

## Title 1

## GENERAL PROVISIONS

## Chapters

- 1.08 Statute law committee (Code reviser).**  
**1.12 Rules of construction.**  
**1.20 General provisions.**

## Chapter 1.08 RCW

STATUTE LAW COMMITTEE  
(CODE REVISER)

## Sections

- 1.08.001 Statute law committee created—Membership.  
 1.08.003 Terms of members—Filling vacancies.  
 1.08.007 Committee meetings.  
 1.08.011 Employment of code reviser and staff.

**1.08.001 Statute law committee created—Membership.** There is created a permanent statute law committee consisting of eleven members as follows:

- (1) The secretary of the senate, ex officio;
- (2) Two members of the senate, one from each of the two largest caucuses in the senate, appointed by the president of the senate;
- (3) The chief clerk of the house of representatives, ex officio;
- (4) Two members of the house of representatives, one from each of the two largest caucuses in the house of representatives, appointed by the speaker of the house of representatives;
- (5) The staff director of the nonpartisan professional committee staff of the senate, ex officio;
- (6) The staff director of the nonpartisan professional committee staff of the house of representatives, ex officio;
- (7) A lawyer admitted to practice in this state, appointed by the board of governors of the Washington State Bar Association;
- (8) A judge of the supreme court or a lawyer who has been admitted to practice in this state, appointed by the chief justice of the supreme court; and
- (9) A lawyer staff member of the governor's office or a state agency, appointed by the governor.

All such initial appointments shall be made within thirty days of May 11, 2005. [2005 c 409 § 1; 1967 ex.s. c 124 § 1; 1959 c 95 § 1; 1955 c 235 § 1; 1953 c 257 § 1; 1951 c 157 § 1.]

**Effective date—2005 c 409:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 11, 2005]." [2005 c 409 § 5.]

**Severability—1955 c 235:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1955 c 235 § 10.]

**1.08.003 Terms of members—Filling vacancies.** The term of the member of the committee appointed by the State Bar Association, shall be for two years.

The term of any ex officio member expires upon expiration of tenure of the position by virtue of which he or she is a

member of the committee. The remaining members of the committee shall serve at the pleasure of the appointing authority. Vacancies shall be filled by designation, appointment, or ex officio in the same manner as for the member so vacating, and if a vacancy results other than from expiration of a term, the vacancy shall be filled for the unexpired term. [2005 c 409 § 2; 1959 c 95 § 2; 1955 c 235 § 2; 1953 c 257 § 2; 1951 c 157 § 2.]

**Effective date—2005 c 409:** See note following RCW 1.08.001.

**1.08.007 Committee meetings.** The committee shall from time to time elect a chairman from among its members and adopt rules to govern its procedures. Four members of the committee shall constitute a quorum for the transaction of any business but no proceeding of the committee shall be valid unless carried by the vote of a majority of the members present. The code reviser or a member of his or her staff shall act as secretary of the committee. [2005 c 409 § 3; 1953 c 257 § 3; 1951 c 157 § 4.]

**Effective date—2005 c 409:** See note following RCW 1.08.001.

**1.08.011 Employment of code reviser and staff.** The committee shall employ on behalf of the state and from time to time fix the compensation of a competent code reviser, with power to terminate any such employment at any time. The committee shall also employ on behalf of the state and fix the compensation of such additional legal and clerical assistance to the code reviser as may reasonably be required under this chapter. The committee shall have general supervision and control over the functions and performance of the code reviser. [2005 c 409 § 4; 1951 c 157 § 5.]

**Effective date—2005 c 409:** See note following RCW 1.08.001.

## Chapter 1.12 RCW

## RULES OF CONSTRUCTION

## Sections

- 1.12.070 Reports, claims, tax returns, remittances, etc.—Filing.

**1.12.070 Reports, claims, tax returns, remittances, etc.—Filing.** Except as otherwise specifically provided by law hereafter:

(1) Any report, claim, tax return, statement or other document required to be filed with, or any payment made to the state or to any political subdivision thereof, which is (a) transmitted through the United States mail or private third-party delivery service, shall be deemed filed and received by the state or political subdivision on the date shown by the post office or private third-party delivery service cancellation mark or shipping date stamped or affixed upon the envelope or other appropriate wrapper containing it; or (b) mailed via United States mail or sent by a private third-party delivery service but not received by the state or political subdivision, or where received and the cancellation mark or shipping date is illegible, erroneous, or omitted, shall be deemed filed and received on the date it was mailed if the sender establishes by competent evidence that the report, claim, tax return, statement, remittance, or other document was deposited with a private third-party delivery service or in the United States mail on or before the date due for filing; and in cases of such

nonreceipt of a report, tax return, statement, remittance, or other document required by law to be filed, the sender files with the state or political subdivision a duplicate within ten days after written notification is given to the sender by the state or political subdivision of its nonreceipt of such report, tax return, statement, remittance, or other document.

(2)(a) If any report, claim, tax return, statement, remittance, or other document is sent by United States registered mail, certified mail or certificate of mailing, a record authenticated by the United States post office of such registration, certification or certificate shall be considered competent evidence that the report, claim, tax return, statement, remittance or other document was delivered to the addressee, and the date of registration, certification or certificate shall be deemed the postmarked date.

(b) If any report, claim, tax return, statement, remittance, or other document is sent via private third-party delivery service, a record authenticated by the private third-party delivery service shall be considered competent evidence that the report, claim, tax return, statement, remittance, or other document was delivered to the addressee, and the date of deposit with the private third-party delivery service shall be deemed the shipping date.

(3) If the date for filing any report, claim, tax return, statement, remittance, or other document falls upon a Saturday, Sunday or legal holiday, the filing shall be considered timely if performed on the next business day. [2005 c 502 § 1; 1967 c 222 § 1.]

**Effective date—2005 c 502:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 17, 2005]." [2005 c 502 § 11.]

## Chapter 1.20 RCW GENERAL PROVISIONS

### Sections

1.20.037 State marine mammal.

**1.20.037 State marine mammal.** The orca, *Orcinus orca*, is hereby designated as the official marine mammal of the state of Washington. [2005 c 51 § 2.]

**Finding—Intent—2005 c 51:** "The legislature finds that many people visit Washington state to watch orcas, the orca is a significant symbol for the Native American culture, there are pods of orcas that migrate annually through Puget Sound, and the orca is easily recognizable because of its distinct markings. The legislature intends to promote orca awareness and to encourage protection of the natural marine habitat by designating the orca as the official marine mammal of the state of Washington." [2005 c 51 § 1.]

## Title 2 COURTS OF RECORD

### Chapters

- 2.08 Superior courts.
- 2.14 Retirement of judges—Supplemental retirement.
- 2.28 Powers of courts and general provisions.
- 2.32 Court clerks, reporters, and bailiffs.
- 2.36 Juries.
- 2.43 Interpreters for non-English-speaking persons.
- 2.53 Civil legal aid.

[2005 RCW Supp—page 2]

- 2.56 Administrator for the courts.
- 2.64 Commission on judicial conduct.
- 2.68 Judicial information system.
- 2.70 Office of public defense.

## Chapter 2.08 RCW SUPERIOR COURTS

### Sections

- 2.08.063 Judges—Lincoln, Skagit, Walla Walla, Whitman, Yakima, Adams, and Whatcom counties.
- 2.08.180 Judge pro tempore—Appointment—Oath—Compensation.

### 2.08.063 Judges—Lincoln, Skagit, Walla Walla, Whitman, Yakima, Adams, and Whatcom counties.

There shall be in the county of Lincoln one judge of the superior court; in the county of Skagit, four judges of the superior court; in the county of Walla Walla, two judges of the superior court; in the county of Whitman, one judge of the superior court; in the county of Yakima, eight judges of the superior court; in the county of Adams, one judge of the superior court; in the county of Whatcom, three judges of the superior court. [2005 c 95 § 1; 1998 c 270 § 2; 1992 c 189 § 3; 1988 c 66 § 1; 1975 1st ex.s. c 49 § 1; 1973 1st ex.s. c 27 § 2; 1971 ex.s. c 83 § 1; 1963 c 48 § 3; 1955 c 19 § 1; 1951 c 125 § 5. Prior: 1949 c 237 §§ 2, 4; 1945 c 20 § 1, part; 1927 c 135 § 1, part; 1917 c 97 § 5, part; 1911 c 62 § 1; 1911 c 129 § 2, part; 1907 c 79 § 1, part; 1895 c 89 § 1, part; 1891 c 68 § 3, part; 1890 p 341 § 1, part; Rem. Supp. 1949 §§ 11045-1j, 11045-1i; Rem. Supp. 1945 § 11045-1d, part; RRS § 11045-1, part.]

**Contingency of additional judicial position—2005 c 95:** "The additional judicial position created by section 1 of this act in Skagit county shall be effective only if the county through its legislative authority documents its approval by January 1, 2007, of the additional position and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of the additional judicial position as provided by statute. The additional expenses include, but are not limited to, expenses incurred for court facilities." [2005 c 95 § 2.]

**Effective date—Additional judicial positions in Clark, Lewis, and Yakima counties—Start dates—Establishment by county commissioners upon superior court request—1998 c 270:** See notes following RCW 2.08.062.

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

**Effect—Additional judicial position in Yakima county subject to approval and agreement—1988 c 66:** "The additional judicial position created by section 1 of this act in Yakima county shall be effective only if the county through its legislative authority documents its approval by January 1, 1990, of the additional position and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of the additional judicial position as provided by statute. The additional expenses include, but are not limited to, expenses incurred for court facilities." [1988 c 66 § 2.]

**2.08.180 Judge pro tempore—Appointment—Oath—Compensation.** A case in the superior court of any county may be tried by a judge pro tempore, who must be either: (1) A member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court, and sworn to try the case; or (2) pursuant to supreme court rule, any sitting elected judge. Any action in the trial of such cause shall have the same effect as if it was made by a judge of such court. However, if a previously elected judge of the superior court retires leaving a pending

case in which the judge has made discretionary rulings, the judge is entitled to hear the pending case as a judge pro tempore without any written agreement.

A judge pro tempore shall, before entering upon his or her duties in any cause, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States and the Constitution of the State of Washington, and that I will faithfully discharge the duties of the office of judge pro tempore in the cause wherein . . . . is plaintiff and . . . . defendant, according to the best of my ability."

A judge pro tempore who is a practicing attorney and who is not a retired justice of the supreme court or judge of a superior court of the state of Washington, or who is not an active judge of a court of the state of Washington, shall receive a compensation of one-two hundred fiftieth of the annual salary of a superior court judge for each day engaged in said trial, to be paid in the same manner as the salary of the superior judge. A judge who is an active full-time judge of a court of the state of Washington shall receive no compensation as judge pro tempore. A judge who is an active part-time judge of a court of the state of Washington may receive compensation as a judge pro tempore only when sitting as a judge pro tempore during time for which he or she is not compensated as a part-time judge. A justice or judge who has retired from the supreme court, court of appeals, or superior court of the state of Washington shall receive compensation as judge pro tempore in the amount of sixty percent of the amount payable to a judge pro tempore under this section, provided that a retired justice or judge may decline to accept compensation. [2005 c 142 § 1; 2003 c 247 § 1; 2002 c 137 § 1; 1987 c 73 § 1; 1971 c 81 § 6; 1967 c 149 § 1; 1890 p 343 § 11; RRS § 40.]

**Contingent effective date—1987 c 73:** "This act shall take effect January 1, 1988, if the proposed amendment to Article IV, section 7 of the state Constitution, allowing retiring judges to hear pending cases, is validly submitted to and is approved and ratified by the voters at a general election held in November, 1987. If the proposed amendment is not so approved and ratified, this act shall be null and void in its entirety." [1987 c 73 § 2.] Amendment 80 of the state Constitution, amending Article IV, section 7, was approved by the voters November 3, 1987.

*Judges pro tempore: State Constitution Art. 4 § 7.*  
*appointments: RCW 2.56.170.*

**Chapter 2.14 RCW**  
**RETIREMENT OF JUDGES—**  
**SUPPLEMENTAL RETIREMENT**

Sections

2.14.110 Payment of contributions upon member's death.

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

spouse had been nominated by written designation or, if there is no such surviving spouse, then to the member's legal representatives. [2005 c 282 § 1; 1996 c 42 § 1; 1988 c 109 § 22.]

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

**Chapter 2.28 RCW**

**POWERS OF COURTS AND GENERAL PROVISIONS**

Sections

2.28.170 Drug courts.  
2.28.180 Mental health courts.  
2.28.190 Drug court and mental health court may be combined.

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

(2) For the purposes of this section, "drug court" means a court that has special calendars or dockets designed to achieve a reduction in recidivism and substance abuse among nonviolent, substance abusing felony and nonfelony offenders by increasing their likelihood for successful rehabilitation through early, continuous, and intense judicially supervised treatment; mandatory periodic drug testing; and the use of appropriate sanctions and other rehabilitation services.

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

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

(ii) Match, on a dollar-for-dollar basis, state moneys allocated for drug court programs with local cash or in-kind resources. Moneys allocated by the state must be used to supplement, not supplant, other federal, state, and local funds for drug court operations and associated services.

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

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

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

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

(A) That is a sex offense;

(B) That is a serious violent offense;

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

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

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

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

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

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

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

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

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

**2.28.180 Mental health courts.** (1) Counties may establish and operate mental health courts.

(2) For the purposes of this section, "mental health court" means a court that has special calendars or dockets designed to achieve a reduction in recidivism and symptoms of mental illness among nonviolent, mentally ill felony and nonfelony offenders by increasing their likelihood for successful rehabilitation through early, continuous, and intense judicially supervised treatment including drug treatment for persons with co-occurring disorders; mandatory periodic reviews, including drug testing if indicated; and the use of appropriate sanctions and other rehabilitation services.

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

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

(ii) Match, on a dollar-for-dollar basis, state moneys allocated for mental health court programs with local cash or in-kind resources. Moneys allocated by the state must be used to supplement, not supplant, other federal, state, and local funds for mental health court operations and associated services.

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

(i) The offender would benefit from psychiatric treatment;

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

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

(A) That is a sex offense;

(B) That is a serious violent offense;

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

(D) During which the defendant caused substantial or great bodily harm or death to another person. [2005 c 504 § 501.]

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

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

**2.28.190 Drug court and mental health court may be combined.** Any county that has established a drug court and a mental health court under this chapter may combine the functions of both courts into a single therapeutic court. [2005 c 504 § 502.]

[2005 RCW Supp—page 4]

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

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

## Chapter 2.32 RCW

### COURT CLERKS, REPORTERS, AND BAILIFFS

#### Sections

2.32.160 Washington court reports commission.

#### **2.32.160 Washington court reports commission.**

There is hereby created a commission advisory to the supreme court regarding the publication of the decisions of the supreme court and court of appeals of this state in both the form of advance sheets for temporary use and in permanent form, to be known as the Washington court reports commission, and to include the reporter of decisions, the state law librarian, and such other members, including a judge of the court of appeals and a member in good standing of the Washington state bar association, as determined by the chief justice of the supreme court, who shall be chairman of the commission. Members of the commission shall serve as such without additional or any compensation: PROVIDED, That members shall be compensated in accordance with RCW 43.03.240. [2005 c 190 § 1; 1995 c 257 § 1; 1984 c 287 § 7; 1971 c 42 § 1; 1943 c 185 § 1; Rem. Supp. 1943 § 11071-1. Prior: 1917 c 87 § 1; 1905 c 167 §§ 1-4; 1895 c 55 § 1; 1891 c 37 § 1; 1890 p 327 § 1.]

**Legislative findings—Severability—Effective date—1984 c 287:** See notes following RCW 43.03.220.

## Chapter 2.36 RCW

### JURIES

#### Sections

2.36.055 Jury source list—Jury assignment areas—Master jury list—Compilation.

**2.36.055 Jury source list—Jury assignment areas—Master jury list—Compilation.** The superior court at least annually shall cause a jury source list to be compiled from a list of all registered voters and a list of licensed drivers and identicard holders residing in the county.

In a county with more than one superior court facility and a separate case assignment area for each court facility, the jury source list may be divided into jury assignment areas that consist of registered voters and licensed drivers and identicard holders residing in each jury assignment area. Jury assignment area boundaries may be designated and adjusted by the administrative office of the courts based on the most current United States census data at the request of the majority of the judges of the superior court when required for the efficient and fair administration of justice.

The superior court upon receipt of the jury source list shall compile a master jury list. The master jury list shall be certified by the superior court and filed with the county clerk. All previous jury source lists and master jury lists shall be superseded. In the event that, for any reason, a county's jury source list is not timely created and available for use at least



annually, the most recent previously compiled jury source list for that county shall be used by the courts of that county on an emergency basis only for the shortest period of time until a current jury source list is created and available for use.

Upon receipt of amendments to the list of registered voters and licensed drivers and identocard holders residing in the county the superior court may update the jury source list and master jury list as maintained by the county clerk accordingly. [2005 c 199 § 2; 1993 c 408 § 5; 1988 c 188 § 4.]

**Findings—Intent—2005 c 199:** "The legislature finds that superior courts with more than one superior court facility are asking some jurors to travel excessively long distances to attend court proceedings. In these cases, the legislature further finds that consideration of a juror's proximity to a particular courthouse can be accommodated while continuing to provide proportionate jury source list representation from distinctive groups within the community. The legislature intends to lessen the burdens borne by jurors fulfilling their civic duties by providing a mechanism that narrows the geographic area from which the jurors are drawn while maintaining a random and proportionate jury pool." [2005 c 199 § 1.]

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

**Legislative findings—Severability—Effective date—1988 c 188:** See notes following RCW 2.36.010.

## Chapter 2.43 RCW INTERPRETERS FOR NON-ENGLISH-SPEAKING PERSONS

### Sections

2.43.020	Definitions.
2.43.030	Appointment of interpreter.
2.43.070	Testing, certification of interpreters.

### **2.43.020 Definitions.** As used in this chapter:

(1) "Non-English-speaking person" means any person involved in a legal proceeding who cannot readily speak or understand the English language, but does not include hearing-impaired persons who are covered under chapter 2.42 RCW.

(2) "Qualified interpreter" means a person who is able readily to interpret or translate spoken and written English for non-English-speaking persons and to interpret or translate oral or written statements of non-English-speaking persons into spoken English.

(3) "Legal proceeding" means a proceeding in any court in this state, grand jury hearing, or hearing before an inquiry judge, or before an administrative board, commission, agency, or licensing body of the state or any political subdivision thereof.

(4) "Certified interpreter" means an interpreter who is certified by the administrative office of the courts.

(5) "Appointing authority" means the presiding officer or similar official of any court, department, board, commission, agency, licensing authority, or legislative body of the state or of any political subdivision thereof. [2005 c 282 § 2; 1989 c 358 § 2. Formerly RCW 2.42.210.]

**Severability—1989 c 358:** See note following RCW 2.43.010.

**2.43.030 Appointment of interpreter.** (1) Whenever an interpreter is appointed to assist a non-English-speaking person in a legal proceeding, the appointing authority shall, in the absence of a written waiver by the person, appoint a

certified or a qualified interpreter to assist the person throughout the proceedings.

(a) Except as otherwise provided for in (b) of this subsection, the interpreter appointed shall be a qualified interpreter.

(b) Beginning on July 1, 1990, when a non-English-speaking person is a party to a legal proceeding, or is subpoenaed or summoned by an appointing authority or is otherwise compelled by an appointing authority to appear at a legal proceeding, the appointing authority shall use the services of only those language interpreters who have been certified by the administrative office of the courts, unless good cause is found and noted on the record by the appointing authority. For purposes of chapter 358, Laws of 1989, "good cause" includes but is not limited to a determination that:

(i) Given the totality of the circumstances, including the nature of the proceeding and the potential penalty or consequences involved, the services of a certified interpreter are not reasonably available to the appointing authority; or

(ii) The current list of certified interpreters maintained by the administrative office of the courts does not include an interpreter certified in the language spoken by the non-English-speaking person.

(c) Except as otherwise provided in this section, when a non-English-speaking person is involved in a legal proceeding, the appointing authority shall appoint a qualified interpreter.

(2) If good cause is found for using an interpreter who is not certified or if a qualified interpreter is appointed, the appointing authority shall make a preliminary determination, on the basis of testimony or stated needs of the non-English-speaking person, that the proposed interpreter is able to interpret accurately all communications to and from such person in that particular proceeding. The appointing authority shall satisfy itself on the record that the proposed interpreter:

(a) Is capable of communicating effectively with the court or agency and the person for whom the interpreter would interpret; and

(b) Has read, understands, and will abide by the code of ethics for language interpreters established by court rules. [2005 c 282 § 3; 1990 c 183 § 1; 1989 c 358 § 3. Formerly RCW 2.42.220.]

**Severability—1989 c 358:** See note following RCW 2.43.010.

**2.43.070 Testing, certification of interpreters.** (1) Subject to the availability of funds, the administrative office of the courts shall establish and administer a comprehensive testing and certification program for language interpreters.

(2) The administrative office of the courts shall work cooperatively with community colleges and other private or public educational institutions, and with other public or private organizations to establish a certification preparation curriculum and suitable training programs to ensure the availability of certified interpreters. Training programs shall be made readily available in both eastern and western Washington locations.

(3) The administrative office of the courts shall establish and adopt standards of proficiency, written and oral, in English and the language to be interpreted.

(4) The administrative office of the courts shall conduct periodic examinations to ensure the availability of certified interpreters. Periodic examinations shall be made readily available in both eastern and western Washington locations.

(5) The administrative office of the courts shall compile, maintain, and disseminate a current list of interpreters certified by the office.

(6) The administrative office of the courts may charge reasonable fees for testing, training, and certification. [2005 c 282 § 4; 1989 c 358 § 7. Formerly RCW 2.42.260.]

**Severability—1989 c 358:** See note following RCW 2.43.010.

## Chapter 2.53 RCW CIVIL LEGAL AID

### Sections

2.53.005	Findings.
2.53.010	Civil legal aid oversight committee.
2.53.020	Office of civil legal aid—Director's duties.
2.53.030	Public safety and education account—Use—Distribution formula—Audit—Rules.
2.53.900	Effective date—2005 c 105.

**2.53.005 Findings.** The legislature finds that the provision of civil legal aid services to indigent persons is an important component of the state's responsibility to provide for the proper and effective administration of civil and criminal justice. The legislature further finds that state-funded legal aid services should be administered by an independent office of civil legal aid located within the judicial branch and subject to formal continuing oversight that includes bipartisan legislative representation. [2005 c 105 § 1.]

**2.53.010 Civil legal aid oversight committee.** (1) There is created a civil legal aid oversight committee consisting of the following members:

(a) Three persons appointed by the supreme court from a list of nominees submitted by the access to justice board, one of whom at the time of appointment is income eligible to receive state-funded civil legal aid;

(b) Two persons appointed by the board for judicial administration;

(c) Two senators, one from each of the two largest caucuses, appointed by the president of the senate; and two members of the house of representatives, one from each of the two largest caucuses, appointed by the speaker of the house of representatives;

(d) One person appointed by the Washington state bar association; and

(e) One person appointed by the governor.

(2) During the term of his or her appointment, an appointee may not be employed by a state-funded legal aid provider.

(3) Members shall each serve a three-year term, subject to renewal for no more than one additional three-year term. The oversight committee shall develop rules that provide for the staggering of terms so that, after the first three years of the committee's existence, the terms of one-third of the members expire each year. Members of the oversight committee receive no compensation for their services as members of the oversight committee, but may be reimbursed for travel and

other expenses in accordance with rules adopted by the office of financial management.

(4) The oversight committee shall: Oversee the activities of the office of civil legal aid created in RCW 2.53.020; review the performance of the director of the office of civil legal aid; and may, from time to time, make recommendations to the supreme court, the access to justice board, and the legislature regarding the provision of civil legal aid funded through RCW 2.53.030. [2005 c 105 § 4.]

### **2.53.020 Office of civil legal aid—Director's duties.**

(1) There is created an office of civil legal aid as an independent agency of the judicial branch.

(2) Activities of the office of civil legal aid shall be carried out by a director of civil legal aid services. The director of civil legal aid services shall be appointed by the supreme court from a list of three names forwarded by the access to justice board. Qualifications for the director include admission to practice law in this state for at least five years; experience in representation of low-income people in civil matters, which experience may be in the form of volunteer representation; knowledge of and demonstrated commitment to promoting access to the civil justice system for indigent persons; and proven managerial or supervisory experience. The director shall serve at the pleasure of the supreme court and receive a salary to be fixed by the oversight committee.

(3) The director shall:

(a) Contract with one or more qualified legal aid providers to provide civil legal aid services authorized by RCW 2.53.030;

(b) Monitor and oversee the use of state funding to ensure compliance with this chapter;

(c) Report quarterly to the civil legal aid oversight committee established in RCW 2.53.010 and the supreme court's access to justice board on the use of state funds for legal aid; and report biennially on the status of access to the civil justice system for low-income people eligible for state-funded legal aid; and

(d) Submit a biennial budget request.

(4) The office shall not provide direct representation of clients. [2005 c 105 § 5.]

**2.53.030 Public safety and education account—Use—Distribution formula—Audit—Rules.** (1)(a) The legislature recognizes the ethical obligation of attorneys to represent clients without interference by third parties in the discharge of professional obligations to clients. However, to ensure the most beneficial use of state resources, the legislature finds that it is within the authority of the legislature to specify the categories of legal cases in which qualified legal aid programs may provide civil representation with state moneys. Accordingly, moneys appropriated for civil legal representation shall not be used for legal representation that is either outside the scope of this section or prohibited by this section.

(b) Nothing in this section is intended to limit the authority of existing entities, including but not limited to the Washington state bar association, the public disclosure commission, the state auditor, and the federal legal services corporation to resolve issues within their respective jurisdictions.

(2) Any money appropriated by the legislature for civil representation of indigent persons shall be administered by the office of civil legal aid established under RCW 2.53.020, and shall be used solely for the purpose of contracting with qualified legal aid programs for legal representation of indigent persons in matters relating to: (a) Domestic relations and family law matters, (b) public assistance and health care, (c) housing and utilities, (d) social security, (e) mortgage foreclosures, (f) home protection bankruptcies, (g) consumer fraud and unfair sales practices, (h) rights of residents of long-term care facilities, (i) wills, estates, and living wills, (j) elder abuse, and (k) guardianship.

(3) For purposes of this section, a "qualified legal aid program" means a not-for-profit corporation incorporated and operating exclusively in Washington which has received basic field funding for the provision of civil legal aid to indigents from the federal legal services corporation or that has received funding for civil legal aid for indigents under this section before July 1, 1997.

(4) When entering into a contract with a qualified legal aid provider under this section, the office of civil legal aid shall require the provider to provide legal aid in a manner that maximizes geographic access throughout the state.

(5) Funds distributed to qualified legal aid programs under this section may not be used directly or indirectly for:

(a) Lobbying.

(i) For purposes of this section, "lobbying" means any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or other device directly or indirectly intended to influence any member of congress or any other federal, state, or local nonjudicial official, whether elected or appointed:

(A) In connection with any act, bill, resolution, or similar legislation by the congress of the United States or by any state or local legislative body, or any administrative rule, rule-making activity, standard, rate, or other enactment by any federal, state, or local administrative agency;

(B) In connection with any referendum, initiative, constitutional amendment, or any similar procedure of the congress, any state legislature, any local council, or any similar governing body acting in a legislative capacity; or

(C) In connection with inclusion of any provision in a legislative measure appropriating funds to, or defining or limiting the functions or authority of, the recipient of funds under this section.

(ii) "Lobbying" does not include the response of an employee of a legal aid program to a written request from a governmental agency, an elected or appointed official, or committee on a specific matter. This exception does not authorize communication with anyone other than the requesting party, or agent or employee of such agency, official, or committee.

(b) Grass roots lobbying. For purposes of this section, "grass roots lobbying" means preparation, production, or dissemination of information the purpose of which is to encourage the public at large, or any definable segment thereof, to contact legislators or their staff in support of or in opposition to pending or proposed legislation; or contribute to or participate in a demonstration, march, rally, lobbying campaign, or letter writing or telephone campaign for the purpose of influencing the course of pending or proposed legislation.

(c) Class action lawsuits.

(d) Participating in or identifying the program with prohibited political activities. For purposes of this section, "prohibited political activities" means (i) any activity directed toward the success or failure of a political party, a candidate for partisan or nonpartisan office, a partisan political group, or a ballot measure; (ii) advertising or contributing or soliciting financial support for or against any candidate, political group, or ballot measure; or (iii) voter registration or transportation activities.

(e) Representation in fee-generating cases. For purposes of this section, "fee-generating" means a case that might reasonably be expected to result in a fee for legal aid if undertaken by a private attorney. The charging of a fee pursuant to subsection (6) of this section does not establish the fee-generating nature of a case.

A fee-generating case may be accepted when: (i) The case has been rejected by the local lawyer referral services or by two private attorneys; (ii) neither the referral service nor two private attorneys will consider the case without payment of a consultation fee; (iii) after consultation with the appropriate representatives of the private bar, the program has determined that the type of case is one that private attorneys do not ordinarily accept, or do not accept without prepayment of a fee; or (iv) the director of the program or the director's designee has determined that referral of the case to the private bar is not possible because documented attempts to refer similar cases in the past have been futile, or because emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate and consistent with professional responsibility, referral will be attempted at a later time.

(f) Organizing any association, union, or federation, or representing a labor union. However, nothing in this subsection (5)(f) prohibits the provision of legal aid to clients as otherwise permitted by this section.

(g) Representation of undocumented aliens.

(h) Picketing, demonstrations, strikes, or boycotts.

(i) Engaging in inappropriate solicitation. For purposes of this section, "inappropriate solicitation" means promoting the assertion of specific legal claims among persons who know of their rights to make a claim and who decline to do so. Nothing in this subsection precludes a legal aid program or its employees from providing information regarding legal rights and responsibilities or providing information regarding the program's services and intake procedures through community legal education activities, responding to an individual's specific question about whether the individual should consult with an attorney or take legal action, or responding to an individual's specific request for information about the individual's legal rights or request for assistance in connection with a specific legal problem.

(j) Conducting training programs that: (i) Advocate particular public policies; (ii) encourage or facilitate political activities, labor or antilabor activities, boycotts, picketing, strikes, or demonstrations; or (iii) attempt to influence legislation or rule making. Nothing in this subsection (5)(j) precludes representation of clients as otherwise permitted by this section.

(6) The office of civil legal aid may establish requirements for client participation in the provision of civil legal

aid under this section, including but not limited to copayments and sliding fee scales.

(7)(a) Contracts entered into by the office of civil legal aid with qualified legal aid programs under this section must specify that the program's expenditures of moneys distributed under this section:

(i) Must be audited annually by an independent outside auditor. These audit results must be provided to the office of civil legal aid; and

(ii) Are subject to audit by the state auditor.

(b)(i) Any entity auditing a legal aid program under this section shall have access to all records of the legal aid program to the full extent necessary to determine compliance with this section, with the exception of confidential information protected by the United States Constitution, the state Constitution, the attorney-client privilege, and applicable rules of attorney conduct.

(ii) The legal aid program shall have a system allowing for production of case-specific information, including client eligibility and case type, to demonstrate compliance with this section, with the exception of confidential information protected by the United States Constitution, the state Constitution, the attorney-client privilege, and applicable rules of attorney conduct. Such information shall be available to any entity that audits the program.

(8) The office of civil legal aid must recover or withhold amounts determined by an audit to have been used in violation of this section.

(9) The office of civil legal aid may adopt rules to implement this section. [2005 c 105 § 3; 1997 c 319 § 2; 1995 c 399 § 62; 1992 c 54 § 4. Formerly RCW 43.08.260.]

**Intent—1997 c 319:** "It is the intent of the legislature to promote the provision of civil legal services to indigent persons, subject to available funds. To the extent that funds are appropriated for civil legal services for the indigent, the legislature intends that civil legal services be offered within an oversight framework that ensures accountability." [1997 c 319 § 1.]

**Effective date—1992 c 54:** See note following RCW 36.18.020.

**2.53.900 Effective date—2005 c 105.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005. [2005 c 105 § 9.]

## Chapter 2.56 RCW

### ADMINISTRATOR FOR THE COURTS

#### Sections

2.56.010	Office created—Appointment of administrator.
2.56.020	Appointment, compensation of assistants—Administrator, assistants not to practice law.
2.56.030	Powers and duties.
2.56.040	Distribution of work of courts by chief justice.
2.56.120	Judicial impact notes—Establishment of procedure—Legislator may request—Copies to be filed.
2.56.150	Review of mandatory use of court-appointed special advocates as guardians ad litem, certification of guardians ad litem.
2.56.180	Family law handbook.
2.56.200	Performance audits.

**2.56.010 Office created—Appointment of administrator.** There shall be a state office to be known as the administrative office of the courts. The executive officer of the administrative office of the courts is the administrator for

the courts, who shall be appointed by and hold office at the pleasure of the supreme court of this state. The administrator's salary shall be fixed by the supreme court. [2005 c 282 § 5; 1984 c 20 § 1; 1979 ex.s. c 255 § 7; 1974 ex.s. c 156 § 1; 1969 c 93 § 1; 1957 c 259 § 1.]

**Effective date—1979 ex.s. c 255:** See note following RCW 43.03.010.

**2.56.020 Appointment, compensation of assistants—Administrator, assistants not to practice law.** (1) The administrator for the courts, with the approval of the chief justice of the supreme court of this state, shall appoint and fix the compensation of such assistants as are necessary to enable performance of the power and duties vested in the administrative office of the courts.

(2) Neither the administrator nor any assistant shall engage in the private practice of law except as otherwise provided for in this section.

(3) Except as provided in subsection (4) of this section, nothing in this section prohibits the administrator or any assistant from:

(a) Performing legal services for himself or herself or his or her immediate family; or

(b) Performing legal services of a charitable nature.

(4) The legal services identified in subsection (3) of this section may not be performed if they would interfere with the duties of the administrator or any assistant and no services that are performed shall be deemed within the scope of employment. [2005 c 282 § 6; 1957 c 259 § 2.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(15) Develop, in consultation with the entities set forth in RCW 2.56.150(3), a comprehensive statewide curriculum for persons who act as guardians ad litem under Title 13 or 26 RCW. The curriculum shall be made available July 1, 1997, and include specialty sections on child development, child sexual abuse, child physical abuse, child neglect, clinical and forensic investigative and interviewing techniques, family reconciliation and mediation services, and relevant statutory and legal requirements. The curriculum shall be made available to all superior court judges, court personnel, and all persons who act as guardians ad litem;

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

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

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

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

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

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

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

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

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

(iii) The city has certified to the office of the administrator for the courts that the conditions in (b)(i) and (ii) of this subsection have been met. [2005 c 457 § 7; 2005 c 282 § 7; 2002 c 49 § 2; 1997 c 41 § 2; 1996 c 249 § 2; 1994 c 240 § 1; 1993 c 415 § 3; 1992 c 205 § 115; 1989 c 95 § 2. Prior: 1988 c 234 § 2; 1988 c 109 § 23; 1987 c 363 § 6; 1981 c 132 § 1; 1957 c 259 § 3.]

**Reviser's note:** This section was amended by 2005 c 282 § 7 and by 2005 c 457 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

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

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

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

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

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

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

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

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

**2.56.040 Distribution of work of courts by chief justice.** The chief justice shall consider all recommendations of the administrator for the assignment of judges, and, in the discretion of the chief justice, direct any judge whose calendar, in the judgment of the chief justice, will permit, to hold court in any county or district where need therefor exists, to the end

that the courts of this state shall function with maximum efficiency, and that the work of other courts shall be equitably distributed. It shall be the duty of every judge to obey such direction of the chief justice unless excused by the chief justice for sufficient cause. [2005 c 182 § 1; 1957 c 259 § 4.]

*Visiting judge: RCW 2.08.140 through 2.08.170, 2.08.200.*

**2.56.120 Judicial impact notes—Establishment of procedure—Legislator may request—Copies to be filed.**

(1) The administrative office of the courts, in cooperation with appropriate legislative committees and legislative staff, shall establish a procedure for the provision of judicial impact notes on the effect legislative bills will have on the workload and administration of the courts of this state. The administrative office of the courts and the office of financial management shall coordinate the development of judicial impact notes with the preparation of fiscal notes under chapters 43.88A and 43.132 RCW.

(2) The administrative office of the courts shall provide a judicial impact note on any legislative proposal at the request of any legislator. The note shall be provided to the requesting legislator and copies filed with the appropriate legislative committees in accordance with subsection (3) of this section when the proposed legislation is introduced in either house.

(3) When a judicial impact note is prepared and approved by the administrative office of the courts, copies of the note shall be filed with:

- (a) The chairperson of the committee to which the bill was referred upon introduction in the house of origin;
  - (b) The senate committee on ways and means;
  - (c) The house of representatives committee on ways and means;
  - (d) The senate judiciary committee;
  - (e) The house of representatives judiciary committee;
- and
- (f) The office of financial management.

(4) This section shall not prevent either house of the legislature from acting on any bill before it as otherwise provided by the state Constitution, by law, and by the rules and joint rules of the senate and house of representatives, nor shall the lack of any judicial impact note as provided in this section or any error in the accuracy thereof affect the validity of any measure otherwise duly passed by the legislature. [2005 c 282 § 8; 1986 c 158 § 1; 1984 c 258 § 604.]

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

**2.56.150 Review of mandatory use of court-appointed special advocates as guardians ad litem, certification of guardians ad litem.**

(1) The administrator for the courts shall review the advisability and feasibility of the statewide mandatory use of court-appointed special advocates as described in RCW 26.12.175 to act as guardians ad litem in appropriate cases under Titles 13 and 26 RCW. The review must explore the feasibility of obtaining various sources of private and public funding to implement statewide mandatory use of court-appointed special advocates, such as grants and donations, instead of or in combination with raising court fees or assessments.

[2005 RCW Supp—page 10]

(2) The administrator shall also conduct a study on the feasibility and desirability of requiring all persons who act as guardians ad litem under Titles 11, 13, and 26 RCW to be certified as qualified guardians ad litem prior to their eligibility for appointment.

(3) In conducting the review and study the administrator shall consult with: (a) The presidents or directors of all public benefit nonprofit corporations that are eligible to receive state funds under RCW 43.330.135; (b) the attorney general, or a designee; (c) the secretary of the department of social and health services, or a designee; (d) the superior court judges association; (e) the Washington state bar association; (f) public defenders who represent children under Title 13 or 26 RCW; (g) private attorneys who represent parents under Title 13 or 26 RCW; (h) professionals who evaluate families for the purposes of determining the custody or placement decisions of children; (i) the office of financial management; (j) persons who act as volunteer or compensated guardians ad litem; and (k) parents who have dealt with guardians ad litem in court cases. For the purposes of studying the feasibility of a certification requirement for guardians ad litem acting under Title 11 RCW the administrator shall consult with the advisory group formed under RCW 11.88.090.

(4) The administrator shall also conduct a review of problems and concerns about the role of guardians ad litem in actions under Titles 11, 13, and 26 RCW and recommend alternatives to strengthen judicial oversight of guardians ad litem and ensure fairness and impartiality of the process. The administrator must accept and obtain comments from parties designated in subsection (3) of this section. [2005 c 282 § 9; 1996 c 249 § 3.]

**Presentation of review and study—Time limit—1996 c 249:** "The review and study required under section 3 of this act shall be presented to the governor and to the legislature no later than December 1, 1996." [1996 c 249 § 4.]

**Intent—1996 c 249:** See note following RCW 2.56.030.

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

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

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

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

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

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

(d) Information on child support for minor children;

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

(f) Information on spousal maintenance;

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

(h) Information on the court process for dissolution;

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

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

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

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

(2) The state has a compelling interest in providing couples, applying for a marriage license, information with regard to marriage and, if contemplated, the effects of divorce." [2002 c 49 § 1.]

**2.56.200 Performance audits.** The office of the administrator for the courts is encouraged to conduct performance audits of courts under the authority of the supreme court, in conformity with criteria and methods developed by the board for judicial administration that have been approved by the supreme court. In developing criteria and methods for conducting performance audits, the board for judicial administration is encouraged to consider quality improvement programs, audits, and scoring. The judicial branch is encouraged to submit the results of these efforts to the chief justice of the supreme court or his or her designee, and with any other applicable boards or committees established under the authority of the supreme court to oversee government accountability. [2005 c 385 § 10.]

**Findings—2005 c 385:** See note following RCW 43.09.430.

## Chapter 2.64 RCW

### COMMISSION ON JUDICIAL CONDUCT

#### Sections

- 2.64.020 Membership—Terms. (*Effective January 1, 2006, if the proposed amendment to Article IV, section 31 of the state Constitution is approved at the November 2005 general election.*)
- 2.64.111 Exemption from public disclosure—Records subject to public disclosure, when. (*Effective July 1, 2006.*)

**2.64.020 Membership—Terms.** (*Effective January 1, 2006, if the proposed amendment to Article IV, section 31 of the state Constitution is approved at the November 2005 general election.*) The commission shall consist of eleven members. One member shall be a judge selected by and from the court of appeals judges; one member shall be a judge selected by and from the superior court judges; one member shall be a judge selected by and from the limited jurisdiction court judges; two members shall be selected by the state bar association and be admitted to the practice of law in this state; and six members shall be nonlawyers appointed by the governor. The term of each member of the commission shall be four years. [2005 c 15 § 1; 1989 c 367 § 2; 1987 c 186 § 2; 1981 c 268 § 3.]

**Contingent effective date—2005 c 15:** "This act takes effect January 1, 2006, if the proposed amendment to Article IV, section 31 of the state Constitution (Senate Joint Resolution No. 8207, changing the membership of

the commission on judicial conduct) is validly submitted to and is approved and ratified by the voters at the next general election. If the proposed amendment is not approved and ratified, this act is void in its entirety." [2005 c 15 § 2.]

**Contingent effective date—1989 c 367:** See note following RCW 2.64.010.

**Terms of additional members—1987 c 186 § 2:** "Notwithstanding RCW 2.64.020, the initial term of one of the members added to the commission on judicial conduct by section 2, chapter 186, Laws of 1987 shall end on June 16, 1990, and the term of the other member shall end on June 16, 1991, as determined by lot." [1987 c 186 § 3.]

**2.64.111 Exemption from public disclosure—Records subject to public disclosure, when.** (*Effective July 1, 2006.*) All pleadings, papers, evidence records, and files of the commission, including complaints and the identity of complainants, compiled or obtained during the course of an investigation or initial proceeding involving the discipline or retirement of a judge or justice, are exempt from the public disclosure requirements of chapter 42.56 RCW during such investigation or initial proceeding. As of the date of a public hearing, all those records of the initial proceeding that were the basis of a finding of probable cause are subject to the public disclosure requirements of chapter 42.56 RCW. [2005 c 274 § 201; 1989 c 367 § 6.]

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

**Contingent effective date—1989 c 367:** See note following RCW 2.64.010.

## Chapter 2.68 RCW

### JUDICIAL INFORMATION SYSTEM

#### Sections

- 2.68.020 Judicial information system account.

**2.68.020 Judicial information system account.** There is created an account in the custody of the state treasurer to be known as the judicial information system account. The administrative office of the courts shall maintain and administer the account, in which shall be deposited all moneys received from in-state noncourt users and any out-of-state users of the judicial information system and moneys as specified in RCW 2.68.040 for the purposes of providing judicial information system access to noncourt users and providing an adequate level of automated services to the judiciary. The legislature shall appropriate the funds in the account for the purposes of the judicial information system. The account shall be used for the acquisition of equipment, software, supplies, services, and other costs incidental to the acquisition, development, operation, and administration of information services, telecommunications, systems, software, supplies, and equipment, including the payment of principal and interest on items paid in installments. [2005 c 282 § 11; 1994 c 8 § 1; 1989 c 364 § 2.]

## Chapter 2.70 RCW

### OFFICE OF PUBLIC DEFENSE

#### Sections

- 2.70.030 Advisory committee—Membership—Duties—Travel and other expenses.

2.70.050 Transfer to office of appellate indigent defense powers, duties, functions, information, property, appropriations, employees, rules, and pending business—Apportionment—Effect on collective bargaining.

**2.70.030 Advisory committee—Membership—Duties—Travel and other expenses.** (1) There is created an advisory committee consisting of the following members:

(a) Three persons appointed by the chief justice of the supreme court, including the chair of the appellate indigent defense commission identified in subsection (3) of this section;

(b) Two nonattorneys appointed by the governor;

(c) Two senators, one from each of the two largest caucuses, appointed by the president of the senate; and two members of the house of representatives, one from each of the two largest caucuses, appointed by the speaker of the house of representatives;

(d) One person appointed by the court of appeals executive committee;

(e) One person appointed by the Washington state bar association.

(2) During the term of his or her appointment, no appointee may: (a) Provide indigent defense services except on a pro bono basis; (b) serve as an appellate judge except on a pro tem basis or as an appellate court employee; or (c) serve as a prosecutor or prosecutor employee.

(3) The initial advisory committee shall be comprised of the current members of the appellate indigent defense commission, as established by Supreme Court Order No. 25700-B, dated March 9, 1995, plus two additional legislator members appointed under subsection (1)(c) of this section. Members shall serve until the termination of their current terms, and may be reappointed. The two additional legislator members, who are not on the appellate indigent defense commission, shall each serve three-year terms. Members of the advisory committee shall receive no compensation for their services as members of the commission, but may be reimbursed for travel and other expenses in accordance with rules adopted by the office of financial management. [2005 c 111 § 1; 1996 c 221 § 4.]

**Sunset Act application:** See note following chapter digest.

**2.70.050 Transfer to office of appellate indigent defense powers, duties, functions, information, property, appropriations, employees, rules, and pending business—Apportionment—Effect on collective bargaining.** (1) All powers, duties, and functions of the supreme court and the administrative office of the courts pertaining to appellate indigent defense are transferred to the office of public defense.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the supreme court or the administrative office of the courts pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the office of public defense. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the supreme court or the administrative office of the courts in carrying out the powers, functions, and duties transferred shall be made available to the office of public defense. All funds, credits, or other assets

held in connection with the powers, functions, and duties transferred shall be assigned to the office of public defense.

(b) Any appropriations made to the supreme court or the administrative office of the courts for carrying out the powers, functions, and duties transferred shall, on June 6, 1996, be transferred and credited to the office of public defense.

(c) Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees of the supreme court or the administrative office of the courts engaged in performing the powers, functions, and duties transferred are transferred to the jurisdiction of the office of public defense. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the office of public defense to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All rules and all pending business before the supreme court or the administrative office of the courts pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the office of public defense. All existing contracts and obligations shall remain in full force and shall be performed by the office of public defense.

(5) The transfer of the powers, duties, functions, and personnel of the supreme court or the administrative office of the courts shall not affect the validity of any act performed before June 6, 1996.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(7) Nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the personnel board as provided by law. [2005 c 282 § 12; 1996 c 221 § 6.]

**Sunset Act application:** See note following chapter digest.

## Title 3

### DISTRICT COURTS—COURTS OF LIMITED JURISDICTION

#### Chapters

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



### Chapter 3.34 RCW DISTRICT JUDGES

## Sections

- 3.34.010 District judges—Number for each county.  
3.34.025 District judge positions—Approval and agreement.

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

The number of district judges to be elected in each county shall be: Adams, two; Asotin, one; Benton, three; Chelan, two; Clallam, two; Clark, six; Columbia, one; Cowlitz, two; Douglas, one; Ferry, one; Franklin, one; Garfield, one; Grant, two; Grays Harbor, two; Island, one; Jefferson, one; King, twenty-one; Kitsap, four; Kittitas, two; Klickitat, two; Lewis, two; Lincoln, one; Mason, one; Okanogan, two; Pacific, two; Pend Oreille, one; Pierce, eleven; San Juan, one; Skagit, two; Skamania, one; Snohomish, eight; Spokane, ten; Stevens, one; Thurston, three; Wahkiakum, one; Walla Walla, two; Whatcom, two; Whitman, one; Yakima, four. This number may be increased only as provided in RCW 3.34.020. [2005 c 91 § 1; 2003 c 97 § 1; 2002 c 138 § 1; 1998 c 64 § 1; 1995 c 168 § 1; 1994 c 111 § 1; 1991 c 354 § 1; 1989 c 227 § 6; 1987 c 202 § 111; 1975 1st ex.s. c 153 § 1; 1973 1st ex.s. c 14 § 1; 1971 ex.s. c 147 § 1; 1970 ex.s. c 23 § 1; 1969 ex.s. c 66 § 1; 1965 ex.s. c 110 § 5; 1961 c 299 § 10.]

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

**Effective date—2003 c 97:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2003]." [2003 c 97 § 6.]

**Effective date—1995 c 168:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 1, 1995]." [1995 c 168 § 2.]

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

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

#### 3.34.025 District judge positions—Approval and agreement.

**District judge position for Clark county—2005 c 91:** "For the purposes of RCW 3.34.025, the district judge position for Clark county created in chapter 97, Laws of 2003, is hereby re-created as of July 24, 2005." [2005 c 91 § 2.]

### Chapter 3.46 RCW MUNICIPAL DEPARTMENTS

## Sections

- 3.46.030 Jurisdiction.  
3.46.150 Termination of municipal department—Transfer agreement—Notice. (*Effective January 1, 2006.*)  
3.46.160 City trial court improvement account—Contributions to account by city—Use of funds.

**3.46.030 Jurisdiction.** A municipal department shall have exclusive jurisdiction of matters arising from ordinances of the city, and no jurisdiction of other matters except as conferred by statute. A municipal department participating in the program established by the administrative office of the courts pursuant to RCW 2.56.160 shall have jurisdiction to take recognizance, approve bail, and arraign defendants held within its jurisdiction on warrants issued by any court of

limited jurisdiction participating in the program. [2005 c 282 § 13; 2000 c 111 § 5; 1985 c 303 § 13; 1961 c 299 § 37.]

#### 3.46.150 Termination of municipal department—Transfer agreement—Notice. (*Effective January 1, 2006.*)

(1) Any city, having established a municipal department as provided in this chapter may, by written notice to the county legislative authority not less than one year prior to February 1st of the year in which all district court judges are subject to election, require the termination of the municipal department created pursuant to this chapter. A city may terminate a municipal department only at the end of a four-year judicial term. However, the city may not give the written notice required by this section unless the city has reached an agreement with the county under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the termination. The agreement shall provide for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04A RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04A RCW.

(2) A county that wishes to terminate a municipal department of the district court must provide written notice to the city legislative authority at least one year prior to the date of the intended termination. [2005 c 433 § 33; 2001 c 68 § 2; 1984 c 258 § 210; 1961 c 299 § 49.]

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

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

#### 3.46.160 City trial court improvement account—

**Contributions to account by city—Use of funds.** Any city operating a municipal department under this chapter for which the state contributes to district or municipal court judges' salaries under RCW 2.56.030 shall create a city trial court improvement account. An amount equal to one hundred percent of the state's contribution received by the city for the payment of the city's proportionate share of the district or municipal court judges' salaries shall be deposited into the account. Money in the account shall be used to fund improvements to the municipal department's staffing, programs, facilities, or services, as appropriated by the city legislative authority. [2005 c 457 § 2.]

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

### Chapter 3.50 RCW

#### MUNICIPAL COURTS—ALTERNATE PROVISION

(Formerly: Municipal departments—Alternate provision)

## Sections

- 3.50.020 Jurisdiction.  
3.50.355 Offender supervision by another state.

- 3.50.480 City or town trial court improvement account—Contributions to account by city or town—Use of funds.
- 3.50.800 Repeal of municipal criminal code—Agreement covering costs of handling resulting criminal cases—Arbitration—Renewal. (*Effective January 1, 2006.*)
- 3.50.805 Termination of municipal court—Agreement covering costs of handling resulting criminal cases—Arbitration—Repeal of municipal criminal code—Agreement—Arbitration—Repeal of a municipal crime equivalent to offense in RCW 46.63.020—Agreement—Arbitration. (*Effective January 1, 2006.*)

**3.50.020 Jurisdiction.** The municipal court shall have exclusive original jurisdiction over traffic infractions arising under city ordinances and exclusive original criminal jurisdiction of all violations of city ordinances duly adopted by the city in which the municipal court is located and shall have original jurisdiction of all other actions brought to enforce or recover license penalties or forfeitures declared or given by such ordinances or by state statutes. The municipal court shall also have the jurisdiction as conferred by statute. The municipal court is empowered to forfeit cash bail or bail bonds and issue execution thereon; and in general to hear and determine all causes, civil or criminal, including traffic infractions, arising under such ordinances and to pronounce judgment in accordance therewith. A municipal court participating in the program established by the administrative office of the courts pursuant to RCW 2.56.160 shall have jurisdiction to take recognizance, approve bail, and arraign defendants held within its jurisdiction on warrants issued by any court of limited jurisdiction participating in the program. [2005 c 282 § 14; 2000 c 111 § 6; 1985 c 303 § 14; 1984 c 258 § 104; 1979 ex.s. c 136 § 17; 1961 c 299 § 51.]

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

**Application—1984 c 258 §§ 101-139:** See note following RCW 3.50.005.

**Effective date—Severability—1979 ex.s. c 136:** See notes following RCW 46.63.010.

**3.50.355 Offender supervision by another state.** (1) If a person placed on probation for one year or more for a misdemeanor or gross misdemeanor by a municipal court requests permission to travel or transfer to another state, the assigned probation officer shall determine whether such request is subject to RCW 9.94A.745, the interstate compact for adult offender supervision. If such request is subject to the compact, the probation officer shall:

- (a) Notify the department of corrections of the probationer's request;
- (b) Provide the department of corrections with the supporting documentation it requests for processing an application for transfer;
- (c) Notify the probationer of the fee due to the department of corrections for processing an application under the compact;
- (d) Cease supervision of the probationer while another state supervises the probationer pursuant to the compact;
- (e) Resume supervision if the probationer returns to this state before the term of probation expires.

(2) The probationer shall receive credit for time served while being supervised by another state.

(3) If the probationer is returned to the state at the request of the receiving state under rules of the interstate compact for

adult offender supervision, the department of corrections is responsible for the cost of returning the probationer.

(4) The state of Washington, the department of corrections and its employees, and any city and its employees are not liable for civil damages resulting from any act or omission authorized or required under this section unless the act or omission constitutes gross negligence. [2005 c 400 § 6.]

**Application—Effective date—2005 c 400:** See notes following RCW 9.94A.74504.

**3.50.480 City or town trial court improvement account—Contributions to account by city or town—Use of funds.** Any city or town operating a municipal court under this chapter for which the state contributes to municipal court judges' salaries under RCW 2.56.030 shall create a city or town trial court improvement account. An amount equal to one hundred percent of the state's contribution for the payment of the city's or town's municipal court judges' salaries shall be deposited into the account. Money in the account shall be used to fund improvements to the municipal court's staffing, programs, facilities, or services, as appropriated by the city or town legislative authority. [2005 c 457 § 3.]

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

**3.50.800 Repeal of municipal criminal code—Agreement covering costs of handling resulting criminal cases—Arbitration—Renewal.** (*Effective January 1, 2006.*) (1) If a municipality has, prior to July 1, 1984, repealed in its entirety that portion of its municipal code defining crimes but continues to hear and determine traffic infraction cases under chapter 46.63 RCW in a municipal court, the municipality and the appropriate county shall, prior to January 1, 1985, enter into an agreement under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs incurred after January 1, 1985, associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the repeal. If the municipality and the county cannot come to an agreement within the time prescribed by this section, they shall be deemed to have entered into an agreement to submit the issue to arbitration pursuant to chapter 7.04A RCW. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04A RCW.

(2) The agreement between the municipality and the county shall include provisions for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04A RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights as other parties who have agreed to submit to arbitration under chapter 7.04A RCW. [2005 c 433 § 34; 1984 c 258 § 202.]

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

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

**3.50.805 Termination of municipal court—Agreement covering costs of handling resulting criminal cases—Arbitration—Repeal of municipal criminal code—Agreement—Arbitration—Repeal of a municipal crime equivalent to offense in RCW 46.63.020—Agreement—Arbitration.** (*Effective January 1, 2006.*) (1) A municipality operating a municipal court under this chapter shall not terminate that court unless the municipality has reached an agreement with the appropriate county or another municipality under chapter 39.34 RCW under which the county or municipality is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district or municipal court as a result of the termination. The agreement shall provide for periodic review and renewal of the terms of the agreement. If the municipality and the county or municipality are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04A RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county or municipality have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04A RCW. A municipality that has entered into agreements with other municipalities that have terminated their municipal courts may not thereafter terminate its court unless each municipality has reached an agreement with the appropriate county in accordance with this section.

(2) A municipality operating a municipal court under this chapter may not repeal in its entirety that portion of its municipal code defining crimes while retaining the court's authority to hear and determine traffic infractions under chapter 46.63 RCW unless the municipality has reached an agreement with the county under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the repeal. The agreement shall provide for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04A RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04A RCW.

(3) A municipality operating a municipal court under this chapter may not repeal a provision of its municipal code which defines a crime equivalent to an offense listed in RCW 46.63.020 unless the municipality has reached an agreement with the county under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the repeal. The agreement shall provide for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter

7.04A RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04A RCW. [2005 c 433 § 35; 1984 c 258 § 203.]

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

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

### Chapter 3.58 RCW SALARIES AND EXPENSES

#### Sections

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

**3.58.060 County trial court improvement account—Contributions to account by county—Use of funds.** Any county with a district court created under this title shall create a county trial court improvement account. An amount equal to one hundred percent of the state's contribution received by the county for the payment of district court judges' salaries under RCW 43.08.250 shall be deposited into the account. Money in the account shall be used to fund improvements to superior and district court staffing, programs, facilities, or services, as appropriated by the county legislative authority. [2005 c 457 § 4.]

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

### Chapter 3.62 RCW INCOME OF COURT

#### Sections

3.62.050 Court expenditures to be paid from county current expense fund—Exception.  
3.62.060 Filing fees in civil cases—Fees allowed as court costs.  
3.62.085 Fee for conviction or plea of guilty.

**3.62.050 Court expenditures to be paid from county current expense fund—Exception.** The total expenditures of the district courts, including the cost of providing courtroom and office space, the cost of probation and parole services and any personnel employment therefor, and the cost of providing services necessary for the preparation and presentation of a defense at public expense, except costs of defense to be paid by a city pursuant to RCW 3.62.070 and the portion of district court judges' salaries distributed by the administrator for the courts pursuant to RCW 2.56.030, shall be paid from the county current expense fund. [2005 c 457 § 6; 1987 c 202 § 114; 1984 c 258 § 308; 1973 1st ex.s. c 10 § 1; 1969 ex.s. c 199 § 3; 1969 c 111 § 1; 1963 c 213 § 2; 1961 c 299 § 109.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**3.62.085 Fee for conviction or plea of guilty.** Upon conviction or a plea of guilty in any court organized under this title or Title 35 RCW, a defendant in a criminal case is liable for a fee of forty-three dollars. This fee shall be subject to division with the state under RCW 3.46.120(2), 3.50.100(2), 3.62.020(2), 3.62.040(2), and 35.20.220(2). [2005 c 457 § 10.]

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

## Chapter 3.66 RCW JURISDICTION AND VENUE

### Sections

3.66.010	Powers of district court.
3.66.070	Venue—Criminal actions—Temporary venue.
3.66.140	Offender supervision by another state.

**3.66.010 Powers of district court.** (1) The justices of the peace elected in accordance with chapters 3.30 through 3.74 RCW are authorized to hold court as judges of the district court for the trial of all actions enumerated in chapters 3.30 through 3.74 RCW or assigned to the district court by law; to hear, try, and determine the same according to the law, and for that purpose where no special provision is otherwise made by law, such court shall be vested with all the necessary powers which are possessed by courts of record in this state; and all laws of a general nature shall apply to such district court as far as the same may be applicable and not inconsistent with the provisions of chapters 3.30 through 3.74 RCW. The district court shall, upon the demand of either party, impanel a jury to try any civil or criminal case in accordance with the provisions of chapter 12.12 RCW. No jury trial may be held in a proceeding involving a traffic infraction.

(2) A district court participating in the program established by the administrative office of the courts pursuant to RCW 2.56.160 shall have jurisdiction to take recognizance, approve bail, and arraign defendants held within its jurisdiction on warrants issued by any other court of limited jurisdiction participating in the program. [2005 c 282 § 15; 2000 c 111 § 2; 1984 c 258 § 40; 1979 ex.s. c 136 § 20; 1961 c 299 § 112.]

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

**Effective date—Severability—1979 ex.s. c 136:** See notes following RCW 46.63.010.

*Powers and jurisdiction of district court commissioner:* RCW 3.42.020.

**3.66.070 Venue—Criminal actions—Temporary venue.** (1) All criminal actions shall be brought in the district where the alleged violation occurred: PROVIDED, That (a) the prosecuting attorney may file felony cases in the district in which the county seat is located, (b) with the consent of the defendant criminal actions other than those arising out of violations of city ordinances may be brought in or transferred to the district in which the county seat is located, (c) if the alleged violation relates to driving, or being in actual physical control of, a motor vehicle while under the influence of intoxicating liquor or any drug and the alleged violation occurred within a judicial district which has been designated an enhanced enforcement district under RCW 2.56.110, the charges may be filed in that district or in a district within the same county which is adjacent to the district in which the alleged violation occurred, and (d) a district court participating in the program established by the administrative office of the courts pursuant to RCW 2.56.160 shall have jurisdiction to take recognizance, approve bail, and arraign defendants held within its jurisdiction on warrants issued by any other court of limited jurisdiction participating in the program.

(2) In the event of an emergency created by act of nature, civil unrest, technological failure, or other hazardous condi-

tion, temporary venue for court of limited jurisdiction matters may be had in a court district not impacted by the emergency. Such emergency venue is appropriate only for the duration of the emergency.

(3) A criminal action commenced under a local ordinance or state statute is deemed to be properly heard by the court of original jurisdiction even though the hearing may take place by video or other electronic means as approved by the supreme court and the defendant is appearing by an electronic method from a location outside the court's geographic jurisdiction or boundaries. [2005 c 282 § 16; 2002 c 59 § 1; 2001 c 15 § 1; 2000 c 111 § 4; 1991 c 290 § 2; 1984 c 258 § 47; 1983 c 165 § 32; 1961 c 299 § 118.]

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

**Legislative finding, intent—Effective dates—Severability—1983 c 165:** See notes following RCW 46.20.308.

**3.66.140 Offender supervision by another state.** (1) If a person placed on probation for one year or more for a misdemeanor or gross misdemeanor by a district court requests permission to travel or transfer to another state, the assigned probation officer shall determine whether such request is subject to RCW 9.94A.745, the interstate compact for adult offender supervision. If such request is subject to the compact, the probation officer shall:

- (a) Notify the department of corrections of the probationer's request;
- (b) Provide the department of corrections with the supporting documentation it requests for processing an application for transfer;
- (c) Notify the probationer of the fee due to the department of corrections for processing an application under the compact;
- (d) Cease supervision of the probationer while another state supervises the probationer pursuant to the compact;
- (e) Resume supervision if the probationer returns to this state before the term of probation expires.

(2) The probationer shall receive credit for time served while being supervised by another state.

(3) If the probationer is returned to the state at the request of the receiving state under rules of the interstate compact for adult offender supervision, the department of corrections is responsible for the cost of returning the probationer.

(4) The state of Washington, the department of corrections and its employees, and any county and its employees are not liable for civil damages resulting from any act or omission authorized or required under this section unless the act or omission constitutes gross negligence. [2005 c 400 § 4.]

**Application—Effective date—2005 c 400:** See notes following RCW 9.94A.74504.

**Chapter 3.72 RCW  
YOUTH COURT**

Sections

- 3.72.010 Youth court creation—Jurisdiction.
- 3.72.030 Purpose and limitations of youth courts, student courts.

**3.72.010 Youth court creation—Jurisdiction.** (1) A court created under chapter 3.30, 3.46, 3.50, or 35.20 RCW may create a youth court. The youth court shall have jurisdiction over traffic infractions alleged to have been committed by juveniles age sixteen or seventeen. The court may refer a juvenile to the youth court upon request of any party or upon its own motion. However, a juvenile shall not be required under this section to have his or her traffic infraction referred to or disposed of by a youth court.

(2) To be referred to a youth court pursuant to this chapter, a juvenile:

- (a) May not have had a prior traffic infraction referred to a youth court;
- (b) May not be under the jurisdiction of any court for a violation of any provision of Title 46 RCW;
- (c) May not have any convictions for a violation of any provision of Title 46 RCW; and
- (d) Must acknowledge that there is a high likelihood that he or she would be found to have committed the traffic infraction.

(3)(a) Nothing in this chapter shall interfere with the ability of juvenile courts to refer matters to youth courts that have been established to provide a diversion for matters involving juvenile offenders who are eligible for diversion pursuant to RCW 13.40.070 (6) and (7) and who agree, along with a parent, guardian, or legal custodian, to comply with the provisions of RCW 13.40.600.

(b) Nothing in this chapter shall interfere with the ability of student courts to work with students who violate school rules and policies pursuant to RCW 28A.300.420. [2005 c 73 § 1; 2002 c 237 § 2.]

**3.72.030 Purpose and limitations of youth courts, student courts.** Youth courts provide a disposition method for cases involving juveniles alleged to have committed traffic infractions. Youth courts may also provide diversion in cases involving juvenile offenders who are eligible for diversion pursuant to RCW 13.40.070 (6) and (7) and who agree, along with a parent, guardian, or legal custodian, to comply with the provisions of RCW 13.40.600. Student court programs may also be available in schools to work with students who violate school rules and policies pursuant to RCW 28A.300.420. Youth court participants, under the supervision of the court or an adult coordinator, may serve in various capacities within the youth court, acting in the role of jurors, lawyers, bailiffs, clerks, and judges. Youth courts and student courts have no jurisdiction except as provided for in this chapter, chapter 13.40 RCW, and RCW 28A.300.420. Youth courts and student courts are not courts established under Article IV of the state Constitution. [2005 c 73 § 2; 2002 c 237 § 4.]

**Title 4**

**CIVIL PROCEDURE**

**Chapters**

- 4.12 Venue—Jurisdiction.**
- 4.24 Special rights of action and special immunities.**
- 4.28 Commencement of actions.**

## Chapter 4.12 RCW

## VENUE—JURISDICTION

## Sections

- 4.12.090 Transmission of record on change of venue—Costs, attorney's fee.

**4.12.090 Transmission of record on change of venue—Costs, attorney's fee.** (1) When an order is made transferring an action or proceeding for trial, the clerk of the court must transmit the pleadings and papers therein to the court to which it is transferred and charge a fee as provided in RCW 36.18.016. The costs and fees thereof and of filing the papers anew must be paid by the party at whose instance the order was made, except in the cases mentioned in RCW 4.12.030(1), in which case the plaintiff shall pay costs of transfer and, in addition thereto, if the court finds that the plaintiff could have determined the county of proper venue with reasonable diligence, it shall order the plaintiff to pay the reasonable attorney's fee of the defendant for the changing of venue to the proper county. The court to which an action or proceeding is transferred has and exercises over the same the like jurisdiction as if it had been originally commenced therein.

(2) In acting on any motion for dismissal without prejudice in a case where a motion for change of venue under subsection (1) of this section has been made, the court shall, if it determines the motion for change of venue proper, determine the amount of attorney's fee properly to be awarded to defendant and, if the action be dismissed, the attorney's fee shall be a setoff against any claim subsequently brought on the same cause of action. [2005 c 457 § 11; 1969 ex.s. c 144 § 1; Code 1881 § 54; 1877 p 12 § 55; 1875 p 7 § 10; 1869 p 14 §§ 55, 56; RRS § 215.]

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

## Chapter 4.24 RCW

## SPECIAL RIGHTS OF ACTION AND SPECIAL IMMUNITIES

## Sections

- 4.24.250 Health care provider filing charges or presenting evidence—Immunity—Information sharing.
- 4.24.320 Action by person damaged by malicious mischief to livestock or by owner damaged by theft of livestock—Treble damages, attorney's fees.
- 4.24.550 Sex offenders and kidnapping offenders—Release of information to public—Web site. (*Effective until September 1, 2006.*)
- 4.24.550 Sex offenders and kidnapping offenders—Release of information to public—Web site. (*Effective September 1, 2006.*)
- 4.24.720 Liability immunity—Amber alerts.
- 4.24.730 Liability immunity—Disclosure of employee information to prospective employer.

**4.24.250 Health care provider filing charges or presenting evidence—Immunity—Information sharing.** (1) Any health care provider as defined in RCW 7.70.020 (1) and (2) who, in good faith, files charges or presents evidence against another member of their profession based on the claimed incompetency or gross misconduct of such person before a regularly constituted review committee or board of a professional society or hospital whose duty it is to evaluate the competency and qualifications of members of the profes-

sion, including limiting the extent of practice of such person in a hospital or similar institution, or before a regularly constituted committee or board of a hospital whose duty it is to review and evaluate the quality of patient care and any person or entity who, in good faith, shares any information or documents with one or more other committees, boards, or programs under subsection (2) of this section, shall be immune from civil action for damages arising out of such activities. For the purposes of this section, sharing information is presumed to be in good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading. The proceedings, reports, and written records of such committees or boards, or of a member, employee, staff person, or investigator of such a committee or board, are not subject to review or disclosure, or subpoena or discovery proceedings in any civil action, except actions arising out of the recommendations of such committees or boards involving the restriction or revocation of the clinical or staff privileges of a health care provider as defined in RCW 7.70.020 (1) and (2).

(2) A coordinated quality improvement program maintained in accordance with RCW 43.70.510 or 70.41.200, a quality assurance committee maintained in accordance with RCW 18.20.390 or 74.42.640, or any committee or board under subsection (1) of this section may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a coordinated quality improvement committee or committees or boards under subsection (1) of this section, with one or more other coordinated quality improvement programs or committees or boards under subsection (1) of this section for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program or committee or board under subsection (1) of this section to another coordinated quality improvement program or committee or board under subsection (1) of this section and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (1) of this section and by RCW 43.70.510(4), 70.41.200(3), 18.20.390 (6) and (8), and 74.42.640 (7) and (9). [2005 c 291 § 1; 2005 c 33 § 5; 2004 c 145 § 1; 1981 c 181 § 1; 1979 c 17 § 1; 1977 c 68 § 1; 1975 1st ex.s. c 114 § 2; 1971 ex.s. c 144 § 1.]

**Reviser's note:** This section was amended by 2005 c 33 § 5 and by 2005 c 291 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—2005 c 33:** See note following RCW 18.20.390.

**4.24.320 Action by person damaged by malicious mischief to livestock or by owner damaged by theft of livestock—Treble damages, attorney's fees.** Any person who suffers damage to livestock as a result of actions described in RCW 16.52.205 or any owner of livestock who suffers damage as a result of a willful, unauthorized act described in RCW 9A.56.080 or 9A.56.083 may bring an action against the person or persons committing the act in a court of competent jurisdiction for exemplary damages up to three times the actual damages sustained, plus attorney's fees. As used in this section, "livestock" means the animals specified in RCW 9A.56.080. [2005 c 419 § 2; 2003 c 53 § 4; 1979 c 145 § 1; 1977 ex.s. c 174 § 3.]

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

**4.24.550 Sex offenders and kidnapping offenders—Release of information to public—Web site. (Effective until September 1, 2006.)** (1) In addition to the disclosure under subsection (5) of this section, public agencies are authorized to release information to the public regarding sex offenders and kidnapping offenders when the agency determines that disclosure of the information is relevant and necessary to protect the public and counteract the danger created by the particular offender. This authorization applies to information regarding: (a) Any person adjudicated or convicted of a sex offense as defined in RCW 9A.44.130 or a kidnapping offense as defined by RCW 9A.44.130; (b) any person under the jurisdiction of the indeterminate sentence review board as the result of a sex offense or kidnapping offense; (c) any person committed as a sexually violent predator under chapter 71.09 RCW or as a sexual psychopath under chapter 71.06 RCW; (d) any person found not guilty of a sex offense or kidnapping offense by reason of insanity under chapter 10.77 RCW; and (e) any person found incompetent to stand trial for a sex offense or kidnapping offense and subsequently committed under chapter 71.05 or 71.34 RCW.

(2) Except for the information specifically required under subsection (5) of this section, the extent of the public disclosure of relevant and necessary information shall be rationally related to: (a) The level of risk posed by the offender to the community; (b) the locations where the offender resides, expects to reside, or is regularly found; and (c) the needs of the affected community members for information to enhance their individual and collective safety.

(3) Except for the information specifically required under subsection (5) of this section, local law enforcement agencies shall consider the following guidelines in determining the extent of a public disclosure made under this section: (a) For offenders classified as risk level I, the agency shall share information with other appropriate law enforcement agencies and may disclose, upon request, relevant, necessary, and accurate information to any victim or witness to the offense and to any individual community member who lives near the residence where the offender resides, expects to reside, or is regularly found; (b) for offenders classified as risk level II, the agency may also disclose relevant, necessary, and accurate information to public and private schools, child day care centers, family day care providers, public libraries, businesses and organizations that serve primarily

children, women, or vulnerable adults, and neighbors and community groups near the residence where the offender resides, expects to reside, or is regularly found; (c) for offenders classified as risk level III, the agency may also disclose relevant, necessary, and accurate information to the public at large; and (d) because more localized notification is not feasible and homeless and transient offenders may present unique risks to the community, the agency may also disclose relevant, necessary, and accurate information to the public at large for offenders registered as homeless or transient.

(4) The county sheriff with whom an offender classified as risk level III is registered shall cause to be published by legal notice, advertising, or news release a sex offender community notification that conforms to the guidelines established under RCW 4.24.5501 in at least one legal newspaper with general circulation in the area of the sex offender's registered address or location. The county sheriff shall also cause to be published consistent with this subsection a current list of level III registered sex offenders, twice yearly. Unless the information is posted on the web site described in subsection (5) of this section, this list shall be maintained by the county sheriff on a publicly accessible web site and shall be updated at least once per month.

(5)(a) When funded by federal grants or other sources, the Washington association of sheriffs and police chiefs shall create and maintain a statewide registered kidnapping and sex offender web site, which shall be available to the public. The web site shall post all level III and level II registered sex offenders and all registered kidnapping offenders in the state of Washington.

(i) For level III offenders, the web site shall contain, but is not limited to, the registered sex offender's name, relevant criminal convictions, address by hundred block, physical description, and photograph. The web site shall provide mapping capabilities that display the sex offender's address by hundred block on a map. The web site shall allow citizens to search for registered sex offenders within the state of Washington by county, city, zip code, last name, type of conviction, and address by hundred block.

(ii) For level II offenders, the web site shall contain, but is not limited to, the same information and functionality as described in (a)(i) of this subsection, provided that it is permissible under state and federal law. If it is not permissible, the web site shall be limited to the information and functionality that is permissible under state and federal law.

(iii) For kidnapping offenders, the web site shall contain, but is not limited to, the same information and functionality as described in (a)(i) of this subsection, provided that it is permissible under state and federal law. If it is not permissible, the web site shall be limited to the information and functionality that is permissible under state and federal law.

(b) Until the implementation of (a) of this subsection, the Washington association of sheriffs and police chiefs shall create a web site available to the public that provides electronic links to county-operated web sites that offer sex offender registration information.

(6) Local law enforcement agencies that disseminate information pursuant to this section shall: (a) Review available risk level classifications made by the department of corrections, the department of social and health services, and the

indeterminate sentence review board; (b) assign risk level classifications to all offenders about whom information will be disseminated; and (c) make a good faith effort to notify the public and residents at least fourteen days before the offender is released from confinement or, where an offender moves from another jurisdiction, as soon as possible after the agency learns of the offender's move, except that in no case may this notification provision be construed to require an extension of an offender's release date. The juvenile court shall provide local law enforcement officials with all relevant information on offenders allowed to remain in the community in a timely manner.

(7) An appointed or elected public official, public employee, or public agency as defined in RCW 4.24.470, or units of local government and its employees, as provided in RCW 36.28A.010, are immune from civil liability for damages for any discretionary risk level classification decisions or release of relevant and necessary information, unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith. The immunity in this section applies to risk level classification decisions and the release of relevant and necessary information regarding any individual for whom disclosure is authorized. The decision of a local law enforcement agency or official to classify an offender to a risk level other than the one assigned by the department of corrections, the department of social and health services, or the indeterminate sentence review board, or the release of any relevant and necessary information based on that different classification shall not, by itself, be considered gross negligence or bad faith. The immunity provided under this section applies to the release of relevant and necessary information to other public officials, public employees, or public agencies, and to the general public.

(8) Except as may otherwise be provided by law, nothing in this section shall impose any liability upon a public official, public employee, or public agency for failing to release information authorized under this section.

(9) Nothing in this section implies that information regarding persons designated in subsection (1) of this section is confidential except as may otherwise be provided by law.

(10) When a local law enforcement agency or official classifies an offender differently than the offender is classified by the end of sentence review committee or the department of social and health services at the time of the offender's release from confinement, the law enforcement agency or official shall notify the end of sentence review committee or the department of social and health services and submit its reasons supporting the change in classification. Upon implementation of subsection (5)(a) of this section, notification of the change shall also be sent to the Washington association of sheriffs and police chiefs. [2005 c 228 § 1; 2005 c 99 § 1; 2003 c 217 § 1; 2002 c 118 § 1. Prior: 2001 c 283 § 2; 2001 c 169 § 2; 1998 c 220 § 6; prior: 1997 c 364 § 1; 1997 c 113 § 2; 1996 c 215 § 1; 1994 c 129 § 2; 1990 c 3 § 117.]

**Reviser's note:** This section was amended by 2005 c 99 § 1 and by 2005 c 228 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Conflict with federal requirements—2002 c 118:** "If any provision of this act or its application to any person or circumstance is held invalid due to a conflict with federal law, the conflicting part of this act is inoperative solely to the extent of the conflict, and such holding does not affect the oper-

ation of the remainder of this act or the application of the provision to other persons or circumstances." [2002 c 118 § 3.]

**Severability—1998 c 220:** See note following RCW 9A.44.130.

**Severability—1997 c 364:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 364 § 9.]

**Findings—1997 c 113:** "The legislature finds that offenders who commit kidnapping offenses against minor children pose a substantial threat to the well-being of our communities. Child victims are especially vulnerable and unable to protect themselves. The legislature further finds that requiring sex offenders to register has assisted law enforcement agencies in protecting their communities. Similar registration requirements for offenders who have kidnapped or unlawfully imprisoned a child would also assist law enforcement agencies in protecting the children in their communities from further victimization." [1997 c 113 § 1.]

**Findings—Intent—1994 c 129:** "The legislature finds that members of the public may be alarmed when law enforcement officers notify them that a sex offender who is about to be released from custody will live in or near their neighborhood. The legislature also finds that if the public is provided adequate notice and information, the community can develop constructive plans to prepare themselves and their children for the offender's release. A sufficient time period allows communities to meet with law enforcement to discuss and prepare for the release, to establish block watches, to obtain information about the rights and responsibilities of the community and the offender, and to provide education and counseling to their children. Therefore, the legislature intends that when law enforcement officials decide to notify the public about a sex offender's pending release that notice be given at least fourteen days before the offender's release whenever possible." [1994 c 129 § 1.]

**Finding—Policy—1990 c 3 § 117:** "The legislature finds that sex offenders pose a high risk of engaging in sex offenses even after being released from incarceration or commitment and that protection of the public from sex offenders is a paramount governmental interest. The legislature further finds that the penal and mental health components of our justice system are largely hidden from public view and that lack of information from either may result in failure of both systems to meet this paramount concern of public safety. Overly restrictive confidentiality and liability laws governing the release of information about sexual predators have reduced willingness to release information that could be appropriately released under the public disclosure laws, and have increased risks to public safety. Persons found to have committed a sex offense have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government. Release of information about sexual predators to public agencies and under limited circumstances, the general public, will further the governmental interests of public safety and public scrutiny of the criminal and mental health systems so long as the information released is rationally related to the furtherance of those goals.

Therefore, this state's policy as expressed in RCW 4.24.550 is to require the exchange of relevant information about sexual predators among public agencies and officials and to authorize the release of necessary and relevant information about sexual predators to members of the general public." [1990 c 3 § 116.]

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

*Release of information regarding*

*convicted sex offenders: RCW 9.94A.846.*

*juveniles found to have committed sex offenses: RCW 13.40.217.*

*persons in custody of department of social and health services: RCW 10.77.207, 71.05.427, 71.06.135, 71.09.120.*

**4.24.550 Sex offenders and kidnapping offenders—Release of information to public—Web site. (Effective September 1, 2006.)** (1) In addition to the disclosure under subsection (5) of this section, public agencies are authorized to release information to the public regarding sex offenders and kidnapping offenders when the agency determines that disclosure of the information is relevant and necessary to protect the public and counteract the danger created by the particular offender. This authorization applies to information regarding: (a) Any person adjudicated or convicted of a sex



offense as defined in RCW 9A.44.130 or a kidnapping offense as defined by RCW 9A.44.130; (b) any person under the jurisdiction of the indeterminate sentence review board as the result of a sex offense or kidnapping offense; (c) any person committed as a sexually violent predator under chapter 71.09 RCW or as a sexual psychopath under chapter 71.06 RCW; (d) any person found not guilty of a sex offense or kidnapping offense by reason of insanity under chapter 10.77 RCW; and (e) any person found incompetent to stand trial for a sex offense or kidnapping offense and subsequently committed under chapter 71.05 or 71.34 RCW.

(2) Except for the information specifically required under subsection (5) of this section, the extent of the public disclosure of relevant and necessary information shall be rationally related to: (a) The level of risk posed by the offender to the community; (b) the locations where the offender resides, expects to reside, or is regularly found; and (c) the needs of the affected community members for information to enhance their individual and collective safety.

(3) Except for the information specifically required under subsection (5) of this section, local law enforcement agencies shall consider the following guidelines in determining the extent of a public disclosure made under this section: (a) For offenders classified as risk level I, the agency shall share information with other appropriate law enforcement agencies and, if the offender is a student, the public or private school regulated under Title 28A RCW or chapter 72.40 RCW which the offender is attending, or planning to attend. The agency may disclose, upon request, relevant, necessary, and accurate information to any victim or witness to the offense and to any individual community member who lives near the residence where the offender resides, expects to reside, or is regularly found; (b) for offenders classified as risk level II, the agency may also disclose relevant, necessary, and accurate information to public and private schools, child day care centers, family day care providers, public libraries, businesses and organizations that serve primarily children, women, or vulnerable adults, and neighbors and community groups near the residence where the offender resides, expects to reside, or is regularly found; (c) for offenders classified as risk level III, the agency may also disclose relevant, necessary, and accurate information to the public at large; and (d) because more localized notification is not feasible and homeless and transient offenders may present unique risks to the community, the agency may also disclose relevant, necessary, and accurate information to the public at large for offenders registered as homeless or transient.

(4) The county sheriff with whom an offender classified as risk level III is registered shall cause to be published by legal notice, advertising, or news release a sex offender community notification that conforms to the guidelines established under RCW 4.24.5501 in at least one legal newspaper with general circulation in the area of the sex offender's registered address or location. The county sheriff shall also cause to be published consistent with this subsection a current list of level III registered sex offenders, twice yearly. Unless the information is posted on the web site described in subsection (5) of this section, this list shall be maintained by the county sheriff on a publicly accessible web site and shall be updated at least once per month.

(5)(a) When funded by federal grants or other sources, the Washington association of sheriffs and police chiefs shall create and maintain a statewide registered kidnapping and sex offender web site, which shall be available to the public. The web site shall post all level III and level II registered sex offenders and all registered kidnapping offenders in the state of Washington.

(i) For level III offenders, the web site shall contain, but is not limited to, the registered sex offender's name, relevant criminal convictions, address by hundred block, physical description, and photograph. The web site shall provide mapping capabilities that display the sex offender's address by hundred block on a map. The web site shall allow citizens to search for registered sex offenders within the state of Washington by county, city, zip code, last name, type of conviction, and address by hundred block.

(ii) For level II offenders, the web site shall contain, but is not limited to, the same information and functionality as described in (a)(i) of this subsection, provided that it is permissible under state and federal law. If it is not permissible, the web site shall be limited to the information and functionality that is permissible under state and federal law.

(iii) For kidnapping offenders, the web site shall contain, but is not limited to, the same information and functionality as described in (a)(i) of this subsection, provided that it is permissible under state and federal law. If it is not permissible, the web site shall be limited to the information and functionality that is permissible under state and federal law.

(b) Until the implementation of (a) of this subsection, the Washington association of sheriffs and police chiefs shall create a web site available to the public that provides electronic links to county-operated web sites that offer sex offender registration information.

(6) Local law enforcement agencies that disseminate information pursuant to this section shall: (a) Review available risk level classifications made by the department of corrections, the department of social and health services, and the indeterminate sentence review board; (b) assign risk level classifications to all offenders about whom information will be disseminated; and (c) make a good faith effort to notify the public and residents at least fourteen days before the offender is released from confinement or, where an offender moves from another jurisdiction, as soon as possible after the agency learns of the offender's move, except that in no case may this notification provision be construed to require an extension of an offender's release date. The juvenile court shall provide local law enforcement officials with all relevant information on offenders allowed to remain in the community in a timely manner.

(7) An appointed or elected public official, public employee, or public agency as defined in RCW 4.24.470, or units of local government and its employees, as provided in RCW 36.28A.010, are immune from civil liability for damages for any discretionary risk level classification decisions or release of relevant and necessary information, unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith. The immunity in this section applies to risk level classification decisions and the release of relevant and necessary information regarding any individual for whom disclosure is authorized. The decision of a local law enforcement agency or official to classify an offender to

a risk level other than the one assigned by the department of corrections, the department of social and health services, or the indeterminate sentence review board, or the release of any relevant and necessary information based on that different classification shall not, by itself, be considered gross negligence or bad faith. The immunity provided under this section applies to the release of relevant and necessary information to other public officials, public employees, or public agencies, and to the general public.

(8) Except as may otherwise be provided by law, nothing in this section shall impose any liability upon a public official, public employee, or public agency for failing to release information authorized under this section.

(9) Nothing in this section implies that information regarding persons designated in subsection (1) of this section is confidential except as may otherwise be provided by law.

(10) When a local law enforcement agency or official classifies an offender differently than the offender is classified by the end of sentence review committee or the department of social and health services at the time of the offender's release from confinement, the law enforcement agency or official shall notify the end of sentence review committee or the department of social and health services and submit its reasons supporting the change in classification. Upon implementation of subsection (5)(a) of this section, notification of the change shall also be sent to the Washington association of sheriffs and police chiefs. [2005 c 380 § 2; 2005 c 228 § 1; 2005 c 99 § 1; 2003 c 217 § 1; 2002 c 118 § 1. Prior: 2001 c 283 § 2; 2001 c 169 § 2; 1998 c 220 § 6; prior: 1997 c 364 § 1; 1997 c 113 § 2; 1996 c 215 § 1; 1994 c 129 § 2; 1990 c 3 § 117.]

**Reviser's note:** This section was amended by 2005 c 99 § 1, 2005 c 228 § 1, and by 2005 c 380 § 2, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2005 c 380:** See note following RCW 9A.44.130.

**Conflict with federal requirements—2002 c 118:** "If any provision of this act or its application to any person or circumstance is held invalid due to a conflict with federal law, the conflicting part of this act is inoperative solely to the extent of the conflict, and such holding does not affect the operation of the remainder of this act or the application of the provision to other persons or circumstances." [2002 c 118 § 3.]

**Severability—1998 c 220:** See note following RCW 9A.44.130.

**Severability—1997 c 364:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 364 § 9.]

**Findings—1997 c 113:** "The legislature finds that offenders who commit kidnapping offenses against minor children pose a substantial threat to the well-being of our communities. Child victims are especially vulnerable and unable to protect themselves. The legislature further finds that requiring sex offenders to register has assisted law enforcement agencies in protecting their communities. Similar registration requirements for offenders who have kidnapped or unlawfully imprisoned a child would also assist law enforcement agencies in protecting the children in their communities from further victimization." [1997 c 113 § 1.]

**Findings—Intent—1994 c 129:** "The legislature finds that members of the public may be alarmed when law enforcement officers notify them that a sex offender who is about to be released from custody will live in or near their neighborhood. The legislature also finds that if the public is provided adequate notice and information, the community can develop constructive plans to prepare themselves and their children for the offender's release. A sufficient time period allows communities to meet with law enforcement to discuss and prepare for the release, to establish block watches, to obtain information about the rights and responsibilities of the community and the offender, and to provide education and counseling to their children. There-

fore, the legislature intends that when law enforcement officials decide to notify the public about a sex offender's pending release that notice be given at least fourteen days before the offender's release whenever possible." [1994 c 129 § 1.]

**Finding—Policy—1990 c 3 § 117:** "The legislature finds that sex offenders pose a high risk of engaging in sex offenses even after being released from incarceration or commitment and that protection of the public from sex offenders is a paramount governmental interest. The legislature further finds that the penal and mental health components of our justice system are largely hidden from public view and that lack of information from either may result in failure of both systems to meet this paramount concern of public safety. Overly restrictive confidentiality and liability laws governing the release of information about sexual predators have reduced willingness to release information that could be appropriately released under the public disclosure laws, and have increased risks to public safety. Persons found to have committed a sex offense have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government. Release of information about sexual predators to public agencies and under limited circumstances, the general public, will further the governmental interests of public safety and public scrutiny of the criminal and mental health systems so long as the information released is rationally related to the furtherance of those goals.

Therefore, this state's policy as expressed in RCW 4.24.550 is to require the exchange of relevant information about sexual predators among public agencies and officials and to authorize the release of necessary and relevant information about sexual predators to members of the general public." [1990 c 3 § 116.]

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

*Release of information regarding*

*convicted sex offenders:* RCW 9.94A.846.

*juveniles found to have committed sex offenses:* RCW 13.40.217.

*persons in custody of department of social and health services:* RCW 10.77.207, 71.05.427, 71.06.135, 71.09.120.

**4.24.720 Liability immunity—Amber alerts.** No cause of action shall be maintained for civil damages in any court of this state against any radio or television broadcasting station or cable television system, or the employees, officers, directors, managers, or agents of the radio or television broadcasting station or cable television system, based on the broadcast of information including, but not limited to, the name or description of an abducted child, the name or description of a suspected abductor, and the circumstances of an abduction supplied by law enforcement officials pursuant to the voluntary broadcast notification system commonly known as the "Amber alert," or as the same system may otherwise be known in this state, which is used to notify the public of missing or abducted children. Nothing in this section shall be construed to limit or restrict in any way any immunity or privilege a radio or television broadcasting station or cable television system may have under statute or common law for broadcasting or otherwise disseminating information. [2005 c 128 § 1.]

**4.24.730 Liability immunity—Disclosure of employee information to prospective employer.** (1) An employer who discloses information about a former or current employee to a prospective employer, or employment agency as defined by RCW 49.60.040, at the specific request of that individual employer or employment agency, is presumed to be acting in good faith and is immune from civil and criminal liability for such disclosure or its consequences if the disclosed information relates to: (a) The employee's ability to perform his or her job; (b) the diligence, skill, or reliability with which the employee carried out the duties of his

or her job; or (c) any illegal or wrongful act committed by the employee when related to the duties of his or her job.

(2) The employer should retain a written record of the identity of the person or entity to which information is disclosed under this section for a minimum of two years from the date of disclosure. The employee or former employee has a right to inspect any such written record upon request and any such written record shall become part of the employee's personnel file, subject to the provisions of chapter 49.12 RCW.

(3) For the purposes of this section, the presumption of good faith may only be rebutted upon a showing by clear and convincing evidence that the information disclosed by the employer was knowingly false, deliberately misleading, or made with reckless disregard for the truth. [2005 c 103 § 1.]

### Chapter 4.28 RCW COMMENCEMENT OF ACTIONS

#### Sections

4.28.100 Service of summons by publication—When authorized.

**4.28.100 Service of summons by publication—When authorized.** When the defendant cannot be found within the state, and upon the filing of an affidavit of the plaintiff, his agent, or attorney, with the clerk of the court, stating that he believes that the defendant is not a resident of the state, or cannot be found therein, and that he has deposited a copy of the summons (substantially in the form prescribed in RCW 4.28.110) and complaint in the post office, directed to the defendant at his place of residence, unless it is stated in the affidavit that such residence is not known to the affiant, and stating the existence of one of the cases hereinafter specified, the service may be made by publication of the summons, by the plaintiff or his attorney in any of the following cases:

(1) When the defendant is a foreign corporation, and has property within the state;

(2) When the defendant, being a resident of this state, has departed therefrom with intent to defraud his creditors, or to avoid the service of a summons, or keeps himself concealed therein with like intent;

(3) When the defendant is not a resident of the state, but has property therein and the court has jurisdiction of the subject of the action;

(4) When the action is for (a) establishment or modification of a parenting plan or residential schedule; or (b) dissolution of marriage, legal separation, or declaration of invalidity, in the cases prescribed by law;

(5) When the action is for nonparental custody under chapter 26.10 RCW and the child is in the physical custody of the petitioner;

(6) When the subject of the action is real or personal property in this state, and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly, or partly, in excluding the defendant from any interest or lien therein;

(7) When the action is to foreclose, satisfy, or redeem from a mortgage, or to enforce a lien of any kind on real estate in the county where the action is brought, or satisfy or redeem from the same;

(8) When the action is against any corporation, whether private or municipal, organized under the laws of the state, and the proper officers on whom to make service do not exist or cannot be found;

(9) When the action is brought under RCW 4.08.160 and 4.08.170 to determine conflicting claims to property in this state. [2005 c 117 § 1; 1981 c 331 § 13; 1953 c 102 § 1. Prior: 1929 c 81 § 1; 1915 c 45 § 1; 1893 c 127 § 9; RRS § 228.]

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

## Title 5 EVIDENCE

### Chapters

**5.60 Witnesses—Competency.**

### Chapter 5.60 RCW

### WITNESSES—COMPETENCY

#### Sections

5.60.060 Who are disqualified—Privileged communications.  
5.60.070 Mediation. (*Effective January 1, 2006.*)  
5.60.072 Mediation by agency—Privilege and confidentiality. (*Effective January 1, 2006.*)

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

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

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

(3) A member of the clergy or a priest shall not, without the consent of a person making the confession, be examined as to any confession made to him or her in his or her profes-

sional character, in the course of discipline enjoined by the church to which he or she belongs.

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

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

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

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

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

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

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

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

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

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

(b) A sexual assault advocate may disclose a confidential communication without the consent of the victim if failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another person. Any sexual assault advocate participating in good faith in the disclosing of records and communications under this section shall have immunity from any liability, civil, criminal, or otherwise, that might result from the action. In any proceeding, civil or criminal, arising out of a disclosure under this section, the good faith of the sexual assault advocate who disclosed the confidential communication shall be presumed. [2005 c 504 § 705; 2001 c 286 § 2; 1998 c 72 § 1; 1997 c 338 § 1; 1996 c 156 § 1; 1995 c 240 § 1; 1989 c 271 § 301. Prior: 1989 c 10 § 1; 1987 c 439 § 11; 1987 c 212 § 1501; 1986 c 305 § 101; 1982 c 56 § 1; 1979 ex.s. c 215 § 2; 1965 c 13 § 7; Code 1881 § 392; 1879 p 118 § 1; 1877 p 86 § 394; 1873 p 107 § 385; 1869 p 104 § 387; 1854 p 187 § 294; RRS § 1214. Cf. 1886 p 73 § 1.]

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

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

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

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

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

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

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

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

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

**Severability—1982 c 56:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 56 § 2.]

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

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

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

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

### 5.60.070 Mediation. (Effective January 1, 2006.) (1)

If there is a court order to mediate, a written agreement between the parties to mediate, or if mediation is mandated under RCW 7.70.100, then any communication made or materials submitted in, or in connection with, the mediation proceeding, whether made or submitted to or by the mediator, a mediation organization, a party, or any person present, are privileged and confidential and are not subject to disclosure in any judicial or administrative proceeding except:

(a) When all parties to the mediation agree, in writing, to disclose;

(b) When the written materials or tangible evidence are otherwise subject to discovery, and were not prepared specif-

ically for use in and actually used in the mediation proceeding;

(c) When a written agreement to mediate permits disclosure;

(d) When disclosure is mandated by statute;

(e) When the written materials consist of a written settlement agreement or other agreement signed by the parties resulting from a mediation proceeding;

(f) When those communications or written materials pertain solely to administrative matters incidental to the mediation proceeding, including the agreement to mediate; or

(g) In a subsequent action between the mediator and a party to the mediation arising out of the mediation.

(2) When there is a court order, a written agreement to mediate, or when mediation is mandated under RCW 7.70.100, as described in subsection (1) of this section, the mediator or a representative of a mediation organization shall not testify in any judicial or administrative proceeding unless:

(a) All parties to the mediation and the mediator agree in writing; or

(b) In an action described in subsection (1)(g) of this section.

(3) Beginning on January 1, 2006, this section governs only mediations pursuant to a referral or an agreement made before January 1, 2006. Mediations pursuant to a referral or an agreement made on or after January 1, 2006, are governed by chapter 7.07 RCW. [2005 c 172 § 14; 1993 c 492 § 422; 1991 c 321 § 1.]

**Short title—Captions not law—Severability—Effective date—2005 c 172:** See RCW 7.07.900 through 7.07.902 and 7.07.904.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

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

**Severability—1991 c 321:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 321 § 3.]

**5.60.072 Mediation by agency—Privilege and confidentiality. (Effective January 1, 2006.)** Notwithstanding the provisions of RCW 5.60.070 and chapter 7.07 RCW, when any party participates in mediation conducted by a state or federal agency under the provisions of a collective bargaining law or similar statute, the agency's rules govern questions of privilege and confidentiality. [2005 c 172 § 15; 1991 c 321 § 2.]

**Short title—Captions not law—Severability—Effective date—2005 c 172:** See RCW 7.07.900 through 7.07.902 and 7.07.904.

**Severability—1991 c 321:** See note following RCW 5.60.070.

## Title 6

### ENFORCEMENT OF JUDGMENTS

#### Chapters

**6.13 Homesteads.**

**6.15 Personal property exemptions.**

## Chapter 6.13 RCW

### HOMESTEADS

#### Sections

6.13.080 Homestead exemption, when not available.

#### **6.13.080 Homestead exemption, when not available.**

The homestead exemption is not available against an execution or forced sale in satisfaction of judgments obtained:

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

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

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

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

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

(6) On debts secured by a condominium's or homeowner association's lien. In order for an association to be exempt under this provision, the association must have provided a homeowner with notice that nonpayment of the association's assessment may result in foreclosure of the association lien and that the homestead protection under this chapter shall not apply. An association has complied with this notice requirement by mailing the notice, by first class mail, to the address of the owner's lot or unit. The notice required in this subsection shall be given within thirty days from the date the association learns of a new owner, but in all cases the notice must be given prior to the initiation of a foreclosure. The phrase "learns of a new owner" in this subsection means actual knowledge of the identity of a homeowner acquiring title after June 9, 1988, and does not require that an association affirmatively ascertain the identity of a homeowner. Failure to give the notice specified in this subsection affects an association's lien only for debts accrued up to the time an association complies with the notice provisions under this subsection. [2005 c 292 § 4; 1993 c 200 § 4. Prior: 1988 c 231 § 3; 1988 c 192 § 1; 1987 c 442 § 208; 1984 c 260 § 16; 1982 c 10 § 1; prior: 1981 c 304 § 17; 1981 c 149 § 1; 1909 c 44 § 1; 1895 c 64 § 5; RRS § 533. Formerly RCW 6.12.100.]

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

**Severability—1984 c 260:** See RCW 26.18.900.

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

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

## Chapter 6.15 RCW

## PERSONAL PROPERTY EXEMPTIONS

## Sections

6.15.010 Exempt property.

**6.15.010 Exempt property.** Except as provided in RCW 6.15.050, the following personal property shall be exempt from execution, attachment, and garnishment:

(1) All wearing apparel of every individual and family, but not to exceed one thousand dollars in value in furs, jewelry, and personal ornaments for any individual.

(2) All private libraries of every individual, but not to exceed fifteen hundred dollars in value, and all family pictures and keepsakes.

(3) To each individual or, as to community property of spouses maintaining a single household as against a creditor of the community, to the community:

(a) The individual's or community's household goods, appliances, furniture, and home and yard equipment, not to exceed two thousand seven hundred dollars in value for the individual or five thousand four hundred dollars for the community, said amount to include provisions and fuel for the comfortable maintenance of the individual or community;

(b) Other personal property, except personal earnings as provided under RCW 6.15.050(1), not to exceed two thousand dollars in value, of which not more than two hundred dollars in value may consist of cash, and of which not more than two hundred dollars in value may consist of bank accounts, savings and loan accounts, stocks, bonds, or other securities;

(c) For an individual, a motor vehicle used for personal transportation, not to exceed two thousand five hundred dollars or for a community two motor vehicles used for personal transportation, not to exceed five thousand dollars in aggregate value;

(d) Any past due, current, or future child support paid or owed to the debtor, which can be traced;

(e) All professionally prescribed health aids for the debtor or a dependent of the debtor; and

(f) To any individual, the right to or proceeds of a payment not to exceed sixteen thousand one hundred fifty dollars on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or the right to or proceeds of a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor. The exemption under this subsection (3)(f) does not apply to the right of the state of Washington, or any agent or assignee of the state, as a lienholder or subrogee under RCW 43.20B.060.

(4) To each qualified individual, one of the following exemptions:

(a) To a farmer, farm trucks, farm stock, farm tools, farm equipment, supplies and seed, not to exceed five thousand dollars in value;

(b) To a physician, surgeon, attorney, clergyman, or other professional person, the individual's library, office fur-

niture, office equipment and supplies, not to exceed five thousand dollars in value;

(c) To any other individual, the tools and instruments and materials used to carry on his or her trade for the support of himself or herself or family, not to exceed five thousand dollars in value.

For purposes of this section, "value" means the reasonable market value of the debtor's interest in an article or item at the time it is selected for exemption, exclusive of all liens and encumbrances thereon.

(5) Tuition units, under chapter 28B.95 RCW, purchased more than two years prior to the date of a bankruptcy filing or court judgment. [2005 c 272 § 6; 2002 c 265 § 1; 1991 c 112 § 1; 1988 c 231 § 5; 1987 c 442 § 301; 1983 1st ex.s. c 45 § 8; 1979 ex.s. c 65 § 1; 1973 1st ex.s. c 154 § 13; 1965 c 89 § 1; 1886 p 96 § 1; Code 1881 § 347; 1879 p 157 § 1; 1877 p 73 § 351; 1869 p 87 § 343; 1854 p 178 § 253; RRS § 563. Formerly RCW 6.16.020.]

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

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

## Title 7

## SPECIAL PROCEEDINGS AND ACTIONS

## Chapters

7.04 Arbitration.

7.04A Uniform arbitration act.

7.06 Mandatory arbitration of civil actions.

7.07 Uniform mediation act.

7.48 Nuisances.

7.68 Victims of crimes—Compensation, assistance.

7.69B Crime victims and witnesses—Dependent persons.

7.70 Actions for injuries resulting from health care.

7.75 Dispute resolution centers.

## Chapter 7.04 RCW

## ARBITRATION

## Sections

7.04.010 through 7.04.220 Repealed. (Effective January 1, 2006.)

**7.04.010 through 7.04.220 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Chapter 7.04A RCW

## UNIFORM ARBITRATION ACT

## Sections

7.04A.010 Definitions. (Effective January 1, 2006.)

7.04A.020 Notice. (Effective January 1, 2006.)

7.04A.030 When chapter applies. (Effective January 1, 2006.)

7.04A.040 Effect of agreement to arbitrate—Nonwaivable provisions. (Effective January 1, 2006.)

7.04A.050 Application to court. (Effective January 1, 2006.)

7.04A.060 Validity of agreement to arbitrate. (Effective January 1, 2006.)

7.04A.070 Motion to compel or stay arbitration. (Effective January 1, 2006.)

7.04A.080 Provisional remedies. (Effective January 1, 2006.)

7.04A.090 Initiation of arbitration. (Effective January 1, 2006.)

- 7.04A.100 Consolidation of separate arbitration proceedings. (*Effective January 1, 2006.*)
- 7.04A.110 Appointment of arbitrator—Service as a neutral arbitrator. (*Effective January 1, 2006.*)
- 7.04A.120 Disclosure by arbitrator. (*Effective January 1, 2006.*)
- 7.04A.130 Action by majority. (*Effective January 1, 2006.*)
- 7.04A.140 Immunity of arbitrator—Competency to testify—Attorneys' fees and costs. (*Effective January 1, 2006.*)
- 7.04A.150 Arbitration process. (*Effective January 1, 2006.*)
- 7.04A.160 Representation by lawyer. (*Effective January 1, 2006.*)
- 7.04A.170 Witnesses—Subpoenas—Depositions—Discovery. (*Effective January 1, 2006.*)
- 7.04A.180 Court enforcement of preaward ruling by arbitrator. (*Effective January 1, 2006.*)
- 7.04A.190 Award. (*Effective January 1, 2006.*)
- 7.04A.200 Change of award by arbitrator. (*Effective January 1, 2006.*)
- 7.04A.210 Remedies—Fees and expenses of arbitration proceeding. (*Effective January 1, 2006.*)
- 7.04A.220 Confirmation of award. (*Effective January 1, 2006.*)
- 7.04A.230 Vacating award. (*Effective January 1, 2006.*)
- 7.04A.240 Modification or correction of award. (*Effective January 1, 2006.*)
- 7.04A.250 Judgment on award—Attorneys' fees and litigation expenses. (*Effective January 1, 2006.*)
- 7.04A.260 Jurisdiction. (*Effective January 1, 2006.*)
- 7.04A.270 Venue. (*Effective January 1, 2006.*)
- 7.04A.280 Appeals. (*Effective January 1, 2006.*)
- 7.04A.290 Relationship to electronic signatures in global and national commerce act. (*Effective January 1, 2006.*)
- 7.04A.900 Effective date—2005 c 433.
- 7.04A.901 Uniformity of application and construction—2005 c 433. (*Effective January 1, 2006.*)
- 7.04A.902 Captions not law—2005 c 433. (*Effective January 1, 2006.*)
- 7.04A.903 Savings—2005 c 433. (*Effective January 1, 2006.*)

**7.04A.010 Definitions. (*Effective January 1, 2006.*)**

The definitions set forth in this section apply throughout this chapter.

(1) "Arbitration organization" means a neutral association, agency, board, commission, or other entity that initiates, sponsors, or administers arbitration proceedings or is involved in the appointment of arbitrators.

(2) "Arbitrator" means an individual appointed to render an award in a controversy between persons who are parties to an agreement to arbitrate.

(3) "Authenticate" means:

(a) To sign; or

(b) To execute or adopt a record by attaching to or logically associating with the record, an electronic sound, symbol, or process with the intent to sign the record.

(4) "Court" means a court of competent jurisdiction in this state.

(5) "Knowledge" means actual knowledge.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(7) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. [2005 c 433 § 1.]

**7.04A.020 Notice. (*Effective January 1, 2006.*)** Unless the parties to an agreement to arbitrate otherwise agree or except as otherwise provided in this chapter, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice. A person has notice if the person has knowledge of

the notice or has received notice. A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery of such communications. [2005 c 433 § 2.]

**7.04A.030 When chapter applies. (*Effective January 1, 2006.*)** (1) Before July 1, 2006, this chapter governs agreements to arbitrate entered into:

(a) On or after January 1, 2006; and

(b) Before January 1, 2006, if all parties to the agreement to arbitrate or to arbitration proceedings agree in a record to be governed by this chapter.

(2) On or after July 1, 2006, this chapter governs agreements to arbitrate even if the arbitration agreement was entered into before January 1, 2006.

(3) This chapter does not apply to any arbitration governed by chapter 7.06 RCW.

(4) This chapter does not apply to any arbitration agreement between employers and employees or between employers and associations of employees. [2005 c 433 § 3.]

**7.04A.040 Effect of agreement to arbitrate—Non-waivable provisions. (*Effective January 1, 2006.*)** (1) Except as otherwise provided in subsections (2) and (3) of this section, the parties to an agreement to arbitrate or to an arbitration proceeding may waive or vary the requirements of this chapter to the extent permitted by law.

(2) Before a controversy arises that is subject to an agreement to arbitrate, the parties to the agreement may not:

(a) Waive or vary the requirements of RCW 7.04A.050(1), 7.04A.060(1), 7.04A.080, 7.04A.170 (1) or (2), 7.04A.260, or 7.04A.280;

(b) Unreasonably restrict the right under RCW 7.04A.090 to notice of the initiation of an arbitration proceeding;

(c) Unreasonably restrict the right under RCW 7.04A.120 to disclosure of any facts by a neutral arbitrator; or

(d) Waive the right under RCW 7.04A.160 of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under this chapter.

(3) The parties to an agreement to arbitrate may not waive or vary the requirements of this section or RCW 7.04A.030 (1)(a) or (2), 7.04A.070, 7.04A.140, 7.04A.180, 7.04A.200 (3) or (4), 7.04A.220, 7.04A.230, 7.04A.240, 7.04A.250 (1) or (2), 7.04A.901, 7.04A.903, section 50, chapter 433, Laws of 2005, or section 51, chapter 433, Laws of 2005. [2005 c 433 § 4.]

**7.04A.050 Application to court. (*Effective January 1, 2006.*)** (1) Except as otherwise provided in RCW 7.04A.280, an application for judicial relief under this chapter must be made by motion to the court and heard in the manner and upon the notice provided by law or rule of court for making and hearing motions.

(2) Notice of an initial motion to the court under this chapter must be served in the manner provided by law for the service of a summons in a civil action unless a civil action is already pending involving the agreement to arbitrate. [2005 c 433 § 5.]

**7.04A.060 Validity of agreement to arbitrate.** (*Effective January 1, 2006.*) (1) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of contract.

(2) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(3) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

(4) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders. [2005 c 433 § 6.]

**7.04A.070 Motion to compel or stay arbitration.** (*Effective January 1, 2006.*) (1) On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement, the court shall order the parties to arbitrate if the refusing party does not appear or does not oppose the motion. If the refusing party opposes the motion, the court shall proceed summarily to decide the issue. Unless the court finds that there is no enforceable agreement to arbitrate, it shall order the parties to arbitrate. If the court finds that there is no enforceable agreement, it may not order the parties to arbitrate.

(2) On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate. If the court finds that there is no enforceable agreement, it may not order the parties to arbitrate.

(3) The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.

(4) If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion under this section must be filed in that court. Otherwise a motion under this section may be filed in any court as required by RCW 7.04A.270.

(5) If a party files a motion with the court to order arbitration under this section, the court shall on just terms stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

(6) If the court orders arbitration, the court shall on just terms stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may sever it and limit the stay to that claim. [2005 c 433 § 7.]

**7.04A.080 Provisional remedies.** (*Effective January 1, 2006.*) (1) Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the

same conditions as if the controversy were the subject of a civil action.

(2) After an arbitrator is appointed and is authorized and able to act, the arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action. After an arbitrator is appointed and is authorized and able to act, a party to an arbitration proceeding may move the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or if the arbitrator cannot provide an adequate remedy.

(3) A motion to a court for a provisional remedy under subsection (1) or (2) of this section does not waive any right of arbitration. [2005 c 433 § 8.]

**7.04A.090 Initiation of arbitration.** (*Effective January 1, 2006.*) (1) A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by mail certified or registered, return receipt requested and obtained, or by service as authorized for the initiation of a civil action. The notice must describe the nature of the controversy and the remedy sought.

(2) Unless a person interposes an objection as to lack or insufficiency of notice under RCW 7.04A.150(3) not later than the commencement of the arbitration hearing, the person's appearance at the hearing waives any objection to lack of or insufficiency of notice. [2005 c 433 § 9.]

**7.04A.100 Consolidation of separate arbitration proceedings.** (*Effective January 1, 2006.*) (1) Except as otherwise provided in subsection (3) of this section, upon motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

(a) There are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;

(b) The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

(c) The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

(d) Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

(2) The court may order consolidation of separate arbitration proceedings as to certain claims and allow other claims to be resolved in separate arbitration proceedings.

(3) The court may not order consolidation of the claims of a party to an agreement to arbitrate that prohibits consolidation. [2005 c 433 § 10.]

**7.04A.110 Appointment of arbitrator—Service as a neutral arbitrator.** (*Effective January 1, 2006.*) (1) If the



parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method must be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. The arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed under the agreed method.

(2) An arbitrator who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party may not serve as a neutral arbitrator. [2005 c 433 § 11.]

**7.04A.120 Disclosure by arbitrator. (Effective January 1, 2006.)** (1) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

(a) A financial or personal interest in the outcome of the arbitration proceeding; and

(b) An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, witnesses, or the other arbitrators.

(2) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceedings and to any other arbitrators any facts that the arbitrator learns after accepting appointment that a reasonable person would consider likely to affect the impartiality of the arbitrator.

(3) If an arbitrator discloses a fact required by subsection (1) or (2) of this section to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the disclosure, the objection may be a ground to vacate the award under RCW 7.04A.230(1)(b).

(4) If the arbitrator did not disclose a fact as required by subsection (1) or (2) of this section, upon timely objection of a party, an award may be vacated under RCW 7.04A.230(1)(b).

(5) An arbitrator appointed as a neutral who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party is presumed to act with evident partiality under RCW 7.04A.230(1)(b).

(6) If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under RCW 7.04A.230(1)(b). [2005 c 433 § 12.]

**7.04A.130 Action by majority. (Effective January 1, 2006.)** If there is more than one arbitrator, the powers of the arbitrators must be exercised by a majority of them. [2005 c 433 § 13.]

**7.04A.140 Immunity of arbitrator—Competency to testify—Attorneys' fees and costs. (Effective January 1, 2006.)** (1) An arbitrator or an arbitration organization acting in that capacity is immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.

(2) The immunity afforded by this section supplements any other immunity.

(3) If an arbitrator does not make a disclosure required by RCW 7.04A.120, the nondisclosure does not cause a loss of immunity under this section.

(4) In any judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify or required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding to the same extent as a judge of a court of this state acting in a judicial capacity. This subsection does not apply:

(a) To the extent necessary to determine the claim of an arbitrator or an arbitration organization or a representative of the arbitration organization against a party to the arbitration proceeding; or

(b) If a party to the arbitration proceeding files a motion to vacate an award under RCW 7.04A.230(1) (a) or (b) and establishes prima facie that a ground for vacating the award exists.

(5) If a person commences a civil action against an arbitrator, an arbitration organization, or a representative of an arbitration organization arising from the services of the arbitrator, organization, or representative or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify in violation of subsection (4) of this section, and the court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is incompetent to testify, the court shall award to the arbitrator, organization, or representative reasonable attorneys' fees and other reasonable expenses of litigation. [2005 c 433 § 14.]

**7.04A.150 Arbitration process. (Effective January 1, 2006.)** (1) The arbitrator may conduct the arbitration in such manner as the arbitrator considers appropriate so as to aid in the fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and to determine the admissibility, relevance, materiality, and weight of any evidence.

(2) The arbitrator may decide a request for summary disposition of a claim or particular issue by agreement of all interested parties or upon request of one party to the arbitration proceeding if that party gives notice to all other parties to the arbitration proceeding and the other parties have a reasonable opportunity to respond.

(3) The arbitrator shall set a time and place for a hearing and give notice of the hearing not less than five days before the hearing. Unless a party to the arbitration proceeding interposes an objection to lack of or insufficiency of notice not later than the commencement of the hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause

shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The court, on request, may direct the arbitrator to promptly conduct the hearing and render a timely decision.

(4) If an arbitrator orders a hearing under subsection (3) of this section, the parties to the arbitration proceeding are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(5) If there is more than one arbitrator, all of them shall conduct the hearing under subsection (3) of this section; however, a majority shall decide any issue and make a final award.

(6) If an arbitrator ceases, or is unable, to act during the arbitration proceeding, a replacement arbitrator must be appointed in accordance with RCW 7.04A.110 to continue the hearing and to decide the controversy. [2005 c 433 § 15.]

**7.04A.160 Representation by lawyer. (Effective January 1, 2006.)** A party to an arbitration proceeding may be represented by a lawyer. [2005 c 433 § 16.]

**7.04A.170 Witnesses—Subpoenas—Depositions—Discovery. (Effective January 1, 2006.)** (1) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena must be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

(2) On request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness, including a witness who cannot be subpoenaed for or is unable to attend a hearing, to be taken under conditions determined by the arbitrator for use as evidence in order to make the proceeding fair, expeditious, and cost-effective.

(3) An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost-effective.

(4) If an arbitrator permits discovery under subsection (3) of this section, the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, including the issuance of a subpoena for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and may take action against a party to the arbitration proceeding who does not comply to the extent permitted by law as if the controversy were the subject of a civil action in this state.

(5) An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from

disclosure as if the controversy were the subject of a civil action in this state.

(6) All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this state.

(7) The court may enforce a subpoena or discovery-related order for the attendance of a witness within this state and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court in order to make the arbitration proceeding fair, expeditious, and cost-effective. A subpoena or discovery-related order issued by an arbitrator must be served in the manner provided by law for service of subpoenas in a civil action in this state and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this state. [2005 c 433 § 17.]

**7.04A.180 Court enforcement of preaward ruling by arbitrator. (Effective January 1, 2006.)** If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under RCW 7.04A.190. The successful party may file a motion to the court for an expedited order to confirm the award under RCW 7.04A.220, in which case the court shall proceed summarily to decide the motion. The court shall issue an order to confirm the award unless the court vacates, modifies, or corrects the award of the arbitrator under RCW 7.04A.230 and 7.04A.240. [2005 c 433 § 18.]

**7.04A.190 Award. (Effective January 1, 2006.)** (1) An arbitrator shall make a record of an award. The record must be authenticated by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

(2) An award must be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend or the parties to the arbitration proceeding may agree in a record to extend the time. The court or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award. [2005 c 433 § 19.]

**7.04A.200 Change of award by arbitrator. (Effective January 1, 2006.)** (1) On motion to an arbitrator by a party to the arbitration proceeding, the arbitrator may modify or correct an award:

- (a) Upon the grounds stated in RCW 7.04A.240(1) (a) or (c);
- (b) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or
- (c) To clarify the award.

(2) A motion under subsection (1) of this section must be made and served on all parties within twenty days after the movant receives notice of the award.

(3) A party to the arbitration proceeding must serve any objections to the motion within ten days after receipt of the notice.

(4) If a motion to the court is pending under RCW 7.04A.220, 7.04A.230, or 7.04A.240, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(a) Upon the grounds stated in RCW 7.04A.240(1) (a) or (c);

(b) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(c) To clarify the award.

(5) An award modified or corrected under this section is subject to RCW 7.04A.220, 7.04A.230, and 7.04A.240. [2005 c 433 § 20.]

**7.04A.210 Remedies—Fees and expenses of arbitration proceeding. (Effective January 1, 2006.)** (1) An arbitrator may award punitive damages or other exemplary relief if such an award is authorized under the applicable law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

(2) An arbitrator may award attorneys' fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

(3) As to all remedies other than those authorized by subsections (1) and (2) of this section, an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award RCW 7.04A.220 or for vacating an award under RCW 7.04A.230.

(4) An arbitrator's expenses and fees, together with other expenses, must be paid as provided in the award.

(5) If an arbitrator awards punitive damages or other exemplary relief under subsection (1) of this section, the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief. [2005 c 433 § 21.]

**7.04A.220 Confirmation of award. (Effective January 1, 2006.)** After a party to the arbitration proceeding receives notice of an award, the party may file a motion with the court for an order confirming the award, at which time the court shall issue such an order unless the award is modified or corrected under RCW 7.04A.200 or 7.04A.240 or is vacated under RCW 7.04A.230. [2005 c 433 § 22.]

**7.04A.230 Vacating award. (Effective January 1, 2006.)** (1) Upon motion of a party to the arbitration proceeding, the court shall vacate an award if:

(a) The award was procured by corruption, fraud, or other undue means;

(b) There was:

(i) Evident partiality by an arbitrator appointed as a neutral;

(ii) Corruption by an arbitrator; or

(iii) Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(c) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to RCW 7.04A.150, so as to prejudice substantially the rights of a party to the arbitration proceeding;

(d) An arbitrator exceeded the arbitrator's powers;

(e) There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under RCW 7.04A.150(3) not later than the commencement of the arbitration hearing; or

(f) The arbitration was conducted without proper notice of the initiation of an arbitration as required in RCW 7.04A.090 so as to prejudice substantially the rights of a party to the arbitration proceeding.

(2) A motion under this section must be filed within ninety days after the movant receives notice of the award in a record under RCW 7.04A.190 or within ninety days after the movant receives notice of an arbitrator's award in a record on a motion to modify or correct an award under RCW 7.04A.200, unless the motion is predicated upon the ground that the award was procured by corruption, fraud, or other undue means, in which case it must be filed within ninety days after such a ground is known or by the exercise of reasonable care should have been known by the movant.

(3) In vacating an award on a ground other than that set forth in subsection (1)(e) of this section, the court may order a rehearing before a new arbitrator. If the award is vacated on a ground stated in subsection (1)(c), (d), or (f) of this section, the court may order a rehearing before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time as that provided in RCW 7.04A.190(2) for an award.

(4) If a motion to vacate an award is denied and a motion to modify or correct the award is not pending, the court shall confirm the award. [2005 c 433 § 23.]

**7.04A.240 Modification or correction of award. (Effective January 1, 2006.)** (1) Upon motion filed within ninety days after the movant receives notice of the award in a record under RCW 7.04A.190 or within ninety days after the movant receives notice of an arbitrator's award in a record on a motion to modify or correct an award under RCW 7.04A.200, the court shall modify or correct the award if:

(a) There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;

(b) The arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or

(c) The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

(2) If a motion filed under subsection (1) of this section is granted, the court shall modify or correct and confirm the award as modified or corrected. Otherwise, the court shall confirm the award.

(3) A motion to modify or correct an award under this section may be joined with a motion to vacate the award. [2005 c 433 § 24.]

**7.04A.250 Judgment on award—Attorneys' fees and litigation expenses.** (*Effective January 1, 2006.*) (1) Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment in conformity with the order. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.

(2) A court may allow reasonable costs of the motion and subsequent judicial proceedings.

(3) On application of a prevailing party to a contested judicial proceeding under RCW 7.04A.220, 7.04A.230, or 7.04A.240, the court may add to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award, attorneys' fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made. [2005 c 433 § 25.]

**7.04A.260 Jurisdiction.** (*Effective January 1, 2006.*)

(1) A court of this state having jurisdiction over the dispute and the parties may enforce an agreement to arbitrate.

(2) An agreement to arbitrate providing for arbitration in this state confers exclusive jurisdiction on the court to enter judgment on an award under this chapter. [2005 c 433 § 26.]

**7.04A.270 Venue.** (*Effective January 1, 2006.*) A motion under RCW 7.04A.050 must be filed in the court of the county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court of the county in which it was held. Otherwise, the motion must be filed in any county in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this state, in the court of any county in this state. All subsequent motions must be filed in the court hearing the initial motion unless the court otherwise directs. [2005 c 433 § 27.]

**7.04A.280 Appeals.** (*Effective January 1, 2006.*) (1)

An appeal may be taken from:

- (a) An order denying a motion to compel arbitration;
- (b) An order granting a motion to stay arbitration;
- (c) An order confirming or denying confirmation of an award;
- (d) An order modifying or correcting an award;
- (e) An order vacating an award without directing a rehearing; or
- (f) A final judgment entered under this chapter.

(2) An appeal under this section must be taken as from an order or a judgment in a civil action. [2005 c 433 § 28.]

**7.04A.290 Relationship to electronic signatures in global and national commerce act.** (*Effective January 1, 2006.*) The provisions of this chapter governing the legal

[2005 RCW Supp—page 32]

effect, validity, and enforceability of electronic records or electronic signatures, and of contracts performed with the use of such records or signatures conform to the requirements of section 102 of the electronic signatures in global and national commerce act. [2005 c 433 § 32.]

**7.04A.900 Effective date—2005 c 433.** This act takes effect January 1, 2006. [2005 c 433 § 51.]

**7.04A.901 Uniformity of application and construction—2005 c 433.** (*Effective January 1, 2006.*) In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2005 c 433 § 29.]

**7.04A.902 Captions not law—2005 c 433.** (*Effective January 1, 2006.*) Captions used in this act are not part of the law. [2005 c 433 § 30.]

**7.04A.903 Savings—2005 c 433.** (*Effective January 1, 2006.*) This act does not affect an action or proceeding commenced or right accrued before January 1, 2006. [2005 c 433 § 31.]

## Chapter 7.06 RCW

### MANDATORY ARBITRATION OF CIVIL ACTIONS

#### Sections

7.06.010	Authorization.
7.06.020	Actions subject to mandatory arbitration—Court may authorize mandatory arbitration of maintenance and child support.

**7.06.010 Authorization.** In counties with a population of more than one hundred thousand, mandatory arbitration of civil actions under this chapter shall be required. In counties with a population of one hundred thousand or less, the superior court of the county, by majority vote of the judges thereof, or the county legislative authority may authorize mandatory arbitration of civil actions under this chapter. [2005 c 472 § 1; 2002 c 338 § 1; 1991 c 363 § 7; 1984 c 258 § 511; 1979 c 103 § 1.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

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

**7.06.020 Actions subject to mandatory arbitration—Court may authorize mandatory arbitration of maintenance and child support.** (1) All civil actions, except for appeals from municipal or district courts, which are at issue in the superior court in counties which have authorized arbitration, where the sole relief sought is a money judgment, and where no party asserts a claim in excess of fifteen thousand dollars, or if approved by the superior court of a county by two-thirds or greater vote of the judges thereof, up to fifty thousand dollars, exclusive of interest and costs, are subject to mandatory arbitration.

(2) If approved by majority vote of the superior court judges of a county which has authorized arbitration, all civil actions which are at issue in the superior court in which the

sole relief sought is the establishment, termination or modification of maintenance or child support payments are subject to mandatory arbitration. The arbitrability of any such action shall not be affected by the amount or number of payments involved. [2005 c 472 § 2. Prior: 1987 c 212 § 101; 1987 c 202 § 127; 1985 c 265 § 3; 1982 c 188 § 1; 1979 c 103 § 2.]

**Rules of court:** MAR 1.2.

**Application—2005 c 472 § 2:** "Section 2 of this act applies to any case in which a notice of arbitrability is filed on or after the July 24, 2005." [2005 c 472 § 3.]

**Effective date—1987 c 212 §§ 101 and 102:** "Sections 101 and 102 of this act shall take effect July 1, 1988." [1987 c 212 § 1902.]

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

## Chapter 7.07 RCW UNIFORM MEDIATION ACT

### Sections

7.07.010	Definitions. <i>(Effective January 1, 2006.)</i>
7.07.020	Scope. <i>(Effective January 1, 2006.)</i>
7.07.030	Privilege against disclosure—Admissibility—Discovery. <i>(Effective January 1, 2006.)</i>
7.07.040	Waiver and preclusion of privilege. <i>(Effective January 1, 2006.)</i>
7.07.050	Exceptions to privilege. <i>(Effective January 1, 2006.)</i>
7.07.060	Prohibited mediator reports. <i>(Effective January 1, 2006.)</i>
7.07.070	Confidentiality. <i>(Effective January 1, 2006.)</i>
7.07.080	Mediator's disclosure of conflicts of interest—Background. <i>(Effective January 1, 2006.)</i>
7.07.090	Participation in mediation. <i>(Effective January 1, 2006.)</i>
7.07.100	Relation to electronic signatures in global and national commerce act. <i>(Effective January 1, 2006.)</i>
7.07.110	Uniformity of application and construction. <i>(Effective January 1, 2006.)</i>
7.07.900	Short title—2005 c 172. <i>(Effective January 1, 2006.)</i>
7.07.901	Captions not law—2005 c 172. <i>(Effective January 1, 2006.)</i>
7.07.902	Severability—2005 c 172. <i>(Effective January 1, 2006.)</i>
7.07.903	Application to existing agreements or referrals. <i>(Effective January 1, 2006.)</i>
7.07.904	Effective date—2005 c 172.

**7.07.010 Definitions. (Effective January 1, 2006.)** In this chapter:

(1) "Mediation" means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

(2) "Mediation communication" means a statement, whether oral or in a record or verbal or nonverbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.

(3) "Mediator" means an individual who conducts a mediation.

(4) "Nonparty participant" means a person, other than a party or mediator, that participates in a mediation.

(5) "Mediation party" means a person that participates in a mediation and whose agreement is necessary to resolve the dispute.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; or public corporation, or any other legal or commercial entity.

(7) "Proceeding" means:

(a) A judicial, administrative, arbitral, or other adjudicative process, including related prehearing and posthearing motions, conferences, and discovery; or

(b) A legislative hearing or similar process.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) "Sign" means:

(a) To execute or adopt a tangible symbol with the present intent to authenticate a record; or

(b) To attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate a record. [2005 c 172 § 2.]

**7.07.020 Scope. (Effective January 1, 2006.)** (1) Except as otherwise provided in subsection (2) or (3) of this section, this chapter applies to a mediation in which:

(a) The mediation parties are required to mediate by statute or court or administrative agency rule or referred to mediation by a court, administrative agency, or arbitrator;

(b) The mediation parties and the mediator agree to mediate in a record that demonstrates an expectation that mediation communications will be privileged against disclosure; or

(c) The mediation parties use as a mediator an individual who holds himself or herself out as a mediator or the mediation is provided by a person that holds itself out as providing mediation.

(2) This chapter does not apply to a mediation:

(a) Conducted by a judge who might make a ruling on the case; or

(b) Conducted under the auspices of:

(i) A primary or secondary school if all the parties are students; or

(ii) A correctional institution for youths if all the parties are residents of that institution.

(3) If the parties agree in advance in a signed record, or a record of proceeding reflects agreement by the parties, that all or part of a mediation is not privileged, the privileges under RCW 7.07.030 through 7.07.050 do not apply to the mediation or part agreed upon. However, RCW 7.07.030 through 7.07.050 apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made. [2005 c 172 § 3.]

**7.07.030 Privilege against disclosure—Admissibility—Discovery. (Effective January 1, 2006.)** (1) Except as otherwise provided in RCW 7.07.050, a mediation communication is privileged as provided in subsection (2) of this section and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided by RCW 7.07.040.

(2) In a proceeding, the following privileges apply:

(a) A mediation party may refuse to disclose, and may prevent any other person from disclosing, a mediation communication;

(b) A mediator may refuse to disclose a mediation communication, and may prevent any other person from disclosing a mediation communication of the mediator; and

(c) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a mediation communication of the nonparty participant.

(3) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation. [2005 c 172 § 4.]

**7.07.040 Waiver and preclusion of privilege. (Effective January 1, 2006.)** (1) A privilege under RCW 7.07.030 may be waived in a record or orally during a proceeding if it is expressly waived by all parties to the mediation and:

(a) In the case of the privilege of a mediator, it is expressly waived by the mediator; and

(b) In the case of the privilege of a nonparty participant, it is expressly waived by the nonparty participant.

(2) A person that discloses or makes a representation about a mediation communication which prejudices another person in a proceeding is precluded from asserting a privilege under RCW 7.07.030, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.

(3) A person that intentionally uses a mediation to plan, attempt to commit, or commit a crime, or to conceal an ongoing crime or ongoing criminal activity is precluded from asserting a privilege under RCW 7.07.030. [2005 c 172 § 5.]

**7.07.050 Exceptions to privilege. (Effective January 1, 2006.)** (1) There is no privilege under RCW 7.07.030 for a mediation communication that is:

(a) In an agreement evidenced by a record signed by all parties to the agreement;

(b) Made during a session of a mediation which is open, or is required by law to be open, to the public;

(c) A threat or statement of a plan to inflict bodily injury or commit a crime of violence;

(d) Intentionally used to plan a crime, attempt to commit or commit a crime, or to conceal an ongoing crime or ongoing criminal activity;

(e) Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator;

(f) Except as otherwise provided in subsection (3) of this section, sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant, or representative of a party based on conduct occurring during a mediation; or

(g) Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation in a proceeding in which a child or adult protective services agency is a party, unless the public agency participates in the child or adult protection mediation.

(2) There is no privilege under RCW 7.07.030 if a court finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, that there is a need for the evidence that substantially outweighs the interest in protecting confidentiality, and that the mediation communication is sought or offered in:

(a) A criminal court proceeding involving a felony; or

(b) Except as otherwise provided in subsection (3) of this section, a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation.

(3) A mediator may not be compelled to provide evidence of a mediation communication referred to in subsection (1)(f) or (2)(b) of this section.

(4) If a mediation communication is not privileged under subsection (1) or (2) of this section, only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted. Admission of evidence under subsection (1) or (2) of this section does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

(5) Records of mediation communications that are privileged under this chapter are exempt from the requirements of chapter 42.17 RCW. [2005 c 172 § 6.]

**7.07.060 Prohibited mediator reports. (Effective January 1, 2006.)** (1) Except as provided in subsection (2) of this section, a mediator may not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a court, administrative agency, or other authority that may make a ruling on the dispute that is the subject of the mediation.

(2) A mediator may disclose:

(a) Whether the mediation occurred or has terminated, whether a settlement was reached, attendance, and efforts to schedule a mediation ordered by a court, administrative agency, or other authority that may make a ruling on the dispute;

(b) A mediation communication as permitted under RCW 7.07.050; or

(c) A mediation communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against such mistreatment.

(3) A communication made in violation of subsection (1) of this section may not be considered by a court, administrative agency, or arbitrator. [2005 c 172 § 7.]

**7.07.070 Confidentiality. (Effective January 1, 2006.)** Unless subject to chapter 42.30 RCW, mediation communications are confidential to the extent agreed by the parties or provided by other law or rule of this state. [2005 c 172 § 8.]

**7.07.080 Mediator's disclosure of conflicts of interest—Background. (Effective January 1, 2006.)** (1) Before accepting a mediation, an individual who is requested to serve as a mediator shall:

(a) Make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable individual would consider likely to affect the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation and an existing or past relationship with a mediation party or foreseeable participant in the mediation; and

(b) Disclose any such known fact to the mediation parties as soon as is practical before accepting a mediation.

(2) If a mediator learns any fact described in subsection (1)(a) of this section after accepting a mediation, the mediator shall disclose it as soon as is practicable.

(3) At the request of a mediation party, an individual who is requested to serve as a mediator shall disclose the mediator's qualifications to mediate a dispute.

(4) A person that violates subsection (1) or (2) of this section is precluded by the violation from asserting a privilege under RCW 7.07.030.

(5) Subsections (1) through (3) of this section do not apply to an individual acting as a judge.

(6) This chapter does not require that a mediator have a special qualification by background or profession. [2005 c 172 § 9.]

**7.07.090 Participation in mediation.** (*Effective January 1, 2006.*) An attorney or other individual designated by a party may accompany the party to and participate in a mediation, except that if the dispute being mediated is the subject of pending proceedings under chapter 12.40 RCW, then a party may not be represented by an attorney in mediation unless the party may be represented by an attorney in the proceedings under chapter 12.40 RCW. A waiver of participation given before the mediation may be rescinded. [2005 c 172 § 10.]

**7.07.100 Relation to electronic signatures in global and national commerce act.** (*Effective January 1, 2006.*) This chapter modifies, limits, or supersedes the federal electronic signatures in global and national commerce act (15 U.S.C. Sec. 7001 et seq.), but this chapter does not modify, limit, or supersede section 101(c) of that act or authorize electronic delivery of any of the notices described in section 103(b) of that act. [2005 c 172 § 11.]

**7.07.110 Uniformity of application and construction.** (*Effective January 1, 2006.*) In applying and construing this chapter, consideration should be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2005 c 172 § 12.]

**7.07.900 Short title—2005 c 172.** (*Effective January 1, 2006.*) This act may be cited as the Uniform Mediation Act. [2005 c 172 § 1.]

**7.07.901 Captions not law—2005 c 172.** (*Effective January 1, 2006.*) Captions used in this act are not any part of the law. [2005 c 172 § 20.]

**7.07.902 Severability—2005 c 172.** (*Effective January 1, 2006.*) If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2005 c 172 § 21.]

**7.07.903 Application to existing agreements or referrals.** (*Effective January 1, 2006.*) (1) This chapter governs a mediation pursuant to a referral or an agreement to mediate made on or after January 1, 2006.

(2) If all parties agree in a signed record or a record of proceeding reflects such an agreement by all parties, then this

chapter governs a mediation pursuant to a referral or an agreement to mediate whenever made. [2005 c 172 § 22.]

**7.07.904 Effective date—2005 c 172.** This act takes effect January 1, 2006. [2005 c 172 § 23.]

## Chapter 7.48 RCW

### NUISANCES

#### Sections

7.48.315	Agricultural activities and forest practices—Recovering lawsuit costs—Farmers.
7.48.320	Agricultural activities and forest practices—Recovering costs to investigate complaints—State and local agencies.

**7.48.315 Agricultural activities and forest practices—Recovering lawsuit costs—Farmers.** (1) A farmer who prevails in any action, claim, or counterclaim alleging that agricultural activity on a farm constitutes a nuisance may recover the full costs and expenses determined by a court to have been reasonably incurred by the farmer as a result of the action, claim, or counterclaim.

(2) A farmer who prevails in any action, claim, or counterclaim (a) based on an allegation that agricultural activity on a farm is in violation of specified laws, rules, or ordinances, (b) where such activity is not found to be in violation of the specified laws, rules, or ordinances, and (c) actual damages are realized by the farm as a result of the action, claim, or counterclaim, may recover the full costs and expenses determined by a court to have been reasonably incurred by the farmer as a result of the action, claim, or counterclaim.

(3) The costs and expenses that may be recovered according to subsection (1) or (2) of this section include actual damages and reasonable attorneys' fees and costs. For the purposes of this subsection, "actual damages" include lost revenue and the replacement value of crops or livestock damaged or unable to be harvested or sold as a result of the action, claim, or counterclaim.

(4) In addition to any sums recovered according to subsection (1) or (2) of this section, a farmer may recover exemplary damages if a court finds that the action, claim, or counterclaim was initiated maliciously and without probable cause.

(5) A farmer may not recover the costs and expenses authorized in this section from a state or local agency that investigates or pursues an enforcement action pursuant to an allegation as specified in subsection (2) of this section. [2005 c 511 § 1.]

**7.48.320 Agricultural activities and forest practices—Recovering costs to investigate complaints—State and local agencies.** A state or local agency required to investigate a complaint alleging agricultural activity on a farm is in violation of specified laws, rules, or ordinances and where such activity is not found to be in violation of such specified laws, rules, or ordinances may recover its full investigative costs and expenses if a court determines that the complaint was initiated maliciously and without probable cause. [2005 c 511 § 2.]

**Chapter 7.68 RCW**  
**VICTIMS OF CRIMES—**  
**COMPENSATION, ASSISTANCE**

## Sections

7.68.360 Human trafficking—Coordinated state agency protocols.

**7.68.360 Human trafficking—Coordinated state agency protocols.** (1) By July 1, 2005, the director of the department of community, trade, and economic development, or the director's designee, shall within existing resources convene and chair a work group to develop written protocols for delivery of services to victims of trafficking of humans. The director shall invite appropriate federal agencies to consult with the work group for the purpose of developing protocols that, to the extent possible, are in concert with federal statutes, regulations, and policies. In addition to the director of the department of community, trade, and economic development, the following shall be members of the work group: The secretary of the department of health, the secretary of the department of social and health services, the attorney general, the director of the department of labor and industries, the commissioner of the employment security department, a representative of the Washington association of prosecuting attorneys, the chief of the Washington state patrol, two members selected by the Washington association of sheriffs and police chiefs, and five members, selected by the director of the department of community, trade, and economic development from a list submitted by public and private sector organizations that provide assistance to persons who are victims of trafficking. The attorney general, the chief of the Washington state patrol, and the secretaries or directors may designate a person to serve in their place.

Members of the work group shall serve without compensation.

(2) The protocols must meet all of the following minimum standards:

(a) The protocols must apply to the following state agencies: The department of community, trade, and economic development, the department of health, the department of social and health services, the attorney general's office, the Washington state patrol, the department of labor and industries, and the employment security department;

(b) The protocols must provide policies and procedures for interagency coordinated operations and cooperation with government agencies and nongovernmental organizations, agencies, and jurisdictions, including law enforcement agencies and prosecuting attorneys;

(c) The protocols must include the establishment of a data base electronically available to all affected agencies which contains the name, address, and telephone numbers of agencies that provide services to victims of human trafficking; and

(d) The protocols must provide guidelines for providing for the social service needs of victims of trafficking of humans, including housing, health care, and employment.

(3) By January 1, 2006, the work group shall finalize the written protocols and submit them with a report to the legislature and the governor.

(4) The protocols shall be reviewed on a biennial basis by the work group to determine whether revisions are appro-

[2005 RCW Supp—page 36]

priate. The director of the department of community, trade, and economic development, or the director's designee, shall within existing resources reconvene and chair the work group for this purpose. [2005 c 358 § 2.]

**Intent—Finding—2005 c 358:** "The legislature recognizes that human trafficking is growing to epidemic proportions and that our state is impacted. Human trafficking is one of the greatest threats to human dignity. It is the commodification of human beings and an assault on human values. Washington is, and must continue to be, a national leader at the state level in the fight against human trafficking.

The legislature recognizes there are many state agencies and private organizations that might be called on to provide services to victims of trafficking of humans. Victims of human trafficking are often in need of services such as emergency medical attention, food and shelter, vocational and English language training, mental health counseling, and legal support. The state intends to improve the response of state, local, and private entities to incidents of trafficking of humans. Victims would be better served if there is an established, coordinated system of identifying the needs of trafficking victims, protocols for training of service delivery agencies and staff, timely and appropriate delivery of services, and better investigations and prosecutions of trafficking.

Leadership in providing services to victims of trafficking of humans also extends beyond government efforts and is grounded in the work of highly dedicated individuals and community-based groups. Without these efforts the struggle against human trafficking will be very difficult to win. The legislature, therefore, finds that such efforts merit regular public recognition and appreciation. Such recognition and appreciation will encourage the efforts of all persons to end human trafficking, and provide the public with information and education about the necessity of its involvement in this struggle." [2005 c 358 § 1.]

**Effective date—2005 c 358:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 10, 2005]." [2005 c 358 § 3.]

**Chapter 7.69B RCW**

**CRIME VICTIMS AND WITNESSES—**  
**DEPENDENT PERSONS**

## Sections

7.69B.005	Intent—Finding.
7.69B.010	Definitions.
7.69B.020	Rights enumerated.
7.69B.030	Testimony—Videotaped depositions.
7.69B.040	Liability for violating chapter—Actions based on other state or federal laws.
7.69B.900	Severability—2005 c 381.

**7.69B.005 Intent—Finding.** The legislature recognizes that it is important that dependent persons who are witnesses and victims of crime cooperate with law enforcement and prosecutorial agencies and that their assistance contributes to state and local enforcement efforts and the general effectiveness of the criminal justice system. The legislature finds that the state has an interest in making it possible for courts to adequately and fairly conduct cases involving dependent persons who are victims of crimes. Therefore, it is the intent of the legislature, by means of this chapter, to insure that all dependent persons who are victims and witnesses of crime are treated with sensitivity, courtesy, and special care and that their rights be protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protection afforded to other victims, witnesses, and criminal defendants. [2005 c 381 § 1.]



**7.69B.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Crime" means an act punishable as a felony, gross misdemeanor, or misdemeanor under the laws of this state or equivalent federal or local law.

(2) "Dependent person" has the same meaning as that term is defined in RCW 9A.42.010.

(3) "Victim" means a living person against whom a crime has been committed.

(4) "Witness" means a person who has been or is expected to be summoned to testify for the prosecution or defense in a criminal action, or who by reason of having relevant information is subject to call or likely to be called as a witness, whether or not an action or proceeding has been commenced.

(5) "Family member" means a person who is not accused of a crime and who is an adult child, adult sibling, spouse, parent, or legal guardian of the dependent person.

(6) "Advocate" means any person not accused of a crime, including a family member, approved by the witness or victim, in consultation with his or her guardian if applicable, who provides support to a dependent person during any legal proceeding.

(7) "Court proceedings" means any court proceeding conducted during the course of the prosecution of a crime committed against a dependent person, including pretrial hearings, trial, sentencing, or appellate proceedings.

(8) "Identifying information" means the dependent person's name, address, location, and photograph, and in cases in which the dependent person is a relative of the alleged perpetrator, identification of the relationship between the dependent person and the alleged perpetrator.

(9) "Crime victim/witness program" means any crime victim and witness program of a county or local law enforcement agency or prosecutor's office, any rape crisis center's sexual assault victim advocacy program as provided in chapter 70.125 RCW, any domestic violence program's legal and community advocate program for domestic violence victims as provided in chapter 70.123 RCW, or any other crime victim advocacy program which provides trained advocates to assist crime victims during the investigation and prosecution of the crime. [2005 c 381 § 2.]

**7.69B.020 Rights enumerated.** (1) In addition to the rights of victims and witnesses provided for in RCW 7.69.030, there shall be every reasonable effort made by law enforcement agencies, prosecutors, and judges to assure that dependent persons who are victims or witnesses are afforded the rights enumerated in this section. The enumeration of rights under this chapter shall not be construed to create substantive rights and duties, and the application of an enumerated right in an individual case is subject to the discretion of the law enforcement agency, prosecutor, or judge. Dependent persons who are victims or witnesses in the criminal justice system have the following rights, which apply to any criminal court or juvenile court proceeding:

(a) To have explained in language easily understood by the dependent person, all legal proceedings and police investigations in which the dependent person may be involved.

(b) With respect to a dependent person who is a victim of a sex or violent crime, to have a crime victim advocate from a crime victim/witness program, or any other advocate of the victim's choosing, present at any prosecutorial or defense interviews with the dependent person. This subsection applies unless it creates undue hardship and if the presence of the crime victim advocate or other advocate does not cause any unnecessary delay in the investigation or prosecution of the case. The role of the crime victim advocate or other advocate is to provide emotional support to the dependent person and to promote the dependent person's feelings of security and safety.

(c) To be provided, whenever possible, a secure waiting area during court proceedings and to have an advocate or support person remain with the dependent person prior to and during any court proceedings.

(d) To allow an advocate to make recommendations to the prosecuting attorney about the ability of the dependent person to cooperate with prosecution and the potential effect of the proceedings on the dependent person.

(e) To allow an advocate to provide information to the court concerning the dependent person's ability to understand the nature of the proceedings.

(f) To be provided information or appropriate referrals to social service agencies to assist the dependent person with the emotional impact of the crime, the subsequent investigation, and judicial proceedings in which the dependent person is involved.

(g) To allow an advocate to be present in court while the dependent person testifies in order to provide emotional support to the dependent person.

(h) To provide information to the court as to the need for the presence of other supportive persons at the court proceedings while the dependent person testifies in order to promote the dependent person's feelings of security and safety.

(i) To allow law enforcement agencies the opportunity to enlist the assistance of other professional personnel such as victim advocates or prosecutorial staff trained in the interviewing of the dependent person.

(j) With respect to a dependent person who is a victim of a violent or sex crime, to receive either directly or through the dependent person's legal guardian, if applicable, at the time of reporting the crime to law enforcement officials, a written statement of the rights of dependent persons as provided in this chapter. The statement may be paraphrased to make it more easily understood. The written statement shall include the name, address, and telephone number of a county or local crime victim/witness program, if such a crime victim/witness program exists in the county.

(2) Any party may request a preliminary hearing for the purpose of establishing accommodations for the dependent person consistent with, but not limited to, the rights enumerated in this section. [2005 c 381 § 3.]

**7.69B.030 Testimony—Videotaped depositions.** (1) The prosecutor or defense may file a motion with the court at any time prior to commencement of the trial for an order authorizing the taking of a videotape deposition for the purpose of preserving the direct testimony of the moving party's witness if that witness is a dependent person.

(2) The court may grant the motion if the moving party shows that it is likely that the dependent person will be unavailable to testify at a subsequent trial. The court's finding shall be based upon, at a minimum, recommendations from the dependent person's physician or any other person having direct contact with the dependent person and whose recommendations are based on specific behavioral indicators exhibited by the dependent person.

(3) The moving party shall provide reasonable written notice to the other party of the motion and order, if granted, pursuant to superior court criminal rules for depositions.

(4) Both parties shall have an opportunity to be present at the deposition and the nonmoving party shall have the opportunity to cross-examine the dependent person.

(5) Under circumstances permitted by the rules of evidence, the deposition may be introduced as evidence in a subsequent proceeding if the dependent person is unavailable at trial and both the prosecutor and the defendant had notice of and an opportunity to participate in the taking of the deposition. [2005 c 381 § 4.]

**7.69B.040 Liability for violating chapter—Actions based on other state or federal laws.** (1) The failure to provide notice to a dependent person of the rights enumerated in this chapter or the failure to provide the rights enumerated shall not result in civil liability so long as the failure was in good faith.

(2) Nothing in this chapter shall be construed to limit a party's ability to bring an action, including an action for damages, based on rights conferred by other state or federal law. [2005 c 381 § 5.]

**7.69B.900 Severability—2005 c 381.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2005 c 381 § 7.]

## Chapter 7.70 RCW

### ACTIONS FOR INJURIES RESULTING FROM HEALTH CARE

#### Sections

7.70.065 Informed consent—Persons authorized to provide for patients who are not competent—Priority.

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

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

(i) The appointed guardian of the patient, if any;

(ii) The individual, if any, to whom the patient has given a durable power of attorney that encompasses the authority to make health care decisions;

(iii) The patient's spouse;

(iv) Children of the patient who are at least eighteen years of age;

(v) Parents of the patient; and

(vi) Adult brothers and sisters of the patient.

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

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

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

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

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

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

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

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

(iii) Parents of the minor patient;

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

(v) A competent adult representing himself or herself to be a relative responsible for the health care of such minor patient or a competent adult who has signed and dated a declaration under penalty of perjury pursuant to RCW 9A.72.085

stating that the adult person is a relative responsible for the health care of the minor patient. Such declaration shall be effective for up to six months from the date of the declaration.

(b) A health care provider may, but is not required to, rely on the representations or declaration of a person claiming to be a relative responsible for the care of the minor patient, under (a)(v) of this subsection, if the health care provider does not have actual notice of the falsity of any of the statements made by the person claiming to be a relative responsible for the health care of the minor patient.

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

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

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

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

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

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

**Chapter 7.75 RCW**

**DISPUTE RESOLUTION CENTERS**

Sections

7.75.050 Confidentiality of centers' files, etc.—Exception—Privileged communications. (*Effective January 1, 2006.*)

**7.75.050 Confidentiality of centers' files, etc.—Exception—Privileged communications.** (*Effective January 1, 2006.*) Regardless of any provision to the contrary in chapter 42.17 RCW, all memoranda, work notes or products, or case files of centers established under this chapter are confidential and privileged and are not subject to disclosure in any judicial or administrative proceeding unless the court or administrative tribunal determines that the materials were submitted by a participant to the center for the purpose of avoiding discovery of the material in a subsequent proceeding. In all other respects, chapter 7.07 RCW, shall govern the privilege and confidentiality to be accorded to communications made in conjunction with a mediation conducted by a dispute resolution center established under this chapter. [2005 c 172 § 16; 1984 c 258 § 505.]

**Short title—Captions not law—Severability—Effective date—2005 c 172:** See RCW 7.07.900 through 7.07.902 and 7.07.904.

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

**Title 9**

**CRIMES AND PUNISHMENTS**

**Chapters**

- 9.41 Firearms and dangerous weapons.**
- 9.46 Gambling—1973 act.**
- 9.58 Libel and slander.**
- 9.73 Privacy, violating right of.**
- 9.91 Miscellaneous crimes.**
- 9.92 Punishment.**
- 9.94 Prisoners—Correctional institutions.**
- 9.94A Sentencing reform act of 1981.**
- 9.95 Indeterminate sentences.**

**Chapter 9.41 RCW**

**FIREARMS AND DANGEROUS WEAPONS**

Sections

- 9.41.040 Unlawful possession of firearms—Ownership, possession by certain persons—Penalties.
- 9.41.047 Restoration of possession rights.
- 9.41.060 Exceptions to restrictions on carrying firearms.
- 9.41.075 Concealed pistol license—Revocation.
- 9.41.097 Supplying information on persons purchasing pistols or applying for concealed pistol licenses. (*Effective July 1, 2006.*)
- 9.41.129 Recordkeeping requirements. (*Effective July 1, 2006.*)

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

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

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

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

(ii) After having previously been involuntarily committed for mental health treatment under RCW 71.05.320, \*71.34.090, chapter 10.77 RCW, or equivalent statutes of another jurisdiction, unless his or her right to possess a firearm has been restored as provided in RCW 9.41.047;

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

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

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

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

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

(a) Under RCW 9.41.047; and/or

(b)(i) If the conviction or finding of not guilty by reason of insanity was for a felony offense, after five or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit

the possession of a firearm counted as part of the offender score under RCW 9.94A.525; or

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

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

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

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

**\*Reviser's note:** RCW 71.34.090 was recodified as RCW 71.34.750 pursuant to 2005 c 371 § 6.

**Severability—2005 c 453:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 453 § 7.]

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

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

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

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

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

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

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

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

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

**9.41.047 Restoration of possession rights.** (1) At the time a person is convicted or found not guilty by reason of insanity of an offense making the person ineligible to possess a firearm, or at the time a person is committed by court order under RCW 71.05.320, \*71.34.090, or chapter 10.77 RCW for mental health treatment, the convicting or committing court shall notify the person, orally and in writing, that the person must immediately surrender any concealed pistol license and that the person may not possess a firearm unless his or her right to do so is restored by a court of record. For purposes of this section a convicting court includes a court in which a person has been found not guilty by reason of insanity.

The convicting or committing court also shall forward a copy of the person's driver's license or identicard, or comparable information, to the department of licensing, along with the date of conviction or commitment.

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

(3)(a) A person who is prohibited from possessing a firearm, by reason of having been involuntarily committed for mental health treatment under RCW 71.05.320, \*71.34.090, chapter 10.77 RCW, or equivalent statutes of another jurisdiction may, upon discharge, petition a court of record to have his or her right to possess a firearm restored. At the time of commitment, the court shall specifically state to the person that he or she is barred from possession of firearms.

(b) The secretary of social and health services shall develop appropriate rules to create an approval process under this subsection. The rules must provide for the restoration of the right to possess a firearm upon a showing in a court of competent jurisdiction that the person is no longer required to participate in an inpatient or outpatient treatment program, is no longer required to take medication to treat any condition related to the commitment, and does not present a substantial danger to himself or herself, others, or the public. Unlawful possession of a firearm under this subsection shall be punished as a class C felony under chapter 9A.20 RCW.

(c) A person petitioning the court under this subsection (3) shall bear the burden of proving by a preponderance of the evidence that the circumstances resulting in the commitment no longer exist and are not reasonably likely to recur. If a preponderance of the evidence in the record supports a finding that the person petitioning the court has engaged in violence and that it is more likely than not that the person will engage in violence after his or her right to possess a firearm is restored, the person shall bear the burden of proving by clear, cogent, and convincing evidence that he or she does not present a substantial danger to the safety of others.

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

**\*Reviser's note:** RCW 71.34.090 was recodified as RCW 71.34.750 pursuant to 2005 c 371 § 6.

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

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

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

**9.41.060 Exceptions to restrictions on carrying firearms.** The provisions of RCW 9.41.050 shall not apply to:

(1) Marshals, sheriffs, prison or jail wardens or their deputies, or other law enforcement officers of this state or another state;

(2) Members of the armed forces of the United States or of the national guard or organized reserves, when on duty;

(3) Officers or employees of the United States duly authorized to carry a concealed pistol;

(4) Any person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of the person, if possessing, using, or carrying a pistol in the usual or ordinary course of the business;

(5) Regularly enrolled members of any organization duly authorized to purchase or receive pistols from the United States or from this state;

(6) Regularly enrolled members of clubs organized for the purpose of target shooting, when those members are at or are going to or from their places of target practice;

(7) Regularly enrolled members of clubs organized for the purpose of modern and antique firearm collecting, when those members are at or are going to or from their collector's gun shows and exhibits;

(8) Any person engaging in a lawful outdoor recreational activity such as hunting, fishing, camping, hiking, or horseback riding, only if, considering all of the attendant circumstances, including but not limited to whether the person has a valid hunting or fishing license, it is reasonable to conclude that the person is participating in lawful outdoor activities or is traveling to or from a legitimate outdoor recreation area;

(9) Any person while carrying a pistol unloaded and in a closed opaque case or secure wrapper; or

(10) Law enforcement officers retired for service or physical disabilities, except for those law enforcement officers retired because of mental or stress-related disabilities. This subsection applies only to a retired officer who has: (a) Obtained documentation from a law enforcement agency within Washington state from which he or she retired that is signed by the agency's chief law enforcement officer and that states that the retired officer was retired for service or physical disability; and (b) not been convicted or found not guilty by reason of insanity of a crime making him or her ineligible for a concealed pistol license. [2005 c 453 § 3; 1998 c 253 § 2; 1996 c 295 § 5; 1995 c 392 § 1; 1994 sp.s. c 7 § 406; 1961 c 124 § 5; 1935 c 172 § 6; RRS § 2516-6.]

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

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

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

**9.41.075 Concealed pistol license—Revocation.** (1) The license shall be revoked by the license-issuing authority immediately upon:

(a) Discovery by the issuing authority that the person was ineligible under RCW 9.41.070 for a concealed pistol license when applying for the license or license renewal;

(b) Conviction of the licensee, or the licensee being found not guilty by reason of insanity, of an offense, or commitment of the licensee for mental health treatment, that makes a person ineligible under RCW 9.41.040 to possess a firearm;

(c) Conviction of the licensee for a third violation of this chapter within five calendar years; or

(d) An order that the licensee forfeit a firearm under RCW 9.41.098(1)(d).

(2)(a) Unless the person may lawfully possess a pistol without a concealed pistol license, an ineligible person to whom a concealed pistol license was issued shall, within fourteen days of license revocation, lawfully transfer ownership of any pistol acquired while the person was in possession of the license.

(b) Upon discovering a person issued a concealed pistol license was ineligible for the license, the issuing authority shall contact the department of licensing to determine whether the person purchased a pistol while in possession of the license. If the person did purchase a pistol while in possession of the concealed pistol license, if the person may not lawfully possess a pistol without a concealed pistol license, the issuing authority shall require the person to present satisfactory evidence of having lawfully transferred ownership of the pistol. The issuing authority shall require the person to produce the evidence within fifteen days of the revocation of the license.

(3) When a licensee is ordered to forfeit a firearm under RCW 9.41.098(1)(d), the issuing authority shall:

(a) On the first forfeiture, revoke the license for one year;

(b) On the second forfeiture, revoke the license for two years; or

(c) On the third or subsequent forfeiture, revoke the license for five years.

Any person whose license is revoked as a result of a forfeiture of a firearm under RCW 9.41.098(1)(d) may not reapply for a new license until the end of the revocation period.

(4) The issuing authority shall notify, in writing, the department of licensing of the revocation of a license. The department of licensing shall record the revocation. [2005 c 453 § 4; 1994 sp.s. c 7 § 408.]

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

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

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

**9.41.097 Supplying information on persons purchasing pistols or applying for concealed pistol licenses.** (*Effective July 1, 2006.*) (1) The department of social and health services, mental health institutions, and other health care facilities shall, upon request of a court or law enforcement agency, supply such relevant information as is necessary to determine the eligibility of a person to possess a pistol

[2005 RCW Supp—page 42]

or to be issued a concealed pistol license under RCW 9.41.070 or to purchase a pistol under RCW 9.41.090.

(2) Mental health information received by: (a) The department of licensing pursuant to RCW 9.41.047 or 9.41.170; (b) an issuing authority pursuant to RCW 9.41.047 or 9.41.070; (c) a chief of police or sheriff pursuant to RCW 9.41.090 or 9.41.170; (d) a court or law enforcement agency pursuant to subsection (1) of this section, shall not be disclosed except as provided in RCW 42.56.240(4). [2005 c 274 § 202; 1994 sp.s. c 7 § 412; 1983 c 232 § 5.]

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

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

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

**9.41.129 Recordkeeping requirements.** (*Effective July 1, 2006.*) The department of licensing may keep copies or records of applications for concealed pistol licenses provided for in RCW 9.41.070, copies or records of applications for alien firearm licenses, copies or records of applications to purchase pistols provided for in RCW 9.41.090, and copies or records of pistol transfers provided for in RCW 9.41.110. The copies and records shall not be disclosed except as provided in RCW 42.56.240(4). [2005 c 274 § 203; 1994 sp.s. c 7 § 417.]

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

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

## Chapter 9.46 RCW GAMBLING—1973 ACT

### Sections

9.46.0237	"Gambling."
9.46.071	Information for pathological gamblers—Fee increases.

**9.46.0237 "Gambling."** "Gambling," as used in this chapter, means staking or risking something of value upon the outcome of a contest of chance or a future contingent event not under the person's control or influence, upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome. Gambling does not include fishing derbies as defined by this chapter, parimutuel betting and handicapping contests as authorized by chapter 67.16 RCW, bona fide business transactions valid under the law of contracts, including, but not limited to, contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including, but not limited to, contracts of indemnity or guarantee and life, health, or accident insurance. In addition, a contest of chance which is specifically excluded from the definition of lottery under this chapter shall not constitute gambling. [2005 c 351 § 1; 1987 c 4 § 10. Formerly RCW 9.46.020(9).]

**9.46.071 Information for pathological gamblers—Fee increases.** (1) The legislature recognizes that some individuals in this state are problem or pathological gamblers. Because the state promotes and regulates gambling through

the activities of the state lottery commission, the Washington horse racing commission, and the Washington state gambling commission, the state has the responsibility to continue to provide resources for the support of services for problem and pathological gamblers. Therefore, the Washington state gambling commission, the Washington horse racing commission, and the state lottery commission shall jointly develop informational signs concerning problem and pathological gambling which include a toll-free hot line number for problem and pathological gamblers. The signs shall be placed in the establishments of gambling licensees, horse racing licensees, and lottery retailers. In addition, the Washington state gambling commission, the Washington horse racing commission, and the state lottery commission may also contract with other qualified entities to provide public awareness, training, and other services to ensure the intent of this section is fulfilled.

(2)(a) During any period in which RCW 82.04.285(2) is in effect, the commission may not increase fees payable by licensees under its jurisdiction for the purpose of funding services for problem and pathological gambling. Any fee imposed or increased by the commission, for the purpose of funding these services, before July 1, 2005, shall have no force and effect after July 1, 2005.

(b) During any period in which RCW 82.04.285(2) is not in effect:

(i) The commission, the Washington state horse racing commission, and the state lottery commission may contract for services, in addition to those authorized in subsection (1) of this section, to assist in providing for treatment of problem and pathological gambling; and

(ii) The commission may increase fees payable by licenses [licensees] under its jurisdiction for the purpose of funding the services authorized in this section for problem and pathological gamblers. [2005 c 369 § 9; 2003 c 75 § 1; 1994 c 218 § 6.]

**Findings—Intent—Severability—Effective date—2005 c 369:** See notes following RCW 43.20A.890.

**Effective date—1994 c 218:** See note following RCW 9.46.010.

**Chapter 9.58 RCW  
LIBEL AND SLANDER**

Sections

9.58.110 Repealed.  
9.58.120 Repealed.

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

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

**Chapter 9.73 RCW  
PRIVACY, VIOLATING RIGHT OF**

Sections

9.73.230 Intercepting, transmitting, or recording conversations concerning controlled substances—Conditions—Written reports required—Judicial review—Notice—Admissibility—Penalties.

**9.73.230 Intercepting, transmitting, or recording conversations concerning controlled substances—Conditions—Written reports required—Judicial review—Notice—Admissibility—Penalties.** (1) As part of a bona fide criminal investigation, the chief law enforcement officer of a law enforcement agency or his or her designee above the rank of first line supervisor may authorize the interception, transmission, or recording of a conversation or communication by officers under the following circumstances:

(a) At least one party to the conversation or communication has consented to the interception, transmission, or recording;

(b) Probable cause exists to believe that the conversation or communication involves the unlawful manufacture, delivery, sale, or possession with intent to manufacture, deliver, or sell, controlled substances as defined in chapter 69.50 RCW, or legend drugs as defined in chapter 69.41 RCW, or imitation controlled substances as defined in chapter 69.52 RCW; and

(c) A written report has been completed as required by subsection (2) of this section.

(2) The agency's chief officer or designee authorizing an interception, transmission, or recording under subsection (1) of this section, shall prepare and sign a written report at the time of authorization indicating:

(a) The circumstances that meet the requirements of subsection (1) of this section;

(b) The names of the authorizing and consenting parties, except that in those cases where the consenting party is a confidential informant, the name of the confidential informant need not be divulged;

(c) The names of the officers authorized to intercept, transmit, and record the conversation or communication;

(d) The identity of the particular person or persons, if known, who may have committed or may commit the offense;

(e) The details of the particular offense or offenses that may have been or may be committed and the expected date, location, and approximate time of the conversation or communication; and

(f) Whether there was an attempt to obtain authorization pursuant to RCW 9.73.090(2) and, if there was such an attempt, the outcome of the attempt.

(3) An authorization under this section is valid in all jurisdictions within Washington state and for the interception of communications from additional persons if the persons are brought into the conversation or transaction by the nonconsenting party or if the nonconsenting party or such additional persons cause or invite the consenting party to enter another jurisdiction.

(4) The recording of any conversation or communication under this section shall be done in such a manner that protects the recording from editing or other alterations.

(5) An authorization made under this section is valid for no more than twenty-four hours from the time it is signed by the authorizing officer, and each authorization shall independently meet all of the requirements of this section. The authorizing officer shall sign the written report required under subsection (2) of this section, certifying the exact date and time of his or her signature. An authorization under this section may be extended not more than twice for an addi-

tional consecutive twenty-four hour period based upon the same probable cause regarding the same suspected transaction. Each such extension shall be signed by the authorizing officer.

(6) Within fifteen days after the signing of an authorization that results in any interception, transmission, or recording of a conversation or communication pursuant to this section, the law enforcement agency which made the interception, transmission, or recording shall submit a report including the original authorization under subsection (2) of this section to a judge of a court having jurisdiction which report shall identify (a) the persons, including the consenting party, who participated in the conversation, and (b) the date, location, and approximate time of the conversation.

In those cases where the consenting party is a confidential informant, the name of the confidential informant need not be divulged.

A monthly report shall be filed by the law enforcement agency with the administrator for the courts indicating the number of authorizations granted, the date and time of each authorization, interceptions made, arrests resulting from an interception, and subsequent invalidations.

(7)(a) Within two judicial days of receipt of a report under subsection (6) of this section, the court shall make an ex parte review of the authorization, but not of the evidence, and shall make a determination whether the requirements of subsection (1) of this section were met. If the court determines that any of the requirements of subsection (1) of this section were not met, the court shall order that any recording and any copies or transcriptions of the conversation or communication be destroyed. Destruction of recordings, copies, or transcriptions shall be stayed pending any appeal of a finding that the requirements of subsection (1) of this section were not met.

(b) Absent a continuation under (c) of this subsection, six months following a determination under (a) of this subsection that probable cause did not exist, the court shall cause a notice to be mailed to the last known address of any nonconsenting party to the conversation or communication that was the subject of the authorization. The notice shall indicate the date, time, and place of any interception, transmission, or recording made pursuant to the authorization. The notice shall also identify the agency that sought the authorization and shall indicate that a review under (a) of this subsection resulted in a determination that the authorization was made in violation of this section.

(c) An authorizing agency may obtain six-month extensions to the notice requirement of (b) of this subsection in cases of active, ongoing criminal investigations that might be jeopardized by sending the notice.

(8) In any subsequent judicial proceeding, evidence obtained through the interception or recording of a conversation or communication pursuant to this section shall be admissible only if:

(a) The court finds that the requirements of subsection (1) of this section were met and the evidence is used in prosecuting an offense listed in subsection (1)(b) of this section; or

(b) The evidence is admitted with the permission of the person whose communication or conversation was intercepted, transmitted, or recorded; or

(c) The evidence is admitted in a prosecution for a "serious violent offense" as defined in RCW 9.94A.030 in which a party who consented to the interception, transmission, or recording was a victim of the offense; or

(d) The evidence is admitted in a civil suit for personal injury or wrongful death arising out of the same incident, in which a party who consented to the interception, transmission, or recording was a victim of a serious violent offense as defined in RCW 9.94A.030.

Nothing in this subsection bars the admission of testimony of a party or eyewitness to the intercepted, transmitted, or recorded conversation or communication when that testimony is unaided by information obtained solely by violation of RCW 9.73.030.

(9) Any determination of invalidity of an authorization under this section shall be reported by the court to the administrative office of the courts.

(10) Any person who intentionally intercepts, transmits, or records or who intentionally authorizes the interception, transmission, or recording of a conversation or communication in violation of this section, is guilty of a class C felony punishable according to chapter 9A.20 RCW.

(11) An authorizing agency is liable for twenty-five thousand dollars in exemplary damages, in addition to any other damages authorized by this chapter or by other law, to a person whose conversation or communication was intercepted, transmitted, or recorded pursuant to an authorization under this section if:

(a) In a review under subsection (7) of this section, or in a suppression of evidence proceeding, it has been determined that the authorization was made without the probable cause required by subsection (1)(b) of this section; and

(b) The authorization was also made without a reasonable suspicion that the conversation or communication would involve the unlawful acts identified in subsection (1)(b) of this section. [2005 c 282 § 17; 1989 c 271 § 204.]

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

## Chapter 9.91 RCW MISCELLANEOUS CRIMES

### Sections

9.91.175 Interfering with search and rescue dog.

#### **9.91.175 Interfering with search and rescue dog.**

(1)(a)(i) Any person who has received notice that his or her behavior is interfering with the use of an on-duty search and rescue dog who continues with reckless disregard to interfere with the use of an on-duty search and rescue dog by obstructing, intimidating, or otherwise jeopardizing the safety of the search and rescue dog user or his or her search and rescue dog is guilty of a misdemeanor punishable according to chapter 9A.20 RCW, except when (a)(ii) of this subsection applies.

(ii) A second or subsequent violation of (a)(i) of this subsection is a gross misdemeanor punishable according to chapter 9A.20 RCW.

(b)(i) Any person who, with reckless disregard, allows his or her dog to interfere with the use of an on-duty search and rescue dog by obstructing, intimidating, or otherwise jeopardizing the safety of the search and rescue dog user or



his or her search and rescue dog is guilty of a misdemeanor punishable according to chapter 9A.20 RCW, except when (b)(ii) of this subsection applies.

(ii) A second or subsequent violation of (b)(i) of this subsection is a gross misdemeanor punishable according to chapter 9A.20 RCW.

(2)(a) Any person who, with reckless disregard, injures, disables, or causes the death of an on-duty search and rescue dog is guilty of a gross misdemeanor punishable according to chapter 9A.20 RCW.

(b) Any person who, with reckless disregard, allows his or her dog to injure, disable, or cause the death of an on-duty search and rescue dog is guilty of a gross misdemeanor punishable according to chapter 9A.20 RCW.

(3) Any person who intentionally injures, disables, or causes the death of an on-duty search and rescue dog is guilty of a class C felony.

(4) Any person who wrongfully obtains or exerts unauthorized control over an on-duty search and rescue dog with the intent to deprive the dog user of his or her search and rescue dog is guilty of theft in the first degree under RCW 9A.56.030.

(5)(a) In any case in which the defendant is convicted of a violation of this section, he or she shall also be ordered to make full restitution for all damages, including incidental and consequential expenses incurred by the search and rescue dog user and the dog that arise out of, or are related to, the criminal offense.

(b) Restitution for a conviction under this section shall include, but is not limited to:

(i) The value of the replacement of an incapacitated or deceased dog, the training of a replacement search and rescue dog, or retraining of the affected dog and all related veterinary and care expenses; and

(ii) Medical expenses of the search and rescue dog user, training of the dog user, and compensation for any wages or earned income lost by the search and rescue dog user as a result of a violation of subsection (1), (2), (3), or (4) of this section.

(6) Nothing in this section affects any civil remedies available for violation of this section.

(7) For purposes of this section, "search and rescue dog" means a dog that is trained for the purpose of search and rescue of persons lost or missing. [2005 c 212 § 1.]

## Chapter 9.92 RCW PUNISHMENT

### Sections

9.92.060 Suspending sentences.

**9.92.060 Suspending sentences.** (1) Whenever any person is convicted of any crime except murder, burglary in the first degree, arson in the first degree, robbery, rape of a child, or rape, the superior court may, in its discretion, at the time of imposing sentence upon such person, direct that such sentence be stayed and suspended until otherwise ordered by the superior court, and that the sentenced person be placed under the charge of a community corrections officer employed by the department of corrections, or if the county

elects to assume responsibility for the supervision of all superior court misdemeanor probationers a probation officer employed or contracted for by the county, upon such terms as the superior court may determine.

(2) As a condition to suspension of sentence, the superior court shall require the payment of the penalty assessment required by RCW 7.68.035. In addition, the superior court may require the convicted person to make such monetary payments, on such terms as the superior court deems appropriate under the circumstances, as are necessary: (a) To comply with any order of the court for the payment of family support; (b) to make restitution to any person or persons who may have suffered loss or damage by reason of the commission of the crime in question or when the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement; (c) to pay any fine imposed and not suspended and the court or other costs incurred in the prosecution of the case, including reimbursement of the state for costs of extradition if return to this state by extradition was required; and (d) to contribute to a county or interlocal drug fund.

(3) As a condition of the suspended sentence, the superior court may order the probationer to report to the secretary of corrections or such officer as the secretary may designate and as a condition of the probation to follow the instructions of the secretary. If the county legislative authority has elected to assume responsibility for the supervision of superior court misdemeanor probationers within its jurisdiction, the superior court misdemeanor probationer shall report to a probation officer employed or contracted for by the county. In cases where a superior court misdemeanor probationer is sentenced in one county, but resides within another county, there must be provisions for the probationer to report to the agency having supervision responsibility for the probationer's county of residence.

(4) If restitution to the victim has been ordered under subsection (2)(b) of this section and the superior court has ordered supervision, the officer supervising the probationer shall make a reasonable effort to ascertain whether restitution has been made as ordered. If the superior court has ordered supervision and restitution has not been made, the officer shall inform the prosecutor of that violation of the terms of the suspended sentence not less than three months prior to the termination of the suspended sentence.

(5) The provisions of RCW 9.94A.501 apply to sentences imposed under this section. [2005 c 362 § 2; 1996 c 298 § 5; 1995 1st sp.s. c 19 § 30; 1987 c 202 § 142; 1982 1st ex.s. c 47 § 8; 1982 1st ex.s. c 8 § 4; 1979 c 29 § 1; 1967 c 200 § 7; 1957 c 227 § 1; 1949 c 76 § 1; 1921 c 69 § 1; 1909 c 249 § 28; 1905 c 24 § 1; Rem. Supp. 1949 § 2280.]

**Effective date—2005 c 362:** See note following RCW 9.94A.501.

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

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

**Applicability—1984 c 209:** See RCW 9.92.900.

**Severability—1982 1st ex.s. c 47:** See note following RCW 9.41.190.

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

**Severability—1967 c 200:** See note following RCW 9.45.122.

*Probation: RCW 9.95.200 through 9.95.250.*

*Probation and parole services, provision by counties: RCW 36.01.070.*

*Restitution*

*alternative to fine: RCW 9A.20.030.*

*condition of probation: RCW 9.95.210.*

*disposition when victim not found or dead: RCW 7.68.290.*

### Chapter 9.94 RCW

#### PRISONERS—CORRECTIONAL INSTITUTIONS

Sections

9.94.040 Weapons—Possession, etc., by prisoner prohibited—Penalty.

**9.94.040 Weapons—Possession, etc., by prisoner prohibited—Penalty.** (1) Every person serving a sentence in any state correctional institution who, without legal authorization, while in the institution or while being conveyed to or from the institution, or while under the custody or supervision of institution officials, officers, or employees, or while on any premises subject to the control of the institution, knowingly possesses or carries upon his or her person or has under his or her control any weapon, firearm, or any instrument which, if used, could produce serious bodily injury to the person of another, is guilty of a class B felony.

(2) Every person confined in a county or local correctional institution who, without legal authorization, while in the institution or while being conveyed to or from the institution, or while under the custody or supervision of institution officials, officers, or employees, or while on any premises subject to the control of the institution, knowingly possesses or has under his or her control any weapon, firearm, or any instrument that, if used, could produce serious bodily injury to the person of another, is guilty of a class C felony.

(3) The sentence imposed under this section shall be in addition to any sentence being served. [2005 c 361 § 1; 1995 c 314 § 4; 1979 c 121 § 1; 1977 ex.s. c 43 § 1; 1975-'76 2nd ex.s. c 38 § 18. Prior: 1955 c 241 § 4.]

**Severability—1979 c 121:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 121 § 8.]

**Effective date—Severability—1975-'76 2nd ex.s. c 38:** See notes following RCW 9A.08.020.

### Chapter 9.94A RCW

#### SENTENCING REFORM ACT OF 1981

Sections

9.94A.030 Definitions. (*Expires July 1, 2006.*)  
 9.94A.501 Risk assessment—Risk categories—Department must supervise specified offenders. (*Expires July 1, 2010.*)  
 9.94A.515 Table 2—Crimes included within each seriousness level.  
 9.94A.530 Standard sentence range.  
 9.94A.535 Departures from the guidelines.  
 9.94A.537 Aggravating circumstances—Sentences above standard range.  
 9.94A.540 Mandatory minimum terms.  
 9.94A.660 Drug offender sentencing alternative. (*Effective October 1, 2005.*)  
 9.94A.712 Sentencing of nonpersistent offenders. (*Expires July 1, 2006.*)  
 9.94A.737 Community custody—Violations.  
 9.94A.74504 Supervision of transferred offenders—Processing transfer applications.  
 9.94A.760 Legal financial obligations.

9.94A.844 Sex offenders—Discretionary decisions—Immunity. (*Expires July 1, 2006.*)

9.94A.850 Sentencing guidelines commission—Established—Powers and duties.

9.94A.855 Sentencing guidelines commission—Research staff—Data, information, assistance—Bylaws—Salary of executive officer.

**9.94A.030 Definitions. (*Expires July 1, 2006.*)** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means the indeterminate sentence review board created under chapter 9.95 RCW.

(2) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.760, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(3) "Commission" means the sentencing guidelines commission.

(4) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670, 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the community subject to controls placed on the offender's movement and activities by the department. For offenders placed on community custody for crimes committed on or after July 1, 2000, the department shall assess the offender's risk of reoffense and may establish and modify conditions of community custody, in addition to those imposed by the court, based upon the risk to community safety.

(6) "Community custody range" means the minimum and maximum period of community custody included as part of a sentence under RCW 9.94A.715, as established by the commission or the legislature under RCW 9.94A.850, for crimes committed on or after July 1, 2000.

(7) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

(8) "Community protection zone" means the area within eight hundred eighty feet of the facilities and grounds of a public or private school.

(9) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(10) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a

court pursuant to this chapter or RCW 16.52.200(6) or 46.61.524. Where the court finds that any offender has a chemical dependency that has contributed to his or her offense, the conditions of supervision may, subject to available resources, include treatment. For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

(11) "Confinement" means total or partial confinement.

(12) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(13) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

(14) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.

(a) The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) A conviction may be removed from a defendant's criminal history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or a similar out-of-state statute, or if the conviction has been vacated pursuant to a governor's pardon.

(c) The determination of a defendant's criminal history is distinct from the determination of an offender score. A prior conviction that was not included in an offender score calculated pursuant to a former version of the sentencing reform act remains part of the defendant's criminal history.

(15) "Day fine" means a fine imposed by the sentencing court that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

(16) "Day reporting" means a program of enhanced supervision designed to monitor the offender's daily activities and compliance with sentence conditions, and in which the offender is required to report daily to a specific location designated by the department or the sentencing court.

(17) "Department" means the department of corrections.

(18) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community restitution work, or dollars or terms of a legal financial obligation. The fact that an offender through earned release can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(19) "Disposable earnings" means that part of the earnings of an offender remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensa-

tion paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

(20) "Drug offender sentencing alternative" is a sentencing option available to persons convicted of a felony offense other than a violent offense or a sex offense and who are eligible for the option under RCW 9.94A.660.

(21) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.4013) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

(22) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

(23) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (\*RCW 72.66.060), willful failure to return from work release (\*RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

(24) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-and-run injury-accident (RCW 46.52.020(4)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

(25) "Fine" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specific period of time.

(26) "First-time offender" means any person who has no prior convictions for a felony and is eligible for the first-time offender waiver under RCW 9.94A.650.

(27) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.

(28) "Legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys'

fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430.

(29) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

(a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;

(b) Assault in the second degree;

(c) Assault of a child in the second degree;

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

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

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Robbery in the second degree;

(p) Sexual exploitation;

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

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

(s) Any other class B felony offense with a finding of sexual motivation;

(t) Any other felony with a deadly weapon verdict under RCW 9.94A.602;

(u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;

(v)(i) A prior conviction for indecent liberties under \*\*RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim

and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997.

(30) "Nonviolent offense" means an offense which is not a violent offense.

(31) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(32) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention.

(33) "Persistent offender" is an offender who:

(a)(i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection (33)(b)(i); and

(ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in (b)(i) of this subsection. A conviction for rape of a child in the first degree constitutes a conviction under (b)(i) of this subsection only when the offender was sixteen years of age or older when the offender committed the offense. A conviction for rape of a child in the second degree constitutes a conviction under (b)(i) of this subsection only when the offender was eighteen years of age or older when the offender committed the offense.

(34) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

(35) "Private school" means a school regulated under chapter 28A.195 or 28A.205 RCW.

(36) "Public school" has the same meaning as in RCW 28A.150.010.

(37) "Restitution" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specified period of time as payment of damages. The sum may include both public and private costs.

(38) "Risk assessment" means the application of an objective instrument supported by research and adopted by the department for the purpose of assessing an offender's risk of reoffense, taking into consideration the nature of the harm done by the offender, place and circumstances of the offender related to risk, the offender's relationship to any victim, and any information provided to the department by victims. The results of a risk assessment shall not be based on unconfirmed or unconfirmable allegations.

(39) "Serious traffic offense" means:

(a) Driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

(40) "Serious violent offense" is a subcategory of violent offense and means:

(a)(i) Murder in the first degree;

(ii) Homicide by abuse;

(iii) Murder in the second degree;

(iv) Manslaughter in the first degree;

(v) Assault in the first degree;

(vi) Kidnapping in the first degree;

(vii) Rape in the first degree;

(viii) Assault of a child in the first degree; or

(ix) An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

(41) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.130(11);

(ii) A violation of RCW 9A.64.020;

(iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.070 or 9.68A.080; or

(iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a sex offense in (a) of this subsection;

(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or

(d) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

(42) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

(43) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(44) "Statutory maximum sentence" means the maximum length of time for which an offender may be confined as punishment for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the crime, or other statute defining the maximum penalty for a crime.

(45) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

(46) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

(47) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

(48) "Violent offense" means:

(a) Any of the following felonies:

(i) Any felony defined under any law as a class A felony or an attempt to commit a class A felony;

(ii) Criminal solicitation of or criminal conspiracy to commit a class A felony;

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

(ix) Assault of a child in the second degree;

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

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

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

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

(49) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

(50) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.690 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

(51) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school. [2005 c 436 § 1; 2003 c 53 § 55. Prior: 2002 c 175 § 5; 2002 c 107 § 2; prior: 2001 2nd sp.s. c 12 § 301; 2001 c 300 § 3; 2001 c 7 § 2; prior: 2001 c 287 § 4; 2001 c 95 § 1; 2000 c 28 § 2; 1999 c 352 § 8; 1999 c 197 § 1; 1999 c 196 § 2; 1998 c 290 § 3; prior: 1997 c 365 § 1; 1997 c 340 § 4; 1997 c 339 § 1; 1997 c 338 § 2; 1997 c 144 § 1; 1997 c 70 § 1; prior: 1996 c 289 § 1; 1996 c 275 § 5; prior: 1995 c 268 § 2; 1995 c 108 § 1; 1995 c 101 § 2; 1994 c 261 § 16; prior: 1994 c 1 § 3 (Initiative Measure No. 593, approved November 2, 1993); 1993 c 338 § 2; 1993 c 251 § 4; 1993 c 164 § 1; prior: 1992 c 145 § 6; 1992 c 75 § 1; prior: 1991 c 348 § 4; 1991 c 290 § 3; 1991 c 181 § 1; 1991 c 32 § 1; 1990 c 3 § 602; prior: 1989 c 394 § 1; 1989 c 252 § 2; prior: 1988 c 157 § 1; 1988 c 154 § 2; 1988 c 153 § 1; 1988 c 145 § 11; prior: 1987 c 458 § 1; 1987 c 456 § 1; 1987 c 187 § 3; 1986 c 257 § 17; 1985 c 346 § 5; 1984 c 209 § 3; 1983 c 164 § 9; 1983 c 163 § 1; 1982 c 192 § 1; 1981 c 137 § 3.]

**Reviser's note:** \*(1) RCW 72.66.060 and 72.65.070 were repealed by 2001 c 264 § 7. Cf. 2001 c 264 § 8.

\*\* (2) RCW 9A.88.100 was recodified as RCW 9A.44.100 pursuant to 1979 ex.s. c 244 § 17.

**Expiration date—2005 c 436:** "This act expires July 1, 2006." [2005 c 436 § 6.]

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

**Effective date—2002 c 175:** See note following RCW 7.80.130.

**Finding—2002 c 107:** "The legislature considers the majority opinions in *State v. Cruz*, 139 Wn.2d 186 (1999), and *State v. Smith*, Cause No. 70683-2 (September 6, 2001), to be wrongly decided, since neither properly interpreted legislative intent. When the legislature enacted the sentencing reform act, chapter 9.94A RCW, and each time the legislature has amended the act, the legislature intended that an offender's criminal history and offender score be determined using the statutory provisions that were in effect on the day the current offense was committed.

Although certain prior convictions previously were not counted in the offender score or included in the criminal history pursuant to former versions of RCW 9.94A.525, or RCW 9.94A.030, those prior convictions need not be "revived" because they were never vacated. As noted in the minority opinions in *Cruz* and *Smith*, such application of the law does not involve retroactive application or violate ex postfacto prohibitions. Additionally, the Washington state supreme court has repeatedly held in the past that the provisions of the sentencing reform act act upon and punish only current conduct; the sentencing reform act does not act upon or alter the punishment for prior convictions. See *In re Personal Restraint Petition of Williams*, 111 Wn.2d 353, (1988). The legislature has never intended to create in an offender a vested right with respect to whether a prior conviction is excluded when calculating an offender score or with respect to how a prior conviction is counted in the offender score for a current offense." [2002 c 107 § 1.]

**Application—2002 c 107:** "RCW 9.94A.030(13) (b) and (c) and 9.94A.525(18) apply only to current offenses committed on or after June 13, 2002. No offender who committed his or her current offense prior to June

13, 2002, may be subject to resentencing as a result of this act." [2002 c 107 § 4.]

**Application—2001 2nd sp.s. c 12 §§ 301-363:** "(1) Sections 301 through 363 of this act shall not affect the validity of any sentence imposed under any other law for any offense committed before, on, or after September 1, 2001.

(2) Sections 301 through 363 of this act shall apply to offenses committed on or after September 1, 2001." [2001 2nd sp.s. c 12 § 503.]

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

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

**Effective date—2001 c 95:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 95 § 3.]

**Finding—Intent—2001 c 7:** "The legislature finds that an ambiguity may exist regarding whether out-of-state convictions or convictions under prior Washington law, for sex offenses that are comparable to current Washington offenses, count when determining whether an offender is a persistent offender. This act is intended to clarify the legislature's intent that out-of-state convictions for comparable sex offenses and prior Washington convictions for comparable sex offenses shall be used to determine whether an offender meets the definition of a persistent offender." [2001 c 7 § 1.]

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

**Severability—1999 c 197:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 197 § 14.]

**Construction—Short title—1999 c 196:** See RCW 72.09.904 and 72.09.905.

**Severability—1999 c 196:** See note following RCW 9.94A.010.

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

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

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

**Finding—1996 c 275:** See note following RCW 9.94A.505.

**Application—1996 c 275 §§ 1-5:** See note following RCW 9.94A.505.

**Purpose—1995 c 268:** "In order to eliminate a potential ambiguity over the scope of the term "sex offense," this act clarifies that for general purposes the definition of "sex offense" does not include any misdemeanors or gross misdemeanors. For purposes of the registration of sex offenders pursuant to RCW 9A.44.130, however, the definition of "sex offense" is expanded to include those gross misdemeanors that constitute attempts, conspiracies, and solicitations to commit class C felonies." [1995 c 268 § 1.]

**Effective date—1995 c 108:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 19, 1995]." [1995 c 108 § 6.]

**Finding—Intent—1994 c 261:** See note following RCW 16.52.011.

**Severability—Short title—Captions—1994 c 1:** See notes following RCW 9.94A.555.

**Severability—Effective date—1993 c 338:** See notes following RCW 72.09.400.

**Finding—Intent—1993 c 251:** See note following RCW 38.52.430.

**Effective date—1991 c 348:** See note following RCW 46.61.520.

**Effective date—Application—1990 c 3 §§ 601-605:** See note following RCW 9.94A.835.

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

**Purpose—1989 c 252:** "The purpose of this act is to create a system that: (1) Assists the courts in sentencing felony offenders regarding the offenders' legal financial obligations; (2) holds offenders accountable to victims, counties, cities, the state, municipalities, and society for the assessed costs associated with their crimes; and (3) provides remedies for an individ-

ual or other entities to recoup or at least defray a portion of the loss associated with the costs of felonious behavior." [1989 c 252 § 1.]

**Prospective application—1989 c 252:** "Except for sections 18, 22, 23, and 24 of this act, this act applies prospectively only and not retrospectively. It applies only to offenses committed on or after the effective date of this act." [1989 c 252 § 27.]

**Effective dates—1989 c 252:** "(1) Sections 1 through 17, 19 through 21, 25, 26, and 28 of this act shall take effect July 1, 1990 unless otherwise directed by law.

(2) Sections 18, 22, 23, and 24 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 252 § 30.]

**Severability—1989 c 252:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 252 § 31.]

**Application—1988 c 157:** "This act applies to crimes committed after July 1, 1988." [1988 c 157 § 7.]

**Effective date—1988 c 153:** "This act shall take effect July 1, 1988." [1988 c 153 § 16.]

**Application of increased sanctions—1988 c 153:** "Increased sanctions authorized by this act are applicable only to those persons committing offenses after July 1, 1988." [1988 c 153 § 15.]

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

**Severability—1987 c 458:** See note following RCW 48.21.160.

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

**Effective date—1986 c 257 §§ 17-35:** "Sections 17 through 35 of this act shall take effect July 1, 1986." [1986 c 257 § 38.]

**Effective dates—1984 c 209:** See note following RCW 9.92.150.

**Effective date—1983 c 163:** See note following RCW 9.94A.505.

**9.94A.501 Risk assessment—Risk categories—Department must supervise specified offenders. (Expires July 1, 2010.)** (1) When the department performs a risk assessment pursuant to RCW 9.94A.500, or to determine a person's conditions of supervision, the risk assessment shall classify the offender or a probationer sentenced in superior court into one of at least four risk categories.

(2) The department shall supervise every offender sentenced to a term of community custody, community placement, or community supervision and every misdemeanor and gross misdemeanor probationer ordered by a superior court to probation under the supervision of the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210:

(a) Whose risk assessment places that offender or probationer in one of the two highest risk categories; or

(b) Regardless of the offender's or probationer's risk category if:

(i) The offender's or probationer's current conviction is for:

(A) A sex offense;

(B) A violent offense;

(C) A crime against persons as defined in RCW 9.94A.411;

(D) A felony that is domestic violence as defined in RCW 10.99.020;

(E) A violation of RCW 9A.52.025 (residential burglary);

(F) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(G) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

(ii) The offender or probationer has a prior conviction for:

(A) A sex offense;

(B) A violent offense;

(C) A crime against persons as defined in RCW 9.94A.411;

(D) A felony that is domestic violence as defined in RCW 10.99.020;

(E) A violation of RCW 9A.52.025 (residential burglary);

(F) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(G) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

(iii) The conditions of the offender's community custody, community placement, or community supervision or the probationer's supervision include chemical dependency treatment;

(iv) The offender was sentenced under RCW 9.94A.650 or 9.94A.670; or

(v) The offender is subject to supervision pursuant to RCW 9.94A.745.

(3) The department is not authorized to, and may not, supervise any offender sentenced to a term of community custody, community placement, or community supervision or any probationer unless the offender or probationer is one for whom supervision is required under subsection (2) of this section.

(4) This section expires July 1, 2010. [2005 c 362 § 1; 2003 c 379 § 3.]

**Effective date—2005 c 362:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 10, 2005]." [2005 c 362 § 5.]

**Severability—Effective dates—2003 c 379:** See notes following RCW 9.94A.728.

*Conditions of probation:* RCW 9.95.210.

*Misdemeanant probation services—County supervision:* RCW 9.95.204.

*Suspending sentences:* RCW 9.92.060.

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

TABLE 2

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055)
	Malicious explosion 1 (RCW 70.74.280(1))
	Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050)
	Trafficking 1 (RCW 9A.40.100(1))

- XIII Malicious explosion 2 (RCW 70.74.280(2))  
Malicious placement of an explosive 1 (RCW 70.74.270(1))
- XII Assault 1 (RCW 9A.36.011)  
Assault of a Child 1 (RCW 9A.36.120)  
Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))  
Rape 1 (RCW 9A.44.040)  
Rape of a Child 1 (RCW 9A.44.073)  
Trafficking 2 (RCW 9A.40.100(2))
- XI Manslaughter 1 (RCW 9A.32.060)  
Rape 2 (RCW 9A.44.050)  
Rape of a Child 2 (RCW 9A.44.076)
- X Child Molestation 1 (RCW 9A.44.083)  
Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))  
Kidnapping 1 (RCW 9A.40.020)  
Leading Organized Crime (RCW 9A.82.060(1)(a))  
Malicious explosion 3 (RCW 70.74.280(3))  
Sexually Violent Predator Escape (RCW 9A.76.115)
- IX Assault of a Child 2 (RCW 9A.36.130)  
Explosive devices prohibited (RCW 70.74.180)  
Hit and Run—Death (RCW 46.52.020(4)(a))  
Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)  
Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))  
Malicious placement of an explosive 2 (RCW 70.74.270(2))  
Robbery 1 (RCW 9A.56.200)  
Sexual Exploitation (RCW 9.68A.040)  
Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
- VIII Arson 1 (RCW 9A.48.020)  
Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)  
Manslaughter 2 (RCW 9A.32.070)  
Promoting Prostitution 1 (RCW 9A.88.070)  
Theft of Ammonia (RCW 69.55.010)  
Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII Burglary 1 (RCW 9A.52.020)  
Child Molestation 2 (RCW 9A.44.086)  
Civil Disorder Training (RCW 9A.48.120)  
Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)  
Drive-by Shooting (RCW 9A.36.045)  
Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)  
Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1)(b) and (c))  
Introducing Contraband 1 (RCW 9A.76.140)  
Malicious placement of an explosive 3 (RCW 70.74.270(3))  
Negligently Causing Death By Use of a Signal Preemption Device (RCW 46.37.675)  
Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)  
Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1))  
Use of a Machine Gun in Commission of a Felony (RCW 9.41.225)  
Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- VI Bail Jumping with Murder 1 (RCW 9A.76.170(3)(a))  
Bribery (RCW 9A.68.010)  
Incest 1 (RCW 9A.64.020(1))  
Intimidating a Judge (RCW 9A.72.160)  
Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)  
Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))  
Rape of a Child 3 (RCW 9A.44.079)  
Theft of a Firearm (RCW 9A.56.300)  
Unlawful Storage of Ammonia (RCW 69.55.020)
- V Abandonment of dependent person 1 (RCW 9A.42.060)  
Advancing money or property for extortionate extension of credit (RCW 9A.82.030)  
Bail Jumping with class A Felony (RCW 9A.76.170(3)(b))  
Child Molestation 3 (RCW 9A.44.089)  
Criminal Mistreatment 1 (RCW 9A.42.020)



- Custodial Sexual Misconduct 1 (RCW 9A.44.160)
- Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
- Extortion 1 (RCW 9A.56.120)
- Extortionate Extension of Credit (RCW 9A.82.020)
- Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
- Incest 2 (RCW 9A.64.020(2))
- Kidnapping 2 (RCW 9A.40.030)
- Perjury 1 (RCW 9A.72.020)
- Persistent prison misbehavior (RCW 9.94.070)
- Possession of a Stolen Firearm (RCW 9A.56.310)
- Rape 3 (RCW 9A.44.060)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Sexually Violating Human Remains (RCW 9A.44.105)
- Stalking (RCW 9A.46.110)
- Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070)
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault 3 (of a Peace Officer with a Projectile Stun Gun) (RCW 9A.36.031(1)(h))
- Assault by Watercraft (RCW 79A.60.060)
- Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
- Cheating 1 (RCW 9.46.1961)
- Commercial Bribery (RCW 9A.68.060)
- Counterfeiting (RCW 9.16.035(4))
- Endangerment with a Controlled Substance (RCW 9A.42.100)
- Escape 1 (RCW 9A.76.110)
- Hit and Run—Injury (RCW 46.52.020(4)(b))
- Hit and Run with Vessel—Injury Accident (RCW 79A.60.200(3))
- Identity Theft 1 (RCW 9.35.020(2))
- Indecent Exposure to Person Under Age Fourteen (subsequent sex offense) (RCW 9A.88.010)
- Influencing Outcome of Sporting Event (RCW 9A.82.070)
- Malicious Harassment (RCW 9A.36.080)
- Residential Burglary (RCW 9A.52.025)
- Robbery 2 (RCW 9A.56.210)
- Theft of Livestock 1 (RCW 9A.56.080)
- Threats to Bomb (RCW 9.61.160)
- Trafficking in Stolen Property 1 (RCW 9A.82.050)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(b))
- Unlawful transaction of health coverage as a health care service contractor (RCW 48.44.016(3))
- Unlawful transaction of health coverage as a health maintenance organization (RCW 48.46.033(3))
- Unlawful transaction of insurance business (RCW 48.15.023(3))
- Unlicensed practice as an insurance professional (RCW 48.17.063(3))
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
- Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (RCW 46.61.522)
- Willful Failure to Return from Furlough (\*RCW 72.66.060)
- III Abandonment of dependent person 2 (RCW 9A.42.070)
- Assault 3 (Except Assault 3 of a Peace Officer With a Projectile Stun Gun) (RCW 9A.36.031 except subsection (1)(h))
- Assault of a Child 3 (RCW 9A.36.140)
- Bail Jumping with class B or C Felony (RCW 9A.76.170(3)(c))
- Burglary 2 (RCW 9A.52.030)
- Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
- Criminal Gang Intimidation (RCW 9A.46.120)
- Criminal Mistreatment 2 (RCW 9A.42.030)
- Custodial Assault (RCW 9A.36.100)
- Cyberstalking (subsequent conviction or threat of death) (RCW 9.61.260(3))
- Escape 2 (RCW 9A.76.120)
- Extortion 2 (RCW 9A.56.130)

- Harassment (RCW 9A.46.020)
- Intimidating a Public Servant (RCW 9A.76.180)
- Introducing Contraband 2 (RCW 9A.76.150)
- Malicious Injury to Railroad Property (RCW 81.60.070)
- Negligently Causing Substantial Bodily Harm By Use of a Signal Preemption Device (RCW 46.37.674)
- Patronizing a Juvenile Prostitute (RCW 9.68A.100)
- Perjury 2 (RCW 9A.72.030)
- Possession of Incendiary Device (RCW 9.40.120)
- Possession of Machine Gun or Short-Barreled Shotgun or Rifle (RCW 9.41.190)
- Promoting Prostitution 2 (RCW 9A.88.080)
- Securities Act violation (RCW 21.20.400)
- Tampering with a Witness (RCW 9A.72.120)
- Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230(2))
- Theft of Livestock 2 (RCW 9A.56.083)
- Trafficking in Stolen Property 2 (RCW 9A.82.055)
- Unlawful Imprisonment (RCW 9A.40.040)
- Unlawful possession of firearm in the second degree (RCW 9.41.040(2))
- Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
- Willful Failure to Return from Work Release (\*RCW 72.65.070)
- II Computer Trespass 1 (RCW 9A.52.110)
- Counterfeiting (RCW 9.16.035(3))
- Escape from Community Custody (RCW 72.09.310)
- Health Care False Claims (RCW 48.80.030)
- Identity Theft 2 (RCW 9.35.020(3))
- Improperly Obtaining Financial Information (RCW 9.35.010)
- Malicious Mischief 1 (RCW 9A.48.070)
- Possession of Stolen Property 1 (RCW 9A.56.150)
- Theft 1 (RCW 9A.56.030)
- Theft of Rental, Leased, or Lease-purchased Property (valued at one thousand five hundred dollars or more) (RCW 9A.56.096(5)(a))
- Trafficking in Insurance Claims (RCW 48.30A.015)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(a))
- Unlawful Practice of Law (RCW 2.48.180)
- Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
- I Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- False Verification for Welfare (RCW 74.08.055)
- Forgery (RCW 9A.60.020)
- Fraudulent Creation or Revocation of a Mental Health Advance Directive (RCW 9A.60.060)
- Malicious Mischief 2 (RCW 9A.48.080)
- Mineral Trespass (RCW 78.44.330)
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Reckless Burning 1 (RCW 9A.48.040)
- Taking Motor Vehicle Without Permission 2 (RCW 9A.56.075)
- Theft 2 (RCW 9A.56.040)
- Theft of Rental, Leased, or Lease-purchased Property (valued at two hundred fifty dollars or more but less than one thousand five hundred dollars) (RCW 9A.56.096(5)(b))
- Transaction of insurance business beyond the scope of licensure (RCW 48.17.063(4))
- Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
- Unlawful Possession of Fictitious Identification (RCW 9A.56.320)
- Unlawful Possession of Instruments of Financial Fraud (RCW 9A.56.320)
- Unlawful Possession of Payment Instruments (RCW 9A.56.320)
- Unlawful Possession of a Personal Identification Device (RCW 9A.56.320)
- Unlawful Production of Payment Instruments (RCW 9A.56.320)
- Unlawful Trafficking in Food Stamps (RCW 9.91.142)

Unlawful Use of Food Stamps (RCW  
9.91.144)

Vehicle Prowl 1 (RCW 9A.52.095)

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

**Reviser's note:** \*(1) RCW 72.66.060 and 72.65.070 were repealed by 2001 c 264 § 7. Cf. 2001 c 264 § 8.

(2) This section was amended by 2005 c 183 § 9 and by 2005 c 458 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**9.94A.530 Standard sentence range.** (1) The intersection of the column defined by the offender score and the row defined by the offense seriousness score determines the standard sentence range (see RCW 9.94A.510, (Table 1) and RCW 9.94A.517, (Table 3)). The additional time for deadly weapon findings or for other adjustments as specified in RCW 9.94A.533 shall be added to the entire standard sentence range. The court may impose any sentence within the range that it deems appropriate. All standard sentence ranges are expressed in terms of total confinement.

(2) In determining any sentence other than a sentence above the standard range, the trial court may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing, or proven pursuant to RCW 9.94A.537. Acknowledgement includes not objecting to information stated in the presentence reports. Where the defendant disputes material facts, the court must either not consider the fact or grant an evidentiary hearing on the point. The facts shall be deemed proved at the hearing by a preponderance of the evidence, except as otherwise specified in RCW 9.94A.537.

(3) In determining any sentence above the standard sentence range, the court shall follow the procedures set forth in RCW 9.94A.537. Facts that establish the elements of a more serious crime or additional crimes may not be used to go outside the standard sentence range except upon stipulation or

when specifically provided for in \*RCW 9.94A.535(2) (d), (e), (g), and (h). [2005 c 68 § 2; 2002 c 290 § 18; 2000 c 28 § 12; 1999 c 143 § 16; 1996 c 248 § 1; 1989 c 124 § 2; 1987 c 131 § 1; 1986 c 257 § 26; 1984 c 209 § 20; 1983 c 115 § 8. Formerly RCW 9.94A.370.]

**\*Reviser's note:** RCW 9.94A.535 was amended by 2005 c 68 § 3, changing subsection (2) to subsection (3).

**Intent—Severability—Effective date—2005 c 68:** See notes following RCW 9.94A.537.

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

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

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

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

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

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

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

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

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

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

#### (1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

(e) The defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to

the requirements of the law, was significantly impaired. Voluntary use of drugs or alcohol is excluded.

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

(g) The operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) The current offense was a major violation of the Uniform Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition: The presence of ANY of the following may identify a current offense as a major VUCSA:

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

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

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

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

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

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

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

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

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

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

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

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

(i) The offense resulted in the pregnancy of a child victim of rape.

(j) The defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the defendant established or promoted the relationship for the primary purpose of victimization.

(k) The offense was committed with the intent to obstruct or impair human or animal health care or agricultural or forestry research or commercial production.

(l) The current offense is trafficking in the first degree or trafficking in the second degree and any victim was a minor at the time of the offense.

(m) The offense involved a high degree of sophistication or planning.

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

(o) The defendant committed a current sex offense, has a history of sex offenses, and is not amenable to treatment.

(p) The offense involved an invasion of the victim's privacy.

(q) The defendant demonstrated or displayed an egregious lack of remorse.

(r) The offense involved a destructive and foreseeable impact on persons other than the victim.

(s) The defendant committed the offense to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group.

(t) The defendant committed the current offense shortly after being released from incarceration.

(u) The current offense is a burglary and the victim of the burglary was present in the building or residence when the crime was committed.

(v) The offense was committed against a law enforcement officer who was performing his or her official duties at the time of the offense, the offender knew that the victim was a law enforcement officer, and the victim's status as a law enforcement officer is not an element of the offense.

(w) The defendant committed the offense against a victim who was acting as a good samaritan.

(x) The defendant committed the offense against a public official or officer of the court in retaliation of the public official's performance of his or her duty to the criminal justice system.

(y) The victim's injuries substantially exceed the level of bodily harm necessary to satisfy the elements of the offense. This aggravator is not an exception to RCW 9.94A.530(2). [2005 c 68 § 3; 2003 c 267 § 4; 2002 c 169 § 1; 2001 2nd sp.s. c 12 § 314; 2000 c 28 § 8; 1999 c 330 § 1; 1997 c 52 § 4. Prior: 1996 c 248 § 2; 1996 c 121 § 1; 1995 c 316 § 2; 1990 c 3 § 603; 1989 c 408 § 1; 1987 c 131 § 2; 1986 c 257 § 27; 1984 c 209 § 24; 1983 c 115 § 10. Formerly RCW 9.94A.390.]

**Intent—Severability—Effective date—2005 c 68:** See notes following RCW 9.94A.537.

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

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

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

**Effective date—1996 c 121:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 21, 1996]." [1996 c 121 § 2.]

**Effective date—Application—1990 c 3 §§ 601 through 605:** See note following RCW 9.94A.835.

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

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

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

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

**9.94A.537 Aggravating circumstances—Sentences above standard range.** (1) At any time prior to trial or entry of the guilty plea if substantial rights of the defendant are not prejudiced, the state may give notice that it is seeking a sentence above the standard sentencing range. The notice shall state aggravating circumstances upon which the requested sentence will be based.

(2) The facts supporting aggravating circumstances shall be proved to a jury beyond a reasonable doubt. The jury's verdict on the aggravating factor must be unanimous, and by special interrogatory. If a jury is waived, proof shall be to the court beyond a reasonable doubt, unless the defendant stipulates to the aggravating facts.

(3) Evidence regarding any facts supporting aggravating circumstances under RCW 9.94A.535(3) (a) through (y) shall be presented to the jury during the trial of the alleged crime, unless the state alleges the aggravating circumstances listed in RCW 9.94A.535(3) (e)(iv), (h)(i), (o), or (t). If one of these aggravating circumstances is alleged, the trial court may conduct a separate proceeding if the evidence supporting the aggravating fact is not part of the res geste of the charged crime, if the evidence is not otherwise admissible in trial of the charged crime, and if the court finds that the probative value of the evidence to the aggravated fact is substantially outweighed by its prejudicial effect on the jury's ability to determine guilt or innocence for the underlying crime.

(4) If the court conducts a separate proceeding to determine the existence of aggravating circumstances, the proceeding shall immediately follow the trial on the underlying conviction, if possible. If any person who served on the jury is unable to continue, the court shall substitute an alternate juror.

(5) If the jury finds, unanimously and beyond a reasonable doubt, one or more of the facts alleged by the state in support of an aggravated sentence, the court may sentence the offender pursuant to RCW 9.94A.535 to a term of confinement up to the maximum allowed under RCW 9A.20.021 for the underlying conviction if it finds, considering the purposes of this chapter, that the facts found are substantial and compelling reasons justifying an exceptional sentence. [2005 c 68 § 4.]

**Intent—2005 c 68:** "The legislature intends to conform the sentencing reform act, chapter 9.94A RCW, to comply with the ruling in *Blakely v. Washington*, 542 U.S. ... (2004). In that case, the United States supreme court held that a criminal defendant has a Sixth Amendment right to have a jury determine beyond a reasonable doubt any aggravating factor, other than the fact of a prior conviction, that is used to impose greater punishment than the standard range or standard conditions. The legislature intends that aggravating facts, other than the fact of a prior conviction, will be placed before the jury. The legislature intends that the sentencing court will then decide whether or not the aggravating fact is a substantial and compelling reason to impose greater punishment. The legislature intends to create a new criminal procedure for imposing greater punishment than the standard range or conditions and to codify existing common law aggravating factors, without expanding or restricting existing statutory or common law aggravating circumstances. The legislature does not intend the codification of common law aggravating factors to expand or restrict currently available statutory or common law aggravating circumstances. The legislature does not intend to alter how mitigating facts are to be determined under the sentencing reform act, and thus intends that mitigating facts will be found by the sentencing court by a preponderance of the evidence.

While the legislature intends to bring the sentencing reform act into compliance as previously indicated, the legislature recognizes the need to restore the judicial discretion that has been limited as a result of the *Blakely* decision." [2005 c 68 § 1.]

**Severability—2005 c 68:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 68 § 6.]

**Effective date—2005 c 68:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 15, 2005]." [2005 c 68 § 7.]

**9.94A.540 Mandatory minimum terms.** (1) Except to the extent provided in subsection (3) of this section, the following minimum terms of total confinement are mandatory and shall not be varied or modified under RCW 9.94A.535:

(a) An offender convicted of the crime of murder in the first degree shall be sentenced to a term of total confinement not less than twenty years.

(b) An offender convicted of the crime of assault in the first degree or assault of a child in the first degree where the offender used force or means likely to result in death or intended to kill the victim shall be sentenced to a term of total confinement not less than five years.

(c) An offender convicted of the crime of rape in the first degree shall be sentenced to a term of total confinement not less than five years.

(d) An offender convicted of the crime of sexually violent predator escape shall be sentenced to a minimum term of total confinement not less than sixty months.

(2) During such minimum terms of total confinement, no offender subject to the provisions of this section is eligible for community custody, earned release time, furlough, home detention, partial confinement, work crew, work release, or any other form of early release authorized under RCW 9.94A.728, or any other form of authorized leave of absence from the correctional facility while not in the direct custody of a corrections officer. The provisions of this subsection shall not apply: (a) In the case of an offender in need of emergency medical treatment; (b) for the purpose of commitment to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree; or (c) for an extraordinary medical placement when authorized under RCW 9.94A.728(4).

(3)(a) Subsection (1) of this section shall not be applied in sentencing of juveniles tried as adults pursuant to RCW 13.04.030(1)(e)(i).

(b) This subsection (3) applies only to crimes committed on or after July 24, 2005. [2005 c 437 § 2; 2001 2nd sp.s. c 12 § 315; 2000 c 28 § 7. Formerly RCW 9.94A.590.]

**Findings—Intent—2005 c 437:** "(1) The legislature finds that emerging research on brain development indicates that adolescent brains, and thus adolescent intellectual and emotional capabilities, differ significantly from those of mature adults. It is appropriate to take these differences into consideration when sentencing juveniles tried as adults. The legislature further finds that applying mandatory minimum sentences for juveniles tried as adults prevents trial court judges from taking these differences into consideration in appropriate circumstances.

(2) The legislature intends to eliminate the application of mandatory minimum sentences under RCW 9.94A.540 to juveniles tried as adults, and to continue to apply all other adult sentencing provisions to juveniles tried as adults." [2005 c 437 § 1.]

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

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

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

**9.94A.660 Drug offender sentencing alternative. (Effective October 1, 2005.)** (1) An offender is eligible for the special drug offender sentencing alternative if:

(a) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.533 (3) or (4);

(b) The offender has no current or prior convictions for a sex offense at any time or violent offense within ten years before conviction of the current offense, in this state, another state, or the United States;

(c) For a violation of the Uniform Controlled Substances Act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance;

(d) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence;

(e) The standard sentence range for the current offense is greater than one year; and

(f) The offender has not received a drug offender sentencing alternative more than once in the prior ten years before the current offense.

(2) A motion for a sentence under this section may be made by the court, the offender, or the state. If the sentencing court determines that the offender is eligible for this alternative, the court may order an examination of the offender. The examination shall, at a minimum, address the following issues:

(a) Whether the offender suffers from drug addiction;

(b) Whether the addiction is such that there is a probability that criminal behavior will occur in the future;

(c) Whether effective treatment for the offender's addiction is available from a provider that has been licensed or certified by the division of alcohol and substance abuse of the department of social and health services; and

(d) Whether the offender and the community will benefit from the use of the alternative.

(3) The examination report must contain:

(a) Information on the issues required to be addressed in subsection (2) of this section; and

(b) A proposed treatment plan that must, at a minimum, contain:

(i) A proposed treatment provider that has been licensed or certified by the division of alcohol and substance abuse of the department of social and health services;

(ii) The recommended frequency and length of treatment, including both residential chemical dependency treatment and treatment in the community;

(iii) A proposed monitoring plan, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others; and

(iv) Recommended crime-related prohibitions and affirmative conditions.

(4) After receipt of the examination report, if the court determines that a sentence under this section is appropriate, the court shall waive imposition of a sentence within the standard sentence range and impose a sentence consisting of either a prison-based alternative under subsection (5) of this section or a residential chemical dependency treatment-based alternative under subsection (6) of this section. The residential chemical dependency treatment-based alternative is only available if the midpoint of the standard range is twenty-four months or less.

(5) The prison-based alternative shall include:

(a) A period of total confinement in a state facility for one-half of the midpoint of the standard sentence range. During incarceration in the state facility, offenders sentenced under this subsection shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections;

(b) The remainder of the midpoint of the standard range as a term of community custody which must include appropriate substance abuse treatment in a program that has been approved by the division of alcohol and substance abuse of the department of social and health services. If the department finds that conditions have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence. An offender who fails to complete the program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court;

(c) Crime-related prohibitions including a condition not to use illegal controlled substances;

(d) A requirement to submit to urinalysis or other testing to monitor that status; and

(e) A term of community custody pursuant to RCW 9.94A.715 to be imposed upon failure to complete or administrative termination from the special drug offender sentencing alternative program.

(6) The residential chemical dependency treatment-based alternative shall include:

(a) A term of community custody equal to one-half of the midpoint of the standard sentence range or two years, whichever is greater, conditioned on the offender entering and remaining in residential chemical dependency treatment certified under chapter 70.96A RCW for a period set by the court between three and six months. If the court imposes a term of community custody, the department shall, within available resources, make chemical dependency assessment and treatment services available to the offender during the term of community custody. The court shall impose, as conditions of community custody, treatment and other conditions as proposed in the plan under subsection (3)(b) of this section. The department may impose conditions and sanctions as authorized in RCW 9.94A.715 (2), (3), (6), and (7), 9.94A.737, and 9.94A.740. The court shall schedule a progress hearing during the period of residential chemical dependency treatment, and schedule a treatment termination hearing for three months before the expiration of the term of community custody;

(b) Before the progress hearing and treatment termination hearing, the treatment provider and the department shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment. At the hearing, the court may:

(i) Authorize the department to terminate the offender's community custody status on the expiration date determined under (a) of this subsection; or

(ii) Continue the hearing to a date before the expiration date of community custody, with or without modifying the conditions of community custody; or

(iii) Impose a term of total confinement equal to one-half the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.715;

(c) If the court imposes a term of total confinement under (b)(iii) of this subsection, the department shall, within available resources, make chemical dependency assessment and treatment services available to the offender during the terms of total confinement and community custody.

(7) If the court imposes a sentence under this section, the court may prohibit the offender from using alcohol or controlled substances and may require that the monitoring for controlled substances be conducted by the department or by a treatment alternatives to street crime program or a comparable court or agency-referred program. The offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring. In addition, the court may impose any of the following conditions:

(a) Devote time to a specific employment or training;

(b) Remain within prescribed geographical boundaries and notify the court or the community corrections officer before any change in the offender's address or employment;

(c) Report as directed to a community corrections officer;

(d) Pay all court-ordered legal financial obligations;

(e) Perform community restitution work;

(f) Stay out of areas designated by the sentencing court;

(g) Such other conditions as the court may require such as affirmative conditions.

(8)(a) The court may bring any offender sentenced under this section back into court at any time on its own initiative to evaluate the offender's progress in treatment or to determine if any violations of the conditions of the sentence have occurred.

(b) If the offender is brought back to court, the court may modify the terms of the community custody or impose sanctions under (c) of this subsection.

(c) The court may order the offender to serve a term of total confinement within the standard range of the offender's current offense at any time during the period of community custody if the offender violates the conditions of the sentence or if the offender is failing to make satisfactory progress in treatment.

(d) An offender ordered to serve a term of total confinement under (c) of this subsection shall receive credit for any time previously served under this section.

(9) If an offender sentenced to the prison-based alternative under subsection (5) of this section is found by the United States attorney general to be subject to a deportation order, a hearing shall be held by the department unless



waived by the offender, and, if the department finds that the offender is subject to a valid deportation order, the department may administratively terminate the offender from the program and reclassify the offender to serve the remaining balance of the original sentence.

(10) An offender sentenced under this section shall be subject to all rules relating to earned release time with respect to any period served in total confinement.

(11) Costs of examinations and preparing treatment plans under subsections (2) and (3) of this section may be paid, at the option of the county, from funds provided to the county from the criminal justice treatment account under RCW 70.96A.350. [2005 c 460 § 1. Prior: 2002 c 290 § 20; 2002 c 175 § 10; 2001 c 10 § 4; 2000 c 28 § 19.]

**Application—2005 c 460:** "This act applies to sentences imposed on or after October 1, 2005." [2005 c 460 § 2.]

**Effective date—2005 c 460:** "This act takes effect October 1, 2005." [2005 c 460 § 3.]

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

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

**Effective date—2002 c 175:** See note following RCW 7.80.130.

**Intent—Effective date—2001 c 10:** See notes following RCW 9.94A.505.

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

**9.94A.712 Sentencing of nonpersistent offenders. (Expires July 1, 2006.)** (1) An offender who is not a persistent offender shall be sentenced under this section if the offender:

(a) Is convicted of:

(i) Rape in the first degree, rape in the second degree, rape of a child in the first degree, child molestation in the first degree, rape of a child in the second degree, or indecent liberties by forcible compulsion;

(ii) Any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree; or

(iii) An attempt to commit any crime listed in this subsection (1)(a); committed on or after September 1, 2001; or

(b) Has a prior conviction for an offense listed in RCW 9.94A.030(33)(b), and is convicted of any sex offense which was committed after September 1, 2001.

For purposes of this subsection (1)(b), failure to register is not a sex offense.

(2) An offender convicted of rape of a child in the first or second degree or child molestation in the first degree who was seventeen years of age or younger at the time of the offense shall not be sentenced under this section.

(3) Upon a finding that the offender is subject to sentencing under this section, the court shall impose a sentence to a maximum term consisting of the statutory maximum sentence for the offense and a minimum term either within the standard sentence range for the offense, or outside the standard sentence range pursuant to RCW 9.94A.535, if the offender is otherwise eligible for such a sentence.

(4) A person sentenced under subsection (3) of this section shall serve the sentence in a facility or institution operated, or utilized under contract, by the state.

(5) When a court sentences a person to the custody of the department under this section, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody under the supervision of the department and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence.

(6)(a)(i) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in RCW 9.94A.700(4). The conditions may also include those provided for in RCW 9.94A.700(5). The court may also order the offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community, and the department and the board shall enforce such conditions pursuant to RCW 9.94A.713, 9.95.425, and 9.95.430.

(ii) If the offense that caused the offender to be sentenced under this section was an offense listed in subsection (1)(a) of this section and the victim of the offense was under eighteen years of age at the time of the offense, the court shall, as a condition of community custody, prohibit the offender from residing in a community protection zone.

(b) As part of any sentence under this section, the court shall also require the offender to comply with any conditions imposed by the board under RCW 9.94A.713 and 9.95.420 through 9.95.435. [2005 c 436 § 2; 2004 c 176 § 3. Prior: 2001 2nd sp.s. c 12 § 303.]

**Expiration date—2005 c 436:** See note following RCW 9.94A.030.

**Severability—Effective date—2004 c 176:** See notes following RCW 9.94A.515.

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

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

**9.94A.737 Community custody—Violations.** (1) If an offender violates any condition or requirement of community custody, the department may transfer the offender to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation and subject to the limitations of subsection (2) of this section.

(2)(a) For a sex offender sentenced to a term of community custody under RCW 9.94A.670 who violates any condition of community custody, the department may impose a sanction of up to sixty days' confinement in a local correctional facility for each violation. If the department imposes a sanction, the department shall submit within seventy-two hours a report to the court and the prosecuting attorney outlining the violation or violations and the sanctions imposed.

(b) For a sex offender sentenced to a term of community custody under RCW 9.94A.710 who violates any condition of community custody after having completed his or her maximum term of total confinement, including time served on community custody in lieu of earned release, the depart-

ment may impose a sanction of up to sixty days in a local correctional facility for each violation.

(c) For an offender sentenced to a term of community custody under RCW 9.94A.505(2)(b), 9.94A.650, or 9.94A.715, or under RCW 9.94A.545, for a crime committed on or after July 1, 2000, who violates any condition of community custody after having completed his or her maximum term of total confinement, including time served on community custody in lieu of earned release, the department may impose a sanction of up to sixty days in total confinement for each violation. The department may impose sanctions such as work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other sanctions available in the community.

(d) For an offender sentenced to a term of community placement under RCW 9.94A.705 who violates any condition of community placement after having completed his or her maximum term of total confinement, including time served on community custody in lieu of earned release, the department may impose a sanction of up to sixty days in total confinement for each violation. The department may impose sanctions such as work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other sanctions available in the community.

(3) If an offender is accused of violating any condition or requirement of community custody, he or she is entitled to a hearing before the department prior to the imposition of sanctions. The hearing shall be considered as offender disciplinary proceedings and shall not be subject to chapter 34.05 RCW. The department shall develop hearing procedures and a structure of graduated sanctions.

(4) The hearing procedures required under subsection (3) of this section shall be developed by rule and include the following:

(a) Hearing officers shall report through a chain of command separate from that of community corrections officers;

(b) The department shall provide the offender with written notice of the violation, the evidence relied upon, and the reasons the particular sanction was imposed. The notice shall include a statement of the rights specified in this subsection, and the offender's right to file a personal restraint petition under court rules after the final decision of the department;

(c) The hearing shall be held unless waived by the offender, and shall be electronically recorded. For offenders not in total confinement, the hearing shall be held within fifteen working days, but not less than twenty-four hours, after notice of the violation. For offenders in total confinement, the hearing shall be held within five working days, but not less than twenty-four hours, after notice of the violation;

(d) The offender shall have the right to: (i) Be present at the hearing; (ii) have the assistance of a person qualified to assist the offender in the hearing, appointed by the hearing officer if the offender has a language or communications barrier; (iii) testify or remain silent; (iv) call witnesses and present documentary evidence; and (v) question witnesses who appear and testify; and

(e) The sanction shall take effect if affirmed by the hearing officer. Within seven days after the hearing officer's decision, the offender may appeal the decision to a panel of three reviewing officers designated by the secretary or by the secretary's designee. The sanction shall be reversed or modified if a majority of the panel finds that the sanction was not reasonably related to any of the following: (i) The crime of conviction; (ii) the violation committed; (iii) the offender's risk of reoffending; or (iv) the safety of the community.

(5) For purposes of this section, no finding of a violation of conditions may be based on unconfirmed or unconfirmable allegations.

(6) The department shall work with the Washington association of sheriffs and police chiefs to establish and operate an electronic monitoring program for low-risk offenders who violate the terms of their community custody. Between January 1, 2006, and December 31, 2006, the department shall endeavor to place at least one hundred low-risk community custody violators on the electronic monitoring program per day if there are at least that many low-risk offenders who qualify for the electronic monitoring program.

(7) Local governments, their subdivisions and employees, the department and its employees, and the Washington association of sheriffs and police chiefs and its employees shall be immune from civil liability for damages arising from incidents involving low-risk offenders who are placed on electronic monitoring unless it is shown that an employee acted with gross negligence or bad faith. [2005 c 435 § 3; 2002 c 175 § 15; 1999 c 196 § 8; 1996 c 275 § 3; 1988 c 153 § 4. Formerly RCW 9.94A.205.]

**Finding—Intent—2005 c 435:** "The legislature believes that electronic monitoring, as an alternative to incarceration, is a proper and cost-effective method of punishment and supervision for many criminal offenders. The legislature further finds that advancements in electronic monitoring technology have made the technology more common and acceptable to criminal justice system personnel, policymakers, and the general public.

In an effort to reduce prison and jail populations, many states are increasing their utilization of electronic monitoring. However, Washington state's use of electronic monitoring has been relatively stagnant.

The intent of this act is to determine what electronic monitoring policies and programs have been implemented in the other forty-nine states, in order that Washington state can learn from the other states' experiences." [2005 c 435 § 1.]

**Effective date—2002 c 175:** See note following RCW 7.80.130.

**Construction—Short title—1999 c 196:** See RCW 72.09.904 and 72.09.905.

**Severability—1999 c 196:** See note following RCW 9.94A.010.

**Finding—1996 c 275:** See note following RCW 9.94A.505.

**Application—1996 c 275 §§ 1-5:** See note following RCW 9.94A.505.

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

**9.94A.74504 Supervision of transferred offenders—Processing transfer applications.** (1) The department may supervise nonfelony offenders transferred to Washington pursuant to RCW 9.94A.745, the interstate compact for adult offender supervision, and shall supervise these offenders according to the provisions of this chapter.

(2) The department shall process applications for interstate transfer of felony and nonfelony offenders pursuant to RCW 9.94A.745, the interstate compact for adult offender supervision, and may charge offenders a reasonable fee for processing the application. [2005 c 400 § 1.]

**Application—2005 c 400:** "This act applies to offenders sentenced before, on, or after July 1, 2005." [2005 c 400 § 8.]

**Effective date—2005 c 400:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 400 § 9.]

**9.94A.760 Legal financial obligations.** (1) Whenever a person is convicted in superior court, the court may order the payment of a legal financial obligation as part of the sentence. The court must on either the judgment and sentence or on a subsequent order to pay, designate the total amount of a legal financial obligation and segregate this amount among the separate assessments made for restitution, costs, fines, and other assessments required by law. On the same order, the court is also to set a sum that the offender is required to pay on a monthly basis towards satisfying the legal financial obligation. If the court fails to set the offender monthly payment amount, the department shall set the amount if the department has active supervision of the offender, otherwise the county clerk shall set the amount. Upon receipt of an offender's monthly payment, restitution shall be paid prior to any payments of other monetary obligations. After restitution is satisfied, the county clerk shall distribute the payment proportionally among all other fines, costs, and assessments imposed, unless otherwise ordered by the court.

(2) If the court determines that the offender, at the time of sentencing, has the means to pay for the cost of incarceration, the court may require the offender to pay for the cost of incarceration at a rate of fifty dollars per day of incarceration, if incarcerated in a prison, or the court may require the offender to pay the actual cost of incarceration per day of incarceration, if incarcerated in a county jail. In no case may the court require the offender to pay more than one hundred dollars per day for the cost of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision shall take precedence over the payment of the cost of incarceration ordered by the court. All funds recovered from offenders for the cost of incarceration in the county jail shall be remitted to the county and the costs of incarceration in a prison shall be remitted to the department.

(3) The court may add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction is to be issued immediately. If the court chooses not to order the immediate issuance of a notice of payroll deduction at sentencing, the court shall add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction may be issued or other income-withholding action may be taken, without further notice to the offender if a monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owed.

If a judgment and sentence or subsequent order to pay does not include the statement that a notice of payroll deduction may be issued or other income-withholding action may be taken if a monthly legal financial obligation payment is past due, the department or the county clerk may serve a notice on the offender stating such requirements and authorizations. Service shall be by personal service or any form of mail requiring a return receipt.

(4) Independent of the department or the county clerk, the party or entity to whom the legal financial obligation is owed shall have the authority to use any other remedies available to the party or entity to collect the legal financial obligation. These remedies include enforcement in the same manner as a judgment in a civil action by the party or entity to whom the legal financial obligation is owed. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim. The judgment and sentence shall identify the party or entity to whom restitution is owed so that the state, party, or entity may enforce the judgment. If restitution is ordered pursuant to RCW 9.94A.750(6) or 9.94A.753(6) to a victim of rape of a child or a victim's child born from the rape, the Washington state child support registry shall be identified as the party to whom payments must be made. Restitution obligations arising from the rape of a child in the first, second, or third degree that result in the pregnancy of the victim may be enforced for the time periods provided under RCW 9.94A.750(6) and 9.94A.753(6). All other legal financial obligations for an offense committed prior to July 1, 2000, may be enforced at any time during the ten-year period following the offender's release from total confinement or within ten years of entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend the criminal judgment an additional ten years for payment of legal financial obligations including crime victims' assessments. All other legal financial obligations for an offense committed on or after July 1, 2000, may be enforced at any time the offender remains under the court's jurisdiction. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The department may only supervise the offender's compliance with payment of the legal financial obligations during any period in which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is confined in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is not responsible for supervision of the offender during any subsequent period of time the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

(5) In order to assist the court in setting a monthly sum that the offender must pay during the period of supervision, the offender is required to report to the department for purposes of preparing a recommendation to the court. When reporting, the offender is required, under oath, to respond truthfully and honestly to all questions concerning present, past, and future earning capabilities and the location and nature of all property or financial assets. The offender is fur-

ther required to bring all documents requested by the department.

(6) After completing the investigation, the department shall make a report to the court on the amount of the monthly payment that the offender should be required to make towards a satisfied legal financial obligation.

(7)(a) During the period of supervision, the department may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the department sets the monthly payment amount, the department may modify the monthly payment amount without the matter being returned to the court. During the period of supervision, the department may require the offender to report to the department for the purposes of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the department in order to prepare the collection schedule.

(b) Subsequent to any period of supervision, or if the department is not authorized to supervise the offender in the community, the county clerk may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the county clerk sets the monthly payment amount, or if the department set the monthly payment amount and the department has subsequently turned the collection of the legal financial obligation over to the county clerk, the clerk may modify the monthly payment amount without the matter being returned to the court. During the period of repayment, the county clerk may require the offender to report to the clerk for the purpose of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the county clerk in order to prepare the collection schedule.

(8) After the judgment and sentence or payment order is entered, the department is authorized, for any period of supervision, to collect the legal financial obligation from the offender. Subsequent to any period of supervision or, if the department is not authorized to supervise the offender in the community, the county clerk is authorized to collect unpaid legal financial obligations from the offender. Any amount collected by the department shall be remitted daily to the county clerk for the purpose of disbursements. The department and the county clerks are authorized, but not required, to accept credit cards as payment for a legal financial obligation, and any costs incurred related to accepting credit card payments shall be the responsibility of the offender.

(9) The department or any obligee of the legal financial obligation may seek a mandatory wage assignment for the purposes of obtaining satisfaction for the legal financial obligation pursuant to RCW 9.94A.7701. Any party obtaining a wage assignment shall notify the county clerk. The county clerks shall notify the department, or the administrative office

of the courts, whichever is providing the monthly billing for the offender.

(10) The requirement that the offender pay a monthly sum towards a legal financial obligation constitutes a condition or requirement of a sentence and the offender is subject to the penalties for noncompliance as provided in RCW 9.94A.634, 9.94A.737, or 9.94A.740.

(11)(a) Until January 1, 2004, the department shall mail individualized monthly billings to the address known by the department for each offender with an unsatisfied legal financial obligation.

(b) Beginning January 1, 2004, the administrative office of the courts shall mail individualized monthly billings to the address known by the office for each offender with an unsatisfied legal financial obligation.

(c) The billing shall direct payments, other than outstanding cost of supervision assessments under RCW 9.94A.780, parole assessments under RCW 72.04A.120, and cost of probation assessments under RCW 9.95.214, to the county clerk, and cost of supervision, parole, or probation assessments to the department.

(d) The county clerk shall provide the administrative office of the courts with notice of payments by such offenders no less frequently than weekly.

(e) The county clerks, the administrative office of the courts, and the department shall maintain agreements to implement this subsection.

(12) The department shall arrange for the collection of unpaid legal financial obligations during any period of supervision in the community through the county clerk. The department shall either collect unpaid legal financial obligations or arrange for collections through another entity if the clerk does not assume responsibility or is unable to continue to assume responsibility for collection pursuant to subsection (4) of this section. The costs for collection services shall be paid by the offender.

(13) The county clerk may access the records of the employment security department for the purposes of verifying employment or income, seeking any assignment of wages, or performing other duties necessary to the collection of an offender's legal financial obligations.

(14) Nothing in this chapter makes the department, the state, the counties, or any state or county employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations or for the acts of any offender who is no longer, or was not, subject to supervision by the department for a term of community custody, community placement, or community supervision, and who remains under the jurisdiction of the court for payment of legal financial obligations. [2005 c 263 § 1; 2004 c 121 § 3; 2003 c 379 § 14; 2001 c 10 § 3. Prior: 2000 c 226 § 4; 2000 c 28 § 31; 1999 c 196 § 6; prior: 1997 c 121 § 5; 1997 c 52 § 3; 1995 c 231 § 3; 1991 c 93 § 2; 1989 c 252 § 3. Formerly RCW 9.94A.145.]

**Intent—Purpose—2003 c 379 §§ 13-27:** "The legislature intends to revise and improve the processes for billing and collecting legal financial obligations. The purpose of sections 13 through 27, chapter 379, Laws of 2003 is to respond to suggestions and requests made by county government officials, and in particular county clerks, to assume the collection of such obligations in cooperation and coordination with the department of corrections and the administrative office for [of] the courts. The legislature undertakes this effort following a collaboration between local officials, the depart-

ment of corrections, and the administrative office for [of] the courts. The intent of sections 13 through 27, chapter 379, Laws of 2003 is to promote an increased and more efficient collection of legal financial obligations and, as a result, improve the likelihood that the affected agencies will increase the collections which will provide additional benefits to all parties and, in particular, crime victims whose restitution is dependent upon the collections." [2003 c 379 § 13.]

**Severability—Effective dates—2003 c 379:** See notes following RCW 9.94A.728.

**Intent—Effective date—2001 c 10:** See notes following RCW 9.94A.505.

**Finding—Intent—Severability—2000 c 226:** See notes following RCW 9.94A.505.

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

**Construction—Short title—1999 c 196:** See RCW 72.09.904 and 72.09.905.

**Severability—1999 c 196:** See note following RCW 9.94A.010.

**Retroactive application—Captions not law—1991 c 93:** See notes following RCW 9.94A.7601.

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

**9.94A.844 Sex offenders—Discretionary decisions—Immunity. (Expires July 1, 2006.)** Law enforcement agencies and the department of corrections are immune from civil liability for damages from discretionary decisions made under chapter 436, Laws of 2005 if they make a good faith effort to comply with chapter 436, Laws of 2005. [2005 c 436 § 5.]

**Expiration date—2005 c 436:** See note following RCW 9.94A.030.

**9.94A.850 Sentencing guidelines commission—Established—Powers and duties.** (1) A sentencing guidelines commission is established as an agency of state government.

(2) The legislature finds that the commission, having accomplished its original statutory directive to implement this chapter, and having expertise in sentencing practice and policies, shall:

(a) Evaluate state sentencing policy, to include whether the sentencing ranges and standards are consistent with and further:

(i) The purposes of this chapter as defined in RCW 9.94A.010; and

(ii) The intent of the legislature to emphasize confinement for the violent offender and alternatives to confinement for the nonviolent offender.

The commission shall provide the governor and the legislature with its evaluation and recommendations under this subsection not later than December 1, 1996, and every two years thereafter;

(b) Recommend to the legislature revisions or modifications to the standard sentence ranges, state sentencing policy, prosecuting standards, and other standards. If implementation of the revisions or modifications would result in exceeding the capacity of correctional facilities, then the commission shall accompany its recommendation with an additional list of standard sentence ranges which are consistent with correction capacity;

(c) Study the existing criminal code and from time to time make recommendations to the legislature for modification;

(d)(i) Serve as a clearinghouse and information center for the collection, preparation, analysis, and dissemination of information on state and local adult and juvenile sentencing practices; (ii) develop and maintain a computerized adult and juvenile sentencing information system by individual superior court judge consisting of offender, offense, history, and sentence information entered from judgment and sentence forms for all adult felons; and (iii) conduct ongoing research regarding adult and juvenile sentencing guidelines, use of total confinement and alternatives to total confinement, plea bargaining, and other matters relating to the improvement of the adult criminal justice system and the juvenile justice system;

(e) Assume the powers and duties of the juvenile disposition standards commission after June 30, 1996;

(f) Evaluate the effectiveness of existing disposition standards and related statutes in implementing policies set forth in RCW 13.40.010 generally, specifically review the guidelines relating to the confinement of minor and first-time offenders as well as the use of diversion, and review the application of current and proposed juvenile sentencing standards and guidelines for potential adverse impacts on the sentencing outcomes of racial and ethnic minority youth;

(g) Solicit the comments and suggestions of the juvenile justice community concerning disposition standards, and make recommendations to the legislature regarding revisions or modifications of the standards. The evaluations shall be submitted to the legislature on December 1 of each odd-numbered year. The department of social and health services shall provide the commission with available data concerning the implementation of the disposition standards and related statutes and their effect on the performance of the department's responsibilities relating to juvenile offenders, and with recommendations for modification of the disposition standards. The administrative office of the courts shall provide the commission with available data on diversion, including the use of youth court programs, and dispositions of juvenile offenders under chapter 13.40 RCW; and

(h) Not later than December 1, 1997, and at least every two years thereafter, based on available information, report to the governor and the legislature on:

(i) Racial disproportionality in juvenile and adult sentencing, and, if available, the impact that diversions, such as youth courts, have on racial disproportionality in juvenile prosecution, adjudication, and sentencing;

(ii) The capacity of state and local juvenile and adult facilities and resources; and

(iii) Recidivism information on adult and juvenile offenders.

(3) Each of the commission's recommended standard sentence ranges shall include one or more of the following: Total confinement, partial confinement, community supervision, community restitution, and a fine.

(4) The standard sentence ranges of total and partial confinement under this chapter, except as provided in RCW 9.94A.517, are subject to the following limitations:

(a) If the maximum term in the range is one year or less, the minimum term in the range shall be no less than one-third of the maximum term in the range, except that if the maximum term in the range is ninety days or less, the minimum term may be less than one-third of the maximum;

(b) If the maximum term in the range is greater than one year, the minimum term in the range shall be no less than seventy-five percent of the maximum term in the range, except that for murder in the second degree in seriousness level XIV under RCW 9.94A.510, the minimum term in the range shall be no less than fifty percent of the maximum term in the range; and

(c) The maximum term of confinement in a range may not exceed the statutory maximum for the crime as provided in RCW 9A.20.021.

(5)(a) Not later than December 31, 1999, the commission shall propose to the legislature the initial community custody ranges to be included in sentences under RCW 9.94A.715 for crimes committed on or after July 1, 2000. Not later than December 31 of each year, the commission may propose modifications to the ranges. The ranges shall be based on the principles in RCW 9.94A.010, and shall take into account the funds available to the department for community custody. The minimum term in each range shall not be less than one-half of the maximum term.

(b) The legislature may, by enactment of a legislative bill, adopt or modify the community custody ranges proposed by the commission. If the legislature fails to adopt or modify the initial ranges in its next regular session after they are proposed, the proposed ranges shall take effect without legislative approval for crimes committed on or after July 1, 2000.

(c) When the commission proposes modifications to ranges pursuant to this subsection, the legislature may, by enactment of a bill, adopt or modify the ranges proposed by the commission for crimes committed on or after July 1 of the year after they were proposed. Unless the legislature adopts or modifies the commission's proposal in its next regular session, the proposed ranges shall not take effect.

(6) The commission shall exercise its duties under this section in conformity with chapter 34.05 RCW. [2005 c 282 § 19. Prior: 2002 c 290 § 22; 2002 c 237 § 16; 2002 c 175 § 16; 2000 c 28 § 41; prior: 1999 c 352 § 1; 1999 c 196 § 3; prior: 1997 c 365 § 2; 1997 c 338 § 3; 1996 c 232 § 1; 1995 c 269 § 303; 1994 c 87 § 1; 1986 c 257 § 18; 1982 c 192 § 2; 1981 c 137 § 4. Formerly RCW 9.94A.040.]

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

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

**Effective date—2002 c 175:** See note following RCW 7.80.130.

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

**Construction—Short title—1999 c 196:** See RCW 72.09.904 and 72.09.905.

**Severability—1999 c 196:** See note following RCW 9.94A.010.

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

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

**Effective dates—1996 c 232:** "(1) Sections 1 through 8 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 28, 1996].

(2) Section 9 of this act takes effect July 1, 1996." [1996 c 232 § 12.]

**Effective date—1995 c 269:** "Sections 101, 201, 302, 303, 401, 402, 501 through 505, 601, 701, 801, 901, 1001, 1101, 1201 through 1203, 1301, 1302, 1401 through 1407, 1501, 1601, 1701, 1801, 1901, 1902, 2001, 2101, 2102, 2201 through 2204, 2301, 2302, 2401, 2501, 2601 through 2608, 2701, 2801 through 2804, 2901 through 2909, 3001, 3101, 3201, 3301, 3401, and

3501 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 269 § 3604.]

**Part headings not law—Severability—1995 c 269:** See notes following RCW 13.40.005.

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

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

**9.94A.855 Sentencing guidelines commission—Research staff—Data, information, assistance—Bylaws—Salary of executive officer.** The commission shall appoint a research staff of sufficient size and with sufficient resources to accomplish its duties. The commission may request from the office of financial management, the indeterminate sentence review board, the administrative office of the courts, the department of corrections, and the department of social and health services such data, information, and data processing assistance as it may need to accomplish its duties, and such services shall be provided without cost to the commission. The commission shall adopt its own bylaws.

The salary for a full-time executive officer, if any, shall be fixed by the governor pursuant to RCW 43.03.040. [2005 c 282 § 20; 1999 c 143 § 10; 1982 c 192 § 3; 1981 c 137 § 5. Formerly RCW 9.94A.050.]

## Chapter 9.95 RCW

### INDETERMINATE SENTENCES

(Formerly: Prison terms, paroles, and probation)

#### Sections

9.95.204	Misdemeanant probation services—County supervision.
9.95.210	Conditions of probation.
9.95.214	Assessment for supervision of misdemeanor probationers.

**9.95.204 Misdemeanant probation services—County supervision.** (1) When a superior court places a defendant convicted of a misdemeanor or gross misdemeanor on probation and orders supervision under RCW 9.92.060 or 9.95.210, the department of corrections has initial responsibility for supervision of that defendant.

(2) A county legislative authority may assume responsibility for the supervision of all defendants within its jurisdiction who have been convicted of a misdemeanor or gross misdemeanor and sentenced to probation by a superior court. The assumption of responsibility shall be made by contract with the department of corrections on a biennial basis.

(3) If a county assumes supervision responsibility, the county shall supervise all superior court misdemeanor probationers within that county for the duration of the biennium, as set forth in the contract with the department of corrections.

(4) A contract between a county legislative authority and the department of corrections for the transfer of supervision responsibility must include, at a minimum, the following provisions:

(a) The county's agreement to supervise all misdemeanor probationers who are sentenced by a superior court within that county and who reside within that county;

(b) A reciprocal agreement regarding the supervision of superior court misdemeanor probationers sentenced in one county but who reside in another county;

(c) The county's agreement to comply with the minimum standards for classification and supervision of offenders as required under RCW 9.95.206;

(d) The amount of funds available from the department of corrections to the county for supervision of superior court misdemeanor probationers, calculated according to a formula established by the department of corrections;

(e) A method for the payment of funds by the department of corrections to the county;

(f) The county's agreement that any funds received by the county under the contract will be expended only to cover costs of supervision of superior court misdemeanor probationers;

(g) The county's agreement to account to the department of corrections for the expenditure of all funds received under the contract and to submit to audits for compliance with the supervision standards and financial requirements of this section;

(h) Provisions regarding rights and remedies in the event of a possible breach of contract or default by either party; and

(i) Provisions allowing for voluntary termination of the contract by either party, with good cause, after sixty days' written notice.

(5) If the contract between the county and the department of corrections is terminated for any reason, the department of corrections shall reassume responsibility for supervision of superior court misdemeanor probationers within that county. In such an event, the department of corrections retains any and all rights and remedies available by law and under the contract.

(6) The state of Washington, the department of corrections and its employees, community corrections officers, and volunteers who assist community corrections officers are not liable for any harm caused by the actions of a superior court misdemeanor probationer who is under the supervision of a county. A county, its probation department and employees, probation officers, and volunteers who assist probation officers are not liable for any harm caused by the actions of a superior court misdemeanor probationer who is under the supervision of the department of corrections. This subsection applies regardless of whether the supervising entity is in compliance with the standards of supervision at the time of the misdemeanor probationer's actions.

(7) The state of Washington, the department of corrections and its employees, community corrections officers, any county under contract with the department of corrections pursuant to this section and its employees, probation officers, and volunteers who assist community corrections officers and probation officers in the superior court misdemeanor probation program are not liable for civil damages resulting from any act or omission in the rendering of superior court misdemeanor probation activities unless the act or omission constitutes gross negligence. For purposes of this section, "volunteers" is defined according to RCW 51.12.035.

(8) The provisions of RCW 9.94A.501 apply to sentences imposed under this section.

(9)(a) If a misdemeanor probationer requests permission to travel or transfer to another state, the assigned probation officer employed or contracted for by the county shall determine whether such request is subject to RCW 9.94A.745, the interstate compact for adult offender supervi-

sion. If such request is subject to the compact, the probation officer shall:

(i) Notify the department of corrections of the probationer's request;

(ii) Provide the department of corrections with the supporting documentation it requests for processing an application for transfer;

(iii) Notify the probationer of the fee due to the department of corrections for processing an application under the compact;

(iv) Cease supervision of the probationer while another state supervises the probationer pursuant to the compact;

(v) Resume supervision if the probationer returns to this state before the term of probation expires.

(b) The probationer shall receive credit for time served while being supervised by another state. [2005 c 400 § 2; 2005 c 362 § 3; 1996 c 298 § 1.]

**Reviser's note:** This section was amended by 2005 c 362 § 3 and by 2005 c 400 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Application—Effective date—2005 c 400:** See notes following RCW 9.94A.74504.

**Effective date—2005 c 362:** See note following RCW 9.94A.501.

**9.95.210 Conditions of probation.** (1) In granting probation, the superior court may suspend the imposition or the execution of the sentence and may direct that the suspension may continue upon such conditions and for such time as it shall designate, not exceeding the maximum term of sentence or two years, whichever is longer.

(2) In the order granting probation and as a condition thereof, the superior court may in its discretion imprison the defendant in the county jail for a period not exceeding one year and may fine the defendant any sum not exceeding the statutory limit for the offense committed, and court costs. As a condition of probation, the superior court shall require the payment of the penalty assessment required by RCW 7.68.035. The superior court may also require the defendant to make such monetary payments, on such terms as it deems appropriate under the circumstances, as are necessary: (a) To comply with any order of the court for the payment of family support; (b) to make restitution to any person or persons who may have suffered loss or damage by reason of the commission of the crime in question or when the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement; (c) to pay such fine as may be imposed and court costs, including reimbursement of the state for costs of extradition if return to this state by extradition was required; (d) following consideration of the financial condition of the person subject to possible electronic monitoring, to pay for the costs of electronic monitoring if that monitoring was required by the court as a condition of release from custody or as a condition of probation; (e) to contribute to a county or interlocal drug fund; and (f) to make restitution to a public agency for the costs of an emergency response under RCW 38.52.430, and may require bonds for the faithful observance of any and all conditions imposed in the probation.

(3) The superior court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. If the superior court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act, the department of labor and industries, as administrator of the crime victims' compensation program, may petition the superior court within one year of imposition of the sentence for entry of a restitution order. Upon receipt of a petition from the department of labor and industries, the superior court shall hold a restitution hearing and shall enter a restitution order.

(4) In granting probation, the superior court may order the probationer to report to the secretary of corrections or such officer as the secretary may designate and as a condition of the probation to follow the instructions of the secretary. If the county legislative authority has elected to assume responsibility for the supervision of superior court misdemeanor probationers within its jurisdiction, the superior court misdemeanor probationer shall report to a probation officer employed or contracted for by the county. In cases where a superior court misdemeanor probationer is sentenced in one county, but resides within another county, there must be provisions for the probationer to report to the agency having supervision responsibility for the probationer's county of residence.

(5) If the probationer has been ordered to make restitution and the superior court has ordered supervision, the officer supervising the probationer shall make a reasonable effort to ascertain whether restitution has been made. If the superior court has ordered supervision and restitution has not been made as ordered, the officer shall inform the prosecutor of that violation of the terms of probation not less than three months prior to the termination of the probation period. The secretary of corrections will promulgate rules and regulations for the conduct of the person during the term of probation. For defendants found guilty in district court, like functions as the secretary performs in regard to probation may be performed by probation officers employed for that purpose by the county legislative authority of the county wherein the court is located.

(6) The provisions of RCW 9.94A.501 apply to sentences imposed under this section. [2005 c 362 § 4; 1996 c 298 § 3; 1995 1st sp.s. c 19 § 29; 1995 c 33 § 6; 1993 c 251 § 3; 1992 c 86 § 1; 1987 c 202 § 146; 1984 c 46 § 1; 1983 c 156 § 4; 1982 1st ex.s. c 47 § 10; 1982 1st ex.s. c 8 § 5; 1981 c 136 § 42; 1980 c 19 § 1. Prior: 1979 c 141 § 7; 1979 c 29 § 2; 1969 c 29 § 1; 1967 c 200 § 8; 1967 c 134 § 16; 1957 c 227 § 4; prior: 1949 c 77 § 1; 1939 c 125 § 1, part; Rem. Supp. 1949 § 10249-5b.]

**Effective date—2005 c 362:** See note following RCW 9.94A.501.

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**Finding—Intent—1993 c 251:** See note following RCW 38.52.430.

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

**Severability—1982 1st ex.s. c 47:** See note following RCW 9.41.190.

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

**Effective date—1981 c 136:** See RCW 72.09.900.

**Severability—1939 c 125:** See note following RCW 9.95.200.

[2005 RCW Supp—page 68]

#### *Restitution*

*alternative to fine:* RCW 9A.20.030.

*condition to suspending sentence:* RCW 9.92.060.

*disposition when victim not found or dead:* RCW 7.68.290.

*Termination of suspended sentence, restoration of civil rights:* RCW 9.92.066.

*Violations of probation conditions, rearrest, detention:* RCW 72.04A.090.

**9.95.214 Assessment for supervision of misdemeanor probationers.** Whenever a defendant convicted of a misdemeanor or gross misdemeanor is placed on probation under RCW 9.92.060 or 9.95.210, and the defendant is supervised by the department of corrections or a county probation department, the department or county probation department may assess and collect from the defendant for the duration of the term of supervision a monthly assessment not to exceed one hundred dollars per month. This assessment shall be paid to the agency supervising the defendant and shall be applied, along with funds appropriated by the legislature, toward the payment or part payment of the cost of supervising the defendant. The department or county probation department shall suspend such assessment while the defendant is being supervised by another state pursuant to RCW 9.94A.745, the interstate compact for adult offender supervision. [2005 c 400 § 3; 1996 c 298 § 4; 1995 1st sp.s. c 19 § 32.]

**Application—Effective date—2005 c 400:** See notes following RCW 9.94A.74504.

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

## Title 9A

### WASHINGTON CRIMINAL CODE

#### Chapters

**9A.04 Preliminary article.**

**9A.36 Assault—Physical harm.**

**9A.42 Criminal mistreatment.**

**9A.44 Sex offenses.**

**9A.56 Theft and robbery.**

#### Chapter 9A.04 RCW

#### PRELIMINARY ARTICLE

##### Sections

9A.04.110 Definitions.

**9A.04.110 Definitions.** In this title unless a different meaning plainly is required:

(1) "Acted" includes, where relevant, omitted to act;

(2) "Actor" includes, where relevant, a person failing to act;

(3) "Benefit" is any gain or advantage to the beneficiary, including any gain or advantage to a third person pursuant to the desire or consent of the beneficiary;

(4)(a) "Bodily injury," "physical injury," or "bodily harm" means physical pain or injury, illness, or an impairment of physical condition;

(b) "Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the



function of any bodily part or organ, or which causes a fracture of any bodily part;

(c) "Great bodily harm" means bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ;

(5) "Building", in addition to its ordinary meaning, includes any dwelling, fenced area, vehicle, railway car, cargo container, or any other structure used for lodging of persons or for carrying on business therein, or for the use, sale or deposit of goods; each unit of a building consisting of two or more units separately secured or occupied is a separate building;

(6) "Deadly weapon" means any explosive or loaded or unloaded firearm, and shall include any other weapon, device, instrument, article, or substance, including a "vehicle" as defined in this section, which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm;

(7) "Dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is used or ordinarily used by a person for lodging;

(8) "Government" includes any branch, subdivision, or agency of the government of this state and any county, city, district, or other local governmental unit;

(9) "Governmental function" includes any activity which a public servant is legally authorized or permitted to undertake on behalf of a government;

(10) "Indicted" and "indictment" include "informed against" and "information", and "informed against" and "information" include "indicted" and "indictment";

(11) "Judge" includes every judicial officer authorized alone or with others, to hold or preside over a court;

(12) "Malice" and "maliciously" shall import an evil intent, wish, or design to vex, annoy, or injure another person. Malice may be inferred from an act done in wilful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a wilful disregard of social duty;

(13) "Officer" and "public officer" means a person holding office under a city, county, or state government, or the federal government who performs a public function and in so doing is vested with the exercise of some sovereign power of government, and includes all assistants, deputies, clerks, and employees of any public officer and all persons lawfully exercising or assuming to exercise any of the powers or functions of a public officer;

(14) "Omission" means a failure to act;

(15) "Peace officer" means a duly appointed city, county, or state law enforcement officer;

(16) "Pecuniary benefit" means any gain or advantage in the form of money, property, commercial interest, or anything else the primary significance of which is economic gain;

(17) "Person", "he", and "actor" include any natural person and, where relevant, a corporation, joint stock association, or an unincorporated association;

(18) "Place of work" includes but is not limited to all the lands and other real property of a farm or ranch in the case of

an actor who owns, operates, or is employed to work on such a farm or ranch;

(19) "Prison" means any place designated by law for the keeping of persons held in custody under process of law, or under lawful arrest, including but not limited to any state correctional institution or any county or city jail;

(20) "Prisoner" includes any person held in custody under process of law, or under lawful arrest;

(21) "Projectile stun gun" means an electronic device that projects wired probes attached to the device that emit an electrical charge and that is designed and primarily employed to incapacitate a person or animal;

(22) "Property" means anything of value, whether tangible or intangible, real or personal;

(23) "Public servant" means any person other than a witness who presently occupies the position of or has been elected, appointed, or designated to become any officer or employee of government, including a legislator, judge, judicial officer, juror, and any person participating as an advisor, consultant, or otherwise in performing a governmental function;

(24) "Signature" includes any memorandum, mark, or sign made with intent to authenticate any instrument or writing, or the subscription of any person thereto;

(25) "Statute" means the Constitution or an act of the legislature or initiative or referendum of this state;

(26) "Threat" means to communicate, directly or indirectly the intent:

(a) To cause bodily injury in the future to the person threatened or to any other person; or

(b) To cause physical damage to the property of a person other than the actor; or

(c) To subject the person threatened or any other person to physical confinement or restraint; or

(d) To accuse any person of a crime or cause criminal charges to be instituted against any person; or

(e) To expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt, or ridicule; or

(f) To reveal any information sought to be concealed by the person threatened; or

(g) To testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(h) To take wrongful action as an official against anyone or anything, or wrongfully withhold official action, or cause such action or withholding; or

(i) To bring about or continue a strike, boycott, or other similar collective action to obtain property which is not demanded or received for the benefit of the group which the actor purports to represent; or

(j) To do any other act which is intended to harm substantially the person threatened or another with respect to his health, safety, business, financial condition, or personal relationships;

(27) "Vehicle" means a "motor vehicle" as defined in the vehicle and traffic laws, any aircraft, or any vessel equipped for propulsion by mechanical means or by sail;

(28) Words in the present tense shall include the future tense; and in the masculine shall include the feminine and neuter genders; and in the singular shall include the plural;

and in the plural shall include the singular. [2005 c 458 § 3; 1988 c 158 § 1; 1987 c 324 § 1; 1986 c 257 § 3; 1975 1st ex.s. c 260 § 9A.04.110.]

**Effective date—1988 c 158:** "This act shall take effect July 1, 1988." [1988 c 158 § 4.]

**Effective date—1987 c 324:** "Section 3 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately. The remainder of this act shall take effect July 1, 1988." [1987 c 324 § 4.]

**Effective date—1986 c 257 §§ 3-10:** "Sections 3 through 10 of this act shall take effect on July 1, 1988." [1987 c 324 § 3; 1986 c 257 § 12.]

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

## Chapter 9A.36 RCW

### ASSAULT—PHYSICAL HARM

#### Sections

9A.36.031	Assault in the third degree.
9A.36.160	Failing to summon assistance.
9A.36.161	Failing to summon assistance—Penalty.

**9A.36.031 Assault in the third degree.** (1) A person is guilty of assault in the third degree if he or she, under circumstances not amounting to assault in the first or second degree:

(a) With intent to prevent or resist the execution of any lawful process or mandate of any court officer or the lawful apprehension or detention of himself or another person, assaults another; or

(b) Assaults a person employed as a transit operator or driver, the immediate supervisor of a transit operator or driver, a mechanic, or a security officer, by a public or private transit company or a contracted transit service provider, while that person is performing his or her official duties at the time of the assault; or

(c) Assaults a school bus driver, the immediate supervisor of a driver, a mechanic, or a security officer, employed by a school district transportation service or a private company under contract for transportation services with a school district, while the person is performing his or her official duties at the time of the assault; or

(d) With criminal negligence, causes bodily harm to another person by means of a weapon or other instrument or thing likely to produce bodily harm; or

(e) Assaults a fire fighter or other employee of a fire department, county fire marshal's office, county fire prevention bureau, or fire protection district who was performing his or her official duties at the time of the assault; or

(f) With criminal negligence, causes bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering; or

(g) Assaults a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault; or

(h) Assaults a peace officer with a projectile stun gun; or

(i) Assaults a nurse, physician, or health care provider who was performing his or her nursing or health care duties at the time of the assault. For purposes of this subsection: "Nurse" means a person licensed under chapter 18.79 RCW; "physician" means a person licensed under chapter 18.57 or 18.71 RCW; and "health care provider" means a person certified under chapter 18.71 or 18.73 RCW who performs emer-

[2005 RCW Supp—page 70]

gency medical services or a person regulated under Title 18 RCW and employed by, or contracting with, a hospital licensed under chapter 70.41 RCW.

(2) Assault in the third degree is a class C felony. [2005 c 458 § 1; 1999 c 328 § 1; 1998 c 94 § 1; 1997 c 172 § 1; 1996 c 266 § 1; 1990 c 236 § 1; 1989 c 169 § 1; 1988 c 158 § 3; 1986 c 257 § 6.]

**Effective date—1988 c 158:** See note following RCW 9A.04.110.

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

**Effective date—1986 c 257 §§ 3-10:** See note following RCW 9A.04.110.

**9A.36.160 Failing to summon assistance.** A person is guilty of the crime of failing to summon assistance if:

(1) He or she was present when a crime was committed against another person; and

(2) He or she knows that the other person has suffered substantial bodily harm as a result of the crime committed against the other person and that the other person is in need of assistance; and

(3) He or she could reasonably summon assistance for the person in need without danger to himself or herself and without interference with an important duty owed to a third party; and

(4) He or she fails to summon assistance for the person in need; and

(5) Another person is not summoning or has not summoned assistance for the person in need of such assistance. [2005 c 209 § 1.]

**9A.36.161 Failing to summon assistance—Penalty.** A violation of RCW 9A.36.160 is a misdemeanor. [2005 c 209 § 2.]

## Chapter 9A.42 RCW

### CRIMINAL MISTREATMENT

#### Sections

9A.42.100	Endangerment with a controlled substance.
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**9A.42.100 Endangerment with a controlled substance.** A person is guilty of the crime of endangerment with a controlled substance if the person knowingly or intentionally permits a dependent child or dependent adult to be exposed to, ingest, inhale, or have contact with methamphetamine or ephedrine, pseudoephedrine, or anhydrous ammonia, including their salts, isomers, and salts of isomers, that are being used in the manufacture of methamphetamine, including its salts, isomers, and salts of isomers. Endangerment with a controlled substance is a class B felony. [2005 c 218 § 4; 2002 c 229 § 1.]

**Effective date—2002 c 229:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 28, 2002]." [2002 c 229 § 4.]

**Chapter 9A.44 RCW**  
**SEX OFFENSES**

## Sections

9A.44.010	Definitions.
9A.44.093	Sexual misconduct with a minor in the first degree.
9A.44.096	Sexual misconduct with a minor in the second degree.
9A.44.130	Registration of sex offenders and kidnapping offenders—Procedures—Definition—Penalties. ( <i>Effective September 1, 2006.</i> )
9A.44.150	Testimony of child by closed-circuit television.

**9A.44.010 Definitions.** As used in this chapter:

(1) "Sexual intercourse" (a) has its ordinary meaning and occurs upon any penetration, however slight, and

(b) Also means any penetration of the vagina or anus however slight, by an object, when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes, and

(c) Also means any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.

(2) "Sexual contact" means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party.

(3) "Married" means one who is legally married to another, but does not include a person who is living separate and apart from his or her spouse and who has filed in an appropriate court for legal separation or for dissolution of his or her marriage.

(4) "Mental incapacity" is that condition existing at the time of the offense which prevents a person from understanding the nature or consequences of the act of sexual intercourse whether that condition is produced by illness, defect, the influence of a substance or from some other cause.

(5) "Physically helpless" means a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(6) "Forcible compulsion" means physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to herself or himself or another person, or in fear that she or he or another person will be kidnapped.

(7) "Consent" means that at the time of the act of sexual intercourse or sexual contact there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

(8) "Significant relationship" means a situation in which the perpetrator is:

(a) A person who undertakes the responsibility, professionally or voluntarily, to provide education, health, welfare, or organized recreational activities principally for minors;

(b) A person who in the course of his or her employment supervises minors; or

(c) A person who provides welfare, health or residential assistance, personal care, or organized recreational activities to frail elders or vulnerable adults, including a provider, employee, temporary employee, volunteer, or independent contractor who supplies services to long-term care facilities licensed or required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, and home health, hospice, or

home care agencies licensed or required to be licensed under chapter 70.127 RCW, but not including a consensual sexual partner.

(9) "Abuse of a supervisory position" means:

(a) To use a direct or indirect threat or promise to exercise authority to the detriment or benefit of a minor; or

(b) To exploit a significant relationship in order to obtain the consent of a minor.

(10) "Developmentally disabled," for purposes of RCW 9A.44.050(1)(c) and 9A.44.100(1)(c), means a person with a developmental disability as defined in RCW 71A.10.020.

(11) "Person with supervisory authority," for purposes of RCW 9A.44.050(1)(c) or (e) and 9A.44.100(1)(c) or (e), means any proprietor or employee of any public or private care or treatment facility who directly supervises developmentally disabled, mentally disordered, or chemically dependent persons at the facility.

(12) "Mentally disordered person" for the purposes of RCW 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person with a "mental disorder" as defined in RCW 71.05.020.

(13) "Chemically dependent person" for purposes of RCW 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person who is "chemically dependent" as defined in RCW 70.96A.020(4).

(14) "Health care provider" for purposes of RCW 9A.44.050 and 9A.44.100 means a person who is, holds himself or herself out to be, or provides services as if he or she were: (a) A member of a health care profession under chapter 18.130 RCW; or (b) registered under chapter 18.19 RCW or licensed under chapter 18.225 RCW, regardless of whether the health care provider is licensed, certified, or registered by the state.

(15) "Treatment" for purposes of RCW 9A.44.050 and 9A.44.100 means the active delivery of professional services by a health care provider which the health care provider holds himself or herself out to be qualified to provide.

(16) "Frail elder or vulnerable adult" means a person sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself. "Frail elder or vulnerable adult" also includes a person found incapacitated under chapter 11.88 RCW, a person over eighteen years of age who has a developmental disability under chapter 71A.10 RCW, a person admitted to a long-term care facility that is licensed or required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, and a person receiving services from a home health, hospice, or home care agency licensed or required to be licensed under chapter 70.127 RCW. [2005 c 262 § 1; 2001 c 251 § 28. Prior: 1997 c 392 § 513; 1997 c 112 § 37; 1994 c 271 § 302; 1993 c 477 § 1; 1988 c 146 § 3; 1988 c 145 § 1; 1981 c 123 § 1; 1975 1st ex.s. c 14 § 1. Formerly RCW 9.79.140.]

**Severability—2001 c 251:** See RCW 18.225.900.

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**Intent—1994 c 271:** "The legislature hereby reaffirms its desire to protect the children of Washington from sexual abuse and further reaffirms its condemnation of child sexual abuse that takes the form of causing one child to engage in sexual contact with another child for the sexual gratification of the one causing such activities to take place." [1994 c 271 § 301.]

**Purpose—Severability—1994 c 271:** See notes following RCW 9A.28.020.

**Severability—Effective dates—1988 c 146:** See notes following RCW 9A.44.050.

**Effective date—1988 c 145:** "This act shall take effect July 1, 1988." [1988 c 145 § 26.]

**Savings—Application—1988 c 145:** "This act shall not have the effect of terminating or in any way modifying any liability, civil or criminal, which is already in existence on July 1, 1988, and shall apply only to offenses committed on or after July 1, 1988." [1988 c 145 § 25.]

**9A.44.093 Sexual misconduct with a minor in the first degree.** (1) A person is guilty of sexual misconduct with a minor in the first degree when: (a) The person has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with another person who is at least sixteen years old but less than eighteen years old and not married to the perpetrator, if the perpetrator is at least sixty months older than the victim, is in a significant relationship to the victim, and abuses a supervisory position within that relationship in order to engage in or cause another person under the age of eighteen to engage in sexual intercourse with the victim; (b) the person is a school employee who has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with a registered student of the school who is at least sixteen years old and not married to the employee, if the employee is at least sixty months older than the student; or (c) the person is a foster parent who has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with his or her foster child who is at least sixteen.

(2) Sexual misconduct with a minor in the first degree is a class C felony.

(3) For the purposes of this section, "school employee" means an employee of a common school defined in RCW 28A.150.020, or a grade kindergarten through twelve employee of a private school under chapter 28A.195 RCW, who is not enrolled as a student of the common school or private school. [2005 c 262 § 2; 2001 2nd sp.s. c 12 § 357; 1994 c 271 § 306; 1988 c 145 § 8.]

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

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

**Intent—1994 c 271:** See note following RCW 9A.44.010.

**Purpose—Severability—1994 c 271:** See notes following RCW 9A.28.020.

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

**9A.44.096 Sexual misconduct with a minor in the second degree.** (1) A person is guilty of sexual misconduct with a minor in the second degree when: (a) The person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another person who is at least sixteen years old but less than eighteen years old and not married to the perpetrator, if the perpetrator is at least sixty months older than the victim, is in a significant relationship to the victim, and abuses a supervisory position within that relationship in order to engage in or cause another person under the age of eighteen to engage in sexual contact with the victim; (b) the person is a school employee who has, or knowingly causes another person under the age of eighteen to have, sexual contact with a registered student of the school

who is at least sixteen years old and not married to the employee, if the employee is at least sixty months older than the student; or (c) the person is a foster parent who has, or knowingly causes another person under the age of eighteen to have, sexual contact with his or her foster child who is at least sixteen.

(2) Sexual misconduct with a minor in the second degree is a gross misdemeanor.

(3) For the purposes of this section, "school employee" means an employee of a common school defined in RCW 28A.150.020, or a grade kindergarten through twelve employee of a private school under chapter 28A.195 RCW, who is not enrolled as a student of the common school or private school. [2005 c 262 § 3; 2001 2nd sp.s. c 12 § 358; 1994 c 271 § 307; 1988 c 145 § 9.]

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

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

**Intent—1994 c 271:** See note following RCW 9A.44.010.

**Purpose—Severability—1994 c 271:** See notes following RCW 9A.28.020.

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

**9A.44.130 Registration of sex offenders and kidnaping offenders—Procedures—Definition—Penalties. (Effective September 1, 2006.)** (1)(a) Any adult or juvenile residing whether or not the person has a fixed residence, or who is a student, is employed, or carries on a vocation in this state who has been found to have committed or has been convicted of any sex offense or kidnaping offense, or who has been found not guilty by reason of insanity under chapter 10.77 RCW of committing any sex offense or kidnaping offense, shall register with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation, or as otherwise specified in this section. Where a person required to register under this section is in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility as a result of a sex offense or kidnaping offense, the person shall also register at the time of release from custody with an official designated by the agency that has jurisdiction over the person.

(b) Any adult or juvenile who is required to register under (a) of this subsection:

(i) Who is attending, or planning to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW shall, within ten days of enrolling or prior to arriving at the school to attend classes, whichever is earlier, notify the sheriff for the county of the person's residence of the person's intent to attend the school, and the sheriff shall promptly notify the principal of the school;

(ii) Who is admitted to a public or private institution of higher education shall, within ten days of enrolling or by the first business day after arriving at the institution, whichever is earlier, notify the sheriff for the county of the person's residence of the person's intent to attend the institution;

(iii) Who gains employment at a public or private institution of higher education shall, within ten days of accepting employment or by the first business day after commencing work at the institution, whichever is earlier, notify the sheriff for the county of the person's residence of the person's employment by the institution; or

(iv) Whose enrollment or employment at a public or private institution of higher education is terminated shall, within ten days of such termination, notify the sheriff for the county of the person's residence of the person's termination of enrollment or employment at the institution.

(c) Persons required to register under this section who are enrolled in a public or private institution of higher education on June 11, 1998, or a public or private school regulated under Title 28A RCW or chapter 72.40 RCW on September 1, 2006, must notify the county sheriff immediately.

(d) The sheriff shall notify the school's principal or institution's department of public safety and shall provide that department with the same information provided to a county sheriff under subsection (3) of this section.

(e)(i) A principal receiving notice under this subsection must disclose the information received from the sheriff under (b) of this subsection as follows:

(A) If the student who is required to register as a sex offender is classified as a risk level II or III, the principal shall provide the information received to every teacher of any student required to register under (a) of this subsection and to any other personnel who, in the judgment of the principal, supervises the student or for security purposes should be aware of the student's record;

(B) If the student who is required to register as a sex offender is classified as a risk level I, the principal shall provide the information received only to personnel who, in the judgment of the principal, for security purposes should be aware of the student's record.

(ii) Any information received by a principal or school personnel under this subsection is confidential and may not be further disseminated except as provided in RCW 28A.225.330, other statutes or case law, and the family and educational and privacy rights act of 1994, 20 U.S.C. Sec. 1232g et seq.

(2) This section may not be construed to confer any powers pursuant to \*RCW 4.24.500 upon the public safety department of any public or private school or institution of higher education.

(3)(a) The person shall provide the following information when registering: (i) Name; (ii) address; (iii) date and place of birth; (iv) place of employment; (v) crime for which convicted; (vi) date and place of conviction; (vii) aliases used; (viii) social security number; (ix) photograph; and (x) fingerprints.

(b) Any person who lacks a fixed residence shall provide the following information when registering: (i) Name; (ii) date and place of birth; (iii) place of employment; (iv) crime for which convicted; (v) date and place of conviction; (vi) aliases used; (vii) social security number; (viii) photograph; (ix) fingerprints; and (x) where he or she plans to stay.

(4)(a) Offenders shall register with the county sheriff within the following deadlines. For purposes of this section the term "conviction" refers to adult convictions and juvenile adjudications for sex offenses or kidnapping offenses:

(i) OFFENDERS IN CUSTODY. (A) Sex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, are in custody, as a result of that offense, of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, and (B) kidnapping offenders who on or after July 27, 1997, are in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, must register at the time of release from custody with an official designated by the agency that has jurisdiction over the offender. The agency shall within three days forward the registration information to the county sheriff for the county of the offender's anticipated residence. The offender must also register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The agency that has jurisdiction over the offender shall provide notice to the offender of the duty to register. Failure to register at the time of release and within twenty-four hours of release constitutes a violation of this section and is punishable as provided in subsection (10) of this section.

When the agency with jurisdiction intends to release an offender with a duty to register under this section, and the agency has knowledge that the offender is eligible for developmental disability services from the department of social and health services, the agency shall notify the division of developmental disabilities of the release. Notice shall occur not more than thirty days before the offender is to be released. The agency and the division shall assist the offender in meeting the initial registration requirement under this section. Failure to provide such assistance shall not constitute a defense for any violation of this section.

(ii) OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL JURISDICTION. Sex offenders who, on July 28, 1991, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of corrections' active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 28, 1991. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of corrections' active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (4)(a)(ii) as of July 28, 1991, or a kidnapping offender required to register as of July 27, 1997, shall not relieve the offender of the duty to register or to reregister following a change in residence. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(iii) OFFENDERS UNDER FEDERAL JURISDICTION. Sex offenders who, on or after July 23, 1995, and kid-

napping offenders who, on or after July 27, 1997, as a result of that offense are in the custody of the United States bureau of prisons or other federal or military correctional agency for sex offenses committed before, on, or after February 28, 1990, or kidnapping offenses committed on, before, or after July 27, 1997, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. Sex offenders who, on July 23, 1995, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 23, 1995. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (4)(a)(iii) as of July 23, 1995, or a kidnapping offender required to register as of July 27, 1997 shall not relieve the offender of the duty to register or to reregister following a change in residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(iv) OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED. Sex offenders who are convicted of a sex offense on or after July 28, 1991, for a sex offense that was committed on or after February 28, 1990, and kidnapping offenders who are convicted on or after July 27, 1997, for a kidnapping offense that was committed on or after July 27, 1997, but who are not sentenced to serve a term of confinement immediately upon sentencing, shall report to the county sheriff to register immediately upon completion of being sentenced.

(v) OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON RESIDENTS. Sex offenders and kidnapping offenders who move to Washington state from another state or a foreign country that are not under the jurisdiction of the state department of corrections, the indeterminate sentence review board, or the state department of social and health services at the time of moving to Washington, must register within thirty days of establishing residence or reestablishing residence if the person is a former Washington resident. The duty to register under this subsection applies to sex offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed on or after February 28, 1990, and to kidnapping offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed on or after July 27, 1997. Sex offenders and kidnapping offenders from other states or a foreign country who, when they move to Washington, are under the jurisdiction of the department of corrections, the indeterminate sentence review board, or the department of social and health services must register within twenty-four hours of moving to Washington. The agency

that has jurisdiction over the offender shall notify the offender of the registration requirements before the offender moves to Washington.

(vi) OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY. Any adult or juvenile who has been found not guilty by reason of insanity under chapter 10.77 RCW of (A) committing a sex offense on, before, or after February 28, 1990, and who, on or after July 23, 1995, is in custody, as a result of that finding, of the state department of social and health services, or (B) committing a kidnapping offense on, before, or after July 27, 1997, and who on or after July 27, 1997, is in custody, as a result of that finding, of the state department of social and health services, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence. The state department of social and health services shall provide notice to the adult or juvenile in its custody of the duty to register. Any adult or juvenile who has been found not guilty by reason of insanity of committing a sex offense on, before, or after February 28, 1990, but who was released before July 23, 1995, or any adult or juvenile who has been found not guilty by reason of insanity of committing a kidnapping offense but who was released before July 27, 1997, shall be required to register within twenty-four hours of receiving notice of this registration requirement. The state department of social and health services shall make reasonable attempts within available resources to notify sex offenders who were released before July 23, 1995, and kidnapping offenders who were released before July 27, 1997. Failure to register within twenty-four hours of release, or of receiving notice, constitutes a violation of this section and is punishable as provided in subsection (10) of this section.

(vii) OFFENDERS WHO LACK A FIXED RESIDENCE. Any person who lacks a fixed residence and leaves the county in which he or she is registered and enters and remains within a new county for twenty-four hours is required to register with the county sheriff not more than twenty-four hours after entering the county and provide the information required in subsection (3)(b) of this section.

(viii) OFFENDERS WHO LACK A FIXED RESIDENCE AND WHO ARE UNDER SUPERVISION. Offenders who lack a fixed residence and who are under the supervision of the department shall register in the county of their supervision.

(ix) OFFENDERS WHO MOVE TO, WORK, CARRY ON A VOCATION, OR ATTEND SCHOOL IN ANOTHER STATE. Offenders required to register in Washington, who move to another state, or who work, carry on a vocation, or attend school in another state shall register a new address, fingerprints, and photograph with the new state within ten days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. The person must also send written notice within ten days of moving to the new state or to a foreign country to the county sheriff with whom the person last registered in Washington state. The county sheriff shall promptly forward this information to the Washington state patrol.

(b) Failure to register within the time required under this section constitutes a per se violation of this section and is punishable as provided in subsection (10) of this section. The

county sheriff shall not be required to determine whether the person is living within the county.

(c) An arrest on charges of failure to register, service of an information, or a complaint for a violation of this section, or arraignment on charges for a violation of this section, constitutes actual notice of the duty to register. Any person charged with the crime of failure to register under this section who asserts as a defense the lack of notice of the duty to register shall register immediately following actual notice of the duty through arrest, service, or arraignment. Failure to register as required under this subsection (4)(c) constitutes grounds for filing another charge of failing to register. Registering following arrest, service, or arraignment on charges shall not relieve the offender from criminal liability for failure to register prior to the filing of the original charge.

(d) The deadlines for the duty to register under this section do not relieve any sex offender of the duty to register under this section as it existed prior to July 28, 1991.

(5)(a) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must send written notice of the change of address to the county sheriff within seventy-two hours of moving. If any person required to register pursuant to this section moves to a new county, the person must send written notice of the change of address at least fourteen days before moving to the county sheriff in the new county of residence and must register with that county sheriff within twenty-four hours of moving. The person must also send written notice within ten days of the change of address in the new county to the county sheriff with whom the person last registered. The county sheriff with whom the person last registered shall promptly forward the information concerning the change of address to the county sheriff for the county of the person's new residence. Upon receipt of notice of change of address to a new state, the county sheriff shall promptly forward the information regarding the change of address to the agency designated by the new state as the state's offender registration agency.

(b) It is an affirmative defense to a charge that the person failed to send a notice at least fourteen days in advance of moving as required under (a) of this subsection that the person did not know the location of his or her new residence at least fourteen days before moving. The defendant must establish the defense by a preponderance of the evidence and, to prevail on the defense, must also prove by a preponderance that the defendant sent the required notice within twenty-four hours of determining the new address.

(6)(a) Any person required to register under this section who lacks a fixed residence shall provide written notice to the sheriff of the county where he or she last registered within forty-eight hours excluding weekends and holidays after ceasing to have a fixed residence. The notice shall include the information required by subsection (3)(b) of this section, except the photograph and fingerprints. The county sheriff may, for reasonable cause, require the offender to provide a photograph and fingerprints. The sheriff shall forward this information to the sheriff of the county in which the person intends to reside, if the person intends to reside in another county.

(b) A person who lacks a fixed residence must report weekly, in person, to the sheriff of the county where he or she

is registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. The county sheriff's office may require the person to list the locations where the person has stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

(c) If any person required to register pursuant to this section does not have a fixed residence, it is an affirmative defense to the charge of failure to register, that he or she provided written notice to the sheriff of the county where he or she last registered within forty-eight hours excluding weekends and holidays after ceasing to have a fixed residence and has subsequently complied with the requirements of subsections (4)(a)(vii) or (viii) and (6) of this section. To prevail, the person must prove the defense by a preponderance of the evidence.

(7) A sex offender subject to registration requirements under this section who applies to change his or her name under RCW 4.24.130 or any other law shall submit a copy of the application to the county sheriff of the county of the person's residence and to the state patrol not fewer than five days before the entry of an order granting the name change. No sex offender under the requirement to register under this section at the time of application shall be granted an order changing his or her name if the court finds that doing so will interfere with legitimate law enforcement interests, except that no order shall be denied when the name change is requested for religious or legitimate cultural reasons or in recognition of marriage or dissolution of marriage. A sex offender under the requirement to register under this section who receives an order changing his or her name shall submit a copy of the order to the county sheriff of the county of the person's residence and to the state patrol within five days of the entry of the order.

(8) The county sheriff shall obtain a photograph of the individual and shall obtain a copy of the individual's fingerprints.

(9) For the purpose of RCW 9A.44.130, 10.01.200, 43.43.540, 70.48.470, and 72.09.330:

(a) "Sex offense" means:

(i) Any offense defined as a sex offense by RCW 9.94A.030;

(ii) Any violation under RCW 9A.44.096 (sexual misconduct with a minor in the second degree);

(iii) Any violation under RCW 9.68A.090 (communication with a minor for immoral purposes);

(iv) Any federal or out-of-state conviction for an offense that under the laws of this state would be classified as a sex offense under this subsection; and

(v) Any gross misdemeanor that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030 or this subsection.

(b) "Kidnapping offense" means: (i) The crimes of kidnapping in the first degree, kidnapping in the second degree, and unlawful imprisonment, as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent; (ii) any offense that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal

conspiracy to commit an offense that is classified as a kidnapping offense under this subsection (9)(b); and (iii) any federal or out-of-state conviction for an offense that under the laws of this state would be classified as a kidnapping offense under this subsection (9)(b).

(c) "Employed" or "carries on a vocation" means employment that is full-time or part-time for a period of time exceeding fourteen days, or for an aggregate period of time exceeding thirty days during any calendar year. A person is employed or carries on a vocation whether the person's employment is financially compensated, volunteered, or for the purpose of government or educational benefit.

(d) "Student" means a person who is enrolled, on a full-time or part-time basis, in any public or private educational institution. An educational institution includes any secondary school, trade or professional institution, or institution of higher education.

(10)(a) A person who knowingly fails to register with the county sheriff or notify the county sheriff, or who changes his or her name without notifying the county sheriff and the state patrol, as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a felony sex offense as defined in subsection (9)(a) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony sex offense as defined in subsection (9)(a) of this section.

(b) If the crime for which the individual was convicted was other than a felony or a federal or out-of-state conviction for an offense that under the laws of this state would be other than a felony, violation of this section is a gross misdemeanor.

(11)(a) A person who knowingly fails to register or who moves within the state without notifying the county sheriff as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a felony kidnapping offense as defined in subsection (9)(b) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony kidnapping offense as defined in subsection (9)(b) of this section.

(b) If the crime for which the individual was convicted was other than a felony or a federal or out-of-state conviction for an offense that under the laws of this state would be other than a felony, violation of this section is a gross misdemeanor.

(12) Except as may otherwise be provided by law, nothing in this section shall impose any liability upon a peace officer, including a county sheriff, or law enforcement agency, for failing to release information authorized under this section. [2005 c 380 § 1. Prior: 2003 c 215 § 1; 2003 c 53 § 68; 2002 c 31 § 1; prior: 2001 c 169 § 1; 2001 c 95 § 2; 2000 c 91 § 2; prior: 1999 sp.s. c 6 § 2; 1999 c 352 § 9; prior: 1998 c 220 § 1; 1998 c 139 § 1; prior: 1997 c 340 § 3; 1997 c 113 § 3; 1996 c 275 § 11; prior: 1995 c 268 § 3; 1995 c 248 § 1; 1995 c 195 § 1; 1994 c 84 § 2; 1991 c 274 § 2; 1990 c 3 § 402.]

**\*Reviser's note:** The reference to RCW 4.24.500 appears to be incorrect. RCW 4.24.550 was apparently intended.

**Effective date—2005 c 380:** "This act takes effect September 1, 2006." [2005 c 380 § 4.]

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

[2005 RCW Supp—page 76]

**Application—2002 c 31:** "This act applies to all persons convicted of communication with a minor either on, before, or after July 1, 2001, unless otherwise relieved of the duty to register under RCW 9A.44.140." [2002 c 31 § 2.]

**Severability—2002 c 31:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 31 § 3.]

**Effective date—2002 c 31:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 12, 2002]." [2002 c 31 § 4.]

**Effective date—2001 c 95:** See note following RCW 9.94A.030.

**Intent—1999 sp.s. c 6:** "It is the intent of this act to revise the law on registration of sex and kidnapping offenders in response to the case of *State v. Pickett*, Docket number 41562-0-I. The legislature intends that all sex and kidnapping offenders whose history requires them to register shall do so regardless of whether the person has a fixed residence. The lack of a residential address is not to be construed to preclude registration as a sex or kidnapping offender. The legislature intends that persons who lack a residential address shall have an affirmative duty to report to the appropriate county sheriff, based on the level of risk of offending." [1999 sp.s. c 6 § 1.]

**Effective date—1999 sp.s. c 6:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 7, 1999]." [1999 sp.s. c 6 § 3.]

**Severability—1998 c 220:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 220 § 7.]

**Findings—1997 c 113:** See note following RCW 4.24.550.

**Finding—1996 c 275:** See note following RCW 9.94A.505.

**Purpose—1995 c 268:** See note following RCW 9.94A.030.

**Intent—1994 c 84:** "This act is intended to clarify existing law and is not intended to reflect a substantive change in the law." [1994 c 84 § 1.]

**Finding and intent—1991 c 274:** "The legislature finds that sex offender registration has assisted law enforcement agencies in protecting their communities. This act is intended to clarify and amend the deadlines for sex offenders to register. This act's clarification or amendment of RCW 9A.44.130 does not relieve the obligation of sex offenders to comply with the registration requirements of RCW 9A.44.130 as that statute exists before July 28, 1991." [1991 c 274 § 1.]

**Finding—Policy—1990 c 3 § 402:** "The legislature finds that sex offenders often pose a high risk of reoffense, and that law enforcement's efforts to protect their communities, conduct investigations, and quickly apprehend offenders who commit sex offenses, are impaired by the lack of information available to law enforcement agencies about convicted sex offenders who live within the law enforcement agency's jurisdiction. Therefore, this state's policy is to assist local law enforcement agencies' efforts to protect their communities by regulating sex offenders by requiring sex offenders to register with local law enforcement agencies as provided in RCW 9A.44.130." [1990 c 3 § 401.]

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

**9A.44.150 Testimony of child by closed-circuit television.** (1) On motion of the prosecuting attorney in a criminal proceeding, the court may order that a child under the age of ten may testify in a room outside the presence of the defendant and the jury while one-way closed-circuit television equipment simultaneously projects the child's testimony into another room so the defendant and the jury can watch and hear the child testify if:

(a) The testimony will:

(i) Describe an act or attempted act of sexual contact performed with or on the child witness by another person or with or on a child other than the child witness by another person;



(ii) Describe an act or attempted act of physical abuse against the child witness by another person or against a child other than the child witness by another person; or

(iii) Describe a violent offense as defined by RCW 9.94A.030 committed against a person known by or familiar to the child witness or by a person known by or familiar to the child witness;

(b) The testimony is taken during the criminal proceeding;

(c) The court finds by substantial evidence, in a hearing conducted outside the presence of the jury, that requiring the child witness to testify in the presence of the defendant will cause the child to suffer serious emotional or mental distress that will prevent the child from reasonably communicating at the trial. If the defendant is excluded from the presence of the child, the jury must also be excluded;

(d) As provided in subsection (1)(a) and (b) of this section, the court may allow a child witness to testify in the presence of the defendant but outside the presence of the jury, via closed-circuit television, if the court finds, upon motion and hearing outside the presence of the jury, that the child will suffer serious emotional distress that will prevent the child from reasonably communicating at the trial in front of the jury, or, that although the child may be able to reasonably communicate at trial in front of the jury, the child will suffer serious emotional or mental distress from testifying in front of the jury. If the child is able to communicate in front of the defendant but not the jury the defendant will remain in the room with the child while the jury is excluded from the room;

(e) The court finds that the prosecutor has made all reasonable efforts to prepare the child witness for testifying, including informing the child or the child's parent or guardian about community counseling services, giving court tours, and explaining the trial process. If the prosecutor fails to demonstrate that preparations were implemented or the prosecutor in good faith attempted to implement them, the court shall deny the motion;

(f) The court balances the strength of the state's case without the testimony of the child witness against the defendant's constitutional rights and the degree of infringement of the closed-circuit television procedure on those rights;

(g) The court finds that no less restrictive method of obtaining the testimony exists that can adequately protect the child witness from the serious emotional or mental distress;

(h) When the court allows the child witness to testify outside the presence of the defendant, the defendant can communicate constantly with the defense attorney by electronic transmission and be granted reasonable court recesses during the child's testimony for person-to-person consultation with the defense attorney;

(i) The court can communicate with the attorneys by an audio system so that the court can rule on objections and otherwise control the proceedings;

(j) All parties in the room with the child witness are on camera and can be viewed by all other parties. If viewing all participants is not possible, the court shall describe for the viewers the location of the prosecutor, defense attorney, and other participants in relation to the child;

(k) The court finds that the television equipment is capable of making an accurate reproduction and the operator of the equipment is competent to operate the equipment; and

(l) The court imposes reasonable guidelines upon the parties for conducting the filming to avoid trauma to the child witness or abuse of the procedure for tactical advantage.

The prosecutor, defense attorney, and a neutral and trained victim's advocate, if any, shall always be in the room where the child witness is testifying. The court in the court's discretion depending on the circumstances and whether the jury or defendant or both are excluded from the room where the child is testifying, may remain or may not remain in the room with the child.

(2) During the hearing conducted under subsection (1) of this section to determine whether the child witness may testify outside the presence of the defendant and/or the jury, the court may conduct the observation and examination of the child outside the presence of the defendant if:

(a) The prosecutor alleges and the court concurs that the child witness will be unable to testify in front of the defendant or will suffer severe emotional or mental distress if forced to testify in front of the defendant;

(b) The defendant can observe and hear the child witness by closed-circuit television;

(c) The defendant can communicate constantly with the defense attorney during the examination of the child witness by electronic transmission and be granted reasonable court recesses during the child's examination for person-to-person consultation with the defense attorney; and

(d) The court finds the closed-circuit television is capable of making an accurate reproduction and the operator of the equipment is competent to operate the equipment. Whenever possible, all the parties in the room with the child witness shall be on camera so that the viewers can see all the parties. If viewing all participants is not possible, then the court shall describe for the viewers the location of the prosecutor, defense attorney, and other participants in relation to the child.

(3) The court shall make particularized findings on the record articulating the factors upon which the court based its decision to allow the child witness to testify via closed-circuit television pursuant to this section. The factors the court may consider include, but are not limited to, a consideration of the child's age, physical health, emotional stability, expressions by the child of fear of testifying in open court or in front of the defendant, the relationship of the defendant to the child, and the court's observations of the child's inability to reasonably communicate in front of the defendant or in open court. The court's findings shall identify the impact the factors have upon the child's ability to testify in front of the jury or the defendant or both and the specific nature of the emotional or mental trauma the child would suffer. The court shall determine whether the source of the trauma is the presence of the defendant, the jury, or both, and shall limit the use of the closed-circuit television accordingly.

(4) This section does not apply if the defendant is an attorney pro se unless the defendant has a court-appointed attorney assisting the defendant in the defense.

(5) This section may not preclude the presence of both the child witness and the defendant in the courtroom together for purposes of establishing or challenging the identification of the defendant when identification is a legitimate issue in the proceeding.

(6) The Washington supreme court may adopt rules of procedure regarding closed-circuit television procedures.

(7) All recorded tapes of testimony produced by closed-circuit television equipment shall be subject to any protective order of the court for the purpose of protecting the privacy of the child witness.

(8) Nothing in this section creates a right of the child witness to a closed-circuit television procedure in lieu of testifying in open court.

(9) The state shall bear the costs of the closed-circuit television procedure.

(10) A child witness may or may not be a victim in the proceeding.

(11) Nothing in this section precludes the court, under other circumstances arising under subsection (1)(a) of this section, from allowing a child to testify outside the presence of the defendant and the jury so long as the testimony is presented in accordance with the standards and procedures required in this section. [2005 c 455 § 1; 1990 c 150 § 2.]

**Legislative declaration—1990 c 150:** "The legislature declares that protection of child witnesses in sexual assault and physical abuse cases is a substantial and compelling interest of the state. Sexual and physical abuse cases are some of the most difficult cases to prosecute, in part because frequently no witnesses exist except the child victim. When abuse is prosecuted, a child victim may suffer serious emotional and mental trauma from exposure to the abuser or from testifying in open court. In rare cases, the child is so traumatized that the child is unable to testify at trial and is unavailable as a witness or the child's ability to communicate in front of the jury or defendant is so reduced that the truth-seeking function of trial is impaired. In other rare cases, the child is able to proceed to trial but suffers long-lasting trauma as a result of testifying in court or in front of the defendant. The creation of procedural devices designed to enhance the truth-seeking process and to shield child victims from the trauma of exposure to the abuser and the courtroom is a compelling state interest." [1990 c 150 § 1.]

**Severability—1990 c 150:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 150 § 3.]

## Chapter 9A.56 RCW

### THEFT AND ROBBERY

#### Sections

- 9A.56.030 Theft in the first degree—Other than firearm.  
9A.56.080 Theft of livestock in the first degree.

**9A.56.030 Theft in the first degree—Other than firearm.** (1) A person is guilty of theft in the first degree if he or she commits theft of:

(a) Property or services which exceed(s) one thousand five hundred dollars in value other than a firearm as defined in RCW 9.41.010;

(b) Property of any value other than a firearm as defined in RCW 9.41.010 taken from the person of another; or

(c) A search and rescue dog, as defined in RCW 9.91.175, while the search and rescue dog is on duty.

(2) Theft in the first degree is a class B felony. [2005 c 212 § 2; 1995 c 129 § 11 (Initiative Measure No. 159); 1975 1st ex.s. c 260 § 9A.56.030.]

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

*Civil action for shoplifting by adults, minors:* RCW 4.24.230.

[2005 RCW Supp—page 78]

**9A.56.080 Theft of livestock in the first degree.** (1) Every person who, with intent to sell or exchange and to deprive or defraud the lawful owner thereof, willfully takes, leads, or transports away, conceals, withholds, slaughters, or otherwise appropriates any horse, mule, cow, heifer, bull, steer, swine, goat, or sheep is guilty of theft of livestock in the first degree.

(2) Theft of livestock in the first degree is a class B felony. [2005 c 419 § 1; 2003 c 53 § 74; 1986 c 257 § 32; 1977 ex.s. c 174 § 2; 1975 1st ex.s. c 260 § 9A.56.080.]

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

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

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

*Action by owner of damaged or stolen livestock:* RCW 4.24.320.

## Title 10

### CRIMINAL PROCEDURE

#### Chapters

- 10.01** General provisions.  
**10.14** Harassment.  
**10.29** Statewide special inquiry judge act.  
**10.40** Arraignment.  
**10.46** Superior court trial.  
**10.64** Judgments and sentences.  
**10.73** Criminal appeals.  
**10.77** Criminally insane—Procedures.  
**10.97** Washington state criminal records privacy act.  
**10.98** Criminal justice information act.  
**10.99** Domestic violence—Official response.  
**10.101** Indigent defense services.

#### Chapter 10.01 RCW

### GENERAL PROVISIONS

#### Sections

- 10.01.160 Costs—What constitutes—Payment by defendant—Procedure—Remission.

**10.01.160 Costs—What constitutes—Payment by defendant—Procedure—Remission.** (1) The court may require a defendant to pay costs. Costs may be imposed only upon a convicted defendant, except for costs imposed upon a defendant's entry into a deferred prosecution program or costs imposed upon a defendant for preparing and serving a warrant for failure to appear.

(2) Costs shall be limited to expenses specially incurred by the state in prosecuting the defendant or in administering the deferred prosecution program under chapter 10.05 RCW. They cannot include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law. Expenses incurred for serving of warrants for failure to appear and jury fees under RCW 10.46.190 may be included in costs the court may require a defendant to pay. Costs for administering a deferred prosecution may not exceed one hundred fifty dollars. Costs for preparing and serving a warrant for failure to appear may not exceed one

hundred dollars. Costs of incarceration imposed on a defendant convicted of a misdemeanor or a gross misdemeanor may not exceed the actual cost of incarceration. In no case may the court require the offender to pay more than one hundred dollars per day for the cost of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision take precedence over the payment of the cost of incarceration ordered by the court. All funds received from defendants for the cost of incarceration in the county or city jail must be remitted for criminal justice purposes to the county or city that is responsible for the defendant's jail costs. Costs imposed constitute a judgment against a defendant and survive a dismissal of the underlying action against the defendant. However, if the defendant is acquitted on the underlying action, the costs for preparing and serving a warrant for failure to appear do not survive the acquittal, and the judgment that such costs would otherwise constitute shall be vacated.

(3) The court shall not sentence a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(4) A defendant who has been sentenced to pay costs and who is not in contumacious default in the payment thereof may at any time petition the sentencing court for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170. [2005 c 263 § 2; 1995 c 221 § 1; 1994 c 192 § 1; 1991 c 247 § 4; 1987 c 363 § 1; 1985 c 389 § 1; 1975-'76 2nd ex.s. c 96 § 1.]

*Commitment for failure to pay fine and costs: RCW 10.70.010, 10.82.030.*

*Defendant liable for costs: RCW 10.64.015.*

*Fine and costs—Collection and disposition: Chapter 10.82 RCW.*

## Chapter 10.14 RCW HARASSMENT

### Sections

10.14.070	Hearing—Service.
10.14.150	Jurisdiction.
10.14.160	Where action may be brought.

**10.14.070 Hearing—Service.** Upon receipt of the petition alleging a prima facie case of harassment, other than a petition alleging a sex offense as defined in chapter 9A.44 RCW, the court shall order a hearing which shall be held not later than fourteen days from the date of the order. If the petition alleges a sex offense as defined in chapter 9A.44 RCW, the court shall order a hearing which shall be held not later than fourteen days from the date of the order. Except as provided in RCW 10.14.085, personal service shall be made upon the respondent not less than five court days before the hearing. If timely personal service cannot be made, the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided by RCW 10.14.085. If the court per-

mits service by publication, the court shall set the hearing date not later than twenty-four days from the date of the order. The court may issue an ex parte order for protection pending the hearing as provided in RCW 10.14.080 and 10.14.085. [2005 c 144 § 1; 1992 c 143 § 10; 1987 c 280 § 7.]

**10.14.150 Jurisdiction.** (1) The district courts shall have jurisdiction and cognizance of any civil actions and proceedings brought under this chapter, except the district court shall transfer such actions and proceedings to the superior court when it is shown that the respondent to the petition is under eighteen years of age.

(2) Municipal courts may exercise jurisdiction and cognizance of any civil actions and proceedings brought under this chapter by adoption of local court rule, except the municipal court shall transfer such actions and proceedings to the superior court when it is shown that the respondent to the petition is under eighteen years of age.

(3) Superior courts shall have concurrent jurisdiction to receive transfer of antiharassment petitions in cases where a district or municipal court judge makes findings of fact and conclusions of law showing that meritorious reasons exist for the transfer. The municipal and district courts shall have jurisdiction and cognizance of any criminal actions brought under RCW 10.14.120 and 10.14.170. [2005 c 196 § 1; 1999 c 170 § 1; 1991 c 33 § 2; 1987 c 280 § 15.]

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

**10.14.160 Where action may be brought.** For the purposes of this chapter an action may be brought in:

(1) The judicial district of the county in which the alleged acts of unlawful harassment occurred;

(2) The judicial district of the county where any respondent resides at the time the petition is filed;

(3) The judicial district of the county where a respondent may be served if it is the same county or judicial district where a respondent resides;

(4) The municipality in which the alleged acts of unlawful harassment occurred;

(5) The municipality where any respondent resides at the time the petition is filed; or

(6) The municipality where a respondent may be served if it is the same county or judicial district where a respondent resides. [2005 c 196 § 2; 1992 c 127 § 1; 1987 c 280 § 16.]

## Chapter 10.29 RCW

### STATEWIDE SPECIAL INQUIRY JUDGE ACT

#### Sections

10.29.030	Appointment of statewide special inquiry judge—Procedure—Term—Confidentiality. ( <i>Effective July 1, 2006.</i> )
10.29.090	Operating budget—Contents—Audit. ( <i>Effective July 1, 2006.</i> )

**10.29.030 Appointment of statewide special inquiry judge—Procedure—Term—Confidentiality.** (*Effective July 1, 2006.*) (1) The organized crime advisory board shall have the authority, by a three-fourths vote at a regularly constituted meeting, to petition the Washington state supreme court for an order appointing a special inquiry judge as prescribed by this section. Such vote may be on its own motion

or pursuant to a request from the prosecuting attorney of any county. In the event of such request from a prosecuting attorney the board shall vote on the question promptly. A petition filed under this section shall state the general crimes or wrongs to be inquired into and shall state the reasons why said crimes or wrongs are such that a statewide special inquiry judge should be authorized to investigate. The supreme court may order the appointment of a statewide special inquiry judge, in accordance with the petition, for a term of six calendar months. Upon petition by the special prosecutor, and with the approval of the majority of the members of the organized crime advisory board, the supreme court, by order, may extend the term of the statewide special inquiry judge for three months. The term of the statewide special inquiry judge may subsequently be extended in the same manner for additional three-month periods.

(2) If the petition is granted, the supreme court shall designate a judge of a superior court to act as a special inquiry judge. The supreme court shall ensure that sufficient visiting judges are made available to the superior court from which the appointment is made in order to compensate for any loss of judicial time.

(3) All of the information and data collected and processed by the organized crime advisory board and the petition filed with the supreme court shall be confidential and not subject to examination or publication pursuant to chapter 42.56 RCW, except as provided by rules of the supreme court of Washington in the case of the petition. [2005 c 274 § 204; 1980 c 146 § 3.]

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

**10.29.090 Operating budget—Contents—Audit. (Effective July 1, 2006.)** Within ten days of his or her appointment, a special prosecutor selected under this chapter shall submit to the organized crime advisory board an operating budget to fund the activities of his or her office. The budget may include, but shall not be limited to, funds for the hiring of assistant special prosecutors, investigators, and clerical staff. Upon the approval of the budget by a majority of the members of the board, the costs and expenses of the prosecutor's operating budget shall be paid for by the state out of the organized crime prosecution revolving fund. Further operating budgets shall be proposed, approved, and funded pursuant to this section if the term of a statewide special inquiry judge is extended pursuant to RCW 10.29.030.

Vouchers and other budget and accounting records of a special inquiry judge proceeding including such records of the special prosecutor shall be subject to audit by the state auditor but shall not be public records within the meaning of chapter 42.56 RCW. [2005 c 274 § 205; 1980 c 146 § 9.]

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

*Organized crime prosecution revolving fund:* RCW 43.43.866.

## Chapter 10.40 RCW ARRAIGNMENT

### Sections

10.40.200 Deportation of aliens upon conviction—Advisement—Legislative intent.

[2005 RCW Supp—page 80]

## 10.40.200 Deportation of aliens upon conviction—Advisement—Legislative intent.

**Notice to courts—Rules—Forms:** "The administrative office of the courts shall notify all courts of the requirements contained in RCW 10.40.200. The judicial council shall recommend to the supreme court appropriate court rules to ensure compliance with the requirements of RCW 10.40.200. Until court rules are promulgated, the administrative office of the courts shall develop and distribute forms necessary for the courts to comply with RCW 10.40.200." [2005 c 282 § 21; 1983 c 199 § 2.]

## Chapter 10.46 RCW SUPERIOR COURT TRIAL

### Sections

10.46.190 Liability of convicted person for costs—Jury fee.

**10.46.190 Liability of convicted person for costs—Jury fee.** Every person convicted of a crime or held to bail to keep the peace shall be liable to all the costs of the proceedings against him or her, including, when tried by a jury in the superior court or before a committing magistrate, a jury fee as provided for in civil actions for which judgment shall be rendered and collected. The jury fee, when collected for a case tried by the superior court, shall be paid to the clerk and applied as the jury fee in civil cases is applied. [2005 c 457 § 12; 1977 ex.s. c 248 § 1; 1977 ex.s. c 53 § 1; 1961 c 304 § 8; Code 1881 § 2105; 1869 p 418 § 3; RRS § 2227.]

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

*Disposition of fines and costs:* Chapter 10.82 RCW.

### Jury

*fees:* RCW 4.44.110, 36.18.020.  
*in district court:* RCW 10.04.050.

## Chapter 10.64 RCW JUDGMENTS AND SENTENCES

### Sections

10.64.120 Referral assessments—Probation department oversight committee.  
10.64.140 Loss of voting rights—Acknowledgment. (Effective January 1, 2006.)

**10.64.120 Referral assessments—Probation department oversight committee.** (1) Every judge of a court of limited jurisdiction shall have the authority to levy upon a person a monthly assessment not to exceed one hundred dollars for services provided whenever the person is referred by the court to the misdemeanor probation department for evaluation or supervision services. The assessment may also be made by a judge in superior court when such misdemeanor or gross misdemeanor cases are heard in the superior court.

(2) For the purposes of this section the administrative office of the courts shall define a probation department and adopt rules for the qualifications of probation officers based on occupational and educational requirements developed by an oversight committee. This oversight committee shall include a representative from the district and municipal court judges association, the misdemeanor corrections association, the administrative office of the courts, and associations of cities and counties. The oversight committee shall consider qualifications that provide the training and education necessary to (a) conduct presentencing and postsentencing

background investigations, including sentencing recommendations to the court regarding jail terms, alternatives to incarceration, and conditions of release; and (b) provide ongoing supervision and assessment of offenders' needs and the risk they pose to the community.

(3) It shall be the responsibility of the probation services office to implement local procedures approved by the court of limited jurisdiction to ensure collection and payment of such fees into the general fund of the city or county treasury.

(4) Revenues raised under this section shall be used to fund programs for probation services and shall be in addition to those funds provided in RCW 3.62.050.

(5) Assessments and fees levied upon a probationer under this section must be suspended while the probationer is being supervised by another state under RCW 9.94A.745, the interstate compact for adult offender supervision. [2005 c 400 § 7; 2005 c 282 § 22; 1996 c 298 § 6; 1991 c 247 § 3; 1982 c 207 § 4.]

**Reviser's note:** This section was amended by 2005 c 282 § 22 and by 2005 c 400 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Application—Effective date—2005 c 400:** See notes following RCW 9.94A.74504.

**10.64.140 Loss of voting rights—Acknowledgment.** (*Effective January 1, 2006.*) When a person is convicted of a felony, the court shall require the defendant to sign a statement acknowledging that:

(1) The defendant's right to vote has been lost due to the felony conviction;

(2) If the defendant is registered to vote, the voter registration will be canceled;

(3) The right to vote may be restored by:

(a) A certificate of discharge issued by the sentencing court, as provided in RCW 9.94A.637;

(b) A court order issued by the sentencing court restoring the right, as provided in RCW 9.92.066;

(c) A final order of discharge issued by the indeterminate sentence review board, as provided in RCW 9.96.050; or

(d) A certificate of restoration issued by the governor, as provided in RCW 9.96.020; and

(4) Voting before the right is restored is a class C felony under RCW 29A.84.660. [2005 c 246 § 1.]

**Effective date—2005 c 246:** "This act takes effect January 1, 2006." [2005 c 246 § 26.]

## Chapter 10.73 RCW CRIMINAL APPEALS

### Sections

10.73.170 DNA testing requests.

**10.73.170 DNA testing requests.** (1) A person convicted of a felony in a Washington state court who currently is serving a term of imprisonment may submit to the court that entered the judgment of conviction a verified written motion requesting DNA testing, with a copy of the motion provided to the state office of public defense.

(2) The motion shall:

(a) State that:

(i) The court ruled that DNA testing did not meet acceptable scientific standards; or

(ii) DNA testing technology was not sufficiently developed to test the DNA evidence in the case; or

(iii) The DNA testing now requested would be significantly more accurate than prior DNA testing or would provide significant new information;

(b) Explain why DNA evidence is material to the identity of the perpetrator of, or accomplice to, the crime, or to sentence enhancement; and

(c) Comply with all other procedural requirements established by court rule.

(3) The court shall grant a motion requesting DNA testing under this section if such motion is in the form required by subsection (2) of this section, and the convicted person has shown the likelihood that the DNA evidence would demonstrate innocence on a more probable than not basis.

(4) Upon written request to the court that entered a judgment of conviction, a convicted person who demonstrates that he or she is indigent under RCW 10.101.010 may request appointment of counsel solely to prepare and present a motion under this section, and the court, in its discretion, may grant the request. Such motion for appointment of counsel shall comply with all procedural requirements established by court rule.

(5) DNA testing ordered under this section shall be performed by the Washington state patrol crime laboratory. Contact with victims shall be handled through victim/witness divisions.

(6) Notwithstanding any other provision of law, upon motion of defense counsel or the court's own motion, a sentencing court in a felony case may order the preservation of any biological material that has been secured in connection with a criminal case, or evidence samples sufficient for testing, in accordance with any court rule adopted for the preservation of evidence. The court must specify the samples to be maintained and the length of time the samples must be preserved. [2005 c 5 § 1; 2003 c 100 § 1; 2001 c 301 § 1; 2000 c 92 § 1.]

**Effective date—2005 c 5:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 9, 2005]." [2005 c 5 § 2.]

**Construction—2001 c 301:** "Nothing in this act may be construed to create a new or additional cause of action in any court. Nothing in this act shall be construed to limit any rights offenders might otherwise have to court access under any other statutory or constitutional provision." [2001 c 301 § 2.]

**Report on DNA testing—2000 c 92:** "By December 1, 2001, the office of public defense shall prepare a report detailing the following: (1) The number of postconviction DNA test requests approved by the respective prosecutor; (2) the number of postconviction DNA test requests denied by the respective prosecutor and a summary of the basis for the denials; (3) the number of appeals for postconviction DNA testing approved by the attorney general's office; (4) the number of appeals for postconviction DNA testing denied by the attorney general's office and a summary of the basis for the denials; and (5) a summary of the results of the postconviction DNA tests conducted pursuant to RCW 10.73.170 (2) and (3). The report shall also provide an estimate of the number of persons convicted of crimes where DNA evidence was not admitted because the court ruled DNA testing did not meet acceptable scientific standards or where DNA testing technology was not sufficiently developed to test the DNA evidence in the case." [2000 c 92 § 2.]

**Intent—2000 c 92:** "Nothing in chapter 92, Laws of 2000 is intended to create a legal right or cause of action. Nothing in chapter 92, Laws of

2000 is intended to deny or alter any existing legal right or cause of action. Nothing in chapter 92, Laws of 2000 should be interpreted to deny postconviction DNA testing requests under existing law by convicted and incarcerated persons who were sentenced to confinement for a term less than life or the death penalty." [2000 c 92 § 4.]

### Chapter 10.77 RCW

#### CRIMINALLY INSANE—PROCEDURES

##### Sections

10.77.010 Definitions.

##### **10.77.010 Definitions.** As used in this chapter:

(1) "Admission" means acceptance based on medical necessity, of a person as a patient.

(2) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less-restrictive setting.

(3) "Conditional release" means modification of a court-ordered commitment, which may be revoked upon violation of any of its terms.

(4) A "criminally insane" person means any person who has been acquitted of a crime charged by reason of insanity, and thereupon found to be a substantial danger to other persons or to present a substantial likelihood of committing criminal acts jeopardizing public safety or security unless kept under further control by the court or other persons or institutions.

(5) "Department" means the state department of social and health services.

(6) "Designated mental health professional" has the same meaning as provided in RCW 71.05.020.

(7) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter, pending evaluation.

(8) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist or psychologist, or a social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary.

(9) "Developmental disability" means the condition as defined in RCW 71A.10.020(3).

(10) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order.

(11) "Furlough" means an authorized leave of absence for a resident of a state institution operated by the department designated for the custody, care, and treatment of the criminally insane, consistent with an order of conditional release from the court under this chapter, without any requirement that the resident be accompanied by, or be in the custody of, any law enforcement or institutional staff, while on such unescorted leave.

(12) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and in raising their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and ther-

apy. The habilitative process shall be undertaken with recognition of the risk to the public safety presented by the person being assisted as manifested by prior charged criminal conduct.

(13) "History of one or more violent acts" means violent acts committed during: (a) The ten-year period of time prior to the filing of criminal charges; plus (b) the amount of time equal to time spent during the ten-year period in a mental health facility or in confinement as a result of a criminal conviction.

(14) "Incompetency" means a person lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect.

(15) "Indigent" means any person who is financially unable to obtain counsel or other necessary expert or professional services without causing substantial hardship to the person or his or her family.

(16) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for an individual with developmental disabilities, which shall state:

(a) The nature of the person's specific problems, prior charged criminal behavior, and habilitation needs;

(b) The conditions and strategies necessary to achieve the purposes of habilitation;

(c) The intermediate and long-range goals of the habilitation program, with a projected timetable for the attainment;

(d) The rationale for using this plan of habilitation to achieve those intermediate and long-range goals;

(e) The staff responsible for carrying out the plan;

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual release, and a projected possible date for release; and

(g) The type of residence immediately anticipated for the person and possible future types of residences.

(17) "Professional person" means:

(a) A psychiatrist licensed as a physician and surgeon in this state who has, in addition, completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology or the American osteopathic board of neurology and psychiatry;

(b) A psychologist licensed as a psychologist pursuant to chapter 18.83 RCW; or

(c) A social worker with a master's or further advanced degree from an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary.

(18) "Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify persons who are receiving or who at any time have received services for mental illness.

(19) "Release" means legal termination of the court-ordered commitment under the provisions of this chapter.

(20) "Secretary" means the secretary of the department of social and health services or his or her designee.

(21) "Treatment" means any currently standardized medical or mental health procedure including medication.

(22) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others.

(23) "Violent act" means behavior that: (a)(i) Resulted in; (ii) if completed as intended would have resulted in; or (iii) was threatened to be carried out by a person who had the intent and opportunity to carry out the threat and would have resulted in, homicide, nonfatal injuries, or substantial damage to property; or (b) recklessly creates an immediate risk of serious physical injury to another person. As used in this subsection, "nonfatal injuries" means physical pain or injury, illness, or an impairment of physical condition. "Nonfatal injuries" shall be construed to be consistent with the definition of "bodily injury," as defined in RCW 9A.04.110. [2005 c 504 § 106; 2004 c 157 § 2; 2000 c 94 § 12. Prior: 1999 c 143 § 49; 1999 c 13 § 2; 1998 c 297 § 29; 1993 c 31 § 4; 1989 c 420 § 3; 1983 c 122 § 1; 1974 ex.s. c 198 § 1; 1973 1st ex.s. c 117 § 1.]

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

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

**Findings—Intent—2004 c 157:** "The legislature finds that recent state and federal case law requires clarification of state statutes with regard to competency evaluations and involuntary medication ordered in the context of competency restoration.

The legislature finds that the court in *Born v. Thompson*, 117 Wn. App. 57 (2003) interpreted the term "nonfatal injuries" in a manner that conflicts with the stated intent of the legislature to: "(1) Clarify that it is the nature of a person's current conduct, current mental condition, history, and likelihood of committing future acts that pose a threat to public safety or himself or herself, rather than simple categorization of offenses, that should determine treatment procedures and level; ... and (3) provide additional opportunities for mental health treatment for persons whose conduct threatens himself or herself or threatens public safety and has led to contact with the criminal justice system" as stated in section 1, chapter 297, Laws of 1998. Consequently, the legislature intends to clarify that it intended "nonfatal injuries" to be interpreted in a manner consistent with the purposes of the competency restoration statutes.

The legislature also finds that the decision in *Sell v. United States*, \_\_\_ U.S. \_\_\_ (2003), requires a determination whether a particular criminal offense is "serious" in the context of competency restoration and the state's duty to protect the public. The legislature further finds that, in order to adequately protect the public and in order to provide additional opportunities for mental health treatment for persons whose conduct threatens themselves or threatens public safety and has led to contact with the criminal justice system in the state, the determination of those criminal offenses that are "serious" offenses must be made consistently throughout the state. In order to facilitate this consistency, the legislature intends to determine those offenses that are serious in every case as well as the standards by which other offenses may be determined to be serious. The legislature also intends to clarify that a court may, to the extent permitted by federal law and required by the *Sell* decision, inquire into the civil commitment status of a defendant and may be told, if known." [2004 c 157 § 1.]

**Severability—2004 c 157:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 157 § 7.]

**Effective date—2004 c 157:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 26, 2004]." [2004 c 157 § 8.]

**Purpose—Construction—1999 c 13:** "The purpose of this act is to make technical nonsubstantive changes to chapters 10.77 and 71.05 RCW. No provision of this act shall be construed as a substantive change in the provisions dealing with persons charged with crimes who are subject to evaluation under chapter 10.77 or 71.05 RCW." [1999 c 13 § 1.]

**Alphabetization of section—1998 c 297 § 29:** "The code reviser shall alphabetize the definitions in RCW 10.77.010 and correct any references." [1998 c 297 § 51.]

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

## Chapter 10.97 RCW

### WASHINGTON STATE CRIMINAL RECORDS PRIVACY ACT

#### Sections

10.97.050	Restricted, unrestricted information—Records.
10.97.080	Inspection of information by subject—Challenges and corrections. ( <i>Effective July 1, 2006.</i> )
10.97.140	Construction. ( <i>Effective July 1, 2006.</i> )

**10.97.050 Restricted, unrestricted information—Records.** (1) Conviction records may be disseminated without restriction.

(2) Any criminal history record information which pertains to an incident that occurred within the last twelve months for which a person is currently being processed by the criminal justice system, including the entire period of correctional supervision extending through final discharge from parole, when applicable, may be disseminated without restriction with the exception of a record being disseminated in response to a request for a conviction record under RCW 43.43.832. A request for a conviction record under RCW 43.43.832 shall not contain information for a person who, within the last twelve months, is currently being processed by the criminal justice system unless it pertains to information relating to a crime against a person as defined in RCW 9.94A.411.

(3) Criminal history record information which includes nonconviction data may be disseminated by a criminal justice agency to another criminal justice agency for any purpose associated with the administration of criminal justice, or in connection with the employment of the subject of the record by a criminal justice or juvenile justice agency. A criminal justice agency may respond to any inquiry from another criminal justice agency without any obligation to ascertain the purpose for which the information is to be used by the agency making the inquiry.

(4) Criminal history record information which includes nonconviction data may be disseminated by a criminal justice agency to implement a statute, ordinance, executive order, or a court rule, decision, or order which expressly refers to records of arrest, charges, or allegations of criminal conduct or other nonconviction data and authorizes or directs that it be available or accessible for a specific purpose.

(5) Criminal history record information which includes nonconviction data may be disseminated to individuals and agencies pursuant to a contract with a criminal justice agency to provide services related to the administration of criminal

justice. Such contract must specifically authorize access to criminal history record information, but need not specifically state that access to nonconviction data is included. The agreement must limit the use of the criminal history record information to stated purposes and insure the confidentiality and security of the information consistent with state law and any applicable federal statutes and regulations.

(6) Criminal history record information which includes nonconviction data may be disseminated to individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency. Such agreement must authorize the access to nonconviction data, limit the use of that information which identifies specific individuals to research, evaluative, or statistical purposes, and contain provisions giving notice to the person or organization to which the records are disseminated that the use of information obtained therefrom and further dissemination of such information are subject to the provisions of this chapter and applicable federal statutes and regulations, which shall be cited with express reference to the penalties provided for a violation thereof.

(7) Every criminal justice agency that maintains and disseminates criminal history record information must maintain information pertaining to every dissemination of criminal history record information except a dissemination to the effect that the agency has no record concerning an individual. Information pertaining to disseminations shall include:

- (a) An indication of to whom (agency or person) criminal history record information was disseminated;
- (b) The date on which the information was disseminated;
- (c) The individual to whom the information relates; and
- (d) A brief description of the information disseminated.

The information pertaining to dissemination required to be maintained shall be retained for a period of not less than one year.

(8) In addition to the other provisions in this section allowing dissemination of criminal history record information, RCW 4.24.550 governs dissemination of information concerning offenders who commit sex offenses as defined by RCW 9.94A.030. Criminal justice agencies, their employees, and officials shall be immune from civil liability for dissemination on criminal history record information concerning sex offenders as provided in RCW 4.24.550. [2005 c 421 § 9; 1990 c 3 § 129; 1977 ex.s. c 314 § 5.]

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

**10.97.080 Inspection of information by subject—Challenges and corrections. (Effective July 1, 2006.)** All criminal justice agencies shall permit an individual who is, or who believes that he may be, the subject of a criminal record maintained by that agency, to appear in person during normal business hours of that criminal justice agency and request to see the criminal history record information held by that agency pertaining to the individual. The individual's right to access and review of criminal history record information shall not extend to data contained in intelligence, investigative, or other related files, and shall not be construed to include any information other than that defined as criminal history record information by this chapter.

[2005 RCW Supp—page 84]

Every criminal justice agency shall adopt rules and make available forms to facilitate the inspection and review of criminal history record information by the subjects thereof, which rules may include requirements for identification, the establishment of reasonable periods of time to be allowed an individual to examine the record, and for assistance by an individual's counsel, interpreter, or other appropriate persons.

No person shall be allowed to retain or mechanically reproduce any nonconviction data except for the purpose of challenge or correction when the person who is the subject of the record asserts the belief in writing that the information regarding such person is inaccurate or incomplete. The provisions of chapter 42.56 RCW shall not be construed to require or authorize copying of nonconviction data for any other purpose.

The Washington state patrol shall establish rules for the challenge of records which an individual declares to be inaccurate or incomplete, and for the resolution of any disputes between individuals and criminal justice agencies pertaining to the accuracy and completeness of criminal history record information. The Washington state patrol shall also adopt rules for the correction of criminal history record information and the dissemination of corrected information to agencies and persons to whom inaccurate or incomplete information was previously disseminated. Such rules may establish time limitations of not less than ninety days upon the requirement for disseminating corrected information. [2005 c 274 § 206; 1979 ex.s. c 36 § 3; 1977 ex.s. c 314 § 8.]

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

**10.97.140 Construction. (Effective July 1, 2006.)** Nothing in RCW 40.14.060 or 40.14.070 or chapter 42.56 RCW precludes dissemination of criminal history record information, including nonconviction data, for the purposes of this chapter. [2005 c 274 § 207; 1999 c 326 § 4.]

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

## Chapter 10.98 RCW

### CRIMINAL JUSTICE INFORMATION ACT

#### Sections

10.98.080	State identification number, furnishing of.
10.98.100	Compliance audit.
10.98.160	Procedures, development considerations—Washington integrated justice information board, review and recommendations.
10.98.200	Findings—Intent. (Effective July 1, 2006.)

**10.98.080 State identification number, furnishing of.** The section shall promptly furnish a state identification number to the originating agency and to the prosecuting attorney who received a copy of the arrest and fingerprint form. In the case of juvenile felony-like adjudications, the section shall furnish, upon request, the state identification number to the juvenile information section of the administrative office of the courts. [2005 c 282 § 23; 1985 c 201 § 3; 1984 c 17 § 8.]

**10.98.100 Compliance audit.** The section shall administer a compliance audit at least once annually for each prosecuting attorney, district and municipal court, and originating



agency to ensure that all disposition reports have been received and added to the criminal offender record information described in RCW 43.43.705. The section shall prepare listings of all arrests charged and listed in the criminal offender record information for which no disposition report has been received and which has been outstanding for more than nine months since the date of arrest. Each prosecuting attorney, district and municipal court, and originating agency shall be furnished a list of outstanding disposition reports. Cases pending prosecution shall be considered outstanding dispositions in the compliance audit. Within forty-five days, the prosecuting attorney, district and municipal court, and originating agency shall provide the section with a current disposition report for each outstanding disposition. The section shall assist prosecuting attorneys with the compliance audit by cross-checking outstanding cases with the administrative office of the courts and the department of corrections. The section may provide technical assistance to prosecuting attorneys, district or municipal courts, or originating agencies for their compliance audits. The results of compliance audits shall be published annually and distributed to legislative committees dealing with criminal justice issues, the office of financial management, and criminal justice agencies and associations. [2005 c 282 § 24; 1985 c 201 § 5; 1984 c 17 § 10.]

**10.98.160 Procedures, development considerations—Washington integrated justice information board, review and recommendations.** In the development and modification of the procedures, definitions, and reporting capabilities of the section, the department, the office of financial management, and the responsible agencies and persons shall consider the needs of other criminal justice agencies such as the administrative office of the courts, local law enforcement agencies, local jails, the sentencing guidelines commission, the indeterminate sentence review board, the clemency board, prosecuting attorneys, and affected state agencies such as the office of financial management and legislative committees dealing with criminal justice issues. The Washington integrated justice information board shall review and provide recommendations to state justice agencies and the courts for development and modification of the statewide justice information network. [2005 c 282 § 25; 2003 c 104 § 2; 1999 c 143 § 53; 1987 c 462 § 5; 1984 c 17 § 16.]

**Effective dates—1987 c 462:** See note following RCW 13.04.116.

**10.98.200 Findings—Intent. (Effective July 1, 2006.)**

(1) The legislature finds that each of the state's justice agencies and the courts have developed independent information systems to address independent management and planning needs, that the state's justice information system is fragmented, and that access to complete, accurate, and timely justice information is difficult and inefficient.

(2) The legislature declares that the purpose of chapter 104, Laws of 2003 is to develop and maintain, in a cost-effective manner, a statewide network of criminal justice information that enables sharing and integrated delivery of justice information maintained in the state's independent information systems and that will:

- (a) Maximize standardization of data and communications technology among law enforcement agencies, jails, prosecuting attorneys, the courts, corrections, and licensing;
- (b) Reduce redundant data collection and input efforts;
- (c) Reduce or eliminate paper-based information exchanges;
- (d) Improve work flow within the criminal justice system;
- (e) Provide complete, accurate, and timely information to criminal justice agencies and courts in a single computer session; and
- (f) Maintain security and privacy rights respecting criminal justice information.

(3) Statewide coordination of criminal justice information will improve:

(a) The safety of the public and the safety of law enforcement officers and other public servants, by making more complete, accurate, and timely information concerning offenders available to all criminal justice agencies and courts;

(b) Decision making, by increasing the availability of statistical measures for review, evaluation, and promulgation of public policy; and

(c) Access to complete, accurate, and timely information by the public, to the extent permitted pursuant to chapters 10.97 and 42.56 RCW.

(4) The legislature encourages state and local criminal justice agencies and courts to collaborate in the development of justice information systems, as criminal justice agencies and courts collect the most complete, accurate, and timely information regarding offenders.

(5) The legislature finds that the implementation, operation, and continuing enhancement of a statewide justice information network that enables sharing and integrated delivery of information maintained in the state's independent information systems is critical to the complete, accurate, and timely performance of criminal background checks and to the effective communications between and among law enforcement, the courts, executive agencies, and political subdivisions of the state. The legislature further finds and declares that it is in the best interests of the citizens of the state and for the enhancement of public safety that the Washington integrated justice information board be created as soon as possible.

(6) The legislature finds that the intent, purpose, and goals of chapter 104, Laws of 2003 will be implemented most effectively by a board having the power, authority, and responsibility to develop, maintain, and enhance a statewide justice information network that enables sharing and integrated delivery of justice information maintained in the state's independent information systems. [2005 c 274 § 208; 2003 c 104 § 1.]

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

## Chapter 10.99 RCW

### DOMESTIC VIOLENCE—OFFICIAL RESPONSE

#### Sections

10.99.090 Policy adoption and implementation. *(Effective July 1, 2006.)*

**10.99.090 Policy adoption and implementation.** (*Effective July 1, 2006.*) (1) By December 1, 2004, the association shall develop a written model policy on domestic violence committed or allegedly committed by sworn employees of agencies. In developing the policy, the association shall convene a work group consisting of representatives from the following entities and professions:

(a) Statewide organizations representing state and local enforcement officers;

(b) A statewide organization providing training and education for agencies having the primary responsibility of serving victims of domestic violence with emergency shelter and other services; and

(c) Any other organization or profession the association determines to be appropriate.

(2) Members of the work group shall serve without compensation.

(3) The model policy shall provide due process for employees and, at a minimum, meet the following standards:

(a) Provide prehire screening procedures reasonably calculated to disclose whether an applicant for a sworn employee position:

(i) Has committed or, based on credible sources, has been accused of committing an act of domestic violence;

(ii) Is currently being investigated for an allegation of child abuse or neglect or has previously been investigated for founded allegations of child abuse or neglect; or

(iii) Is currently or has previously been subject to any order under RCW 26.44.063, this chapter, chapter 10.14 or 26.50 RCW, or any equivalent order issued by another state or tribal court;

(b) Provide for the mandatory, immediate response to acts or allegations of domestic violence committed or allegedly committed by a sworn employee of an agency;

(c) Provide to a sworn employee, upon the request of the sworn employee or when the sworn employee has been alleged to have committed an act of domestic violence, information on programs under RCW 26.50.150;

(d) Provide for the mandatory, immediate reporting by employees when an employee becomes aware of an allegation of domestic violence committed or allegedly committed by a sworn employee of the agency employing the sworn employee;

(e) Provide procedures to address reporting by an employee who is the victim of domestic violence committed or allegedly committed by a sworn employee of an agency;

(f) Provide for the mandatory, immediate self-reporting by a sworn employee to his or her employing agency when an agency in any jurisdiction has responded to a domestic violence call in which the sworn employee committed or allegedly committed an act of domestic violence;

(g) Provide for the mandatory, immediate self-reporting by a sworn employee to his or her employing agency if the employee is currently being investigated for an allegation of child abuse or neglect or has previously been investigated for founded allegations of child abuse or neglect, or is currently or has previously been subject to any order under RCW 26.44.063, this chapter, chapter 10.14 or 26.50 RCW, or any equivalent order issued by another state or tribal court;

(h) Provide for the performance of prompt separate and impartial administrative and criminal investigations of acts or

allegations of domestic violence committed or allegedly committed by a sworn employee of an agency;

(i) Provide for appropriate action to be taken during an administrative or criminal investigation of acts or allegations of domestic violence committed or allegedly committed by a sworn employee of an agency. The policy shall provide procedures to address, in a manner consistent with applicable law and the agency's ability to maintain public safety within its jurisdiction, whether to relieve the sworn employee of agency-issued weapons and other agency-issued property and whether to suspend the sworn employee's power of arrest or other police powers pending resolution of any investigation;

(j) Provide for prompt and appropriate discipline or sanctions when, after an agency investigation, it is determined that a sworn employee has committed an act of domestic violence;

(k) Provide that, when there has been an allegation of domestic violence committed or allegedly committed by a sworn employee, the agency immediately make available to the alleged victim the following information:

(i) The agency's written policy on domestic violence committed or allegedly committed by sworn employees;

(ii) Information, including but not limited to contact information, about public and private nonprofit domestic violence advocates and services; and

(iii) Information regarding relevant confidentiality policies related to the victim's information;

(l) Provide procedures for the timely response, consistent with chapters 42.56 and 10.97 RCW, to an alleged victim's inquiries into the status of the administrative investigation and the procedures the agency will follow in an investigation of domestic violence committed or allegedly committed by a sworn employee;

(m) Provide procedures requiring an agency to immediately notify the employing agency of a sworn employee when the notifying agency becomes aware of acts or allegations of domestic violence committed or allegedly committed by the sworn employee within the jurisdiction of the notifying agency; and

(n) Provide procedures for agencies to access and share domestic violence training within their jurisdiction and with other jurisdictions.

(4) By June 1, 2005, every agency shall adopt and implement a written policy on domestic violence committed or allegedly committed by sworn employees of the agency that meet the minimum standards specified in this section. In lieu of developing its own policy, the agency may adopt the model policy developed by the association under this section. In developing its own policy, or before adopting the model policy, the agency shall consult public and private nonprofit domestic violence advocates and any other organizations and professions the agency finds appropriate.

(5)(a) Except as provided in this section, not later than June 30, 2006, every sworn employee of an agency shall be trained by the agency on the agency's policy required under this section.

(b) Sworn employees hired by an agency on or after March 1, 2006, shall, within six months of beginning employment, be trained by the agency on the agency's policy required under this section.

(6)(a) By June 1, 2005, every agency shall provide a copy of its policy developed under this section to the association and shall provide a statement notifying the association of whether the agency has complied with the training required under this section. The copy and statement shall be provided in electronic format unless the agency is unable to do so. The agency shall provide the association with any revisions to the policy upon adoption.

(b) The association shall maintain a copy of each agency's policy and shall provide to the governor and legislature not later than January 1, 2006, a list of those agencies that have not developed and submitted policies and those agencies that have not stated their compliance with the training required under this section.

(c) The association shall, upon request and within its resources, provide technical assistance to agencies in developing their policies. [2005 c 274 § 209; 2004 c 18 § 3.]

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

**Findings—Intent—2004 c 18:** See note following RCW 10.99.020.

## Chapter 10.101 RCW

### INDIGENT DEFENSE SERVICES

#### Sections

10.101.005	Legislative finding.
10.101.030	Standards.
10.101.050	Appropriated funds—Application, reports.
10.101.060	Appropriated funds—Use requirements.
10.101.070	County moneys.
10.101.080	City moneys.

**10.101.005 Legislative finding.** The legislature finds that effective legal representation must be provided for indigent persons and persons who are indigent and able to contribute, consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the right to counsel attaches. [2005 c 157 § 1; 1989 c 409 § 1.]

**10.101.030 Standards.** Each county or city under this chapter shall adopt standards for the delivery of public defense services, whether those services are provided by contract, assigned counsel, or a public defender office. Standards shall include the following: Compensation of counsel, duties and responsibilities of counsel, case load limits and types of cases, responsibility for expert witness fees and other costs associated with representation, administrative expenses, support services, reports of attorney activity and vouchers, training, supervision, monitoring and evaluation of attorneys, substitution of attorneys or assignment of contracts, limitations on private practice of contract attorneys, qualifications of attorneys, disposition of client complaints, cause for termination of contract or removal of attorney, and nondiscrimination. The standards endorsed by the Washington state bar association for the provision of public defense services should serve as guidelines to local legislative authorities in adopting standards. [2005 c 157 § 2; 1989 c 409 § 4.]

**10.101.050 Appropriated funds—Application, reports.** The Washington state office of public defense shall

disburse appropriated funds to counties and cities for the purpose of improving the quality of public defense services. Counties may apply for up to their pro rata share as set forth in RCW 10.101.060 provided that counties conform to application procedures established by the office of public defense and improve the quality of services for both juveniles and adults. Cities may apply for moneys pursuant to the grant program set forth in RCW 10.101.080. In order to receive funds, each applying county or city must require that attorneys providing public defense services attend training approved by the office of public defense at least once per calendar year. Each applying county or city shall report the expenditure for all public defense services in the previous calendar year, as well as case statistics for that year, including per attorney caseloads, and shall provide a copy of each current public defense contract to the office of public defense with its application. Each individual or organization that contracts to perform public defense services for a county or city shall report to the county or city hours billed for nonpublic defense legal services in the previous calendar year, including number and types of private cases. [2005 c 157 § 3.]

#### 10.101.060 Appropriated funds—Use requirements.

(1)(a) Subject to the availability of funds appropriated for this purpose, the office of public defense shall disburse to applying counties that meet the requirements of RCW 10.101.050 designated funds under this chapter on a pro rata basis pursuant to the formula set forth in RCW 10.101.070 and shall disburse to eligible cities, funds pursuant to RCW 10.101.080. Each fiscal year for which it receives state funds under this chapter, a county or city must document to the office of public defense that it is meeting the standards for provision of indigent defense services as endorsed by the Washington state bar association or that the funds received under this chapter have been used to make appreciable demonstrable improvements in the delivery of public defense services, including the following:

(i) Adoption by ordinance of a legal representation plan that addresses the factors in RCW 10.101.030. The plan must apply to any contract or agency providing indigent defense services for the county or city;

(ii) Requiring attorneys who provide public defense services to attend training under RCW 10.101.050;

(iii) Requiring attorneys who handle the most serious cases to meet specified qualifications as set forth in the Washington state bar association endorsed standards for public defense services or participate in at least one case consultation per case with office of public defense resource attorneys who are so qualified. The most serious cases include all cases of murder in the first or second degree, persistent offender cases, and class A felonies. This subsection (1)(a)(iii) does not apply to cities receiving funds under RCW 10.101.050 through 10.101.080;

(iv) Requiring contracts to address the subject of compensation for extraordinary cases;

(v) Identifying funding specifically for the purpose of paying experts (A) for which public defense attorneys may file ex parte motions, or (B) which should be specifically designated within a public defender agency budget;

(vi) Identifying funding specifically for the purpose of paying investigators (A) for which public defense attorneys may file ex parte motions, and (B) which should be specifically designated within a public defender agency budget.

(b) The cost of providing counsel in cases where there is a conflict of interest shall not be borne by the attorney or agency who has the conflict.

(2) The office of public defense shall determine eligibility of counties and cities to receive state funds under this chapter. If a determination is made that a county or city receiving state funds under this chapter did not substantially comply with this section, the office of public defense shall notify the county or city of the failure to comply and unless the county or city contacts the office of public defense and substantially corrects the deficiencies within ninety days after the date of notice, or some other mutually agreed period of time, the county's or city's eligibility to continue receiving funds under this chapter is terminated. If an applying county or city disagrees with the determination of the office of public defense as to the county's or city's eligibility, the county or city may file an appeal with the advisory committee of the office of public defense within thirty days of the eligibility determination. The decision of the advisory committee is final. [2005 c 157 § 4.]

**10.101.070 County moneys.** The moneys shall be distributed to each county determined to be eligible to receive moneys by the office of public defense as determined under this section. Ninety percent of the funding appropriated shall be designated as "county moneys" and shall be distributed as follows:

(1) Six percent of the county moneys appropriated shall be distributed as a base allocation among the eligible counties. A county's base allocation shall be equal to this six percent divided by the total number of eligible counties.

(2) Ninety-four percent of the county moneys appropriated shall be distributed among the eligible counties as follows:

(a) Fifty percent of this amount shall be distributed on a pro rata basis to each eligible county based upon the population of the county as a percentage of the total population of all eligible counties; and

(b) Fifty percent of this amount shall be distributed on a pro rata basis to each eligible county based upon the annual number of criminal cases filed in the county superior court as a percentage of the total annual number of criminal cases filed in the superior courts of all eligible counties.

(3) Under this section:

(a) The population of the county is the most recent number determined by the office of financial management;

(b) The annual number of criminal cases filed in the county superior court is determined by the most recent annual report of the courts of Washington, as published by the office of the administrator for the courts;

(c) Distributions and eligibility for distributions in the 2005-2007 biennium shall be based on 2004 figures for the annual number of criminal cases that are filed as described under (b) of this subsection. Future distributions shall be based on the most recent figures for the annual number of criminal cases that are filed as described under (b) of this subsection. [2005 c 157 § 5.]

**10.101.080 City moneys.** The moneys under RCW 10.101.050 shall be distributed to each city determined to be eligible under this section by the office of public defense. Ten percent of the funding appropriated shall be designated as "city moneys" and distributed as follows:

(1) The office of public defense shall administer a grant program to select the cities eligible to receive city moneys. Incorporated cities may apply for grants. Applying cities must conform to the requirements of RCW 10.101.050 and 10.101.060.

(2) City moneys shall be divided among a maximum of five applying cities and shall be distributed in a timely manner to accomplish the goals of the grants.

(3) Criteria for award of grants shall be established by the office of public defense after soliciting input from the association of Washington cities. Award of the grants shall be determined by the office of public defense. [2005 c 157 § 6.]

## Title 11

### PROBATE AND TRUST LAW

#### Chapters

**11.02 General provisions.**

**11.04 Descent and distribution.**

**11.12 Wills.**

**11.28 Letters testamentary and of administration.**

**11.40 Claims against estate.**

**11.42 Settlement of creditor claims for estates passing without probate.**

**11.88 Guardianship—Appointment, qualification, removal of guardians.**

**11.94 Power of attorney.**

**11.98 Trusts.**

#### Chapter 11.02 RCW

#### GENERAL PROVISIONS

#### Sections

11.02.005 Definitions and use of terms.

**11.02.005 Definitions and use of terms.** When used in this title, unless otherwise required from the context:

(1) "Personal representative" includes executor, administrator, special administrator, and guardian or limited guardian and special representative.

(2) "Net estate" refers to the real and personal property of a decedent exclusive of homestead rights, exempt property, the family allowance and enforceable claims against, and debts of, the deceased or the estate.

(3) "Representation" refers to a method of determining distribution in which the takers are in unequal degrees of kinship with respect to the intestate, and is accomplished as follows: After first determining who, of those entitled to share in the estate, are in the nearest degree of kinship, the estate is divided into equal shares, the number of shares being the sum of the number of persons who survive the intestate who are in the nearest degree of kinship and the number of persons in the same degree of kinship who died before the intestate but who left issue surviving the intestate; each share of a deceased

person in the nearest degree shall be divided among those of the deceased person's issue who survive the intestate and have no ancestor then living who is in the line of relationship between them and the intestate, those more remote in degree taking together the share which their ancestor would have taken had he or she survived the intestate. Posthumous children are considered as living at the death of their parent.

(4) "Issue" means all the lineal descendants of an individual. An adopted individual is a lineal descendant of each of his or her adoptive parents and of all individuals with regard to which each adoptive parent is a lineal descendant.

(5) "Degree of kinship" means the degree of kinship as computed according to the rules of the civil law; that is, by counting upward from the intestate to the nearest common ancestor and then downward to the relative, the degree of kinship being the sum of these two counts.

(6) "Heirs" denotes those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the real and personal property of a decedent on the decedent's death intestate.

(7) "Real estate" includes, except as otherwise specifically provided herein, all lands, tenements, and hereditaments, and all rights thereto, and all interest therein possessed and claimed in fee simple, or for the life of a third person.

(8) "Will" means an instrument validly executed as required by RCW 11.12.020.

(9) "Codicil" means a will that modifies or partially revokes an existing earlier will. A codicil need not refer to or be attached to the earlier will.

(10) "Guardian" or "limited guardian" means a personal representative of the person or estate of an incompetent or disabled person as defined in RCW 11.88.010 and the term may be used in lieu of "personal representative" wherever required by context.

(11) "Administrator" means a personal representative of the estate of a decedent and the term may be used in lieu of "personal representative" wherever required by context.

(12) "Executor" means a personal representative of the estate of a decedent appointed by will and the term may be used in lieu of "personal representative" wherever required by context.

(13) "Special administrator" means a personal representative of the estate of a decedent appointed for limited purposes and the term may be used in lieu of "personal representative" wherever required by context.

(14) "Trustee" means an original, added, or successor trustee and includes the state, or any agency thereof, when it is acting as the trustee of a trust to which chapter 11.98 RCW applies.

(15) "Nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under a written instrument or arrangement other than the person's will. "Nonprobate asset" includes, but is not limited to, a right or interest passing under a joint tenancy with right of survivorship, joint bank account with right of survivorship, payable on death or trust bank account, transfer on death security or security account, deed or conveyance if possession has been postponed until the death of the person, trust of which the person is grantor and that becomes effective or irrevocable only upon the person's death, community property agreement, individual retirement

account or bond, or note or other contract the payment or performance of which is affected by the death of the person. "Nonprobate asset" does not include: A payable-on-death provision of a life insurance policy, annuity, or other similar contract, or of an employee benefit plan; a right or interest passing by descent and distribution under chapter 11.04 RCW; a right or interest if, before death, the person has irrevocably transferred the right or interest, the person has waived the power to transfer it or, in the case of contractual arrangement, the person has waived the unilateral right to rescind or modify the arrangement; or a right or interest held by the person solely in a fiduciary capacity. For the definition of "nonprobate asset" relating to revocation of a provision for a former spouse upon dissolution of marriage or declaration of invalidity of marriage, RCW 11.07.010(5) applies. For the definition of "nonprobate asset" relating to revocation of a provision for a former spouse upon dissolution of marriage or declaration of invalidity of marriage, see RCW 11.07.010(5). For the definition of "nonprobate asset" relating to testamentary disposition of nonprobate assets, see RCW 11.11.010(7).

(16) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended or renumbered as of January 1, 2001.

(17) References to "section 2033A" of the Internal Revenue Code in wills, trust agreements, powers of appointment, beneficiary designations, and other instruments governed by or subject to this title shall be deemed to refer to the comparable or corresponding provisions of section 2057 of the Internal Revenue Code, as added by section 6006(b) of the Internal Revenue Service Restructuring Act of 1998 (H.R. 2676, P.L. 105-206); and references to the section 2033A "exclusion" shall be deemed to mean the section 2057 deduction.

Words that import the singular number may also be applied to the plural of persons and things.

Words importing the masculine gender only may be extended to females also. [2005 c 97 § 1; 2001 c 320 § 1; 2000 c 130 § 1; 1999 c 358 § 20; 1998 c 292 § 117; 1997 c 252 § 1; 1994 c 221 § 1; 1993 c 73 § 1; 1985 c 30 § 4. Prior: 1984 c 149 § 4; 1977 ex.s. c 80 § 14; 1975-'76 2nd ex.s. c 42 § 23; 1965 c 145 § 11.02.005. Former RCW sections: Subd. (3), RCW 11.04.110; subd. (4), RCW 11.04.010; subd. (5), RCW 11.04.100; subd. (6), RCW 11.04.280; subd. (7), RCW 11.04.010; subd. (8) and (9), RCW 11.12.240; subd. (14) and (15), RCW 11.02.040.]

**Effective date—2001 c 320:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 320 § 22.]

**Application—2000 c 130:** "Section 1 of this act applies to decedents dying after December 31, 1997." [2000 c 130 § 2.]

**Effective date—1999 c 358 §§ 1 and 3-21:** See note following RCW 82.04.3651.

**Part headings and section captions not law—Effective dates—1998 c 292:** See RCW 11.11.902 and 11.11.903.

**Application—1997 c 252:** "Sections 1 through 72, chapter 252, Laws of 1997 apply to estates of decedents dying after December 31, 1997. Sections 81 through 86, chapter 252, Laws of 1997 apply to all estates, trusts, and governing instruments in existence on or at any time after March 7, 1984, and to all proceedings with respect thereto after March 7, 1984, whether the proceedings commenced before or after March 7, 1984, and including distributions made after March 7, 1984. Sections 81 through 86,

chapter 252, Laws of 1997 do not apply to any governing instrument, the terms of which expressly or by necessary implication make the application of sections 81 through 86, chapter 252, Laws of 1997 inapplicable. The judicial and nonjudicial dispute resolution procedures of chapter 11.96 RCW apply to sections 81 through 86, chapter 252, Laws of 1997." [1998 c 292 § 205; 1997 c 252 § 89.]

**Effective dates—1994 c 221:** See note following RCW 11.94.070.

**Short title—Application—Purpose—Severability—1985 c 30:** See RCW 11.02.900 through 11.02.903.

**Severability—1984 c 149:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 149 § 181.]

**Effective dates—1984 c 149:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 7, 1984], except sections 1 through 98, 100 through 138, and 147 through 178 of this act which shall take effect January 1, 1985." [1984 c 149 § 180.]

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

*Effect of decree of adoption:* RCW 26.33.260.

*Kindred of the half blood:* RCW 11.04.035.

### Chapter 11.04 RCW

#### DESCENT AND DISTRIBUTION

##### Sections

11.04.270 Repealed.

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

### Chapter 11.12 RCW

#### WILLS

##### Sections

11.12.110 Death of grandparent's issue before grantor.

**11.12.110 Death of grandparent's issue before grantor.** Unless otherwise provided, when any property shall be given under a will, or under a trust of which the decedent is a grantor and which by its terms becomes irrevocable upon or before the grantor's death, to any issue of a grandparent of the decedent and that issue dies before the decedent, or dies before that issue's interest is no longer subject to a contingency, leaving descendants who survive the decedent, those descendants shall take that property as the predeceased issue would have done if the predeceased issue had survived the decedent. If those descendants are all in the same degree of kinship to the predeceased issue they shall take equally or, if of unequal degree, then those of more remote degree shall take by representation with respect to the predeceased issue. [2005 c 97 § 2; 1994 c 221 § 14; 1965 c 145 § 11.12.110. Prior: 1947 c 44 § 1; 1917 c 156 § 34; Rem. Supp. 1947 § 1404; prior: Code 1881 § 1327; 1863 p 208 § 62; 1860 p 171 § 29.]

**Effective dates—1994 c 221:** See note following RCW 11.94.070.

*When beneficiary with disclaimed interest deemed to have died:* RCW 11.86.041.

[2005 RCW Supp—page 90]

### Chapter 11.28 RCW

#### LETTERS TESTAMENTARY AND OF ADMINISTRATION

##### Sections

11.28.170 Oath of personal representative.

**11.28.170 Oath of personal representative.** Before letters testamentary or of administration are issued, each personal representative or an officer of a bank or trust company qualified to act as a personal representative, must take and subscribe an oath, before some person authorized to administer oaths, that the duties of the trust as personal representative will be performed according to law, which oath must be filed in the cause. [2005 c 97 § 3; 1965 c 145 § 11.28.170. Prior: 1917 c 156 § 66; RRS § 1436; prior: Code 1881 § 1393; 1877 p 211 § 4; 1873 p 329 § 366.]

### Chapter 11.40 RCW

#### CLAIMS AGAINST ESTATE

##### Sections

11.40.020 Notice to creditors—Manner—Filings—Publication.

11.40.030 Notice to creditors—Form.

11.40.051 Claims against decedent—Time limits.

11.40.070 Claims—Form—Manner of presentation—Waiver of defects.

**11.40.020 Notice to creditors—Manner—Filings—Publication.** (1) Subject to subsection (2) of this section, a personal representative may give notice to the creditors of the decedent, in substantially the form set forth in RCW 11.40.030, announcing the personal representative's appointment and requiring that persons having claims against the decedent present their claims within the time specified in RCW 11.40.051 or be forever barred as to claims against the decedent's probate and nonprobate assets. If notice is given:

(a) The personal representative shall file the notice with the court;

(b) The personal representative shall cause the notice to be published once each week for three successive weeks in a legal newspaper in the county in which the estate is being administered;

(c) The personal representative may, at any time during the probate proceeding, give actual notice to creditors who become known to the personal representative by serving the notice on the creditor or mailing the notice to the creditor at the creditor's last known address, by regular first class mail, postage prepaid; and

(d) The personal representative shall also mail a copy of the notice, including the decedent's social security number, to the state of Washington department of social and health services office of financial recovery.

The personal representative shall file with the court proof by affidavit of the giving and publication of the notice.

(2) If the decedent was a resident of the state of Washington at the time of death and probate proceedings are commenced in a county other than the county of the decedent's residence, then instead of the requirements under subsection (1)(a) and (b) of this section, the personal representative shall cause the notice to creditors in substantially the form set forth in RCW 11.40.030 to be published once each week for three successive weeks in a legal newspaper in the county of the

decedent's residence and shall file the notice with the superior court of the county in which the probate proceedings were commenced. [2005 c 97 § 4; 1999 c 42 § 601; 1997 c 252 § 8; 1974 ex.s. c 117 § 34; 1965 c 145 § 11.40.020. Prior: 1917 c 156 § 108; RRS § 1478; prior: 1883 p 29 § 1; Code 1881 § 1468.]

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

**Application—1997 c 252 §§ 1-73:** See note following RCW 11.02.005.

**Application, construction—Severability—Effective date—1974 ex.s. c 117:** See RCW 11.02.080 and notes following.

**11.40.030 Notice to creditors—Form.** Notice under RCW 11.40.020 must contain the following elements in substantially the following form:

CAPTION ) No.  
OF CASE ) PROBATE NOTICE TO  
) CREDITORS  
..... ) RCW 11.40.030

The personal representative named below has been appointed as personal representative of this estate. Any person having a claim against the decedent must, before the time the claim would be barred by any otherwise applicable statute of limitations, present the claim in the manner as provided in RCW 11.40.070 by serving on or mailing to the personal representative or the personal representative's attorney at the address stated below a copy of the claim and filing the original of the claim with the court in which the probate proceedings were commenced. The claim must be presented within the later of: (1) Thirty days after the personal representative served or mailed the notice to the creditor as provided under RCW 11.40.020(1)(c); or (2) four months after the date of first publication of the notice. If the claim is not presented within this time frame, the claim is forever barred, except as otherwise provided in RCW 11.40.051 and 11.40.060. This bar is effective as to claims against both the decedent's probate and nonprobate assets.

Date of First  
Publication:

Personal Representative:

Attorney for the Personal Representative:  
Address for Mailing or Service:  
Court of probate proceedings and cause number:

[2005 c 97 § 5; 1997 c 252 § 9; 1989 c 333 § 7; 1977 ex.s. c 234 § 8; 1974 ex.s. c 117 § 35; 1965 c 145 § 11.40.030. Prior: 1963 c 43 § 1; 1917 c 156 § 109; RRS § 1479; prior: Code 1881 § 1469; 1873 p 285 § 156; 1854 p 281 § 82.]

**Rules of court:** *SPR 98.08W, 98.10W, 98.12W.*

**Application—1997 c 252 §§ 1-73:** See note following RCW 11.02.005.

**Application—Effective date—1989 c 333:** See note following RCW 11.40.010.

**Application, effective date—Severability—1977 ex.s. c 234:** See notes following RCW 11.20.020.

**Application, construction—Severability—Effective date—1974 ex.s. c 117:** See RCW 11.02.080 and notes following.

**11.40.051 Claims against decedent—Time limits.** (1) Whether or not notice is provided under RCW 11.40.020, a person having a claim against the decedent is forever barred from making a claim or commencing an action against the decedent, if the claim or action is not already barred by an otherwise applicable statute of limitations, unless the creditor presents the claim in the manner provided in RCW 11.40.070 within the following time limitations:

(a) If the personal representative provided notice under RCW 11.40.020 and the creditor was given actual notice as provided in RCW 11.40.020(1)(c), the creditor must present the claim within the later of: (i) Thirty days after the personal representative's service or mailing of notice to the creditor; and (ii) four months after the date of first publication of the notice;

(b) If the personal representative provided notice under RCW 11.40.020 and the creditor was not given actual notice as provided in RCW 11.40.020(1)(c):

(i) If the creditor was not reasonably ascertainable, as defined in RCW 11.40.040, the creditor must present the claim within four months after the date of first publication of notice;

(ii) If the creditor was reasonably ascertainable, as defined in RCW 11.40.040, the creditor must present the claim within twenty-four months after the decedent's date of death; and

(c) If notice was not provided under this chapter or chapter 11.42 RCW, the creditor must present the claim within twenty-four months after the decedent's date of death.

(2) An otherwise applicable statute of limitations applies without regard to the tolling provisions of RCW 4.16.190.

(3) This bar is effective as to claims against both the decedent's probate and nonprobate assets. [2005 c 97 § 6; 1997 c 252 § 11.]

**Application—1997 c 252 §§ 1-73:** See note following RCW 11.02.005.

**11.40.070 Claims—Form—Manner of presentation—Waiver of defects.** (1) The claimant, the claimant's attorney, or the claimant's agent shall sign the claim and include in the claim the following information:

- (a) The name and address of the claimant;
- (b) The name, address, if different from that of the claimant, and nature of authority of an agent signing the claim on behalf of the claimant;
- (c) A statement of the facts or circumstances constituting the basis of the claim;
- (d) The amount of the claim; and
- (e) If the claim is secured, unliquidated, contingent, or not yet due, the nature of the security, the nature of the uncertainty, or the date when it will become due.

Failure to describe correctly the information in (c), (d), or (e) of this subsection, if the failure is not substantially misleading, does not invalidate the claim.

(2) A claim does not need to be supported by affidavit.

(3) A claim must be presented within the time limits set forth in RCW 11.40.051 by: (a) Serving on or mailing to, by regular first class mail, the personal representative or the personal representative's attorney a copy of the signed claim; and (b) filing the original of the signed claim with the court in which probate proceedings were commenced. A claim is

deemed presented upon the later of the date of postmark or service on the personal representative, or the personal representative's attorney, and filing with the court.

(4) Notwithstanding any other provision of this chapter, if a claimant makes a written demand for payment within the time limits set forth in RCW 11.40.051, the personal representative may waive formal defects and elect to treat the demand as a claim properly filed under this chapter if: (a) The claim was due; (b) the amount paid is the amount of indebtedness over and above all payments and offsets; (c) the estate is solvent; and (d) the payment is made in good faith. Nothing in this chapter limits application of the doctrines of waiver, estoppel, or detrimental claims or any other equitable principle. [2005 c 97 § 7; 1997 c 252 § 13; 1965 c 145 § 11.40.070. Prior: 1917 c 156 § 113; RRS § 1483; prior: Code 1881 § 1473; 1854 p 281 § 85.]

**Application—1997 c 252 §§ 1-73:** See note following RCW 11.02.005.

**Chapter 11.42 RCW**

**SETTLEMENT OF CREDITOR CLAIMS FOR ESTATES PASSING WITHOUT PROBATE**

Sections

- 11.42.020 Notice to creditors—Manner—Filings—Publication.
- 11.42.030 Notice to creditors—Form.
- 11.42.070 Claims—Form—Manner of presentation—Waiver of defects.

**11.42.020 Notice to creditors—Manner—Filings—Publication.** (1) Subject to subsection (2) of this section, a notice agent may give nonprobate notice to the creditors of the decedent if:

(a) As of the date of the filing of the notice to creditors with the court, the notice agent has no knowledge of another person acting as notice agent or of the appointment of a personal representative in the decedent's estate in the state of Washington; and

(b) According to the records of the court as are available on the date of the filing of the notice to creditors, no cause number regarding the decedent has been issued to any other notice agent and no personal representative of the decedent's estate had been appointed.

(2) The notice agent must give notice to the creditors of the decedent, in substantially the form set forth in RCW 11.42.030, announcing that the notice agent has elected to give nonprobate notice to creditors and requiring that persons having claims against the decedent present their claims within the time specified in RCW 11.42.050 or be forever barred as to claims against the decedent's probate and nonprobate assets.

(a) The notice agent shall file the notice with the court.

(b) The notice agent shall cause the notice to be published once each week for three successive weeks in a legal newspaper in the notice county.

(c) The notice agent may at any time give actual notice to creditors who become known to the notice agent by serving the notice on the creditor or mailing the notice to the creditor at the creditor's last known address, by regular first class mail, postage prepaid.

(d) The notice agent shall also mail a copy of the notice, including the decedent's social security number, to the state

of Washington department of social and health services' office of financial recovery.

(e) If the decedent was a resident of the state of Washington at the time of death and the notice agent's declaration and oath were filed in a county other than the county of the decedent's residence, then instead of the requirements in (a) and (b) of this subsection, the notice agent shall cause the notice to creditors in substantially the form set forth in RCW 11.42.030 to be published once each week for three successive weeks in a legal newspaper in the county of the decedent's residence and shall file the notice with the superior court of the county in which the notice agent's declaration and oath were filed.

The notice agent shall file with the court proof by affidavit of the giving and publication of the notice. [2005 c 97 § 8; 1997 c 252 § 25; 1995 1st sp.s. c 18 § 59; 1994 c 221 § 32.]

**Application—1997 c 252 §§ 1-73:** See note following RCW 11.02.005.

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**Effective dates—1994 c 221:** See note following RCW 11.94.070.

**11.42.030 Notice to creditors—Form.** Notice under RCW 11.42.020 must contain the following elements in substantially the following form:

```

)
CAPTION ) No.
OF CASE ) NONPROBATE
) NOTICE TO CREDITORS
) RCW 11.42.030
..... )

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The notice agent named below has elected to give notice to creditors of the above-named decedent. As of the date of the filing of a copy of this notice with the court, the notice agent has no knowledge of any other person acting as notice agent or of the appointment of a personal representative of the decedent's estate in the state of Washington. According to the records of the court as are available on the date of the filing of this notice with the court, a cause number regarding the decedent has not been issued to any other notice agent and a personal representative of the decedent's estate has not been appointed.

Any person having a claim against the decedent must, before the time the claim would be barred by any otherwise applicable statute of limitations, present the claim in the manner as provided in RCW 11.42.070 by serving on or mailing to the notice agent or the notice agent's attorney at the address stated below a copy of the claim and filing the original of the claim with the court in which the notice agent's declaration and oath were filed. The claim must be presented within the later of: (1) Thirty days after the notice agent served or mailed the notice to the creditor as provided under RCW 11.42.020(2)(c); or (2) four months after the date of first publication of the notice. If the claim is not presented within this time frame, the claim is forever barred, except as otherwise provided in RCW 11.42.050 and 11.42.060. This bar is effective as to claims against both the decedent's probate and nonprobate assets.



Date of First  
Publication:

Effective dates—1994 c 221: See note following RCW 11.94.070.

The notice agent declares under penalty of perjury under the laws of the state of Washington on \_\_\_\_\_, [year], at \_\_\_\_\_ [city], \_\_\_\_\_ [state] that the foregoing is true and correct.

.....  
Signature of Notice Agent

Notice Agent:

Attorney for the Notice Agent:

Address for Mailing or Service:

Court of Notice Agent's oath and declaration and cause number:

[2005 c 97 § 9; 1997 c 252 § 26; 1994 c 221 § 33.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Effective dates—1994 c 221: See note following RCW 11.94.070.

**11.42.070 Claims—Form—Manner of presentation—Waiver of defects.** (1) The claimant, the claimant's attorney, or the claimant's agent shall sign the claim and include in the claim the following information:

- (a) The name and address of the claimant;
- (b) The name, address, if different from that of the claimant, and nature of authority of an agent signing the claim on behalf of the claimant;
- (c) A statement of the facts or circumstances constituting the basis of the claim;
- (d) The amount of the claim; and
- (e) If the claim is secured, unliquidated, contingent, or not yet due, the nature of the security, the nature of the uncertainty, or the date when it will become due.

Failure to describe correctly the information in (c), (d), or (e) of this subsection, if the failure is not substantially misleading, does not invalidate the claim.

(2) A claim does not need to be supported by affidavit.

(3) A claim must be presented within the time limits set forth in RCW 11.42.050 by: (a) Serving on or mailing to, by regular first class mail, the notice agent or the notice agent's attorney a copy of the signed claim; and (b) filing the original of the signed claim with the court in which the notice agent's declaration and oath were filed. A claim is deemed presented upon the later of the date of postmark or service on the notice agent, or the notice agent's attorney, and filing with the court.

(4) Notwithstanding any other provision of this chapter, if a claimant makes a written demand for payment within the time limits set forth in RCW 11.42.050, the notice agent may waive formal defects and elect to treat the demand as a claim properly filed under this chapter if: (a) The claim was due; (b) the amount paid was the amount of indebtedness over and above all payments and offsets; (c) the estate is solvent; and (d) the payment is made in good faith. Nothing in this chapter limits application of the doctrines of waiver, estoppel, or detrimental claims or any other equitable principle. [2005 c 97 § 10; 1997 c 252 § 30; 1994 c 221 § 37.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Chapter 11.88 RCW

GUARDIANSHIP—APPOINTMENT,  
QUALIFICATION, REMOVAL OF GUARDIANS

Sections

- 11.88.010 Authority to appoint guardians—Definitions—Venue—Nomination by principal. (Effective until January 1, 2006.)
- 11.88.010 Authority to appoint guardians—Definitions—Venue—Nomination by principal. (Effective January 1, 2006.)
- 11.88.080 Guardians nominated by will or durable power of attorney.

**11.88.010 Authority to appoint guardians—Definitions—Venue—Nomination by principal.** (Effective until January 1, 2006.) (1) The superior court of each county shall have power to appoint guardians for the persons and/or estates of incapacitated persons, and guardians for the estates of nonresidents of the state who have property in the county needing care and attention.

(a) For purposes of this chapter, a person may be deemed incapacitated as to person when the superior court determines the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety.

(b) For purposes of this chapter, a person may be deemed incapacitated as to the person's estate when the superior court determines the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs.

(c) A determination of incapacity is a legal not a medical decision, based upon a demonstration of management insufficiencies over time in the area of person or estate. Age, eccentricity, poverty, or medical diagnosis alone shall not be sufficient to justify a finding of incapacity.

(d) A person may also be determined incapacitated if he or she is under the age of majority as defined in RCW 26.28.010.

(e) For purposes of giving informed consent for health care pursuant to RCW 7.70.050 and 7.70.065, an "incompetent" person is any person who is (i) incompetent by reason of mental illness, developmental disability, senility, habitual drunkenness, excessive use of drugs, or other mental incapacity, of either managing his or her property or caring for himself or herself, or both, or (ii) incapacitated as defined in (a), (b), or (d) of this subsection.

(f) For purposes of the terms "incompetent," "disabled," or "not legally competent," as those terms are used in the Revised Code of Washington to apply to persons incapacitated under this chapter, those terms shall be interpreted to mean "incapacitated" persons for purposes of this chapter.

(2) The superior court for each county shall have power to appoint limited guardians for the persons and estates, or either thereof, of incapacitated persons, who by reason of their incapacity have need for protection and assistance, but who are capable of managing some of their personal and financial affairs. After considering all evidence presented as a result of such investigation, the court shall impose, by order, only such specific limitations and restrictions on an incapacitated person to be placed under a limited guardianship as the court finds necessary for such person's protection and assistance. A person shall not be presumed to be inca-

pacitated nor shall a person lose any legal rights or suffer any legal disabilities as the result of being placed under a limited guardianship, except as to those rights and disabilities specifically set forth in the court order establishing such a limited guardianship. In addition, the court order shall state the period of time for which it shall be applicable.

(3) Venue for petitions for guardianship or limited guardianship shall lie in the county wherein the alleged incapacitated person is domiciled, or if such person resides in a facility supported in whole or in part by local, state, or federal funding sources, in either the county where the facility is located, the county of domicile prior to residence in the supported facility, or the county where a parent or spouse of the alleged incapacitated person is domiciled.

If the alleged incapacitated person's residency has changed within one year of the filing of the petition, any interested person may move for a change of venue for any proceedings seeking the appointment of a guardian or a limited guardian under this chapter to the county of the alleged incapacitated person's last place of residence of one year or more. The motion shall be granted when it appears to the court that such venue would be in the best interests of the alleged incapacitated person and would promote more complete consideration of all relevant matters.

(4) Under RCW 11.94.010, a principal may nominate, by a durable power of attorney, the guardian or limited guardian of his or her estate or person for consideration by the court if guardianship proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

(5) Imposition of a guardianship for an incapacitated person shall not result in the loss of the right to vote unless the court determines that the person is incompetent for purposes of rationally exercising the franchise in that the individual lacks the capacity to understand the nature and effect of voting such that she or he cannot make an individual choice. The court order establishing guardianship shall specify whether or not the individual retains voting rights. [2005 c 236 § 2; 1991 c 289 § 1; 1990 c 122 § 2; 1984 c 149 § 176; 1977 ex.s. c 309 § 2; 1975 1st ex.s. c 95 § 2; 1965 c 145 § 11.88.010. Prior: 1917 c 156 § 195; RRS § 1565; prior: Code 1881 § 1604; 1873 p 314 § 299; 1855 p 15 § 1.]

**Expiration date—2005 c 236 § 2:** "Section 2 of this act expires January 1, 2006." [2005 c 236 § 4.]

**Findings—2005 c 236:** See note following RCW 11.88.010.

**Effective date—1990 c 122:** See note following RCW 11.88.005.

**Severability—Effective dates—1984 c 149:** See notes following RCW 11.02.005.

**Severability—1977 ex.s. c 309:** See note following RCW 11.88.005.

**11.88.010 Authority to appoint guardians—Definitions—Venue—Nomination by principal. (Effective January 1, 2006.)** (1) The superior court of each county shall have power to appoint guardians for the persons and/or estates of incapacitated persons, and guardians for the estates of nonresidents of the state who have property in the county needing care and attention.

(a) For purposes of this chapter, a person may be deemed incapacitated as to person when the superior court determines

the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety.

(b) For purposes of this chapter, a person may be deemed incapacitated as to the person's estate when the superior court determines the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs.

(c) A determination of incapacity is a legal not a medical decision, based upon a demonstration of management insufficiencies over time in the area of person or estate. Age, eccentricity, poverty, or medical diagnosis alone shall not be sufficient to justify a finding of incapacity.

(d) A person may also be determined incapacitated if he or she is under the age of majority as defined in RCW 26.28.010.

(e) For purposes of giving informed consent for health care pursuant to RCW 7.70.050 and 7.70.065, an "incompetent" person is any person who is (i) incompetent by reason of mental illness, developmental disability, senility, habitual drunkenness, excessive use of drugs, or other mental incapacity, of either managing his or her property or caring for himself or herself, or both, or (ii) incapacitated as defined in (a), (b), or (d) of this subsection.

(f) For purposes of the terms "incompetent," "disabled," or "not legally competent," as those terms are used in the Revised Code of Washington to apply to persons incapacitated under this chapter, those terms shall be interpreted to mean "incapacitated" persons for purposes of this chapter.

(2) The superior court for each county shall have power to appoint limited guardians for the persons and estates, or either thereof, of incapacitated persons, who by reason of their incapacity have need for protection and assistance, but who are capable of managing some of their personal and financial affairs. After considering all evidence presented as a result of such investigation, the court shall impose, by order, only such specific limitations and restrictions on an incapacitated person to be placed under a limited guardianship as the court finds necessary for such person's protection and assistance. A person shall not be presumed to be incapacitated nor shall a person lose any legal rights or suffer any legal disabilities as the result of being placed under a limited guardianship, except as to those rights and disabilities specifically set forth in the court order establishing such a limited guardianship. In addition, the court order shall state the period of time for which it shall be applicable.

(3) Venue for petitions for guardianship or limited guardianship shall lie in the county wherein the alleged incapacitated person is domiciled, or if such person resides in a facility supported in whole or in part by local, state, or federal funding sources, in either the county where the facility is located, the county of domicile prior to residence in the supported facility, or the county where a parent or spouse of the alleged incapacitated person is domiciled.

If the alleged incapacitated person's residency has changed within one year of the filing of the petition, any interested person may move for a change of venue for any proceedings seeking the appointment of a guardian or a limited guardian under this chapter to the county of the alleged incapacitated person's last place of residence of one year or more. The motion shall be granted when it appears to the

court that such venue would be in the best interests of the alleged incapacitated person and would promote more complete consideration of all relevant matters.

(4) Under RCW 11.94.010, a principal may nominate, by a durable power of attorney, the guardian or limited guardian of his or her estate or person for consideration by the court if guardianship proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

(5) Imposition of a guardianship for an incapacitated person shall not result in the loss of the right to vote unless the court determines that the person is incompetent for purposes of rationally exercising the franchise in that the individual lacks the capacity to understand the nature and effect of voting such that she or he cannot make an individual choice. The court order establishing guardianship shall specify whether or not the individual retains voting rights. When a court determines that the person is incompetent for the purpose of rationally exercising the right to vote, the court shall notify the appropriate county auditor. [2005 c 236 § 3; 2004 c 267 § 139; 1991 c 289 § 1; 1990 c 122 § 2; 1984 c 149 § 176; 1977 ex.s. c 309 § 2; 1975 1st ex.s. c 95 § 2; 1965 c 145 § 11.88.010. Prior: 1917 c 156 § 195; RRS § 1565; prior: Code 1881 § 1604; 1873 p 314 § 299; 1855 p 15 § 1.]

**Effective date—2005 c 236 § 3:** "Section 3 of this act takes effect January 1, 2006." [2005 c 236 § 5.]

**Findings—2005 c 236:** "The legislature finds that the right to vote is a fundamental liberty and that this liberty should not be confiscated without due process. When the state chooses to use guardianship proceedings as the basis for the denial of a fundamental liberty, an individual is entitled to basic procedural protections that will ensure fundamental fairness. These basic procedural protections should include clear notice and a meaningful opportunity to be heard. The legislature further finds that the state has a compelling interest in ensuring that those who cast a ballot understand the nature and effect of voting is an individual decision, and that any restriction of voting rights imposed through guardianship proceedings should be narrowly tailored to meet this compelling interest." [2005 c 236 § 1.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Effective date—1990 c 122:** See note following RCW 11.88.005.

**Severability—Effective dates—1984 c 149:** See notes following RCW 11.02.005.

**Severability—1977 ex.s. c 309:** See note following RCW 11.88.005.

**11.88.080 Guardians nominated by will or durable power of attorney.** When either parent is deceased, the surviving parent of any minor child or a sole parent of a minor child, may by last will or durable power of attorney nominate a guardian or guardians of the person, or of the estate or both, of a minor child, whether born at the time of executing the instrument or afterwards, to continue during the minority of such child or for any less time. This nomination shall be effective in the event of the death or incapacity of such parent. Every guardian of the estate of a child shall give bond in like manner and with like conditions as required by RCW 11.88.100 and 11.88.110, and he or she shall have the same powers and perform the same duties with regard to the person and estate of the minor as a guardian appointed under this chapter. The court shall confirm the parent's nomination unless the court finds, based upon evidence presented at a hearing on the matter, that the individual nominated in the surviving parent's will or durable power of attorney is not

qualified to serve. [2005 c 97 § 11; 1990 c 122 § 7; 1965 c 145 § 11.88.080. Prior: 1917 c 156 § 210; RRS § 1580; prior: Code 1881 § 1618; 1860 p 228 § 335.]

**Effective date—1990 c 122:** See note following RCW 11.88.005.

## Chapter 11.94 RCW POWER OF ATTORNEY

### Sections

11.94.010 Designation—Authority—Effect of acts done—Appointment of guardian, effect—Accounting—Reliance on instrument.

**11.94.010 Designation—Authority—Effect of acts done—Appointment of guardian, effect—Accounting—Reliance on instrument.** (1) Whenever a principal designates another as his or her attorney in fact or agent, by a power of attorney in writing, and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's disability, the authority of the attorney in fact or agent is exercisable on behalf of the principal as provided notwithstanding later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney in fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or the principal's guardian or heirs, devisees, and personal representative as if the principal were alive, competent, and not disabled. A principal may nominate, by a durable power of attorney, the guardian or limited guardian of his or her estate or person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification. If a guardian thereafter is appointed for the principal, the attorney in fact or agent, during the continuance of the appointment, shall account to the guardian rather than the principal. The guardian has the same power the principal would have had if the principal were not disabled or incompetent, to revoke, suspend or terminate all or any part of the power of attorney or agency.

(2) Persons shall place reasonable reliance on any determination of disability or incompetence as provided in the instrument that specifies the time and the circumstances under which the power of attorney document becomes effective.

(3)(a) A principal may authorize his or her attorney-in-fact to provide informed consent for health care decisions on the principal's behalf. If a principal has appointed more than one agent with authority to make mental health treatment decisions in accordance with a directive under chapter 71.32 RCW, to the extent of any conflict, the most recently appointed agent shall be treated as the principal's agent for mental health treatment decisions unless provided otherwise in either appointment.

(b) Unless he or she is the spouse, or adult child or brother or sister of the principal, none of the following persons may act as the attorney-in-fact for the principal: Any of the principal's physicians, the physicians' employees, or the owners, administrators, or employees of the health care facility or long-term care facility as defined in RCW 43.190.020 where the principal resides or receives care. Except when the principal has consented in a mental health advance directive executed under chapter 71.32 RCW to inpatient admission or electroconvulsive therapy, this authorization is subject to the same limitations as those that apply to a guardian under RCW 11.92.043(5) (a) through (c).

(4) A parent or guardian, by a properly executed power of attorney, may authorize an attorney in fact to make health care decisions on behalf of one or more of his or her children, or children for whom he or she is the legal guardian, who are under the age of majority as defined in RCW 26.28.015, to be effective if the child has no other parent or legal representative readily available and authorized to give such consent.

(5) A principal may further nominate a guardian or guardians of the person, or of the estate or both, of a minor child, whether born at the time of making the durable power of attorney or afterwards, to continue during the disability of the principal, during the minority of the child or for any less time by including such a provision in his or her power of attorney.

(6) The authority of any guardian of the person of any minor child shall supersede the authority of a designated attorney in fact to make health care decisions for the minor only after such designated guardian has been appointed by the court.

(7) In the event a conflict between the provisions of a will nominating a testamentary guardian under the authority of RCW 11.88.080 and the nomination of a guardian under the authority of this statute, the most recent designation shall control. [2005 c 97 § 12; 2003 c 283 § 27; 1995 c 297 § 9; 1989 c 211 § 1; 1985 c 30 § 25. Prior: 1984 c 149 § 26; 1974 ex.s. c 117 § 52.]

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

**Short title—Application—Purpose—Severability—1985 c 30:** See RCW 11.02.900 through 11.02.903.

**Severability—Effective dates—1984 c 149:** See notes following RCW 11.02.005.

**Application, construction—Severability—Effective date—1974 ex.s. c 117:** See RCW 11.02.080 and notes following.

## Chapter 11.98 RCW

### TRUSTS

#### Sections

11.98.039 Nonjudicial change of trustee—Judicial appointment or change of trustee—Liability and duties of successor fiduciary.

**11.98.039 Nonjudicial change of trustee—Judicial appointment or change of trustee—Liability and duties of successor fiduciary.** (1) Where a vacancy occurs in the office of the trustee and there is a successor trustee who is willing to serve as trustee and (a) is named in the governing instrument as successor trustee or (b) has been selected to

serve as successor trustee under the procedure established in the governing instrument for the selection of a successor trustee, the outgoing trustee, or any other interested party, shall give notice of such vacancy, whether arising because of the trustee's resignation or because of any other reason, and of the successor trustee's agreement to serve as trustee, to each adult distributee or permissible distributee of trust income or of trust principal or of both trust income and trust principal. If there are no such adults, no notice need be given. The successor trustee named in the governing instrument or selected pursuant to the procedure therefor established in the governing instrument shall be entitled to act as trustee except for good cause or disqualification. The successor trustee shall serve as of the effective date of the discharge of the predecessor trustee as provided in RCW 11.98.041.

(2) Where a vacancy exists or occurs in the office of the trustee and there is no successor trustee who is named in the governing instrument or who has been selected to serve as successor trustee under the procedure established in the governing instrument for the selection of a successor trustee, and who is willing to serve as trustee, then all parties with an interest in the trust may agree to a nonjudicial change of the trustee under RCW 11.96A.220. The successor trustee shall serve as of the effective date of the discharge of the predecessor trustee as provided in RCW 11.98.041 or, in circumstances where there is no predecessor trustee, as of the effective date of the trustee's appointment.

(3) When there is a desire to name one or more co-trustees to serve with the existing trustee, then all parties with an interest in the trust may agree to the nonjudicial addition of one or more co-trustees under RCW 11.96A.220. The additional co-trustee shall serve as of the effective date of the co-trustee's appointment.

(4) Unless subsection (1), (2), or (3) of this section applies, any beneficiary of a trust, the trustor, if alive, or the trustee may petition the superior court having jurisdiction for the appointment or change of a trustee or co-trustee under the procedures provided in RCW 11.96A.080 through 11.96A.200: (a) Whenever the office of trustee becomes vacant; (b) upon filing of a petition of resignation by a trustee; or (c) for any other reasonable cause.

(5) For purposes of this subsection, the term fiduciary includes both trustee and personal representative.

(a) Except as otherwise provided in the governing instrument, a successor fiduciary, absent actual knowledge of a breach of fiduciary duty: (i) Is not liable for any act or omission of a predecessor fiduciary and is not obligated to inquire into the validity or propriety of any such act or omission; (ii) is authorized to accept as conclusively accurate any accounting or statement of assets tendered to the successor fiduciary by a predecessor fiduciary; and (iii) is authorized to receipt only for assets actually delivered and has no duty to make further inquiry as to undisclosed assets of the trust or estate.

(b) Nothing in this section relieves a successor fiduciary from liability for retaining improper investments, nor does this section in any way bar the successor fiduciary, trust beneficiaries, or other party in interest from bringing an action against a predecessor fiduciary arising out of the acts or omissions of the predecessor fiduciary, nor does it relieve the successor fiduciary of liability for its own acts or omissions except as specifically stated or authorized in this section.

[2005 c 97 § 13; 1999 c 42 § 618; 1985 c 30 § 44. Prior: 1984 c 149 § 72; 1959 c 124 § 5. Formerly RCW 30.99.050.]

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

**Short title—Application—Purpose—Severability—1985 c 30:** See RCW 11.02.900 through 11.02.903.

**Severability—Effective dates—1984 c 149:** See notes following RCW 11.02.005.

## Title 12

### DISTRICT COURTS—CIVIL PROCEDURE

#### Chapters

**12.12 Trial.**

**12.40 Small claims.**

#### Chapter 12.12 RCW

##### TRIAL

#### Sections

12.12.030 Jury—Number—Qualifications—Fee.

**12.12.030 Jury—Number—Qualifications—Fee.** After the appearance of the defendant, and before the judge shall proceed to enquire into the merits of the cause, either party may demand a jury to try the action, which jury shall be composed of six good and lawful persons having the qualifications of jurors in the superior court of the same county, unless the parties shall agree upon a lesser number: PROVIDED, That the party demanding the jury shall first pay to the clerk of the court the sum of one hundred twenty-five dollars, which shall be paid over by the clerk of the court to the county, and such amount shall be taxed as costs against the losing party. [2005 c 457 § 13; 1981 c 260 § 3. Prior: 1977 ex.s. c 248 § 2; 1977 ex.s. c 53 § 2; 1888 p 118 § 1; Code 1881 § 1770; 1863 p 438 § 51; 1862 p 58 § 1; 1854 p 235 § 70; RRS § 1849.]

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

#### Chapter 12.40 RCW

##### SMALL CLAIMS

#### Sections

12.40.020 Action—Commencement—Fee.

**12.40.020 Action—Commencement—Fee.** A small claims action shall be commenced by the plaintiff filing a claim, in the form prescribed by RCW 12.40.050, in the small claims department. A filing fee of fourteen dollars plus any surcharge authorized by RCW 7.75.035 shall be paid when the claim is filed. Any party filing a counterclaim, cross-claim, or third-party claim in such action shall pay to the court a filing fee of fourteen dollars plus any surcharge authorized by RCW 7.75.035. [2005 c 457 § 14; 1990 c 172 § 3; 1984 c 258 § 58; 1919 c 187 § 2; RRS § 1777-2.]

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

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

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

## Title 13

### JUVENILE COURTS AND JUVENILE OFFENDERS

#### Chapters

**13.04 Basic juvenile court act.**

**13.34 Juvenile court act—Dependency and termination of parent-child relationship.**

**13.40 Juvenile justice act of 1977.**

**13.64 Emancipation of minors.**

**13.70 Substitute care of children—Review board system.**

#### Chapter 13.04 RCW

##### BASIC JUVENILE COURT ACT

(Formerly: Juvenile courts)

#### Sections

13.04.030 Juvenile court—Exclusive original jurisdiction—Exceptions.

**13.04.030 Juvenile court—Exclusive original jurisdiction—Exceptions.** (1) Except as provided in this section, the juvenile courts in this state shall have exclusive original jurisdiction over all proceedings:

(a) Under the interstate compact on placement of children as provided in chapter 26.34 RCW;

(b) Relating to children alleged or found to be dependent as provided in chapter 26.44 RCW and in RCW 13.34.030 through \*13.34.170;

(c) Relating to the termination of a parent and child relationship as provided in RCW 13.34.180 through 13.34.210;

(d) To approve or disapprove out-of-home placement as provided in RCW 13.32A.170;

(e) Relating to juveniles alleged or found to have committed offenses, traffic or civil infractions, or violations as provided in RCW 13.40.020 through 13.40.230, unless:

(i) The juvenile court transfers jurisdiction of a particular juvenile to adult criminal court pursuant to RCW 13.40.110;

(ii) The statute of limitations applicable to adult prosecution for the offense, traffic or civil infraction, or violation has expired;

(iii) The alleged offense or infraction is a traffic, fish, boating, or game offense, or traffic or civil infraction committed by a juvenile sixteen years of age or older and would, if committed by an adult, be tried or heard in a court of limited jurisdiction, in which instance the appropriate court of limited jurisdiction shall have jurisdiction over the alleged offense or infraction, and no guardian ad litem is required in any such proceeding due to the juvenile's age: PROVIDED, That if such an alleged offense or infraction and an alleged offense or infraction subject to juvenile court jurisdiction arise out of the same event or incident, the juvenile court may have jurisdiction of both matters: PROVIDED FURTHER, That the jurisdiction under this subsection does not constitute "transfer" or a "decline" for purposes of RCW 13.40.110(1) or (e)(i) of this subsection: PROVIDED FURTHER, That courts of limited jurisdiction which confine juveniles for an alleged offense or infraction may place juveniles in juvenile detention facilities under an agreement with the officials

responsible for the administration of the juvenile detention facility in RCW 13.04.035 and 13.20.060;

(iv) The alleged offense is a traffic or civil infraction, a violation of compulsory school attendance provisions under chapter 28A.225 RCW, or a misdemeanor, and a court of limited jurisdiction has assumed concurrent jurisdiction over those offenses as provided in \*\*RCW 13.04.0301; or

(v) The juvenile is sixteen or seventeen years old on the date the alleged offense is committed and the alleged offense is:

(A) A serious violent offense as defined in RCW 9.94A.030;

(B) A violent offense as defined in RCW 9.94A.030 and the juvenile has a criminal history consisting of: (I) One or more prior serious violent offenses; (II) two or more prior violent offenses; or (III) three or more of any combination of the following offenses: Any class A felony, any class B felony, vehicular assault, or manslaughter in the second degree, all of which must have been committed after the juvenile's thirteenth birthday and prosecuted separately;

(C) Robbery in the first degree, rape of a child in the first degree, or drive-by shooting, committed on or after July 1, 1997;

(D) Burglary in the first degree committed on or after July 1, 1997, and the juvenile has a criminal history consisting of one or more prior felony or misdemeanor offenses; or

(E) Any violent offense as defined in RCW 9.94A.030 committed on or after July 1, 1997, and the juvenile is alleged to have been armed with a firearm.

(I) In such a case the adult criminal court shall have exclusive original jurisdiction, except as provided in (e)(v)(E)(II) of this subsection.

(II) The juvenile court shall have exclusive jurisdiction over the disposition of any remaining charges in any case in which the juvenile is found not guilty in the adult criminal court of the charge or charges for which he or she was transferred, or is convicted in the adult criminal court of a lesser included offense that is not also an offense listed in (e)(v) of this subsection. The juvenile court shall enter an order extending juvenile court jurisdiction if the juvenile has turned eighteen years of age during the adult criminal court proceedings pursuant to RCW 13.40.300. However, once the case is returned to juvenile court, the court may hold a decline hearing pursuant to RCW 13.40.110 to determine whether to retain the case in juvenile court for the purpose of disposition or return the case to adult criminal court for sentencing.

If the juvenile challenges the state's determination of the juvenile's criminal history under (e)(v) of this subsection, the state may establish the offender's criminal history by a preponderance of the evidence. If the criminal history consists of adjudications entered upon a plea of guilty, the state shall not bear a burden of establishing the knowing and voluntariness of the plea;

(f) Under the interstate compact on juveniles as provided in chapter 13.24 RCW;

(g) Relating to termination of a diversion agreement under RCW 13.40.080, including a proceeding in which the divertee has attained eighteen years of age;

(h) Relating to court validation of a voluntary consent to an out-of-home placement under chapter 13.34 RCW, by the parent or Indian custodian of an Indian child, except if the

parent or Indian custodian and child are residents of or domiciled within the boundaries of a federally recognized Indian reservation over which the tribe exercises exclusive jurisdiction;

(i) Relating to petitions to compel disclosure of information filed by the department of social and health services pursuant to RCW 74.13.042; and

(j) Relating to judicial determinations and permanency planning hearings involving developmentally disabled children who have been placed in out-of-home care pursuant to a voluntary placement agreement between the child's parent, guardian, or legal custodian and the department of social and health services.

(2) The family court shall have concurrent original jurisdiction with the juvenile court over all proceedings under this section if the superior court judges of a county authorize concurrent jurisdiction as provided in RCW 26.12.010.

(3) The juvenile court shall have concurrent original jurisdiction with the family court over child custody proceedings under chapter 26.10 RCW as provided for in RCW 13.34.155.

(4) A juvenile subject to adult superior court jurisdiction under subsection (1)(e)(i) through (v) of this section, who is detained pending trial, may be detained in a detention facility as defined in RCW 13.40.020 pending sentencing or a dismissal. [2005 c 290 § 1; 2005 c 238 § 1; 2000 c 135 § 2. Prior: 1997 c 386 § 17; 1997 c 341 § 3; 1997 c 338 § 7; prior: 1995 c 312 § 39; 1995 c 311 § 15; 1994 sp.s. c 7 § 519; 1988 c 14 § 1; 1987 c 170 § 1; 1985 c 354 § 29; 1984 c 272 § 1; 1981 c 299 § 1; 1980 c 128 § 6; 1979 c 155 § 3; 1977 ex.s. c 291 § 4; 1937 c 65 § 1; 1929 c 176 § 1; 1921 c 135 § 1; 1913 c 160 § 2; RRS § 1987-2.]

**Reviser's note:** \*(1) RCW 13.34.170 was recodified as RCW 13.34.161 pursuant to 2000 c 122 § 41.

\*\*\*(2) RCW 13.04.0301 was decodified September 2003.

(3) This section was amended by 2005 c 238 § 1 and by 2005 c 290 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Application—1997 c 386:** See note following RCW 74.14D.010.

**Finding—Intent—1997 c 341:** "The legislature finds that a swift and certain response to a juvenile who begins engaging in acts of delinquency may prevent the offender from becoming a chronic or more serious offender. However, given pressing demands to address serious offenders, the system does not always respond to minor offenders expeditiously and effectively. Consequently, this act is adopted to implement an experiment to determine whether granting courts of limited jurisdiction concurrent jurisdiction over certain juvenile offenses will improve the system's effectiveness in curbing delinquency. The legislature may ascertain whether this approach might be successful on a larger scale by conducting an experiment with local governments, which are the laboratories of democracy." [1997 c 341 § 1.]

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

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

**Short title—1995 c 312:** See note following RCW 13.32A.010.

**Application of 1994 sp.s. c 7 amendments:** "Provisions governing exceptions to juvenile court jurisdiction in the amendments to RCW 13.04.030 contained in section 519, chapter 7, Laws of 1994 sp. sess. shall apply to serious violent and violent offenses committed on or after June 13, 1994. The criminal history which may result in loss of juvenile court jurisdiction upon the alleged commission of a serious violent or violent offense may have been acquired on, before, or after June 13, 1994." [1994 sp.s. c 7 § 540.]

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

**Savings—1988 c 14:** "Any court validation of a voluntary consent to relinquishment or adoption of an Indian child which was obtained in a juvenile court or superior court pursuant to chapter 26.33 RCW after July 25, 1987, and before June 9, 1988, shall be valid and effective in all respects." [1988 c 14 § 2.]

**Severability—1987 c 170:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 170 § 15.]

**Severability—Effective date—1985 c 354:** See RCW 71.34.900 and 71.34.901.

**Effective date—Severability—1980 c 128:** See notes following RCW 46.63.060.

**Effective date—Severability—1979 c 155:** See notes following RCW 13.04.011.

**Effective dates—Severability—1977 ex.s. c 291:** See notes following RCW 13.04.005.

*Court commissioners: Chapter 2.24 RCW, state Constitution Art. 4 § 23.*

*Jurisdiction of superior courts: State Constitution Art. 4 § 6 (Amendment 65).*

**Chapter 13.34 RCW**

**JUVENILE COURT ACT—DEPENDENCY AND TERMINATION OF PARENT-CHILD RELATIONSHIP**

Sections

- 13.34.050 Court order to take child into custody, when—Hearing. *(Effective January 1, 2007.)*
- 13.34.102 Guardian ad litem—Training—Registry—Selection—Substitution—Exception.
- 13.34.138 Review hearings—Findings—In-home placement requirements—Housing assistance. *(Effective January 1, 2007.)*
- 13.34.390 Comprehensive services for drug-affected and alcohol-affected mothers and infants.

**13.34.050 Court order to take child into custody, when—Hearing. *(Effective January 1, 2007.)*** (1) The court may enter an order directing a law enforcement officer, probation counselor, or child protective services official to take a child into custody if: (a) A petition is filed with the juvenile court alleging that the child is dependent and that the child's health, safety, and welfare will be seriously endangered if not taken into custody; (b) an affidavit or declaration is filed by the department in support of the petition setting forth specific factual information evidencing reasonable grounds that the child's health, safety, and welfare will be seriously endangered if not taken into custody and at least one of the grounds set forth demonstrates a risk of imminent harm to the child. "Imminent harm" for purposes of this section shall include, but not be limited to, circumstances of sexual abuse, sexual exploitation as defined in RCW 26.44.020, and a parent's failure to perform basic parental functions, obligations, and duties as the result of substance abuse; and (c) the court finds reasonable grounds to believe the child is dependent and that the child's health, safety, and welfare will be seriously endangered if not taken into custody.

(2) Any petition that does not have the necessary affidavit or declaration demonstrating a risk of imminent harm requires that the parents are provided notice and an opportunity to be heard before the order may be entered.

(3) The petition and supporting documentation must be served on the parent, and if the child is in custody at the time

the child is removed, on the entity with custody other than the parent. Failure to effect service does not invalidate the petition if service was attempted and the parent could not be found. [2005 c 512 § 9; 2000 c 122 § 3; 1998 c 328 § 1; 1979 c 155 § 38; 1977 ex.s. c 291 § 33.]

**Finding—Intent—Effective date—Short title—2005 c 512:** See notes following RCW 26.44.100.

**Effective date—Severability—1979 c 155:** See notes following RCW 13.04.011.

**Effective dates—Severability—1977 ex.s. c 291:** See notes following RCW 13.04.005.

**13.34.102 Guardian ad litem—Training—Registry—Selection—Substitution—Exception.** (1) All guardians ad litem must comply with the training requirements established under RCW 2.56.030(15), prior to their appointment in cases under Title 13 RCW, except that volunteer guardians ad litem or court-appointed special advocates may comply with alternative training requirements approved by the administrative office of the courts that meet or exceed the statewide requirements.

(2)(a) Each guardian ad litem program for compensated guardians ad litem shall establish a rotational registry system for the appointment of guardians ad litem. If a judicial district does not have a program the court shall establish the rotational registry system. Guardians ad litem shall be selected from the registry except in exceptional circumstances as determined and documented by the court. The parties may make a joint recommendation for the appointment of a guardian ad litem from the registry.

(b) In judicial districts with a population over one hundred thousand, a list of three names shall be selected from the registry and given to the parties along with the background information as specified in RCW 13.34.100(3), including their hourly rate for services. Each party may, within three judicial days, strike one name from the list. If more than one name remains on the list, the court shall make the appointment from the names on the list. In the event all three names are stricken the person whose name appears next on the registry shall be appointed.

(c) If a party reasonably believes that the appointed guardian ad litem lacks the necessary expertise for the proceeding, charges an hourly rate higher than what is reasonable for the particular proceeding, or has a conflict of interest, the party may, within three judicial days from the appointment, move for substitution of the appointed guardian ad litem by filing a motion with the court.

(d) The superior court shall remove any person from the guardian ad litem registry who misrepresents his or her qualifications pursuant to a grievance procedure established by the court.

(3) The rotational registry system shall not apply to court-appointed special advocate programs. [2005 c 282 § 26; 2000 c 124 § 3; 1997 c 41 § 6; 1996 c 249 § 17.]

**Intent—1996 c 249:** See note following RCW 2.56.030.

**13.34.138 Review hearings—Findings—In-home placement requirements—Housing assistance. *(Effective January 1, 2007.)*** (1) Except for children whose cases are reviewed by a citizen review board under chapter 13.70 RCW, the status of all children found to be dependent shall be

reviewed by the court at least every six months from the beginning date of the placement episode or the date dependency is established, whichever is first, at a hearing in which it shall be determined whether court supervision should continue. The initial review hearing shall be an in-court review and shall be set six months from the beginning date of the placement episode or no more than ninety days from the entry of the disposition order, whichever comes first. The initial review hearing may be a permanency planning hearing when necessary to meet the time frames set forth in RCW 13.34.145(3) or 13.34.134. The review shall include findings regarding the agency and parental completion of disposition plan requirements, and if necessary, revised permanency time limits. This review shall consider both the agency's and parent's efforts that demonstrate consistent measurable progress over time in meeting the disposition plan requirements. The requirements for the initial review hearing, including the in-court requirement, shall be accomplished within existing resources. The supervising agency shall provide a foster parent, preadoptive parent, or relative with notice of, and their right to an opportunity to be heard in, a review hearing pertaining to the child, but only if that person is currently providing care to that child at the time of the hearing. This section shall not be construed to grant party status to any person who has been provided an opportunity to be heard.

(a) A child shall not be returned home at the review hearing unless the court finds that a reason for removal as set forth in RCW 13.34.130 no longer exists. The parents, guardian, or legal custodian shall report to the court the efforts they have made to correct the conditions which led to removal. If a child is returned, casework supervision shall continue for a period of six months, at which time there shall be a hearing on the need for continued intervention.

(b) If the child is not returned home, the court shall establish in writing:

(i) Whether reasonable services have been provided to or offered to the parties to facilitate reunion, specifying the services provided or offered;

(ii) Whether the child has been placed in the least-restrictive setting appropriate to the child's needs, including whether consideration and preference has been given to placement with the child's relatives;

(iii) Whether there is a continuing need for placement and whether the placement is appropriate;

(iv) Whether there has been compliance with the case plan by the child, the child's parents, and the agency supervising the placement;

(v) Whether progress has been made toward correcting the problems that necessitated the child's placement in out-of-home care;

(vi) Whether the parents have visited the child and any reasons why visitation has not occurred or has been infrequent;

(vii) Whether additional services, including housing assistance, are needed to facilitate the return of the child to the child's parents; if so, the court shall order that reasonable services be offered specifying such services; and

(viii) The projected date by which the child will be returned home or other permanent plan of care will be implemented.

(c) The court at the review hearing may order that a petition seeking termination of the parent and child relationship be filed.

(2)(a) In any case in which the court orders that a dependent child may be returned to or remain in the child's home, the in-home placement shall be contingent upon the following:

(i) The compliance of the parents with court orders related to the care and supervision of the child, including compliance with an agency case plan; and

(ii) The continued participation of the parents, if applicable, in available substance abuse or mental health treatment if substance abuse or mental illness was a contributing factor to the removal of the child.

(b) The following may be grounds for removal of the child from the home, subject to review by the court:

(i) Noncompliance by the parents with the agency case plan or court order;

(ii) The parent's inability, unwillingness, or failure to participate in available services or treatment for themselves or the child, including substance abuse treatment if a parent's substance abuse was a contributing factor to the abuse or neglect; or

(iii) The failure of the parents to successfully and substantially complete available services or treatment for themselves or the child, including substance abuse treatment if a parent's substance abuse was a contributing factor to the abuse or neglect.

(3) The court's ability to order housing assistance under RCW 13.34.130 and this section is: (a) Limited to cases in which homelessness or the lack of adequate and safe housing is the primary reason for an out-of-home placement; and (b) subject to the availability of funds appropriated for this specific purpose.

(4) The court shall consider the child's relationship with siblings in accordance with RCW 13.34.130(3). [2005 c 512 § 3; 2003 c 227 § 5; 2001 c 332 § 5; 2000 c 122 § 19.]

**Finding—Intent—Effective date—Short title—2005 c 512:** See notes following RCW 26.44.100.

**Intent—2003 c 227:** See note following RCW 13.34.130.

**13.34.390 Comprehensive services for drug-affected and alcohol-affected mothers and infants.** The department of social and health services and the department of health shall develop and expand comprehensive services for drug-affected and alcohol-affected mothers and infants. Subject to funds appropriated for this purpose, the expansion shall be in evidence-based, research-based, or consensus-based practices, as those terms are defined in \*section 603 of this act, and shall expand capacity in underserved regions of the state. [2005 c 504 § 303.]

**\*Reviser's note:** Section 603 of this act was vetoed by the governor.

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

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



Chapter 13.40 RCW

JUVENILE JUSTICE ACT OF 1977

Sections

- 13.40.060 Jurisdiction of actions—Transfer of case and records, when—Change in venue, grounds.
- 13.40.167 Mental health disposition alternative.
- 13.40.300 Commitment of juvenile beyond age twenty-one prohibited—Jurisdiction of juvenile court after juvenile's eighteenth birthday.
- 13.40.430 Disparity in disposition of juvenile offenders—Data collection.
- 13.40.570 Sexual misconduct by state employees, contractors. (*Effective July 1, 2006.*)

**13.40.060 Jurisdiction of actions—Transfer of case and records, when—Change in venue, grounds.** (1) All actions under this chapter shall be commenced and tried in the county where any element of the offense was committed except as otherwise specially provided by statute. In cases in which diversion is provided by statute, venue is in the county in which the juvenile resides or in the county in which any element of the offense was committed.

(2)(a) The court upon motion of any party or upon its own motion may, at any time, transfer a proceeding to another juvenile court when there is reason to believe that an impartial proceeding cannot be held in the county in which the proceeding was begun; and

(b) A court may transfer a proceeding to another juvenile court following disposition for the purposes of supervision and enforcement of the disposition order.

(3) If the court orders a transfer of the proceeding pursuant to subsection (2)(b) of this section:

(a) The case and copies of only those legal and social documents pertaining thereto shall be transferred to the county in which the juvenile resides, without regard to whether or not his or her custodial parent resides there, for supervision and enforcement of the disposition order.

(b) If any restitution is yet to be determined, the originating court shall transfer the case to the new county with the exception of the restitution. Venue over restitution shall be retained by the originating court for purposes of establishing a restitution order. Once restitution is determined, the originating county shall then transfer venue over modification and enforcement of the restitution to the new county.

(c) The court of the receiving county may modify and enforce the disposition order, including restitution.

(d) The clerk of the originating county shall maintain the account receivable in the judicial information system and all payments shall be made to the clerk of the originating county.

(e) Any collection of the offender legal financial obligation shall be managed by the juvenile probation department of the new county while the offender is under juvenile probation supervision, or by the clerk of the original county at the conclusion of supervision by juvenile probation. The probation department of the new county shall notify the clerk of the originating county when they end supervision of the offender.

(f) In cases where a civil judgment has already been established, venue may not be transferred to another county. [2005 c 165 § 1; 1997 c 338 § 16; 1989 c 71 § 1; 1981 c 299 § 6; 1979 c 155 § 59; 1977 ex.s. c 291 § 60.]

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

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

**Effective date—1989 c 71:** "This act shall take effect September 1, 1989." [1989 c 71 § 2.]

**Effective date—Severability—1979 c 155:** See notes following RCW 13.04.011.

**Effective dates—Severability—1977 ex.s. c 291:** See notes following RCW 13.04.005.

**13.40.167 Mental health disposition alternative.** (1) When an offender is subject to a standard range disposition involving confinement by the department, the court may:

(a) Impose the standard range; or

(b) Suspend the standard range disposition on condition that the offender complies with the terms of this mental health disposition alternative.

(2) The court may impose this disposition alternative when the court finds the following:

(a) The offender has a current diagnosis, consistent with the American psychiatry association diagnostic and statistical manual of mental disorders, of axis I psychiatric disorder, excluding youth that are diagnosed as solely having a conduct disorder, oppositional defiant disorder, substance abuse disorder, paraphilia, or pedophilia;

(b) An appropriate treatment option is available in the local community;

(c) The plan for the offender identifies and addresses requirements for successful participation and completion of the treatment intervention program including: Incentives and graduated sanctions designed specifically for amenable youth, including the use of detention, detoxication, and inpatient or outpatient substance abuse treatment and psychiatric hospitalization, and structured community support consisting of mental health providers, probation, educational and vocational advocates, child welfare services, and family and community support. For any mental health treatment ordered for an offender under this section, the treatment option selected shall be chosen from among programs which have been successful in addressing mental health needs of juveniles and successful in mental health treatment of juveniles and identified as research-based best practice programs. A list of programs which meet these criteria shall be agreed upon by: The Washington association of juvenile court administrators, the juvenile rehabilitation administration of the department of social and health services, a representative of the division of public behavioral health and justice policy at the University of Washington, and the Washington institute for public policy. The list of programs shall be created not later than July 1, 2003. The group shall provide the list to all superior courts, its own membership, the legislature, and the governor. The group shall meet annually and revise the list as appropriate; and

(d) The offender, offender's family, and community will benefit from use of the mental health disposition alternative.

(3) The court on its own motion may order, or on motion by either party, shall order a comprehensive mental health evaluation to determine if the offender has a designated mental disorder. The court may also order a chemical dependency evaluation to determine if the offender also has a co-occurring chemical dependency disorder. The evaluation shall include at a minimum the following: The offender's

version of the facts and the official version of the facts, the offender's offense, an assessment of the offender's mental health and drug-alcohol problems and previous treatment attempts, and the offender's social, criminal, educational, and employment history and living situation.

(4) The evaluator shall determine if the offender is amenable to research-based treatment. A proposed case management and treatment plan shall include at a minimum:

- (a) The availability of treatment;
- (b) Anticipated length of treatment;
- (c) Whether one or more treatment interventions are proposed and the anticipated sequence of those treatment interventions;
- (d) The education plan;
- (e) The residential plan; and
- (f) The monitoring plan.

(5) The court on its own motion may order, or on motion by either party, shall order a second mental health or chemical dependency evaluation. The party making the motion shall select the evaluator. The requesting party shall pay the cost of any examination ordered under this subsection and subsection (3) of this section unless the court finds the offender is indigent and no third party insurance coverage is available, in which case the state shall pay the cost.

(6) Upon receipt of the assessments, evaluations, and reports the court shall consider whether the offender and the community will benefit from use of the mental health disposition alternative. The court shall consider the victim's opinion whether the offender should receive the option.

(7) If the court determines that the mental health disposition alternative is appropriate, the court shall impose a standard range disposition, suspend execution of the disposition, and place the offender on community supervision up to one year and impose one or more other local sanctions. Confinement in a secure county detention facility, other than county group homes, inpatient psychiatric treatment facilities, and substance abuse programs, shall be limited to thirty days. As a condition of a suspended disposition, the court shall require the offender to participate in the recommended treatment interventions.

(8) The treatment providers shall submit monthly reports to the court and parties on the offender's progress in treatment. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, offender's compliance with requirements, treatment activities, medication management, the offender's relative progress in treatment, and any other material specified by the court at the time of the disposition.

(9) If the offender fails to comply with the suspended disposition, the court may impose sanctions pursuant to RCW 13.40.200 or may revoke the suspended disposition and order the disposition's execution.

(10) An offender is ineligible for the mental health disposition option under this section if:

- (a) The offender is ordered to serve a disposition for a firearm violation under RCW 13.40.193; or
- (b) The offense for which the disposition is being considered is:
  - (i) An offense category A+, A, or A- offense, or an attempt, conspiracy, or solicitation to commit a class A+, A, or A- offense;

- (ii) Manslaughter in the second degree (RCW 9A.32.070);

- (iii) A sex offense as defined in RCW 9.94A.030; or

- (iv) Any offense category B+ or B offense, when the offense includes infliction of bodily harm upon another or when during the commission or immediate withdrawal from the offense the respondent was armed with a deadly weapon.

(11) Subject to funds appropriated for this specific purpose, the costs incurred by the juvenile courts for the mental health and chemical dependency evaluations, treatment, and costs of supervision required under this section shall be paid by the department's juvenile rehabilitation administration. [2005 c 508 § 1; 2003 c 378 § 4.]

**13.40.300 Commitment of juvenile beyond age twenty-one prohibited—Jurisdiction of juvenile court after juvenile's eighteenth birthday.** (1) In no case may a juvenile offender be committed by the juvenile court to the department of social and health services for placement in a juvenile correctional institution beyond the juvenile offender's twenty-first birthday. A juvenile may be under the jurisdiction of the juvenile court or the authority of the department of social and health services beyond the juvenile's eighteenth birthday only if prior to the juvenile's eighteenth birthday:

- (a) Proceedings are pending seeking the adjudication of a juvenile offense and the court by written order setting forth its reasons extends jurisdiction of juvenile court over the juvenile beyond his or her eighteenth birthday;

- (b) The juvenile has been found guilty after a fact finding or after a plea of guilty and an automatic extension is necessary to allow for the imposition of disposition;

- (c) Disposition has been held and an automatic extension is necessary to allow for the execution and enforcement of the court's order of disposition. If an order of disposition imposes commitment to the department, then jurisdiction is automatically extended to include a period of up to twelve months of parole, in no case extending beyond the offender's twenty-first birthday; or

- (d) While proceedings are pending in a case in which jurisdiction has been transferred to the adult criminal court pursuant to RCW 13.04.030, the juvenile turns eighteen years of age and is subsequently found not guilty of the charge for which he or she was transferred, or is convicted in the adult criminal court of a lesser included offense, and an automatic extension is necessary to impose the disposition as required by RCW 13.04.030(1)(e)(v)(E).

(2) If the juvenile court previously has extended jurisdiction beyond the juvenile offender's eighteenth birthday and that period of extension has not expired, the court may further extend jurisdiction by written order setting forth its reasons.

(3) In no event may the juvenile court have authority to extend jurisdiction over any juvenile offender beyond the juvenile offender's twenty-first birthday except for the purpose of enforcing an order of restitution or penalty assessment.

(4) Notwithstanding any extension of jurisdiction over a person pursuant to this section, the juvenile court has no jurisdiction over any offenses alleged to have been committed by a person eighteen years of age or older. [2005 c 238 § 2; 2000 c 71 § 2; 1994 sp.s. c 7 § 530; 1986 c 288 § 6; 1983 c

191 § 17; 1981 c 299 § 17; 1979 c 155 § 73; 1975 1st ex.s. c 170 § 1. Formerly RCW 13.04.260.]

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

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

**Severability—1986 c 288:** See note following RCW 13.32A.050.

**Effective date—Severability—1979 c 155:** See notes following RCW 13.04.011.

**13.40.430 Disparity in disposition of juvenile offenders—Data collection.** The administrative office of the courts shall collect such data as may be necessary to monitor any disparity in processing or disposing of cases involving juvenile offenders due to economic, gender, geographic, or racial factors that may result from implementation of section 1, chapter 373, Laws of 1993. The administrative office of the courts may, in consultation with juvenile courts, determine a format for the collection of such data and a schedule for the reporting of such data and shall keep a minimum of five years of data at any given time. [2005 c 282 § 27; 2003 c 207 § 13; 1993 c 373 § 2.]

**Severability—1993 c 373:** See note following RCW 13.40.020.

**13.40.570 Sexual misconduct by state employees, contractors. (Effective July 1, 2006.)** (1) When the secretary has reasonable cause to believe that sexual intercourse or sexual contact between an employee and an offender has occurred, notwithstanding any rule adopted under chapter 41.06 RCW the secretary shall immediately suspend the employee.

(2) The secretary shall immediately institute proceedings to terminate the employment of any person:

(a) Who is found by the department, based on a preponderance of the evidence, to have had sexual intercourse or sexual contact with the offender; or

(b) Upon a guilty plea or conviction for any crime specified in chapter 9A.44 RCW when the victim was an offender.

(3) When the secretary has reasonable cause to believe that sexual intercourse or sexual contact between the employee of a contractor and an offender has occurred, the secretary shall require the employee of a contractor to be immediately removed from any employment position which would permit the employee to have any access to any offender.

(4) The secretary shall disqualify for employment with a contractor in any position with access to an offender, any person:

(a) Who is found by the department, based on a preponderance of the evidence, to have had sexual intercourse or sexual contact with the offender; or

(b) Upon a guilty plea or conviction for any crime specified in chapter 9A.44 RCW when the victim was an offender.

(5) The secretary, when considering the renewal of a contract with a contractor who has taken action under subsection (3) or (4) of this section, shall require the contractor to demonstrate that there has been significant progress made in reducing the likelihood that any of its employees will have sexual intercourse or sexual contact with an offender. The secretary shall examine whether the contractor has taken steps to improve hiring, training, and monitoring practices and whether the employee remains with the contractor. The

secretary shall not renew a contract unless he or she determines that significant progress has been made.

(6)(a) For the purposes of RCW 50.20.060, a person terminated under this section shall be considered discharged for misconduct.

(b)(i) The department may, within its discretion or upon request of any member of the public, release information to an individual or to the public regarding any person or contract terminated under this section.

(ii) An appointed or elected public official, public employee, or public agency as defined in RCW 4.24.470 is immune from civil liability for damages for any discretionary release of relevant and necessary information, unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith. The immunity provided under this section applies to the release of relevant and necessary information to other public officials, public employees, or public agencies, and to the public.

(iii) Except as provided in chapter 42.56 RCW, or elsewhere, nothing in this section shall impose any liability upon a public official, public employee, or public agency for failing to release information authorized under this section. Nothing in this section implies that information regarding persons designated in subsection (2) of this section is confidential except as may otherwise be provided by law.

(7) The department shall adopt rules to implement this section. The rules shall reflect the legislative intent that this section prohibits individuals who are employed by the department or a contractor of the department from having sexual intercourse or sexual contact with offenders. The rules shall also reflect the legislative intent that when a person is employed by the department or a contractor of the department, and has sexual intercourse or sexual contact with an offender against the employed person's will, the termination provisions of this section shall not be invoked.

(8) As used in this section:

(a) "Contractor" includes all subcontractors of a contractor;

(b) "Offender" means a person under the jurisdiction or supervision of the department; and

(c) "Sexual intercourse" and "sexual contact" have the meanings provided in RCW 9A.44.010. [2005 c 274 § 210; 1999 c 72 § 1.]

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

**Application—1999 c 72:** "Nothing in section 1 or 2 of this act affects any collective bargaining agreement in place on July 25, 1999." [1999 c 72 § 3.]

## Chapter 13.64 RCW EMANCIPATION OF MINORS

### Sections

13.64.080 Forms to initiate petition of emancipation.

**13.64.080 Forms to initiate petition of emancipation.** The administrative office of the courts shall prepare and distribute to the county court clerks appropriate forms for minors seeking to initiate a petition of emancipation. [2005 c 282 § 28; 1993 c 294 § 8.]

## Chapter 13.70 RCW

## SUBSTITUTE CARE OF CHILDREN—REVIEW BOARD SYSTEM

## Sections

13.70.130 Funds from public and private sources.

**13.70.130 Funds from public and private sources.**

The administrative office of the courts may apply for and receive funds from federal, local, and private sources for carrying out the purposes of this chapter. [2005 c 282 § 29; 1989 1st ex.s. c 17 § 15.]

## Title 14

## AERONAUTICS

## Chapters

**14.08 Municipal airports—1945 act.**

## Chapter 14.08 RCW

## MUNICIPAL AIRPORTS—1945 ACT

## Sections

14.08.120 Specific powers of municipalities operating airports.

**14.08.120 Specific powers of municipalities operating airports.** In addition to the general powers conferred in this chapter, and without limitation thereof, a municipality that has established or may hereafter establish airports, restricted landing areas, or other air navigation facilities, or that has acquired or set apart or may hereafter acquire or set apart real property for that purpose or purposes is authorized:

(1) To vest authority for the construction, enlargement, improvement, maintenance, equipment, operation, and regulation thereof in an officer, a board, or body of the municipality by ordinance or resolution that prescribes the powers and duties of the officer, board, or body; and the municipality may also vest authority for industrial and commercial development in a municipal airport commission consisting of at least five resident taxpayers of the municipality to be appointed by the governing board of the municipality by an ordinance or resolution that includes (a) the terms of office, which may not exceed six years and which shall be staggered so that not more than three terms will expire in the same year, (b) the method of appointment and filling vacancies, (c) a provision that there shall be no compensation but may provide for a per diem of not to exceed twenty-five dollars per day plus travel expenses for time spent on commission business, (d) the powers and duties of the commission, and (e) any other matters necessary to the exercise of the powers relating to industrial and commercial development. The expense of the construction, enlargement, improvement, maintenance, equipment, industrial and commercial development, operation, and regulation are the responsibility of the municipality.

(2) To adopt and amend all needed rules, regulations, and ordinances for the management, government, and use of any properties under its control, whether within or outside the territorial limits of the municipality; to provide fire protection for the airport, including the acquisition and operation of fire

protection equipment and facilities, and the right to contract with any private body or political subdivision of the state for the furnishing of such fire protection; to appoint airport guards or police, with full police powers; to fix by ordinance or resolution, as may be appropriate, penalties for the violation of the rules, regulations, and ordinances, and enforce those penalties in the same manner in which penalties prescribed by other rules, regulations, and ordinances of the municipality are enforced. For the purposes of such management and government and direction of public use, that part of all highways, roads, streets, avenues, boulevards, and territory that adjoins the limits of any airport or restricted landing area acquired or maintained under the provisions of this chapter is under like control and management of the municipality. It may also adopt and enact rules, regulations, and ordinances designed to safeguard the public upon or beyond the limits of private airports or landing strips within the municipality or its police jurisdiction against the perils and hazards of instrumentalities used in aerial navigation. Rules, regulations, and ordinances shall be published as provided by general law or the charter of the municipality for the publication of similar rules, regulations, and ordinances. They shall conform to and be consistent with the laws of this state and the rules of the state department of transportation and shall be kept in conformity, as nearly as may be, with the then current federal legislation governing aeronautics and the regulations duly promulgated thereunder and the rules and standards issued from time to time pursuant thereto.

(3) To create a special airport fund, and provide that all receipts from the operation of the airport be deposited in the fund, which fund shall remain intact from year to year and may be pledged to the payment of aviation bonds, or kept for future maintenance, construction, or operation of airports or airport facilities.

(4) To lease airports or other air navigation facilities, or real property acquired or set apart for airport purposes, to private parties, any municipal or state government or the national government, or any department thereof, for operation; to lease or assign to private parties, any municipal or state government or the national government, or any department thereof, for operation or use consistent with the purposes of this chapter, space, area, improvements, or equipment of such airports; to authorize its lessees to construct, alter, repair, or improve the leased premises at the cost of the lessee and to reimburse its lessees for such cost, provided the cost is paid solely out of funds fully collected from the airport's tenants; to sell any part of such airports, other air navigation facilities or real property to any municipal or state government, or to the United States or any department or instrumentality thereof, for aeronautical purposes or purposes incidental thereto, and to confer the privileges of concessions of supplying upon its airports goods, commodities, things, services, and facilities: PROVIDED, That in each case in so doing the public is not deprived of its rightful, equal, and uniform use thereof.

(5) Acting through its governing body, to sell or lease any property, real or personal, acquired for airport purposes and belonging to the municipality, which, in the judgment of its governing body, may not be required for aircraft landings, aircraft takeoffs or related aeronautic purposes, in accordance with the laws of this state, or the provisions of the charter of

the municipality, governing the sale or leasing of similar municipally owned property. The municipal airport commission, if one has been organized and appointed under subsection (1) of this section, may lease any airport property for aircraft landings, aircraft takeoffs, or related aeronautic purposes. If there is a finding by the governing body of the municipality that any airport property, real or personal, is not required for aircraft landings, aircraft takeoffs, or related aeronautic purposes, then the municipal airport commission may lease such space, land, area, or improvements, or construct improvements, or take leases back for financing purposes, grant concessions on such space, land, area, or improvements, all for industrial or commercial purposes, by private negotiation and under such terms and conditions that seem just and proper to the municipal airport commission. Any such lease of real property for aircraft manufacturing or aircraft industrial purposes or to any manufacturer of aircraft or aircraft parts or for any other business, manufacturing, or industrial purpose or operation relating to, identified with, or in any way dependent upon the use, operation, or maintenance of the airport, or for any commercial or industrial purpose may be made for any period not to exceed seventy-five years, but any such lease of real property made for a longer period than ten years shall contain provisions requiring the municipality and the lessee to permit the rentals for each five-year period thereafter, to be readjusted at the commencement of each such period if written request for readjustment is given by either party to the other at least thirty days before the commencement of the five-year period for which the readjustment is requested. If the parties cannot agree upon the rentals for the five-year period, they shall submit to have the disputed rentals for the period adjusted by arbitration. The lessee shall pick one arbitrator, and the governing body of the municipality shall pick one, and the two so chosen shall select a third. After a review of all pertinent facts the board of arbitrators may increase or decrease such rentals or continue the previous rate thereof.

The proceeds of the sale of any property the purchase price of which was obtained by the sale of bonds shall be deposited in the bond sinking fund. If all the proceeds of the sale are not needed to pay the principal of bonds remaining unpaid, the remainder shall be paid into the airport fund of the municipality. The proceeds of sales of property the purchase price of which was paid from appropriations of tax funds shall be paid into the airport fund of the municipality.

(6) To determine the charges or rental for the use of any properties under its control and the charges for any services or accommodations, and the terms and conditions under which such properties may be used: PROVIDED, That in all cases the public is not deprived of its rightful, equal, and uniform use of the property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expense of operation to the municipality. The municipality shall have and may enforce liens, as provided by law for liens and enforcement thereof, for repairs to or improvement or storage or care of any personal property, to enforce the payment of any such charges.

(7) To impose a customer facility charge upon customers of rental car companies accessing the airport for the purposes of financing, designing, constructing, operating, and main-

taining consolidated rental car facilities and common use transportation equipment and facilities which are used to transport the customer between the consolidated car rental facilities and other airport facilities. The airport operator may require the rental car companies to collect the facility charges, and any facility charges so collected shall be deposited in a trust account for the benefit of the airport operator and remitted at the direction of the airport operator, but no more often than once per month. The charge shall be calculated on a per-day basis. Facility charges may not exceed the reasonable costs of financing, designing, constructing, operating, and maintaining the consolidated car rental facilities and common use transportation equipment and facilities and may not be used for any other purpose.

(8) To exercise all powers necessarily incidental to the exercise of the general and special powers granted in this section. [2005 c 76 § 1; 1990 c 215 § 1; 1984 c 7 § 5; 1961 c 74 § 2; 1959 c 231 § 2; 1957 c 14 § 1. Prior: 1953 c 178 § 1; 1945 c 182 § 8; Rem. Supp. 1945 § 2722-37. Formerly RCW 14.08.120 through 14.08.150 and 14.08.320.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

**Continuation of existing law—1957 c 14:** "The provisions of section 1 of this act shall be construed as a restatement and continuation of existing law, and not as a new enactment. It shall not be construed as affecting any existing right acquired under its provisions, nor as affecting any proceeding instituted thereunder." [1957 c 14 § 3.]

**Validating—1957 c 14:** "The provisions of section 1 of this act are retroactive and any actions or proceedings had or taken under the provisions of RCW 14.08.120 through 14.08.150 or 14.08.320 are hereby ratified, validated and confirmed." [1957 c 14 § 3.]

*Appointment of police officers by port districts operating airports: RCW 53.08.280.*

## Title 15

### AGRICULTURE AND MARKETING

#### Chapters

- 15.17 Standards of grades and packs.**
- 15.19 Ginseng.**
- 15.26 Tree fruit research act.**
- 15.28 Soft tree fruits.**
- 15.36 Milk and milk products.**
- 15.44 Dairy products commission.**
- 15.49 Seeds.**
- 15.53 Commercial feed.**
- 15.58 Washington pesticide control act.**
- 15.65 Washington state agricultural commodity boards.**
- 15.66 Washington state agricultural commodity commissions.**
- 15.76 Agricultural fairs, youth shows, exhibitions.**
- 15.86 Organic food products.**
- 15.88 Wine commission.**

#### Chapter 15.17 RCW

#### STANDARDS OF GRADES AND PACKS

##### Sections

- 15.17.050 Rules—Authority of director.
- 15.17.243 District two—Transfer of funds—Control of Rhagoletis pomonella.

**15.17.050 Rules—Authority of director.**

**Expiration date—2004 c 211 § 1:** "Section 1 of this act expires December 31, 2007." [2005 c 234 § 1; 2004 c 211 § 2.]

**15.17.243 District two—Transfer of funds—Control of *Rhagoletis pomonella*.** The district manager for district two as defined in \*WAC 16-458-075 is authorized to transfer two hundred thousand dollars from the fruit and vegetable district fund to the plant pest account within the agricultural local fund. The amount transferred is to be derived from fees collected for state inspections of tree fruits and is to be used solely for activities related to the control of *Rhagoletis pomonella* in district two. The transfer of funds shall occur by June 1, 1997. On June 30, 2009, any unexpended portion of the two hundred thousand dollars shall be transferred to the fruit and vegetable inspection account and deposited in the district account for the district that includes Yakima county. [2005 c 49 § 1; 2003 c 14 § 1; 2002 c 322 § 4; 2001 c 92 § 1; 1999 c 47 § 1; 1997 c 227 § 1.]

**\*Reviser's note:** WAC 16-458-075 was repealed by WSR 04-11-078, filed May 18, 2004, effective June 18, 2004. Later enactment, see chapter 16-390 WAC.

**Effective date—2003 c 14:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2003." [2003 c 14 § 2.]

**Effective date—2002 c 322:** See note following RCW 15.17.240.

**Effective date—2001 c 92:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2001." [2001 c 92 § 2.]

**Effective date—1999 c 47:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 1999." [1999 c 47 § 2.]

**Effective date—1997 c 227:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 26, 1997]." [1997 c 227 § 3.]

**Chapter 15.19 RCW****GINSENG**

## Sections

15.19.080 Public disclosure of information—Exemption. (*Effective July 1, 2006.*)

**15.19.080 Public disclosure of information—Exemption. (*Effective July 1, 2006.*)** The department shall not disclose information obtained under this chapter regarding the purchases, sales, or production of an individual American ginseng grower or dealer, except for providing reports to the United States fish and wildlife service. This information is exempt from public disclosure required by chapter 42.56 RCW. [2005 c 274 § 211; 1998 c 154 § 28.]

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

[2005 RCW Supp—page 106]

**Chapter 15.26 RCW****TREE FRUIT RESEARCH ACT**

## Sections

15.26.295 Certain records exempt from public disclosure—Exceptions—Actions not prohibited by chapter. (*Effective July 1, 2006.*)

**15.26.295 Certain records exempt from public disclosure—Exceptions—Actions not prohibited by chapter. (*Effective July 1, 2006.*)** (1) Under RCW 42.56.380, certain agricultural business records, commission records, and department of agriculture records relating to the commission and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or the commission for the purpose of administering this chapter may be shared between the department and the commission. They may also be used, if required, in any suit or administrative hearing involving any provision of this chapter or a marketing order.

(3) This chapter does not prohibit:

(a) The issuance of general statements based upon the reports of persons subject to this chapter as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or the commission of the name of any person violating this chapter and a statement of the manner of the violation by that person. [2005 c 274 § 212; 2002 c 313 § 67.]

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

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

**Chapter 15.28 RCW****SOFT TREE FRUITS**

## Sections

15.28.315 Certain records exempt from public disclosure—Exceptions—Actions not prohibited by chapter. (*Effective July 1, 2006.*)

**15.28.315 Certain records exempt from public disclosure—Exceptions—Actions not prohibited by chapter. (*Effective July 1, 2006.*)** (1) Under RCW 42.56.380, certain agricultural business records, commission records, and department of agriculture records relating to the commission and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or the commission for the purpose of administering this chapter may be shared between the department and the commission. They may also be used, if required, in any suit or administrative hearing involving any provision of this chapter or a marketing order.

(3) This chapter does not prohibit:

(a) The issuance of general statements based upon the reports of persons subject to this chapter as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or the commission of the name of any person violating this chapter and a statement

of the manner of the violation by that person. [2005 c 274 § 213; 2002 c 313 § 68.]

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

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

### Chapter 15.36 RCW

#### MILK AND MILK PRODUCTS

(Formerly: Fluid milk)

##### Sections

- 15.36.051 Milk processing plant license—Fee waiver.
- 15.36.231 Raw milk or milk products—Bottling and capping—Packaging—Labeling.
- 15.36.241 Capping of milk or milk products.
- 15.36.491 Licenses—Money deposited in general fund—Exception.

#### 15.36.051 Milk processing plant license—Fee waiver.

A milk processing plant must obtain an annual milk processing plant license from the department, which shall expire on June 30 of each year. A milk processing plant may choose to process (1) grade A milk and milk products, or (2) other milk products that are not classified grade A.

Only one license may be required to process milk; however, milk processing plants must obtain the necessary endorsements from the department in order to process products as defined for each type of milk or milk product processing. Application for a license shall be on a form prescribed by the director and accompanied by a fifty-five dollar annual license fee. The applicant shall include on the application the full name of the applicant for the license and the location of the milk processing plant he or she intends to operate and any other necessary information. Upon the approval of the application by the director and compliance with the provisions of this chapter, including the applicable rules adopted under this chapter by the department, the applicant shall be issued a license or a renewal of a license.

Licenses shall be issued to cover only those products, processes, and operations specified in the license application and approved for licensing. If a license holder wishes to engage in processing a type of milk product that is different than the type specified on the application supporting the licensee's existing license and processing that type of food product would require a major addition to or modification of the licensee's processing facilities, the licensee shall submit an amendment to the current license application. In such a case, the licensee may engage in processing the new type of milk product only after the amendment has been approved by the department.

A licensee under this section shall not be required to obtain a food processing plant license under chapter 69.07 RCW to process milk or milk products.

The director shall waive the fee for a food processing license under chapter 69.07 RCW for persons who are also licensed as a milk processing plant. [2005 c 414 § 1; 1999 c 291 § 4; 1994 c 143 § 203; 1991 c 109 § 2; 1961 c 11 § 15.32.110. Prior: (i) 1927 c 192 § 11; 1923 c 27 § 8; 1919 c 192 § 29; RRS § 6192. (ii) 1919 c 192 § 33; RRS § 6195. Formerly RCW 15.32.110.]

**Effective date—2005 c 414 §§ 1 and 4:** "Sections 1 and 4 of this act are necessary for the immediate preservation of the public peace, health, or

safety, or support of the state government and its existing public institutions, and take effect July 1, 2005." [2005 c 414 § 5.]

**15.36.231 Raw milk or milk products—Bottling and capping—Packaging—Labeling.** (1) Milk and milk products for consumption in the raw state shall be bottled or packaged on the farm where produced. Bottling and capping shall be done in a sanitary manner by means of approved equipment and operations. Caps or cap stock shall be purchased in sanitary containers and kept therein in a clean dry place until used.

(2) All containers enclosing raw milk or any raw milk product shall be plainly labeled or marked with the word "raw" and the name of the producer or packager. The label or mark shall be in letters of a size, kind, and color approved by the director and shall contain no marks or words which are misleading. [2005 c 414 § 2; 1999 c 291 § 14; 1961 c 11 § 15.36.265. Prior: 1955 c 238 § 38; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part. Formerly RCW 15.36.265.]

**15.36.241 Capping of milk or milk products.** Capping of milk or milk products shall be done in a sanitary manner by means of approved equipment and operations. The cap or cover shall cover the pouring lip to at least its largest diameter. [2005 c 414 § 3; 1961 c 11 § 15.36.420. Prior: 1955 c 238 § 64; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part. Formerly RCW 15.36.420.]

**15.36.491 Licenses—Money deposited in general fund—Exception.** All moneys received for licenses under this chapter shall be deposited in the general fund, except that all moneys received for annual milk processing plant licenses under RCW 15.36.051 shall be deposited in the agricultural local fund established under RCW 43.23.230. [2005 c 414 § 4; 1999 c 291 § 23; 1961 c 11 § 15.32.710. Prior: 1899 c 43 § 27; RRS § 6249. Formerly RCW 15.32.710.]

**Effective date—2005 c 414 §§ 1 and 4:** See note following RCW 15.36.051.

### Chapter 15.44 RCW

#### DAIRY PRODUCTS COMMISSION

##### Sections

- 15.44.185 Certain records exempt from public disclosure—Exceptions—Actions not prohibited by chapter. (*Effective July 1, 2006.*)

**15.44.185 Certain records exempt from public disclosure—Exceptions—Actions not prohibited by chapter. (*Effective July 1, 2006.*)** (1) Under RCW 42.56.380, certain agricultural business records, commission records, and department of agriculture records relating to the commission and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or the commission for the purpose of administering this chapter may be shared between the department and the commission. They may also be used, if required, in any suit or administrative hearing involving any provision of this chapter or a marketing order.

(3) This chapter does not prohibit:

(a) The issuance of general statements based upon the reports of persons subject to this chapter as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or the commission of the name of any person violating this chapter and a statement of the manner of the violation by that person. [2005 c 274 § 214; 2002 c 313 § 69.]

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

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## Chapter 15.49 RCW

### SEEDS

(Formerly: Washington state seed act)

#### Sections

15.49.071 Damages—Arbitration prerequisite to legal action. (*Effective January 1, 2006.*)

**15.49.071 Damages—Arbitration prerequisite to legal action. (*Effective January 1, 2006.*)** (1) When a buyer is damaged by the failure of any seed covered by this chapter to produce or perform as represented by the required label, by warranty, or as a result of negligence, the buyer, as a prerequisite to maintaining a legal action against the dealer of such seed, shall have first provided for the arbitration of the claim. Any statutory period of limitations with respect to such claim shall be tolled from the date arbitration proceedings are instituted until ten days after the date on which the arbitration award becomes final.

(2) Similarly, no such claim may be asserted as a counterclaim or defense in any action brought by a dealer against a buyer until the buyer has first provided for arbitration of the claim. Upon the buyer's filing of a written notice of intention to assert such a claim as a counterclaim or defense in the action accompanied by a copy of the buyer's complaint in arbitration filed as provided in this chapter, the action shall be stayed, and any applicable statute of limitations shall be tolled with respect to such claim from the date arbitration proceedings are instituted until ten days after the arbitration award becomes final.

(3) Conspicuous language calling attention to the requirement for arbitration under this section shall be referenced or included on the analysis label required under RCW 15.49.011 through 15.49.101.

(4) If the parties agree to submit the claim to arbitration and to be bound by the arbitration award, then the arbitration shall be subject to chapter 7.04A RCW, and RCW 15.49.081 through 15.49.111 will not apply to the arbitration. If the parties do not so agree, then the buyer may provide for mandatory arbitration by the arbitration committee under RCW 15.49.081 through 15.49.111. An award rendered in such mandatory arbitration shall not be binding upon the parties and any trial on any claim so arbitrated shall be de novo.

(5) This section applies only to claims, or counterclaims, where the relief sought is, or includes, a monetary amount in excess of two thousand dollars. All claims for two thousand dollars or less shall be commenced in either district court or small claims court. [2005 c 433 § 36; 1989 c 354 § 77.]

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

**Effective date—1989 c 354 §§ 70-81 and 84-86:** See note following RCW 15.49.005.

**Severability—1989 c 354:** See note following RCW 15.36.012.

## Chapter 15.53 RCW COMMERCIAL FEED

#### Sections

- 15.53.901 Definitions.
- 15.53.9013 Commercial feed license—Required—Exemptions—Application—Fees—Renewal—Denial or cancellation for non-compliance—Violation—Penalty—Rules.
- 15.53.9014 Registration of pet food and specialty pet food—Exemption—Application—Renewal—Fees—Denial or cancellation for non-compliance—Violation—Penalty. (*Expires July 1, 2006.*)
- 15.53.9014 Registration of pet food and specialty pet food—Exemption—Application—Renewal—Fees—Denial or cancellation for non-compliance—Violation—Penalty. (*Effective July 1, 2006.*)
- 15.53.9015 Responsible buyer status—Application—Removal—List.
- 15.53.9016 Labeling—Required information—Recordkeeping—Rules.
- 15.53.9018 Semiannual report required—Inspection fees—Reports—Late fees—Confidentiality, exception.
- 15.53.902 Adulteration—Definition—Unlawful to distribute.
- 15.53.9024 Inspections of facilities, vehicles, equipment, etc.—Verification of records and procedures—Notice—Official samples—Warrants authorized.
- 15.53.904 Department's remedies for noncompliance—Classification of crimes—Prosecutions—Injunctions.
- 15.53.9044 Disposition of moneys.
- 15.53.9053 Repealed.

**15.53.901 Definitions.** The definitions set forth in this section apply throughout this chapter.

(1) "Brand name" means a word, name, symbol, or device, or any combination thereof, identifying the commercial feed of a distributor or registrant and distinguishing it from that of others.

(2) "Commercial feed" means all materials or combination of materials that are distributed or intended for distribution for use as feed or for mixing in feed, unless such materials are specifically exempted. Unmixed whole seeds and physically altered entire unmixed seeds, when such whole seeds or physically altered seeds are not chemically changed or not adulterated within the meaning of RCW 15.53.902, are exempt. The department by rule may exempt from this definition, or from specific provisions of this chapter, commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when such commodities, compounds, or substances are not intermixed with other materials, and are not adulterated within the meaning of RCW 15.53.902.

(3) "Contract feeder" means a person who is an independent contractor and feeds commercial feed to animals pursuant to a contract whereby such commercial feed is supplied, furnished, or otherwise provided to such person and whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits, or amount or quality of product.

(4) "Customer-formula feed" means commercial feed that consists of a mixture of commercial feeds or feed ingredients, or both, each batch of which is manufactured according to the instructions of the final purchaser.



(5) "Department" means the department of agriculture of the state of Washington or its duly authorized representative.

(6) "Director" means the director of the department or a duly authorized representative.

(7) "Distribute" means to offer for sale, sell, exchange or barter, commercial feed; or to supply, furnish, or otherwise provide commercial feed to a contract feeder.

(8) "Distributor" means a person who distributes.

(9) "Drug" means an article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than people and articles, other than feed intended to affect the structure or a function of the animal body.

(10) "Facility" means any place where a commercial feed is manufactured, repackaged, sold, transloaded, or stored for later distribution.

(11) "Feed ingredient" means each of the constituent materials making up a commercial feed.

(12) "Final purchaser" means a person who purchases commercial feed to feed to animals in his or her care.

(13) "Initial distributor" means a person who first distributes a commercial feed in or into this state.

(14) "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed is distributed.

(15) "Labeling" means all labels and other written, printed, or graphic matter: (a) Upon a commercial feed or any of its containers or wrappers; or (b) accompanying such commercial feed.

(16) "Licensee" means a person who holds a commercial feed license as prescribed in this chapter.

(17) "Manufacture" means to grind, mix or blend, or further process a commercial feed for distribution.

(18) "Medicated feed" means a commercial feed containing a drug or other medication.

(19) "Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

(20) "Official sample" means a sample of feed taken by the department, obtained and analyzed as provided in RCW 15.53.9024 (3), (5), or (6).

(21) "Percent" or "percentage" means percentage by weight.

(22) "Person" means an individual, firm, partnership, corporation, or association.

(23) "Pet" means a domesticated animal normally maintained in or near the household of the owner of the pet.

(24) "Pet food" means a commercial feed prepared and distributed for consumption by pets.

(25) "Product name" means the name of the commercial feed that identifies it as to kind, class, or specific use.

(26) "Responsible buyer" means a licensee who is not the final purchaser of a commercial feed and has agreed to be responsible for reporting tonnage and paying inspection fees for all commercial feeds they distribute.

(27) "Retail" means to distribute to the final purchaser.

(28) "Sell" or "sale" includes exchange.

(29) "Specialty pet" means a domesticated animal pet normally maintained in a cage or tank, such as, but not limited to, gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes, and turtles.

(30) "Specialty pet food" means a commercial feed prepared and distributed for consumption by specialty pets.

(31) "Ton" means a net weight of two thousand pounds avoirdupois.

(32) "Transload" means to transfer commercial feed from one carrier to another carrier without processing or blending the ingredients, for example, transferred from rail car to trucks or shipping containers.

(33) "Quantity statement" means the net weight (mass), net volume (liquid or dry), or count. [2005 c 18 § 1; 1995 c 374 § 33; 1982 c 177 § 1; 1975 1st ex.s. c 257 § 3; 1965 ex.s. c 31 § 2. Prior acts on this subject: 1961 c 11 §§ 15.53.010 through 15.53.900; 1953 c 80 §§ 1-35.]

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68:** See note following RCW 15.36.012.

**Construction—Effective date—1975 1st ex.s. c 257:** See RCW 15.53.9053 and note.

**15.53.9013 Commercial feed license—Required—Exemptions—Application—Fees—Renewal—Denial or cancellation for noncompliance—Violation—Penalty—Rules.** (1) Except as provided under subsection (2) of this section, any person: (a) Who manufactures a commercial feed in this state; (b) who distributes a commercial feed in or into this state; or (c) whose name appears on a commercial feed label as guarantor, must first obtain from the department a commercial feed license for each facility that distributes in or into this state.

(2) The following persons are exempt from the requirement of a commercial feed license:

(a) Any person who makes only retail sales of commercial feed which bears labeling or other approved indication that the commercial feed is from a licensed manufacturer, guarantor, or distributor who has assumed full responsibility for reporting and paying the inspection fee due under chapter 18, Laws of 2005;

(b) Any person distributing only pet food or specialty pet food;

(c) Any person distributing food processing byproducts from fruit, vegetable, or potato processing plants, freezing or dehydrating facilities, or juice or jelly preserving plants, except that the distribution of byproducts or products of sugar refineries are not exempt from the requirement of a commercial feed license; and

(d) Any person distributing bona fide experimental feed on which accurate records and experimental programs are maintained.

(3) Application for a commercial feed license must be made annually on forms provided by the department and must be accompanied by a fee of fifty dollars.

(4) The commercial feed license expires on June 30th of each year. The application and fee for a commercial feed license renewal is due July 1st of each year. If a completed application and appropriate fee is not received by July 1st, a late renewal fee of fifty dollars per facility will be assessed in addition to the license fee and must be paid by the applicant before the renewal license is issued. A late renewal fee will not apply if the applicant furnishes an affidavit that he or she has not distributed a commercial feed subsequent to the expiration of his or her prior license. The assessment of the late

renewal fee will not prevent the department from taking other action as provided for in this chapter.

(5) An application for a commercial feed license must include:

- (a) The name and mailing address of the applicant;
- (b) The physical address of the facility;
- (c) The name, contact information, and signature of the applicant; and
- (d) Other information required by the department by rule.

(6) The department may deny a license application if the applicant is not in compliance with this chapter or applicable rules, and may cancel a license if the licensee is not in compliance with this chapter or applicable rules. Prior to denial or cancellation of a license, the department shall provide notice and an opportunity to correct deficiencies. If an applicant or licensee fails to correct the deficiency, the department shall deny or cancel the license. If aggrieved by the decision, the applicant or licensee may request a hearing as authorized under chapter 34.05 RCW.

(7) Notwithstanding the payment of a late renewal fee, it is a violation to distribute a commercial feed by an unlicensed person, and nothing in this chapter prevents the department from imposing a penalty authorized by this chapter for the violation.

(8) The department may under conditions specified by rule, request submission of labels and labeling in order to determine compliance with the provisions of this chapter. [2005 c 18 § 2; 1995 c 374 § 35.]

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68:** See note following RCW 15.36.012.

**15.53.9014 Registration of pet food and specialty pet food—Exemption—Application—Renewal—Fees—Denial or cancellation for noncompliance—Violation—Penalty. (Expires July 1, 2006.)** (1) A person may not distribute in this state a pet food or specialty pet food that has not been registered by the department.

(2) All applications for registration must be submitted on forms provided by the department and must include:

- (a) The name and mailing address of the applicant;
- (b) The physical address of the applicant;
- (c) The name, contact information, and signature of the applicant;
- (d) Indication of the package sizes distributed for each product; and
- (e) Other information required by the department by rule.

(3) An application for registration must be accompanied by a label and other applicable printed matter describing the product and the following fees:

- (a) For those registrants whose names begin with a number or the letters A through N:
  - (i) Eleven dollars per product for those products distributed only in packages of ten pounds or more;
  - (ii) Forty-five dollars per product for those products distributed in packages of less than ten pounds; or
  - (iii) Forty-five dollars per product for those products distributed both in packages of less than ten pounds and packages of ten pounds or more.

[2005 RCW Supp—page 110]

(b) For those registrants whose names begin with the letters O through Z:

- (i) Twenty-two dollars per product for those products distributed only in packages of ten pounds or more;
- (ii) Ninety dollars per product for those products distributed in packages of less than ten pounds; or
- (iii) Ninety dollars per product for those products distributed both in packages of less than ten pounds and packages of ten pounds or more.

(4)(a) All registrations issued by the department to a registrant whose name begins with a number or the letters A through N expire July 1, 2006.

(b) All registrations issued by the department to a registrant whose name begins with the letters O through Z expire July 1, 2007.

(5) A distributor is not required to register a pet food or specialty pet food that is already registered under this chapter, as long as it is distributed with the original label.

(6) Changes in the guarantee of either chemical or ingredient composition of a pet food or specialty pet food registered under this chapter may be permitted if there is satisfactory evidence that such changes would not result in a lowering of the feed value of the product for the purpose for which it was designed.

(7) The department may deny registration of any pet food or specialty pet food not in compliance with this chapter and its rules. The department may cancel any registration subsequently found to be not in compliance with this chapter and its rules. Prior to denial or cancellation of a registration, the applicant or registrant of an existing registered pet food or specialty pet food must be notified of the reasons and given an opportunity to amend the application to comply. If the applicant does not make the necessary corrections, the department will deny or cancel the registration. The applicant or registrant of an existing registered pet food or specialty pet food may request a hearing as provided for in chapter 34.05 RCW.

(8) Application for renewal of registration is due July 1st of each registration period. If an application for renewal is not received by the department by the due date, a late fee of ten dollars per product is added to the original fee and must be paid by the applicant before the renewal registration may be issued. A late fee will not apply if the applicant furnishes an affidavit that he or she has not distributed this feed subsequent to the expiration of the prior registration. Payment of a late fee does not prevent the department from imposing a penalty authorized by this chapter for the violation. [2005 c 18 § 3; 1995 c 374 § 36; 1993 sp.s. c 19 § 2; 1982 c 177 § 2; 1975 1st ex.s. c 257 § 4; 1965 ex.s. c 31 § 4.]

**Effective date—2005 c 18 § 3:** "Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 18 § 11.]

**Expiration date—2005 c 18 § 3:** "Section 3 of this act expires July 1, 2006." [2005 c 18 § 13.]

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68:** See note following RCW 15.36.012.

**Construction—Effective date—1975 1st ex.s. c 257:** See RCW 15.53.9053 and note.

**15.53.9014 Registration of pet food and specialty pet food—Exemption—Application—Renewal—Fees—Denial or cancellation for noncompliance—Violation—Penalty.** (*Effective July 1, 2006.*) (1) A person may not distribute in this state a pet food or specialty pet food that has not been registered by the department.

(2) All applications for registration must be submitted on forms provided by the department and must include:

- (a) The name and mailing address of the applicant;
- (b) The physical address of the applicant;
- (c) The name, contact information, and signature of the applicant;

(d) Indication of the package sizes distributed for each product; and

(e) Other information required by the department by rule.

(3) An application for registration must be accompanied by a label and other applicable printed matter describing the product and the following fees:

- (a) Twenty-two dollars per product for those products distributed only in packages of ten pounds or more;
- (b) Ninety dollars per product for those products distributed in packages of less than ten pounds; or
- (c) Ninety dollars per product for those products distributed both in packages of less than ten pounds and packages of ten pounds or more.

(4) Registrations are issued by the department for a two-year period beginning on July 1st of a given year and ending twenty-four months later on July 1st, except that registrations issued to a registrant who applies to register an additional product during the last twelve months of the registrant's term expire on the next July 1st.

(5) A distributor is not required to register a pet food or specialty pet food that is already registered under this chapter, as long as it is distributed with the original label.

(6) Changes in the guarantee of either chemical or ingredient composition of a pet food or specialty pet food registered under this chapter may be permitted if there is satisfactory evidence that such changes would not result in a lowering of the feed value of the product for the purpose for which it was designed.

(7) The department may deny registration of any pet food or specialty pet food not in compliance with this chapter and its rules. The department may cancel any registration subsequently found to be not in compliance with this chapter and its rules. Prior to denial or cancellation of a registration, the applicant or registrant of an existing registered pet food or specialty pet food must be notified of the reasons and given an opportunity to amend the application to comply. If the applicant does not make the necessary corrections, the department will deny or cancel the registration. The applicant or registrant of an existing registered pet food or specialty pet food may request a hearing as provided for in chapter 34.05 RCW.

(8) Application for renewal of registration is due July 1st of each registration period. If an application for renewal is not received by the department by the due date, a late fee of twenty dollars per product is added to the original fee and must be paid by the applicant before the renewal registration may be issued. A late fee will not apply if the applicant furnishes an affidavit that he or she has not distributed this feed

subsequent to the expiration of the prior registration. Payment of a late fee does not prevent the department from imposing a penalty authorized by this chapter for the violation. [2005 c 18 § 4; 1995 c 374 § 36; 1993 sp.s. c 19 § 2; 1982 c 177 § 2; 1975 1st ex.s. c 257 § 4; 1965 ex.s. c 31 § 4.]

**Effective date—2005 c 18 § 4:** "Section 4 of this act takes effect July 1, 2006." [2005 c 18 § 12.]

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68:** See note following RCW 15.36.012.

**Construction—Effective date—1975 1st ex.s. c 257:** See RCW 15.53.9053 and note.

**15.53.9015 Responsible buyer status—Application—Removal—List.** (1) To become a responsible buyer, a commercial feed licensee must apply for responsible buyer status on forms provided by the department. The application must include:

- (a) The name and mailing address of the licensee;
- (b) The physical address of the licensee;
- (c) The name, contact information, and signature of the applicant; and
- (d) Other information required by the department by rule.

(2) To be removed from responsible buyer status, the licensee must notify the department in writing. The licensee is not released from responsible buyer status until the department notifies the licensee in writing of such release.

(3) The department will maintain a current list of all responsible buyers and make the list available on request. [2005 c 18 § 5.]

**15.53.9016 Labeling—Required information—Recordkeeping—Rules.** (1) Any commercial feed, except a customer-formula feed, distributed in this state must be accompanied by a legible label bearing the following information:

(a) The product name and the brand name, if any, under which the commercial feed is distributed.

(b) The guaranteed analysis stated in such terms as the department by rule determines is required to advise the user of the composition of the feed or to support claims made in the labeling. In all cases the substances or elements must be determinable by laboratory methods such as the methods published by the association of official analytical chemists.

(c) The common or usual name of each ingredient used in the manufacture of the commercial feed, except as the department may, by regulation, permit the use of a collective term for a group of ingredients all of which perform the same function. An ingredient statement is not required for single standardized ingredient feeds which are officially defined.

(d) The name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed.

(e) Adequate directions for use for all commercial feeds containing drugs and for all such other commercial feeds as the department may require by rule as necessary for their safe and effective use.

(f) Those precautionary statements the department by rule determines are necessary for the safe and effective use of the commercial feed.

(g) The net weight as required under chapter 19.94 RCW.

(2) When a commercial feed, except a customer-formula feed, is distributed in this state in bags or other containers, the label must be placed on or affixed to the container; when a commercial feed, except a customer-formula feed, is distributed in bulk the label must accompany delivery and be furnished to the purchaser at time of delivery.

(3) A customer-formula feed must be labeled by shipping document. The shipping document, which is to accompany delivery and be supplied to the purchaser at the time of delivery, must bear the following information:

- (a) Name and address of the manufacturer;
- (b) Name and address of the purchaser;
- (c) Date of delivery;

(d) Product name and the net weight as required under chapter 19.94 RCW;

(e) Adequate directions for use for all customer-formula feeds containing drugs and for such other feeds as the department may require by rule as necessary for their safe and effective use;

(f) The directions for use and precautionary statements as required by subsection (1)(e) and (f) of this section; and

(g) If a drug containing product is used:

(i) The purpose of the medication (claim statement);

(ii) The established name of each active drug ingredient and the level of each drug used in the final mixture expressed in accordance with rules established by the department.

(4) The product name and quantity statement of each commercial feed and each other ingredient used in the customer formula feed must be on file at the plant producing the product. These records must be kept on file for one year after the last sale. This information must be made available to the purchaser, the dealer making the sale, and the department on request. [2005 c 18 § 6; 1995 c 374 § 37; 1965 ex.s. c 31 § 5.]

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68:** See note following RCW 15.36.012.

**15.53.9018 Semiannual report required—Inspection fees—Reports—Late fees—Confidentiality, exception.**

(1) Every registrant or licensee must file a semiannual report on forms provided by the department setting forth the number of tons of commercial feed distributed in or into this state. The report must be filed regardless of the amount of feed distributed or inspection fees owed. The report must include:

(a) The name and mailing address of the registrant or licensee;

(b) The physical address of the registrant or licensee;

(c) The name, contact information, and signature of the person filing the report;

(d) The total number of tons distributed in or into this state;

(e) The total number of tons on which the registrant or licensee is paying;

(f) If the registrant or licensee is not paying inspection fees on all commercial feed he or she distributed in or into this state, information regarding the registrants or licensees that are responsible for paying the inspection fees and the number of tons involved; and

(g) Other information required by the department by rule.

(2) Except as provided in subsections (3) through (5) of this section, each initial distributor or responsible buyer must pay to the department an inspection fee on all commercial feed distributed by such person during the reporting period. The inspection fee must accompany the report required in subsection (1) of this section. The inspection fee shall be not less than four cents nor more than twelve cents per ton as prescribed by the department by rule. These fees shall be used for enforcement and administration of this chapter and its rules.

(3) The initial distributor is not required to pay an inspection fee for commercial feed he or she distributed to a responsible buyer.

(4) In a situation where a responsible buyer is distributing to another responsible buyer, the inspection fee must be paid by the last responsible buyer to distribute the commercial feed.

(5) The initial distributor or responsible buyer is not required to pay an inspection fee for: (a) Pet food and specialty pet food distributed in packages weighing less than ten pounds; (b) distribution of bona fide experimental feeds on which accurate records and experimental programs are maintained; (c) commercial feed distributed to points outside this state; and (d) food processing byproducts from fruit, vegetable, or potato processing plants, freezing or dehydrating facilities, or juice or jelly preserving plants.

(6) Tonnage will be reported and inspection fees will be paid on (a) byproducts or products of sugar refineries; and (b) materials used in the preparation of pet foods and specialty pet food.

(7)(a) Each person made responsible by this chapter for filing a report or paying inspection fees must do so according to the following schedule:

(i) For the period January 1st through June 30th of each year, the report and inspection fees are due on July 31st of that year; and

(ii) For the period July 1st through December 31st of each year, the report and inspection fees are due on January 31st of the following year.

(b) If a complete report is not received by the due date or the appropriate inspection fees are not received by the due date, the person responsible for filing the report or paying the inspection fee must pay a late fee equal to fifteen percent of the inspection fee owed or fifty dollars, whichever is greater.

(c) The department may cancel the registration of a person's commercial feed or may cancel a person's commercial feed license if that person fails to pay the late fee. The applicant or licensee may request a hearing as authorized under chapter 34.05 RCW.

(8) If inspection fees are owed, the minimum inspection fee is twelve dollars and fifty cents.

(9) For the purpose of verifying the accuracy of reports and payment of appropriate inspection fees, the department may examine, at reasonable times, a registrant's or licensee's distribution records and may require each registrant or licensee to maintain records or file additional reports. These records must be maintained in usable condition by the registrant or licensee for a period of three years unless by rule this retention period is extended and must be submitted to the department upon request.

(10) The report required by subsection (1) of this section shall not be a public record, and any information given in such report which would reveal the business operation of the person making the report is exempt from public disclosure under chapter 42.17 RCW, and information obtained by the department from other governmental agencies or other sources that is used to verify information received in the report is exempt from public disclosure under chapter 42.17 RCW. However, this subsection does not prevent the use of information concerning the business operation of a person if any action, suit, or proceeding instituted under the authority of this chapter, including any civil action for collection of unpaid inspection fees, which action is hereby authorized and which shall be as an action at law in the name of the director of the department.

(11) Any commercial feed obtained by a consumer or contract feeder outside the jurisdiction of this state and brought into this state for use is subject to all the provisions of this chapter, including inspection fees. [2005 c 18 § 7; 1995 c 374 § 38; 1982 c 177 § 3; 1981 c 297 § 17; 1979 c 91 § 1; 1975 1st ex.s. c 257 § 5; 1967 c 240 § 32; 1965 ex.s. c 31 § 6.]

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68:** See note following RCW 15.36.012.

**Effective date—1981 c 297 § 17:** "Section 17 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1981." [1981 c 297 § 44.]

**Severability—1981 c 297:** See note following RCW 15.36.201.

**Effective date—1979 c 91:** "This act shall take effect on January 1, 1980." [1979 c 91 § 2.]

**Construction—Effective date—1975 1st ex.s. c 257:** See RCW 15.53.9053 and note.

**Severability—1967 c 240:** See note following RCW 43.23.010.

**15.53.902 Adulteration—Definition—Unlawful to distribute.** It is unlawful for any person to distribute an adulterated feed. A commercial feed is deemed to be adulterated:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such commercial feed shall not be considered adulterated under this subsection if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health; or

(2) If it bears or contains any added poisonous, added deleterious, or added nonnutritive substance which is unsafe within the meaning of section 406 of the federal food, drug, and cosmetic act (other than one which is (a) a pesticide chemical in or on a raw agricultural commodity; or (b) a food additive); or

(3) If it is, or it bears, or contains any food additive which is unsafe within the meaning of section 409 of the federal food, drug, and cosmetic act (21 U.S.C. Sec. 348); or

(4) If it is ruminant feed and is, bears, or contains any animal protein prohibited in ruminant feed that is unsafe within the meaning of federal regulations promulgated under section 409 of the federal food, drug, and cosmetic act (21 U.S.C. Sec. 348); or

(5) If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408(a) of the federal food, drug, and cos-

metic act: PROVIDED, That where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the federal food, drug, and cosmetic act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal, which is unsafe within the meaning of section 408(a) of the federal food, drug, and cosmetic act; or

(6) If it is, or it bears or contains any color additive which is unsafe within the meaning of section 706 of the federal food, drug, and cosmetic act; or

(7) If it is, or it bears or contains any new animal drug that is unsafe within the meaning of section 512 of the federal food, drug, and cosmetic act (21 U.S.C. Sec. 360b); or

(8) If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor; or

(9) If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling; or

(10) If it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice rules adopted by the department to assure that the drug meets the requirements of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics that it purports or is represented to possess. In adopting such rules, the department shall adopt the current good manufacturing practice regulations for type A medicated articles and type B and type C medicated feeds established under authority of the federal food, drug, and cosmetic act, unless the department determines that they are not appropriate to the conditions that exist in this state; or

(11) If it contains viable, prohibited (primary) noxious weed seeds in excess of one per pound, or if it contains viable, restricted (secondary) noxious weed seeds in excess of twenty-five per pound. The primary and secondary noxious weed seeds shall be those as named pursuant to the provisions of chapter 15.49 RCW and rules adopted thereunder. [2005 c 40 § 1; 1995 c 374 § 39; 1982 c 177 § 4; 1979 c 154 § 2; 1965 ex.s. c 31 § 7.]

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68:** See note following RCW 15.36.012.

**Severability—1979 c 154:** See note following RCW 15.49.330.

**15.53.9024 Inspections of facilities, vehicles, equipment, etc.—Verification of records and procedures—Notice—Official samples—Warrants authorized.** (1) For the purpose of enforcement of this chapter, and in order to determine whether its provisions have been complied with, including whether an operation is subject to such provisions, inspectors duly designated by the director, upon presenting

appropriate credentials, and a written notice to the owner, operator, or agent in charge, are authorized (a) to enter, during normal business hours, any facility within the state in which commercial feeds are manufactured, transloaded, processed, packed, distributed, or held for distribution, or to enter a vehicle being used to transport or hold such feeds; and (b) to inspect at reasonable times and within reasonable limits and in a reasonable manner, the facilities, or vehicles and all pertinent equipment, finished and unfinished materials, containers, labeling, and records. The inspection may include the verification of only such records, and production and control procedures as may be necessary to determine compliance with this chapter and its rules.

(2) A separate notice shall be given for each such inspection, but a notice is not required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified.

(3) If the inspector or employee making such inspection of a facility or vehicle has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises, he or she shall give to the owner, operator, or agent in charge, a receipt describing the samples obtained.

(4) If the owner of a facility or vehicle described in subsection (1) of this section, or his or her agent, refuses to admit the director or his or her agent to inspect in accordance with subsections (1) and (2) of this section, the director or his or her agent is authorized to obtain from any court of competent jurisdiction a warrant directing such owner or his or her agent to submit the premises described in the warrant to inspection.

(5) For the enforcement of this chapter, the director or his or her duly assigned agent is authorized to enter upon any public or private premises including any vehicle of transport during regular business hours to have access to, and to obtain samples, and to examine records relating to distribution of commercial feeds.

(6) Sampling and analysis shall be conducted in accordance with methods published by the association of official analytical chemists, or in accordance with other generally recognized methods.

(7) The results of all analyses of official samples shall be forwarded by the department to the person named on the label and to the purchaser, if known. If the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded and upon request within thirty days following the receipt of the analysis, the department shall furnish to the registrant or licensee a portion of the sample concerned. If referee analysis is requested, a portion of the official sample shall be furnished by the department and shall be sent directly to an independent lab agreed to by all parties.

(8) The department, in determining for administrative purposes whether a feed is deficient in any component, shall be guided solely by the official sample as defined in RCW 15.53.901(20) and obtained and analyzed as provided for in this section.

(9) Analysis of an official sample by the department shall be accepted as prima facie evidence by any court of

competent jurisdiction. [2005 c 18 § 8; 1995 c 374 § 41; 1965 ex.s. c 31 § 9.]

**Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68:** See note following RCW 15.36.012.

*Prosecutions, official analysis as evidence:* RCW 15.53.904.

**15.53.904 Department's remedies for noncompliance—Classification of crimes—Prosecutions—Injunctions.** (1) Any person convicted of violating any of the provisions of this chapter or the rules and regulations issued thereunder or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent the department in the performance of its duty in connection with the provisions of this chapter, shall be adjudged guilty of a misdemeanor as provided in RCW 9A.20.021. In all prosecutions under this chapter involving the composition of a lot of commercial feed, a certified copy of the official analysis signed by the department shall be accepted as prima facie evidence of the composition.

(2) Any person convicted of intentionally violating RCW 15.53.902(4) or the rules issued thereunder is guilty of a gross misdemeanor as provided in RCW 9A.20.021.

(3) Nothing in this chapter shall be construed as requiring the department to report for prosecution or for the institution of seizure proceedings as a result of minor violations of this chapter when it believes that the public interest will be best served by a suitable notice of warning in writing.

(4) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the department reports a violation for such prosecution, an opportunity shall be given the distributor to present the distributor's view in writing or orally to the department.

(5) The department is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under this chapter notwithstanding the existence of other remedies at law. Said injunction to be issued without bond. [2005 c 40 § 2; 1965 ex.s. c 31 § 17.]

*Analysis of official sample as evidence:* RCW 15.53.9024.

**15.53.9044 Disposition of moneys.** All moneys collected under this chapter shall be paid to the director and deposited in an account within the agricultural local fund. Such deposits shall be used only in the administration and enforcement of this chapter. [2005 c 18 § 9; 1988 c 254 § 5; 1975 1st ex.s. c 257 § 8; 1965 ex.s. c 31 § 19.]

**Construction—Effective date—1975 1st ex.s. c 257:** See RCW 15.53.9053 and note.

**15.53.9053 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Chapter 15.58 RCW

### WASHINGTON PESTICIDE CONTROL ACT

#### Sections

15.58.060 Statement for registration—Contents. (*Effective July 1, 2006.*)

**15.58.060 Statement for registration—Contents.** (*Effective July 1, 2006.*) (1) The applicant for registration shall file a statement with the department which shall include:

(a) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's;

(b) The name of the pesticide;

(c) The complete formula of the pesticide, including the active and inert ingredients: PROVIDED, That confidential business information of a proprietary nature is not made available to any other person and is exempt from disclosure as a public record, as provided by RCW 42.56.070;

(d) Other necessary information required for completion of the department's application for registration form; and

(e) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including the directions and precautions for use.

(2) The director may require a full description of the tests made and the results thereof upon which the claims are based.

(3) The director may prescribe other necessary information by rule. [2005 c 274 § 215; 1989 c 380 § 4; 1971 ex.s. c 190 § 6.]

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

### Chapter 15.65 RCW

#### WASHINGTON STATE AGRICULTURAL COMMODITY BOARDS

(Formerly: Washington state agricultural enabling act of 1961—  
Commodity boards)

##### Sections

15.65.203 Certain records exempt from public disclosure—Exceptions—  
Actions not prohibited by chapter. (*Effective July 1, 2006.*)

**15.65.203 Certain records exempt from public disclosure—Exceptions—Actions not prohibited by chapter.** (*Effective July 1, 2006.*) (1) Pursuant to RCW 42.56.380, certain agricultural business records, commodity board records, and department of agriculture records relating to commodity boards and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or a commodity board for the purpose of administering this chapter or a marketing order or agreement may be shared between the department and the applicable commodity board. They may also be used, if required, in any suit or administrative hearing involving this chapter or a marketing order or agreement.

(3) This chapter does not prohibit:

(a) The issuance of general statements based upon the reports of a number of persons subject to any marketing order or agreement as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or a commodity board of the name of any person violating any marketing order or agreement and a statement of the manner of the violation by that person. [2005 c 274 § 216; 2002 c 313 § 18.]

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

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

### Chapter 15.66 RCW

#### WASHINGTON STATE AGRICULTURAL COMMODITY COMMISSIONS

(Formerly: Washington agricultural enabling act of 1955—  
Commodity commissions)

##### Sections

15.66.105 Certain records exempt from public disclosure—Exemptions—Actions not prohibited by chapter. (*Effective July 1, 2006.*)

**15.66.105 Certain records exempt from public disclosure—Exemptions—Actions not prohibited by chapter.** (*Effective July 1, 2006.*) (1) Pursuant to RCW 42.56.380, certain agricultural business records, commodity commission records, and department of agriculture records relating to commodity commissions and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or a commodity commission for the purpose of administering this chapter or a marketing order may be shared between the department and the applicable commodity commission. They may also be used, if required, in any suit or administrative hearing involving any provision of this chapter or a marketing order.

(3) This chapter does not prohibit:

(a) The issuance of general statements based upon the reports of a number of persons subject to any marketing order as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or a commodity commission of the name of any person violating any marketing order and a statement of the manner of the violation by that person. [2005 c 274 § 217; 2002 c 313 § 50.]

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

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

### Chapter 15.76 RCW

#### AGRICULTURAL FAIRS, YOUTH SHOWS, EXHIBITIONS

##### Sections

15.76.165 Application of counties for capital improvement and maintenance assistance. (*Effective July 1, 2006.*)

**15.76.165 Application of counties for capital improvement and maintenance assistance.** (*Effective July 1, 2006.*) Any county which owns or leases property from another governmental agency and provides such property for area or county and district agricultural fair purposes may apply to the director for special assistance in carrying out necessary capital improvements to such property and maintenance of the appurtenances thereto. [2005 c 443 § 2; 1973 c 117 § 1; 1969 c 85 § 1.]

**Finding—Intent—Effective date—2005 c 443:** See notes following RCW 82.08.0255.

## Chapter 15.86 RCW

## ORGANIC FOOD PRODUCTS

## Sections

15.86.110 Confidentiality of business related information. (*Effective July 1, 2006.*)

**15.86.110 Confidentiality of business related information. (*Effective July 1, 2006.*)** (1) Except as provided in subsection (2) of this section, the department shall keep confidential any business related information obtained under this chapter concerning an entity certified under this chapter or an applicant for such certification and such information shall be exempt from public inspection and copying under chapter 42.56 RCW.

(2) Applications for certification under this chapter and laboratory analyses pertaining to that certification shall be available for public inspection and copying. [2005 c 274 § 218; 1992 c 71 § 11.]

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

## Chapter 15.88 RCW

## WINE COMMISSION

## Sections

15.88.170 Certain records exempt from public disclosure—Exceptions—Actions not prohibited by chapter. (*Effective July 1, 2006.*)

**15.88.170 Certain records exempt from public disclosure—Exceptions—Actions not prohibited by chapter. (*Effective July 1, 2006.*)** (1) Under RCW 42.56.380, certain agricultural business records, commission records, and department of agriculture records relating to the commission and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or the commission for the purpose of administering this chapter may be shared between the department and the commission. They may also be used, if required, in any suit or administrative hearing involving any provision of this chapter or a marketing order.

(3) This chapter does not prohibit:

(a) The issuance of general statements based upon the reports of persons subject to this chapter as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or the commission of the name of any person violating this chapter and a statement of the manner of the violation by that person. [2005 c 274 § 219; 2002 c 313 § 70.]

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

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

[2005 RCW Supp—page 116]

## Title 16

## ANIMALS AND LIVESTOCK

(Formerly: Animals, estrays, brands, and fences)

## Chapters

**16.52 Prevention of cruelty to animals.**

**16.67 Washington state beef commission.**

## Chapter 16.52 RCW

## PREVENTION OF CRUELTY TO ANIMALS

## Sections

16.52.117 Animal fighting—Prohibited behavior—Class C felony—Exceptions.

16.52.205 Animal cruelty in the first degree.

16.52.207 Animal cruelty in the second degree.

**16.52.117 Animal fighting—Prohibited behavior—Class C felony—Exceptions.** (1) A person commits the crime of animal fighting if the person knowingly does any of the following:

(a) Owns, possesses, keeps, breeds, trains, buys, sells, or advertises or offers for sale any animal with the intent that the animal shall be engaged in an exhibition of fighting with another animal;

(b) Promotes, organizes, conducts, participates in, advertises, or performs any service in the furtherance of an exhibition of animal fighting, transports spectators to an animal fight, or provides or serves as a stakeholder for any money wagered on an animal fight;

(c) Keeps or uses any place for the purpose of animal fighting, or manages or accepts payment of admission to any place kept or used for the purpose of animal fighting;

(d) Suffers or permits any place over which the person has possession or control to be occupied, kept, or used for the purpose of an exhibition of animal fighting; or

(e) Takes, leads away, possesses, confines, sells, transfers, or receives a stray animal or a pet animal, with the intent to deprive the owner of the pet animal, and with the intent of using the stray animal or pet animal for animal fighting, or for training or baiting for the purpose of animal fighting.

(2) A person who violates this section is guilty of a class C felony punishable under RCW 9A.20.021.

(3) Nothing in this section prohibits the following:

(a) The use of dogs in the management of livestock, as defined by chapter 16.57 RCW, by the owner of the livestock or the owner's employees or agents or other persons in lawful custody of the livestock;

(b) The use of dogs in hunting as permitted by law; or

(c) The training of animals or the use of equipment in the training of animals for any purpose not prohibited by law.

(4) For the purposes of this section, "animal" means dogs or male chickens. [2005 c 481 § 3; 1994 c 261 § 11; 1982 c 114 § 9.]

**Finding—Intent—1994 c 261:** See note following RCW 16.52.011.

**16.52.205 Animal cruelty in the first degree.** (1) A person is guilty of animal cruelty in the first degree when, except as authorized in law, he or she intentionally (a) inflicts substantial pain on, (b) causes physical injury to, or (c) kills



an animal by a means causing undue suffering, or forces a minor to inflict unnecessary pain, injury, or death on an animal.

(2) A person is guilty of animal cruelty in the first degree when, except as authorized by law, he or she, with criminal negligence, starves, dehydrates, or suffocates an animal and as a result causes: (a) Substantial and unjustifiable physical pain that extends for a period sufficient to cause considerable suffering; or (b) death.

(3) Animal cruelty in the first degree is a class C felony. [2005 c 481 § 1; 1994 c 261 § 8.]

**Finding—Intent—1994 c 261:** See note following RCW 16.52.011.

**16.52.207 Animal cruelty in the second degree.** (1) A person is guilty of animal cruelty in the second degree if, under circumstances not amounting to first degree animal cruelty, the person knowingly, recklessly, or with criminal negligence inflicts unnecessary suffering or pain upon an animal.

(2) An owner of an animal is guilty of animal cruelty in the second degree if, under circumstances not amounting to first degree animal cruelty, the owner knowingly, recklessly, or with criminal negligence:

(a) Fails to provide the animal with necessary shelter, rest, sanitation, space, or medical attention and the animal suffers unnecessary or unjustifiable physical pain as a result of the failure; or

(b) Abandons the animal.

(3) Animal cruelty in the second degree is a misdemeanor.

(4) In any prosecution of animal cruelty in the second degree, it shall be an affirmative defense, if established by the defendant by a preponderance of the evidence, that the defendant's failure was due to economic distress beyond the defendant's control. [2005 c 481 § 2; 1994 c 261 § 9.]

**Finding—Intent—1994 c 261:** See note following RCW 16.52.011.

### Chapter 16.67 RCW

#### WASHINGTON STATE BEEF COMMISSION

##### Sections

16.67.180 Certain records exempt from public disclosure—Exceptions—Actions not prohibited by chapter. (*Effective July 1, 2006.*)

**16.67.180 Certain records exempt from public disclosure—Exceptions—Actions not prohibited by chapter. (*Effective July 1, 2006.*)** (1) Under RCW 42.56.380, certain agricultural business records, commission records, and department of agriculture records relating to the commission and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or the commission for the purpose of administering this chapter may be shared between the department and the commission. They may also be used, if required, in any suit or administrative hearing involving any provision of this chapter or a marketing order.

(3) This chapter does not prohibit:

(a) The issuance of general statements based upon the reports of persons subject to this chapter as long as the state-

ments do not identify the information furnished by any person; or

(b) The publication by the director or the commission of the name of any person violating this chapter and a statement of the manner of the violation by that person. [2005 c 274 § 220; 2002 c 313 § 71.]

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

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

## Title 17

### WEEDS, RODENTS, AND PESTS

#### Chapters

**17.21 Washington pesticide application act.**

**17.28 Mosquito control districts.**

#### Chapter 17.21 RCW

#### WASHINGTON PESTICIDE APPLICATION ACT

##### Sections

17.21.128 Renewal of certificate or license—Recertification standards.

**17.21.128 Renewal of certificate or license—Recertification standards.** (1) The director may renew any certification or license issued under authority of this chapter subject to the recertification standards identified in subsection (2) of this section or an examination requiring new knowledge that may be required to apply pesticides.

(2) Except as provided in subsection (3) of this section, all individuals licensed under this chapter shall meet the recertification standards identified in (a) or (b) of this subsection, every five years, in order to qualify for continuing licensure.

(a) Licensed pesticide applicators may qualify for continued licensure through accumulation of recertification credits.

(i) Private applicators shall accumulate a minimum of twenty department-approved credits every five years with no more than ten credits allowed per year;

(ii) Limited private applicators shall accumulate a minimum of eight department-approved credits every five years. All credits must be applicable to the control of weeds with at least one-half of the credits directly related to weed control and the remaining credits in topic areas indirectly related to weed control, such as the safe and legal use of pesticides;

(iii) Rancher private applicators shall accumulate a minimum of twelve department-approved credits every five years;

(iv) All other license types established under this chapter shall accumulate a minimum of forty department-approved credits every five years with no more than fifteen credits allowed per year.

(b) Certified pesticide applicators may qualify for continued licensure through meeting the examination requirements necessary to become licensed in those areas in which the licensee operates.

(3) At the termination of a licensee's five-year recertification period, the director may waive the requirements iden-

tified in subsection (2) of this section if the licensee can demonstrate that he or she is meeting comparable recertification standards through another state or jurisdiction or through a federal environmental protection agency approved government agency plan. [2005 c 397 § 1; 2004 c 100 § 3; 1994 c 283 § 13; 1986 c 203 § 9; 1979 c 92 § 9.]

**Effective date—2004 c 100:** See note following RCW 17.21.020.

**Severability—1986 c 203:** See note following RCW 15.17.230.

### Chapter 17.28 RCW MOSQUITO CONTROL DISTRICTS

#### Sections

17.28.255 Classification of property—Assessments.

#### 17.28.255 Classification of property—Assessments.

The board of trustees shall annually determine the amount of money necessary to carry on the operations of the district and shall classify the property therein in proportion to the benefits to be derived from the operations of the district and in accordance with such classification shall apportion and assess the several lots, blocks, tracts, and parcels of land or other property within the district, which assessment shall be collected with the general taxes of the county or counties. A mosquito control district must use the assessed value applicable to forest land, farm and agricultural land, or open space land, under chapter 84.33 or 84.34 RCW, when the land has been designated as such and the assessed value is used as a component in determining the district assessment. If a district uses a fractional amount of assessed value as a component in determining the district assessment, then a fractional amount of the value applicable to forest land, farm and agricultural land, or open space land, under chapter 84.33 or 84.34 RCW, shall be used. [2005 c 181 § 2; 1959 c 64 § 7.]

## Title 18

### BUSINESSES AND PROFESSIONS

#### Chapters

- 18.20 Boarding homes.
- 18.27 Registration of contractors.
- 18.32 Dentistry.
- 18.35 Hearing and speech services.
- 18.36A Naturopathy.
- 18.39 Embalmers—Funeral directors.
- 18.43 Engineers and land surveyors.
- 18.44 Escrow agent registration act.
- 18.51 Nursing homes.
- 18.57 Osteopathy—Osteopathic medicine and surgery.
- 18.64 Pharmacists.
- 18.71 Physicians.
- 18.73 Emergency medical care and transportation services.
- 18.74 Physical therapy.
- 18.79 Nursing care.
- 18.83 Psychologists.
- 18.85 Real estate brokers and salespersons.
- 18.96 Landscape architects.
- 18.104 Water well construction.
- 18.106 Plumbers.

- 18.118 Regulation of business professions.
- 18.120 Regulation of health professions—Criteria.
- 18.130 Regulation of health professions—Uniform disciplinary act.
- 18.140 Certified real estate appraiser act.
- 18.160 Fire sprinkler system contractors.
- 18.225 Mental health counselors, marriage and family therapists, social workers.

### Chapter 18.20 RCW BOARDING HOMES

#### Sections

- 18.20.195 Disputed violations, enforcement remedies—Informal dispute resolution process.
- 18.20.390 Quality assurance committee.
- 18.20.410 Standards for small boarding homes—Study.
- 18.20.415 Rule-making authority.

**18.20.195 Disputed violations, enforcement remedies—Informal dispute resolution process.** (1) The licensee or its designee has the right to an informal dispute resolution process to dispute any violation found or enforcement remedy imposed by the department during a licensing inspection or complaint investigation. The purpose of the informal dispute resolution process is to provide an opportunity for an exchange of information that may lead to the modification, deletion, or removal of a violation, or parts of a violation, or enforcement remedy imposed by the department.

(2) The informal dispute resolution process provided by the department shall include, but is not necessarily limited to, an opportunity for review by a department employee who did not participate in, or oversee, the determination of the violation or enforcement remedy under dispute. The department shall develop, or further develop, an informal dispute resolution process consistent with this section.

(3) A request for an informal dispute resolution shall be made to the department within ten working days from the receipt of a written finding of a violation or enforcement remedy. The request shall identify the violation or violations and enforcement remedy or remedies being disputed. The department shall convene a meeting, when possible, within ten working days of receipt of the request for informal dispute resolution, unless by mutual agreement a later date is agreed upon.

(4) If the department determines that a violation or enforcement remedy should not be cited or imposed, the department shall delete the violation or immediately rescind or modify the enforcement remedy. If the department determines that a violation should have been cited under a different more appropriate regulation, the department shall revise the report, statement of deficiencies, or enforcement remedy accordingly. Upon request, the department shall issue a clean copy of the revised report, statement of deficiencies, or notice of enforcement action.

(5) The request for informal dispute resolution does not delay the effective date of any enforcement remedy imposed by the department, except that civil monetary fines are not payable until the exhaustion of any formal hearing and appeal rights provided under this chapter. The licensee shall submit to the department, within the time period prescribed by the department, a plan of correction to address any undisputed

violations, and including any violations that still remain following the informal dispute resolution. [2005 c 506 § 1; 2004 c 140 § 5; 2001 c 193 § 7.]

**18.20.390 Quality assurance committee.** (1) To ensure the proper delivery of services and the maintenance and improvement in quality of care through self-review, any boarding home licensed under this chapter may maintain a quality assurance committee that, at a minimum, includes:

(a) A licensed registered nurse under chapter 18.79 RCW;

(b) The administrator; and

(c) Three other members from the staff of the boarding home.

(2) When established, the quality assurance committee shall meet at least quarterly to identify issues that may adversely affect quality of care and services to residents and to develop and implement plans of action to correct identified quality concerns or deficiencies in the quality of care provided to residents.

(3) To promote quality of care through self-review without the fear of reprisal, and to enhance the objectivity of the review process, the department shall not require, and the long-term care ombudsman program shall not request, disclosure of any quality assurance committee records or reports, unless the disclosure is related to the committee's compliance with this section, if:

(a) The records or reports are not maintained pursuant to statutory or regulatory mandate; and

(b) The records or reports are created for and collected and maintained by the committee.

(4) If the boarding home refuses to release records or reports that would otherwise be protected under this section, the department may then request only that information that is necessary to determine whether the boarding home has a quality assurance committee and to determine that it is operating in compliance with this section. However, if the boarding home offers the department documents generated by, or for, the quality assurance committee as evidence of compliance with boarding home requirements, the documents are protected as quality assurance committee documents under subsections (6) and (8) of this section when in the possession of the department. The department is not liable for an inadvertent disclosure, a disclosure related to a required federal or state audit, or disclosure of documents incorrectly marked as quality assurance committee documents by the facility.

(5) Good faith attempts by the committee to identify and correct quality deficiencies shall not be used as a basis for sanctions.

(6) Information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, a quality assurance committee are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude:

(a) In any civil action, the discovery of the identity of persons involved in the care that is the basis of the civil action whose involvement was independent of any quality improvement committee activity;

(b) In any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of their participation in the quality assurance committee activities.

(7) A quality assurance committee under subsection (1) of this section, RCW 70.41.200, 74.42.640, 4.24.250, or 43.70.510 may share information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, the committee, with one or more other quality assurance committees created under subsection (1) of this section, RCW 70.41.200, 74.42.640, 4.24.250, or 43.70.510 for the improvement of the quality of care and services rendered to boarding home residents. Information and documents disclosed by one quality assurance committee to another quality assurance committee and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsections (6) and (8) of this section, RCW 43.70.510(4), 70.41.200(3), 4.24.250(1), and 74.42.640 (7) and (9). The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws.

(8) Information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, a quality assurance committee are exempt from disclosure under chapter 42.17 RCW.

(9) Notwithstanding any records created for the quality assurance committee, the facility shall fully set forth in the resident's records, available to the resident, the department, and others as permitted by law, the facts concerning any incident of injury or loss to the resident, the steps taken by the facility to address the resident's needs, and the resident outcome. [2005 c 33 § 2; 2004 c 144 § 2.]

**Findings—2005 c 33:** "The legislature finds that facilitation of the quality assurance process in licensed boarding homes and nursing homes will promote safe patient care. The legislature also finds that communication and quality assurance efforts by boarding homes and nursing homes will achieve the goal of providing high quality of care to citizens residing in licensed boarding homes and nursing homes, and may reduce property and liability insurance premium costs for such facilities. The legislature further finds that sharing of quality assurance information between boarding homes, nursing homes, coordinated quality improvement plans, peer review organizations, and hospitals will promote safe patient care and ensure consistency of care across organizations and practices." [2005 c 33 § 1.]

**Finding—2004 c 144:** "The legislature finds that quality assurance efforts will promote compliance with regulations by providers and achieve the goal of providing high quality of care to citizens residing in licensed boarding homes, and may reduce property and liability insurance premium costs for such facilities." [2004 c 144 § 1.]

**Effective date—2004 c 144:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 26, 2004]." [2004 c 144 § 5.]

**18.20.410 Standards for small boarding homes—Study.** The department of health, the department, and the building code council shall develop standards for small boarding homes between seven and sixteen beds that address at least the following issues:

- (1) Domestic food refrigeration and freezer storage;
- (2) Sinks and sink placement;
- (3) Dishwashers;
- (4) Use of heat supplements for water temperature in clothes washers;
- (5) Yard shrubbery;
- (6) Number of janitorial rooms in a facility;
- (7) Number and cross-purpose of dirty rooms;
- (8) Instant hot water faucets;
- (9) Medication refrigeration; and
- (10) Walled and gated facilities.

Based on the standards developed under this section, the department of health and the building code council shall study the risks and benefits of modifying and simplifying construction and equipment standards for boarding homes with a capacity of seven to sixteen persons. The study shall include coordination with the department. The department of health shall report its findings and recommendations to appropriate committees of the legislature no later than December 1, 2005. [2005 c 505 § 1.]

**18.20.415 Rule-making authority.** The department of health and the department of social and health services may adopt rules to implement RCW 18.20.410. [2005 c 505 § 2.]

### Chapter 18.27 RCW

#### REGISTRATION OF CONTRACTORS

##### Sections

18.27.120 List of registered contractors—Availability, fee. (*Effective July 1, 2006.*)

**18.27.120 List of registered contractors—Availability, fee.** (*Effective July 1, 2006.*) (1) The department shall compile a list of all contractors registered under this chapter and update the list at least bimonthly. The list shall be considered as public record information and shall be available to the public upon request: PROVIDED, That the department may charge a reasonable fee under RCW 42.56.120.

(2) The department shall inform any person, firm, or corporation, if a contractor is registered, and if a contractor is bonded or insured, without charge except for a reasonable fee under RCW 42.56.120 for copies made. [2005 c 274 § 221; 1983 1st ex.s. c 2 § 20; 1973 1st ex.s. c 153 § 7; 1972 ex.s. c 118 § 5.]

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

*Fees, generally:* RCW 18.27.070.

### Chapter 18.32 RCW

#### DENTISTRY

##### Sections

18.32.040 Requirements for licensure. (*Effective July 1, 2006.*)  
18.32.195 University of Washington dental school faculty and residents—Licenses. (*Effective until July 1, 2006.*)

[2005 RCW Supp—page 120]

18.32.195 University of Washington dental school faculty and residents—Licenses. (*Effective July 1, 2006.*)

**18.32.040 Requirements for licensure.** (*Effective July 1, 2006.*) The commission shall require that every applicant for a license to practice dentistry shall:

- (1) Present satisfactory evidence of graduation from a dental college, school, or dental department of an institution approved by the commission;
- (2) Submit, for the files of the commission, a recent picture duly identified and attested; and
- (3)(a) Pass an examination prepared or approved by and administered under the direction of the commission. The dentistry licensing examination shall consist of practical and written tests upon such subjects and of such scope as the commission determines. The commission shall set the standards for passing the examination. The secretary shall keep on file the examination papers and records of examination for at least one year. This file shall be open for inspection by the applicant or the applicant's agent unless the disclosure will compromise the examination process as determined by the commission or is exempted from disclosure under chapter 42.56 RCW.

(b) The commission may accept, in lieu of all or part of the written examination required in (a) of this subsection, a certificate granted by a national or regional testing organization approved by the commission.

(c) The commission shall accept, in lieu of the practical examination required in (a) of this subsection, proof that an applicant has satisfactorily completed a postdoctoral dental residency program accredited by the commission on dental accreditation of the American dental association and approved by the commission, of one to three year's duration, in a community health clinic that serves predominantly low-income patients or is located in a dental care health professional shortage area in this state, and that includes an outcome assessment evaluation, other than the western regional examining board's clinical examination, assessing the resident's competence to practice dentistry. The commission shall develop criteria, consistent with the standards of the commission on dental accreditation of the American dental association, for community clinics to use when sponsoring students in a residency program under this subsection, including guidelines for the proper supervision of the resident and measuring the resident's competence to practice dentistry. [2005 c 454 § 2; 2005 c 274 § 222; 1994 sp.s. c 9 § 211; 1991 c 3 § 61; 1989 c 202 § 16; 1979 c 38 § 2; 1935 c 112 § 5; RRS § 10031-5. Prior: 1923 c 16 §§ 4, 5. Formerly RCW 18.32.040 and 18.32.130 through 18.32.150.]

**Reviser's note:** This section was amended by 2005 c 274 § 222 and by 2005 c 454 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2005 c 454:** See note following RCW 18.82.195.

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

**18.32.195 University of Washington dental school faculty and residents—Licenses.** (*Effective until July 1, 2006.*) The commission may, without examination, issue a license to persons who possess the qualifications set forth in this section.

(1) The commission may, upon written request of the dean of the school of dentistry of the University of Washington, issue a license to practice dentistry in this state to persons who have been licensed or otherwise authorized to practice dentistry in another state or country and who have been accepted for employment by the school of dentistry as faculty members. For purposes of this subsection, this means teaching members of the faculty of the school of dentistry of the University of Washington. Such license shall permit the holder thereof to practice dentistry within the confines of the university facilities for a period of one year while he or she is so employed as a faculty member by the school of dentistry of the University of Washington. It shall terminate whenever the holder ceases to be a faculty member. Such license shall permit the holder thereof to practice dentistry only in connection with his or her duties in employment with the school of dentistry of the University of Washington. This limitation shall be stated on the license.

(2) The commission may, upon written request of the dean of the school of dentistry of the University of Washington, issue a limited license to practice dentistry in this state to university residents in postgraduate dental education. The license shall permit the resident dentist to provide dental care only in connection with his or her duties as a university resident.

(3) The commission may condition the granting of a license under this section with terms the commission deems appropriate. All persons licensed under this section shall be subject to the jurisdiction of the commission to the same extent as other members of the dental profession, in accordance with this chapter, and in addition the licensee may be disciplined by the commission after a hearing has been held in accordance with the provisions set forth in this chapter, and determination by the commission that such licensee has violated any of the restrictions set forth in this section.

(4) Persons applying for licensure pursuant to this section shall pay the application fee determined by the secretary and, in the event the license applied for is issued, a license fee at the rate provided for licenses generally. After review by the commission, licenses issued under this section may be renewed annually if the licensee continues to be employed as a faculty member of the school of dentistry of the University of Washington, or a university resident in postgraduate dental education, and otherwise meets the requirements of the provisions and conditions deemed appropriate by the commission. Any person who obtains a license pursuant to this section may, without an additional application fee, apply for licensure under this chapter, in which case the applicant shall be subject to examination and the other requirements of this chapter. [2005 c 164 § 1; 1994 sp.s. c 9 § 218; 1992 c 59 § 1; 1991 c 3 § 69; 1985 c 111 § 1.]

**18.32.195 University of Washington dental school faculty and residents—Licenses. (Effective July 1, 2006.)**

The commission may, without examination, issue a license to persons who possess the qualifications set forth in this section.

(1) The commission may, upon written request of the dean of the school of dentistry of the University of Washington, issue a license to practice dentistry in this state to persons who have been licensed or otherwise authorized to practice

dentistry in another state or country and who have been accepted for employment by the school of dentistry as faculty members. For purposes of this subsection, this means teaching members of the faculty of the school of dentistry of the University of Washington. Such license shall permit the holder thereof to practice dentistry within the confines of the university facilities for a period of one year while he or she is so employed as a faculty member by the school of dentistry of the University of Washington. It shall terminate whenever the holder ceases to be a faculty member. Such license shall permit the holder thereof to practice dentistry only in connection with his or her duties in employment with the school of dentistry of the University of Washington. This limitation shall be stated on the license.

(2) The commission may, upon written request of the dean of the school of dentistry of the University of Washington or the director of a dental residency program under RCW 18.32.040, issue a limited license to practice dentistry in this state to university residents in postgraduate dental education or postdoctorate residents in a dental residency program under RCW 18.32.040. The license shall permit the resident dentist to provide dental care only in connection with his or her duties as a university resident or a postdoctorate resident in a program under RCW 18.32.040.

(3) The commission may condition the granting of a license under this section with terms the commission deems appropriate. All persons licensed under this section shall be subject to the jurisdiction of the commission to the same extent as other members of the dental profession, in accordance with this chapter, and in addition the licensee may be disciplined by the commission after a hearing has been held in accordance with the provisions set forth in this chapter, and determination by the commission that such licensee has violated any of the restrictions set forth in this section.

(4) Persons applying for licensure pursuant to this section shall pay the application fee determined by the secretary and, in the event the license applied for is issued, a license fee at the rate provided for licenses generally. After review by the commission, licenses issued under this section may be renewed annually if the licensee continues to be employed as a faculty member of the school of dentistry of the University of Washington, or a university resident in postgraduate dental education, or a postdoctorate resident in a dental residency program under RCW 18.32.040, and otherwise meets the requirements of the provisions and conditions deemed appropriate by the commission. Any person who obtains a license pursuant to this section may, without an additional application fee, apply for licensure under this chapter, in which case the applicant shall be subject to examination and the other requirements of this chapter. [2005 c 454 § 1; 2005 c 164 § 1; 1994 sp.s. c 9 § 218; 1992 c 59 § 1; 1991 c 3 § 69; 1985 c 111 § 1.]

**Reviser's note:** This section was amended by 2005 c 164 § 1 and by 2005 c 454 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2005 c 454:** "This act takes effect July 1, 2006." [2005 c 454 § 4.]

## Chapter 18.35 RCW

## HEARING AND SPEECH SERVICES

(Formerly: Hearing aids)

## Sections

18.35.010	Definitions.
18.35.020	Hearing instruments—Dispensing—License, certificate, permit required.
18.35.060	Interim permit—Issuance.
18.35.195	Exemptions.

**18.35.010 Definitions.** As used in this chapter, unless the context requires otherwise:

(1) "Assistive listening device or system" means an amplification system that is specifically designed to improve the signal to noise ratio for the listener, reduce interference from noise in the background, and enhance hearing levels at a distance by picking up sound from as close to source as possible and sending it directly to the ear of the listener, excluding hearing instruments as defined in this chapter.

(2) "Licensed audiologist" means a person who is licensed by the department to engage in the practice of audiology and meets the qualifications in this chapter.

(3) "Audiology" means the application of principles, methods, and procedures related to hearing and the disorders of hearing and to related language and speech disorders, whether of organic or nonorganic origin, peripheral or central, that impede the normal process of human communication including, but not limited to, disorders of auditory sensitivity, acuity, function, processing, or vestibular function, the application of aural habilitation, rehabilitation, and appropriate devices including fitting and dispensing of hearing instruments, and cerumen management to treat such disorders.

(4) "Board" means the board of hearing and speech.

(5) "Department" means the department of health.

(6) "Establishment" means any permanent site housing a person engaging in the practice of fitting and dispensing of hearing instruments by a hearing instrument fitter/dispenser or audiologist; where the client can have personal contact and counsel during the firm's business hours; where business is conducted; and the address of which is given to the state for the purpose of bonding.

(7) "Facility" means any permanent site housing a person engaging in the practice of speech-language pathology and/or audiology, excluding the sale, lease, or rental of hearing instruments.

(8) "Fitting and dispensing of hearing instruments" means the sale, lease, or rental or attempted sale, lease, or rental of hearing instruments together with the selection and modification of hearing instruments and the administration of nondiagnostic tests as specified by RCW 18.35.110 and the use of procedures essential to the performance of these functions; and includes recommending specific hearing instrument systems, specific hearing instruments, or specific hearing instrument characteristics, the taking of impressions for ear molds for these purposes, the use of nondiagnostic procedures and equipment to verify the appropriateness of the hearing instrument fitting, and hearing instrument orientation. The fitting and dispensing of hearing instruments as defined by this chapter may be equally provided by a licensed hearing instrument fitter/dispenser or licensed audiologist.

(9) "Good standing" means a licensed hearing instrument fitter/dispenser, licensed audiologist, or licensed speech-language pathologist whose license has not been subject to sanctions pursuant to chapter 18.130 RCW or sanctions by other states, territories, or the District of Columbia in the last two years.

(10) "Hearing instrument" means any wearable prosthetic instrument or device designed for or represented as aiding, improving, compensating for, or correcting defective human hearing and any parts, attachments, or accessories of such an instrument or device, excluding batteries and cords, ear molds, and assistive listening devices.

(11) "Hearing instrument fitter/dispenser" means a person who is licensed to engage in the practice of fitting and dispensing of hearing instruments and meets the qualifications of this chapter.

(12) "Interim permit holder" means a person who holds the permit created under RCW 18.35.060 and who practices under the supervision of a licensed hearing instrument fitter/dispenser, licensed speech-language pathologist, or licensed audiologist.

(13) "Secretary" means the secretary of health.

(14) "Licensed speech-language pathologist" means a person who is licensed by the department to engage in the practice of speech-language pathology and meets the qualifications of this chapter.

(15) "Speech-language pathology" means the application of principles, methods, and procedures related to the development and disorders, whether of organic or nonorganic origin, that impede oral, pharyngeal, or laryngeal sensorimotor competencies and the normal process of human communication including, but not limited to, disorders and related disorders of speech, articulation, fluency, voice, verbal and written language, auditory comprehension, cognition/communication, and the application of augmentative communication treatment and devices for treatment of such disorders. [2005 c 45 § 1; 2002 c 310 § 1; 1998 c 142 § 1; 1996 c 200 § 2; 1993 c 313 § 1; 1991 c 3 § 80; 1983 c 39 § 1; 1979 c 158 § 38; 1973 1st ex.s. c 106 § 1.]

**Effective date—2002 c 310:** "This act takes effect January 1, 2003." [2002 c 310 § 27.]

**Effective date—1998 c 142 §§ 1-14 and 16-20:** "Sections 1 through 14 and 16 through 20 of this act take effect January 1, 2003." [1998 c 142 § 21.]

**18.35.020 Hearing instruments—Dispensing—License, certificate, permit required.** (1) No person shall engage in the fitting and dispensing of hearing instruments or imply or represent that he or she is engaged in the fitting and dispensing of hearing instruments unless he or she is a licensed hearing instrument fitter/dispenser or a licensed audiologist or holds an interim permit issued by the department as provided in this chapter and is an owner or employee of an establishment that is bonded as provided by RCW 18.35.240. The owner or manager of an establishment that dispenses hearing instruments is responsible under this chapter for all transactions made in the establishment name or conducted on its premises by agents or persons employed by the establishment engaged in fitting and dispensing of hearing instruments. Every establishment that fits and dispenses shall have in its employ at least one licensed hearing instrument fitter/dispenser or licensed audiologist at all times, and

shall annually submit proof that all testing equipment at that establishment that is required by the board to be calibrated has been properly calibrated.

(2) Effective January 1, 2003, no person shall engage in the practice of audiology or imply or represent that he or she is engaged in the practice of audiology unless he or she is a licensed audiologist or holds an audiology interim permit issued by the department as provided in this chapter. Audiologists who are certified as educational staff associates by the state board of education are excluded unless they elect to become licensed under this chapter. However, a person certified by the state board of education as an educational staff associate who practices outside the school setting must be a licensed audiologist.

(3) Effective January 1, 2003, no person shall engage in the practice of speech-language pathology or imply or represent that he or she is engaged in the practice of speech-language pathology unless he or she is a licensed speech-language pathologist or holds a speech-language pathology interim permit issued by the department as provided in this chapter. Speech-language pathologists who are certified as educational staff associates by the state board of education are excluded unless they elect to become licensed under this chapter. However, a person certified by the state board of education as an educational staff associate who practices outside the school setting must be a licensed speech-language pathologist. [2005 c 45 § 2; 2002 c 310 § 2; 1998 c 142 § 2; 1996 c 200 § 3; 1989 c 198 § 1; 1983 c 39 § 2; 1973 1st ex.s. c 106 § 2.]

**Effective date—2002 c 310:** See note following RCW 18.35.010.

**Effective date—1998 c 142 §§ 1-14 and 16-20:** See note following RCW 18.35.010.

**18.35.060 Interim permit—Issuance.** The department, upon approval by the board, shall issue an interim permit authorizing an applicant for speech-language pathologist licensure or audiologist licensure who, except for the post-graduate professional experience and the examination requirements, meets the academic and practicum requirements of RCW 18.35.040(2) to practice under supervision. The interim permit is valid for a period of one year from date of issuance. The board shall determine conditions for the interim permit. [2005 c 45 § 3; 2002 c 310 § 6; 1998 c 142 § 4; 1997 c 275 § 3. Prior: 1996 c 200 § 7; 1996 c 191 § 19; 1993 c 313 § 3; 1991 c 3 § 82; 1985 c 7 § 31; 1983 c 39 § 6; 1975 1st ex.s. c 30 § 37; 1973 1st ex.s. c 106 § 6.]

**Effective date—2002 c 310:** See note following RCW 18.35.010.

**Effective date—1998 c 142 §§ 1-14 and 16-20:** See note following RCW 18.35.010.

**18.35.195 Exemptions.** (1) This chapter shall not apply to military or federal government employees.

(2) This chapter does not prohibit or regulate:

(a) Fitting or dispensing by students enrolled in a board-approved program who are directly supervised by a licensed hearing instrument fitter/dispenser, a licensed audiologist under the provisions of this chapter, or an instructor at a two-year hearing instrument fitter/dispenser degree program that is approved by the board;

(b) Hearing instrument fitter/dispensers, speech-language pathologists, or audiologists of other states, territories,

or countries, or the District of Columbia while appearing as clinicians of bona fide educational seminars sponsored by speech-language pathology, audiology, hearing instrument fitter/dispenser, medical, or other healing art professional associations so long as such activities do not go beyond the scope of practice defined by this chapter; and

(c) The practice of audiology or speech-language pathology by persons certified by the state board of education as educational staff associates, except for those persons electing to be licensed under this chapter. However, a person certified by the state board of education as an educational staff associate who practices outside the school setting must be a licensed audiologist or licensed speech-language pathologist. [2005 c 45 § 4; 2002 c 310 § 21; 1998 c 142 § 15; 1996 c 200 § 27; 1983 c 39 § 22.]

**Effective date—2002 c 310:** See note following RCW 18.35.010.

## Chapter 18.36A RCW NATUROPATHY

### Sections

18.36A.020 Definitions.

18.36A.040 Scope of practice.

**18.36A.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of health.

(2) "Secretary" means the secretary of health or the secretary's designee.

(3) "Naturopath" means an individual licensed under this chapter.

(4) "Committee" means the Washington state naturopathic practice advisory committee.

(5) "Educational program" means an accredited program preparing persons for the practice of naturopathic medicine.

(6) "Nutrition and food science" means the prevention and treatment of disease or other human conditions through the use of foods, water, herbs, roots, bark, or natural food elements.

(7) "Manual manipulation" or "mechanotherapy" means manipulation of a part or the whole of the body by hand or by mechanical means.

(8) "Physical modalities" means use of physical, chemical, electrical, and other noninvasive modalities, including but not limited to heat, cold, air, light, water in any of its forms, sound, massage, and therapeutic exercise.

(9) "Homeopathy" means a system of medicine based on the use of infinitesimal doses of medicines capable of producing symptoms similar to those of the disease treated, as listed in the homeopathic pharmacopeia of the United States.

(10) "Naturopathic medicines" means vitamins; minerals; botanical medicines; homeopathic medicines; hormones; and those legend drugs and controlled substances consistent with naturopathic medical practice in accordance with rules established by the secretary. Controlled substances are limited to codeine and testosterone products that are contained in Schedules III, IV, and V in chapter 69.50 RCW.

(11) "Hygiene and immunization" means the use of such preventative techniques as personal hygiene, asepsis, public health, and immunizations, to the extent allowed by rule.

(12) "Minor office procedures" means care and procedures incident thereto of superficial lacerations, lesions, and abrasions, and the removal of foreign bodies located in superficial structures, not to include the eye; and the use of antiseptics and topical or local anesthetics in connection therewith. "Minor office procedures" also includes intramuscular, intravenous, subcutaneous, and intradermal injections of substances consistent with the practice of naturopathic medicine and in accordance with rules established by the secretary.

(13) "Common diagnostic procedures" means the use of venipuncture consistent with the practice of naturopathic medicine, commonly used diagnostic modalities consistent with naturopathic practice, health history taking, physical examination, radiography, examination of body orifices excluding endoscopy, laboratory medicine, and obtaining samples of human tissues, but excluding incision or excision beyond that which is authorized as a minor office procedure.

(14) "Suggestion" means techniques including but not limited to counseling, biofeedback, and hypnosis.

(15) "Radiography" means the ordering, but not the interpretation, of radiographic diagnostic and other imaging studies and the taking and interpretation of standard radiographs. [2005 c 158 § 1; 1991 c 3 § 87; 1987 c 447 § 4.]

**Education and training requirements—2005 c 158:** "The secretary [of health], in consultation with the naturopathic advisory committee and the Washington state board of pharmacy, shall develop education and training requirements for the use of controlled substances authorized under this act. The requirements must be met by the naturopath prior to being authorized to prescribe controlled substances under this act." [2005 c 158 § 3.]

**18.36A.040 Scope of practice.** Naturopathic medicine is the practice by naturopaths of the art and science of the diagnosis, prevention, and treatment of disorders of the body by stimulation or support, or both, of the natural processes of the human body. A naturopath is responsible and accountable to the consumer for the quality of naturopathic care rendered.

The practice of naturopathic medicine includes manual manipulation (mechanotherapy), the prescription, administration, dispensing, and use, except for the treatment of malignancies, of nutrition and food science, physical modalities, minor office procedures, homeopathy, naturopathic medicines, hygiene and immunization, nondrug contraceptive devices, common diagnostic procedures, and suggestion; however, nothing in this chapter shall prohibit consultation and treatment of a patient in concert with a practitioner licensed under chapter 18.57 or 18.71 RCW. No person licensed under this chapter may employ the term "chiropractic" to describe any services provided by a naturopath under this chapter. [2005 c 158 § 2; 1991 c 3 § 89; 1988 c 246 § 1; 1987 c 447 § 3.]

**Education and training requirements—2005 c 158:** See note following RCW 18.36A.020.

## Chapter 18.39 RCW

### EMBALMERS—FUNERAL DIRECTORS

#### Sections

18.39.010	Definitions.
18.39.020	License required.
18.39.035	Applicant for license as funeral director or embalmer—Eligibility.
18.39.045	College course requirements.
18.39.070	Examinations—Applications—Notice—Passing grades—Retake of examination.
18.39.100	License—Form—Restrictions.
18.39.120	Interns—Registration—Renewal—Notice of termination—Fees.
18.39.125	Academic interns.
18.39.130	Licenses—Applicants from other states—Examination.
18.39.145	Funeral establishment license—Issuance—Requirements—Transferability—Expiration.
18.39.148	Repealed.
18.39.150	License lapse—Reinstatement—Fee—Reexamination.
18.39.170	Inspector of funeral establishments, crematories, directors, and embalmers—Appointment—Eligibility—Term—Powers and duties.
18.39.173	Board of funeral directors and embalmers—Established—Membership—Appointment—Qualifications—Terms—Vacancies—Officers—Quorum.
18.39.175	Board—Duties and responsibilities—Compensation—Travel expenses—Rules.
18.39.181	Powers and duties of director.
18.39.195	Pricing information to be given—Billing "cash advanced" items.
18.39.215	Embalmers—Authorization to embalm—Information required—Immediate care of body—Waiver—Penalty.
18.39.217	License or endorsement required for cremation—Penalty—Regulation of crematories.
18.39.220	Unlawful business practices—Penalty.
18.39.231	Prohibited advice and transactions—Exceptions—Rules—Penalty.
18.39.250	P rearrangement contracts—Trusts—Refunds.
18.39.255	P rearrangement contracts—Insurance funded—Requirements.
18.39.345	P rearrangement trust—Examination by board.
18.39.410	Unprofessional conduct.
18.39.450	Findings of fact—Order—Notice—Report. ( <i>Effective July 1, 2006.</i> )
18.39.525	Certificates of removal registration.
18.39.800	Funeral directors and embalmers account.

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

(1) "Funeral director" means a person engaged in the profession or business of providing for the care, shelter, transportation, and arrangements for the disposition of human remains that may include arranging and directing funeral, memorial, or other services.

(2) "Embalmer" means a person engaged in the profession or business of disinfecting and preserving human remains for transportation or final disposition.

(3) "Two-year college course" means the completion of sixty semester hours or ninety quarter hours of college credit, including the satisfactory completion of certain college courses, as set forth in this chapter.

(4) "Funeral establishment" means a place of business licensed in accordance with RCW 18.39.145, that provides for any aspect of the care, shelter, transportation, embalming, preparation, and arrangements for the disposition of human remains and includes all areas of such entity and all equipment, instruments, and supplies used in the care, shelter, transportation, preparation, and embalming of human remains.

(5) "Director" means the director of licensing.



(6) "Board" means the state board of funeral directors and embalmers created pursuant to RCW 18.39.173.

(7) "Prearrangement funeral service contract" means any contract under which, for a specified consideration, a funeral establishment promises, upon the death of the person named or implied in the contract, to furnish funeral merchandise or services.

(8) "Funeral merchandise or services" means those services normally performed and merchandise normally provided by funeral establishments, including the sale of burial supplies and equipment, but excluding the sale by a cemetery of lands or interests therein, services incidental thereto, markers, memorials, monuments, equipment, crypts, niches, or vaults.

(9) "Public depository" means a public depository defined by RCW 39.58.010 or a state or federally chartered credit union.

(10) "Licensee" means any person or entity holding a license, registration, endorsement, or permit under this chapter issued by the director.

Words used in this chapter importing the singular may be applied to the plural of the person or thing, words importing the plural may be applied to the singular, and words importing the masculine gender may be applied to the female. [2005 c 365 § 1; 2000 c 171 § 10; 1989 c 390 § 1; 1982 c 66 § 1; 1981 c 43 § 1; 1979 c 158 § 39; 1977 ex.s. c 93 § 1; 1965 ex.s. c 107 § 1; 1937 c 108 § 1; RRS § 8313.]

**Effective dates—1982 c 66:** See note following RCW 18.39.240.

*Number and gender: RCW 1.12.050.*

**18.39.020 License required.** It is unlawful for any person to act or hold himself or herself out as a funeral director or embalmer or discharge any of the duties of a funeral director or embalmer as defined in this chapter unless the person has a valid license under this chapter. It is unlawful for any person to establish, maintain, or operate a funeral establishment without a valid establishment license. [2005 c 365 § 2; 1987 c 150 § 30; 1981 c 43 § 2; 1937 c 108 § 2; RRS § 8314-1. Prior: 1909 c 215 § 1. Formerly RCW 18.39.020 and 18.39.110.]

**Severability—1987 c 150:** See RCW 18.122.901.

**18.39.035 Applicant for license as funeral director or embalmer—Eligibility.** (1) An applicant for a license as a funeral director shall be at least eighteen years of age and must have obtained an associate of arts degree in mortuary science or completed a course of not less than two years in an accredited college, and a one-year course of training under a licensed funeral director in this state. The applicant must also pass an examination in the funeral arts and an examination in the laws of this state pertaining to the handling, care, transportation, and disposition of human remains and the contents of this chapter.

(2) An applicant for a license as an embalmer must be at least eighteen years of age and have obtained an associate of arts degree in mortuary science or completed a course of instruction in an accredited mortuary science college program and other college courses that total sixty semester hours or ninety quarter hours, completed a two-year course of training under a licensed embalmer in this state, and have passed

an examination in the funeral sciences and an examination in the laws of this state pertaining to the handling, care, transportation, and disposition of human remains, and the contents of this chapter. [2005 c 365 § 3; 1996 c 217 § 1; 1981 c 43 § 3.]

**18.39.045 College course requirements.** (1) The two-year college course required for funeral directors under this chapter shall consist of sixty semester or ninety quarter hours of instruction at a school, college, or university accredited by the Northwest Association of Schools and Colleges or other accrediting association approved by the board, with a minimum 2.0 grade point, or a grade of C or better, in each subject required by subsection (2) of this section.

(2) Credits shall include one course in psychology, one in mathematics, two courses in English composition, two courses in social science, and three courses selected from the following subjects: Behavioral sciences, public speaking, counseling, business administration and management, computer science, and first aid.

(3) This section does not apply to any person registered and in good standing as an apprentice funeral director or embalmer on or before January 1, 1982. [2005 c 365 § 4; 1996 c 217 § 2; 1982 c 66 § 20; 1981 c 43 § 4.]

**Effective dates—1982 c 66:** See note following RCW 18.39.240.

**18.39.070 Examinations—Applications—Notice—Passing grades—Retake of examination.** (1) License examinations shall be held by the director at least once each year at a time and place to be designated by the director. Application to take an examination shall be filed with the director at least fifteen days prior to the examination date. The department shall give each applicant written notice of the time and place of the next examination. The applicant shall be deemed to have passed an examination if the applicant attains a grade of not less than seventy-five percent in each examination. Any applicant who fails an examination shall be entitled, at no additional fee, to one retake of that examination.

(2) An applicant for a license may take his or her written examination after completing the educational requirements and before completing the course of training required under RCW 18.39.035. [2005 c 365 § 5; 1996 c 217 § 3; 1981 c 43 § 6; 1965 ex.s. c 107 § 4; 1937 c 108 § 5; RRS § 8317. Prior: 1909 c 215 §§ 8, 11.]

**18.39.100 License—Form—Restrictions.** Every license issued shall specify the name of the person to whom it is issued and shall be displayed in his or her place of business in an area accessible to the public. No license shall be assigned, and not more than one person shall carry on the profession or business of funeral directing or embalming under one license. [2005 c 365 § 6; 1996 c 217 § 4; 1937 c 108 § 7; RRS § 8319. Prior: 1909 c 215 § 13.]

**18.39.120 Interns—Registration—Renewal—Notice of termination—Fees.** Every person engaged in the business of funeral directing or embalming, who employs an intern to assist in the conduct of the business, shall register the name of each intern with the director at the beginning of

the internship, and shall also forward notice of the termination of the internship. The registration shall be renewed annually and shall expire on the anniversary of the intern's birthdate. Fees determined under RCW 43.24.086 shall be paid for the initial registration of the intern, and for each annual renewal. [2005 c 365 § 7; 1985 c 7 § 38; 1981 c 43 § 7; 1975 1st ex.s. c 30 § 43; 1937 c 108 § 10; RRS § 8322.]

**18.39.125 Academic interns.** (1) An "academic intern" includes any student enrolled in an accredited college funeral service education program who is serving his or her three-month internship at a participating Washington state funeral establishment as required for graduation from the funeral service education program.

(2) Academic interns shall serve their internship in accordance with the guidelines established by the funeral service education program.

(3) Academic interns shall register with the director at the beginning of the academic internship on an application form prescribed by the board. The academic internship may not exceed a period of three months. No fee is required for registration as an academic intern. [2005 c 365 § 8.]

**18.39.130 Licenses—Applicants from other states—Examination.** The board may recognize licenses issued to funeral directors or embalmers from other states and extend reciprocity to an applicant if the applicant furnishes satisfactory evidence that the applicant holds a valid license issued by another licensing authority recognized by the board as having qualifications for licensure that are substantially equivalent to those required by this chapter on the date of original licensure or licensure with the other licensing authority. Five years active experience as a licensee may be accepted to make up a deficit in the comparable education requirements.

The board may issue a funeral director's or embalmer's license upon:

- (1) Presentation of the license verification;
- (2) Payment of a fee determined under RCW 43.24.086;
- (3) Successful completion of the examination of the laws of this state pertaining to the handling, care, transportation, and disposition of human remains and the contents of this chapter. [2005 c 365 § 9; 1996 c 217 § 5. Prior: 1986 c 259 § 60; 1985 c 7 § 39; 1982 c 66 § 22; 1981 c 43 § 8; 1975 1st ex.s. c 30 § 44; 1937 c 108 § 15; RRS § 8325; prior: 1909 c 215 § 16.]

**Severability—1986 c 259:** See note following RCW 18.130.010.

**Effective dates—1982 c 66:** See note following RCW 18.39.240.

**18.39.145 Funeral establishment license—Issuance—Requirements—Transferability—Expiration.** The board shall issue a funeral establishment license to any person, partnership, association, corporation, or other organization to operate a funeral establishment, at a specific location only, which has met the following requirements:

- (1) The applicant has designated the name under which the funeral establishment will operate and has designated the location for which the establishment license is to be issued;

(2) The applicant is licensed in this state as a funeral director or employs one licensed funeral director who will be in service at the designated location;

(3) The applicant has filed an application with the director as required by this chapter and paid the required filing fee pursuant to RCW 43.24.086;

(4) As a condition of applying for a new funeral establishment license, the person or entity desiring to acquire such ownership or control shall be bound by all then existing pre-arrangement funeral service contracts.

(5) All duties requiring a license will be performed by licensed individuals or registered interns.

The board may deny an application for a funeral establishment license, or issue a conditional license, if disciplinary action has previously been taken against the applicant or the applicant's designated funeral director or embalmer. No funeral establishment license shall be transferable. An applicant may make application for more than one funeral establishment license so long as all of the requirements are met for each license. All funeral establishment licenses shall expire on January 31st, or as otherwise determined by the director. [2005 c 365 § 10. Prior: 1986 c 259 § 61; 1985 c 7 § 40; 1977 ex.s. c 93 § 3.]

**Severability—1986 c 259:** See note following RCW 18.130.010.

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

**18.39.150 License lapse—Reinstatement—Fee—Reexamination.** Any licensed funeral director or embalmer whose license has lapsed shall reapply for a license and pay a fee as determined under RCW 43.24.086 before the license may be issued. Applications under this section shall be made within one year after the expiration of the previous license. If the application is not made within one year, the applicant shall be required to take an examination and pay the license fee, which may include penalty fees. [2005 c 365 § 11. Prior: 1986 c 259 § 63; 1985 c 7 § 41; 1981 c 43 § 10; 1975 1st ex.s. c 30 § 45; 1937 c 108 § 8; RRS § 8320.]

**Severability—1986 c 259:** See note following RCW 18.130.010.

**18.39.170 Inspector of funeral establishments, crematories, directors, and embalmers—Appointment—Eligibility—Term—Powers and duties.** There shall be appointed by the director an agent whose title shall be "inspector of funeral establishments, crematories, funeral directors, and embalmers of the state of Washington." No person shall be eligible for such appointment unless he or she has been a licensed funeral director and embalmer in the state of Washington, with a minimum experience of not less than five consecutive years.

(1) The inspector shall:

- (a) Serve at the pleasure of the director; and
- (b) At all times be under the supervision of the director.

(2) The inspector is authorized to:

- (a) Enter the office, premises, establishment, or place of business, where funeral directing, embalming, or cremation is carried on for the purpose of inspecting the premises;

(b) Inspect the licenses and registrations of funeral directors, embalmers, funeral director interns, and embalmer interns;

(c) Serve and execute any papers or process issued by the director under authority of this chapter; and

(d) Perform any other duty or duties prescribed or ordered by the director. [2005 c 365 § 12; 1937 c 108 § 16; RRS § 8325-1.]

**18.39.173 Board of funeral directors and embalmers—Established—Membership—Appointment—Qualifications—Terms—Vacancies—Officers—Quorum.** There is hereby established a state board of funeral directors and embalmers to be composed of five members, four professional and one public member, appointed by the governor in accordance with this section. Each professional member of the board shall be licensed in this state as a funeral director and embalmer and a resident of the state of Washington for a period of at least five years next preceding appointment, during which time such member shall have been continuously engaged in the profession.

All members of the board of funeral directors and embalmers shall be appointed to serve for a term of five years, to expire on July 1st of the year of termination of their term, and until their successors have been appointed. In case of a vacancy occurring on the board, the governor shall appoint a qualified member for the remainder of the unexpired term of the vacant office. Any member of the board of funeral directors and embalmers who fails to properly discharge the duties of a member may be removed by the governor.

The board shall meet once annually to elect a chair, vice-chair, and secretary and take official board action on pending matters by majority vote of all the members of the board of funeral directors and embalmers and at other times when called by the director, the chair, or a majority of the members. A majority of the members of the board shall at all times constitute a quorum. [2005 c 365 § 13; 1977 ex.s. c 93 § 8.]

**18.39.175 Board—Duties and responsibilities—Compensation—Travel expenses—Rules.** Each member of the board of funeral directors and embalmers shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses in connection with board duties in accordance with RCW 43.03.050 and 43.03.060.

The board shall have the following duties and responsibilities:

(1) To be responsible for the preparation, conducting, and grading of examinations of applicants for funeral director and embalmer licenses;

(2) To certify to the director the results of examinations of applicants and certify the applicant as having "passed" or "failed";

(3) To make findings and recommendations to the director on any and all matters relating to the enforcement of this chapter;

(4) To adopt and enforce reasonable rules. Rules regulating the cremation of human remains shall be adopted in consultation with the cemetery board;

(5) To examine or audit or to direct the examination and audit of prearrangement funeral service trust fund records for compliance with this chapter and rules adopted by the board; and

(6) To adopt rules establishing mandatory continuing education requirements to be met by persons applying for license renewal. [2005 c 365 § 14; 1996 c 217 § 6; 1994 c 17 § 1. Prior: 1986 c 259 § 64; 1985 c 402 § 6; 1984 c 287 § 34; 1984 c 279 § 53; 1981 c 43 § 11; 1977 ex.s. c 93 § 9.]

**Savings—1986 c 259 §§ 64, 73:** "The repeal of RCW 18.39.179 and the amendment of RCW 18.39.175 by this act shall not be construed as affecting any rights and duties which matured, penalties which were incurred, and proceedings which were begun before June 11, 1986." [1986 c 259 § 74.]

**Severability—1986 c 259:** See note following RCW 18.130.010.

**Legislative finding—1985 c 402:** See note following RCW 68.50.165.

**Legislative findings—Severability—Effective date—1984 c 287:** See notes following RCW 43.03.220.

**Severability—1984 c 279:** See RCW 18.130.901.

**18.39.181 Powers and duties of director.** The director shall have the following powers and duties:

(1) To issue all licenses provided for under this chapter;

(2) To renew licenses under this chapter;

(3) To collect all fees prescribed and required under this chapter;

(4) To immediately suspend the license of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order;

(5) To keep records of all official acts, proceedings, and transactions of the department of licensing; and

(6) To employ the necessary staff to carry out the duties of this chapter. [2005 c 365 § 15; 1997 c 58 § 819; 1996 c 217 § 7; 1986 c 259 § 65; 1981 c 43 § 13; 1977 ex.s. c 93 § 5.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**Severability—1986 c 259:** See note following RCW 18.130.010.

**18.39.195 Pricing information to be given—Billing "cash advanced" items.** (1) Every licensed funeral director, his or her agent, or his or her employee shall give, or cause to be given, to the person making funeral arrangements or arranging for shipment, transportation, or other disposition of a deceased person:

(a) If requested by voice, data, text, electronic, or other similar transmission, accurate information regarding the retail prices of funeral merchandise and services offered for sale by that funeral director; and

(b) At the time such arrangements are completed or prior to the time of rendering the service, a written, itemized statement showing to the extent then known the price of merchandise and service that such person making such arrangements has selected, the price of supplemental items of service and merchandise, if any, and the estimated amount of each item for which the funeral service firm will advance money as an accommodation to the person making such funeral arrangements.

(2) No such funeral director, his or her agent, or his or her employee, shall bill or cause to be billed any item that is referred to as a "cash advanced" item unless the net amount paid for such item by the funeral director is the same amount as is billed to such funeral director. [2005 c 365 § 16; 1979 ex.s. c 62 § 1.]

**18.39.215 Embalmers—Authorization to embalm—Information required—Immediate care of body—Waiver—Penalty.** (1)(a) No licensed embalmer shall embalm human remains without first having obtained authorization from the individual or individuals that have the right to control the disposition under RCW 68.50.160.

(b) The funeral director or embalmer shall inform the family member or representative of the deceased that embalming is not required by state law, except that embalming is required under certain conditions as determined by rule by the state board of health.

(2)(a) Any licensee authorized to dispose of human remains shall refrigerate or embalm the human remains upon receipt of the human remains. However, subsection (1) of this section and RCW 68.50.108 shall be complied with before human remains are embalmed. Upon written authorization of the proper state or local authority, the provisions of this subsection may be waived for a specified period of time.

(b) Violation of this subsection is a gross misdemeanor. [2005 c 365 § 17; 2003 c 53 § 127; 1987 c 331 § 76; 1985 c 402 § 5; 1981 c 43 § 15.]

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

**Effective date—1987 c 331:** See RCW 68.05.900.

**Legislative finding—1985 c 402:** See note following RCW 68.50.165.

**18.39.217 License or endorsement required for cremation—Penalty—Regulation of crematories.** (1) A license or endorsement issued by the board or under chapter 68.05 RCW is required in order to operate a crematory or conduct a cremation.

(2) Conducting a cremation without a license or endorsement is a misdemeanor. Each such cremation is a separate violation.

(3) Crematories owned or operated by or located on property licensed as a funeral establishment shall be regulated by the board. Crematories not affiliated with a funeral establishment shall be regulated by the cemetery board. [2005 c 365 § 18; 2003 c 53 § 128; 1985 c 402 § 7.]

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

**Legislative finding—1985 c 402:** See note following RCW 68.50.165.

**18.39.220 Unlawful business practices—Penalty.** (1) Every licensee who pays, or causes to be paid, directly or indirectly, money, or other valuable consideration, for the securing of business is guilty of a gross misdemeanor.

(2) Every person who sells, or offers for sale, any share, certificate, or interest in the business of any funeral director or embalmer, or in any corporation, firm, or association owning or operating a funeral establishment, which promises to give to the purchaser a right to the services of the funeral director, embalmer, or corporation, firm, or association at a

charge or cost less than that offered or given to the public, is guilty of a gross misdemeanor. [2005 c 365 § 19; 2003 c 53 § 129; 1981 c 43 § 16; 1937 c 108 § 13; RRS § 8323-2.]

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

**Violations—Penalty—Unfair practice under chapter 19.86 RCW:** RCW 18.39.350.

**18.39.231 Prohibited advice and transactions—Exceptions—Rules—Penalty.** (1) A licensee shall not, in conjunction with any professional services performed for compensation under this chapter, provide financial or investment advice to any person other than a family member, represent any person in a real estate transaction, or act as an agent under a power of attorney for any person. However, this section shall not be deemed to prohibit a funeral establishment from entering into prearrangement funeral service contracts in accordance with this chapter or to prohibit a funeral director from providing advice about government or insurance benefits.

(2) A violation of this section is a gross misdemeanor and is grounds for disciplinary action.

(3) The board shall adopt rules as the board deems necessary to prevent unethical financial dealings between licensees and their clients. [2005 c 365 § 20; 2003 c 53 § 130; 1986 c 259 § 66; 1982 c 66 § 15.]

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

**Severability—1986 c 259:** See note following RCW 18.130.010.

**Effective dates—1982 c 66:** See note following RCW 18.39.240.

**18.39.250 Prearrangement contracts—Trusts—Refunds.** (1) Any funeral establishment selling funeral merchandise or services by prearrangement funeral service contract and accepting moneys therefore shall establish and maintain one or more prearrangement funeral service trusts under Washington state law with two or more designated trustees, for the benefit of the beneficiary of the prearrangement funeral service contract. Funeral establishments may join with one or more other Washington state licensed funeral establishments in a "master trust" provided that each member of the "master trust" shall comply individually with the requirements of this chapter.

(2) Up to ten percent of the cash purchase price of each prearrangement funeral service contract, excluding sales tax, may be retained by the funeral establishment unless otherwise provided in this chapter. If the prearrangement funeral service contract is canceled within thirty calendar days of its signing, then the purchaser shall receive a full refund of all moneys paid under the contract.

(3) At least ninety percent of the cash purchase price of each prearrangement funeral service contract, paid in advance, excluding sales tax, shall be placed in the trust established or utilized by the funeral establishment. Deposits to the prearrangement funeral service trust shall be made not later than the twentieth day of the month following receipt of each payment made on the last ninety percent of each prearrangement funeral service contract, excluding sales tax.

(4) All prearrangement funeral service trust moneys shall be deposited in an insured account in a public depository or shall be invested in instruments issued or insured by any

agency of the federal government. The account or investments shall be designated as the prearrangement funeral service trust of the funeral establishment for the benefit of the beneficiaries named in the prearrangement funeral service contracts. The prearrangement funeral service trust shall not be considered as, or used as, an asset of the funeral establishment.

(5) After deduction of reasonable fees for the administration of the trust, taxes paid or withheld, or other expenses of the trust, all interest, dividends, or growth earned by a trust shall become a part of the trust. Adequate records shall be maintained to allocate the share of principal and interest to each contract. Fees deducted for the administration of the trust shall not exceed one percent per year of the amount in trust. In no instance shall the administrative charges deducted from the prearrangement funeral service trust reduce, diminish, or in any other way lessen the value of the trust so that the services or merchandise provided for under the contract are reduced, diminished, or in any other way lessened.

(6) Except as otherwise provided in this chapter, the trustees of a prearrangement funeral service trust shall permit withdrawal of all funds deposited under a prearrangement funeral service contract, plus accruals thereon, under the following circumstances and conditions:

(a) If the funeral establishment files a verified statement with the trustees that the prearrangement funeral merchandise and services covered by the contract have been furnished and delivered in accordance therewith; or

(b) If the funeral establishment files a verified statement with the trustees that the prearrangement funeral merchandise and services covered by the contract have been canceled in accordance with its terms.

(7) Subsequent to the thirty calendar day cancellation period provided for in this chapter, any purchaser or beneficiary who has a revocable prearrangement funeral service contract has the right to demand a refund of the amount in trust.

(8) Prearrangement funeral service contracts which have or should have an account in a prearrangement funeral service trust may be terminated by the board if the funeral establishment goes out of business, becomes insolvent or bankrupt, makes an assignment for the benefit of creditors, has its prearrangement funeral service certificate of registration revoked, or for any other reason is unable to fulfill the obligations under the contract. In such event, or upon demand by the purchaser or beneficiary of the prearrangement funeral service contract, the funeral establishment shall refund to the purchaser or beneficiary all moneys deposited in the trust and allocated to the contract unless otherwise ordered by a court of competent jurisdiction. The purchaser or beneficiary may, in lieu of a refund, elect to transfer the prearrangement funeral service contract and all amounts in trust to another funeral establishment licensed under this chapter which will agree, by endorsement to the contract, to be bound by the contract and to provide the funeral merchandise or services. Election of this option shall not relieve the defaulting funeral establishment of its obligation to the purchaser or beneficiary for any amounts required to be, but not placed, in trust.

(9) Prior to the sale or transfer of ownership or control of any funeral establishment which has contracted for prear-

angement funeral service contracts, any person, corporation, or other legal entity desiring to acquire such ownership or control shall apply to the director in accordance with RCW 18.39.145. Persons and business entities selling or relinquishing, and persons and business entities purchasing or acquiring ownership or control of such funeral establishments shall each verify and attest to a report showing the status of the prearrangement funeral service trust or trusts on the date of the sale. This report shall be on a form prescribed by the board and shall be considered part of the application for a funeral establishment license. In the event of failure to comply with this subsection, the funeral establishment shall be deemed to have gone out of business and the provisions of subsection (8) of this section shall apply.

(10) Prearrangement funeral service trust moneys shall not be used, directly or indirectly, for the benefit of the funeral establishment or any director, officer, agent, or employee of the funeral establishment including, but not limited to, any encumbrance, pledge, or other use of prearrangement funeral service trust moneys as collateral or other security.

(11)(a) If, at the time of the signing of the prearrangement funeral service contract, the beneficiary of the trust is a recipient of public assistance as defined in RCW 74.04.005, or reasonably anticipates being so defined, the contract may provide that the trust will be irrevocable. If after the contract is entered into, the beneficiary becomes eligible or seeks to become eligible for public assistance under Title 74 RCW, the contract may provide for an election by the beneficiary, or by the purchaser on behalf of the beneficiary, to make the trust irrevocable thereafter in order to become or remain eligible for such assistance.

(b) The department of social and health services shall notify the trustee of any prearrangement service trust that the department has a claim on the estate of a beneficiary for long-term care services. Such notice shall be renewed at least every three years. The trustees upon becoming aware of the death of a beneficiary shall give notice to the department of social and health services, office of financial recovery, who shall file any claim there may be within thirty days of the notice.

(12) Every prearrangement funeral service contract financed through a prearrangement funeral service trust shall contain language which:

(a) Informs the purchaser of the prearrangement funeral service trust and the amount to be deposited in the trust;

(b) Indicates if the contract is revocable or not in accordance with subsection (11) of this section;

(c) Specifies that a full refund of all moneys paid on the contract will be made if the contract is canceled within thirty calendar days of its signing;

(d) Specifies that, in the case of cancellation by a purchaser or beneficiary eligible to cancel under the contract or under this chapter, up to ten percent of the contract amount may be retained by the seller to cover the necessary expenses of selling and setting up the contract;

(e) Identifies the trust to be used and contains information as to how the trustees may be contacted. [2005 c 365 § 21; 1996 c 217 § 8; 1995 1st sp.s. c 18 § 62; 1989 c 390 § 3; 1982 c 66 § 3.]

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**Effective dates—Transfer of records, files, and pending business—Savings—1982 c 66:** See notes following RCW 18.39.240.

**18.39.255 Prearrangement contracts—Insurance funded—Requirements.** Prearranged funeral service contracts funded through insurance shall contain language which:

- (1) States the amount of insurance;
- (2) Informs the purchaser of the name and address of the insurance company through which the insurance will be provided and the name of the beneficiary;
- (3) Informs the purchaser that amounts paid for insurance may not be refundable;
- (4) Informs that any funds from the policy not used for services may be subject to a claim for reimbursement for long-term care services paid for by the state; and
- (5) States that for purposes of the contract, the procedures in RCW 18.39.250(11)(b) shall control such recoupment. [2005 c 365 § 22; 1995 1st sp.s. c 18 § 63; 1989 c 390 § 4.]

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**18.39.345 Prearrangement trust—Examination by board.** (1) The board shall examine a prearrangement funeral service trust whenever it deems it necessary, but at least once every three years, or whenever the licensee fails after reasonable notice from the board to file the reports required by this chapter or the board.

(2) The expense of the prearrangement funeral service trust examination shall be paid by the licensee and shall not be deducted from the earnings of the trust.

(3) Such examination shall be conducted in private in the principal office of the licensee and the records relating to prearrangement funeral service contracts and prearrangement funeral service trusts shall be available at such office. [2005 c 365 § 23; 1989 c 390 § 10.]

**18.39.410 Unprofessional conduct.** In addition to the unprofessional conduct described in RCW 18.235.130, the board may take disciplinary action and may impose any of the sanctions specified in RCW 18.235.110 for the following conduct, acts, or conditions:

(1) Solicitation of human remains by a licensee, registrant, endorsement, or permit holder, or agent, assistant, or employee of the licensee, registrant, endorsement, or permit holder whether the solicitation occurs after death or while death is impending. This chapter does not prohibit general advertising or the sale of prearrangement funeral service contracts;

(2) Solicitation may include employment of solicitors, payment of commission, bonus, rebate, or any form of gratuity or payment of a finders fee, referral fee, or other consideration given for the purpose of obtaining or providing the services for human remains or where death is impending;

(3) Acceptance by a licensee, registrant, endorsement, or permit holder or other employee of a funeral establishment of a commission, bonus, rebate, or gratuity in consideration of directing business to a cemetery, crematory, mausoleum,

columbarium, florist, or other person providing goods and services to the disposition of human remains;

(4) Using a casket or part of a casket that has previously been used as a receptacle for, or in connection with, the burial or other disposition of human remains without the written consent of the person lawfully entitled to control the disposition of remains of the deceased person in accordance with RCW 68.50.160. This subsection does not prohibit the use of rental caskets, such as caskets of which the outer shell portion is rented and the inner insert that contains the human remains is purchased and used for the disposition, that are disclosed as such in the statement of funeral goods and services;

(5) Violation of a state law, municipal law, or county ordinance or regulation affecting the handling, custody, care, transportation, or disposition of human remains;

(6) Refusing to promptly surrender the custody of human remains upon the expressed order of the person lawfully entitled to its custody under RCW 68.50.160;

(7) Selling, or offering for sale, a share, certificate, or an interest in the business of a funeral establishment, or in a corporation, firm, or association owning or operating a funeral establishment that promises or purports to give to purchasers a right to the services of a licensee, registrant, endorsement, or permit holder at a charge or cost less than offered or given to the public;

(8) Violation of any state or federal statute or administrative ruling relating to funeral practice;

(9) Knowingly concealing information concerning a violation of this title. [2005 c 365 § 24; 2002 c 86 § 221; 1994 c 17 § 3.]

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**18.39.450 Findings of fact—Order—Notice—Report. (Effective July 1, 2006.)** (1) In the event of a finding of unprofessional conduct, the board shall prepare and serve findings of fact and an order as provided in chapter 34.05 RCW and the board shall notify the public, which notice must include press releases to appropriate local news media and the major news wire services. If the licensee, registrant, endorsement, or permit holder or applicant is found to have not committed unprofessional conduct, the board shall immediately prepare and serve findings of fact and an order of dismissal of the charges. The board shall retain the findings of fact and order as a permanent record.

(2) The board shall report the issuance of statements of charges and final orders in cases processed by the board to:

(a) The person or agency who brought to the board's attention information that resulted in the initiation of the case;

(b) Appropriate organizations, public or private, that serve the professions; and

(c) Counterpart licensing boards in other states or associations of state licensing boards.

(3) This section does not require the reporting of information that is exempt from public disclosure under chapter 42.56 RCW. [2005 c 274 § 223; 1994 c 17 § 7.]

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

**18.39.525 Certificates of removal registration.** (1) The director shall issue a certificate of removal registration to a funeral establishment licensed in another state contiguous to Washington, with laws substantially similar to the provisions of this section, for the limited purpose of removing human remains from Washington prior to submitting a certificate of death. Licensed funeral establishments wishing to participate must: Apply to the department of licensing for a certificate of removal registration, on a form provided by the department, and pay the required application fee, as set by the director.

(2) For purposes of this section, each branch of a registrant's funeral establishment is a separate establishment and must be registered as a fixed place of business.

(3) Certificates of death are governed by RCW 70.58.160.

(4) Notices of removal and disposition permits are governed by RCW 70.58.230.

(5) The conduct of funeral directors, embalmers, or any other person employed by or acting on behalf of a removal registrant is the direct responsibility of the holder of the certificate of removal registration.

(6) The board may impose sanctions upon the holder of a certificate of removal registration if the registrant is found to be in violation of any death care statute or rule.

(7) Certificates of removal registration expire January 31st, or as otherwise determined by the director. [2005 c 365 § 26.]

#### **18.39.800 Funeral directors and embalmers account.**

The funeral directors and embalmers account is created in the state treasury. All fees received by the department for licenses, registrations, renewals, examinations, and audits shall be forwarded to the state treasurer who shall credit the money to the account. All fines and civil penalties ordered by the superior court or fines ordered pursuant to RCW 18.130.160(8) against holders of licenses or registrations issued under the provisions of this chapter shall be paid to the account. All expenses incurred in carrying out the licensing and registration activities of the department and the state funeral directors and embalmers board under this chapter shall be paid from the account as authorized by legislative appropriation. Any residue in the account shall be accumulated and shall not revert to the general fund at the end of the biennium. All earnings of investments of balances in the account shall be credited to the general fund. [2005 c 365 § 25; 1996 c 217 § 9; 1993 c 43 § 2.]

**Effective date of 1993 c 43—1993 sp.s. c 24:** See note following RCW 18.39.290.

### **Chapter 18.43 RCW**

#### **ENGINEERS AND LAND SURVEYORS**

##### Sections

18.43.080 Expiration and renewals of certificates—Fees—Continuing professional development.

**18.43.080 Expiration and renewals of certificates—Fees—Continuing professional development.** (1) Certificates of registration, and certificates of authorization and renewals thereof, shall expire on the last day of the month of

December following their issuance or renewal and shall become invalid on that date unless renewed. It shall be the duty of the administrator of the division of professional licensing to notify every person, firm, or corporation registered under this chapter of the date of the expiration of his or her certificate and the amount of the renewal fee that shall be required for its renewal for one year. Such notice shall be mailed at least thirty days before the end of December of each year. Renewal may be effected during the month of December by the payment of a fee determined by the director as provided in RCW 43.24.086. In case any professional engineer and/or land surveyor registered under this chapter shall fail to pay the renewal fee hereinabove provided for, within ninety days from the date when the same shall become due, the renewal fee shall be the current fee plus an amount equal to one year's fee.

(2) Beginning July 1, 2007, the department of licensing may not renew a certificate of registration for a land surveyor unless the registrant verifies to the board that he or she has completed at least fifteen hours of continuing professional development per year of the registration period. By July 1, 2006, the board shall adopt rules governing continuing professional development for land surveyors that are generally patterned after the model rules of the national council of examiners for engineering and surveying. [2005 c 29 § 1; 1985 c 7 § 43; 1981 c 260 § 4. Prior: 1975 1st ex.s. c 30 § 47; 1975 c 23 § 1; 1965 ex.s. c 126 § 1; 1961 c 142 § 3; 1959 c 297 § 5; 1947 c 283 § 11; Rem. Supp. 1947 § 8306-28; prior: 1935 c 167 § 10; RRS § 8306-10.]

### **Chapter 18.44 RCW**

#### **ESCROW AGENT REGISTRATION ACT**

##### Sections

18.44.031 License—Application, requisites. (*Effective July 1, 2006.*)

**18.44.031 License—Application, requisites.** (*Effective July 1, 2006.*) An application for an escrow agent license shall be in writing in such form as is prescribed by the director, and shall be verified on oath by the applicant. An application for an escrow agent license shall include fingerprints for all officers, directors, owners, partners, and controlling persons, and, unless waived by the director, the following:

(1) The applicant's form of business organization and place of organization;

(2) If the applicant is a corporation or limited liability company, the address of its physical location, a list of officers, controlling persons, and directors of such corporation or company and their residential addresses, telephone numbers, and other identifying information as the director may determine by rule. If the applicant is a sole proprietorship or partnership, the address of its business location, a list of owners, partners, or controlling persons and their residential addresses, telephone numbers, and other identifying information as the director may determine by rule. Any information in the application regarding the personal residential address or telephone number of any officer, director, partner, owner, controlling person, or employee is exempt from the public records disclosure requirements of chapter 42.56 RCW;

(3) In the event the applicant is doing business under an assumed name, a copy of the master business license with the registered trade name shown;

(4) The qualifications and business history of the applicant and all of its officers, directors, owners, partners, and controlling persons;

(5) A personal credit report from a recognized credit reporting bureau satisfactory to the director on all officers, directors, owners, partners, and controlling persons of the applicant;

(6) Whether any of the officers, directors, owners, partners, or controlling persons have been convicted of any crime within the preceding ten years which relates directly to the business or duties of escrow agents, or have suffered a judgment within the preceding five years in any civil action involving fraud, misrepresentation, any unfair or deceptive act or practice, or conversion;

(7) The identity of the licensed escrow officer designated by the escrow agent as the designated escrow officer responsible for supervising the agent's escrow activity;

(8) Evidence of compliance with the bonding and insurance requirements of RCW 18.44.201; and

(9) Any other information the director may require by rule. The director may share any information contained within a license application, including fingerprints, with the federal bureau of investigation and other regulatory or law enforcement agencies. [2005 c 274 § 224; 1999 c 30 § 3; 1977 ex.s. c 156 § 3; 1965 c 153 § 3. Formerly RCW 18.44.030.]

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

### Chapter 18.51 RCW NURSING HOMES

#### Sections

- 18.51.062 Temporary managers—Department shall indemnify, defend, and hold harmless.  
18.51.290 Writings as public records. (*Effective July 1, 2006.*)

**18.51.062 Temporary managers—Department shall indemnify, defend, and hold harmless.** The department shall indemnify, defend, and hold harmless any temporary manager appointed and acting under RCW 18.51.060(7) against claims made against the temporary manager for any actions by the temporary manager or its agents that do not amount to intentional torts or criminal behavior. [2005 c 375 § 1.]

**18.51.290 Writings as public records. (*Effective July 1, 2006.*)** Any writing received, owned, used, or retained by the department in connection with the provisions of this chapter is a public record and, as such, is open to public inspection. Copies of such records provided for public inspection shall comply with RCW 42.56.070(1). The names of duly authorized officers, employees, or agents of the department shall be included. [2005 c 274 § 225; 1980 c 184 § 4; 1975 1st ex.s. c 99 § 9.]

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

[2005 RCW Supp—page 132]

**Conflict with federal requirements—1980 c 184:** See RCW 74.42.630.

### Chapter 18.57 RCW OSTEOPATHY—OSTEOPATHIC MEDICINE AND SURGERY

#### Sections

- 18.57.280 Repealed.

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

### Chapter 18.64 RCW PHARMACISTS

#### Sections

- 18.64.044 Shopkeeper's registration—Penalty—Ephedrine/pseudoephedrine/phenylpropanolamine. (*Effective January 1, 2006.*)  
18.64.046 Wholesaler's license—Required—Authority of licensee—Penalty—Ephedrine/pseudoephedrine/phenylpropanolamine. (*Effective January 1, 2006.*)  
18.64.047 Itinerant vendor's or peddler's registration—Fee—Penalties—Ephedrine/pseudoephedrine/phenylpropanolamine. (*Effective January 1, 2006.*)  
18.64.350 Nonresident pharmacies—Findings.  
18.64.360 Nonresident pharmacies—Definition—Requirements—Exemption—Reciprocity with Canadian pharmacies.  
18.64.420 Nonresident pharmacies—Information confidential—Exceptions. (*Effective July 1, 2006.*)  
18.64.480 Waiver request to allow importation of prescription drugs from Canada.  
18.64.490 Waiver request to authorize the state to license Canadian, United Kingdom, Irish, and other nondomestic prescription drug wholesalers under RCW 18.64.046—Implementation—Rules.

**18.64.044 Shopkeeper's registration—Penalty—Ephedrine/pseudoephedrine/phenylpropanolamine. (*Effective January 1, 2006.*)** (1) A shopkeeper registered as provided in this section may sell nonprescription drugs, if such drugs are sold in the original package of the manufacturer.

(2) Every shopkeeper not a licensed pharmacist, desiring to secure the benefits and privileges of this section, is hereby required to register as a shopkeeper through the master license system, and he or she shall pay the fee determined by the secretary for registration, and on a date to be determined by the secretary thereafter the fee determined by the secretary for renewal of the registration; and shall at all times keep said registration or the current renewal thereof conspicuously exposed in the location to which it applies. In event such shopkeeper's registration is not renewed by the master license expiration date, no renewal or new registration shall be issued except upon payment of the registration renewal fee and the master license delinquency fee under chapter 19.02 RCW. This registration fee shall not authorize the sale of legend drugs or controlled substances.

(3) The registration fees determined by the secretary under subsection (2) of this section shall not exceed the cost of registering the shopkeeper.

(4) Any shopkeeper who shall vend or sell, or offer to sell to the public any such nonprescription drug or preparation without having registered to do so as provided in this



section, shall be guilty of a misdemeanor and each sale or offer to sell shall constitute a separate offense.

(5) A shopkeeper who is not a licensed pharmacy may purchase products containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, only from a wholesaler licensed by the department under RCW 18.64.046 or from a manufacturer licensed by the department under RCW 18.64.045. The board shall issue a warning to a shopkeeper who violates this subsection, and may suspend or revoke the registration of the shopkeeper for a subsequent violation.

(6) A shopkeeper who has purchased products containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, in a suspicious transaction as defined in RCW 69.43.035, is subject to the following requirements:

(a) The shopkeeper may not sell any quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, if the total monthly sales of these products exceed ten percent of the shopkeeper's total prior monthly sales of nonprescription drugs in March through October. In November through February, the shopkeeper may not sell any quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, if the total monthly sales of these products exceed twenty percent of the shopkeeper's total prior monthly sales of nonprescription drugs. For purposes of this section, "monthly sales" means total dollars paid by buyers. The board may suspend or revoke the registration of a shopkeeper who violates this subsection.

(b) The shopkeeper shall maintain inventory records of the receipt and disposition of nonprescription drugs, utilizing existing inventory controls if an auditor or investigator can determine compliance with (a) of this subsection, and otherwise in the form and manner required by the board. The records must be available for inspection by the board or any law enforcement agency and must be maintained for two years. The board may suspend or revoke the registration of a shopkeeper who violates this subsection. For purposes of this subsection, "disposition" means the return of product to the wholesaler or distributor. [2005 c 388 § 5; 2004 c 52 § 2. Prior: 1989 1st ex.s. c 9 § 401; 1989 c 352 § 1; 1984 c 153 § 5; 1982 c 182 § 30; 1979 c 90 § 17.]

**Finding—Effective dates—Severability—2005 c 388:** See notes following RCW 69.43.105.

**Finding—2004 c 52:** "The legislature finds that quantities of ephedrine, pseudoephedrine, and phenylpropanolamine continue to be sold at the wholesale and retail levels far in excess of legitimate consumer needs. The excess quantities being sold are most likely used in the criminal manufacture of methamphetamine. It is therefore necessary for the legislature to further regulate the sales of these drugs, including sales from out-of-state sources, in order to reduce the threat that methamphetamine presents to the people of the state." [2004 c 52 § 1.]

**Severability—2004 c 52:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 52 § 8.]

**Effective date—2004 c 52:** "This act takes effect July 1, 2004." [2004 c 52 § 9.]

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

**Severability—1982 c 182:** See RCW 19.02.901.

*Master license*

*delinquency fee—Rate—Disposition:* RCW 19.02.085.

*expiration date:* RCW 19.02.090.

*system*

*existing licenses or permits registered under, when:* RCW 19.02.810.

*generally:* RCW 18.64.011(24).

*to include additional licenses:* RCW 19.02.110.

**18.64.046 Wholesaler's license—Required—Authority of licensee—Penalty—Ephedrine/pseudoephedrine/phenylpropanolamine. (Effective January 1, 2006.)**

(1) The owner of each place of business which sells legend drugs and nonprescription drugs, or nonprescription drugs at wholesale shall pay a license fee to be determined by the secretary, and thereafter, on or before a date to be determined by the secretary as provided in RCW 43.70.250 and 43.70.280, a like fee to be determined by the secretary, for which the owner shall receive a license of location from the department, which shall entitle such owner to either sell legend drugs and nonprescription drugs or nonprescription drugs at wholesale at the location specified for the period ending on a date to be determined by the secretary, and each such owner shall at the time of payment of such fee file with the department, on a blank therefor provided, a declaration of ownership and location, which declaration of ownership and location so filed as aforesaid shall be deemed presumptive evidence of the ownership of such place of business mentioned therein. It shall be the duty of the owner to notify immediately the department of any change of location and ownership and to keep the license of location or the renewal thereof properly exhibited in such place of business.

(2) Failure to conform with this section is a misdemeanor, and each day that the failure continues is a separate offense.

(3) In event the license fee remains unpaid on the date due, no renewal or new license shall be issued except upon compliance with administrative procedures, administrative requirements, and fees determined as provided in RCW 43.70.250 and 43.70.280.

(4) No wholesaler may sell any quantity of drug products containing ephedrine, pseudoephedrine, phenylpropanolamine, or their salts, isomers, or salts of isomers, if the total monthly sales of these products to persons within the state of Washington exceed five percent of the wholesaler's total prior monthly sales of nonprescription drugs to persons within the state in March through October. In November through February, no wholesaler may sell any quantity of drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers if the total monthly sales of these products to persons within the state of Washington exceed ten percent of the wholesaler's total prior monthly sales of nonprescription drugs to persons within the state. For purposes of this section, monthly sales means total dollars paid by buyers. The board may suspend or revoke the license of any wholesaler that violates this section.

(5) The board may exempt a wholesaler from the limitations of subsection (4) of this section if it finds that the wholesaler distributes nonprescription drugs only through transactions between divisions, subsidiaries, or related companies when the wholesaler and the retailer are related by common ownership, and that neither the wholesaler nor the retailer has

a history of suspicious transactions in precursor drugs as defined in RCW 69.43.035.

(6) The requirements for a license apply to all persons, in Washington and outside of Washington, who sell both legend drugs and nonprescription drugs and to those who sell only nonprescription drugs, at wholesale to pharmacies, practitioners, and shopkeepers in Washington.

(7)(a) No wholesaler may sell any product containing any detectable quantity of ephedrine, pseudoephedrine, phenylpropanolamine, or their salts, isomers, or salts of isomers, to any person in Washington other than a pharmacy licensed under this chapter, a shopkeeper or itinerant vendor registered under this chapter, a practitioner as defined in RCW 18.64.011, or a traditional Chinese herbal practitioner as defined in RCW 69.43.105.

(b) A violation of this subsection is punishable as a class C felony according to chapter 9A.20 RCW, and each sale in violation of this subsection constitutes a separate offense. [2005 c 388 § 6; 2004 c 52 § 3; 2003 c 53 § 133; 1996 c 191 § 45; 1991 c 229 § 5; 1989 1st ex.s. c 9 § 417; 1984 c 153 § 7; 1979 c 90 § 18.]

**Finding—Effective dates—Severability—2005 c 388:** See notes following RCW 69.43.105.

**Finding—Severability—Effective date—2004 c 52:** See notes following RCW 18.64.044.

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

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

**18.64.047 Itinerant vendor's or peddler's registration—Fee—Penalties—Ephedrine/pseudoephedrine/phenylpropanolamine. (Effective January 1, 2006.)** (1) Any itinerant vendor or any peddler of any nonprescription drug or preparation for the treatment of disease or injury, shall pay a registration fee determined by the secretary on a date to be determined by the secretary as provided in RCW 43.70.250 and 43.70.280. The department may issue a registration to such vendor on an approved application made to the department.

(2) Any itinerant vendor or peddler who shall vend or sell, or offer to sell to the public any such nonprescription drug or preparation without having registered to do so as provided in this section, is guilty of a misdemeanor and each sale or offer to sell shall constitute a separate offense.

(3) In event the registration fee remains unpaid on the date due, no renewal or new registration shall be issued except upon compliance with administrative procedures, administrative requirements, and fees determined as provided in RCW 43.70.250 and 43.70.280. This registration shall not authorize the sale of legend drugs or controlled substances.

(4) An itinerant vendor may purchase products containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers only from a wholesaler licensed by the department under RCW 18.64.046 or from a manufacturer licensed by the department under RCW 18.64.045. The board shall issue a warning to an itinerant vendor who violates this subsection, and may suspend or revoke the registration of the vendor for a subsequent violation.

(5) An itinerant vendor who has purchased products containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, in a suspicious transaction as defined in RCW 69.43.035, is subject to the following requirements:

(a) The itinerant vendor may not sell any quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, if the total monthly sales of these products exceed ten percent of the vendor's total prior monthly sales of nonprescription drugs in March through October. In November through February, the vendor may not sell any quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, if the total monthly sales of these products exceed twenty percent of the vendor's total prior monthly sales of nonprescription drugs. For purposes of this section, "monthly sales" means total dollars paid by buyers. The board may suspend or revoke the registration of an itinerant vendor who violates this subsection.

(b) The itinerant vendor shall maintain inventory records of the receipt and disposition of nonprescription drugs, utilizing existing inventory controls if an auditor or investigator can determine compliance with (a) of this subsection, and otherwise in the form and manner required by the board. The records must be available for inspection by the board or any law enforcement agency and must be maintained for two years. The board may suspend or revoke the registration of an itinerant vendor who violates this subsection. For purposes of this subsection, "disposition" means the return of product to the wholesaler or distributor. [2005 c 388 § 7; 2004 c 52 § 4; 2003 c 53 § 134; 1996 c 191 § 46; 1991 c 229 § 6; 1989 1st ex.s. c 9 § 418; 1984 c 153 § 8; 1979 c 90 § 10; 1971 ex.s. c 201 § 4; 1963 c 38 § 5; 1949 c 153 § 3; 1935 c 98 § 7; 1899 c 121 § 16; Rem. Supp. 1949 § 10141. Formerly RCW 18.60.010 through 18.60.030.]

**Finding—Effective dates—Severability—2005 c 388:** See notes following RCW 69.43.105.

**Finding—Severability—Effective date—2004 c 52:** See notes following RCW 18.64.044.

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

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

**Severability—1971 ex.s. c 201:** See note following RCW 18.64.040.

**18.64.350 Nonresident pharmacies—Findings.** (1) The legislature finds and declares that the practice of pharmacy is a dynamic, patient-oriented health service that applies a scientific body of knowledge to improve and promote patient health by means of appropriate drug use and drug-related therapy.

(2) The legislature recognizes that with the proliferation of alternate methods of health delivery, there has arisen among third-party payors and insurance companies the desire to control the cost and utilization of pharmacy services through a variety of mechanisms, including the use of mail-order pharmacies located outside the state of Washington.

(3) As a result, the legislature finds and declares that to continue to protect the Washington consumer-patient, all out-of-state pharmacies, including those located in Canada, that provide services to Washington residents shall be licensed by

the department of health, disclose specific information about their services, and provide pharmacy services at a high level of protection and competence. [2005 c 275 § 2; 1991 c 87 § 1.]

**Finding—Intent—2005 c 275:** "The legislature finds that as consumers' prescription drug costs continue to rise, people across the state of Washington are exercising the option to purchase prescription drugs from Canada for their personal use. The state has a strong interest in the safety of drugs purchased through this mechanism. To address this interest, the legislature intends to authorize the state board of pharmacy to regulate nonresident Canadian pharmacies." [2005 c 275 § 1.]

**Effective date—1991 c 87:** "This act shall take effect October 1, 1991." [1991 c 87 § 15.]

**18.64.360 Nonresident pharmacies—Definition—Requirements—Exemption—Reciprocity with Canadian pharmacies.** (1) For the purposes of this chapter any pharmacy located outside this state that ships, mails, or delivers, in any manner, except when delivered in person to an individual, controlled substances, legend drugs, or devices into this state is a nonresident pharmacy, and shall be licensed by the department of health, and shall disclose to the department the following:

(a) The location, names, and titles of all owners including corporate officers and all pharmacists employed by the pharmacy who are dispensing controlled substances, legend drugs, or devices to residents of this state. A report containing this information shall be made on an annual basis and within ninety days after a change of location, corporate officer, or pharmacist;

(b) Proof of compliance with all lawful directions and requests for information from the regulatory or licensing agency of the state or Canadian province in which it is licensed as well as with all requests for information made by the department of health under this section. The nonresident pharmacy shall maintain, at all times, a valid unexpired license, permit, or registration to operate the pharmacy in compliance with the laws of the state or Canadian province in which it is located. As a prerequisite to be licensed by the department of health, the nonresident pharmacy shall submit a copy of the most recent inspection report issued by the regulatory licensing agency of the state or Canadian province in which it is located;

(c) Proof that it maintains its records of controlled substances, legend drugs, or devices dispensed to patients in this state so that the records are readily retrievable from the records of other drugs dispensed.

(2) Any pharmacy subject to this section shall, during its regular hours of operation, provide a toll-free telephone service to facilitate communication between patients in this state and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number shall be disclosed on the label affixed to each container of drugs dispensed to patients in this state.

(3) A pharmacy subject to this section shall comply with board rules regarding the maintenance and use of patient medication record systems.

(4) A pharmacy subject to this section shall comply with board of pharmacy rules regarding the provision of drug information to the patient. Drug information may be contained in written form setting forth directions for use and any additional information necessary to assure the proper utiliza-

tion of the medication prescribed. A label bearing the expiration date of the prescription must be affixed to each box, bottle, jar, tube, or other container of a prescription that is dispensed in this state by a pharmacy subject to this section.

(5) A pharmacy subject to this section shall not dispense medication in a quantity greater than authorized by the prescriber.

(6) The license fee specified by the secretary, in accordance with the provisions of RCW 43.70.250, shall not exceed the fee charged to a pharmacy located in this state.

(7) The license requirements of this section apply to nonresident pharmacies that ship, mail, or deliver controlled substances, legend drugs, and devices into this state only under a prescription. The board of pharmacy may grant an exemption from licensing under this section upon application by an out-of-state pharmacy that restricts its dispensing activity in Washington to isolated transactions.

(8) Each nonresident pharmacy that ships, mails, or delivers legend drugs or devices into this state shall designate a resident agent in Washington for service of process. The designation of such an agent does not indicate that the nonresident pharmacy is a resident of Washington for tax purposes.

(9) The board shall attempt to develop a reciprocal licensing agreement for licensure of nonresident pharmacies with Health Canada or an applicable Canadian province. If the board is unable to develop such an agreement, the board shall develop a process to license participating Canadian nonresident pharmacies through on-site inspection and certification. [2005 c 275 § 3; 1996 c 109 § 1; 1991 c 87 § 2.]

**Finding—Intent—2005 c 275:** See note following RCW 18.64.350.

**Effective date—1991 c 87:** See note following RCW 18.64.350.

**18.64.420 Nonresident pharmacies—Information confidential—Exceptions.** (*Effective July 1, 2006.*) All records, reports, and information obtained by the department from or on behalf of an entity licensed under chapter 48.20, 48.21, 48.44, or 48.46 RCW shall be confidential and exempt from inspection and copying under chapter 42.56 RCW. Nothing in this section restricts the investigation or the proceedings of the board or the department so long as the board and the department comply with the provisions of chapter 42.56 RCW. Nothing in this section or in chapter 42.56 RCW shall restrict the board or the department from complying with any mandatory reporting requirements that exist or may exist under federal law, nor shall the board or the department be restricted from providing to any person the name of any nonresident pharmacy that is or has been licensed or disciplined under RCW 18.64.350 through 18.64.400. [2005 c 274 § 226; 1991 c 87 § 12.]

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

**Effective date—1991 c 87:** See note following RCW 18.64.350.

**18.64.480 Waiver request to allow importation of prescription drugs from Canada.** (1) By September 1, 2005, the board of pharmacy shall, in consultation with the department and the health care authority, submit a waiver request to the federal food and drug administration that

authorizes the importation of prescription drugs from Canada.

(2) Upon approval of the federal waiver allowing for the importation of prescription drugs from Canada, the board, in consultation with the department and the health care authority, shall license Canadian pharmacies that provide services to Washington residents under RCW 18.64.350 and 18.64.360. [2005 c 275 § 4.]

**Finding—Intent—2005 c 275:** See note following RCW 18.64.350.

**18.64.490 Waiver request to authorize the state to license Canadian, United Kingdom, Irish, and other non-domestic prescription drug wholesalers under RCW 18.64.046—Implementation—Rules.** (1) By September 1, 2005, the board shall, in consultation with the department and the health care authority, submit a waiver request to the federal food and drug administration that will authorize the state of Washington to license Canadian, United Kingdom, Irish, and other nondomestic prescription drug wholesalers under RCW 18.64.046, thereby providing retail pharmacies licensed in Washington state the opportunity to purchase prescription drugs from approved wholesalers and pass those savings on to consumers. The waiver shall provide that:

(a) Canadian, United Kingdom, Irish, and other nondomestic prescription drug wholesalers meet the requirements of RCW 18.64.046 and any rules adopted by the board to implement those requirements;

(b) The board must ensure the integrity of the prescription drug products being distributed by:

(i) Requiring that prescription drugs purchased from Canadian, United Kingdom, Irish, and other nondomestic wholesalers originate only from approved manufacturing locations;

(ii) Routinely testing prescription drugs purchased from Canadian, United Kingdom, Irish, and other nondomestic wholesalers for safety;

(iii) Establishing safe labeling, tracking, and shipping procedures for prescription drugs purchased from Canadian, United Kingdom, Irish, and other nondomestic wholesalers; and

(iv) Closely monitoring compliance with RCW 18.64.046 and any rules adopted to implement the waiver;

(c) The prescription drugs purchased from Canadian, United Kingdom, Irish, and other nondomestic wholesalers must be limited to those that are not temperature sensitive or infused and for which potential savings to consumers can be demonstrated and those available through purchase by individuals only at licensed retail pharmacies;

(d) To ensure that the program benefits those consumers without insurance coverage for prescription drugs who are most in need of price relief, prescription drug purchases from pharmacies under the waiver will be limited to those not eligible for reimbursement by third party insurance coverage, whether public or private, for the particular drug being purchased; and

(e) Savings associated with purchasing prescription drugs from Canadian, United Kingdom, Irish, and other nondomestic wholesalers will be passed on to consumers.

(2) Upon approval of the federal waiver submitted in accordance with subsection (1) of this section, the board, in

consultation with the department and the health care authority, shall submit a detailed implementation plan to the governor and appropriate committees of the legislature that details the mechanisms that the board will use to implement each component of the waiver under subsection (1) of this section.

(3) The board shall adopt rules as necessary to implement chapter 293, Laws of 2005. [2005 c 293 § 2.]

**Finding—Intent—2005 c 293:** "The legislature finds that as consumers' prescription drug costs continue to rise, people across the state of Washington are seeking opportunities to purchase lower cost prescription drugs from Canada, the United Kingdom, Ireland, and other countries for their personal use. The state has a strong interest in promoting the safe use of prescription drugs by consumers in Washington state. To address this interest, the legislature intends to seek authorization from the federal government to license Canadian, United Kingdom, Irish, and other nondomestic prescription drug wholesalers, thereby providing licensed retail pharmacies the opportunity to purchase prescription drugs from approved wholesalers and pass those savings on to consumers, and providing consumers the opportunity to purchase prescription drugs from a trusted community pharmacist who is aware of all of their prescription drug needs." [2005 c 293 § 1.]

**Conflict with federal requirements—2005 c 293:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2005 c 293 § 3.]

## Chapter 18.71 RCW

### PHYSICIANS

#### Sections

- 18.71.0195 Disciplinary reports—Confidentiality—Immunity. (*Effective July 1, 2006.*)  
 18.71.340 Impaired physician program—Entity records protected. (*Effective July 1, 2006.*)  
 18.71.370 Repealed.

**18.71.0195 Disciplinary reports—Confidentiality—Immunity. (*Effective July 1, 2006.*)** (1) The contents of any report filed under RCW 18.130.070 shall be confidential and exempt from public disclosure pursuant to chapter 42.56 RCW, except that it may be reviewed (a) by the licensee involved or his or her counsel or authorized representative who may submit any additional exculpatory or explanatory statements or other information, which statements or other information shall be included in the file, or (b) by a representative of the commission, or investigator thereof, who has been assigned to review the activities of a licensed physician.

Upon a determination that a report is without merit, the commission's records may be purged of information relating to the report.

(2) Every individual, medical association, medical society, hospital, medical service bureau, health insurance carrier or agent, professional liability insurance carrier, professional standards review organization, agency of the federal, state, or local government, or the entity established by RCW 18.71.300 and its officers, agents, and employees are immune from civil liability, whether direct or derivative, for providing information to the commission under RCW 18.130.070, or for which an individual health care provider has immunity under the provisions of RCW 4.24.240, 4.24.250, or 4.24.260. [2005 c 274 § 227; 1998 c 132 § 2; 1994 sp.s. c 9

§ 328; 1986 c 259 § 117; 1979 ex.s. c 111 § 15. Formerly RCW 18.72.265.]

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

**Finding—Intent—1998 c 132:** "The legislature finds that the self-imposed license surcharge on physician licenses to fund a program to help physicians with chemical dependency or mental illness is not being fully spent on that program. It is the intent of the legislature that the program be fully funded and that funds collected into the impaired physician account be spent only on the program." [1998 c 132 § 1.]

**Severability—1998 c 132:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 132 § 15.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**Severability—1986 c 259:** See note following RCW 18.130.010.

**Severability—1979 ex.s. c 111:** See note following RCW 18.71.0191.

**18.71.340 Impaired physician program—Entity records protected. (Effective July 1, 2006.)** All entity records are not subject to disclosure pursuant to chapter 42.56 RCW. [2005 c 274 § 228; 1998 c 132 § 7; 1987 c 416 § 6. Formerly RCW 18.72.321.]

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

**Finding—Intent—Severability—1998 c 132:** See notes following RCW 18.71.0195.

**Effective date—1987 c 416:** See note following RCW 18.71.300.

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

## Chapter 18.73 RCW

### EMERGENCY MEDICAL CARE AND TRANSPORTATION SERVICES

#### Sections

18.73.030 Definitions.  
18.73.250 Epinephrine—Availability—Administration.

**18.73.030 Definitions.** Unless a different meaning is plainly required by the context, the following words and phrases as used in this chapter shall have the meanings indicated.

(1) "Secretary" means the secretary of the department of health.

(2) "Department" means the department of health.

(3) "Committee" means the emergency medical services licensing and certification advisory committee.

(4) "Ambulance" means a ground or air vehicle designed and used to transport the ill and injured and to provide personnel, facilities, and equipment to treat patients before and during transportation.

(5) "Aid vehicle" means a vehicle used to carry aid equipment and individuals trained in first aid or emergency medical procedure.

(6) "Emergency medical technician" means a person who is authorized by the secretary to render emergency medical care pursuant to RCW 18.73.081.

(7) "Ambulance service" means an organization that operates one or more ambulances.

(8) "Aid service" means an organization that operates one or more aid vehicles.

(9) "Emergency medical service" means medical treatment and care which may be rendered at the scene of any medical emergency or while transporting any patient in an ambulance to an appropriate medical facility, including ambulance transportation between medical facilities.

(10) "Communications system" means a radio and land-line network which provides rapid public access, coordinated central dispatching of services, and coordination of personnel, equipment, and facilities in an emergency medical services and trauma care system.

(11) "Prehospital patient care protocols" means the written procedure adopted by the emergency medical services medical program director which direct the out-of-hospital emergency care of the emergency patient which includes the trauma care patient. These procedures shall be based upon the assessment of the patient's medical needs and what treatment will be provided for emergency conditions. The protocols shall meet or exceed statewide minimum standards developed by the department in rule as authorized in chapter 70.168 RCW.

(12) "Patient care procedures" means written operating guidelines adopted by the regional emergency medical services and trauma care council, in consultation with the local emergency medical services and trauma care councils, emergency communication centers, and the emergency medical services medical program director, in accordance with statewide minimum standards. The patient care procedures shall identify the level of medical care personnel to be dispatched to an emergency scene, procedures for triage of patients, the level of trauma care facility to first receive the patient, and the name and location of other trauma care facilities to receive the patient should an interfacility transfer be necessary. Procedures on interfacility transfer of patients shall be consistent with the transfer procedures in chapter 70.170 RCW.

(13) "Emergency medical services medical program director" means a person who is an approved medical program director as defined by RCW 18.71.205(4).

(14) "Council" means the local or regional emergency medical services and trauma care council as authorized under chapter 70.168 RCW.

(15) "Basic life support" means noninvasive emergency medical services requiring basic medical treatment skills as defined in chapter 18.73 RCW.

(16) "Advanced life support" means invasive emergency medical services requiring advanced medical treatment skills as defined by chapter 18.71 RCW.

(17) "First responder" means a person who is authorized by the secretary to render emergency medical care as defined by RCW 18.73.081.

(18) "Stretcher" means a cart designed to serve as a litter for the transportation of a patient in a prone or supine position as is commonly used in the ambulance industry, such as wheeled stretchers, portable stretchers, stair chairs, solid backboards, scoop stretchers, basket stretchers, or flexible stretchers. The term does not include personal mobility aids that recline at an angle or remain at a flat position, that are owned or leased for a period of at least one week by the individual using the equipment or the individual's guardian or

representative, such as wheelchairs, personal gurneys, or banana carts. [2005 c 193 § 2; 2000 c 93 § 16; 1990 c 269 § 23; 1988 c 104 § 3; 1987 c 214 § 2; 1983 c 112 § 5; 1979 ex.s. c 261 § 1; 1973 1st ex.s. c 208 § 3.]

**Finding—2005 c 193:** "The legislature finds that requiring all patients who need to travel in a prone or supine position but are medically stable, to be transported by ambulance can be overly restrictive to individuals with disabilities. These individuals frequently travel by means of reclining wheelchairs or devices commonly referred to as banana carts. Expanding travel options for these individuals will give them greater opportunities for mobility and reduce their costs of travel." [2005 c 193 § 1.]

**Severability—1990 c 269:** See RCW 70.168.901.

**18.73.250 Epinephrine—Availability—Administration.** (1) All of the state's ambulance and aid services shall make epinephrine available to their emergency medical technicians in their emergency care supplies. The emergency medical technician may administer epinephrine.

(2) Nothing in this section authorizes the administration of epinephrine by a first responder. [2005 c 463 § 1; 2001 c 24 § 1; 1999 c 337 § 4.]

**Findings—Purpose—1999 c 337:** "The legislature finds that allergies are a serious medical disorder that affect more than one in five persons in the United States and are the sixth leading cause of chronic disease. Anaphylaxis is the most severe form of allergic reaction. Rapid and appropriate administration of the drug epinephrine to a patient suffering an anaphylaxis allergic reaction may make the difference between the life and death of that patient. The legislature further finds that some situations may arise when the administration of epinephrine by an emergency medical technician is required to save a person's life and that it is paramount that these valuable emergency response personnel receive the appropriate training on the use of epinephrine to treat anaphylaxis.

It is the purpose of chapter 337, Laws of 1999 to investigate the rate of anaphylaxis statewide and the training and care standards needed to allow emergency medical technicians to administer life saving epinephrine." [1999 c 337 § 1.]

**Effective dates—1999 c 337:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 1999], except for section 4 of this act which takes effect January 1, 2000." [1999 c 337 § 5.]

**Short title—1999 c 337:** "This act may be known and cited as the Kristine Kastner Act." [1999 c 337 § 6.]

## Chapter 18.74 RCW PHYSICAL THERAPY

### Sections

18.74.005	Purpose of chapter.
18.74.010	Definitions.
18.74.012	Consultation with health care practitioner not required for certain treatments.
18.74.150	Unlawful activities—Persons exempt from licensure under chapter.
18.74.160	Authorization to practice—Referral to appropriate practitioner—Standards of ethics—Electroneuromyographic examinations—Authorization to purchase, store, and administer certain drugs or medication.
18.74.170	Delegation.

**18.74.005 Purpose of chapter.** The purpose of this chapter is to protect the public health, safety, and welfare, and to provide for state administrative control, supervision, licensure, and regulation of the practice of physical therapy. It is the intent of the legislature that only individuals who meet and maintain prescribed standards of competence and conduct be allowed to engage in the practice of physical ther-

apy as defined and authorized by this chapter. [2005 c 501 § 1; 1983 c 116 § 1.]

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

(1) "Board" means the board of physical therapy created by RCW 18.74.020.

(2) "Department" means the department of health.

(3) "Physical therapy" means the care and services provided by or under the direction and supervision of a physical therapist licensed by the state. The use of Roentgen rays and radium for diagnostic and therapeutic purposes, the use of electricity for surgical purposes, including cauterization, and the use of spinal manipulation, or manipulative mobilization of the spine and its immediate articulations, are not included under the term "physical therapy" as used in this chapter.

(4) "Physical therapist" means a person who meets all the requirements of this chapter and is licensed in this state to practice physical therapy.

(5) "Secretary" means the secretary of health.

(6) Words importing the masculine gender may be applied to females.

(7) "Authorized health care practitioner" means and includes licensed physicians, osteopathic physicians, chiropractors, naturopaths, podiatric physicians and surgeons, dentists, and advanced registered nurse practitioners: PROVIDED, HOWEVER, That nothing herein shall be construed as altering the scope of practice of such practitioners as defined in their respective licensure laws.

(8) "Practice of physical therapy" is based on movement science and means:

(a) Examining, evaluating, and testing individuals with mechanical, physiological, and developmental impairments, functional limitations in movement, and disability or other health and movement-related conditions in order to determine a diagnosis, prognosis, plan of therapeutic intervention, and to assess and document the ongoing effects of intervention;

(b) Alleviating impairments and functional limitations in movement by designing, implementing, and modifying therapeutic interventions that include therapeutic exercise; functional training related to balance, posture, and movement to facilitate self-care and reintegration into home, community, or work; manual therapy including soft tissue and joint mobilization and manipulation; therapeutic massage; assistive, adaptive, protective, and devices related to postural control and mobility except as restricted by (c) of this subsection; airway clearance techniques; physical agents or modalities; mechanical and electrotherapeutic modalities; and patient-related instruction;

(c) Training for, and the evaluation of, the function of a patient wearing an orthosis or prosthesis as defined in RCW 18.200.010. Physical therapists may provide those direct-formed and prefabricated upper limb, knee, and ankle-foot orthoses, but not fracture orthoses except those for hand, wrist, ankle, and foot fractures, and assistive technology devices specified in RCW 18.200.010 as exemptions from the defined scope of licensed orthotic and prosthetic services. It is the intent of the legislature that the unregulated devices specified in RCW 18.200.010 are in the public domain to the

extent that they may be provided in common with individuals or other health providers, whether unregulated or regulated under Title 18 RCW, without regard to any scope of practice;

(d) Performing wound care services that is [are] limited to sharp debridement, debridement with other agents, dry dressings, wet dressings, topical agents including enzymes, hydrotherapy, electrical stimulation, ultrasound, and other similar treatments. Physical therapists may not delegate sharp debridement. A physical therapist may perform wound care services only by referral from or after consultation with an authorized health care practitioner;

(e) Reducing the risk of injury, impairment, functional limitation, and disability related to movement, including the promotion and maintenance of fitness, health, and quality of life in all age populations; and

(f) Engaging in administration, consultation, education, and research.

(9)(a) "Physical therapist assistant" means a person who has successfully completed a board-approved physical therapist assistant program.

(b) "Physical therapy aide" means a person who is involved in direct physical therapy patient care who does not meet the definition of a physical therapist or physical therapist assistant and receives ongoing on-the-job training.

(c) "Other assistive personnel" means other trained or educated health care personnel, not defined in (a) or (b) of this subsection, who perform specific designated tasks related to physical therapy under the supervision of a physical therapist, including but not limited to licensed massage practitioners, athletic trainers, and exercise physiologists. At the direction of the supervising physical therapist, and if properly credentialed and not prohibited by any other law, other assistive personnel may be identified by the title specific to their training or education.

(10) "Direct supervision" means the supervising physical therapist must (a) be continuously on-site and present in the department or facility where assistive personnel or holders of interim permits are performing services; (b) be immediately available to assist the person being supervised in the services being performed; and (c) maintain continued involvement in appropriate aspects of each treatment session in which a component of treatment is delegated to assistive personnel.

(11) "Sharp debridement" means the removal of devitalized tissue from a wound with scissors, scalpel, and tweezers without anesthesia. "Sharp debridement" does not mean surgical debridement. A physical therapist may perform sharp debridement, to include the use of a scalpel, only upon showing evidence of adequate education and training as established by rule. Until the rules are established, but no later than July 1, 2006, physical therapists licensed under this chapter who perform sharp debridement as of July 24, 2005, shall submit to the secretary an affidavit that includes evidence of adequate education and training in sharp debridement, including the use of a scalpel. [2005 c 501 § 2; 1997 c 275 § 8; 1991 c 12 § 1; (1991 c 3 §§ 172, 173 repealed by 1991 sp.s. c 11 § 2); (1990 c 297 § 17 repealed by 1991 c 12 § 6); 1988 c 185 § 1; 1983 c 116 § 2; 1961 c 64 § 1; 1949 c 239 § 1; Rem. Supp. 1949 § 10163-1.]

**Effective dates—1991 c 12 §§ 1, 2, 3, 6:** "(1) Sections 1, 2, and 6 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institu-

tions, and shall take effect June 30, 1991.

(2) Section 3 of this act shall take effect January 1, 1992." [1991 c 12 § 7.]

*Number and gender: RCW 1.12.050.*

**18.74.012 Consultation with health care practitioner not required for certain treatments.** A consultation and periodic review by an authorized health care practitioner is not required for treatment of neuromuscular or musculoskeletal conditions. [2005 c 501 § 3; 2000 c 171 § 24; 1991 c 12 § 2; 1990 c 297 § 19; 1988 c 185 § 2.]

**Effective dates—1991 c 12 §§ 1, 2, 3, 6:** See note following RCW 18.74.010.

**18.74.150 Unlawful activities—Persons exempt from licensure under chapter.** (1) It is unlawful for any person to practice or in any manner hold himself or herself out to practice physical therapy or designate himself or herself as a physical therapist, unless he or she is licensed in accordance with this chapter.

(2) This chapter does not restrict persons licensed under any other law of this state from engaging in the profession or practice for which they are licensed, if they are not representing themselves to be physical therapists or providers of physical therapy.

(3) The following persons are exempt from licensure as physical therapists under this chapter when engaged in the following activities:

(a) A person who is pursuing a course of study leading to a degree as a physical therapist in an approved professional education program and is satisfying supervised clinical education requirements related to his or her physical therapy education while under direct supervision of a licensed physical therapist;

(b) A physical therapist while practicing in the United States armed services, United States public health service, or veterans administration as based on requirements under federal regulations for state licensure of health care providers; and

(c) A physical therapist licensed in another United States jurisdiction, or a foreign-educated physical therapist credentialed in another country, performing physical therapy as part of teaching or participating in an educational seminar of no more than sixty days in a calendar year. [2005 c 501 § 4.]

**18.74.160 Authorization to practice—Referral to appropriate practitioner—Standards of ethics—Electro-neuromyographic examinations—Authorization to purchase, store, and administer certain drugs or medication.**

(1) A physical therapist licensed under this chapter is fully authorized to practice physical therapy as defined in this chapter.

(2) A physical therapist shall refer persons under his or her care to appropriate health care practitioners if the physical therapist has reasonable cause to believe symptoms or conditions are present that require services beyond the scope of practice under this chapter or when physical therapy is contraindicated.

(3) Physical therapists shall adhere to the recognized standards of ethics of the physical therapy profession and as further established by rule.

(4) A physical therapist may perform electroneuromyographic examinations for the purpose of testing neuromuscular function only by referral from an authorized health care practitioner identified in RCW 18.74.010(7) and only upon demonstration of further education and training in electro-neuromyographic examinations as established by rule. Within two years after July 1, 2005, the secretary shall waive the requirement for further education and training for those physical therapists licensed under this chapter who perform electroneuromyographic examinations.

(5) A physical therapist licensed under this chapter may purchase, store, and administer medications such as hydrocortisone, fluocinonide, topical anesthetics, silver sulfadiazine, lidocaine, magnesium sulfate, zinc oxide, and other similar medications, and may administer such other drugs or medications as prescribed by an authorized health care practitioner for the practice of physical therapy. A pharmacist who dispenses such drugs to a licensed physical therapist is not liable for any adverse reactions caused by any method of use by the physical therapist. [2005 c 501 § 5.]

**18.74.170 Delegation.** (1) Physical therapists are responsible for patient care given by assistive personnel under their supervision. A physical therapist may delegate to assistive personnel and supervise selected acts, tasks, or procedures that fall within the scope of physical therapy practice but do not exceed the education or training of the assistive personnel.

(2) Nothing in this chapter may be construed to prohibit other licensed health care providers from using the services of physical therapist assistants, physical therapist aides, or other assistive personnel as long as the licensed health care provider is responsible for the activities of such assistants, aides, and other personnel and provides appropriate supervision. [2005 c 501 § 6.]

## Chapter 18.79 RCW NURSING CARE

### Sections

18.79.070	Commission established—Membership—Qualifications.
18.79.202	License fee surcharge—Use of proceeds—Nursing resource center account—Report to the legislature—Review—Rules. <i>(Effective until June 30, 2013.)</i>
18.79.2021	Repealer.
18.79.240	Construction.
18.79.320	Repealed.

**18.79.070 Commission established—Membership—Qualifications.** (1) The state nursing care quality assurance commission is established, consisting of fifteen members to be appointed by the governor to four-year terms. The governor shall consider nursing members who are recommended for appointment by the appropriate professional associations in the state. No person may serve as a member of the commission for more than two consecutive full terms.

(2) There must be seven registered nurse members, two advanced registered nurse practitioner members, three licensed practical nurse members, and three public members on the commission. Each member of the commission must be a citizen of the United States and a resident of this state.

(3)(a) Registered nurse members of the commission must:

(i) Be licensed as registered nurses under this chapter; and

(ii) Have had at least three years' experience in the active practice of nursing and have been engaged in that practice within two years of appointment.

(b) In addition:

(i) At least one member must be on the faculty at a four-year university nursing program;

(ii) At least one member must be on the faculty at a two-year community college nursing program;

(iii) At least two members must be staff nurses providing direct patient care; and

(iv) At least one member must be a nurse manager or a nurse executive.

(4) Advanced registered nurse practitioner members of the commission must:

(a) Be licensed as advanced registered nurse practitioners under this chapter; and

(b) Have had at least three years' experience in the active practice of advanced registered nursing and have been engaged in that practice within two years of appointment.

(5) Licensed practical nurse members of the commission must:

(a) Be licensed as licensed practical nurses under this chapter; and

(b) Have had at least three years' actual experience as a licensed practical nurse and have been engaged in practice as a practical nurse within two years of appointment.

(6) Public members of the commission may not be a member of any other health care licensing board or commission, or have a fiduciary obligation to a facility rendering health services regulated by the commission, or have a material or financial interest in the rendering of health services regulated by the commission.

In appointing the initial members of the commission, it is the intent of the legislature that, to the extent possible, the governor appoint the existing members of the board of nursing and the board of practical nursing repealed under chapter 9, Laws of 1994 sp. sess. The governor may appoint initial members of the commission to staggered terms of from one to four years. Thereafter, all members shall be appointed to full four-year terms. Members of the commission hold office until their successors are appointed.

When the secretary appoints pro tem members, reasonable efforts shall be made to ensure that at least one pro tem member is a registered nurse who is currently practicing and, in addition to meeting other minimum qualifications, has graduated from an associate or baccalaureate nursing program within three years of appointment. [2005 c 17 § 1; 1994 sp.s. c 9 § 407.]

**18.79.202 License fee surcharge—Use of proceeds—Nursing resource center account—Report to the legislature—Review—Rules. *(Effective until June 30, 2013.)*** (1) In addition to the licensing fee for registered nurses and licensed practical nurses licensed under this chapter, the department shall impose an additional surcharge of five dollars per year on all initial licenses and renewal licenses for registered nurses and licensed practical nurses issued under



this chapter. Advanced registered nurse practitioners are only required to pay the surcharge on their registered nurse licenses.

(2) The department, in consultation with the commission and the work force training and education coordinating board, shall use the proceeds from the surcharge imposed under subsection (1) of this section to provide grants to a central nursing resource center. The grants may be awarded only to a not-for-profit central nursing resource center that is comprised of and led by nurses. The central nursing resource center will demonstrate coordination with relevant nursing constituents including professional nursing organizations, groups representing nursing educators, staff nurses, nurse managers or executives, and labor organizations representing nurses. The central nursing resource center shall have as its mission to contribute to the health and wellness of Washington state residents by ensuring that there is an adequate nursing work force to meet the current and future health care needs of the citizens of the state of Washington. The grants may be used to fund the following activities of the central nursing resource center:

(a) Maintain information on the current and projected supply and demand of nurses through the collection and analysis of data regarding the nursing work force, including but not limited to education level, race and ethnicity, employment settings, nursing positions, reasons for leaving the nursing profession, and those leaving Washington state to practice elsewhere. This data collection and analysis must complement other state activities to produce data on the nursing work force and the central nursing resource center shall work collaboratively with other entities in the data collection to ensure coordination and avoid duplication of efforts;

(b) Monitor and validate trends in the applicant pool for programs in nursing. The central nursing resource center must work with nursing leaders to identify approaches to address issues arising related to the trends identified, and collect information on other states' approaches to addressing these issues;

(c) Facilitate partnerships between the nursing community and other health care providers, licensing authority, business and industry, consumers, legislators, and educators to achieve policy consensus, promote diversity within the profession, and enhance nursing career mobility and nursing leadership development;

(d) Evaluate the effectiveness of nursing education and articulation among programs to increase access to nursing education and enhance career mobility, especially for populations that are underrepresented in the nursing profession;

(e) Provide consultation, technical assistance, data, and information related to Washington state and national nursing resources;

(f) Promote strategies to enhance patient safety and quality patient care including encouraging a safe and healthy workplace environment for nurses; and

(g) Educate the public including students in K-12 about opportunities and careers in nursing.

(3) The nursing resource center account is created in the custody of the state treasurer. All receipts from the surcharge in subsection (1) of this section must be deposited in the account. Expenditures from the account may be used only for grants to an organization to conduct the specific activities

listed in subsection (2) of this section and to compensate the department for the reasonable costs associated with the collection and distribution of the surcharge and the administration of the grant provided for in subsection (2) of this section. No money from this account may be used by the recipient towards administrative costs of the central nursing resource center not associated with the specific activities listed in subsection (2) of this section. No money from this account may be used by the recipient toward lobbying. Only the secretary or the secretary's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. Grants will be awarded on an annual basis and funds will be distributed quarterly. The first distribution after awarding the first grant shall be made no later than six months after July 24, 2005. The central nursing resource center shall report to the department on meeting the grant objectives annually.

(4) The central nursing resource center shall submit a report of all progress, collaboration with other organizations and government entities, and activities conducted by the center to the relevant committees of the legislature by November 30, 2011. The department shall conduct a review of the program to collect funds to support the activities of a nursing resource center and make recommendations on the effectiveness of the program and whether it should continue. The review shall be paid for with funds from the nursing resource center account. The review must be completed by June 30, 2012.

(5) The department may adopt rules as necessary to implement chapter 268, Laws of 2005. [2005 c 268 § 4.]

**Finding—2005 c 268:** "Washington state is experiencing a critical shortage of registered nurses. To safeguard and promote patient safety and quality of care, the legislature finds that a central resource center for the nursing work force is critical and essential in addressing the nursing shortage and ensuring that the public continue to receive safe, quality care." [2005 c 268 § 1.]

**18.79.2021 Repealer.** The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 2013:

(1) Section 1, chapter 268, Laws of 2005 (uncodified); and

(2) RCW 18.79.202 and section 4, chapter 268, Laws of 2005. [2005 c 268 § 5.]

**Finding—2005 c 268:** See note following RCW 18.79.202.

**18.79.240 Construction.** (1) In the context of the definition of registered nursing practice and advanced registered nursing practice, this chapter shall not be construed as:

(a) Prohibiting the incidental care of the sick by domestic servants or persons primarily employed as housekeepers, so long as they do not practice registered nursing within the meaning of this chapter;

(b) Preventing a person from the domestic administration of family remedies or the furnishing of nursing assistance in case of emergency;

(c) Prohibiting the practice of nursing by students enrolled in approved schools as may be incidental to their course of study or prohibiting the students from working as nursing technicians;

(d) Prohibiting auxiliary services provided by persons carrying out duties necessary for the support of nursing services, including those duties that involve minor nursing services for persons performed in hospitals, nursing homes, or elsewhere under the direction of licensed physicians or the supervision of licensed registered nurses;

(e) Prohibiting the practice of nursing in this state by a legally qualified nurse of another state or territory whose engagement requires him or her to accompany and care for a patient temporarily residing in this state during the period of one such engagement, not to exceed six months in length, if the person does not represent or hold himself or herself out as a registered nurse licensed to practice in this state;

(f) Prohibiting nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of a church by adherents of the church so long as they do not engage in the practice of nursing as defined in this chapter;

(g) Prohibiting the practice of a legally qualified nurse of another state who is employed by the United States government or a bureau, division, or agency thereof, while in the discharge of his or her official duties;

(h) Permitting the measurement of the powers or range of human vision, or the determination of the accommodation and refractive state of the human eye or the scope of its functions in general, or the fitting or adaptation of lenses for the aid thereof;

(i) Permitting the prescribing or directing the use of, or using, an optical device in connection with ocular exercises, visual training, vision training, or orthoptics;

(j) Permitting the prescribing of contact lenses for, or the fitting and adaptation of contact lenses to, the human eye;

(k) Prohibiting the performance of routine visual screening;

(l) Permitting the practice of dentistry or dental hygiene as defined in chapters 18.32 and 18.29 RCW, respectively;

(m) Permitting the practice of chiropractic as defined in chapter 18.25 RCW including the adjustment or manipulation of the articulation of the spine;

(n) Permitting the practice of podiatric medicine and surgery as defined in chapter 18.22 RCW;

(o) Permitting the performance of major surgery, except such minor surgery as the commission may have specifically authorized by rule adopted in accordance with chapter 34.05 RCW;

(p) Permitting the prescribing of controlled substances as defined in Schedule I of the Uniform Controlled Substances Act, chapter 69.50 RCW;

(q) Prohibiting the determination and pronouncement of death;

(r) Prohibiting advanced registered nurse practitioners, approved by the commission as certified registered nurse anesthetists from selecting, ordering, or administering controlled substances as defined in Schedules II through IV of the Uniform Controlled Substances Act, chapter 69.50 RCW, consistent with their commission-recognized scope of practice; subject to facility-specific protocols, and subject to a request for certified registered nurse anesthetist anesthesia services issued by a physician licensed under chapter 18.71 RCW, an osteopathic physician and surgeon licensed under chapter 18.57 RCW, a dentist licensed under chapter 18.32

RCW, or a podiatric physician and surgeon licensed under chapter 18.22 RCW; the authority to select, order, or administer Schedule II through IV controlled substances being limited to those drugs that are to be directly administered to patients who require anesthesia for diagnostic, operative, obstetrical, or therapeutic procedures in a hospital, clinic, ambulatory surgical facility, or the office of a practitioner licensed under chapter 18.71, 18.22, 18.36, 18.36A, 18.57, 18.57A, or 18.32 RCW; "select" meaning the decision-making process of choosing a drug, dosage, route, and time of administration; and "order" meaning the process of directing licensed individuals pursuant to their statutory authority to directly administer a drug or to dispense, deliver, or distribute a drug for the purpose of direct administration to a patient, under instructions of the certified registered nurse anesthetist. "Protocol" means a statement regarding practice and documentation concerning such items as categories of patients, categories of medications, or categories of procedures rather than detailed case-specific formulas for the practice of nurse anesthesia;

(s) Prohibiting advanced registered nurse practitioners from ordering or prescribing controlled substances as defined in Schedules II through IV of the Uniform Controlled Substances Act, chapter 69.50 RCW, if and to the extent that doing so is permitted by their scope of practice.

(2) In the context of the definition of licensed practical nursing practice, this chapter shall not be construed as:

(a) Prohibiting the incidental care of the sick by domestic servants or persons primarily employed as housekeepers, so long as they do not practice practical nursing within the meaning of this chapter;

(b) Preventing a person from the domestic administration of family remedies or the furnishing of nursing assistance in case of emergency;

(c) Prohibiting the practice of practical nursing by students enrolled in approved schools as may be incidental to their course of study or prohibiting the students from working as nursing assistants;

(d) Prohibiting auxiliary services provided by persons carrying out duties necessary for the support of nursing services, including those duties that involve minor nursing services for persons performed in hospitals, nursing homes, or elsewhere under the direction of licensed physicians or the supervision of licensed registered nurses;

(e) Prohibiting or preventing the practice of nursing in this state by a legally qualified nurse of another state or territory whose engagement requires him or her to accompany and care for a patient temporarily residing in this state during the period of one such engagement, not to exceed six months in length, if the person does not represent or hold himself or herself out as a licensed practical nurse licensed to practice in this state;

(f) Prohibiting nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of a church by adherents of the church so long as they do not engage in licensed practical nurse practice as defined in this chapter;

(g) Prohibiting the practice of a legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency thereof, while in the

discharge of his or her official duties. [2005 c 28 § 1; 2003 c 258 § 6; 2000 c 64 § 3; 1994 sp.s. c 9 § 424.]

**Severability—Effective date—2003 c 258:** See notes following RCW 18.79.330.

**Effective date—2000 c 64 §§ 1-3:** See note following RCW 18.79.255.

**Severability—2000 c 64:** See note following RCW 18.79.255.

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

## Chapter 18.83 RCW PSYCHOLOGISTS

### Sections

18.83.110 Privileged communications.

**18.83.110 Privileged communications.** Confidential communications between a client and a psychologist shall be privileged against compulsory disclosure to the same extent and subject to the same conditions as confidential communications between attorney and client, but this exception is subject to the limitations under RCW 70.96A.140 and 71.05.360 (8) and (9). [2005 c 504 § 706; 1989 c 271 § 303; 1987 c 439 § 12; 1965 c 70 § 11; 1955 c 305 § 11.]

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

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

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

## Chapter 18.85 RCW

### REAL ESTATE BROKERS AND SALESPERSONS

#### Sections

18.85.520 Fee assessed. (*Expires September 30, 2010.*)

18.85.530 Washington real estate research account—Creation. (*Expires September 30, 2010.*)

18.85.540 Real estate research center—Purpose. (*Expires September 30, 2010.*)

**18.85.520 Fee assessed. (*Expires September 30, 2010.*)**

(1) A fee of ten dollars is created and shall be assessed on each real estate broker, associate broker, and salesperson originally licensed after October 1, 1999, and upon each renewal of a license with an expiration date after October 1, 1999, including renewals of inactive licenses.

(2) This section expires September 30, 2010. [2005 c 185 § 1; 1999 c 192 § 1.]

**18.85.530 Washington real estate research account—Creation. (*Expires September 30, 2010.*)** (1) The Washington real estate research account is created in the state treasury. All receipts from the fee under RCW 18.85.520 shall be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the purposes of RCW 18.85.540.

(2) This section expires September 30, 2010. [2005 c 185 § 2; 1999 c 192 § 2.]

**18.85.540 Real estate research center—Purpose. (*Expires September 30, 2010.*)** (1) The purpose of a real estate research center in Washington state is to provide credible research, value-added information, education services, and project-oriented research to real estate licensees, real estate consumers, real estate service providers, institutional customers, public agencies, and communities in Washington state and the Pacific Northwest region. The center may:

(a) Conduct studies and research on affordable housing and strategies to meet the affordable housing needs of the state;

(b) Conduct studies in all areas directly or indirectly related to real estate and urban or rural economics and economically isolated communities;

(c) Disseminate findings and results of real estate research conducted at or by the center or elsewhere, using a variety of dissemination media;

(d) Supply research results and educational expertise to the Washington state real estate commission to support its regulatory functions, as requested;

(e) Prepare information of interest to real estate consumers and make the information available to the general public, universities, or colleges, and appropriate state agencies;

(f) Encourage economic growth and development within the state of Washington;

(g) Support the professional development and continuing education of real estate licensees in Washington;

(h) Study and recommend changes in state statutes relating to real estate; and

(i) Develop a vacancy rate standard for low-income housing in the state.

(2) The director shall establish a memorandum of understanding with an institution of higher learning that establishes a real estate research center for the purposes under subsection (1) of this section.

(3) This section expires September 30, 2010. [2005 c 185 § 3; 2002 c 294 § 5; 1999 c 192 § 3.]

**Findings—2002 c 294:** See note following RCW 36.22.178.

## Chapter 18.96 RCW

### LANDSCAPE ARCHITECTS

#### Sections

18.96.050 Board—Terms of office—Removal—Compensation and travel expenses.

**18.96.050 Board—Terms of office—Removal—Compensation and travel expenses.** The members of the first board shall serve for the following terms:

One member for one year, one member for two years, one member for three years, one member for four years, and one member for five years from the date of appointment or until successors are duly appointed and qualified. Every member of the board shall receive a certificate of his or her appointment from the governor, and before beginning his or her term of office shall file with the secretary of state his or her written oath or affirmation for the faithful discharge of his or her official duties. On the expiration of the term of each member, the governor shall appoint a successor to serve for a term of five years, or until his or her successor has been

appointed and qualified: PROVIDED, That no member shall serve more than ten consecutive years.

The governor may remove any member of the board for cause. Vacancies in the board for any reason shall be filled by appointment for the unexpired term. In carrying out the provisions of this chapter, the members of the board shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses according to the provisions of RCW 43.03.050 and 43.03.060, such funds to be provided from the business and professions account created in RCW 43.24.150. [2005 c 25 § 2; 1984 c 287 § 52; 1975-'76 2nd ex.s. c 34 § 54; 1969 ex.s. c 158 § 5.]

**Effective date—2005 c 25:** See note following RCW 43.24.150.

**Legislative findings—Severability—Effective date—1984 c 287:** See notes following RCW 43.03.220.

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

## Chapter 18.104 RCW

### WATER WELL CONSTRUCTION

#### Sections

18.104.020	Definitions.
18.104.043	Well sealing and decommissioning—Delegation of authority.
18.104.050	Reports of well construction or decommissioning.
18.104.055	Fees.
18.104.100	Licenses—Duration—Renewal—Failure to renew, procedure—Suspension—Conditional licenses.
18.104.120	Complaints against a well contractor, operator, or trainee—Department's response—Review.
18.104.190	Technical advisory group.
18.104.200	Continuing education.

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

(1) "Abandoned well" means a well that is unmaintained or is in such disrepair that it is unusable or is a risk to public health and welfare.

(2) "Constructing a well" or "construct a well" means:

(a) Boring, digging, drilling, or excavating a well;

(b) Installing casing, sheeting, lining, or well screens, in a well;

(c) Drilling a geotechnical soil boring; or

(d) Installing an environmental investigation well.

"Constructing a well" or "construct a well" includes the alteration of an existing well.

(3) "Decommission" means to fill or plug a well so that it will not produce water, serve as a channel for movement of water or pollution, or allow the entry of pollutants into the well or aquifers.

(4) "Department" means the department of ecology.

(5) "Dewatering well" means a cased or lined excavation or boring that is intended to withdraw or divert ground water for the purpose of facilitating construction, stabilizing a landslide, or protecting an aquifer.

(6) "Director" means the director of the department of ecology.

(7) "Environmental investigation well" means a cased hole intended or used to extract a sample or samples of ground water, vapor, or soil from an underground formation and which is decommissioned immediately after the sample or samples are obtained. An environmental investigation

well is typically installed using direct push technology or auger boring and uses the probe, stem, auger, or rod as casing. An environmental investigation well is not a geotechnical soil boring.

(8) "Geotechnical soil boring" or "boring" means a well drilled for the purpose of obtaining soil samples or information to ascertain structural properties of the subsurface.

(9) "Ground source heat pump boring" means a vertical boring constructed for the purpose of installing a closed loop heat exchange system for a ground source heat pump.

(10) "Ground water" means and includes ground waters as defined in RCW 90.44.035.

(11) "Grounding well" means a grounding electrode installed in the earth by the use of drilling equipment to prevent buildup of voltages that may result in undue hazards to persons or equipment. Examples are anode and cathode protection wells.

(12) "Instrumentation well" means a well in which pneumatic or electric geotechnical or hydrological instrumentation is permanently or periodically installed to measure or monitor subsurface strength and movement. Instrumentation well includes borehole extensometers, slope indicators, pneumatic or electric pore pressure transducers, and load cells.

(13) "Monitoring well" means a well designed to obtain a representative ground water sample or designed to measure the water level elevation in either clean or contaminated water or soil.

(14) "Observation well" means a well designed to measure the depth to the water level elevation in either clean or contaminated water or soil.

(15) "Operator" means a person who (a) is employed by a well contractor; (b) is licensed under this chapter; or (c) who controls, supervises, or oversees the construction of a well or who operates well construction equipment.

(16) "Owner" or "well owner" means the person, firm, partnership, copartnership, corporation, association, other entity, or any combination of these, who owns the property on which the well is or will be constructed or has the right to the well by means of an easement, covenant, or other enforceable legal instrument for the purpose of benefiting from the well.

(17) "Pollution" and "contamination" have the meanings provided in RCW 90.48.020.

(18) "Remediation well" means a well intended or used to withdraw ground water or inject water, air (for air sparging), or other solutions into the subsurface for the purpose of remediating, cleaning up, or controlling potential or actual ground water contamination.

(19) "Resource protection well" means a cased boring intended or used to collect subsurface information or to determine the existence or migration of pollutants within an underground formation. Resource protection wells include monitoring wells, observation wells, piezometers, spill response wells, remediation wells, environmental investigation wells, vapor extraction wells, ground source heat pump boring, grounding wells, and instrumentation wells.

(20) "Resource protection well contractor" means any person, firm, partnership, copartnership, corporation, association, or other entity, licensed and bonded under chapter 18.27 RCW, engaged in the business of constructing resource protection wells or geotechnical soil borings.

(21) "Water well" means any excavation that is constructed when the intended use of the well is for the location, diversion, artificial recharge, observation, monitoring, dewatering, or withdrawal of ground water. "Water wells" include ground source heat pump borings and grounding wells.

(22) "Water well contractor" means any person, firm, partnership, copartnership, corporation, association, or other entity, licensed and bonded under chapter 18.27 RCW, engaged in the business of constructing water wells.

(23) "Well" means water wells, resource protection wells, dewatering wells, and geotechnical soil borings. Well does not mean an excavation made for the purpose of obtaining or prospecting for oil, natural gas, geothermal resources, minerals, or products of mining, or quarrying, or for inserting media to repressure oil or natural gas bearing formations, or for storing petroleum, natural gas, or other products.

(24) "Well contractor" means a resource protection well contractor and a water well contractor licensed and bonded under chapter 18.27 RCW. [2005 c 84 § 1; 2002 c 48 § 1; 2000 c 171 § 26; 1993 c 387 § 2; 1983 1st ex.s. c 27 § 14; 1971 ex.s. c 212 § 2.]

**18.104.043 Well sealing and decommissioning—Delegation of authority.** (1) If requested in writing by the governing body of a local health district or county, the department by memorandum of agreement may delegate to the governing body the authority to administer and enforce the well tagging, sealing, and decommissioning portions of the water well construction program.

(2) The department shall determine whether a local health district or county that seeks delegation under this section has the resources, capability, and expertise, including qualified field inspectors, to administer the delegated program. If the department determines the local government has these resources, it shall notify well contractors and operators of the proposal. The department shall accept written comments on the proposal for sixty days after the notice is mailed.

(3) If the department determines that a delegation of authority to a local health district or county to administer and enforce the well sealing and decommissioning portions of the water well construction program will enhance the public health and safety and the environment, the department and the local governing body may enter into a memorandum of agreement setting forth the specific authorities delegated by the department to the local governing body. The memorandum of agreement must be, at a minimum, reviewed annually. The department, in consultation with the technical advisory group, created under RCW 18.104.190, shall adopt rules outlining the annual review and reporting process. A detailed summary of the review must be made available to well contractors and operators upon request and be published on the department's web site.

(4) With regard to the portions of the water well construction program delegated under this section, the local governing agency shall exercise only the authority delegated to it under this section. If, after a public hearing, the department determines that a local governing body is not administering the program in accordance with this chapter, it shall notify the local governing body of the deficiencies. If corrective action is not taken within a reasonable time, not to exceed

sixty days, the department by order shall withdraw the delegation of authority.

(5) The department shall promptly furnish the local governing body with a copy of each water well report and notification of start cards received in the area covered by a delegated program.

(6) The department and the local governing body shall coordinate to reduce duplication of effort and shall share all appropriate information including technical reports, violations, and well reports.

(7) Any person aggrieved by a decision of a local health district or county under a delegated program may appeal the decision to the department. The department's decision is subject to review by the pollution control hearings board as provided in RCW 43.21B.110.

(8) The department shall not delegate the authority to license well contractors, renew licenses, receive notices of intent to commence constructing a well, receive well reports, or collect state fees provided for in this chapter. [2005 c 84 § 2; 2000 c 32 § 1; 1996 c 12 § 2; 1993 c 387 § 5; 1992 c 67 § 2.]

**Findings—Intent—1996 c 12:** "The legislature finds that experimental delegation of portions of the well drilling administration and enforcement authority of the department of ecology to willing and able local governments has been successful to date. Delegation has provided a more effective and efficient means of assuring proper well construction and decommissioning and protection of public health and safety than could be accomplished by the department of ecology acting alone. The legislature further finds that without legislative action, the authority for such delegation will expire June 30, 1996. Therefore, it is the intent of the legislature to extend the authority for delegation an additional four years." [1996 c 12 § 1.]

**Legislative findings—1992 c 67:** "The legislature finds that the public health and safety and the environment would be enhanced by permitting qualified local governmental agencies to administer and enforce portions of the water well construction program." [1992 c 67 § 1.]

**18.104.050 Reports of well construction or decommissioning.** (1) Any person authorized by this chapter to construct or decommission a well shall furnish a well report to the director within thirty days after the completion of the construction or decommissioning of a well. The director, by rule, shall prescribe the form of the report and the information to be contained therein.

(2) In the case of a dewatering well project:

(a) A single well construction report may be submitted for all similar dewatering wells constructed with no significant change in geologic formation; and

(b) A single well decommissioning report may be submitted for all similar dewatering wells decommissioned that have no significant change in geologic formation. [2005 c 84 § 3; 1993 c 387 § 8; 1971 ex.s. c 212 § 5.]

**18.104.055 Fees.** (1) A fee is hereby imposed on each well constructed in this state on or after July 1, 2005.

(2)(a) The fee for one water well, other than a dewatering well, with a minimum top casing diameter of less than twelve inches is two hundred dollars. This fee does not apply to a ground source heat pump boring or a grounding well.

(b) The fee for one water well, other than a dewatering well, with a minimum top casing diameter of twelve inches or greater is three hundred dollars.

(c) The fee for a resource protection well, except for an environmental investigation well, a ground source heat pump boring, or a grounding well, is forty dollars for each well.

(d) The fee for an environmental investigation well in which ground water is sampled or measured is forty dollars for construction of up to four environmental investigation wells per project, ten dollars for each additional environmental investigation well constructed on a project with more than four wells. There is no fee for soil or vapor sampling purposes.

(e) The fee for a ground source heat pump boring or a grounding well is forty dollars for construction of up to four ground source heat pump borings or grounding wells per project and ten dollars for each additional ground source heat pump boring or grounding well constructed on a project with more than four wells.

(f) The combined fee for construction and decommissioning of a dewatering well system shall be forty dollars for each two hundred horizontal lineal feet, or portion thereof, of the dewatering well system.

(g) The fee to decommission a water well is fifty dollars.

(h) The fee to decommission a resource protection well, except for an environmental investigation well, is twenty dollars. There is no fee to decommission an environmental investigation well or a geotechnical soil boring.

(i) The fee to decommission a ground source heat pump boring or a grounding well is twenty dollars.

(3) The fees imposed by this section shall be paid at the time the notice of well construction is submitted to the department as provided by RCW 18.104.048. The department by rule may adopt procedures to permit the fees required for resource protection wells to be paid after the number of wells actually constructed has been determined. The department shall refund the amount of any fee collected for wells, borings, probes, or excavations as long as construction has not started and the department has received a refund request within one hundred eighty days from the time the department received the fee. The refund request shall be made on a form provided by the department. [2005 c 84 § 4; 2002 c 48 § 2; 1993 c 387 § 9.]

**18.104.100 Licenses—Duration—Renewal—Failure to renew, procedure—Suspension—Conditional licenses.**

(1) Licenses issued pursuant to this chapter shall be renewed every two years. A license shall be renewed upon payment of a renewal fee and completion of continuing education requirements and receipt of a completed license renewal application. If a licensee fails to submit an application for renewal, the renewal fee, and proof of completion of the required continuing education, the license shall be suspended at the end of its effective term. The licensee is not allowed to perform work authorized by their license during the time that it is suspended. The licensee is allowed thirty days to submit an application for renewal, the renewal fee, and proof of completion of the required continuing education for the renewal period. Continuing education obtained during the thirty-day suspension period may be applied only to the next renewal period. If a licensee fails to submit an application for renewal, the renewal fee, and proof of completion of the required continuing education by the end of the thirty-day suspension period, the license expires. The department shall

adopt rules, in consultation with the technical advisory group created under RCW 18.104.190, that allow for an extension of the thirty-day suspension period for certain situations that are beyond the control of the licensee. The rules must also allow for a retirement or inactive license.

(2) A person whose license has expired must apply for a new license as provided in this chapter. The department may waive the requirement for a written examination and on-site testing for a person whose license has expired.

(3) The department may refuse to renew a license if the licensee has not complied with an order issued by the department or has not paid a penalty imposed in accordance with this chapter, unless the order or penalty is under appeal.

(4) The department may issue a conditional license to enable a former licensee to comply with an order to correct problems with a well. [2005 c 84 § 5; 1993 c 387 § 17; 1971 ex.s. c 212 § 10.]

**18.104.120 Complaints against a well contractor, operator, or trainee—Department's response—Review.**

Any person who can demonstrate being materially harmed by the actions or inactions of a well contractor, operator, or trainee, or has knowledge of illegal activities engaged in by a well contractor, operator, or trainee may submit a complaint against the well contractor, operator, or trainee to the department of ecology. The complaint shall be in writing, signed by the complainant, and specify the grievances against the licensee. The department may investigate the complaint to establish the validity of the complaint. In the event evidence shows a violation of this chapter or rules adopted under this chapter, the department may respond to the complaint by issuance of an order appropriate to the violation. Review of the order shall be subject to the hearings procedures set forth in RCW 18.104.130. [2005 c 84 § 7; 1993 c 387 § 19; 1983 c 93 § 1; 1971 ex.s. c 212 § 12.]

**18.104.190 Technical advisory group.** (1) For the purpose of carrying out the provisions of this chapter, the director shall appoint a technical advisory group, chaired by the department. The technical advisory group shall have twelve members: Two members shall represent the department of ecology, six members shall represent resource protection well contractors or water well contractors, one member shall represent the department of health and be a person who regularly works on issues related to drinking water wells, one member shall represent local health departments and be a person who regularly works on issues related to drinking water wells, one member shall represent licensed professional engineers and be knowledgeable about the design and construction of wells, and one member shall be a licensed hydrogeologist knowledgeable about the design and construction of wells.

(2) The technical advisory group shall assist the department in the development and revision of rules; the preparation and revision of licensing examinations; the development of training criteria for inspectors, well contractors, and well operators; the establishment of continuing education providers; the development of evaluation procedures of all continuing education offerings; and the review of proposed changes to the minimum standards for construction and maintenance

of wells by local governments for the purpose of achieving continuity with technology and state rules.

(3) The group shall meet at least twice each year to review rules and suggest any necessary changes.

(4) Each member of the group shall be compensated in accordance with RCW 43.03.240 and reimbursed for travel expenses while engaged in the business of the group as prescribed in RCW 43.03.050 and 43.03.060. [2005 c 84 § 8; 1993 c 387 § 25.]

**18.104.200 Continuing education.** (1) A person seeking a new license or to renew an existing license under this chapter must demonstrate a willingness to maintain a high level of professional competency by completing continuing education programs as required by the department by rule. The department shall not approve any continuing education program unless: (a) It is offered by an approved provider; (b) it is open to all persons licensed or pursuing a license under this chapter; and (c) the fees charged are reasonable for all persons desiring to attend the program.

(2) The department, in consultation with the technical advisory group created in RCW 18.104.190, shall adopt rules governing continuing education programs. At a minimum, the rules must establish: A method of approving providers of continuing education; a criteria to evaluate the offerings, workshops, courses, classes, or programs; a criteria for assigning credits; and a criteria for reporting and verifying completion.

(3) The department shall support approved providers by providing, upon request and at the department's discretion, technical assistance and presenters for continuing education offerings.

(4) The department shall maintain a current list of all continuing education offerings by approved providers and ensure that the list is available to all licensees by request. The list must also be posted on the department's web site. [2005 c 84 § 6.]

## Chapter 18.106 RCW

### PLUMBERS

#### Sections

18.106.320 Contractor's duties—Records audit—Department's rule-making authority—Penalty. (*Effective July 1, 2006.*)

**18.106.320 Contractor's duties—Records audit—Department's rule-making authority—Penalty.** (*Effective July 1, 2006.*) (1) Contractors shall accurately verify and attest to the trainee hours worked by plumbing trainees on behalf of the contractor and that all training hours were under the supervision of a certified plumber and within the proper ratio, and shall provide the supervising plumbers' names and certificate numbers. However, contractors are not required to identify which hours a trainee works with a specific certified plumber.

(2) The department may audit the records of a contractor that has verified the hours of experience submitted by a plumbing trainee to the department under RCW 18.106.030 in the following circumstances: Excessive hours were reported; hours were reported outside the normal course of

the contractor's business; or for other similar circumstances in which the department demonstrates a likelihood of excessive or improper hours being reported. The department shall limit the audit to records necessary to verify hours. The department shall adopt rules implementing audit procedures. Information obtained from a contractor under the provisions of this section is confidential and is not open to public inspection under chapter 42.56 RCW.

(3) Violation of this section by a contractor is an infraction. [2005 c 274 § 229; 2002 c 82 § 5.]

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

## Chapter 18.118 RCW

### REGULATION OF BUSINESS PROFESSIONS

#### Sections

18.118.010 Purpose—Intent. (*Effective January 1, 2006.*)

**18.118.010 Purpose—Intent.** (*Effective January 1, 2006.*) (1) The purpose of this chapter is to establish guidelines for the regulation of the real estate profession and other business professions which may seek legislation to substantially increase their scope of practice or the level of regulation of the profession, and for the regulation of business professions not licensed or regulated on July 26, 1987: PROVIDED, That the provisions of this chapter are not intended and shall not be construed to: (a) Apply to any regulatory entity created prior to July 26, 1987, except as provided in this chapter; (b) affect the powers and responsibilities of the superintendent of public instruction or Washington professional educator standards board under RCW 28A.410.210 and 28A.410.010; (c) apply to or interfere in any way with the practice of religion or to any kind of treatment by prayer; (d) apply to any remedial or technical amendments to any statutes which licensed or regulated activity before July 26, 1987; and (e) apply to proposals relating solely to continuing education. The legislature believes that all individuals should be permitted to enter into a business profession unless there is an overwhelming need for the state to protect the interests of the public by restricting entry into the profession. Where such a need is identified, the regulation adopted by the state should be set at the least restrictive level consistent with the public interest to be protected.

(2) It is the intent of this chapter that no regulation shall be imposed upon any business profession except for the exclusive purpose of protecting the public interest. All bills introduced in the legislature to regulate a business profession for the first time should be reviewed according to the following criteria. A business profession should be regulated by the state only when:

(a) Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

(b) The public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and

(c) The public cannot be effectively protected by other means in a more cost-beneficial manner.

(3) After evaluating the criteria in subsection (2) of this section and considering governmental and societal costs and benefits, if the legislature finds that it is necessary to regulate a business profession not previously regulated by law, the least restrictive alternative method of regulation should be implemented, consistent with the public interest and this section:

(a) Where existing common law and statutory civil actions and criminal prohibitions are not sufficient to eradicate existing harm, the regulation should provide for stricter civil actions and criminal prosecutions;

(b) Where a service is being performed for individuals involving a hazard to the public health, safety, or welfare, the regulation should impose inspection requirements and enable an appropriate state agency to enforce violations by injunctive relief in court, including, but not limited to, regulation of the business activity providing the service rather than the employees of the business;

(c) Where the threat to the public health, safety, or economic well-being is relatively small as a result of the operation of the business profession, the regulation should implement a system of registration;

(d) Where the consumer may have a substantial basis for relying on the services of a practitioner, the regulation should implement a system of certification; or

(e) Where apparent that adequate regulation cannot be achieved by means other than licensing, the regulation should implement a system of licensing. [2005 c 497 § 218; 1990 c 33 § 553; 1987 c 514 § 4.]

**Intent—Part headings not law—Effective date—2005 c 497:** See notes following RCW 28A.305.011.

**Purpose—Statutory references—Severability—1990 c 33:** See RCW 28A.900.100 through 28A.900.102.

### Chapter 18.120 RCW

#### REGULATION OF HEALTH PROFESSIONS—CRITERIA

##### Sections

18.120.010 Purpose—Criteria. (*Effective January 1, 2006.*)

**18.120.010 Purpose—Criteria.** (*Effective January 1, 2006.*) (1) The purpose of this chapter is to establish guidelines for the regulation of health professions not licensed or regulated prior to July 24, 1983, and those licensed or regulated health professions which seek to substantially increase their scope of practice: PROVIDED, That the provisions of this chapter are not intended and shall not be construed to: (a) Apply to any regulatory entity created prior to July 24, 1983, except as provided in this chapter; (b) affect the powers and responsibilities of the superintendent of public instruction or Washington professional educator standards board under RCW 28A.410.210 and 28A.410.010; (c) apply to or interfere in any way with the practice of religion or to any kind of treatment by prayer; and (d) apply to any remedial or technical amendments to any statutes which licensed or regulated activity before July 24, 1983. The legislature believes that all individuals should be permitted to enter into a health profession unless there is an overwhelming need for the state to protect the interests of the public by restricting entry into the profession. Where such a need is identified, the regulation

[2005 RCW Supp—page 148]

adopted by the state should be set at the least restrictive level consistent with the public interest to be protected.

(2) It is the intent of this chapter that no regulation shall, after July 24, 1983, be imposed upon any health profession except for the exclusive purpose of protecting the public interest. All bills introduced in the legislature to regulate a health profession for the first time should be reviewed according to the following criteria. A health profession should be regulated by the state only when:

(a) Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

(b) The public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and

(c) The public cannot be effectively protected by other means in a more cost-beneficial manner.

(3) After evaluating the criteria in subsection (2) of this section and considering governmental and societal costs and benefits, if the legislature finds that it is necessary to regulate a health profession not previously regulated by law, the least restrictive alternative method of regulation should be implemented, consistent with the public interest and this section:

(a) Where existing common law and statutory civil actions and criminal prohibitions are not sufficient to eradicate existing harm, the regulation should provide for stricter civil actions and criminal prosecutions;

(b) Where a service is being performed for individuals involving a hazard to the public health, safety, or welfare, the regulation should impose inspection requirements and enable an appropriate state agency to enforce violations by injunctive relief in court, including, but not limited to, regulation of the business activity providing the service rather than the employees of the business;

(c) Where the threat to the public health, safety, or economic well-being is relatively small as a result of the operation of the health profession, the regulation should implement a system of registration;

(d) Where the consumer may have a substantial basis for relying on the services of a practitioner, the regulation should implement a system of certification; or

(e) Where apparent that adequate regulation cannot be achieved by means other than licensing, the regulation should implement a system of licensing. [2005 c 497 § 219; 1990 c 33 § 554; 1983 c 168 § 1.]

**Intent—Part headings not law—Effective date—2005 c 497:** See notes following RCW 28A.305.011.

**Purpose—Statutory references—Severability—1990 c 33:** See RCW 28A.900.100 through 28A.900.102.

### Chapter 18.130 RCW

#### REGULATION OF HEALTH PROFESSIONS—UNIFORM DISCIPLINARY ACT

##### Sections

- 18.130.070 Rules requiring reports—Court orders—Immunity from liability—Licensees required to report.
- 18.130.085 Communication with complainant. (*Effective July 1, 2006.*)
- 18.130.095 Uniform procedural rules. (*Effective July 1, 2006.*)
- 18.130.110 Findings of fact—Order—Report. (*Effective July 1, 2006.*)



18.130.175 Voluntary substance abuse monitoring programs. (*Effective July 1, 2006.*)

**18.130.070 Rules requiring reports—Court orders—Immunity from liability—Licensees required to report.**

(1) The disciplining authority may adopt rules requiring any person, including, but not limited to, licensees, corporations, organizations, health care facilities, impaired practitioner programs, or voluntary substance abuse monitoring programs approved by the disciplining authority and state or local governmental agencies, to report to the disciplining authority any conviction, determination, or finding that a license holder has committed an act which constitutes unprofessional conduct, or to report information to the disciplining authority, an impaired practitioner program, or voluntary substance abuse monitoring program approved by the disciplining authority, which indicates that the license holder may not be able to practice his or her profession with reasonable skill and safety to consumers as a result of a mental or physical condition. If a report has been made by a hospital to the department pursuant to RCW 70.41.210, a report to the disciplining authority is not required. To facilitate meeting the intent of this section, the cooperation of agencies of the federal government is requested by reporting any conviction, determination, or finding that a federal employee or contractor regulated by the disciplining authorities enumerated in this chapter has committed an act which constituted unprofessional conduct and reporting any information which indicates that a federal employee or contractor regulated by the disciplining authorities enumerated in this chapter may not be able to practice his or her profession with reasonable skill and safety as a result of a mental or physical condition.

(2) If a person fails to furnish a required report, the disciplining authority may petition the superior court of the county in which the person resides or is found, and the court shall issue to the person an order to furnish the required report. A failure to obey the order is a contempt of court as provided in chapter 7.21 RCW.

(3) A person is immune from civil liability, whether direct or derivative, for providing information to the disciplining authority pursuant to the rules adopted under subsection (1) of this section.

(4) The holder of a license subject to the jurisdiction of this chapter shall report to the disciplining authority any conviction, determination, or finding that the licensee has committed unprofessional conduct or is unable to practice with reasonable skill or safety. Failure to report within thirty days of notice of the conviction, determination, or finding constitutes grounds for disciplinary action. [2005 c 470 § 2; 1998 c 132 § 8; 1989 c 373 § 19; 1986 c 259 § 4; 1984 c 279 § 7.]

**Finding—Intent—Severability—1998 c 132:** See notes following RCW 18.71.0195.

**Severability—1989 c 373:** See RCW 7.21.900.

**Severability—1986 c 259:** See note following RCW 18.130.010.

**18.130.085 Communication with complainant.** (*Effective July 1, 2006.*) If the department communicates in writing to a complainant, or his or her representative, regarding his or her complaint, such communication shall not include the address or telephone number of the health care provider against whom he or she has complained. The

department shall inform all applicants for a health care provider license of the provisions of this section and chapter 42.56 RCW regarding the release of address and telephone information. [2005 c 274 § 230; 1993 c 360 § 1.]

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

**Effective date—1993 c 360:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 15, 1993]." [1993 c 360 § 3.]

**18.130.095 Uniform procedural rules.** (*Effective July 1, 2006.*)

(1)(a) The secretary, in consultation with the disciplining authorities, shall develop uniform procedural rules to respond to public inquiries concerning complaints and their disposition, active investigations, statement of charges, findings of fact, and final orders involving a licensee, applicant, or unlicensed person. The uniform procedural rules adopted under this subsection apply to all adjudicative proceedings conducted under this chapter and shall include provisions for establishing time periods for initial assessment, investigation, charging, discovery, settlement, and adjudication of complaints, and shall include enforcement provisions for violations of the specific time periods by the department, the disciplining authority, and the respondent. A licensee must be notified upon receipt of a complaint, except when the notification would impede an effective investigation. At the earliest point of time the licensee must be allowed to submit a written statement about that complaint, which statement must be included in the file. Complaints filed after July 27, 1997, are exempt from public disclosure under chapter 42.56 RCW until the complaint has been initially assessed and determined to warrant an investigation by the disciplining authority. Complaints determined not to warrant an investigation by the disciplining authority are no longer considered complaints, but must remain in the records and tracking system of the department. Information about complaints that did not warrant an investigation, including the existence of the complaint, may be released only upon receipt of a written public disclosure request or pursuant to an interagency agreement as provided in (b) of this subsection. Complaints determined to warrant no cause for action after investigation are subject to public disclosure, must include an explanation of the determination to close the complaint, and must remain in the records and tracking system of the department.

(b) The secretary, on behalf of the disciplining authorities, shall enter into interagency agreements for the exchange of records, which may include complaints filed but not yet assessed, with other state agencies if access to the records will assist those agencies in meeting their federal or state statutory responsibilities. Records obtained by state agencies under the interagency agreements are subject to the limitations on disclosure contained in (a) of this subsection.

(2) The uniform procedures for conducting investigations shall provide that prior to taking a written statement:

(a) For violation of this chapter, the investigator shall inform such person, in writing of: (i) The nature of the complaint; (ii) that the person may consult with legal counsel at his or her expense prior to making a statement; and (iii) that any statement that the person makes may be used in an adjudicative proceeding conducted under this chapter; and

(b) From a witness or potential witness in an investigation under this chapter, the investigator shall inform the person, in writing, that the statement may be released to the licensee, applicant, or unlicensed person under investigation if a statement of charges is issued.

(3) Only upon the authorization of a disciplining authority identified in RCW 18.130.040(2)(b), the secretary, or his or her designee, may serve as the presiding officer for any disciplinary proceedings of the disciplining authority authorized under this chapter. Except as provided in RCW 18.130.050(8), the presiding officer shall not vote on or make any final decision. All functions performed by the presiding officer shall be subject to chapter 34.05 RCW. The secretary, in consultation with the disciplining authorities, shall adopt procedures for implementing this subsection.

(4) The uniform procedural rules shall be adopted by all disciplining authorities listed in RCW 18.130.040(2), and shall be used for all adjudicative proceedings conducted under this chapter, as defined by chapter 34.05 RCW. The uniform procedural rules shall address the use of a presiding officer authorized in subsection (3) of this section to determine and issue decisions on all legal issues and motions arising during adjudicative proceedings. [2005 c 274 § 231; 1997 c 270 § 1; 1995 c 336 § 6; 1993 c 367 § 2.]

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

**18.130.110 Findings of fact—Order—Report. (Effective July 1, 2006.)** (1) In the event of a finding of unprofessional conduct, the disciplining authority shall prepare and serve findings of fact and an order as provided in chapter 34.05 RCW, the Administrative Procedure Act. If the license holder or applicant is found to have not committed unprofessional conduct, the disciplining authority shall forthwith prepare and serve findings of fact and an order of dismissal of the charges, including public exoneration of the licensee or applicant. The findings of fact and order shall be retained by the disciplining authority as a permanent record.

(2) The disciplining authority shall report the issuance of statements of charges and final orders in cases processed by the disciplining authority to:

(a) The person or agency who brought to the disciplining authority's attention information which resulted in the initiation of the case;

(b) Appropriate organizations, public or private, which serve the professions;

(c) The public. Notification of the public shall include press releases to appropriate local news media and the major news wire services; and

(d) Counterpart licensing boards in other states, or associations of state licensing boards.

(3) This section shall not be construed to require the reporting of any information which is exempt from public disclosure under chapter 42.56 RCW. [2005 c 274 § 232; 1989 c 175 § 70; 1984 c 279 § 11.]

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

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

**18.130.175 Voluntary substance abuse monitoring programs. (Effective July 1, 2006.)** (1) In lieu of disciplin- [2005 RCW Supp—page 150]

ary action under RCW 18.130.160 and if the disciplining authority determines that the unprofessional conduct may be the result of substance abuse, the disciplining authority may refer the license holder to a voluntary substance abuse monitoring program approved by the disciplining authority.

The cost of the treatment shall be the responsibility of the license holder, but the responsibility does not preclude payment by an employer, existing insurance coverage, or other sources. Primary alcoholism or other drug addiction treatment shall be provided by approved treatment programs under RCW 70.96A.020 or by any other provider approved by the entity or the commission. However, nothing shall prohibit the disciplining authority from approving additional services and programs as an adjunct to primary alcoholism or other drug addiction treatment. The disciplining authority may also approve the use of out-of-state programs. Referral of the license holder to the program shall be done only with the consent of the license holder. Referral to the program may also include probationary conditions for a designated period of time. If the license holder does not consent to be referred to the program or does not successfully complete the program, the disciplining authority may take appropriate action under RCW 18.130.160. The secretary shall adopt uniform rules for the evaluation by the disciplinary authority of a relapse or program violation on the part of a license holder in the substance abuse monitoring program. The evaluation shall encourage program participation with additional conditions, in lieu of disciplinary action, when the disciplinary authority determines that the license holder is able to continue to practice with reasonable skill and safety.

(2) In addition to approving substance abuse monitoring programs that may receive referrals from the disciplining authority, the disciplining authority may establish by rule requirements for participation of license holders who are not being investigated or monitored by the disciplining authority for substance abuse. License holders voluntarily participating in the approved programs without being referred by the disciplining authority shall not be subject to disciplinary action under RCW 18.130.160 for their substance abuse, and shall not have their participation made known to the disciplining authority, if they meet the requirements of this section and the program in which they are participating.

(3) The license holder shall sign a waiver allowing the program to release information to the disciplining authority if the licensee does not comply with the requirements of this section or is unable to practice with reasonable skill or safety. The substance abuse program shall report to the disciplining authority any license holder who fails to comply with the requirements of this section or the program or who, in the opinion of the program, is unable to practice with reasonable skill or safety. License holders shall report to the disciplining authority if they fail to comply with this section or do not complete the program's requirements. License holders may, upon the agreement of the program and disciplining authority, reenter the program if they have previously failed to comply with this section.

(4) The treatment and pretreatment records of license holders referred to or voluntarily participating in approved programs shall be confidential, shall be exempt from chapter 42.56 RCW, and shall not be subject to discovery by subpoena or admissible as evidence except for monitoring

Chapter 18.140 RCW

CERTIFIED REAL ESTATE APPRAISER ACT

records reported to the disciplining authority for cause as defined in subsection (3) of this section. Monitoring records relating to license holders referred to the program by the disciplining authority or relating to license holders reported to the disciplining authority by the program for cause, shall be released to the disciplining authority at the request of the disciplining authority. Records held by the disciplining authority under this section shall be exempt from chapter 42.56 RCW and shall not be subject to discovery by subpoena except by the license holder.

(5) "Substance abuse," as used in this section, means the impairment, as determined by the disciplining authority, of a license holder's professional services by an addiction to, a dependency on, or the use of alcohol, legend drugs, or controlled substances.

(6) This section does not affect an employer's right or ability to make employment-related decisions regarding a license holder. This section does not restrict the authority of the disciplining authority to take disciplinary action for any other unprofessional conduct.

(7) A person who, in good faith, reports information or takes action in connection with this section is immune from civil liability for reporting information or taking the action.

(a) The immunity from civil liability provided by this section shall be liberally construed to accomplish the purposes of this section and the persons entitled to immunity shall include:

- (i) An approved monitoring treatment program;
- (ii) The professional association operating the program;
- (iii) Members, employees, or agents of the program or association;
- (iv) Persons reporting a license holder as being possibly impaired or providing information about the license holder's impairment; and
- (v) Professionals supervising or monitoring the course of the impaired license holder's treatment or rehabilitation.

(b) The courts are strongly encouraged to impose sanctions on clients and their attorneys whose allegations under this subsection are not made in good faith and are without either reasonable objective, substantive grounds, or both.

(c) The immunity provided in this section is in addition to any other immunity provided by law. [2005 c 274 § 233; 1998 c 132 § 10; 1993 c 367 § 3; 1991 c 3 § 270; 1988 c 247 § 2.]

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

**Finding—Intent—Severability—1998 c 132:** See notes following RCW 18.71.0195.

**Legislative intent—1988 c 247:** "Existing law does not provide for a program for rehabilitation of health professionals whose competency may be impaired due to the abuse of alcohol and other drugs.

It is the intent of the legislature that the disciplining authorities seek ways to identify and support the rehabilitation of health professionals whose practice or competency may be impaired due to the abuse of drugs or alcohol. The legislature intends that such health professionals be treated so that they can return to or continue to practice their profession in a way which safeguards the public. The legislature specifically intends that the disciplining authorities establish an alternative program to the traditional administrative proceedings against such health professionals." [1988 c 247 § 1.]

Sections

- 18.140.005 Intent.
- 18.140.010 Definitions.
- 18.140.020 Use of title by unauthorized person. *(Effective April 1, 2006.)*
- 18.140.030 Powers and duties of director.
- 18.140.060 Applications—Original and renewal certification, licensure, or registration. *(Effective April 1, 2006.)*
- 18.140.070 Categories of appraisers. *(Effective April 1, 2006.)*
- 18.140.100 Examination requirements.
- 18.140.110 Nonresident applicants—Consent for service of process. *(Effective April 1, 2006.)*
- 18.140.120 Reciprocity.
- 18.140.130 Expiration of certificate, license, or registration—Renewal—Failure to renew in timely manner. *(Effective April 1, 2006.)*
- 18.140.140 Certificate, license, or registration—Required use of number. *(Effective April 1, 2006.)*
- 18.140.150 Use of term restricted—Group certificates, licenses, or registrations prohibited. *(Effective April 1, 2006.)*
- 18.140.155 Temporary certification or licensing—Extension.
- 18.140.160 Disciplinary actions—Grounds. *(Effective April 1, 2006.)*
- 18.140.170 Violations—Investigations. *(Effective April 1, 2006.)*
- 18.140.200 Certificate, license, or registration suspension—Nonpayment or default on educational loan or scholarship. *(Effective April 1, 2006.)*
- 18.140.202 Certificate, license, or registration suspension—Noncompliance with support order—Reissuance. *(Effective April 1, 2006.)*
- 18.140.220 Acting without certificate, license, or registration—Penalty. *(Effective April 1, 2006.)*
- 18.140.230 Real estate appraiser commission—Establishment—Composition.
- 18.140.260 Real estate appraiser commission account.
- 18.140.280 Trainee real estate appraiser—Registration. *(Effective April 1, 2006.)*

**18.140.005 Intent.** (1) It is the intent of the legislature that only individuals who meet and maintain minimum standards of competence and conduct established under this chapter for certified, licensed, or registered real estate appraisers may provide real estate appraisal services to the public.

(2) It is the further intent of the legislature to provide for the proper supervision and training of new entrants to the appraiser profession through the implementation of the state-registered appraiser trainee classification. [2005 c 339 § 1; 1996 c 182 § 1; 1993 c 30 § 1; 1989 c 414 § 1.]

**Effective dates—2005 c 339:** "(1) Sections 1, 2, 4, 7, 9, 13, 20, and 22 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2005.

(2) Sections 3, 5, 6, 8, 10 through 12, 14 through 18, and 21 of this act take effect April 1, 2006." [2005 c 339 § 26.]

**Effective dates—1996 c 182:** "This act shall take effect July 1, 1996, except section 3 of this act, which shall take effect July 1, 1997." [1996 c 182 § 16.]

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

(1) "Appraisal" means the act or process of estimating value; an estimate of value; or of or pertaining to appraising and related functions.

(2) "Appraisal report" means any communication, written or oral, of an appraisal, review, or consulting service in accordance with the standards of professional conduct or practice, adopted by the director, that is transmitted to the client upon completion of an assignment.

(3) "Appraisal assignment" means an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion relating to the value of specified interests in, or aspects of, identified real estate. The term "appraisal assignment" may apply to valuation work and analysis work.

(4) "Brokers price opinion" means an oral or written report of property value that is prepared by a real estate broker or salesperson licensed under chapter 18.85 RCW.

(5) "Client" means any party for whom an appraiser performs a service.

(6) "Commission" means the real estate appraiser commission of the state of Washington.

(7) "Comparative market analysis" means a brokers price opinion.

(8) "Department" means the department of licensing.

(9) "Director" means the director of the department of licensing.

(10) "Expert review appraiser" means a state-certified or state-licensed real estate appraiser chosen by the director for the purpose of providing appraisal review assistance to the director.

(11) "Federal department" means an executive department of the United States of America specifically concerned with housing finance issues, such as the department of housing and urban development, the department of veterans affairs, or their legal federal successors.

(12) "Federal financial institutions regulatory agency" means the board of governors of the federal reserve system, the federal deposit insurance corporation, the office of the comptroller of the currency, the office of thrift supervision, the national credit union administration, their successors and/or such other agencies as may be named in future amendments to 12 U.S.C. Sec. 3350(6).

(13) "Federal secondary mortgage marketing agency" means the federal national mortgage association, the government national mortgage association, the federal home loan mortgage corporation, their successors and/or such other similarly functioning housing finance agencies as may be federally chartered in the future.

(14) "Federally related transaction" means any real estate-related financial transaction that the federal financial institutions regulatory agency or the resolution trust corporation engages in, contracts for, or regulates; and that requires the services of an appraiser.

(15) "Financial institution" means any person doing business under the laws of this state or the United States relating to banks, bank holding companies, savings banks, trust companies, savings and loan associations, credit unions, consumer loan companies, and the affiliates, subsidiaries, and service corporations thereof.

(16) "Mortgage broker" for the purpose of this chapter means a mortgage broker licensed under chapter 19.146 RCW, any mortgage broker approved and subject to audit by the federal national mortgage association, the government national mortgage association, or the federal home loan mortgage corporation as provided in RCW 19.146.020, any mortgage broker approved by the United States secretary of housing and urban development for participation in any mortgage insurance under the national housing act, 12 U.S.C. Sec.

1201, and the affiliates, subsidiaries, and service corporations thereof.

(17) "Real estate" means an identified parcel or tract of land, including improvements, if any.

(18) "Real estate-related financial transaction" means any transaction involving:

(a) The sale, lease, purchase, investment in, or exchange of real property, including interests in property, or the financing thereof;

(b) The refinancing of real property or interests in real property; and

(c) The use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.

(19) "Real property" means one or more defined interests, benefits, or rights inherent in the ownership of real estate.

(20) "Review" means the act or process of critically studying an appraisal report prepared by another.

(21) "Specialized appraisal services" means all appraisal services that do not fall within the definition of appraisal assignment. The term "specialized appraisal service" may apply to valuation work and to analysis work. Regardless of the intention of the client or employer, if the appraiser would be perceived by third parties or the public as acting as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion, the work is classified as an appraisal assignment and not a specialized appraisal service.

(22) "State-certified general real estate appraiser" means a person certified by the director to develop and communicate real estate appraisals of all types of property. A state-certified general real estate appraiser may designate or identify an appraisal rendered by him or her as a "certified appraisal."

(23) "State-certified residential real estate appraiser" means a person certified by the director to develop and communicate real estate appraisals of all types of residential property of one to four units without regard to transaction value or complexity and nonresidential property having a transaction value as specified in rules adopted by the director. A state certified residential real estate appraiser may designate or identify an appraisal rendered by him or her as a "certified appraisal."

(24) "State-licensed real estate appraiser" means a person licensed by the director to develop and communicate real estate appraisals of noncomplex one to four residential units and complex one to four residential units and nonresidential property having transaction values as specified in rules adopted by the director.

(25) "State-registered appraiser trainee," "trainee," or "trainee real estate appraiser" means a person registered by the director under RCW 18.140.280 to develop and communicate real estate appraisals under the immediate and personal direction of a state-certified real estate appraiser. Appraisals are limited to those types of properties that the supervisory appraiser is permitted by their current credential, and that the supervisory appraiser is competent and qualified to appraise. By signing the appraisal report, or being identified in the certification or addenda as having lent significant professional assistance, the state-registered appraiser trainee accepts total

and complete individual responsibility for all content, analyses, and conclusions in the report.

(26) "Supervisory appraiser" means a person holding a currently valid certificate issued by the director as a state-certified real estate appraiser providing direct supervision to another state-certified, state-licensed, or state-registered appraiser trainee. The supervisory appraiser must be in good standing in each jurisdiction that he or she is credentialed. The supervisory appraiser must sign all appraisal reports. By signing the appraisal report, the supervisory appraiser accepts full responsibility for all content, analyses, and conclusions in the report. [2005 c 339 § 2; 2000 c 249 § 1; 1997 c 399 § 1; 1996 c 182 § 2; 1993 c 30 § 2; 1989 c 414 § 3.]

**Effective dates—2005 c 339:** See note following RCW 18.140.005.

**Effective date—1997 c 399:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 399 § 3.]

**Effective dates—1996 c 182:** See note following RCW 18.140.005.

**18.140.020 Use of title by unauthorized person.**

*(Effective April 1, 2006.)* (1) No person other than a state-certified or state-licensed real estate appraiser may receive compensation of any form for a real estate appraisal or an appraisal review, except that a state-registered appraiser trainee may receive compensation from one or more supervisory appraisers or the supervisory appraiser's employer for appraisal assignments.

(2) Compensation may be provided for brokers price opinions prepared by a real estate licensee, licensed under chapter 18.85 RCW.

(3) No person, other than a state-certified, state-licensed real estate appraiser, or a state-registered appraiser trainee may assume or use that title or any title, designation, or abbreviation likely to create the impression of certification, licensure, or registration as a real estate appraiser by this state.

(4) A person who is not certified, licensed, or registered under this chapter shall not prepare any appraisal of real estate located in this state, except as provided under subsection (2) of this section.

(5) This section does not preclude a staff employee of a governmental entity from performing an appraisal or an appraisal assignment within the scope of his or her employment insofar as the performance of official duties for the governmental entity are concerned. Such an activity for the benefit of the governmental entity is exempt from the requirements of this chapter.

(6) This chapter does not preclude an individual person licensed by the state of Washington as a real estate broker or as a real estate salesperson from issuing a brokers price opinion. However, if the brokers price opinion is written, or given as evidence in any legal proceeding, and is issued to a person who is not a prospective seller, buyer, lessor, or lessee as the only intended user, then the brokers price opinion shall contain a statement, in an obvious location within the written document or specifically and affirmatively in spoken testimony, that substantially states: "This brokers price opinion is not an appraisal as defined in chapter 18.140 RCW and has been prepared by a real estate licensee, licensed under chapter 18.85 RCW, who . . . . (is/is not) also state-certified or

state-licensed as a real estate appraiser under chapter 18.140 RCW." However, the brokers price opinion issued under this subsection may not be used as an appraisal in conjunction with a federally related transaction.

(7) This section does not apply to an appraisal or an appraisal review performed for a financial institution or mortgage broker by an employee or third party, when such appraisal or appraisal review is not required to be performed by a state-certified or state-licensed real estate appraiser by the appropriate federal financial institutions regulatory agency.

(8) This section does not apply to an attorney licensed to practice law in this state or to a certified public accountant, as defined in RCW 18.04.025, who evaluates real property in the normal scope of his or her professional services. [2005 c 339 § 3; 1998 c 120 § 1; 1997 c 399 § 2; 1996 c 182 § 3; 1993 c 30 § 3; 1989 c 414 § 4.]

**Effective dates—2005 c 339:** See note following RCW 18.140.005.

**Effective date—1997 c 399:** See note following RCW 18.140.010.

**Effective dates—1996 c 182:** See note following RCW 18.140.005.

**18.140.030 Powers and duties of director.** The director shall have the following powers and duties:

(1) To adopt rules in accordance with chapter 34.05 RCW necessary to implement this chapter and chapter 18.235 RCW, with the advice and approval of the commission;

(2) To receive and approve or deny applications for certification or licensure as a state-certified or state-licensed real estate appraiser and for registration as a state-registered appraiser trainee under this chapter; to establish appropriate administrative procedures for the processing of such applications; to issue certificates, licenses, or registrations to qualified applicants pursuant to the provisions of this chapter; and to maintain a roster of the names and addresses of individuals who are currently certified, licensed, or registered under this chapter;

(3) To provide administrative assistance to the members of and to keep records for the real estate appraiser commission;

(4) To solicit bids and enter into contracts with educational testing services or organizations for the preparation of questions and answers for certification or licensure examinations;

(5) To administer or contract for administration of certification or licensure examinations at locations and times as may be required to carry out the responsibilities under this chapter;

(6) To enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter;

(7) To consider recommendations by the real estate appraiser commission relating to the experience, education, and examination requirements for each classification of state-certified appraiser and for licensure;

(8) To consider recommendations by the real estate appraiser commission relating to the educational requirements for the state-registered appraiser trainee classification;

(9) To consider recommendations by the real estate appraiser commission relating to the maximum number of

state-registered appraiser trainees that each supervisory appraiser will be permitted to supervise;

(10) To consider recommendations by the real estate appraiser commission relating to continuing education requirements as a prerequisite to renewal of certification or licensure;

(11) To consider recommendations by the real estate appraiser commission relating to standards of professional appraisal conduct or practice in the enforcement of this chapter;

(12) To employ such professional, clerical, and technical assistance as may be necessary to properly administer the work of the director;

(13) To establish forms necessary to administer this chapter;

(14) To establish an expert review appraiser roster comprised of state-certified or licensed real estate appraisers whose purpose is to assist the director by applying their individual expertise by reviewing real estate appraisals for compliance with this chapter. Qualifications to act as an expert review appraiser shall be established by the director with the advice of the commission. An application to serve as an expert review appraiser shall be submitted to the real estate appraiser program, and the roster of accepted expert review appraisers shall be maintained by the department. An expert review appraiser may be added to or deleted from that roster by the director. The expert review appraiser shall be reimbursed for expenses in the same manner as the department reimburses the commission; and

(15) To do all other things necessary to carry out the provisions of this chapter and minimally meet the requirements of federal guidelines regarding state certification or licensure of appraisers and registration of state-registered appraiser trainees that the director determines are appropriate for state-certified and state-licensed appraisers and state-registered appraiser trainees in this state. [2005 c 339 § 4; 2002 c 86 § 238; 2000 c 249 § 2; 1996 c 182 § 4; 1993 c 30 § 4; 1989 c 414 § 7.]

**Effective dates—2005 c 339:** See note following RCW 18.140.005.

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**Effective dates—1996 c 182:** See note following RCW 18.140.005.

**18.140.060 Applications—Original and renewal certification, licensure, or registration. (Effective April 1, 2006.)** (1) Applications for examinations, original certification, licensure, or registration, and renewal certification, licensure, or registration shall be made in writing to the department on forms approved by the director. Applications for original and renewal certification, licensure, or registration shall include a statement confirming that the applicant shall comply with applicable rules and regulations and that the applicant understands the penalties for misconduct.

(2) The appropriate fees shall accompany all applications for examination, reexamination, original certification, licensure, or registration, and renewal certification, licensure, or registration. [2005 c 339 § 5; 1993 c 30 § 6; 1989 c 414 § 10.]

**Effective dates—2005 c 339:** See note following RCW 18.140.005.

**18.140.070 Categories of appraisers. (Effective April 1, 2006.)** There shall be two categories of state-certified real estate appraisers, one category of state-licensed real estate appraisers, and one category of state-registered appraiser trainee as follows:

- (1) The state-certified general real estate appraiser;
- (2) The state-certified residential real estate appraiser;
- (3) The state-licensed real estate appraiser; and
- (4) The state-registered appraiser trainee. [2005 c 339 § 6; 1993 c 30 § 7; 1989 c 414 § 11.]

**Effective dates—2005 c 339:** See note following RCW 18.140.005.

**18.140.100 Examination requirements.** An original certificate or license shall be issued to persons who have satisfactorily passed the written examination as endorsed by the Appraiser Qualifications Board of the Appraisal Foundation and as adopted by the director. [2005 c 339 § 7; 1993 c 30 § 10; 1989 c 414 § 14.]

**Effective dates—2005 c 339:** See note following RCW 18.140.005.

**18.140.110 Nonresident applicants—Consent for service of process. (Effective April 1, 2006.)** Every applicant for certification, licensing, or registration who is not a resident of this state shall submit, with the application for certification, licensing, or registration an irrevocable consent that service of process upon him or her may be made by service on the director if, in an action against the applicant in a court of this state arising out of the applicant's activities as a state-certified or state-licensed real estate appraiser or state-registered appraiser trainee, the plaintiff cannot, in the exercise of due diligence, obtain personal service upon the applicant. [2005 c 339 § 8; 1993 c 30 § 11; 1989 c 414 § 15.]

**Effective dates—2005 c 339:** See note following RCW 18.140.005.

**18.140.120 Reciprocity.** An applicant for certification or licensure who is currently certified or licensed and in good standing under the laws of another state may obtain a certificate or license as a Washington state-certified or state-licensed real estate appraiser without being required to satisfy the examination requirements of this chapter if: The director determines that the certification or licensure requirements are substantially similar to those found in Washington state; and that the other state has a written reciprocal agreement to provide similar treatment to holders of Washington state certificates and/or licenses. [2005 c 339 § 9; 1993 c 30 § 12; 1989 c 414 § 16.]

**Effective dates—2005 c 339:** See note following RCW 18.140.005.

**18.140.130 Expiration of certificate, license, or registration—Renewal—Failure to renew in timely manner. (Effective April 1, 2006.)** (1) Each original and renewal certificate, license, or registration issued under this chapter shall expire on the applicant's second birthday following issuance of the certificate, license, or registration.

(2) To be renewed as a state-certified or state-licensed real estate appraiser or state-registered appraiser trainee, the holder of a valid certificate, license, or registration shall apply and pay the prescribed fee to the director no earlier than one hundred twenty days prior to the expiration date of the

certificate, license, or registration and shall demonstrate satisfaction of any continuing education requirements.

(3) If a person fails to renew a certificate, license, or registration prior to its expiration and no more than one year has passed since the person last held a valid certificate, license, or registration, the person may obtain a renewal certificate, license, or registration by satisfying all of the requirements for renewal and paying late renewal fees.

The director shall cancel the certificate, license, or registration of any person whose renewal fee is not received within one year from the date of expiration. A person may obtain a new certificate, license, or registration by satisfying the procedures and qualifications for initial certification, licensure, or registration, including the successful completion of any applicable examinations. [2005 c 339 § 10; 1996 c 182 § 6; 1993 c 30 § 13; 1989 c 414 § 17.]

**Effective dates—2005 c 339:** See note following RCW 18.140.005.

**Effective dates—1996 c 182:** See note following RCW 18.140.005.

**18.140.140 Certificate, license, or registration—Required use of number. (Effective April 1, 2006.)** (1) A certificate, license, or registration issued under this chapter shall bear the signature or facsimile signature of the director and a certificate, license, or registration number assigned by the director.

(2) Each state-certified or state-licensed real estate appraiser or state-registered appraiser trainee shall place his or her certificate, license, or registration number adjacent to or immediately below the title "state-certified general real estate appraiser," "state-certified residential real estate appraiser," "state-licensed real estate appraiser," or "state-registered appraiser trainee" when used in an appraisal report or in a contract or other instrument used by the certificate holder, licensee, or registered appraiser trainee in conducting real property appraisal activities, except that the certificate, license, or registration number shall not be required to appear when the title is not accompanied by a signature as is typical on such promotional and stationery items as brochures, business cards, forms, or letterhead.

(3) Each state-registered appraiser trainee shall place his or her registration number adjacent to or immediately below the title "state-registered appraiser trainee" when used in an appraisal report and the supervisory appraiser shall place his or her certificate number adjacent to or immediately below the title "state-certified general real estate appraiser" or "state-certified residential real estate appraiser." [2005 c 339 § 11; 1996 c 182 § 7; 1993 c 30 § 14; 1989 c 414 § 18.]

**Effective dates—2005 c 339:** See note following RCW 18.140.005.

**Effective dates—1996 c 182:** See note following RCW 18.140.005.

**18.140.150 Use of term restricted—Group certificates, licenses, or registrations prohibited. (Effective April 1, 2006.)** (1) The term "state-certified real estate appraiser," "state-licensed real estate appraiser," or "state-registered appraiser trainee" may only be used to refer to individuals who hold the certificate, license, or registration and may not be used following or immediately in connection with the name or signature of a firm, partnership, corporation, group, or limited liability company, or in such manner that it might be interpreted as referring to a firm, partnership, corpo-

ration, group, limited liability company, or anyone other than an individual holder of the certificate, license, or registration.

(2) No certificate, license, or registration may be issued under this chapter to a corporation, partnership, firm, limited liability company, or group. This shall not be construed to prevent a state-certified or state-licensed appraiser from signing an appraisal report on behalf of a corporation, partnership, firm, group practice, or limited liability company, nor may it be construed to prevent a state-registered appraiser trainee from signing an appraisal report under the supervision of a state-certified real estate appraiser on behalf of a corporation, partnership, firm, group practice, or limited liability company. [2005 c 339 § 12; 1996 c 182 § 8; 1993 c 30 § 15; 1989 c 414 § 19.]

**Effective dates—2005 c 339:** See note following RCW 18.140.005.

**Effective dates—1996 c 182:** See note following RCW 18.140.005.

**18.140.155 Temporary certification or licensing—Extension.** (1) A real estate appraiser from another state who is certified or licensed by another state may apply for registration to receive temporary certification or licensing in Washington by paying a fee and filing a notarized application with the department on a form provided by the department.

(2) The director is authorized to adopt by rule the term or duration of the certification and licensing privileges granted under the provisions of this section. Certification or licensing shall not be renewed. However, an applicant may receive an extension of a temporary practice permit to complete an assignment, provided that a written request is received by the department prior to the expiration date, stating the reason for the extension.

(3) A temporary practice permit issued under this section allows an appraiser to perform independent appraisal services required by a contract for appraisal services.

(4) Persons granted temporary certification or licensing privileges under this section shall not advertise or otherwise hold themselves out as being certified or licensed by the state of Washington.

(5) Persons granted temporary certification or licensure are subject to all provisions under this chapter. [2005 c 339 § 13; 2001 c 78 § 1; 1993 c 30 § 16.]

**Effective dates—2005 c 339:** See note following RCW 18.140.005.

**18.140.160 Disciplinary actions—Grounds. (Effective April 1, 2006.)** In addition to the unprofessional conduct described in RCW 18.235.130, the director may take disciplinary action for the following conduct, acts, or conditions:

(1) Failing to meet the minimum qualifications for state certification, licensure, or registration established by or pursuant to this chapter;

(2) Paying money other than the fees provided for by this chapter to any employee of the director or the commission to procure state certification, licensure, or registration under this chapter;

(3) Continuing to act as a state-certified real estate appraiser, state-licensed real estate appraiser, or state-registered appraiser trainee when his or her certificate, license, or registration is on an expired status;

(4) Violating any provision of this chapter or any lawful rule made by the director pursuant thereto;

(5) Issuing an appraisal report on any real property in which the appraiser has an interest unless his or her interest is clearly stated in the appraisal report; and

(6) Being affiliated as an employer, independent contractor, or supervisory appraiser of a state-certified real estate appraiser, state-licensed real estate appraiser, or state-registered appraiser trainee whose certification, license, or registration is currently in a suspended or revoked status. [2005 c 339 § 14; 2002 c 86 § 239; 2000 c 35 § 1; 1996 c 182 § 9; 1993 c 30 § 17; 1989 c 414 § 20.]

**Effective dates—2005 c 339:** See note following RCW 18.140.005.

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**Effective dates—1996 c 182:** See note following RCW 18.140.005.

**18.140.170 Violations—Investigations.** (*Effective April 1, 2006.*) The director may investigate the actions of a state-certified or state-licensed real estate appraiser or a state-registered appraiser trainee or an applicant for certification, licensure, or registration or recertification, relicensure, or reregistration. Upon receipt of information indicating that a state-certified or state-licensed real estate appraiser or state-registered appraiser trainee under this chapter may have violated this chapter, the director may cause one or more of the staff investigators to make an investigation of the facts to determine whether or not there is admissible evidence of any such violation. If technical assistance is required, a staff investigator may consult with one or more of the members of the commission. [2005 c 339 § 15; 2002 c 86 § 240; 1996 c 182 § 10; 1993 c 30 § 18; 1989 c 414 § 21.]

**Effective dates—2005 c 339:** See note following RCW 18.140.005.

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**Effective dates—1996 c 182:** See note following RCW 18.140.005.

**18.140.200 Certificate, license, or registration suspension—Nonpayment or default on educational loan or scholarship.** (*Effective April 1, 2006.*) The director shall suspend the certificate, license, or registration of any person who has been certified by a lending agency and reported to the director for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the agency must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's certificate, license, or registration shall not be reissued until the person provides the director a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for certification, licensure, or registration during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the director may impose. [2005 c 339 § 16; 1996 c 293 § 19.]

**Effective dates—2005 c 339:** See note following RCW 18.140.005.

**Severability—1996 c 293:** See note following RCW 18.04.420.

**18.140.202 Certificate, license, or registration suspension—Noncompliance with support order—Reissuance.** (*Effective April 1, 2006.*) The director shall immediately suspend any certificate, license, or registration issued under this chapter if the holder has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the certificate, license, or registration shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the person is in compliance with the order. [2005 c 339 § 17; 1997 c 58 § 832.]

**Effective dates—2005 c 339:** See note following RCW 18.140.005.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**18.140.220 Acting without certificate, license, or registration—Penalty.** (*Effective April 1, 2006.*) Any person acting as a state-certified or state-licensed real estate appraiser or state-registered appraiser trainee without a certificate, license, or registration that is currently valid is guilty of a misdemeanor. [2005 c 339 § 18; 1996 c 182 § 12.]

**Effective dates—2005 c 339:** See note following RCW 18.140.005.

**Effective dates—1996 c 182:** See note following RCW 18.140.005.

**18.140.230 Real estate appraiser commission—Establishment—Composition.** There is established the real estate appraiser commission of the state of Washington, consisting of seven members who shall act to give advice to the director.

(1) The seven commission members shall be appointed by the governor in the following manner: For a term of six years each, with the exception of the first appointees who shall be the incumbent members of the predecessor real estate appraiser advisory committee to serve for the duration of their current terms, with all other subsequent appointees to be appointed for a six-year term.

(2) At least two of the commission members shall be selected from the area of the state east of the Cascade mountain range and at least two of the commission members shall be selected from the area of the state west of the Cascade mountain range. At least two members of the commission shall be certified general real estate appraisers, at least two members of the commission shall be certified residential real estate appraisers, and at least one member of the commission may be a licensed real estate appraiser, all pursuant to this chapter. No certified or licensed appraiser commission member shall be appointed who has not been certified and/or licensed pursuant to this chapter for less than ten years, except that this experience duration shall be not less than five years only for any commission member taking office before January 1, 2003. One member shall be an employee of a financial institution as defined in this chapter whose duties are concerned with real estate appraisal management and pol-



icy. One member shall be an individual engaged in mass appraisal whose duties are concerned with ad valorem appraisal management and policy and who is licensed or certified under this chapter. One member may be a member of the general public.

(3) The members of the commission annually shall elect their chairperson and vice-chairperson to serve for a term of one calendar year. A majority of the members of said commission shall at all times constitute a quorum.

(4) Any vacancy on the commission shall be filled by appointment by the governor for the unexpired term. [2005 c 339 § 19; 2000 c 249 § 3.]

**18.140.260 Real estate appraiser commission account.** The real estate appraiser commission account is created in the state treasury. All fees received by the department for certificates, licenses, registrations, renewals, examinations, and audits must be forwarded to the state treasurer who must credit the money to the account. All fines and civil penalties ordered pursuant to RCW 18.140.020, 18.140.160, or 18.235.110 against holders of certificates, licenses, or registrations issued under the provisions of this chapter must be paid to the account. All expenses incurred in carrying out the certification, licensing, and registration activities of the department under this chapter must be paid from the account as authorized by legislative appropriation. Any residue in the account shall be accumulated and shall not revert to the general fund at the end of the biennium. Any fund balance remaining in the general fund attributable to the real estate appraiser commission account as of July 1, 2003, must be transferred to the real estate appraiser commission account. [2005 c 339 § 20; 2002 c 86 § 241.]

**Effective dates—2005 c 339:** See note following RCW 18.140.005.

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**18.140.280 Trainee real estate appraiser—Registration.** (*Effective April 1, 2006.*) (1) The director may issue an original registration as a state-registered trainee real estate appraiser, to be valid for a term not exceeding two years together with a maximum of two renewals, which must be completed within seven years from the original date of registration, unless either period is interrupted by service in the armed forces of the United States of America.

(2) A trainee real estate appraiser may not provide appraisal services other than through and under the direct supervision of a state-certified general real estate appraiser or a state-certified residential real estate appraiser. [2005 c 339 § 21.]

**Effective dates—2005 c 339:** See note following RCW 18.140.005.

## Chapter 18.160 RCW

### FIRE SPRINKLER SYSTEM CONTRACTORS

#### Sections

18.160.050 Renewal—Certificate of competency—Contractor license—Fire protection contractor license fund created.

**18.160.050 Renewal—Certificate of competency—Contractor license—Fire protection contractor license fund created.** (1)(a) All certificate of competency holders that desire to continue in the fire protection sprinkler business shall annually, prior to January 1, secure from the state director of fire protection a renewal certificate of competency upon payment of the fee as prescribed by the state director of fire protection. Application for renewal shall be upon a form prescribed by the state director of fire protection and the certificate holder shall furnish the information required by the director.

(b) Failure of any certificate of competency holder to secure his or her renewal certificate of competency within sixty days after the due date shall constitute sufficient cause for the state director of fire protection to suspend the certificate of competency.

(c) The state director of fire protection may, upon the receipt of payment of all delinquent fees including a late charge, restore a certificate of competency that has been suspended for failure to pay the renewal fee.

(d) A certificate of competency holder may voluntarily surrender his or her certificate of competency to the state director of fire protection and be relieved of the annual renewal fee. After surrendering the certificate of competency, he or she shall not be known as a certificate of competency holder and shall desist from the practice thereof. Within two years from the time of surrender of the certificate of competency, he or she may again qualify for a certificate of competency, without examination, by the payment of the required fee. If two or more years have elapsed, he or she shall return to the status of a new applicant.

(2)(a) All licensed fire protection sprinkler system contractors desiring to continue to be licensed shall annually, prior to January 1, secure from the state director of fire protection a renewal license upon payment of the fee as prescribed by the state director of fire protection. Application for renewal shall be upon a form prescribed by the state director of fire protection and the license holder shall furnish the information required by the director.

(b) Failure of any license holder to secure his or her renewal license within sixty days after the due date shall constitute sufficient cause for the state director of fire protection to suspend the license.

(c) The state director of fire protection may, upon the receipt of payment of all delinquent fees including a late charge, restore a license that has been suspended for failure to pay the renewal fee.

(3) The initial certificate of competency or license fee shall be prorated based upon the portion of the year such certificate of competency or license is in effect, prior to renewal on January 1.

(4) The fire protection contractor license fund is created in the custody of the state treasurer. All receipts from license and certificate fees and charges or from the money generated by the rules and regulations promulgated under this chapter shall be deposited into the fund. Expenditures from the fund may be used only for purposes authorized under this chapter and for providing assistance in identifying fire sprinkler system components that have been subject to either a recall or voluntary replacement program by a manufacturer of fire sprinkler products, a nationally recognized testing laboratory,

or the federal consumer product safety commission. Assistance shall include, but is not limited to, aiding in the identification of recalled components, information sharing strategies aimed at ensuring the consumer is made aware of recalls and voluntary replacement programs, and providing training and assistance to local fire authorities, the fire sprinkler industry, and the public. Only the state director of fire protection or the director's designee may authorize expenditures from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. [2005 c 109 § 1; 1990 c 177 § 6.]

### Chapter 18.225 RCW

#### MENTAL HEALTH COUNSELORS, MARRIAGE AND FAMILY THERAPISTS, SOCIAL WORKERS

##### Sections

18.225.105 Disclosure of information—Exceptions.

#### 18.225.105 Disclosure of information—Exceptions.

A person licensed under this chapter shall not disclose the written acknowledgment of the disclosure statement pursuant to RCW 18.225.100, nor any information acquired from persons consulting the individual in a professional capacity when the information was necessary to enable the individual to render professional services to those persons except:

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

(2) If the person waives the privilege by bringing charges against the person licensed under this chapter;

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

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

(5) To any individual if the person licensed under this chapter reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the individual or any other individual; however, there is no obligation on the part of the provider to so disclose. [2005 c 504 § 707; 2003 c 204 § 1.]

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

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

*Licenses under chapter 18.225 RCW—Subject to chapter 70.02 RCW: RCW 70.02.180.*

## Title 19

### BUSINESS REGULATIONS— MISCELLANEOUS

#### Chapters

- 19.02** Business license center act.  
**19.27** State building code.  
**19.28** Electricians and electrical installations.  
**19.34** Washington electronic authentication act.  
**19.80** Trade names.

[2005 RCW Supp—page 158]

- 19.105** Camping resorts.  
**19.122** Underground utilities.  
**19.182** Fair credit reporting act.  
**19.188** Electronic media violence.  
**19.190** Commercial electronic mail.  
**19.230** Uniform money services act.  
**19.245** Automated teller machines.  
**19.250** Disclosure of personal wireless numbers.  
**19.255** Personal information—Notice of security breaches.  
**19.260** Energy efficiency.  
**19.265** Tax refund anticipation loans.  
**19.270** Computer spyware.

### Chapter 19.02 RCW

#### BUSINESS LICENSE CENTER ACT

##### Sections

19.02.310 Performance-based grant program.

**19.02.310 Performance-based grant program.** (1) Subject to the availability of amounts appropriated for this specific purpose, the department shall administer a performance-based grant program that provides funding assistance to public agencies that issue business licenses and that wish to join with the department's master licensing service.

(2) The department may determine among interested grant applicants the order and the amount of the grant. In making grant determinations, consideration must be given, but not limited to, the following criteria: Readiness of the public agency to participate; the number of renewable licenses; and the reduced regulatory impact to businesses subject to licensure relative to the overall investment required by the department.

(3) The department shall invite and encourage participation by all Washington city and county governments having interests or responsibilities relating to business licensing.

(4) The total amount of grants provided under this section may not exceed seven hundred fifty thousand dollars in any one fiscal year.

(5) The source of funds for this grant program is the master license account. [2005 c 201 § 1.]

### Chapter 19.27 RCW

#### STATE BUILDING CODE

##### Sections

- 19.27.500 Nightclubs—Automatic sprinkler system—Building code council shall adopt rules.  
 19.27.510 "Nightclub" defined.  
 19.27.520 Building constructed, used, or converted to nightclub—In accordance with chapter.

**19.27.500 Nightclubs—Automatic sprinkler system—Building code council shall adopt rules.** The building code council shall adopt rules by December 1, 2005, requiring that all nightclubs be provided with an automatic sprinkler system. Rules adopted by the council shall consider applicable nationally recognized fire and building code standards and local conditions.

By December 15, 2005, the council shall transmit to the fire protection policy board copies of the rules as adopted.

The fire protection policy board shall respond to the council by February 15, 2006. If changes are recommended by the fire protection policy board the council shall immediately consider those changes to the rules through its rule-making procedures. The rules shall be effective December 1, 2007. [2005 c 148 § 1.]

**19.27.510 "Nightclub" defined.** As used in this chapter:

"Nightclub" means an establishment, other than a theater with fixed seating, which is characterized by all of the following:

(1) Provides live entertainment by paid performing artists or by way of recorded music conducted by a person employed or engaged to do so;

(2) Has as its primary source of revenue (a) the sale of beverages of any kind for consumption on the premises, (b) cover charges, or (c) both; and

(3) Has an occupant load of one hundred or more where the occupant load for any portion of the occupancy is calculated at one person per ten square feet or less, excluding the entry foyer. [2005 c 148 § 2.]

**19.27.520 Building constructed, used, or converted to nightclub—In accordance with chapter.** No building shall be constructed for, used for, or converted to, occupancy as a nightclub except in accordance with this chapter. [2005 c 148 § 3.]

## Chapter 19.28 RCW ELECTRICIANS AND ELECTRICAL INSTALLATIONS

### Sections

19.28.171 Electrical trainee hours—Audit—Rules—Confidentiality.  
(Effective July 1, 2006.)

19.28.311 Electrical board.

**19.28.171 Electrical trainee hours—Audit—Rules—Confidentiality.** (Effective July 1, 2006.) The department may audit the records of an electrical contractor that has verified the hours of experience submitted by an electrical trainee to the department under RCW 19.28.161(2) in the following circumstances: Excessive hours were reported; hours reported outside the normal course of the contractor's business; the type of hours reported do not reasonably match the type of permits purchased; or for other similar circumstances in which the department demonstrates a likelihood of excessive hours being reported. The department shall limit the audit to records necessary to verify hours. The department shall adopt rules implementing audit procedures. Information obtained from an electrical contractor under the provisions of this section is confidential and is not open to public inspection under chapter 42.56 RCW. [2005 c 274 § 234; 2001 c 211 § 11; 1996 c 241 § 2. Formerly RCW 19.28.515.]

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

**19.28.311 Electrical board.** There is hereby created an electrical board, consisting of fifteen members to be appointed by the governor with the advice of the director of

labor and industries as herein provided. It shall be the purpose and function of the board to advise the director on all matters pertaining to the enforcement of this chapter including, but not limited to standards of electrical and telecommunications installation, minimum inspection procedures, and the adoption of rules pertaining to the electrical inspection division: PROVIDED, HOWEVER, That no rules shall be amended or repealed until the electrical board has first had an opportunity to consider any proposed amendments or repeals and had an opportunity to make recommendations to the director relative thereto. The members of the electrical board shall be selected and appointed as follows: One member shall be an employee or officer of a corporation or public agency generating or distributing electric power; one member must be an employee or officer of a facilities-based telecommunications service provider regulated by the Washington state utilities and transportation commission; three members shall be licensed electrical contractors: PROVIDED, That one of these members may be a representative of a trade association in the electrical industry; one member shall be a licensed telecommunications contractor; one member shall be an employee, or officer, or representative of a corporation or firm engaged in the business of manufacturing or distributing electrical and telecommunications materials, equipment, or devices; one member shall be a person with knowledge of the electrical industry, not related to the electrical industry, to represent the public; three members shall be certified electricians; one member shall be a telecommunications worker; one member shall be a licensed professional electrical engineer qualified to do business in the state of Washington and designated as a registered communications distribution designer; one member shall be an outside line worker; and one nonvoting member must be a building official from an incorporated city or town with an electrical inspection program established under RCW 19.28.141. The regular term of each member shall be four years: PROVIDED, HOWEVER, The original board shall be appointed on June 9, 1988, for the following terms: The first term of the member representing a corporation or public agency generating or distributing electric power shall serve four years; two members representing licensed electrical contractors shall serve three years; the member representing a manufacturer or distributor of electrical equipment or devices shall serve three years; the member representing the public and one member representing licensed electrical contractors shall serve two years; the three members selected as certified electricians shall serve for terms of one, two, and three years, respectively; the member selected as the licensed professional electrical engineer shall serve for one year. In appointing the original board, the governor shall give due consideration to the value of continuity in membership from predecessor boards. Thereafter, the governor shall appoint or reappoint board members for terms of four years and to fill vacancies created by the completion of the terms of the original members. When new positions are created, the governor may appoint the initial members to the new positions to staggered terms of one to three years. The governor shall also fill vacancies caused by death, resignation, or otherwise for the unexpired term of such members by appointing their successors from the same business classification. The same procedure shall be followed in making such subsequent appointments as is provided for the original

appointments. The board, at this first meeting shall elect one of its members to serve as chairman. Any person acting as the chief electrical inspector shall serve as secretary of the board during his or her tenure as chief state inspector. Meetings of the board shall be held at least quarterly in accordance with a schedule established by the board. Each member of the board shall receive compensation in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 which shall be paid out of the electrical license fund, upon vouchers approved by the director of labor and industries. [2005 c 280 § 1; 2000 c 238 § 3; 1988 c 81 § 4; 1984 c 287 § 56; 1975-'76 2nd ex.s. c 34 § 60; 1969 ex.s. c 71 § 1; 1963 c 207 § 5. Formerly RCW 19.28.065.]

**Appointment to electrical board—2005 c 280:** "The governor shall appoint the member representing outside line workers within ninety days after July 24, 2005." [2005 c 280 § 2.]

**Severability—2000 c 238:** See note following RCW 19.28.301.

**Legislative findings—Severability—Effective date—1984 c 287:** See notes following RCW 43.03.220.

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

### Chapter 19.34 RCW WASHINGTON ELECTRONIC AUTHENTICATION ACT

#### Sections

19.34.240 Private key—Control—Public disclosure exemption. (*Effective July 1, 2006.*)

**19.34.240 Private key—Control—Public disclosure exemption. (*Effective July 1, 2006.*)** (1) By accepting a certificate issued by a licensed certification authority, the subscriber identified in the certificate assumes a duty to exercise reasonable care to retain control of the private key and prevent its disclosure to a person not authorized to create the subscriber's digital signature. The subscriber is released from this duty if the certificate expires or is revoked.

(2) A private key is the personal property of the subscriber who rightfully holds it.

(3) A private key in the possession of a state agency or local agency, as those terms are defined by RCW 42.17.020, is exempt from public inspection and copying under chapter 42.56 RCW. [2005 c 274 § 235; 1997 c 27 § 11; 1996 c 250 § 305.]

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

**Effective date—Severability—1997 c 27:** See notes following RCW 19.34.030.

### Chapter 19.80 RCW TRADE NAMES

#### Sections

19.80.065 RCW 42.56.070(9) inapplicable. (*Effective July 1, 2006.*)

**19.80.065 RCW 42.56.070(9) inapplicable. (*Effective July 1, 2006.*)** RCW 42.56.070(9) does not apply to registrations made under this chapter. [2005 c 274 § 236; 2000 c 171 § 59; 1984 c 130 § 8.]

[2005 RCW Supp—page 160]

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

**Effective date—1984 c 130:** See note following RCW 19.80.001.

### Chapter 19.105 RCW CAMPING RESORTS

#### Sections

19.105.310 Unlawful to offer or sell contract unless contract registered—Exemptions.  
19.105.325 Exemptions from chapter.  
19.105.380 Unprofessional conduct/disciplinary action—Grounds—Liability for administrative and legal costs—Assurances of discontinuance—Support order, noncompliance.

**19.105.310 Unlawful to offer or sell contract unless contract registered—Exemptions.** Except in transactions exempt under RCW 19.105.325, it is unlawful for any person to market, offer, or sell a camping resort contract in this state or to a Washington state resident unless the camping resort contract is registered and the operator or registrant has received a permit to market the registered contracts under this chapter. [2005 c 112 § 1; 1988 c 159 § 2; 1982 c 69 § 2.]

**19.105.325 Exemptions from chapter.** (1) The following transactions are exempt from registration under this chapter:

(a) An offer or sale by a government or governmental agency;  
(b) A bona fide pledge of a camping resort contract; and  
(c) Offerings and dispositions of up to three resale camping resort contracts by purchasers thereof on their own behalf or by third parties brokering on behalf of purchasers, other than resale contracts forfeited by or placed into an operator's sale inventory. All other sales of resale camping resort contracts by any person or business requires registration under this chapter.

(2) The director may, by rule or order, exempt any person, wholly or partially, from any or all requirements of this chapter if the director finds the requirements are not necessary for the protection of the public health, safety, and welfare. [2005 c 112 § 2; 1988 c 159 § 4.]

**19.105.380 Unprofessional conduct/disciplinary action—Grounds—Liability for administrative and legal costs—Assurances of discontinuance—Support order, noncompliance.** (1) In addition to the unprofessional conduct in RCW 18.235.130, the director may take disciplinary action for the following conduct, acts, or conditions:

(a) The applicant, registrant, or affiliate has failed to file copies of the camping resort contract form under RCW 19.105.360;

(b) The applicant, registrant, or affiliate has failed to comply with any provision of this chapter;

(c) The applicant's, registrant's, or affiliate's offering of camping resort contracts has worked or would work a fraud upon purchasers or owners of camping resort contracts;

(d) The camping resort operator or any officer, director, or affiliate of the camping resort operator has been enjoined from or had any civil penalty assessed for a finding of dishonest dealing or fraud in a civil suit, or been found to have engaged in any violation of any act designed to protect con-

sumers, or has been engaged in dishonest practices in any industry involving sales to consumers;

(e) The applicant or registrant has represented or is representing to purchasers in connection with the offer or sale of a camping resort contract that a camping resort property, facility, amenity camp site, or other development is planned, promised, or required, and the applicant or registrant has not provided the director with a security or assurance of performance as required by this chapter;

(f) The applicant or registrant has not provided or is no longer providing the director with the necessary security arrangements to ensure future availability of titles or properties as required by this chapter or agreed to in the permit to market;

(g) The applicant or registrant is or has been employing unregistered salespersons or offering or proposing a membership referral program not in compliance with this chapter;

(h) The applicant or registrant has breached any escrow, impound, reserve account, or trust arrangement or the conditions of an order or permit to market required by this chapter;

(i) The applicant or registrant has filed or caused to be filed with the director any document or affidavit, or made any statement during the course of a registration or exemption procedure with the director, that is materially untrue or misleading;

(j) The applicant or registrant has engaged in a practice of failing to provide the written disclosures to purchasers or prospective purchasers as required under this chapter;

(k) The applicant, registrant, or any of its officers, directors, or employees, if the operator is other than a natural person, have willfully done, or permitted any of their salespersons or agents to do, any of the following:

(i) Engage in a pattern or practice of making untrue or misleading statements of a material fact, or omitting to state a material fact;

(ii) Employ any device, scheme, or artifice to defraud purchasers or members;

(iii) Engage in a pattern or practice of failing to provide the written disclosures to purchasers or prospective purchasers as required under this chapter;

(l) The applicant or registrant has failed to provide a bond, letter of credit, or other arrangement to ensure delivery of promised gifts, prizes, awards, or other items of consideration, as required under this chapter, breached such a security arrangement, or failed to maintain such a security arrangement in effect because of a resignation or loss of a trustee, impound, or escrow agent;

(m) The applicant or registrant has engaged in a practice of selling contracts using material amendments or codicils that have not been filed or are the consequences of breaches or alterations in previously filed contracts;

(n) The applicant or registrant has engaged in a practice of selling or proposing to sell contracts in a ratio of contracts to sites available in excess of that filed in the affidavit required by this chapter;

(o) The camping resort operator has withdrawn, has the right to withdraw, or is proposing to withdraw from use all or any portion of any camping resort property devoted to the camping resort program, unless:

(i) Adequate provision has been made to provide within a reasonable time thereafter a substitute property in the same

general area that is at least as desirable for the purpose of camping and outdoor recreation;

(ii) The property is withdrawn because, despite good faith efforts by the camping resort operator, a nonaffiliate of the camping resort has exercised a right of withdrawal from use by the camping resort (such as withdrawal following expiration of a lease of the property to the camping resort) and the terms of the withdrawal right have been disclosed in writing to all purchasers at or prior to the time of any sales of camping resort contracts after the camping resort has represented to purchasers that the property is or will be available for camping or recreation purposes;

(iii) The specific date upon which the withdrawal becomes effective has been disclosed in writing to all purchasers and members prior to the time of any sales of camping resort contracts after the camping resort has represented to purchasers that the property is or will be available for camping or recreation purposes;

(iv) The rights of members and owners of the camping resort contracts under the express terms of the camping resort contract have expired, or have been specifically limited, upon the lapse of a stated or determinable period of time, and the director by order has found that the withdrawal is not otherwise inconsistent with the protection of purchasers or the desire of the majority of the owners of camping resort contracts, as expressed in their previously obtained vote of approval;

(p) The format, form, or content of the written disclosures provided therein is not complete, full, or materially accurate, or statements made therein are materially false, misleading, or deceptive;

(q) The applicant or registrant has failed to file an amendment for a material change in the manner or at the time required under this chapter or its implementing rules;

(r) The applicant or registrant has filed voluntarily or been placed involuntarily into a federal bankruptcy or is proposing to do so; or

(s) A camping resort operator's rights or interest in a campground has been terminated by foreclosure or the operations in a camping resort have been terminated in a manner contrary to contract provisions.

(2) An operator, registrant, or applicant against whom administrative or legal proceedings have been filed shall be responsible for and shall reimburse the state, by payment into the business and professions account created in RCW 43.24.150, for all administrative and legal costs actually incurred by the department in issuing, processing, and conducting any such administrative or legal proceeding authorized under this chapter that results in a final legal or administrative determination of any type or degree in favor of the department.

(3) The director may enter into assurances of discontinuance in lieu of issuing a statement of charges or a cease and desist order or conducting a hearing under this chapter. The assurances shall consist of a statement of the law in question and an agreement not to violate the stated provision. The applicant or registrant shall not be required to admit to any violation of the law, nor shall the assurance be construed as such an admission. Violating or breaching an assurance under this subsection is grounds for suspension or revocation of registration or imposition of a fine.

(4) The director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [2005 c 25 § 3; 2002 c 86 § 273; 1997 c 58 § 850; 1988 c 159 § 14; 1982 c 69 § 9.]

**Effective date—2005 c 25:** See note following RCW 43.24.150.

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

## Chapter 19.122 RCW UNDERGROUND UTILITIES

### Sections

19.122.020	Definitions.
19.122.027	One-number locator services—Single statewide toll-free telephone number.
19.122.055	Failure to notify one-number locator service—Civil penalty, if damages.
19.122.070	Civil penalties—Trespass damages—Existing remedies not affected.
19.122.090	Excavation without a valid excavation confirmation code—Penalty.
19.122.100	Violation of RCW 19.122.090—Affirmative defense.
19.122.110	False excavation confirmation code—Penalty.
19.122.120	One-number locator service to provide excavation confirmation code.

**19.122.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Business day" means any day other than Saturday, Sunday, or a legal local, state, or federal holiday.

(2) "Damage" includes the substantial weakening of structural or lateral support of an underground facility, penetration, impairment, or destruction of any underground protective coating, housing, or other protective device, or the severance, partial or complete, of any underground facility to the extent that the project owner or the affected utility owner determines that repairs are required.

(3) "Emergency" means any condition constituting a clear and present danger to life or property, or a customer service outage.

(4) "Excavation" means any operation in which earth, rock, or other material on or below the ground is moved or otherwise displaced by any means, except the tilling of soil less than twelve inches in depth for agricultural purposes, or road and ditch maintenance that does not change the original road grade or ditch flowline.

(5) "Excavation confirmation code" means a code or ticket issued by the one-number locator service for the site

where an excavation is planned. The code must be accompanied by the date and time it was issued.

(6) "Excavator" means any person who engages directly in excavation.

(7) "Gas" means natural gas, flammable gas, or toxic or corrosive gas.

(8) "Hazardous liquid" means: (a) Petroleum, petroleum products, or anhydrous ammonia as those terms are defined in 49 C.F.R. Part 195 as in effect on March 1, 1998; and (b) carbon dioxide. The utilities and transportation commission may by rule incorporate by reference other substances designated as hazardous by the secretary of transportation.

(9) "Identified facility" means any underground facility which is indicated in the project plans as being located within the area of proposed excavation.

(10) "Identified but unlocatable underground facility" means an underground facility which has been identified but cannot be located with reasonable accuracy.

(11) "Locatable underground facility" means an underground facility which can be field-marked with reasonable accuracy.

(12) "Marking" means the use of stakes, paint, or other clearly identifiable materials to show the field location of underground facilities, in accordance with the current color code standard of the American public works association. Markings shall include identification letters indicating the specific type of the underground facility.

(13) "Notice" or "notify" means contact in person or by telephone or other electronic methods that results in the receipt of a valid excavation confirmation code.

(14) "One-number locator service" means a service through which a person can notify utilities and request field-marking of underground facilities.

(15) "Operator" means the individual conducting the excavation.

(16) "Person" means an individual, partnership, franchise holder, association, corporation, a state, a city, a county, or any subdivision or instrumentality of a state, and its employees, agents, or legal representatives.

(17) "Pipeline" or "pipeline system" means all or parts of a pipeline facility through which hazardous liquid or gas moves in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks. "Pipeline" or "pipeline system" does not include process or transfer pipelines as defined in RCW 81.88.010.

(18) "Pipeline company" means a person or entity constructing, owning, or operating a pipeline for transporting hazardous liquid or gas. A pipeline company does not include: (a) Distribution systems owned and operated under franchise for the sale, delivery, or distribution of natural gas at retail; or (b) excavation contractors or other contractors that contract with a pipeline company.

(19) "Reasonable accuracy" means location within twenty-four inches of the outside dimensions of both sides of an underground facility.

(20) "Transmission pipeline" means a pipeline that transports hazardous liquid or gas within a storage field, or transports hazardous liquid or gas from an interstate pipeline or

storage facility to a distribution main or a large volume hazardous liquid or gas user, or operates at a hoop stress of twenty percent or more of the specified minimum yield strength.

(21) "Underground facility" means any item buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, cablevision, electric energy, petroleum products, gas, gaseous vapors, hazardous liquids, or other substances and including but not limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, and those parts of poles or anchors below ground. This definition does not include pipelines as defined in subsection (17) of this section, but does include distribution systems owned and operated under franchise for the sale, delivery, or distribution of natural gas at retail. [2005 c 448 § 1; 2000 c 191 § 15; 1984 c 144 § 2.]

**Intent—Findings—Conflict with federal requirements—Short title—Effective date—2000 c 191:** See RCW 81.88.005 and 81.88.900 through 81.88.902.

**19.122.027 One-number locator services—Single statewide toll-free telephone number.** (1) The utilities and transportation commission shall cause to be established a single statewide toll-free telephone number to be used for referring excavators to the appropriate one-number locator service.

(2) The utilities and transportation commission, in consultation with the Washington utilities coordinating council, shall establish minimum standards and best management practices for one-number locator services.

(3) One-number locator services shall be operated by nongovernmental agencies. [2005 c 448 § 2; 2000 c 191 § 16.]

**Intent—Findings—Conflict with federal requirements—Short title—Effective date—2000 c 191:** See RCW 81.88.005 and 81.88.900 through 81.88.902.

**19.122.055 Failure to notify one-number locator service—Civil penalty, if damages.** (1)(a) Any excavator who fails to notify the one-number locator service and causes damage to a hazardous liquid or gas pipeline is subject to a civil penalty of not more than ten thousand dollars for each violation.

(b) The civil penalty in this subsection may also be imposed on any excavator who violates RCW 19.122.090.

(2) All civil penalties recovered under this section shall be deposited into the pipeline safety account created in RCW 81.88.050. [2005 c 448 § 3; 2001 c 238 § 5; 2000 c 191 § 24.]

**Intent—Finding—Effective date—2001 c 238:** See notes following RCW 80.24.060.

**Intent—Findings—Conflict with federal requirements—Short title—Effective date—2000 c 191:** See RCW 81.88.005 and 81.88.900 through 81.88.902.

**19.122.070 Civil penalties—Treble damages—Existing remedies not affected.** (1) Any person who violates any provision of this chapter not amounting to a violation of RCW 19.122.055, and which violation results in damage to underground facilities, is subject to a civil penalty of not more than one thousand dollars for each violation. All penal-

ties recovered in such actions shall be deposited in the general fund.

(2) Any excavator who willfully or maliciously damages a field-marked underground facility shall be liable for treble the costs incurred in repairing or relocating the facility. In those cases in which an excavator fails to notify known underground facility owners or the one-number locator service, any damage to the underground facility shall be deemed willful and malicious and shall be subject to treble damages for costs incurred in repairing or relocating the facility.

(3) This chapter does not affect any civil remedies for personal injury or for property damage, including that to underground facilities, nor does this chapter create any new civil remedies for such damage. [2005 c 448 § 4; 1984 c 144 § 7.]

*Damages to facilities on state highways: RCW 47.44.150.*

**19.122.090 Excavation without a valid excavation confirmation code—Penalty.** Any excavator who excavates, without a valid excavation confirmation code when required under this chapter, within thirty-five feet of a transmission pipeline is guilty of a misdemeanor. [2005 c 448 § 5.]

**19.122.100 Violation of RCW 19.122.090—Affirmative defense.** If charged with a violation of RCW 19.122.090, an operator will be deemed to have established an affirmative defense to such charges if:

(1) The operator was provided a valid excavation confirmation code;

(2) The excavation was performed in an emergency situation;

(3) The operator was provided a false confirmation code by an identifiable third party; or

(4) Notice of the excavation was not required under this chapter. [2005 c 448 § 6.]

**19.122.110 False excavation confirmation code—Penalty.** Any person who intentionally provides an operator with a false excavation confirmation code is guilty of a misdemeanor. [2005 c 448 § 7.]

**19.122.120 One-number locator service to provide excavation confirmation code.** Upon receipt, during normal business hours, of notice of an intended excavation, the one-number locator service shall provide an excavation confirmation code. [2005 c 448 § 8.]

## Chapter 19.182 RCW

### FAIR CREDIT REPORTING ACT

#### Sections

- 19.182.160 Block of information appearing as result of identity theft.
- 19.182.170 Victim of identity theft—Security freeze.
- 19.182.180 Security freeze—Changes to information—Written confirmation required.
- 19.182.190 Security freeze—RCW 19.182.170 not applicable to certain consumer reporting agencies.
- 19.182.200 Security freeze—Exempt entities.
- 19.182.210 Information furnished to a governmental agency.

**19.182.160 Block of information appearing as result of identity theft.** (1) Within thirty days of receipt of proof of the consumer's identification and a copy of a police report, filed by the consumer, evidencing the consumer's claim to be a victim of a violation of RCW 9.35.020, a consumer reporting agency shall permanently block reporting any information the consumer identifies on his or her consumer report is a result of a violation of RCW 9.35.020, so that the information cannot be reported, except as provided in subsection (2) of this section. The consumer reporting agency shall promptly notify the furnisher of the information that a police report has been filed, that a block has been requested, and the effective date of the block.

(2) A consumer reporting agency may decline to block or may rescind any block of consumer information if, in the exercise of good faith and reasonable judgment, the consumer reporting agency believes:

(a) The information was blocked due to a misrepresentation of fact by the consumer relevant to the request to block under this section;

(b) The consumer agrees that the blocked information or portions of the blocked information were blocked in error; or

(c) The consumer knowingly obtained possession of goods, services, or moneys as a result of the blocked transaction or transactions or the consumer should have known that he or she obtained possession of goods, services, or moneys as a result of the blocked transaction or transactions.

(3) If the block of information is declined or rescinded under this section, the consumer shall be notified promptly in the same manner as consumers are notified of the reinsertion of information pursuant to section 611 of the fair credit reporting act, 15 U.S.C. Sec. 1681I, as amended. The prior presence of the blocked information in the consumer reporting agency's file on the consumer is not evidence of whether the consumer knew or should have known that he or she obtained possession of any goods, services, or moneys.

(4) In order to facilitate the exercise of a consumer's right to block information in his or her consumer report, all police and sheriff's departments in Washington state shall provide to the consumer, at the consumer's request, a copy of any police report, filed by the consumer, evidencing the consumer's claim to be a victim of a violation of RCW 9.35.020.

Nothing in this section shall be construed to require a law enforcement agency to investigate reports claiming identity theft. [2005 c 366 § 1; 2001 c 217 § 6.]

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

**19.182.170 Victim of identity theft—Security freeze.**

(1) A victim of identity theft who has submitted a valid police report to a consumer reporting agency may elect to place a security freeze on his or her report by making a request in writing by certified mail to a consumer reporting agency. "Security freeze" means a notice placed in a consumer's credit report, at the request of the consumer and subject to certain exceptions, that prohibits the consumer reporting agency from releasing the consumer's credit report or any information from it without the express authorization of the consumer. If a security freeze is in place, information from a consumer's credit report may not be released to a third party without prior express authorization from the consumer. This subsection does not prevent a consumer reporting agency

from advising a third party that a security freeze is in effect with respect to the consumer's credit report.

(2) For purposes of this section and RCW 19.182.180 through 19.182.210, a "victim of identity theft" means:

(a) A victim of identity theft as defined in RCW 9.35.020; or

(b) A person who has been notified by an agency, person, or business that owns or licenses computerized data of a breach in a computerized data system which has resulted in the acquisition of that person's unencrypted personal information by an unauthorized person or entity.

(3) A consumer reporting agency shall place a security freeze on a consumer's credit report no later than five business days after receiving a written request from the consumer.

(4) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within ten business days and shall provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the release of his or her credit report for a specific party or period of time.

(5) If the consumer wishes to allow his or her credit report to be accessed for a specific party or period of time while a freeze is in place, he or she shall contact the consumer reporting agency, request that the freeze be temporarily lifted, and provide the following:

(a) Proper identification, which means that information generally deemed sufficient to identify a person. Only if the consumer is unable to sufficiently identify himself or herself, may a consumer reporting agency require additional information concerning the consumer's employment and personal or family history in order to verify his or her identity;

(b) The unique personal identification number or password provided by the credit reporting agency under subsection (4) of this section; and

(c) The proper information regarding the third party who is to receive the credit report or the time period for which the report is available to users of the credit report.

(6) A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report under subsection (5) of this section, shall comply with the request no later than three business days after receiving the request.

(7) A consumer reporting agency may develop procedures involving the use of telephone, fax, the internet, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a credit report under subsection (5) of this section in an expedited manner.

(8) A consumer reporting agency shall remove or temporarily lift a freeze placed on a consumer's credit report only in the following cases:

(a) Upon consumer request, under subsection (5) or (11) of this section; or

(b) When the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. When a consumer reporting agency intends to remove a freeze upon a consumer's credit report under this subsection, the consumer reporting agency shall notify the consumer in writing prior to removing the freeze on the consumer's credit report.

(9) When a third party requests access to a consumer credit report on which a security freeze is in effect, and this



request is in connection with an application for credit or any other use, and the consumer does not allow his or her credit report to be accessed for that specific party or period of time, the third party may treat the application as incomplete.

(10) When a consumer requests a security freeze, the consumer reporting agency shall disclose the process of placing and temporarily lifting a freeze, and the process for allowing access to information from the consumer's credit report for a specific party or period of time while the freeze is in place.

(11) A security freeze remains in place until the consumer requests that the security freeze be removed. A consumer reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer, who provides both of the following:

(a) Proper identification, as defined in subsection (5)(a) of this section; and

(b) The unique personal identification number or password provided by the consumer reporting agency under subsection (4) of this section.

(12) This section does not apply to the use of a consumer credit report by any of the following:

(a) A person or entity, or a subsidiary, affiliate, or agent of that person or entity, or an assignee of a financial obligation owing by the consumer to that person or entity, or a prospective assignee of a financial obligation owing by the consumer to that person or entity in conjunction with the proposed purchase of the financial obligation, with which the consumer has or had prior to assignment an account or contract, including a demand deposit account, or to whom the consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or negotiable instrument. For purposes of this subsection, "reviewing the account" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements;

(b) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under subsection (5) of this section for purposes of facilitating the extension of credit or other permissible use;

(c) Any federal, state, or local entity, including a law enforcement agency, court, or their agents or assigns;

(d) A private collection agency acting under a court order, warrant, or subpoena;

(e) A child support agency acting under Title IV-D of the social security act (42 U.S.C. et seq.);

(f) The department of social and health services acting to fulfill any of its statutory responsibilities;

(g) The internal revenue service acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities;

(h) The use of credit information for the purposes of pre-screening as provided for by the federal fair credit reporting act;

(i) Any person or entity administering a credit file monitoring subscription service to which the consumer has subscribed; and

(j) Any person or entity for the purpose of providing a consumer with a copy of his or her credit report upon the consumer's request. [2005 c 342 § 1.]

**19.182.180 Security freeze—Changes to information—Written confirmation required.** If a security freeze is in place, a consumer reporting agency may not change any of the following official information in a consumer credit report without sending a written confirmation of the change to the consumer within thirty days of the change being posted to the consumer's file: Name, date of birth, social security number, and address. Written confirmation is not required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address change, the written confirmation shall be sent to both the new address and to the former address. [2005 c 342 § 2.]

**19.182.190 Security freeze—RCW 19.182.170 not applicable to certain consumer reporting agencies.** A consumer reporting agency is not required to place a security freeze in a consumer credit report under RCW 19.182.170 if it acts only as a reseller of credit information by assembling and merging information contained in the data base of another consumer reporting agency or multiple consumer reporting agencies, and does not maintain a permanent data base of credit information from which new consumer credit reports are produced. However, a consumer reporting agency must honor any security freeze placed on a consumer credit report by another consumer reporting agency. [2005 c 342 § 3.]

**19.182.200 Security freeze—Exempt entities.** The following entities are not required to place a security freeze in a consumer credit report under RCW 19.182.170:

(1) A check services or fraud prevention services company, which issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payments; and

(2) A deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or similar negative information regarding a consumer, to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution. [2005 c 342 § 4.]

**19.182.210 Information furnished to a governmental agency.** A consumer reporting agency may furnish to a governmental agency a consumer's name, address, former address, places of employment, or former places of employment. [2005 c 342 § 5.]

## Chapter 19.188 RCW

### ELECTRONIC MEDIA VIOLENCE

#### Sections

19.188.040 Video game rating system—Video game retailers shall post signs—Location—Information.

**19.188.040 Video game rating system—Video game retailers shall post signs—Location—Information.** (1)

The definitions in this subsection apply throughout this section.

(a) "Video game" means an object or device that stores recorded data or instructions, receives data or instructions generated by a person who uses it, and, by processing the data or instructions, creates an interactive game capable of being played, viewed, or experienced on or through a computer, gaming system, console, or other technology.

(b) "Video game retailer" means a person who sells or rents video games to the public.

(c) "Point of sale" means the location in the retail establishment at which a transaction occurs resulting in the sale or rental of a video game.

(2) Every video game retailer shall post signs providing information to consumers about the existence of a nationally recognized video game rating system, or notifying consumers that a rating system is available, to aid in the selection of a game if such a rating system is in existence.

(3) The signs shall be posted within the retail establishment in prominent areas near the video game displays and points of sale. The signs and lettering shall be clearly visible to consumers at these locations.

(4) A video game retailer shall make available to consumers, upon request, information that explains the video game rating system. [2005 c 230 § 1.]

### Chapter 19.190 RCW

#### COMMERCIAL ELECTRONIC MAIL

##### Sections

19.190.010	Definitions.
19.190.080	Personally identifying information—Violation of chapter.
19.190.090	Civil actions.
19.190.100	Violation—Consumer protection act.
19.190.110	Intent—Preemption of local laws.

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

(1) "Assist the transmission" means actions taken by a person to provide substantial assistance or support which enables any person to formulate, compose, send, originate, initiate, or transmit a commercial electronic mail message or a commercial electronic text message when the person providing the assistance knows or consciously avoids knowing that the initiator of the commercial electronic mail message or the commercial electronic text message is engaged, or intends to engage, in any practice that violates the consumer protection act. "Assist the transmission" does not include any of the following: (a) Activities of an electronic mail service provider or other entity who provides intermediary transmission service in sending or receiving electronic mail, or provides to users of electronic mail services the ability to send, receive, or compose electronic mail; or (b) activities of any entity related to the design, manufacture, or distribution of any technology, product, or component that has a commercially significant use other than to violate or circumvent this section.

(2) "Commercial electronic mail message" means an electronic mail message sent for the purpose of promoting real property, goods, or services for sale or lease. It does not

mean an electronic mail message to which an interactive computer service provider has attached an advertisement in exchange for free use of an electronic mail account, when the sender has agreed to such an arrangement.

(3) "Commercial electronic text message" means an electronic text message sent to promote real property, goods, or services for sale or lease.

(4) "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.

(5) "Electronic mail message" means an electronic message sent to an electronic mail address and a reference to an internet domain, whether or not displayed, to which an electronic mail message can be sent or delivered.

(6) "Electronic text message" means a text message sent to a cellular telephone or pager equipped with short message service or any similar capability, whether the message is initiated as a short message service message or as an electronic mail message.

(7) "Initiate the transmission" refers to the action by the original sender of an electronic mail message or an electronic text message, not to the action by any intervening interactive computer service or wireless network that may handle or retransmit the message, unless such intervening interactive computer service assists in the transmission of an electronic mail message when it knows, or consciously avoids knowing, that the person initiating the transmission is engaged, or intends to engage, in any act or practice that violates the consumer protection act.

(8) "Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the internet and such systems operated or services offered by libraries or educational institutions.

(9) "Internet" means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, that comprise the interconnected world wide network of networks that employ the transmission control protocol/internet protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

(10) "Internet domain name" refers to a globally unique, hierarchical reference to an internet host or service, assigned through centralized internet naming authorities, comprising a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.

(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation, or any other legal or commercial entity.

(12) "Personally identifying information" means an individual's: (a) Social security number; (b) driver's license number; (c) bank account number; (d) credit or debit card number; (e) personal identification number; (f) automated or electronic signature; (g) unique biometric data; (h) account passwords; or (i) any other piece of information that can be used to access an individual's financial accounts or to obtain goods or services.

(13) "Web page" means a location, with respect to the world wide web, that has a single uniform resource locator or other single location with respect to the internet. [2005 c 378 § 1; 2003 c 137 § 2; 1999 c 289 § 1; 1998 c 149 § 2.]

**Severability—2005 c 378:** See note following RCW 19.190.080.

**Intent—2003 c 137:** See note following RCW 19.190.060.

**19.190.080 Personally identifying information—Violation of chapter.** It is a violation of this chapter to solicit, request, or take any action to induce a person to provide personally identifying information by means of a web page, electronic mail message, or otherwise using the internet by representing oneself, either directly or by implication, to be another person, without the authority or approval of such other person. [2005 c 378 § 2.]

**Severability—2005 c 378:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 378 § 6.]

**19.190.090 Civil actions.** (1) A person who is injured under this chapter may bring a civil action in the superior court to enjoin further violations, and to seek up to five hundred dollars per violation, or actual damages, whichever is greater. A person who seeks damages under this subsection may only bring an action against a person or entity that directly violates RCW 19.190.080.

(2) A person engaged in the business of providing internet access service to the public, an owner of a web page, or trademark owner who is adversely affected by reason of a violation of RCW 19.190.080, may bring an action against a person who violates RCW 19.190.080 to:

- (a) Enjoin further violations of RCW 19.190.080; and
- (b) Recover the greater of actual damages or five thousand dollars per violation of RCW 19.190.080.

(3) In an action under subsection (2) of this section, a court may increase the damages up to three times the damages allowed by subsection (2) of this section if the defendant has engaged in a pattern and practice of violating this section. The court may award costs and reasonable attorneys' fees to a prevailing party. [2005 c 378 § 3.]

**Severability—2005 c 378:** See note following RCW 19.190.080.

**19.190.100 Violation—Consumer protection act.** The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business, and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. [2005 c 378 § 4.]

**Severability—2005 c 378:** See note following RCW 19.190.080.

**19.190.110 Intent—Preemption of local laws.** It is the intent of the legislature that this chapter is a matter of state-wide concern. This chapter supersedes and preempts all rules, regulations, codes, ordinances, and other laws adopted by a city, county, city and county, municipality, or local agency regarding the practices covered by this chapter and

notices to consumers from computer software providers regarding information collection. [2005 c 378 § 5.]

**Severability—2005 c 378:** See note following RCW 19.190.080.

## Chapter 19.230 RCW

### UNIFORM MONEY SERVICES ACT

#### Sections

19.230.190 Confidentiality. (*Effective July 1, 2006.*)

#### 19.230.190 Confidentiality. (*Effective July 1, 2006.*)

(1) Except as otherwise provided in subsection (2) of this section, all information or reports obtained by the director from an applicant, licensee, or authorized delegate and all information contained in, or related to, examination, investigation, operating, or condition reports prepared by, on behalf of, or for the use of the director, or financial statements, balance sheets, or authorized delegate information, are confidential and are not subject to disclosure under chapter 42.56 RCW.

(2) The director may disclose information not otherwise subject to disclosure under subsection (1) of this section to representatives of state or federal agencies who agree in writing to maintain the confidentiality of the information; or if the director finds that the release is reasonably necessary for the protection of the public and in the interests of justice.

(3) This section does not prohibit the director from disclosing to the public a list of persons licensed under this chapter or the aggregated financial data concerning those licensees. [2005 c 274 § 237; 2003 c 287 § 21.]

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

## Chapter 19.245 RCW

### AUTOMATED TELLER MACHINES

#### Sections

19.245.010 Automated teller machine—Access fee or surcharge.

**19.245.010 Automated teller machine—Access fee or surcharge.** (1) The owner of an automated teller machine may charge an access fee or surcharge to a customer conducting a transaction using an account from a financial institution that is located outside of the United States.

(2) "Automated teller machine" means the same as defined in RCW 19.174.020.

(3) "Financial institution" means the same as defined in RCW 30.22.040. [2005 c 98 § 1.]

## Chapter 19.250 RCW

### DISCLOSURE OF PERSONAL WIRELESS NUMBERS

#### Sections

19.250.010 Wireless subscriber must opt-in to any directory data base—Revocation—Application of section—Penalty—Attorney general may enforce—Limitation of liability.

**19.250.010 Wireless subscriber must opt-in to any directory data base—Revocation—Application of section—Penalty—Attorney general may enforce—Limita-**

**tion of liability.** (1) A radio communications service company, as defined in RCW 80.04.010, or any direct or indirect affiliate or agent of a provider, shall not include the phone number of any subscriber for inclusion in any directory of any form, nor shall it sell the contents of any directory data base, without first obtaining the express, opt-in consent of that subscriber. The subscriber's consent must be obtained either in writing or electronically, and a receipt must be provided to the subscriber. The consent shall be a separate document or located on a separate screen or web page that has the sole purpose of authorizing a radio communications service company to include the subscriber's phone number in a publicly available directory assistance data base. In obtaining the subscriber's consent, the provider shall unambiguously disclose that, by consenting, the subscriber agrees to have the subscriber's phone number sold or licensed as part of a list of subscribers and that the phone number may be included in a publicly available directory assistance data base. The provider must also disclose that by consenting to be included in the directory, the subscriber may incur additional charges for receiving unsolicited calls or text messages.

(2) A subscriber who provides express consent pursuant to subsection (1) of this section may revoke that consent at any time. A radio communications service company shall comply with the subscriber's request to opt out within a reasonable period of time, not to exceed sixty days.

(3) A subscriber shall not be charged for opting not to be listed in the directory.

(4) This section does not apply to the provision of telephone numbers, for the purposes indicated, to:

(a) Any law enforcement agency, fire protection agency, public health agency, public environmental health agency, city or county emergency services planning agency, or private for-profit corporation operating under contract with, and at the direction of, one or more of these agencies, for the exclusive purpose of responding to a 911 call or communicating an imminent threat to life or property. Information or records provided to a private for-profit corporation pursuant to (b) of this subsection shall be held in confidence by that corporation and by any individual employed by or associated with that corporation. Such information or records shall not be open to examination for any purpose not directly connected with the administration of the services specified in this subsection;

(b) A lawful process issued under state or federal law;

(c) A telecommunications company providing service between service areas for the provision of telephone services to the subscriber between service areas, or to third parties for the limited purpose of providing billing services;

(d) A telecommunications company to effectuate a customer's request to transfer the customer's assigned telephone number from the customer's existing provider of telecommunications services to a new provider of telecommunications services;

(e) The utilities and transportation commission pursuant to its jurisdiction and control over telecommunications companies; and

(f) A sales agent to provide the subscriber's cell phone numbers to the cellular provider for the limited purpose of billing and customer service.

(5) Every knowing violation of this section is punishable by a fine of up to fifty thousand dollars for each violation.

(6) The attorney general may bring actions to enforce compliance with this section. For the first violation by any company or organization of this section, the attorney general may notify the company with a letter of warning that the section has been violated.

(7) No telecommunications company, nor any official or employee of a telecommunications company, shall be subject to criminal or civil liability for the release of customer information as authorized by this section. [2005 c 322 § 1.]

## Chapter 19.255 RCW

### PERSONAL INFORMATION—NOTICE OF SECURITY BREACHES

#### Sections

19.255.010 Disclosure, notice—Definitions—Rights, remedies.

**19.255.010 Disclosure, notice—Definitions—Rights, remedies.** (1) Any person or business that conducts business in this state and that owns or licenses computerized data that includes personal information shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of this state whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (3) of this section, or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(2) Any person or business that maintains computerized data that includes personal information that the person or business does not own shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

(3) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.

(4) For purposes of this section, "breach of the security of the system" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the person or business. Good faith acquisition of personal information by an employee or agent of the person or business for the purposes of the person or business is not a breach of the security of the system when the personal information is not used or subject to further unauthorized disclosure.

(5) For purposes of this section, "personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

(a) Social security number;  
 (b) Driver's license number or Washington identification card number; or

(c) Account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(6) For purposes of this section, "personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(7) For purposes of this section and except under subsection (8) of this section, "notice" may be provided by one of the following methods:

(a) Written notice;

(b) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in 15 U.S.C. Sec. 7001; or

(c) Substitute notice, if the person or business demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars, or that the affected class of subject persons to be notified exceeds five hundred thousand, or the person or business does not have sufficient contact information. Substitute notice shall consist of all of the following:

(i) E-mail notice when the person or business has an e-mail address for the subject persons;

(ii) Conspicuous posting of the notice on the web site page of the person or business, if the person or business maintains one; and

(iii) Notification to major statewide media.

(8) A person or business that maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with the timing requirements of this section is in compliance with the notification requirements of this section if the person or business notifies subject persons in accordance with its policies in the event of a breach of security of the system.

(9) Any waiver of the provisions of this section is contrary to public policy, and is void and unenforceable.

(10)(a) Any customer injured by a violation of this section may institute a civil action to recover damages.

(b) Any business that violates, proposes to violate, or has violated this section may be enjoined.

(c) The rights and remedies available under this section are cumulative to each other and to any other rights and remedies available under law.

(d) A person or business under this section shall not be required to disclose a technical breach of the security system that does not seem reasonably likely to subject customers to a risk of criminal activity. [2005 c 368 § 2.]

*Similar provision: RCW 42.17.31922.*

## Chapter 19.260 RCW ENERGY EFFICIENCY

### Sections

19.260.010 Findings.  
 19.260.020 Definitions.  
 19.260.030 Application of chapter.

19.260.040 Minimum efficiency standards.

19.260.050 Limit on sale or installation of products required to meet or exceed standards in RCW 19.260.040.

19.260.060 Department recommended updates to standards.

19.260.070 Manufacturers must test products—Certification—Rules—Identification of products—Complaints—Penalty.

19.260.900 Severability—2005 c 298.

### 19.260.010 Findings. The legislature finds that:

(1) According to estimates of the department of community, trade, and economic development, the efficiency standards set forth in chapter 298, Laws of 2005 will save nine hundred thousand megawatt-hours of electricity, thirteen million therms of natural gas, and one billion seven hundred million gallons of water in the year 2020, fourteen years after the standards have become effective, with a total net present value to buyers of four hundred ninety million dollars in 2020.

(2) Efficiency standards for certain products sold or installed in the state assure consumers and businesses that such products meet minimum efficiency performance levels thus saving money on utility bills.

(3) Efficiency standards save energy and reduce pollution and other environmental impacts associated with the production, distribution, and use of electricity and natural gas.

(4) Efficiency standards contribute to the economy of Washington by helping to better balance energy supply and demand, thus reducing pressure for higher natural gas and electricity prices. By saving consumers and businesses money on energy bills, efficiency standards help the state and local economy, since energy bill savings can be spent on local goods and services.

(5) Efficiency standards can make electricity systems more reliable by reducing the strain on the electricity grid during peak demand periods. Furthermore, improved energy efficiency can reduce or delay the need for new power plants, power transmission lines, and power distribution system upgrades. [2005 c 298 § 1.]

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

(1) "Automatic commercial ice cube machine" means a factory-made assembly, not necessarily shipped in one package, consisting of a condensing unit and ice-making section operating as an integrated unit with means for making and harvesting ice cubes. It may also include integrated components for storing or dispensing ice, or both.

(2) "Ballast" means a device used with an electric discharge lamp to obtain necessary circuit conditions, such as voltage, current, and waveform, for starting and operating the lamp.

(3) "Commercial clothes washer" means a soft mount horizontal or vertical-axis clothes washer that: (a) Has a clothes container compartment no greater than 3.5 cubic feet in the case of a horizontal-axis product or no greater than 4.0 cubic feet in the case of a vertical-axis product; and (b) is designed for use by more than one household, such as in multifamily housing, apartments, or coin laundries.

(4) "Commercial prerinse spray valve" means a handheld device designed and marketed for use with commercial dishwashing and warewashing equipment and that sprays water

on dishes, flatware, and other food service items for the purpose of removing food residue prior to their cleaning.

(5)(a) "Commercial refrigerators and freezers" means refrigerators, freezers, or refrigerator-freezers designed for use by commercial or institutional facilities for the purpose of storing or merchandising food products, beverages, or ice at specified temperatures that: (i) Incorporate most components involved in the vapor-compression cycle and the refrigerated compartment in a single cabinet; and (ii) may be configured with either solid or transparent doors as a reach-in cabinet, pass-through cabinet, roll-in cabinet, or roll-through cabinet.

(b) "Commercial refrigerators and freezers" does not include: (i) Products with 85 cubic feet or more of internal volume; (ii) walk-in refrigerators or freezers; (iii) consumer products that are federally regulated pursuant to 42 U.S.C. Sec. 6291 et seq.; (iv) products without doors; or (v) freezers specifically designed for ice cream.

(6) "Compensation" means money or any other valuable thing, regardless of form, received or to be received by a person for services rendered.

(7) "Department" means the department of community, trade, and economic development.

(8) "High-intensity discharge lamp" means a lamp in which light is produced by the passage of an electric current through a vapor or gas, and in which the light-producing arc is stabilized by bulb wall temperature and the arc tube has a bulb wall loading in excess of three watts per square centimeter.

(9) "Illuminated exit sign" means an internally illuminated sign that is designed to be permanently fixed in place to identify a building exit and consists of an electrically powered integral light source that illuminates the legend "EXIT" and any directional indicators and provides contrast between the legend, any directional indicators, and the background.

(10)(a) "Low-voltage dry-type distribution transformer" means a distribution transformer that: (i) Has an input voltage of 600 volts or less; (ii) is air cooled; (iii) does not use oil as a coolant; and (iv) is rated for operation at a frequency of 60 hertz.

(b) "Low-voltage dry-type transformer" does not include: (i) Transformers with multiple voltage taps, with the highest voltage tap equaling at least twenty percent more than the lowest voltage tap; or (ii) transformers, such as those commonly known as drive transformers, rectifier transformers, auto transformers, uninterruptible power system transformers, impedance transformers, regulating transformers, sealed and nonventilating transformers, machine tool transformers, welding transformers, grounding transformers, or testing transformers, that are designed to be used in a special purpose application and are unlikely to be used in general purpose applications.

(11) "Metal halide lamp" means a high-intensity discharge lamp in which the major portion of the light is produced by radiation of metal halides and their products of dissociation, possibly in combination with metallic vapors.

(12) "Metal halide lamp fixture" means a light fixture designed to be operated with a metal halide lamp and a ballast for a metal halide lamp.

(13) "Pass-through cabinet" means a commercial refrigerator or freezer with hinged or sliding doors on both the front and rear of the unit.

(14) "Probe-start metal halide ballast" means a ballast used to operate metal halide lamps which does not contain an igniter and which instead starts lamps by using a third starting electrode "probe" in the arc tube.

(15) "Reach-in cabinet" means a commercial refrigerator or freezer with hinged or sliding doors or lids, but does not include roll-in or roll-through cabinets or pass-through cabinets.

(16)(a) "Roll-in cabinet" means a commercial refrigerator or freezer with hinged or sliding doors that allow wheeled racks of product to be rolled into the unit.

(b) "Roll-through cabinet" means a commercial refrigerator or freezer with hinged or sliding doors on two sides of the cabinet that allow wheeled racks of product to be rolled through the unit.

(17)(a) "Single-voltage external AC to DC power supply" means a device that: (i) Is designed to convert line voltage alternating current input into lower voltage direct current output; (ii) is able to convert to only one DC output voltage at a time; (iii) is sold with, or intended to be used with, a separate end-use product that constitutes the primary power load; (iv) is contained within a separate physical enclosure from the end-use product; (v) is connected to the end-use product via a removable or hard-wired male/female electrical connection, cable, cord, or other wiring; and (vi) has a nameplate output power less than or equal to 250 watts.

(b) "Single-voltage external AC to DC power supply" does not include: (i) Products with batteries or battery packs that physically attach directly to the power supply unit; (ii) products with a battery chemistry or type selector switch and indicator light; or (iii) products with a battery chemistry or type selector switch and a state of charge meter.

(18) "State-regulated incandescent reflector lamp" means a lamp that is not colored or designed for rough or vibration service applications, that has an inner reflective coating on the outer bulb to direct the light, an E26 medium screw base, and a rated voltage or voltage range that lies at least partially within 115 to 130 volts, and that falls into one of the following categories:

(a) A bulged reflector or elliptical reflector bulb shape and which has a diameter which equals or exceeds 2.25 inches;

(b) A reflector, parabolic aluminized reflector, or similar bulb shape and which has a diameter of 2.25 to 2.75 inches.

(19) "Torchiere" means a portable electric lighting fixture with a reflective bowl that directs light upward onto a ceiling so as to produce indirect illumination on the surfaces below. "Torchiere" may include downward directed lamps in addition to the upward, indirect illumination.

(20) "Traffic signal module" means a standard (a) 8-inch or 200 mm or (b) 12-inch or 300 mm traffic signal indication, consisting of a light source, a lens, and all other parts necessary for operation.

(21) "Transformer" means a device consisting of two or more coils of insulated wire and that is designed to transfer alternating current by electromagnetic induction from one coil to another to change the original voltage or current value.

(22)(a) "Unit heater" means a self-contained, vented fan-type commercial space heater that uses natural gas or propane, and that is designed to be installed without ducts within a heated space.

## Energy Efficiency

(b) "Unit heater" does not include any products covered by federal standards established pursuant to 42 U.S.C. Sec. 6291 et seq. or any product that is a direct vent, forced flue heater with a sealed combustion burner. [2005 c 298 § 2.]

**19.260.030 Application of chapter.** (1) This chapter applies to the following types of new products sold, offered for sale, or installed in the state: (a) Automatic commercial ice cube machines; (b) commercial clothes washers; (c) commercial prerinse spray valves; (d) commercial refrigerators and freezers; (e) illuminated exit signs; (f) low-voltage dry-type distribution transformers; (g) metal halide lamp fixtures; (h) single-voltage external AC to DC power supplies; (i) state-regulated incandescent reflector lamps; (j) torchieres;

(k) traffic signal modules; and (l) unit heaters. This chapter applies equally to products whether they are sold, offered for sale, or installed as a stand-alone product or as a component of another product.

(2) This chapter does not apply to (a) new products manufactured in the state and sold outside the state, (b) new products manufactured outside the state and sold at wholesale inside the state for final retail sale and installation outside the state, (c) products installed in mobile manufactured homes at the time of construction[,] or (d) products designed expressly for installation and use in recreational vehicles. [2005 c 298 § 3.]

**19.260.040 Minimum efficiency standards.** The legislature establishes the following minimum efficiency standards for the types of new products set forth in RCW 19.260.030.

(1)(a) Automatic commercial ice cube machines must have daily energy use and daily water use no greater than the applicable values in the following table:

Equipment type	Type of cooling	Harvest rate (lbs. ice/24 hrs.)	Maximum energy use (kWh/100 lbs.)	Maximum condenser water use (gallons/100 lbs. ice)
Ice-making head	water	<500	7.80 - .0055H	200 - .022H
		>=500<1436	5.58 - .0011H	200 - .022H
		>=1436	4.0	200 - .022H
Ice-making head	air	450	10.26 - .0086H	Not applicable
		>=450	6.89 - .0011H	Not applicable
Remote condensing but not remote compressor	air	<1000	8.85 - .0038	Not applicable
		>=1000	5.10	Not applicable
Remote condensing and remote compressor	air	<934	8.85 - .0038H	Not applicable
		>=934	5.3	Not applicable
Self-contained models	water	<200	11.40 - .0190H	191 - .0315H
		>=200	7.60	191 - .0315H
Self-contained models	air	<175	18.0 - .0469H	Not applicable
		>=175	9.80	Not applicable

Where H= harvest rate in pounds per twenty-four hours which must be reported within 5% of the tested value. "Maximum water use" applies only to water used for the condenser.

(b) For purposes of this section, automatic commercial ice cube machines shall be tested in accordance with ARI 810-2003 test method as published by the air-conditioning and refrigeration institute. Ice-making heads include all automatic commercial ice cube machines that are not split system ice makers or self-contained models as defined in ARI 810-2003.

(2) Commercial clothes washers must have a minimum modified energy factor of 1.26. For the purposes of this section, capacity and modified energy factor are defined and measured in accordance with the current federal test method for clothes washers as found at 10 C.F.R. Sec. 430.23.

(3) Commercial prerinse spray valves must have a flow rate equal to or less than 1.6 gallons per minute when measured in accordance with the American society for testing and materials' "Standard Test Method for Prerinse Spray Valves," ASTM F2324-03.

(4)(a) Commercial refrigerators and freezers must meet the applicable requirements listed in the following table:

Equipment Type	Doors	Maximum Daily Energy Consumption (kWh)
Reach-in cabinets, pass-through cabinets, and roll-in or roll-through cabinets that are refrigerators	Solid	0.10V+ 2.04
	Transparent	0.12V+ 3.34
Reach-in cabinets, pass-through cabinets, and roll-in or roll-through cabinets that are "pull-down" refrigerators	Transparent	.126V+ 3.51

**Title 19 RCW: Business Regulations—Miscellaneous**

Reach-in cabinets, pass-through cabinets, and roll-in or roll-through cabinets that are freezers	Solid	0.40V+ 1.38
	Transparent	0.75V+ 4.10
Reach-in cabinets that are refrigerator-freezers with an AV of 5.19 or higher	Solid	0.27AV - 0.71

kWh= kilowatt hours

V= total volume (ft<sup>3</sup>)

AV= adjusted volume= [1.63 x freezer volume (ft<sup>3</sup>)]+ refrigerator volume (ft<sup>3</sup>)

(b) For purposes of this section, "pulldown" designates products designed to take a fully stocked refrigerator with beverages at 90 degrees F and cool those beverages to a stable temperature of 38 degrees F within 12 hours or less. Daily energy consumption shall be measured in accordance with the American national standards institute/American society of heating, refrigerating and air-conditioning engineers test method 117-2002, except that the back-loading doors of pass-through and roll-through refrigerators and freezers must remain closed throughout the test, and except that the controls of all appliances must be adjusted to obtain the following product temperatures.

Product or compartment type	Integrated average product temperature in degrees Fahrenheit
Refrigerator	38± 2
Freezer	0± 2

(5) Illuminated exit signs must have an input power demand of five watts or less per illuminated face. For the purposes of this section, input power demand is measured in accordance with the United States environmental protection agency's energy star exit sign program's conditions for testing, version 3.0. Illuminated exit signs must meet all applicable building and safety codes.

(6)(a) Low-voltage dry-type distribution transformers shall have efficiencies not less than the applicable values in the following table when tested at thirty-five percent of the rated output power:

Single Phase		Three Phase	
Rated power output in kVa	Minimum efficiency %	Rated power output in kVa	Minimum efficiency %
≥ 15	<25	≥ 15	<30
			97.0
≥ 25	<37.5	≥ 30	<45
			97.5
≥ 37.5	<50	≥ 45	<75
			97.7
≥ 50	<75	≥ 75	<112.5
			98.0
≥ 75	<100	≥ 112.5	<150
			98.2
≥ 100	<167	≥ 150	<225
			98.3
≥ 167	<250	≥ 225	<300
			98.5
≥ 250	<333	≥ 300	<500
			98.6
333		≥ 500	<750
			98.7
—	—	≥ 750	<1000
			98.8
—	—	1000	
			98.9

kVa= kilovolt amperes

(b) For the purposes of this section, low-voltage dry-type distribution transformer efficiency is measured in accordance with the national electrical manufacturers association TP 2-1998 test method.

(7) Metal halide lamp fixtures designed to be operated with lamps rated greater than or equal to 150 watts but less than or equal to 500 watts shall not contain a probe-start metal halide lamp ballast.

(8)(a) Single-voltage external AC to DC power supplies shall meet the requirements in the following table:

Nameplate output	Minimum Efficiency in Active Mode
< 1 Watt	0.49 * Nameplate Output
> or= 1 Watt and < or= 49 Watts	0.09 * Ln (Nameplate Output)+ 0.49
> 49 Watts	0.84
	Maximum Energy Consumption in No-Load Mode
< 10 Watts	0.5 Watts
> or= 10 Watts and < or= 250 Watts	0.75 Watts

Where Ln (Nameplate Output) - Natural Logarithm of the nameplate output expressed in Watts



(b) For the purposes of this section, efficiency of single-voltage external AC to DC power supplies shall be measured in accordance with the United States environmental protection agency's "Test Method for Calculating the Energy Efficiency of Single-Voltage External AC to DC and AC to AC Power Supplies," by Ecos Consulting and Power Electronics Application Center, dated August 11, 2004.

(9)(a) State-regulated incandescent reflector lamps that are not 50 watt elliptical reflector lamps must meet the minimum efficacies in the following table:

Wattage	Minimum average lamp efficacy (lumens per watt)
40 - 50	10.5
51 - 66	11.0
67 - 85	12.5
86 - 115	14.0
116 - 155	14.5
156 - 205	15.0

(b) Lamp efficacy must be measured in accordance with the applicable federal test method as found at 10 C.F.R. Sec. 430.23.

(10) Torchieres may not use more than 190 watts. A torchiere is deemed to use more than 190 watts if any commercially available lamp or combination of lamps can be inserted in a socket and cause the torchiere to draw more than 190 watts when operated at full brightness.

(11)(a) Traffic signal modules must have maximum and nominal wattage that do not exceed the applicable values in the following table:

Module Type	Maximum Wattage (at 74°C)	Nominal Wattage (at 25°C)
12" red ball (or 300 mm circular)	17	11
8" red ball (or 200 mm circular)	13	8
12" red arrow (or 300 mm arrow)	12	9
12" green ball (or 300 mm circular)	15	15
8" green ball (or 200 mm circular)	12	12
12" green arrow (or 300 mm arrow)	11	11

mm= millimeter

(b) For the purposes of this section, maximum wattage and nominal wattage must be measured in accordance with and under the testing conditions specified by the institute for transportation engineers "Interim LED Purchase Specification, Vehicle Traffic Control Signal Heads, Part 2: Light Emitting Diode Vehicle Traffic Signal Modules."

(12) Unit heaters must be equipped with intermittent ignition devices and must have either power venting or an automatic flue damper. [2005 c 298 § 4.]

#### **19.260.050 Limit on sale or installation of products required to meet or exceed standards in RCW 19.260.040.**

(1) On or after January 1, 2007, no new commercial prerinse spray valve, commercial clothes washer, commercial refrigerator or freezer, illuminated exit sign, low-voltage dry-type distribution transformer, single-voltage external AC to DC power supply, state-regulated incandescent reflector lamp, torchiere, traffic signal module, or unit heater may be sold or offered for sale in the state unless the efficiency of the new product meets or exceeds the efficiency standards set forth in RCW 19.260.040. On or after January 1, 2008, no new automatic commercial ice cube machine or metal halide lamp fixtures may be sold or offered for sale in the state unless the efficiency of the new product meets or exceeds the efficiency standards set forth in RCW 19.260.040.

(2) On or after January 1, 2008, no new commercial prerinse spray valve, commercial clothes washer, commercial refrigerator or freezer, illuminated exit sign, low-voltage dry-type distribution transformer, single-voltage external AC to DC power supply, state-regulated incandescent reflector lamp, torchiere, traffic signal module, or unit heater may be

installed for compensation in the state unless the efficiency of the new product meets or exceeds the efficiency standards set forth in RCW 19.260.040. On or after January 1, 2009, no new automatic commercial ice cube machine or metal halide lamp fixtures may be installed for compensation in the state unless the efficiency of the new product meets or exceeds the efficiency standards set forth in RCW 19.260.040.

(3) Standards for metal halide lamp fixtures and state-regulated incandescent reflector lamps are effective on the dates in subsections (1) and (2) of this section. [2005 c 298 § 5.]

**19.260.060 Department recommended updates to standards.** The department may recommend updates to the energy efficiency standards and test methods for products listed in RCW 19.260.030. The department may also recommend establishing state standards for additional nonfederally covered products. In making its recommendations, the department shall use the following criteria: (1) Multiple manufacturers produce products that meet the proposed standard at the time of recommendation, (2) products meeting the

proposed standard are available at the time of recommendation, (3) the products are cost-effective to consumers on a life-cycle cost basis using average Washington resource rates, (4) the utility of the energy efficient product meets or exceeds the utility of the comparable product available for purchase, and (5) the standard exists in at least two other states in the United States. For recommendations concerning commercial clothes washers, the department must also consider the fiscal effects on the low-income, elderly, and student populations. Any recommendations shall be transmitted to the appropriate committees of the legislature sixty days before the start of any regular legislative session. [2005 c 298 § 6.]

**19.260.070 Manufacturers must test products—Certification—Rules—Identification of products—Complaints—Penalty.** (1) The manufacturers of products covered by this chapter must test samples of their products in accordance with the test procedures under this chapter or those specified in the state building code.

(2) Manufacturers of new products covered by RCW 19.260.030, except for single-voltage external AC to DC power supplies, shall certify to the department that the products are in compliance with this chapter. This certification must be based on test results unless this chapter does not specify a test method. The department shall establish rules governing the certification of these products and may coordinate with the certification programs of other states and federal agencies with similar standards.

(3) Manufacturers of new products covered by RCW 19.260.030 shall identify each product offered for sale or installation in the state as in compliance with this chapter by means of a mark, label, or tag on the product and packaging at the time of sale or installation. The department shall establish rules governing the identification of these products and packaging, which shall be coordinated to the greatest practical extent with the labeling programs of other states and federal agencies with equivalent efficiency standards.

(4) The department may test products covered by RCW 19.260.030. If products so tested are found not to be in compliance with the minimum efficiency standards established under RCW 19.260.040, the department shall: (a) Charge the manufacturer of the product for the cost of product purchase and testing; and (b) make information available to the public on products found not to be in compliance with the standards.

(5) The department shall obtain in paper form the test methods specified in RCW 19.260.040, which shall be available for public use at the department's energy policy offices.

(6) The department shall investigate complaints received concerning violations of this chapter. Any manufacturer or distributor who violates this chapter shall be issued a warning by the director of the department for any first violation. Repeat violations are subject to a civil penalty of not more than two hundred fifty dollars a day. Penalties assessed under this subsection are in addition to costs assessed under subsection (4) of this section.

(7) The department may adopt rules as necessary to ensure the proper implementation and enforcement of this chapter.

(8) The proceedings relating to this chapter are governed by the administrative procedure act, chapter 34.05 RCW. [2005 c 298 § 7.]

**19.260.900 Severability—2005 c 298.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2005 c 298 § 8.]

## Chapter 19.265 RCW

### TAX REFUND ANTICIPATION LOANS

#### Sections

19.265.010	Definitions.
19.265.020	Registration of facilitators.
19.265.030	Required disclosure.
19.265.040	Borrower may rescind loan—Manner.
19.265.050	Facilitators—Unlawful activities.
19.265.060	Violation of chapter—Penalty.
19.265.070	Finding—Application of chapter 19.86 RCW.
19.265.900	Short title.

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

(1) "Borrower" means a taxpayer who receives the proceeds of a refund anticipation loan.

(2) "Department" means the department of financial institutions.

(3) "Director" means the director of the department of financial institutions.

(4) "Facilitator" means a person who receives or accepts for delivery an application for a refund anticipation loan, delivers a check in payment of refund anticipation loan proceeds, or in any other manner acts to allow the making of a refund anticipation loan. "Facilitator" does not include a bank, thrift, savings association, industrial bank, or credit union, operating under the laws of the United States or this state, an affiliate that is a servicer for such an entity, or any person who acts solely as an intermediary and does not deal with a taxpayer in the making of the refund anticipation loan.

(5) "Lender" means a person who extends credit to a borrower in the form of a refund anticipation loan.

(6) "Person" means an individual, a firm, a partnership, an association, a corporation, or other entity.

(7) "Refund anticipation loan" means a loan borrowed by a taxpayer from a lender based on the taxpayer's anticipated federal income tax refund.

(8) "Refund anticipation loan fee" means the charges, fees, or other consideration imposed by the lender for a refund anticipation loan. This term does not include any charge, fee, or other consideration usually imposed by the facilitator in the ordinary course of business for nonloan services, such as fees for tax return preparation and fees for electronic filing of tax returns.

(9) "Refund anticipation loan fee schedule" means a listing or table of refund anticipation loan fees charged by the facilitator or the lender for three or more representative refund anticipation loan amounts. The schedule shall list separately each fee or charge imposed, as well as a total of all fees imposed, related to the making of refund anticipation

loans. The schedule shall also include, for each representative loan amount, the estimated annual percentage rate calculated under the guidelines established by the federal truth in lending act, 15 U.S.C. Sec. 1601 et seq.

(10) "Taxpayer" means an individual who files a federal income tax return. [2005 c 471 § 2.]

**19.265.020 Registration of facilitators.** (1) No person may individually, or in conjunction or cooperation with another person act as a facilitator unless that person is:

(a) A tax preparer or works for a person that engages in the business of tax preparation;

(b) Accepted by the internal revenue service as an authorized IRS e-file provider; and

(c) Registered with the department as a facilitator. The director may prescribe the registration form.

(2) A person is registered as a facilitator by providing the department, on or before December 31st of each year with:

(a) A list of authorized IRS e-file providers in the state of Washington for the current tax filing year; and

(b) A thirty-five dollar processing fee for each authorized e-file provider on the list.

(3) After the December 31st deadline, a facilitator may amend the registration required in subsection (2) of this section to reflect additions or deletions of office locations or e-file providers authorized by the internal revenue service.

(4) The department shall make available to the public a list of all facilitators registered under this section.

(5) This section does not apply to a person doing business as a bank, thrift, savings association, industrial bank, or credit union, operating under the laws of the United States or this state, an affiliate that is a servicer for such an entity, or any person who acts solely as an intermediary and does not deal with a taxpayer in the making of the refund anticipation loan.

(6) This chapter shall preempt and be exclusive of all local acts, statutes, ordinances, and regulations relating to refund anticipation loans. This subsection shall be given retroactive and prospective effect. [2005 c 471 § 3.]

**19.265.030 Required disclosure.** (1) For all refund anticipation loans, a facilitator must provide clear disclosure to the borrower prior to the borrower's completion of the application. The disclosure must contain the following:

(a) The refund anticipation loan fee schedule; and

(b) A written statement, in a minimum of ten-point type, containing the following elements:

(i) That a refund anticipation loan is a loan, and is not the borrower's actual income tax refund;

(ii) That the taxpayer can file an income tax return electronically without applying for a refund anticipation loan;

(iii) The average times according to the internal revenue service within which a taxpayer who does not obtain a refund anticipation loan can expect to receive a refund if the taxpayer's return is (A) filed electronically and the refund is directly deposited to the taxpayer's bank account or mailed to the taxpayer, and (B) mailed to the internal revenue service and the refund is directly deposited to the taxpayer's bank account or mailed to the taxpayer;

(iv) That the internal revenue service does not guarantee that it will pay the full amount of the anticipated refund and it does not guarantee a specific date that a refund will be deposited into a taxpayer's financial institution account or mailed to a taxpayer;

(v) That the borrower is responsible for repayment of the loan and related fees in the event that the tax refund is not paid or paid in full;

(vi) The estimated time within which the loan proceeds will be paid to the borrower if the loan is approved;

(vii) The fee that will be charged, if any, if the borrower's loan is not approved; and

(viii) The borrower's right to rescind the refund anticipation loan transaction as provided in RCW 19.265.040.

(2) The following additional information must be provided to the borrower of a refund anticipation loan before consummation of the loan transaction:

(a) The estimated total fees for obtaining the refund anticipation loan; and

(b) The estimated annual percentage rate for the borrower's refund anticipation loan, using the guidelines established under the federal truth in lending act (15 U.S.C. Sec. 1601 et seq.). [2005 c 471 § 4.]

**19.265.040 Borrower may rescind loan—Manner.** A borrower may rescind a loan, on or before the close of business on the next day of business, by either returning the original check issued for the loan or providing the amount of the loan in cash to the lender or the facilitator. The facilitator may not charge the borrower a fee for rescinding the loan or a refund anticipation loan fee if the loan is rescinded but may charge the borrower the administrative cost of establishing a bank account to electronically receive the refund. [2005 c 471 § 5.]

**19.265.050 Facilitators—Unlawful activities.** It is unlawful for a facilitator of a refund anticipation loan to engage in any of the following activities:

(1) Misrepresent a material factor or condition of a refund anticipation loan;

(2) Fail to process the application for a refund anticipation loan promptly after the consumer applies for the loan;

(3) Engage in any dishonest, fraudulent, unfair, unconscionable, or unethical practice or conduct in connection with a refund anticipation loan;

(4) Arrange for a creditor to take a security interest in any property of the consumer other than the proceeds of the consumer's tax refund and the account into which that tax refund is deposited to secure payment of the loan; and

(5) Offer a refund anticipation loan that, including any refund anticipation loan fee or any other fee related to the loan or tax preparation, exceeds the amount of the anticipated tax refund. [2005 c 471 § 6.]

**19.265.060 Violation of chapter—Penalty.** Any person who knowingly and willfully violates this chapter is guilty of a misdemeanor and shall be fined up to five hundred dollars for each offense. [2005 c 471 § 7.]

**19.265.070 Finding—Application of chapter 19.86 RCW.** The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. [2005 c 471 § 8.]

**19.265.900 Short title.** This chapter may be known and cited as the tax refund anticipation loan act. [2005 c 471 § 1.]

### Chapter 19.270 RCW COMPUTER SPYWARE

#### Sections

19.270.010	Definitions.
19.270.020	Unlawful activities—Modification of settings—Collection of personally identifiable information—Installation or removal of software.
19.270.030	Unlawful activities—Taking control of computer—Modification of computer's setting—Preventing installation of certain software.
19.270.040	Unlawful activities—Misrepresenting security software—Deceptive execution of software component.
19.270.050	Application of RCW 19.270.030 or 19.270.040.
19.270.060	Who may bring an action—Damages—Attorneys' fees—Limit of damages.
19.270.070	Intent—Chapter preempts local laws.
19.270.080	Chapter 19.86 RCW not affected.
19.270.900	Severability—2005 c 500.

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

(1) "Advertisement" means a communication, the primary purpose of which is the commercial promotion of a commercial product or service, including a communication on an internet web site that is operated for a commercial purpose.

(2) "Computer software" means a sequence of instructions written in any programming language that is executed on a computer. "Computer software" does not include computer software that is a web page, or are data components of web pages that are not executable independently of the web page.

(3) "Damage" means any significant impairment to the integrity or availability of data, computer software, a system, or information.

(4) "Execute" means the performance of the functions or the carrying out of the instructions of the computer software.

(5) "Intentionally deceptive" means any of the following:

(a) An intentionally and materially false or fraudulent statement;

(b) A statement or description that intentionally omits or misrepresents material information in order to deceive an owner or operator; and

(c) An intentional and material failure to provide any notice to an owner or operator regarding the installation or execution of computer software in order to deceive the owner or operator.

(6) "Internet" means the global information system that is logically linked together by a globally unique address space based on the internet protocol (IP), or its subsequent extensions, and that is able to support communications using the transmission control protocol/internet protocol (TCP/IP) suite, or its subsequent extensions, or other IP-compatible protocols, and that provides, uses, or makes accessible, either publicly or privately, high level services layered on the communications and related infrastructure described in this subsection.

(7) "Owner or operator" means the owner or lessee of a computer, or someone using such computer with the owner's or lessee's authorization. "Owner or operator" does not include any person who owns a computer before the first retail sale of such computer.

(8) "Person" means any individual, partnership, corporation, limited liability company, or other organization, or any combination thereof.

(9) "Personally identifiable information" means any of the following with respect to an individual who is an owner or operator:

(a) First name or first initial in combination with last name;

(b) A home or other physical address including street name;

(c) An electronic mail address;

(d) A credit or debit card number, bank account number, or a password or access code associated with a credit or debit card or bank account;

(e) Social security number, tax identification number, driver's license number, passport number, or any other government-issued identification number; and

(f) Any of the following information in a form that personally identifies an owner or operator:

(i) Account balances;

(ii) Overdraft history; and

(iii) Payment history.

(10) "Transmit" means to transfer, send, or make available computer software, or any component thereof, via the internet or any other medium, including local area networks of computers, other nonwire transmission, and disc or other data storage device. "Transmit" does not include any action by a person providing:

(a) The internet connection, telephone connection, or other means of transmission capability such as a compact disk or digital video disk through which the software was made available;

(b) The storage or hosting of the software program or a web page through which the software was made available; or

(c) An information location tool, such as a directory, index reference, pointer, or hypertext link, through which the user of the computer located the software, unless such person receives a direct economic benefit from the execution of such software on the computer. [2005 c 500 § 1.]

**19.270.020 Unlawful activities—Modification of settings—Collection of personally identifiable information—Installation or removal of software.** It is unlawful for a person who is not an owner or operator to transmit computer software to the owner or operator's computer with actual knowledge or with conscious avoidance of actual

knowledge and to use such software to do any of the following:

(1) Modify, through intentionally deceptive means, settings that control any of the following:

(a) The page that appears when an owner or operator launches an internet browser or similar computer software used to access and navigate the internet;

(b) The default provider or web proxy the owner or operator uses to access or search the internet; and

(c) The owner or operator's list of bookmarks used to access web pages;

(2) Collect, through intentionally deceptive means, personally identifiable information:

(a) Through the use of a keystroke-logging function that records all keystrokes made by an owner or operator and transfers that information from the computer to another person;

(b) In a manner that correlates such information with data respecting all or substantially all of the web sites visited by an owner or operator, other than web sites operated by the person collecting such information; and

(c) Described in RCW 19.270.010(9) (d), (e), or (f)(i) or (ii) by extracting the information from the owner or operator's hard drive;

(3) Prevent, through intentionally deceptive means, an owner or operator's reasonable efforts to block the installation or execution of, or to disable, computer software by causing the software that the owner or operator has properly removed or disabled automatically to reinstall or reactivate on the computer;

(4) Intentionally misrepresent that computer software will be uninstalled or disabled by an owner or operator's action; and

(5) Through intentionally deceptive means, remove, disable, or render inoperative security, antispyware, or antivirus computer software installed on the computer. [2005 c 500 § 2.]

**19.270.030 Unlawful activities—Taking control of computer—Modification of computer's setting—Preventing installation of certain software.** It is unlawful for a person who is not an owner or operator to transmit computer software to the owner or operator's computer with actual knowledge or with conscious avoidance of actual knowledge and to use the software to do any of the following:

(1) Take control of the computer by:

(a) Accessing or using the modem or internet service for such computer to cause damage to the computer or cause an owner or operator to incur financial charges for a service that is not authorized by the owner or operator;

(b) Opening multiple, sequential, stand-alone advertisements in the owner or operator's internet browser without the authorization of an owner or operator and that a reasonable computer user cannot close without turning off the computer or closing the internet browser;

(2) Modify any of the following settings related to the computer's access to, or use of, the internet:

(a) Settings that protect information about the owner or operator in order to steal the owner or operator's personally identifiable information; and

(b) Security settings in order to cause damage to a computer; and

(3) Prevent an owner or operator's reasonable efforts to block the installation of, or to disable, computer software by doing any of the following:

(a) Presenting the owner or operator with an option to decline installation of computer software with knowledge that, when the option is selected, the installation nevertheless proceeds; and

(b) Falsely representing that computer software has been disabled. [2005 c 500 § 3.]

**19.270.040 Unlawful activities—Misrepresenting security software—Deceptive execution of software component.** It is unlawful for a person who is not an owner or operator to do any of the following with regard to the owner or operator's computer:

(1) Induce an owner or operator to install a computer software component onto the computer by intentionally misrepresenting the extent to which installing the software is necessary for security or privacy reasons or in order to open, view, or play a particular type of content; and

(2) Deceptively cause the execution on the computer of a computer software component with the intent of causing the owner or operator to use the component in a manner that violates any other provision of this section. [2005 c 500 § 4.]

**19.270.050 Application of RCW 19.270.030 or 19.270.040.** RCW 19.270.030 or 19.270.040 does not apply to any monitoring of, or interaction with, a subscriber's internet or other network connection or service, or a computer, by a telecommunications carrier, cable operator, computer hardware or software provider, or provider of information service or interactive computer service for network or computer security purposes, diagnostics, technical support, maintenance, repair, authorized updates of software or system firmware, authorized remote system management, or detection or prevention of the unauthorized use of or fraudulent or other illegal activities in connection with a network, service, or computer software, including scanning for and removing software under this chapter. [2005 c 500 § 5.]

**19.270.060 Who may bring an action—Damages—Attorneys' fees—Limit of damages.** (1) In addition to any other remedies provided by this chapter or any other provision of law, the attorney general, or a provider of computer software or owner of a web site or trademark who is adversely affected by reason of a violation of this chapter, may bring an action against a person who violates this chapter to enjoin further violations and to recover either actual damages or one hundred thousand dollars per violation, whichever is greater.

(2) In an action under subsection (1) of this section, a court may increase the damages up to three times the damages allowed under subsection (1) of this section if the defendant has engaged in a pattern and practice of violating this chapter. The court may also award costs and reasonable attorneys' fees to the prevailing party.

(3) The amount of damages determined under subsection (1) or (2) of this section may not exceed two million dollars. [2005 c 500 § 6.]

**19.270.070 Intent—Chapter preempts local laws.** It is the intent of the legislature that this chapter is a matter of statewide concern. This chapter supersedes and preempts all rules, regulations, codes, ordinances, and other laws adopted by a city, county, city and county, municipality, or local agency regarding spyware and notices to consumers from computer software providers regarding information collection. [2005 c 500 § 7.]

**19.270.080 Chapter 19.86 RCW not affected.** Chapter 500, Laws of 2005 does not add to, contract, alter, or amend any cause of action allowed under chapter 19.86 RCW and does not affect in any way the application of chapter 19.86 RCW to any future case or fact pattern. [2005 c 500 § 8.]

**19.270.900 Severability—2005 c 500.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2005 c 500 § 9.]

## Title 21

### SECURITIES AND INVESTMENTS

#### Chapters

- 21.20 Securities act of Washington.**  
**21.30 Commodity transactions.**  
**21.35 Uniform transfer on death security registration act.**

#### Chapter 21.20 RCW

##### SECURITIES ACT OF WASHINGTON

###### Sections

- 21.20.855 Debenture companies—Examination reports and information—Exempt from public disclosure—Use in civil actions. (*Effective July 1, 2006.*)

**21.20.855 Debenture companies—Examination reports and information—Exempt from public disclosure—Use in civil actions.** (*Effective July 1, 2006.*) (1) Examination reports and information obtained by the director or the director's representatives in conducting examinations pursuant to RCW 21.20.700 shall not be subject to public disclosure under chapter 42.56 RCW.

(2) In any civil action in which the reports are sought to be discovered or used as evidence, any party may, upon notice to the director, petition the court for an in camera review of the report. The court may permit discovery and introduction of only those portions of the report which are relevant and otherwise unobtainable by the requesting party. This subsection shall not apply to an action brought or defended by the director. [2005 c 274 § 238; 1988 c 244 § 16.]

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

[2005 RCW Supp—page 178]

**Severability—Effective date—Implementation—Application—1988 c 244:** See notes following RCW 21.20.700.

#### Chapter 21.30 RCW

##### COMMODITY TRANSACTIONS

###### Sections

- 21.30.170 Information—Availability to public—Exceptions. (*Effective July 1, 2006.*)

**21.30.170 Information—Availability to public—Exceptions.** (*Effective July 1, 2006.*) (1) All information collected, assembled, or maintained by the director under this chapter is public information and is available for the examination of the public as provided by chapter 42.56 RCW except the following:

(a) Information obtained in private investigations pursuant to RCW 21.30.100 or 21.30.110;

(b) Information exempt from public disclosure under chapter 42.56 RCW; and

(c) Information obtained from federal or state agencies which may not be disclosed under federal or state law.

(2) The director in the director's discretion may disclose any information made confidential under subsection (1)(a) of this section to persons identified in RCW 21.30.180.

(3) No provision of this chapter either creates or derogates from any privilege which exists at common law, by statute, or otherwise when any documentary or other evidence is sought under subpoena directed to the director or any employee of the director. [2005 c 274 § 239; 1986 c 14 § 18.]

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

#### Chapter 21.35 RCW

##### UNIFORM TRANSFER ON DEATH SECURITY REGISTRATION ACT

###### Sections

- 21.35.005 Definitions.

**21.35.005 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Beneficiary form" means a registration of a security that indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner, referred to as a "beneficiary."

(2) "Devisee" means any person designated in a will to receive a disposition of real or personal property.

(3) "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(4) "Person" means an individual, a corporation, an organization, or other legal entity.

(5) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

(6) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(7) "Register," including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(8) "Registering entity" means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(9) "Security" means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account.

(10) "Security account" means (a) a reinvestment account associated with a security; a securities account with a broker; a cash balance in a brokerage account; or cash, cash equivalents, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death; (b) an agency account including, without limitation, an investment management account, investment advisory account, or custody account, with a trust company or a trust division of a bank with trust powers, including the securities in the account; a cash balance in the account; and cash, cash equivalents, interest, earnings, or dividends earned or declared on a security in the account, whether or not credited to the account before the owner's death; or (c) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

(11) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States. [2005 c 97 § 14; 2003 c 118 § 1; 1993 c 287 § 1.]

## Title 22

### WAREHOUSING AND DEPOSITS

#### Chapters

- 22.09** Agricultural commodities.  
**22.28** Safe deposit companies.

#### Chapter 22.09 RCW

##### AGRICULTURAL COMMODITIES

#### Sections

- 22.09.640 Publication and distribution of list of licensed warehouses. *(Effective July 1, 2006.)*

**22.09.640 Publication and distribution of list of licensed warehouses.** *(Effective July 1, 2006.)* Notwithstanding the provisions of chapter 42.56 RCW, the department shall publish annually and distribute to interested parties, a list of licensed warehouses showing the location,

county, capacity, and bond coverage for each company. [2005 c 274 § 240; 1979 ex.s. c 238 § 25.]

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

#### Chapter 22.28 RCW

##### SAFE DEPOSIT COMPANIES

#### Sections

- 22.28.030 Exercise of due care required.

**22.28.030 Exercise of due care required.** Whenever any safe deposit company shall let or lease any vault, safe, box or other receptacle for the keeping or storage of personal property such safe deposit company shall be bound to exercise due care to prevent the opening of such vault, safe, box or receptacle by any person other than the lessee thereof, or his or her duly authorized agent, and the parties may provide in writing the terms, conditions, and liabilities in the lease. Authorized agent as used in this section includes, but is not limited to, a duly appointed personal representative, an attorney in fact, a special representative, or a trustee acting under a revocable living trust. [2005 c 97 § 15; 1923 c 186 § 3; RRS § 3384.]

## Title 26

### DOMESTIC RELATIONS

#### Chapters

- 26.09** Dissolution of marriage—Legal separation.  
**26.12** Family court.  
**26.18** Child support enforcement.  
**26.19** Child support schedule.  
**26.23** State support registry.  
**26.26** Uniform parentage act.  
**26.44** Abuse of children.  
**26.50** Domestic violence prevention.

#### Chapter 26.09 RCW

##### DISSOLUTION OF MARRIAGE— LEGAL SEPARATION

#### Sections

- 26.09.015 Mediation proceedings. *(Effective January 1, 2006.)*  
 26.09.030 Petition for dissolution of marriage—Court proceedings, findings—Transfer to family court—Legal separation in lieu of dissolution.

**26.09.015 Mediation proceedings.** *(Effective January 1, 2006.)* (1) In any proceeding under this chapter, the matter may be set for mediation of the contested issues before or concurrent with the setting of the matter for hearing. The purpose of the mediation proceeding shall be to reduce acrimony which may exist between the parties and to develop an agreement assuring the child's close and continuing contact with both parents after the marriage is dissolved. The mediator shall use his or her best efforts to effect a settlement of the dispute.

(2) Each superior court may make available a mediator. The mediator may be a member of the professional staff of a

family court or mental health services agency, or may be any other person or agency designated by the court. In order to provide mediation services, the court is not required to institute a family court.

(3)(a) Mediation proceedings under this chapter shall be governed in all respects by chapter 7.07 RCW, except as follows:

(i) Mediation communications in postdecree mediations mandated by a parenting plan are admissible in subsequent proceedings for the limited purpose of proving:

(A) Abuse, neglect, abandonment, exploitation, or unlawful harassment as defined in RCW 9A.46.020(1), of a child;

(B) Abuse or unlawful harassment as defined in RCW 9A.46.020(1), of a family or household member as defined in RCW 26.50.010(2); or

(C) That a parent used or frustrated the dispute resolution process without good reason for purposes of RCW 26.09.184(3)(d).

(ii) If a postdecree mediation-arbitration proceeding is required pursuant to a parenting plan and the same person acts as both mediator and arbitrator, mediation communications in the mediation phase of such a proceeding may be admitted during the arbitration phase, and shall be admissible in the judicial review of such a proceeding under RCW 26.09.184(3)(e) to the extent necessary for such review to be effective.

(b) None of the exceptions under (a)(i) and (ii) of this subsection shall subject a mediator to compulsory process to testify except by court order for good cause shown, taking into consideration the need for the mediator's testimony and the interest in the mediator maintaining an appearance of impartiality. If a mediation communication is not privileged under (a)(i) of this subsection or that portion of (a)(ii) of this subsection pertaining to judicial review, only the portion of the communication necessary for the application of the exception may be admitted, and such admission of evidence shall not render any other mediation communication discoverable or admissible except as may be provided in chapter 7.07 RCW.

(4) The mediator shall assess the needs and interests of the child or children involved in the controversy and may interview the child or children if the mediator deems such interview appropriate or necessary.

(5) Any agreement reached by the parties as a result of mediation shall be reported to the court and to counsel for the parties by the mediator on the day set for mediation or any time thereafter designated by the court. [2005 c 172 § 17; 1991 c 367 § 2; 1989 c 375 § 2; 1986 c 95 § 4.]

**Short title—Captions not law—Severability—Effective date—2005 c 172:** See RCW 7.07.900 through 7.07.902 and 7.07.904.

**Severability—1991 c 367:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 367 § 54.]

**Effective date—1991 c 367:** "This act shall take effect September 1, 1991." [1991 c 367 § 55.]

**Captions not law—1991 c 367:** "Captions as used in this act do not constitute any part of the law." [1991 c 367 § 57.]

*Mediation testimony competency: RCW 5.60.070 and 5.60.072.*

[2005 RCW Supp—page 180]

**26.09.030 Petition for dissolution of marriage—Court proceedings, findings—Transfer to family court—Legal separation in lieu of dissolution.** When a party who (1) is a resident of this state, or (2) is a member of the armed forces and is stationed in this state, or (3) is married to a party who is a resident of this state or who is a member of the armed forces and is stationed in this state, petitions for a dissolution of marriage, and alleges that the marriage is irretrievably broken and when ninety days have elapsed since the petition was filed and from the date when service of summons was made upon the respondent or the first publication of summons was made, the court shall proceed as follows:

(a) If the other party joins in the petition or does not deny that the marriage is irretrievably broken, the court shall enter a decree of dissolution.

(b) If the other party alleges that the petitioner was induced to file the petition by fraud, or coercion, the court shall make a finding as to that allegation and, if it so finds shall dismiss the petition.

(c) If the other party denies that the marriage is irretrievably broken the court shall consider all relevant factors, including the circumstances that gave rise to the filing of the petition and the prospects for reconciliation and shall:

(i) Make a finding that the marriage is irretrievably broken and enter a decree of dissolution of the marriage; or

(ii) At the request of either party or on its own motion, transfer the cause to the family court, refer them to another counseling service of their choice, and request a report back from the counseling service within sixty days, or continue the matter for not more than sixty days for hearing. If the cause is returned from the family court or at the adjourned hearing, the court shall:

(A) Find that the parties have agreed to reconciliation and dismiss the petition; or

(B) Find that the parties have not been reconciled, and that either party continues to allege that the marriage is irretrievably broken. When such facts are found, the court shall enter a decree of dissolution of the marriage.

(d) If the petitioner requests the court to decree legal separation in lieu of dissolution, the court shall enter the decree in that form unless the other party objects and petitions for a decree of dissolution or declaration of invalidity.

(e) In considering a petition for dissolution of marriage, a court shall not use a party's pregnancy as the sole basis for denying or delaying the entry of a decree of dissolution of marriage. Granting a decree of dissolution of marriage when a party is pregnant does not affect further proceedings under the uniform parentage act, chapter 26.26 RCW. [2005 c 55 § 1; 1996 c 23 § 1; 1973 1st ex.s. c 157 § 3.]

## Chapter 26.12 RCW FAMILY COURT

### Sections

26.12.170	Authority of family court judges and court commissioners to order or recommend services—Report by court of child abuse or neglect. ( <i>Effective July 1, 2006.</i> )
26.12.177	Guardians ad litem and investigators—Training—Registry—Subregistry—Selection—Substitution—Exceptions.
26.12.240	Courthouse facilitator program—Fee or surcharge.
26.12.250	Therapeutic courts. ( <i>Effective July 1, 2006.</i> )
26.12.802	Family court pilot program—Created.
26.12.804	Family court pilot program—Rules.



**26.12.170 Authority of family court judges and court commissioners to order or recommend services—Report by court of child abuse or neglect. (Effective July 1, 2006.)**

To facilitate and promote the purposes of this chapter, family court judges and court commissioners may order or recommend family court services, parenting seminars, drug and alcohol abuse evaluations and monitoring of the parties through public or private treatment services, other treatment services, the aid of physicians, psychiatrists, other specialists, or other services or may recommend the aid of the pastor or director of any religious denomination to which the parties may belong.

If the court has reasonable cause to believe that a child of the parties has suffered abuse or neglect it may file a report with the proper law enforcement agency or the department of social and health services as provided in RCW 26.44.040. Upon receipt of such a report the law enforcement agency or the department of social and health services will conduct an investigation into the cause and extent of the abuse or neglect. The findings of the investigation may be made available to the court if ordered by the court as provided in RCW 42.56.210(2). The findings shall be restricted to the issue of abuse and neglect and shall not be considered custody investigations. [2005 c 274 § 241; 1994 c 267 § 3; 1991 c 367 § 13; 1983 c 219 § 5; 1971 ex.s. c 151 § 2; 1949 c 50 § 17; Rem. Supp. 1949 § 997-46.]

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

**Effective date—1994 c 267:** See note following RCW 26.09.191.

**Severability—Effective date—Captions not law—1991 c 367:** See notes following RCW 26.09.015.

**26.12.177 Guardians ad litem and investigators—Training—Registry—Subregistry—Selection—Substitution—Exceptions.** (1) All guardians ad litem and investigators appointed under this title must comply with the training requirements established under RCW 2.56.030(15), prior to their appointment in cases under Title 26 RCW, except that volunteer guardians ad litem or court-appointed special advocates may comply with alternative training requirements approved by the administrative office of the courts that meet or exceed the statewide requirements.

(2)(a) Each guardian ad litem program for compensated guardians ad litem shall establish a rotational registry system for the appointment of guardians ad litem and investigators under this title. If a judicial district does not have a program the court shall establish the rotational registry system. Guardians ad litem and investigators under this title shall be selected from the registry except in exceptional circumstances as determined and documented by the court. The parties may make a joint recommendation for the appointment of a guardian ad litem from the registry.

(b) In judicial districts with a population over one hundred thousand, a list of three names shall be selected from the registry and given to the parties along with the background information as specified in RCW 26.12.175(3), including their hourly rate for services. Each party may, within three judicial days, strike one name from the list. If more than one name remains on the list, the court shall make the appointment from the names on the list. In the event all three names

are stricken the person whose name appears next on the registry shall be appointed.

(c) If a party reasonably believes that the appointed guardian ad litem lacks the necessary expertise for the proceeding, charges an hourly rate higher than what is reasonable for the particular proceeding, or has a conflict of interest, the party may, within three judicial days from the appointment, move for substitution of the appointed guardian ad litem by filing a motion with the court.

(d) Under this section, within either registry referred to in (a) of this subsection, a subregistry may be created that consists of guardians ad litem under contract with the department of social and health services' division of child support. Guardians ad litem on such a subregistry shall be selected and appointed in state-initiated paternity cases only.

(e) The superior court shall remove any person from the guardian ad litem registry who misrepresents his or her qualifications pursuant to a grievance procedure established by the court.

(3) The rotational registry system shall not apply to court-appointed special advocate programs. [2005 c 282 § 30; 2000 c 124 § 7; 1997 c 41 § 7; 1996 c 249 § 18.]

**Intent—1996 c 249:** See note following RCW 2.56.030.

**26.12.240 Courthouse facilitator program—Fee or surcharge.** A county may create a courthouse facilitator program to provide basic services to pro se litigants in family law cases. The legislative authority of any county may impose user fees or may impose a surcharge of up to twenty dollars on only those superior court cases filed under Title 26 RCW, or both, to pay for the expenses of the courthouse facilitator program. Fees collected under this section shall be collected and deposited in the same manner as other county funds are collected and deposited, and shall be maintained in a separate account to be used as provided in this section. [2005 c 457 § 15; 1993 c 435 § 2.]

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

**26.12.250 Therapeutic courts. (Effective July 1, 2006.)** (1) Every county that authorizes the tax provided in RCW 82.14.460 shall, and every county may, establish and operate a therapeutic court component for dependency proceedings designed to be effective for the court's size, location, and resources. A county with a drug court for criminal cases or with a mental health court may include a therapeutic court for dependency proceedings as a component of its existing program.

(2) For the purposes of this section, "therapeutic court" means a court that has special calendars or dockets designed for the intense judicial supervision, coordination, and oversight of treatment provided to parents and families who have substance abuse or mental health problems and who are involved in the dependency and is designed to achieve a reduction in:

- (a) Child abuse and neglect;
- (b) Out-of-home placement of children;
- (c) Termination of parental rights; and
- (d) Substance abuse or mental health symptoms among parents or guardians and their children.

(3) To the extent possible, the therapeutic court shall provide services for parents and families colocated with the court or as near to the court as practicable.

(4) The department of social and health services shall furnish services to the therapeutic court unless a court contracts with providers outside of the department.

(5) Any jurisdiction that receives a state appropriation to fund a therapeutic court must first exhaust all federal funding available for the development and operation of the therapeutic court and associated services.

(6) Moneys allocated by the state for a therapeutic court must be used to supplement, not supplant, other federal, state, local, and private funding for court operations and associated services under this section.

(7) Any county that establishes a therapeutic court or receives funds for an existing court under this section shall:

(a) Establish minimum requirements for the participation in the program; and

(b) Develop an evaluation component of the court, including tracking the success rates in graduating from treatment, reunifying parents with their children, and the costs and benefits of the court. [2005 c 504 § 503.]

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

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

#### **26.12.802 Family court pilot program—Created.**

The administrative office of the courts shall conduct a unified family court pilot program.

(1) Pilot program sites shall be selected through a request for proposal process, and shall be established in no more than three superior court judicial districts.

(2) To be eligible for consideration as a pilot project site, judicial districts must have a statutorily authorized judicial complement of at least five judges.

(3) The administrative office of the courts shall develop criteria for the unified family court pilot program. The pilot program shall include:

(a) All case types under Title 13 RCW, chapters 26.09, 26.10, 26.12, 26.18, 26.19, 26.20, 26.26, 26.50, 26.27, and 28A.225 RCW;

(b) Unified family court judicial officers, who volunteer for the program, and meet training requirements established by local court rule;

(c) Case management practices that provide a flexible response to the diverse court-related needs of families involved in multiple areas of the justice system. Case management practices should result in a reduction in process redundancies and an efficient use of time and resources, and create a system enabling multiple case type resolution by one judicial officer or judicial team;

(d) A court facilitator to provide assistance to parties with matters before the unified family court; and

(e) An emphasis on providing nonadversarial methods of dispute resolution such as a settlement conference, evaluative mediation by attorney mediators, and facilitative mediation by nonattorney mediators.

(4) The administrative office of the courts shall publish and disseminate a state-approved listing of definitions of

[2005 RCW Supp—page 182]

nonadversarial methods of dispute resolution so that court officials, practitioners, and users can choose the most appropriate process for the matter at hand.

(5) The administrative office of the courts shall provide to the judicial districts selected for the pilot program the computer resources needed by each judicial district to implement the unified family court pilot program.

(6) The administrative office of the courts shall conduct a study of the pilot program measuring improvements in the judicial system's response to family involvement in the judicial system. The administrator for the courts shall report preliminary findings and final results of the study to the governor, the chief justice of the supreme court, and the legislature on a biennial basis. The initial report is due by July 1, 2000, and the final report is due by December 1, 2004. [2005 c 282 § 31; 1999 c 397 § 2.]

**26.12.804 Family court pilot program—Rules.** The judges of the superior court judicial districts with unified family court pilot programs shall adopt local court rules directing the program. The local court rules shall comply with the criteria established by the administrative office of the courts and shall include:

(1) A requirement that all judicial officers hearing cases in unified family court:

(a) Complete an initial training program including the topic areas of childhood development, domestic violence, cultural awareness, child abuse and neglect, chemical dependency, and mental illness; and

(b) Subsequent to the training in (a) of this subsection, annually attend a minimum of eight hours of continuing education of pertinence to the unified family court;

(2) Case management that is based on the practice of one judge or judicial team handling all matters relating to a family;

(3) An emphasis on coordinating or consolidating, to the extent possible, all cases before the unified family court relating to a family; and

(4) Programs that provide for record confidentiality to protect the confidentiality of court records in accordance with the law. However law enforcement agencies shall have access to the records to the extent permissible under the law. [2005 c 282 § 32; 1999 c 397 § 3.]

### **Chapter 26.18 RCW**

#### **CHILD SUPPORT ENFORCEMENT**

##### Sections

- 26.18.210 Child support order summary report form.  
26.18.220 Standard court forms—Mandatory use.

**26.18.210 Child support order summary report form.** (1) The administrative office of the courts shall develop a child support order summary report form to provide for the reporting of summary information in every case in which a child support order is entered or modified either judicially or administratively. The administrative office of the courts shall attempt to the greatest extent possible to make the form simple and understandable by the parties. The form shall indicate the following:

- (a) The county in which the order was entered and the cause number;
  - (b) Whether it was a judicial or administrative order;
  - (c) Whether the order is an original order or from a modification;
  - (d) The number of children of the parties and the children's ages;
  - (e) The combined monthly net income of parties;
  - (f) The monthly net income of the father as determined by the court;
  - (g) The monthly net income of the mother as determined by the court;
  - (h) The basic child support obligation for each child as determined from the economic table;
  - (i) Whether or not the court deviated from the child support for each child;
  - (j) The reason or reasons stated by the court for the deviation;
  - (k) The amount of child support after the deviation;
  - (l) Any amount awarded for day care;
  - (m) Any other extraordinary amounts in the order;
  - (n) Any amount ordered for postsecondary education;
  - (o) The total amount of support ordered;
  - (p) In the case of a modification, the amount of support in the previous order;
  - (q) If the change in support was in excess of thirty percent, whether the change was phased in;
  - (r) The amount of the transfer payment ordered;
  - (s) Which parent was ordered to make the transfer payment; and
  - (t) The date of the entry of the order.
- (2) The administrative office of the courts shall make the form available to the parties. [2005 c 282 § 33; 1990 1st ex.s. c 2 § 22.]

**Effective dates—Severability—1990 1st ex.s. c 2:** See notes following RCW 26.09.100.

**26.18.220 Standard court forms—Mandatory use.**

- (1) The administrative office of the courts shall develop not later than July 1, 1991, standard court forms and format rules for mandatory use by litigants in all actions commenced under chapters 26.09, 26.10, and 26.26 RCW effective January 1, 1992. The administrator for the courts shall develop mandatory forms for financial affidavits for integration into the worksheets. The forms shall be developed and approved not later than September 1, 1992. The parties shall use the mandatory form for financial affidavits for actions commenced on or after September 1, 1992. The administrative office of the courts has continuing responsibility to develop and revise mandatory forms and format rules as appropriate.
- (2) A party may delete unnecessary portions of the forms according to the rules established by the administrative office of the courts. A party may supplement the mandatory forms with additional material.
- (3) A party's failure to use the mandatory forms or follow the format rules shall not be a reason to dismiss a case, refuse a filing, or strike a pleading. However, the court may require the party to submit a corrected pleading and may impose terms payable to the opposing party or payable to the court, or both.

- (4) The administrative office of the courts shall distribute a master copy of the forms to all county court clerks. The administrative office of the courts and county clerks shall distribute the mandatory forms to the public upon request and may charge for the cost of production and distribution of the forms. Private vendors may distribute the mandatory forms. Distribution may be in printed or electronic form. [2005 c 282 § 34; 1992 c 229 § 5; 1990 1st ex.s. c 2 § 25.]

**Effective dates—Severability—1990 1st ex.s. c 2:** See notes following RCW 26.09.100.

**Chapter 26.19 RCW  
CHILD SUPPORT SCHEDULE**

Sections

- 26.19.011 Definitions.
- 26.19.035 Standards for application of the child support schedule.
- 26.19.050 Worksheets and instructions.

**26.19.011 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Basic child support obligation" means the monthly child support obligation determined from the economic table based on the parties' combined monthly net income and the number of children for whom support is owed.

(2) "Child support schedule" means the standards, economic table, worksheets, and instructions, as defined in this chapter.

(3) "Court" means a superior court judge, court commissioner, and presiding and reviewing officers who administratively determine or enforce child support orders.

(4) "Deviation" means a child support amount that differs from the standard calculation.

(5) "Economic table" means the child support table for the basic support obligation provided in RCW 26.19.020.

(6) "Instructions" means the instructions developed by the administrative office of the courts pursuant to RCW 26.19.050 for use in completing the worksheets.

(7) "Standards" means the standards for determination of child support as provided in this chapter.

(8) "Standard calculation" means the presumptive amount of child support owed as determined from the child support schedule before the court considers any reasons for deviation.

(9) "Support transfer payment" means the amount of money the court orders one parent to pay to another parent or custodian for child support after determination of the standard calculation and deviations. If certain expenses or credits are expected to fluctuate and the order states a formula or percentage to determine the additional amount or credit on an ongoing basis, the term "support transfer payment" does not mean the additional amount or credit.

(10) "Worksheets" means the forms developed by the administrative office of the courts pursuant to RCW 26.19.050 for use in determining the amount of child support. [2005 c 282 § 35; 1991 sp.s. c 28 § 4.]

**Severability—Effective date—Captions not law—1991 sp.s. c 28:** See notes following RCW 26.09.100.

**26.19.035 Standards for application of the child support schedule.** (1) **Application of the child support schedule.** The child support schedule shall be applied:

- (a) In each county of the state;
- (b) In judicial and administrative proceedings under this title or Title 13 or 74 RCW;
- (c) In all proceedings in which child support is determined or modified;
- (d) In setting temporary and permanent support;
- (e) In automatic modification provisions or decrees entered pursuant to RCW 26.09.100; and
- (f) In addition to proceedings in which child support is determined for minors, to adult children who are dependent on their parents and for whom support is ordered pursuant to RCW 26.09.100.

The provisions of this chapter for determining child support and reasons for deviation from the standard calculation shall be applied in the same manner by the court, presiding officers, and reviewing officers.

(2) **Written findings of fact supported by the evidence.** An order for child support shall be supported by written findings of fact upon which the support determination is based and shall include reasons for any deviation from the standard calculation and reasons for denial of a party's request for deviation from the standard calculation. The court shall enter written findings of fact in all cases whether or not the court: (a) Sets the support at the presumptive amount, for combined monthly net incomes below five thousand dollars; (b) sets the support at an advisory amount, for combined monthly net incomes between five thousand and seven thousand dollars; or (c) deviates from the presumptive or advisory amounts.

(3) **Completion of worksheets.** Worksheets in the form developed by the administrative office of the courts shall be completed under penalty of perjury and filed in every proceeding in which child support is determined. The court shall not accept incomplete worksheets or worksheets that vary from the worksheets developed by the administrative office of the courts.

(4) **Court review of the worksheets and order.** The court shall review the worksheets and the order setting support for the adequacy of the reasons set forth for any deviation or denial of any request for deviation and for the adequacy of the amount of support ordered. Each order shall state the amount of child support calculated using the standard calculation and the amount of child support actually ordered. Worksheets shall be attached to the decree or order or if filed separately shall be initialed or signed by the judge and filed with the order. [2005 c 282 § 36; 1992 c 229 § 6; 1991 c 367 § 27.]

**Severability—Effective date—Captions not law—1991 c 367:** See notes following RCW 26.09.015.

**26.19.050 Worksheets and instructions.** (1) The administrative office of the courts shall develop and adopt worksheets and instructions to assist the parties and courts in establishing the appropriate child support level and apportionment of support. The administrative office of the courts shall attempt to the greatest extent possible to make the worksheets and instructions understandable by persons who are not represented by legal counsel.

(2) The administrative office of the courts shall develop and adopt standards for the printing of worksheets and shall establish a process for certifying printed worksheets. The administrator may maintain a register of sources for approved worksheets.

(3) The administrative office of the courts should explore methods to assist pro se parties and judges in the courtroom to calculate support payments through automated software, equipment, or personal assistance. [2005 c 282 § 37; 1990 1st ex.s. c 2 § 5; 1988 c 275 § 6.]

**Effective dates—Severability—1990 1st ex.s. c 2:** See notes following RCW 26.09.100.

**Effective dates—Severability—1988 c 275:** See notes following RCW 26.19.001.

## Chapter 26.23 RCW STATE SUPPORT REGISTRY

### Sections

26.23.120 Information and records—Confidentiality—Disclosure—Adjudicative proceeding—Rules—Penalties. (*Effective July 1, 2006.*)

**26.23.120 Information and records—Confidentiality—Disclosure—Adjudicative proceeding—Rules—Penalties.** (*Effective July 1, 2006.*) (1) Any information or records concerning individuals who owe a support obligation or for whom support enforcement services are being provided which are obtained or maintained by the Washington state support registry, the division of child support, or under chapter 74.20 RCW shall be private and confidential and shall only be subject to public disclosure as provided in subsection (2) of this section.

(2) The secretary of the department of social and health services may adopt rules:

- (a) That specify what information is confidential;
- (b) That specify the individuals or agencies to whom this information and these records may be disclosed;
- (c) Limiting the purposes for which the information may be disclosed;
- (d) Establishing procedures to obtain the information or records; or
- (e) Establishing safeguards necessary to comply with federal law requiring safeguarding of information.

(3) The rules adopted under subsection (2) of this section shall provide for disclosure of the information and records, under appropriate circumstances, which shall include, but not be limited to:

- (a) When authorized or required by federal statute or regulation governing the support enforcement program;
- (b) To the person the subject of the records or information, unless the information is exempt from disclosure under chapter 42.56 RCW;
- (c) To government agencies, whether state, local, or federal, and including federally recognized tribes, law enforcement agencies, prosecuting agencies, and the executive branch, if the disclosure is necessary for child support enforcement purposes or required under Title IV-D of the federal social security act;
- (d) To the parties in a judicial or adjudicative proceeding upon a specific written finding by the presiding officer that

the need for the information outweighs any reason for maintaining the privacy and confidentiality of the information or records;

(e) To private persons, federally recognized tribes, or organizations if the disclosure is necessary to permit private contracting parties to assist in the management and operation of the department;

(f) Disclosure of address and employment information to the parties to an action for purposes relating to a child support order, subject to the limitations in subsections (4) and (5) of this section;

(g) Disclosure of information or records when necessary to the efficient administration of the support enforcement program or to the performance of functions and responsibilities of the support registry and the division of child support as set forth in state and federal statutes; or

(h) Disclosure of the information or records when authorized under RCW 74.04.060.

(4) Prior to disclosing the whereabouts of a physical custodian, custodial parent or a child to the other parent or party, a notice shall be mailed, if appropriate under the circumstances, to the parent or physical custodian whose whereabouts are to be disclosed, at that person's last known address. The notice shall advise the parent or physical custodian that a request for disclosure has been made and will be complied with unless the department:

(a) Receives a copy of a court order within thirty days which enjoins the disclosure of the information or restricts or limits the requesting party's right to contact or visit the parent or party whose address is to be disclosed or the child;

(b) Receives a hearing request within thirty days under subsection (5) of this section; or

(c) Has reason to believe that the release of the information may result in physical or emotional harm to the physical custodian whose whereabouts are to be released, or to the child.

(5) A person receiving notice under subsection (4) of this section may request an adjudicative proceeding under chapter 34.05 RCW, at which the person may show that there is reason to believe that release of the information may result in physical or emotional harm to the person or the child. The administrative law judge shall determine whether the whereabouts of the person or child should be disclosed based on subsection (4)(c) of this section, however no hearing is necessary if the department has in its possession a protective order or an order limiting visitation or contact.

(6) The notice and hearing process in subsections (4) and (5) of this section do not apply to protect the whereabouts of a noncustodial parent, unless that parent has requested notice before whereabouts information is released. A noncustodial parent may request such notice by submitting a written request to the division of child support.

(7) Nothing in this section shall be construed as limiting or restricting the effect of RCW 42.56.070(9). Nothing in this section shall be construed to prevent the disclosure of information and records if all details identifying an individual are deleted or the individual consents to the disclosure.

(8) It shall be unlawful for any person or agency in violation of this section to solicit, publish, disclose, receive, make use of, or to authorize, knowingly permit, participate in or acquiesce in the use of any lists of names for commercial

or political purposes or the use of any information for purposes other than those purposes specified in this section. A violation of this section shall be a gross misdemeanor as provided in chapter 9A.20 RCW. [2005 c 274 § 242; 1998 c 160 § 4; 1997 c 58 § 908; 1994 c 230 § 12. Prior: 1989 c 360 § 17; 1989 c 175 § 78; 1987 c 435 § 12.]

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

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

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

## Chapter 26.26 RCW UNIFORM PARENTAGE ACT

### Sections

26.26.065 Mandatory use of approved forms.

**26.26.065 Mandatory use of approved forms.** (1) Effective January 1, 1992, a party shall not file any pleading with the clerk of the court in an action commenced under this chapter unless on forms approved by the administrative office of the courts.

(2) The parties shall comply with requirements for submission to the court of forms as provided in RCW 26.18.220. [2005 c 282 § 38; 1992 c 229 § 7; 1990 1st ex.s. c 2 § 28.]

**Effective dates—Severability—1990 1st ex.s. c 2:** See notes following RCW 26.09.100.

## Chapter 26.44 RCW

### ABUSE OF CHILDREN

(Formerly: Abuse of children and adult dependent persons)

### Sections

26.44.015 Limitations of chapter. (*Effective January 1, 2007.*)

26.44.020 Definitions. (*Effective January 1, 2007.*)

26.44.030 Reports—Duty and authority to make—Duty of receiving agency—Duty to notify—Case planning and consultation—Penalty for unauthorized exchange of information—Filing dependency petitions—Interviews of children—Records—Risk assessment process.

26.44.100 Information about rights—Legislative purpose—Notification of investigation, report, and findings. (*Effective January 1, 2007.*)

26.44.195 Negligent treatment or maltreatment—Offer of services—Evidence of substance abuse—In-home services—Initiation of dependency proceedings. (*Effective January 1, 2007.*)

26.44.220 Abuse of adolescents—Staff training curriculum.

26.44.230 Abuse of adolescents—Reviews and reports.

**26.44.015 Limitations of chapter.** (*Effective January 1, 2007.*) (1) This chapter shall not be construed to authorize interference with child-raising practices, including reasonable parental discipline, which are not injurious to the child's health, welfare, or safety.

(2) Nothing in this chapter may be used to prohibit the reasonable use of corporal punishment as a means of discipline.

(3) No parent or guardian may be deemed abusive or neglectful solely by reason of the parent's or child's blindness, deafness, developmental disability, or other handicap. [2005 c 512 § 4; 1999 c 176 § 28; 1997 c 386 § 23; 1993 c 412 § 11.]

**Finding—Intent—Effective date—Short title—2005 c 512:** See notes following RCW 26.44.100.

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**Application—Effective date—1997 c 386:** See notes following RCW 74.14D.010.

**26.44.020 Definitions. (Effective January 1, 2007.)**

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

(1) "Court" means the superior court of the state of Washington, juvenile department.

(2) "Law enforcement agency" means the police department, the prosecuting attorney, the state patrol, the director of public safety, or the office of the sheriff.

(3) "Practitioner of the healing arts" or "practitioner" means a person licensed by this state to practice podiatric medicine and surgery, optometry, chiropractic, nursing, dentistry, osteopathic medicine and surgery, or medicine and surgery or to provide other health services. The term "practitioner" includes a duly accredited Christian Science practitioner: PROVIDED, HOWEVER, That a person who is being furnished Christian Science treatment by a duly accredited Christian Science practitioner will not be considered, for that reason alone, a neglected person for the purposes of this chapter.

(4) "Institution" means a private or public hospital or any other facility providing medical diagnosis, treatment or care.

(5) "Department" means the state department of social and health services.

(6) "Child" or "children" means any person under the age of eighteen years of age.

(7) "Professional school personnel" include, but are not limited to, teachers, counselors, administrators, child care facility personnel, and school nurses.

(8) "Social service counselor" means anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support or education of children, or providing social services to adults or families, including mental health, drug and alcohol treatment, and domestic violence programs, whether in an individual capacity, or as an employee or agent of any public or private organization or institution.

(9) "Psychologist" means any person licensed to practice psychology under chapter 18.83 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(10) "Pharmacist" means any registered pharmacist under chapter 18.64 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(11) "Clergy" means any regularly licensed or ordained minister, priest, or rabbi of any church or religious denomination, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(12) "Abuse or neglect" means sexual abuse, sexual exploitation, or injury of a child by any person under circumstances which cause harm to the child's health, welfare, or safety, excluding conduct permitted under RCW 9A.16.100; or the negligent treatment or maltreatment of a child by a per-

son responsible for or providing care to the child. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.

(13) "Child protective services section" means the child protective services section of the department.

(14) "Sexual exploitation" includes: (a) Allowing, permitting, or encouraging a child to engage in prostitution by any person; or (b) allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming, or depicting of a child by any person.

(15) "Negligent treatment or maltreatment" means an act or a failure to act, or the cumulative effects of a pattern of conduct, behavior, or inaction, that evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to a child's health, welfare, or safety. When considering whether a clear and present danger exists, evidence of a parent's substance abuse as a contributing factor to negligent treatment or maltreatment shall be given great weight. The fact that siblings share a bedroom is not, in and of itself, negligent treatment or maltreatment. Poverty, homelessness, or exposure to domestic violence as defined in RCW 26.50.010 that is perpetrated against someone other than the child do [does] not constitute negligent treatment or maltreatment in and of themselves [itself].

(16) "Child protective services" means those services provided by the department designed to protect children from child abuse and neglect and safeguard such children from future abuse and neglect, and conduct investigations of child abuse and neglect reports. Investigations may be conducted regardless of the location of the alleged abuse or neglect. Child protective services includes referral to services to ameliorate conditions that endanger the welfare of children, the coordination of necessary programs and services relevant to the prevention, intervention, and treatment of child abuse and neglect, and services to children to ensure that each child has a permanent home. In determining whether protective services should be provided, the department shall not decline to provide such services solely because of the child's unwillingness or developmental inability to describe the nature and severity of the abuse or neglect.

(17) "Malice" or "maliciously" means an evil intent, wish, or design to vex, annoy, or injure another person. Such malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty.

(18) "Sexually aggressive youth" means a child who is defined in RCW 74.13.075(1)(b) as being a sexually aggressive youth.

(19) "Unfounded" means available information indicates that, more likely than not, child abuse or neglect did not occur. No unfounded allegation of child abuse or neglect may be disclosed to a child-placing agency, private adoption agency, or any other provider licensed under chapter 74.15 RCW. [2005 c 512 § 5; 2000 c 162 § 19; 1999 c 176 § 29; 1998 c 314 § 7. Prior: 1997 c 386 § 45; 1997 c 386 § 24; 1997 c 282 § 4; 1997 c 132 § 2; 1996 c 178 § 10; prior: 1993 c 412 § 12; 1993 c 402 § 1; 1988 c 142 § 1; prior: 1987 c 524 § 9; 1987 c 206 § 2; 1984 c 97 § 2; 1982 c 129 § 6; 1981 c 164 § 1; 1977 ex.s. c 80 § 25; 1975 1st ex.s. c 217 § 2; 1969 ex.s. c 35 § 2; 1965 c 13 § 2.]

**Finding—Intent—Effective date—Short title—2005 c 512:** See notes following RCW 26.44.100.

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**Application—Effective date—1997 c 386:** See notes following RCW 74.14D.010.

**Findings—1997 c 132:** "The legislature finds that housing is frequently influenced by the economic situation faced by the family. This may include siblings sharing a bedroom. The legislature also finds that the family living situation due to economic circumstances in and of itself is not sufficient to justify a finding of child abuse, negligent treatment, or maltreatment." [1997 c 132 § 1.]

**Effective date—1996 c 178:** See note following RCW 18.35.110.

**Severability—1984 c 97:** See RCW 74.34.900.

**Severability—1982 c 129:** See note following RCW 9A.04.080.

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**26.44.030 Reports—Duty and authority to make—Duty of receiving agency—Duty to notify—Case planning and consultation—Penalty for unauthorized exchange of information—Filing dependency petitions—Interviews of children—Records—Risk assessment process.** (1)(a)

When any practitioner, county coroner or medical examiner, law enforcement officer, professional school personnel, registered or licensed nurse, social service counselor, psychologist, pharmacist, licensed or certified child care providers or their employees, employee of the department, juvenile probation officer, placement and liaison specialist, responsible living skills program staff, HOPE center staff, or state family and children's ombudsman or any volunteer in the ombudsman's office has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(b) When any person, in his or her official supervisory capacity with a nonprofit or for-profit organization, has reasonable cause to believe that a child has suffered abuse or neglect caused by a person over whom he or she regularly exercises supervisory authority, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency, provided that the person alleged to have caused the abuse or neglect is employed by, contracted by, or volunteers with the organization and coaches, trains, educates, or counsels a child or children or regularly has unsupervised access to a child or children as part of the employment, contract, or voluntary service. No one shall be required to report under this section when he or she obtains the information solely as a result of a privileged communication as provided in RCW 5.60.060.

Nothing in this subsection (1)(b) shall limit a person's duty to report under (a) of this subsection.

For the purposes of this subsection, the following definitions apply:

(i) "Official supervisory capacity" means a position, status, or role created, recognized, or designated by any nonprofit or for-profit organization, either for financial gain or without financial gain, whose scope includes, but is not limited to, overseeing, directing, or managing another person who is employed by, contracted by, or volunteers with the nonprofit or for-profit organization.

(ii) "Regularly exercises supervisory authority" means to act in his or her official supervisory capacity on an ongoing or continuing basis with regards to a particular person.

(c) The reporting requirement also applies to department of corrections personnel who, in the course of their employment, observe offenders or the children with whom the offenders are in contact. If, as a result of observations or information received in the course of his or her employment, any department of corrections personnel has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report the incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(d) The reporting requirement shall also apply to any adult who has reasonable cause to believe that a child who resides with them, has suffered severe abuse, and is able or capable of making a report. For the purposes of this subsection, "severe abuse" means any of the following: Any single act of abuse that causes physical trauma of sufficient severity that, if left untreated, could cause death; any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.

(e) The report must be made at the first opportunity, but in no case longer than forty-eight hours after there is reasonable cause to believe that the child has suffered abuse or neglect. The report must include the identity of the accused if known.

(2) The reporting requirement of subsection (1) of this section does not apply to the discovery of abuse or neglect that occurred during childhood if it is discovered after the child has become an adult. However, if there is reasonable cause to believe other children are or may be at risk of abuse or neglect by the accused, the reporting requirement of subsection (1) of this section does apply.

(3) Any other person who has reasonable cause to believe that a child has suffered abuse or neglect may report such incident to the proper law enforcement agency or to the department of social and health services as provided in RCW 26.44.040.

(4) The department, upon receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means or who has been subjected to alleged sexual abuse, shall report such incident to the proper law enforcement agency. In emergency cases, where the child's welfare is endangered, the department shall notify the proper law enforcement agency within twenty-four hours after a report is received by the department. In all other cases, the department shall notify the law enforcement agency within seventy-two hours after a report is received by the department. If the department makes an oral report, a written report must also be made to the proper law enforcement agency within five days thereafter.

(5) Any law enforcement agency receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental

means, or who has been subjected to alleged sexual abuse, shall report such incident in writing as provided in RCW 26.44.040 to the proper county prosecutor or city attorney for appropriate action whenever the law enforcement agency's investigation reveals that a crime may have been committed. The law enforcement agency shall also notify the department of all reports received and the law enforcement agency's disposition of them. In emergency cases, where the child's welfare is endangered, the law enforcement agency shall notify the department within twenty-four hours. In all other cases, the law enforcement agency shall notify the department within seventy-two hours after a report is received by the law enforcement agency.

(6) Any county prosecutor or city attorney receiving a report under subsection (5) of this section shall notify the victim, any persons the victim requests, and the local office of the department, of the decision to charge or decline to charge a crime, within five days of making the decision.

(7) The department may conduct ongoing case planning and consultation with those persons or agencies required to report under this section, with consultants designated by the department, and with designated representatives of Washington Indian tribes if the client information exchanged is pertinent to cases currently receiving child protective services. Upon request, the department shall conduct such planning and consultation with those persons required to report under this section if the department determines it is in the best interests of the child. Information considered privileged by statute and not directly related to reports required by this section must not be divulged without a valid written waiver of the privilege.

(8) Any case referred to the department by a physician licensed under chapter 18.57 or 18.71 RCW on the basis of an expert medical opinion that child abuse, neglect, or sexual assault has occurred and that the child's safety will be seriously endangered if returned home, the department shall file a dependency petition unless a second licensed physician of the parents' choice believes that such expert medical opinion is incorrect. If the parents fail to designate a second physician, the department may make the selection. If a physician finds that a child has suffered abuse or neglect but that such abuse or neglect does not constitute imminent danger to the child's health or safety, and the department agrees with the physician's assessment, the child may be left in the parents' home while the department proceeds with reasonable efforts to remedy parenting deficiencies.

(9) Persons or agencies exchanging information under subsection (7) of this section shall not further disseminate or release the information except as authorized by state or federal statute. Violation of this subsection is a misdemeanor.

(10) Upon receiving reports of alleged abuse or neglect, the department or law enforcement agency may interview children. The interviews may be conducted on school premises, at day-care facilities, at the child's home, or at other suitable locations outside of the presence of parents. Parental notification of the interview must occur at the earliest possible point in the investigation that will not jeopardize the safety or protection of the child or the course of the investigation. Prior to commencing the interview the department or law enforcement agency shall determine whether the child wishes a third party to be present for the interview and, if so,

shall make reasonable efforts to accommodate the child's wishes. Unless the child objects, the department or law enforcement agency shall make reasonable efforts to include a third party in any interview so long as the presence of the third party will not jeopardize the course of the investigation.

(11) Upon receiving a report of alleged child abuse and neglect, the department or investigating law enforcement agency shall have access to all relevant records of the child in the possession of mandated reporters and their employees.

(12) The department shall maintain investigation records and conduct timely and periodic reviews of all cases constituting abuse and neglect. The department shall maintain a log of screened-out nonabusive cases.

(13) The department shall use a risk assessment process when investigating alleged child abuse and neglect referrals. The department shall present the risk factors at all hearings in which the placement of a dependent child is an issue. Substance abuse must be a risk factor. The department shall, within funds appropriated for this purpose, offer enhanced community-based services to persons who are determined not to require further state intervention.

(14) Upon receipt of a report of alleged abuse or neglect the law enforcement agency may arrange to interview the person making the report and any collateral sources to determine if any malice is involved in the reporting.

(15) The department shall make reasonable efforts to learn the name, address, and telephone number of each person making a report of abuse or neglect under this section. The department shall provide assurances of appropriate confidentiality of the identification of persons reporting under this section. If the department is unable to learn the information required under this subsection, the department shall only investigate cases in which: (a) The department believes there is a serious threat of substantial harm to the child; (b) the report indicates conduct involving a criminal offense that has, or is about to occur, in which the child is the victim; or (c) the department has, after investigation, a report of abuse or neglect that has been founded with regard to a member of the household within three years of receipt of the referral. [2005 c 417 § 1; 2003 c 207 § 4. Prior: 1999 c 267 § 20; 1999 c 176 § 30; 1998 c 328 § 5; 1997 c 386 § 25; 1996 c 278 § 2; 1995 c 311 § 17; prior: 1993 c 412 § 13; 1993 c 237 § 1; 1991 c 111 § 1; 1989 c 22 § 1; prior: 1988 c 142 § 2; 1988 c 39 § 1; prior: 1987 c 524 § 10; 1987 c 512 § 23; 1987 c 206 § 3; 1986 c 145 § 1; 1985 c 259 § 2; 1984 c 97 § 3; 1982 c 129 § 7; 1981 c 164 § 2; 1977 ex.s. c 80 § 26; 1975 1st ex.s. c 217 § 3; 1971 ex.s. c 167 § 1; 1969 ex.s. c 35 § 3; 1965 c 13 § 3.]

**Severability—2005 c 417:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 417 § 2.]

**Findings—Intent—Severability—1999 c 267:** See notes following RCW 43.20A.790.

**Short title—Purpose—Entitlement not granted—Federal waivers—1999 c 267 §§ 10-26:** See RCW 74.15.900 and 74.15.901.

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**Application—Effective date—1997 c 386:** See notes following RCW 74.14D.010.

**Finding—Intent—1996 c 278:** "The legislature finds that including certain department of corrections personnel among the professionals who are mandated to report suspected abuse or neglect of children, dependent adults,



or people with developmental disabilities is an important step toward improving the protection of these vulnerable populations. The legislature intends, however, to limit the circumstances under which department of corrections personnel are mandated reporters of suspected abuse or neglect to only those circumstances when the information is obtained during the course of their employment. This act is not to be construed to alter the circumstances under which other professionals are mandated to report suspected abuse or neglect, nor is it the legislature's intent to alter current practices and procedures utilized by other professional organizations who are mandated reporters under RCW 26.44.030(1)(a)." [1996 c 278 § 1.]

**Severability—1987 c 512:** See RCW 18.19.901.

**Legislative findings—1985 c 259:** "The Washington state legislature finds and declares:

The children of the state of Washington are the state's greatest resource and the greatest source of wealth to the state of Washington. Children of all ages must be protected from child abuse. Governmental authorities must give the prevention, treatment, and punishment of child abuse the highest priority, and all instances of child abuse must be reported to the proper authorities who should diligently and expeditiously take appropriate action, and child abusers must be held accountable to the people of the state for their actions.

The legislature recognizes the current heavy caseload of governmental authorities responsible for the prevention, treatment, and punishment of child abuse. The information obtained by child abuse reporting requirements, in addition to its use as a law enforcement tool, will be used to determine the need for additional funding to ensure that resources for appropriate governmental response to child abuse are available." [1985 c 259 § 1.]

**Severability—1984 c 97:** See RCW 74.34.900.

**Severability—1982 c 129:** See note following RCW 9A.04.080.

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**26.44.100 Information about rights—Legislative purpose—Notification of investigation, report, and findings. (Effective January 1, 2007.)** (1) The legislature finds parents and children often are not aware of their due process rights when agencies are investigating allegations of child abuse and neglect. The legislature reaffirms that all citizens, including parents, shall be afforded due process, that protection of children remains the priority of the legislature, and that this protection includes protecting the family unit from unnecessary disruption. To facilitate this goal, the legislature wishes to ensure that parents and children be advised in writing and orally, if feasible, of their basic rights and other specific information as set forth in this chapter, provided that nothing contained in this chapter shall cause any delay in protective custody action.

(2) The department shall notify the parent, guardian, or legal custodian of a child of any allegations of child abuse or neglect made against such person at the initial point of contact with such person, in a manner consistent with the laws maintaining the confidentiality of the persons making the complaints or allegations. Investigations of child abuse and neglect should be conducted in a manner that will not jeopardize the safety or protection of the child or the integrity of the investigation process.

Whenever the department completes an investigation of a child abuse or neglect report under chapter 26.44 RCW, the department shall notify the subject of the report of the department's investigative findings. The notice shall also advise the subject of the report that:

(a) A written response to the report may be provided to the department and that such response will be filed in the record following receipt by the department;

(b) Information in the department's record may be considered in subsequent investigations or proceedings related to child protection or child custody;

(c) Founded reports of child abuse and neglect may be considered in determining whether the person is disqualified from being licensed to provide child care, employed by a licensed child care agency, or authorized by the department to care for children; and

(d) A subject named in a founded report of child abuse or neglect has the right to seek review of the finding as provided in this chapter.

(3) The notification required by this section shall be made by certified mail, return receipt requested, to the person's last known address.

(4) The duty of notification created by this section is subject to the ability of the department to ascertain the location of the person to be notified. The department shall exercise reasonable, good-faith efforts to ascertain the location of persons entitled to notification under this section.

(5) The department shall provide training to all department personnel who conduct investigations under this section that shall include, but is not limited to, training regarding the legal duties of the department from the initial time of contact during investigation through treatment in order to protect children and families. [2005 c 512 § 1; 1998 c 314 § 8; 1997 c 282 § 2; 1993 c 412 § 17; 1985 c 183 § 1.]

**Finding—Intent—2005 c 512:** "The legislature finds that whenever possible, children should remain in the home of their parents. It is only when the safety of the child is in jeopardy that the child should be removed from the home.

It is the intent of the legislature that the department of social and health services be permitted to intervene in cases of chronic neglect where the health, welfare, or safety of the child is at risk. One incident of neglect may not rise to the level requiring state intervention; however, a pattern of neglect has been shown to cause damage to the health and well-being of the child subject to the neglect.

It is the intent of the legislature that, when chronic neglect has been found to exist in a family, the legal system reinforce the need for the parent's early engagement in services that will decrease the likelihood of future neglect. However, if the parents fail to comply with the offered necessary and available services, the state has the authority to intervene to protect the children who are at risk. If a parent fails to engage in available substance abuse or mental health services necessary to maintain the safety of a child or a parent fails to correct substance abuse deficiencies that jeopardize the safety of a child, the state has the authority to intervene to protect a child." [2005 c 512 § 2.]

**Effective date—2005 c 512:** "This act takes effect January 1, 2007." [2005 c 512 § 10.]

**Short title—2005 c 512:** "This act may be known and cited as the Justice and Raiden Act." [2005 c 512 § 11.]

**26.44.195 Negligent treatment or maltreatment—Offer of services—Evidence of substance abuse—In-home services—Initiation of dependency proceedings. (Effective January 1, 2007.)** (1) If the department, upon investigation of a report that a child has been abused or neglected as defined in this chapter, determines that the child has been subject to negligent treatment or maltreatment, the department may offer services to the child's parents, guardians, or legal custodians to: (a) Ameliorate the conditions that endangered the welfare of the child; or (b) address or treat the effects of mistreatment or neglect upon the child.

(2) When evaluating whether the child has been subject to negligent treatment or maltreatment, evidence of a parent's substance abuse as a contributing factor to a parent's failure to

provide for a child's basic health, welfare, or safety shall be given great weight.

(3) If the child's parents, guardians, or legal custodians are available and willing to participate on a voluntary basis in in-home services, and the department determines that in-home services on a voluntary basis are appropriate for the family, the department may offer such services.

(4) In cases where the department has offered appropriate and reasonable services under subsection (1) of this section, and the parents, guardians, or legal custodians refuse to accept or fail to obtain available and appropriate treatment or services, or are unable or unwilling to participate in or successfully and substantially complete the treatment or services identified by the department, the department may initiate a dependency proceeding under chapter 13.34 RCW on the basis that the negligent treatment or maltreatment by the parent, guardian, or legal custodian constitutes neglect. When evaluating whether to initiate a dependency proceeding on this basis, the evidence of a parent's substance abuse as a contributing factor to the negligent treatment or maltreatment shall be given great weight.

(5) Nothing in this section precludes the department from filing a dependency petition as provided in chapter 13.34 RCW if it determines that such action is necessary to protect the child from abuse or neglect.

(6) Nothing in this section shall be construed to create in any person an entitlement to services or financial assistance in paying for services or to create judicial authority to order the provision of services to any person or family if the services are unavailable or unsuitable or if the child or family is not eligible for such services. [2005 c 512 § 6.]

**Finding—Intent—Effective date—Short title—2005 c 512:** See notes following RCW 26.44.100.

**26.44.220 Abuse of adolescents—Staff training curriculum.** (1) Within existing resources, the department shall develop a curriculum designed to train staff of the department's children's administration who assess or provide services to adolescents on how to screen and respond to referrals to child protective services when those referrals may involve victims of abuse or neglect between the ages of eleven and eighteen. At a minimum, the curriculum developed pursuant to this section shall include:

(a) Review of relevant laws and regulations, including the requirement that the department investigate complaints if a parent's or caretaker's actions result in serious physical or emotional harm or present an imminent risk of serious harm to any person under eighteen;

(b) Review of policies of the department's children's administration that require assessment and screening of abuse and neglect referrals on the basis of risk and not age;

(c) Explanation of safety assessment and risk assessment models;

(d) Case studies of situations in which the department has received reports of alleged abuse or neglect of older children and adolescents;

(e) Discussion of best practices in screening and responding to referrals involving older children and adolescents; and

(f) Discussion of how abuse and neglect referrals related to adolescents are investigated and when law enforcement must be notified.

(2) As it develops its curriculum pursuant to this section, the department shall request that the office of the family and children's ombudsman review and comment on its proposed training materials. The department shall consider the comments and recommendations of the office of the family and children's ombudsman as it develops the curriculum required by this section.

(3) The department shall complete the curriculum materials required by this section no later than December 31, 2005.

(4) Within existing resources, the department shall incorporate training on the curriculum developed pursuant to this section into existing training for child protective services workers who screen intake calls, children's administration staff responsible for assessing or providing services to older children and adolescents, and all new employees of the children's administration responsible for assessing or providing services to older children and adolescents. [2005 c 345 § 1.]

**26.44.230 Abuse of adolescents—Reviews and reports.** (1) The department shall review a sampling of the screening decisions by child protective services related to children between the ages of eleven and eighteen on a quarterly basis through June 30, 2007. The sampling shall consist of not less than the proportionate share of the two and one-half percent of all screening decisions regularly reviewed by the department that are related to children between the ages of eleven and eighteen. The sampling shall be representative of the diversity of screening decisions related to children between the ages of eleven and eighteen.

(2) The department shall use the results of the quarterly reviews required by this section to improve practice and to improve the curriculum required by RCW 26.44.220. The department shall also report to the governor and the appropriate committees of the legislature on the quarterly reviews required by this section on August 1, 2006, and August 1, 2007. [2005 c 345 § 2.]

## Chapter 26.50 RCW

### DOMESTIC VIOLENCE PREVENTION

#### Sections

- |           |   |
|-----------|---|
| 26.50.030 | Petition for an order for protection—Availability of forms and informational brochures—Bond not required.   |
| 26.50.035 | Development of instructions, informational brochures, forms, and handbook by the administrative office of the courts—Community resource list—Distribution of master copy. |

**26.50.030 Petition for an order for protection—Availability of forms and informational brochures—Bond not required.** There shall exist an action known as a petition for an order for protection in cases of domestic violence.

(1) A petition for relief shall allege the existence of domestic violence, and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought. Petitioner and respondent shall disclose the existence of any other litigation concerning the

custody or residential placement of a child of the parties as set forth in RCW 26.27.281 and the existence of any other restraining, protection, or no-contact orders between the parties.

(2) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties except in cases where the court realigns petitioner and respondent in accordance with RCW 26.50.060(4).

(3) Within ninety days of receipt of the master copy from the administrative office of the courts, all court clerk's offices shall make available the standardized forms, instructions, and informational brochures required by RCW 26.50.035 and shall fill in and keep current specific program names and telephone numbers for community resources. Any assistance or information provided by clerks under this section does not constitute the practice of law and clerks are not responsible for incorrect information contained in a petition.

(4) No filing fee may be charged for proceedings under this section. Forms and instructional brochures shall be provided free of charge.

(5) A person is not required to post a bond to obtain relief in any proceeding under this section. [2005 c 282 § 39; 1996 c 248 § 12; 1995 c 246 § 3; 1992 c 111 § 2; 1985 c 303 § 2; 1984 c 263 § 4.]

**Severability—1995 c 246:** See note following RCW 26.50.010.

**Findings—1992 c 111:** "The legislature finds that:

Domestic violence is a problem of immense proportions affecting individuals as well as communities. Domestic violence has long been recognized as being at the core of other major social problems: Child abuse, other crimes of violence against person or property, juvenile delinquency, and alcohol and drug abuse. Domestic violence costs millions of dollars each year in the state of Washington for health care, absence from work, services to children, and more. The crisis is growing.

While the existing protection order process can be a valuable tool to increase safety for victims and to hold batterers accountable, specific problems in its use have become evident. Victims have difficulty completing the paperwork required particularly if they have limited English proficiency; model forms have been modified to be inconsistent with statutory language; different forms create confusion for law enforcement agencies about the contents and enforceability of orders. Refinements are needed so that victims have the easy, quick, and effective access to the court system envisioned at the time the protection order process was first created.

When courts issue mutual protection orders without the filing of separate written petitions, notice to each respondent, and hearing on each petition, the original petitioner is deprived of due process. Mutual protection orders label both parties as violent and treat both as being equally at fault. Batterers conclude that the violence is excusable or provoked and victims who are not violent are confused and stigmatized. Enforcement may be ineffective and mutual orders may be used in other proceedings as evidence that the victim is equally at fault.

Valuable information about the reported incidents of domestic violence in the state of Washington is unobtainable without gathering data from all law enforcement agencies; without this information, it is difficult for policymakers, funders, and service providers to plan for the resources and services needed to address the issue.

Domestic violence must be addressed more widely and more effectively in our state: Greater knowledge by professionals who deal frequently with domestic violence is essential to enforce existing laws, to intervene in domestic violence situations that do not come to the attention of the law enforcement or judicial systems, and to reduce and prevent domestic violence by intervening before the violence becomes severe.

Adolescent dating violence is occurring at increasingly high rates: Preventing and confronting adolescent violence is important in preventing potential violence in future adult relationships." [1992 c 111 § 1.]

**Effective date—1985 c 303 §§ 1, 2:** See note following RCW 26.50.020.

*Child abuse, temporary restraining order:* RCW 26.44.063.

*Orders prohibiting contact:* RCW 10.99.040.

*Temporary restraining order:* RCW 26.09.060.

**26.50.035 Development of instructions, informational brochures, forms, and handbook by the administrative office of the courts—Community resource list—Distribution of master copy.** (1) The administrative office of the courts shall develop and prepare instructions and informational brochures required under RCW 26.50.030(4), standard petition and order for protection forms, and a court staff handbook on domestic violence and the protection order process. The standard petition and order for protection forms must be used after September 1, 1994, for all petitions filed and orders issued under this chapter. The instructions, brochures, forms, and handbook shall be prepared in consultation with interested persons, including a representative of the state domestic violence coalition, judges, and law enforcement personnel.

(a) The instructions shall be designed to assist petitioners in completing the petition, and shall include a sample of standard petition and order for protection forms.

(b) The informational brochure shall describe the use of and the process for obtaining, modifying, and terminating a domestic violence protection order as provided under this chapter, an antiharassment no-contact order as provided under chapter 9A.46 RCW, a domestic violence no-contact order as provided under chapter 10.99 RCW, a restraining order as provided under chapters 26.09, 26.10, 26.26, and 26.44 RCW, an antiharassment protection order as provided by chapter 10.14 RCW, and a foreign protection order as defined in chapter 26.52 RCW.

(c) The order for protection form shall include, in a conspicuous location, notice of criminal penalties resulting from violation of the order, and the following statement: "You can be arrested even if the person or persons who obtained the order invite or allow you to violate the order's prohibitions. The respondent has the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order upon written application."

(d) The court staff handbook shall allow for the addition of a community resource list by the court clerk.

(2) All court clerks shall obtain a community resource list from a domestic violence program, defined in RCW 70.123.020, serving the county in which the court is located. The community resource list shall include the names and telephone numbers of domestic violence programs serving the community in which the court is located, including law enforcement agencies, domestic violence agencies, sexual assault agencies, legal assistance programs, interpreters, multicultural programs, and batterers' treatment programs. The court shall make the community resource list available as part of or in addition to the informational brochures described in subsection (1) of this section.

(3) The administrative office of the courts shall distribute a master copy of the petition and order forms, instructions, and informational brochures to all court clerks and shall distribute a master copy of the petition and order forms to all superior, district, and municipal courts.

(4) For purposes of this section, "court clerks" means court administrators in courts of limited jurisdiction and elected court clerks.

(5) The administrative office of the courts shall determine the significant non-English-speaking or limited English-speaking populations in the state. The administrator shall then arrange for translation of the instructions and informational brochures required by this section, which shall contain a sample of the standard petition and order for protection forms, into the languages spoken by those significant non-English-speaking populations and shall distribute a master copy of the translated instructions and informational brochures to all court clerks by January 1, 1997.

(6) The administrative office of the courts shall update the instructions, brochures, standard petition and order for protection forms, and court staff handbook when changes in the law make an update necessary. [2005 c 282 § 40; 2000 c 119 § 14; 1995 c 246 § 4; 1993 c 350 § 2; 1985 c 303 § 3; 1984 c 263 § 31.]

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

**Severability—1995 c 246:** See note following RCW 26.50.010.

**Findings—1993 c 350:** "The legislature finds that domestic violence is a problem of immense proportions affecting individuals as well as communities. Domestic violence has long been recognized as being at the core of other major social problems including child abuse, crimes of violence against person or property, juvenile delinquency, and alcohol and drug abuse. Domestic violence costs include the loss of lives as well as millions of dollars each year in the state of Washington for health care, absence from work, and services to children. The crisis is growing.

While the existing protection order process can be a valuable tool to increase safety for victims and to hold batterers accountable, specific problems in its use have become evident. Victims have difficulty completing the paperwork required; model forms have been modified to be inconsistent with statutory language; different forms create confusion for law enforcement agencies about the contents and enforceability of orders. Refinements are needed so that victims have the easy, quick, and effective access to the court system envisioned at the time the protection order process was first created.

Valuable information about the reported incidents of domestic violence in the state of Washington is unobtainable without gathering data from all law enforcement agencies. Without this information, it is difficult for policymakers, funders, and service providers to plan for the resources and services needed to address the issue." [1993 c 350 § 1.]

**Severability—1993 c 350:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 350 § 9.]

## Title 27

### LIBRARIES, MUSEUMS, AND HISTORICAL ACTIVITIES

#### Chapters

- 27.24 County law libraries.
- 27.34 State historical societies—Historic preservation.
- 27.53 Archaeological sites and resources.

#### Chapter 27.24 RCW

#### COUNTY LAW LIBRARIES

##### Sections

- 27.24.020 Board of trustees—Composition—Terms.
- 27.24.062 Establishment of regional law libraries.
- 27.24.070 Portion of filing fees for county or regional law library.

#### 27.24.020 Board of trustees—Composition—Terms.

(1) Unless a regional law library is created pursuant to RCW 27.24.062, every county with a population of three hundred

thousand or more must have a board of law library trustees consisting of five members to be constituted as follows: The chairman of the county legislative authority is an ex officio trustee, the judges of the superior court of the county shall choose two of their number to be trustees, and the members of the county bar association shall choose two members of the bar of the county to be trustees.

(2) Unless a regional law library is created pursuant to RCW 27.24.062, every county with a population of eight thousand or more but less than three hundred thousand must have a board of law library trustees consisting of five members to be constituted as follows: The chairman of the county legislative authority is an ex officio trustee, the judges of the superior court of the county shall choose one of their number to be a trustee, and the members of the county bar association shall choose three members of the county to be trustees. If there is no county bar association, then the lawyers of the county shall choose three of their number to be trustees.

(3) If a county has a population of less than eight thousand, then the provisions contained in RCW 27.24.068 shall apply to the establishment and operation of the county law library.

(4) If a regional law library is created pursuant to RCW 27.24.062, then it shall be governed by one board of trustees. The board shall consist of the following representatives from each county: The judges of the superior court of the county shall choose one of their number to be a trustee, the county legislative authority shall choose one of their number to be a trustee, and the members of the county bar association shall choose one member of the bar of the county to be a trustee. If there is no county bar association, then the lawyers of the county shall choose one of their number to be a trustee.

(5) The term of office of a member of the board who is a judge is for as long as he or she continues to be a judge, and the term of a member who is from the bar is four years. Vacancies shall be filled as they occur and in the manner directed in this section. The office of trustee shall be without salary or other compensation. The board shall elect one of their number president and the librarian shall act as secretary, except that in counties with a population of eight thousand or more but less than three hundred thousand, the board shall elect one of their number to act as secretary if no librarian is appointed. Meetings shall be held at least once per year, and if more often, then at such times as may be prescribed by rule. [2005 c 63 § 2; 1992 c 62 § 2; 1919 c 84 § 2; RRS § 8248.]

#### 27.24.062 Establishment of regional law libraries.

Two or more counties each with a population of from eight thousand to less than one hundred twenty-five thousand at the time of creation of the regional law library may, by agreement of the respective law library boards of trustees as described in RCW 27.24.020(2), create a regional law library and establish and maintain one principal law library at such location as the regional board of trustees may determine will best suit the needs of the users: PROVIDED, HOWEVER, That there shall be at all times a law library in such size as the board of trustees may determine necessary to be located at the courthouse where each superior court is located. [2005 c 63 § 1; 1992 c 62 § 4; 1991 c 363 § 18; 1971 ex.s. c 141 § 1; 1943 c 195 § 1; 1933 c 167 § 1; 1925 ex.s. c 94 § 1; Rem. Supp. 1943 § 8254-1.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**27.24.070 Portion of filing fees for county or regional law library.** In each county pursuant to this chapter, the county treasurer shall deposit in the county or regional law library fund a sum equal to seventeen dollars for every new probate or civil filing fee, including appeals and for every fee for filing a counterclaim, cross-claim, or third-party claim in any civil action, collected by the clerk of the superior court and seven dollars for every fee collected for the commencement of a civil action and for the filing of a counterclaim, cross-claim, or third-party claim in any civil action in district court for the support of the law library in that county or the regional law library to which the county belongs: PROVIDED, That upon a showing of need the seventeen dollar contribution may be increased up to twenty dollars or in counties with multiple library sites up to thirty dollars upon the request of the law library board of trustees and with the approval of the county legislative body or bodies. [2005 c 457 § 16; 1992 c 54 § 6; 1985 c 389 § 2; 1984 c 258 § 310; 1979 c 126 § 1; 1971 ex.s. c 141 § 3; 1969 c 25 § 2; 1961 c 304 § 9; 1957 c 31 § 1; 1953 c 249 § 1. Prior: (i) 1937 c 32 § 1, part; 1919 c 84 § 8, part; RRS § 8254, part. (ii) 1933 c 167 § 2, part; 1925 ex.s. c 94 § 3, part; RRS § 8254-3, part. (iii) 1943 c 195 § 2; Rem. Supp. 1943 § 8254-9.]

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

**Effective date—1992 c 54:** See note following RCW 36.18.020.

**Effective date—1985 c 389:** "Sections 2 through 9 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985." [1985 c 389 § 10.]

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

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

*County clerk's fees: RCW 36.18.020.*

*District courts, filing fees in civil cases: RCW 3.62.060.*

## Chapter 27.34 RCW

### STATE HISTORICAL SOCIETIES— HISTORIC PRESERVATION

#### Sections

27.34.020	Definitions.
27.34.070	State historical societies—Powers and duties.
27.34.210	Repealed.
27.34.230	Director—Duties.
27.34.310	Repealed.
27.34.320	Repealed.
27.34.330	Heritage capital projects—Proposals for funding—Prioritized list. ( <i>Expires June 30, 2007.</i> )
27.34.330	Heritage capital projects—Proposals for funding—Prioritized list. ( <i>Effective June 30, 2007.</i> )
27.34.342	Lewis and Clark bicentennial advisory committee. ( <i>Expires June 30, 2007.</i> )
27.34.344	Lewis and Clark bicentennial advisory committee—Duties—Role of Washington state historical society. ( <i>Expires June 30, 2007.</i> )
27.34.360	Women's history consortium—Created—Washington state historical society as managing agency.
27.34.365	Women's history consortium—Board of advisors.
27.34.370	Women's history consortium—Responsibilities of board of advisors.
27.34.375	Women's history consortium—Responsibilities.
27.34.380	Women's history consortium—Report to the legislature.

**27.34.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Advisory council" means the advisory council on historic preservation.

(2) "Department" means the department of archaeology and historic preservation.

(3) "Director" means the director of the department of archaeology and historic preservation.

(4) "Federal act" means the national historic preservation act of 1966 (Public Law 89-655; 80 Stat. 915).

(5) "Heritage council" means the Washington state heritage council.

(6) "Historic preservation" includes the protection, rehabilitation, restoration, identification, scientific excavation, and reconstruction of districts, sites, buildings, structures, and objects significant in American and Washington state history, architecture, archaeology, or culture.

(7) "Preservation officer" means the state historic preservation officer as provided for in RCW 43.334.020.

(8) "Project" means programs leading to the preservation for public benefit of historical properties, whether by state and local governments or other public bodies, or private organizations or individuals, including the acquisition of title or interests in, and the development of, any district, site, building, structure, or object that is significant in American and Washington state history, architecture, archaeology, or culture, and property used in connection therewith, or for its development.

(9) "State historical agencies" means the state historical societies and the department.

(10) "State historical societies" means the Washington state historical society and the eastern Washington state historical society.

(11) "Cultural resource management plan" means a comprehensive plan which identifies and organizes information on the state of Washington's historic, archaeological, and architectural resources into a set of management criteria, and which is to be used for producing reliable decisions, recommendations, and advice relative to the identification, evaluation, and protection of these resources. [2005 c 333 § 13; 1995 c 399 § 13; 1993 c 101 § 10; 1986 c 266 § 9; 1983 c 91 § 2.]

**Findings—1993 c 101:** See note following RCW 27.34.010.

**Severability—1986 c 266:** See note following RCW 38.52.005.

**Transfer of powers and duties of office of archaeology and historic preservation—Construction of statutory references:** See note following RCW 38.52.005.

**27.34.070 State historical societies—Powers and duties.** (1) Each state historical society is designated a trustee for the state whose powers and duties include but are not limited to the following:

(a) To collect, catalog, preserve, and interpret objects, manuscripts, sites, photographs, and other materials illustrative of the cultural, artistic, and natural history of this state;

(b) To operate state museums and assist and encourage cultural and historical studies and museum interpretive efforts throughout the state, including those sponsored by local historical organizations, and city, county, and state agencies;

(c) To engage in cultural, artistic, and educational activities, including classes, exhibits, seminars, workshops, and conferences if these activities are related to the basic purpose of the society;

(d) To plan for and conduct celebrations of significant events in the history of the state of Washington and to give assistance to and coordinate with state agencies, local governments, and local historical organizations in planning and conducting celebrations;

(e) To create one or more classes of membership in the society;

(f) To engage in the sale of various articles which are related to the basic purpose of the society;

(g) To engage in appropriate fund-raising activities for the purpose of increasing the self-support of the society;

(h) To accept gifts, grants, conveyances, bequests, and devises, of real or personal property, or both, in trust or otherwise, and sell, lease, exchange, invest, or expend the same or the proceeds, rents, profits, and income therefrom except as limited by the donor's terms. The governing boards of the state historical societies shall adopt rules to govern and protect the receipt and expenditure of the proceeds, rents, profits, and income of all such gifts, grants, conveyances, bequests, and devises;

(i) To accept on loan or lend objects of historical interest, and sell, exchange, divest itself of, or refuse to accept, items which do not enhance the collection; and

(j) To charge general or special admission fees to its museums or exhibits and to waive or decrease such fees as it finds appropriate.

(2) All objects, sites, manuscripts, photographs, and all property, including real property, now held or hereafter acquired by the state historical societies shall be held by the societies in trust for the use and benefit of the people of Washington state. [2005 c 333 § 14; 1983 c 91 § 7.]

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

**27.34.230 Director—Duties.** The director or the director's designee shall:

(1) Receive, administer, and disburse such gifts, grants, and endowments from private sources as may be made in trust or otherwise for the purposes of RCW 27.34.200 through 27.34.220 or the federal act; and

(2) Develop and implement a cultural resource management plan. [2005 c 333 § 15; 1986 c 266 § 12; 1983 c 91 § 13.]

**Severability—1986 c 266:** See note following RCW 38.52.005.

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

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

**27.34.330 Heritage capital projects—Proposals for funding—Prioritized list. (Expires June 30, 2007.)** The Washington state historical society shall establish a competitive process to solicit proposals for and prioritize heritage

[2005 RCW Supp—page 194]

capital projects for potential funding in the state capital budget. The society shall adopt rules governing project eligibility and evaluation criteria. Application for funding of specific projects may be made to the society by local governments, public development authorities, nonprofit corporations, tribal governments, and other entities, as determined by the society. The society, with the advice of leaders in the heritage field, including but not limited to representatives from the office of the secretary of state, the eastern Washington state historical society, and the department, shall establish and submit a prioritized list of heritage capital projects to the governor and the legislature in the society's biennial capital budget request. The list shall include a description of each project, the amount of recommended state funding, and documentation of nonstate funds to be used for the project. The total amount of recommended state funding for projects on a biennial project list shall not exceed four million dollars. The department may provide an additional prioritized alternate project list which shall not exceed two million dollars. The prioritized list shall be developed through open and public meetings and the amount of state funding shall not exceed thirty-three percent of the total cost of the project. The nonstate portion of the total project cost may include cash, the value of real property when acquired solely for the purpose of the project, and in-kind contributions. The department shall not sign contracts or otherwise financially obligate funds under this section until the legislature has approved a specific list of projects. In contracts for grants authorized under this section, the society shall include provisions requiring that capital improvements be held by the grantee for a specified period of time appropriate to the amount of the grant and that facilities be used for the express purpose of the grant. If the grantee is found to be out of compliance with provisions of the contract, the grantee shall repay to the state general fund the principal amount of the grant plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the date of authorization of the grant. [2005 c 333 § 16; 2005 c 160 § 3; 1999 c 295 § 2; 1995 c 182 § 2.]

**Reviser's note:** This section was amended by 2005 c 160 § 3 and by 2005 c 333 § 16, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Expiration date—2005 c 333 §§ 16-18:** "Sections 16 through 18 of this act expire June 30, 2007." [2005 c 333 § 26.]

**Findings—1995 c 182:** "The legislature finds that the state of Washington has a rich heritage in historical sites and artifacts that have the potential to provide life-long learning opportunities for citizens of the state. Further, the legislature finds that many of these historical treasures are not readily accessible to citizens, and that there is a need to create an ongoing program to support the capital needs of heritage organizations and facilities." [1995 c 182 § 1.]

**27.34.330 Heritage capital projects—Proposals for funding—Prioritized list. (Effective June 30, 2007.)** The Washington state historical society shall establish a competitive process to solicit proposals for and prioritize heritage capital projects for potential funding in the state capital budget. The society shall adopt rules governing project eligibility and evaluation criteria. Application for funding of specific projects may be made to the society by local governments, public development authorities, nonprofit

corporations, tribal governments, and other entities, as determined by the society. The society, with the advice of leaders in the heritage field, including but not limited to representatives from the office of the secretary of state, the eastern Washington state historical society, and the state \*office of archaeology and historic preservation, shall establish and submit a prioritized list of heritage capital projects to the governor and the legislature in the society's biennial capital budget request. The list shall include a description of each project, the amount of recommended state funding, and documentation of nonstate funds to be used for the project. The total amount of recommended state funding for projects on a biennial project list shall not exceed four million dollars. The department may provide an additional prioritized alternate project list which shall not exceed two million dollars. The prioritized list shall be developed through open and public meetings and the amount of state funding shall not exceed thirty-three percent of the total cost of the project. The non-state portion of the total project cost may include cash, the value of real property when acquired solely for the purpose of the project, and in-kind contributions. The department shall not sign contracts or otherwise financially obligate funds under this section until the legislature has approved a specific list of projects. In contracts for grants authorized under this section, the society shall include provisions requiring that capital improvements be held by the grantee for a specified period of time appropriate to the amount of the grant and that facilities be used for the express purpose of the grant. If the grantee is found to be out of compliance with provisions of the contract, the grantee shall repay to the state general fund the principal amount of the grant plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the date of authorization of the grant. [2005 c 160 § 3; 1999 c 295 § 2; 1995 c 182 § 2.]

\***Reviser's note:** Powers, duties, and functions of the office of archaeology and historic preservation were transferred to the department of archaeology and historic preservation pursuant to 2005 c 333 § 12.

**Findings—1995 c 182:** "The legislature finds that the state of Washington has a rich heritage in historical sites and artifacts that have the potential to provide life-long learning opportunities for citizens of the state. Further, the legislature finds that many of these historical treasures are not readily accessible to citizens, and that there is a need to create an ongoing program to support the capital needs of heritage organizations and facilities." [1995 c 182 § 1.]

**27.34.342 Lewis and Clark bicentennial advisory committee. (Expires June 30, 2007.)** The Lewis and Clark bicentennial advisory committee is created under the auspices of the Washington state historical society. The committee shall consist of sixteen members, as follows:

- (1) Six citizen members, at least three of whom must be enrolled members of a Washington Indian tribe, who shall be appointed by the governor;
- (2) The president of the Washington state historical society;
- (3) The director of the Washington state parks and recreation commission;
- (4) The secretary of the Washington state department of transportation;
- (5) The director of the Washington state department of community, trade, and economic development;

(6) Four members of the Washington state legislature, one from each caucus in the senate and the house of representatives as designated by each caucus;

(7) The chair of the Lewis and Clark trail advisory committee; and

(8) The director of the department of archaeology and historic preservation. [2005 c 333 § 17; 1999 c 35 § 1.]

**Expiration date—2005 c 333 §§ 16-18:** See note following RCW 27.34.330.

**Expiration date—1999 c 35:** "Sections 1 through 3 of this act expire June 30, 2007." [1999 c 35 § 4.]

**27.34.344 Lewis and Clark bicentennial advisory committee—Duties—Role of Washington state historical society. (Expires June 30, 2007.)** (1) The Lewis and Clark bicentennial advisory committee shall coordinate and provide guidance to Washington's observance of the bicentennial of the Lewis and Clark expedition. The committee may:

(a) Cooperate with national, regional, statewide, and local events promoting the bicentennial;

(b) Assist, plan, or conduct bicentennial events;

(c) Engage in or encourage fund-raising activities including revenue-generating enterprises, as well as the solicitation of charitable gifts, grants, or donations;

(d) Promote public education concerning the importance of the Lewis and Clark expedition in American history, including the role of native people in making the expedition a success;

(e) Coordinate interagency participation in the observance; and

(f) Perform other related duties.

(2) The committee is attached to the Washington state historical society for administrative purposes. Accordingly, the society shall:

(a) Direct and supervise the budgeting, recordkeeping, reporting, and related administrative and clerical functions of the committee;

(b) Include the committee's budgetary requests in the society's departmental budget;

(c) Collect all nonappropriated revenues for the committee and deposit them in the proper fund or account;

(d) Provide staff support for the committee;

(e) Print and disseminate for the committee any required notices, rules, or orders adopted by the committee; and

(f) Allocate or otherwise provide office space to the committee as may be necessary. [2005 c 333 § 18; 1999 c 35 § 2.]

**Expiration date—2005 c 333 §§ 16-18:** See note following RCW 27.34.330.

**Expiration date—1999 c 35:** See note following RCW 27.34.342.

**27.34.360 Women's history consortium—Created—Washington state historical society as managing agency.**

(1) A women's history consortium is created with the Washington state historical society as the managing agency. To ensure geographic, demographic, and subject matter diversity, the consortium shall be managed by a board of advisors representing a range of perspectives, including private citizens, business, labor, historical societies, colleges and universities, educators, tribes, and public officials. Appointment

of the board of advisors must be completed by September 30, 2005.

(2) The consortium is attached to the Washington state historical society as the managing agency. Accordingly, the agency shall:

(a) Direct and supervise the budgeting, recordkeeping, recording, and related administrative and clerical functions of the consortium;

(b) Include the consortium's budgetary requests in the society's departmental budget;

(c) Collect all nonappropriated revenues for the consortium and deposit them in the proper fund or account;

(d) Provide staff support for the consortium;

(e) Print and disseminate for the consortium any required notices, rules, or orders adopted by the consortium; and

(f) Allocate or otherwise provide office space for the consortium as may be necessary. [2005 c 391 § 2.]

**Finding—Intent—2005 c 391:** "The legislature finds that Washington state is widely recognized as being a steady leader in advancing rights and opportunities for women in all spheres of life. The legislature declares its intent to initiate the establishment of a Washington women's history consortium. This will improve the availability of historical information about the many actions taken by Washingtonians which have resulted in such notable and influential achievements for women and girls, for use by citizens, educators, researchers, and historians." [2005 c 391 § 1.]

**27.34.365 Women's history consortium—Board of advisors.** The board of advisors shall consist of fifteen members. The governor shall appoint eleven members to the board of advisors. Two members of the senate, one each representing the two largest caucuses of the senate, shall be appointed by the president of the senate, and two members of the house of representatives, one each representing the two largest caucuses of the house of representatives[,] shall be appointed by the speaker of the house of representatives. [2005 c 391 § 3.]

**Finding—Intent—2005 c 391:** See note following RCW 27.34.360.

**27.34.370 Women's history consortium—Responsibilities of board of advisors.** Key responsibilities of the board of advisors include:

(1) Organizational and fiscal planning, management, and oversight;

(2) Adopting criteria and procedures for consortium membership and member responsibilities;

(3) Identifying short-term and long-term priorities of the consortium, with special emphasis on short-term priorities relating to preserving historical information from the last several decades before it is lost;

(4) Appointing special committees and task forces including people from consortium members and nonmembers to assist with the consortium's tasks; and

(5) Developing recommendations for statewide commemoration of the centennial of the adoption in 1910 of the fifth amendment to the Washington state Constitution, guaranteeing women's suffrage. [2005 c 391 § 4.]

**Finding—Intent—2005 c 391:** See note following RCW 27.34.360.

**27.34.375 Women's history consortium—Responsibilities.** Within available resources, the consortium responsibilities include:

(1) Compiling a comprehensive index of existing historically relevant materials and making it available in electronic and print form;

(2) Identifying topics, historical periods, materials, or activities not well represented in publicly accessible collections and developing strategies for making them publicly available, including topics related to motherhood and the accomplishments of mothers in Washington;

(3) Encouraging collection and preservation of materials important to understanding Washington women's history, with special emphasis on the last several decades;

(4) Referring potential donors of historical materials to appropriate museums, archives, libraries, and other organizations throughout the state;

(5) Developing protocols for protection of donations, loans, leases, and purchases of historically relevant materials;

(6) Encouraging exhibit development and sharing among member organizations and others;

(7) Encouraging public access and educational institution access to women's history information, materials, and exhibits;

(8) Seeking private donations to assist with consortium work;

(9) Developing a concept for a grant program;

(10) Developing a volunteer program; and

(11) Encouraging development of curriculum materials.

[2005 c 391 § 5.]

**Finding—Intent—2005 c 391:** See note following RCW 27.34.360.

**27.34.380 Women's history consortium—Report to the legislature.** The consortium board of advisors shall provide a report to the appropriate committees of the legislature by December 1, 2006, addressing the following:

(1) Progress on activities identified in RCW 27.34.370 and 27.34.375; and

(2) Consortium needs and plans for the future. [2005 c 391 § 6.]

**Report to the governor and legislature—2005 c 391:** "The consortium shall provide a report to the governor and the legislature by September 1, 2006, regarding recommendations for commemorating the 2010 centennial of the women's suffrage amendment to the state Constitution." [2005 c 391 § 7.]

**Finding—Intent—2005 c 391:** See note following RCW 27.34.360.

## Chapter 27.53 RCW

### ARCHAEOLOGICAL SITES AND RESOURCES

#### Sections

27.53.020	Archaeological resource preservation—Designation of department of archaeology and historic preservation—Cooperation among agencies.
27.53.030	Definitions.
27.53.070	Field investigations—Communication of site or resource location to department. ( <i>Effective until July 1, 2006.</i> )
27.53.070	Field investigations—Communication of site or resource location to department. ( <i>Effective July 1, 2006.</i> )
27.53.080	Archaeological activities upon public lands—Entry—Agreement—Approval of activities—Information regarding results of studies and activities.
27.53.095	Knowing and willful failure to obtain or comply with permit—Penalties.

**27.53.020 Archaeological resource preservation—Designation of department of archaeology and historic**



**preservation—Cooperation among agencies.** The discovery, identification, excavation, and study of the state's archaeological resources, the providing of information on archaeological sites for their nomination to the state and national registers of historic places, the maintaining of a complete inventory of archaeological sites and collections, and the providing of information to state, federal, and private construction agencies regarding the possible impact of construction activities on the state's archaeological resources, are proper public functions; and the department of archaeology and historic preservation, created under the authority of chapter 43.334 RCW, is hereby designated as an appropriate agency to carry out these functions. The director shall provide guidelines for the selection of depositories designated by the state for archaeological resources. The legislature directs that there shall be full cooperation amongst the department and other agencies of the state. [2005 c 333 § 19; 2002 c 211 § 2; 1986 c 266 § 16; 1977 ex.s. c 195 § 12; 1975-'76 2nd ex.s. c 82 § 1; 1975 1st ex.s. c 134 § 2.]

**Purpose—2002 c 211:** "The purpose of this act is to give the department of community, trade, and economic development the authority to issue civil penalties to enforce the provisions of permits issued under RCW 27.53.060 and to take into consideration prior penalties issued under chapter 27.53 RCW and under comparable federal laws when issuing permits. Additionally, this act provides guidance to state agencies and political subdivisions of the state when approving archaeological activities on public lands." [2002 c 211 § 1.]

**Severability—1986 c 266:** See note following RCW 38.52.005.

**Severability—1977 ex.s. c 195:** "If any provision of this 1977 amendment, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 195 § 20.]

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

(1) "Archaeology" means systematic, scientific study of man's past through material remains.

(2) "Archaeological object" means an object that comprises the physical evidence of an indigenous and subsequent culture including material remains of past human life including monuments, symbols, tools, facilities, and technological by-products.

(3) "Archaeological site" means a geographic locality in Washington, including but not limited to, submerged and submersible lands and the bed of the sea within the state's jurisdiction, that contains archaeological objects.

(4) "Department" means the department of archaeology and historic preservation, created in chapter 43.334 RCW.

(5) "Director" means the director of the department of archaeology and historic preservation, created in chapter 43.334 RCW.

(6) "Historic" means peoples and cultures who are known through written documents in their own or other languages. As applied to underwater archaeological resources, the term historic shall include only those properties which are listed in or eligible for listing in the Washington State Register of Historic Places (RCW 27.34.220) or the National Register of Historic Places as defined in the National Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 89-665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

(7) "Prehistoric" means peoples and cultures who are unknown through contemporaneous written documents in any language.

(8) "Professional archaeologist" means a person who has met the educational, training, and experience requirements of the society of professional archaeologists.

(9) "Qualified archaeologist" means a person who has had formal training and/or experience in archaeology over a period of at least three years, and has been certified in writing to be a qualified archaeologist by two professional archaeologists.

(10) "Amateur society" means any organization composed primarily of persons who are not professional archaeologists, whose primary interest is in the archaeological resources of the state, and which has been certified in writing by two professional archaeologists.

(11) "Historic archaeological resources" means those properties which are listed in or eligible for listing in the Washington State Register of Historic Places (RCW 27.34.220) or the National Register of Historic Places as defined in the National Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 89-665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended. [2005 c 333 § 20; 1995 c 399 § 16; 1989 c 44 § 6; 1988 c 124 § 2; 1986 c 266 § 17; 1983 c 91 § 20; 1977 ex.s. c 195 § 13; 1975 1st ex.s. c 134 § 3.]

**Intent—1989 c 44:** See RCW 27.44.030.

**Captions not law—Liberal construction—1989 c 44:** See RCW 27.44.900 and 27.44.901.

**Intent—1988 c 124:** "It is the intent of the legislature that those historic archaeological resources located on state-owned aquatic lands that are of importance to the history of our state, or its communities, be protected for the people of the state. At the same time, the legislature also recognizes that divers have long enjoyed the recreation of diving near shipwrecks and picking up artifacts from the state-owned aquatic lands, and it is not the intent of the legislature to regulate these occasional, recreational activities except in areas where necessary to protect underwater historic archaeological sites. The legislature also recognizes that salvors who invest in a project to salvage underwater archaeological resources on state-owned aquatic lands should be required to obtain a state permit for their operation in order to protect the interest of the people of the state, as well as to protect the interest of the salvors who have invested considerable time and money in the salvage expedition." [1988 c 124 § 1.]

**Application—1988 c 124:** "This act shall not affect any ongoing salvage effort in which the state has entered into separate contracts or agreements prior to March 18, 1988." [1988 c 124 § 13.]

**Severability—1986 c 266:** See note following RCW 38.52.005.

**Effective date—1983 c 91:** See RCW 27.34.910.

**Severability—1977 ex.s. c 195:** See note following RCW 27.53.020.

**27.53.070 Field investigations—Communication of site or resource location to department.** (*Effective until July 1, 2006.*) It is the declared intention of the legislature that field investigations on privately owned lands should be discouraged except in accordance with both the provisions and spirit of this chapter and persons having knowledge of the location of archaeological sites or resources are encouraged to communicate such information to the department. Such information shall not constitute a public record which requires disclosure pursuant to the exception authorized in \*RCW 42.17.310, as now or hereafter amended, to avoid site depredation. [2005 c 333 § 21; 1975-'76 2nd ex.s. c 82 § 3; 1975 1st ex.s. c 134 § 7.]

\*Reviser's note: RCW 42.17.310 was recodified as RCW 42.56.210 pursuant to 2005 c 274 § 103, effective July 1, 2006.

**27.53.070 Field investigations—Communication of site or resource location to department.** (*Effective July 1, 2006.*) It is the declared intention of the legislature that field investigations on privately owned lands should be discouraged except in accordance with both the provisions and spirit of this chapter and persons having knowledge of the location of archaeological sites or resources are encouraged to communicate such information to the department. Such information shall not constitute a public record which requires disclosure pursuant to the exception authorized in chapter 42.56 RCW to avoid site depredation. [2005 c 333 § 21; 2005 c 274 § 243; 1975-'76 2nd ex.s. c 82 § 3; 1975 1st ex.s. c 134 § 7.]

**Reviser's note:** This section was amended by 2005 c 274 § 243 and by 2005 c 333 § 21, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

**27.53.080 Archaeological activities upon public lands—Entry—Agreement—Approval of activities—Information regarding results of studies and activities.**

(1) Qualified or professional archaeologists, in performance of their duties, may enter upon public lands of the state of Washington and its political subdivisions after first notifying the entity responsible for managing those public lands, at such times and in such manner as not to interfere with the normal management thereof, for the purposes of doing archaeological resource location and evaluation studies, including site sampling activities. The results of such studies shall be provided to the state agency or political subdivision responsible for such lands and the department and are confidential unless the director, in writing, declares otherwise. Scientific excavations are to be carried out only after appropriate agreement has been made between a professional archaeologist or an institution of higher education and the agency or political subdivision responsible for such lands. A copy of such agreement shall be filed with the department.

(2) Amateur societies may engage in such activities by submitting and having approved by the responsible agency or political subdivision a written proposal detailing the scope and duration of the activity. Before approval, a proposal from an amateur society shall be submitted to the department for review and recommendation. The approving agency or political subdivision shall impose conditions on the scope and duration of the proposed activity necessary to protect the archaeological resources and ensure compliance with applicable federal, state, and local laws. The findings and results of activities authorized under this section shall be made known to the approving agency or political subdivision approving the activities and to the department. [2005 c 333 § 22; 2002 c 211 § 5; 1986 c 266 § 19; 1977 ex.s. c 195 § 15; 1975 1st ex.s. c 134 § 8.]

**Purpose—2002 c 211:** See note following RCW 27.53.020.

**Severability—1986 c 266:** See note following RCW 38.52.005.

**Severability—1977 ex.s. c 195:** See note following RCW 27.53.020.

**27.53.095 Knowing and willful failure to obtain or comply with permit—Penalties.** (1) Persons found to have violated this chapter, either by a knowing and willful failure to obtain a permit where required under RCW 27.53.060 or by a knowing and willful failure to comply with the provisions of a permit issued by the director where required under RCW 27.53.060, in addition to other remedies as provided for by law, may be subject to one or more of the following:

(a) Reasonable investigative costs incurred by a mutually agreed upon independent professional archaeologist investigating the alleged violation;

(b) Reasonable site restoration costs; and

(c) Civil penalties, as determined by the director, in an amount of not more than five thousand dollars per violation.

(2) Any person incurring the penalty may file an application for an adjudicative proceeding and may pursue subsequent review as provided in chapter 34.05 RCW and applicable rules of the department.

(3) Any penalty imposed by final order following an adjudicative proceeding becomes due and payable upon service of the final order.

(4) The attorney general may bring an action in the name of the department in the superior court of Thurston county or of any county in which the violator may do business to collect any penalty imposed under this chapter and to enforce subsection (5) of this section.

(5) Any and all artifacts in possession of a violator shall become the property of the state until proper identification of artifact ownership may be determined by the director.

(6) Penalties overturned on appeal entitle the appealing party to fees and other expenses, including reasonable attorneys' fees, as provided in RCW 4.84.350. [2005 c 333 § 23; 2002 c 211 § 4.]

**Purpose—2002 c 211:** See note following RCW 27.53.020.

## Title 28A

### COMMON SCHOOL PROVISIONS

#### Chapters

**28A.150** General provisions.

**28A.160** Student transportation.

**28A.165** Learning assistance program.

**28A.170** Substance abuse awareness program.

**28A.175** Dropout prevention and retrieval program.

**28A.205** Education centers.

**28A.210** Health—Screening and requirements.

**28A.230** Compulsory course work and activities.

**28A.235** Food services.

**28A.300** Superintendent of public instruction.

**28A.305** State board of education.

**28A.310** Educational service districts.

**28A.315** Organization and reorganization of school districts.

**28A.320** Provisions applicable to all districts.

**28A.335** School districts' property.

**28A.345** Washington state school directors' association.

**28A.400** Employees.

**28A.405** Certificated employees.

**28A.410** Certification.

**28A.415** Institutes, workshops, and training.

**28A.500** Local effort assistance.

**28A.505** School districts' budgets.

- 28A.600 Students.**  
**28A.630 Temporary provisions—Special projects.**  
**28A.655 Academic achievement and accountability.**

**Chapter 28A.150 RCW**  
**GENERAL PROVISIONS**

Sections

28A.150.060	Certificated employee. ( <i>Effective January 1, 2006.</i> )
28A.150.262	Defining full-time equivalent student—Students receiving instruction through digital programs—Requirements—Rules.
28A.150.520	High-performance public buildings—Compliance with requirements.
28A.150.530	High-performance public buildings—Implementation rules—Energy conservation report review.

**28A.150.060 Certificated employee. (*Effective January 1, 2006.*)** The term "certificated employee" as used in RCW 28A.195.010, 28A.150.060, 28A.150.260, 28A.405.100, 28A.405.210, 28A.405.240, 28A.405.250, 28A.405.300 through 28A.405.380, and chapter 41.59 RCW, shall include those persons who hold certificates as authorized by rule of the Washington professional educator standards board or the superintendent of public instruction. [2005 c 497 § 212; 1990 c 33 § 102; 1977 ex.s. c 359 § 17; 1975 1st ex.s. c 288 § 21; 1973 1st ex.s. c 105 § 1. Formerly RCW 28A.01.130.]

**Intent—Part headings not law—Effective date—2005 c 497:** See notes following RCW 28A.305.011.

**Effective date—Severability—1977 ex.s. c 359:** See notes following RCW 28A.150.200.

**Effective dates—1975 1st ex.s. c 288:** See RCW 41.59.940.

**Severability—1975 1st ex.s. c 288:** See RCW 41.59.950.

*Basic Education Act, RCW 28A.150.060 as part of: RCW 28A.150.200.*

*Construction of chapter—Employee's rights preserved: RCW 41.59.920.*

*Construction of chapter—Employer's responsibilities and rights preserved: RCW 41.59.930.*

**28A.150.262 Defining full-time equivalent student—Students receiving instruction through digital programs—Requirements—Rules.** Under RCW 28A.150.260, the superintendent of public instruction shall revise the definition of a full-time equivalent student to include students who receive instruction through digital programs. "Digital programs" means electronically delivered learning that occurs primarily away from the classroom. The superintendent of public instruction has the authority to adopt rules to implement the revised definition beginning with the 2005-2007 biennium for school districts claiming state funding for the programs. The rules shall include but not be limited to the following:

(1) Defining a full-time equivalent student under RCW 28A.150.260 or part-time student under RCW 28A.150.350 based upon the district's estimated average weekly hours of learning activity as identified in the student's learning plan, as long as the student is found, through monthly evaluation, to be making satisfactory progress; the rules shall require districts providing programs under this section to nonresident students to establish procedures that address, at a minimum, the coordination of student counting for state funding so that

no student is counted for more than one full-time equivalent in the aggregate;

(2) Requiring the board of directors of a school district offering, or contracting under RCW 28A.150.305 to offer, a digital program to adopt and annually review written policies for each program and program provider and to receive an annual report on its digital learning programs from its staff;

(3) Requiring each school district offering or contracting to offer a digital program to report annually to the superintendent of public instruction on the types of programs and course offerings, and number of students participating;

(4) Requiring completion of a program self-evaluation;

(5) Requiring documentation of the district of the student's physical residence;

(6) Requiring that supervision, monitoring, assessment, and evaluation of the digital program be provided by certificated instructional staff;

(7) Requiring each school district offering courses or programs to identify the ratio of certificated instructional staff to full-time equivalent students enrolled in such courses or programs, and to include a description of their ratio as part of the reports required under subsections (2) and (3) of this section;

(8) Requiring reliable methods to verify a student is doing his or her own work; the methods may include proctored examinations or projects, including the use of web cams or other technologies. "Proctored" means directly monitored by an adult authorized by the school district;

(9) Requiring, for each student receiving instruction in a digital program, a learning plan that includes a description of course objectives and information on the requirements a student must meet to successfully complete the program or courses. The rules shall allow course syllabi and other additional information to be used to meet the requirement for a learning plan;

(10) Requiring that the district assess the educational progress of enrolled students at least annually, using, for full-time students, the state assessment for the student's grade level and using any other annual assessments required by the school district. Part-time students shall also be assessed at least annually. However, part-time students who are either receiving home-based instruction under chapter 28A.200 RCW or who are enrolled in an approved private school under chapter 28A.195 RCW are not required to participate in the assessments required under chapter 28A.655 RCW. The rules shall address how students who reside outside the geographic service area of the school district are to be assessed;

(11) Requiring that each student enrolled in the program have direct personal contact with certificated instructional staff at least weekly until the student completes the course objectives or the requirements in the learning plan. Direct personal contact is for the purposes of instruction, review of assignments, testing, evaluation of student progress, or other learning activities. Direct personal contact may include the use of telephone, e-mail, instant messaging, interactive video communication, or other means of digital communication;

(12) Requiring state-funded public schools or public school programs whose primary purpose is to provide digital learning programs to receive accreditation through the state

accreditation program or through the regional accreditation program;

(13) Requiring state-funded public schools or public school programs whose primary purpose is to provide digital learning to provide information to students and parents on whether or not the courses or programs: Cover one or more of the school district's learning goals or of the state's essential academic learning requirements or whether they permit the student to meet one or more of the state's or district's graduation requirements; and

(14) Requiring that a school district that provides one or more digital courses to a student provide the parent or guardian of the student, prior to the student's enrollment, with a description of any difference between home-based education as described in chapter 28A.200 RCW and the enrollment option selected by the student. The parent or guardian shall sign documentation attesting to his or her understanding of the difference and the documentation shall be retained by the district and made available for audit. [2005 c 356 § 2.]

**Findings—Intent—2005 c 356:** "The legislature finds that digital learning courses and programs can provide students with opportunities to study subjects that may not otherwise be available within the students' schools, school districts, or communities. These courses can also meet the instructional needs of students who have scheduling conflicts, students who learn best from technology-based instructional methods, and students who have a need to enroll in schools on a part-time basis. Digital learning courses can also meet the needs of students and families seeking nontraditional learning environments. The legislature further finds that the state rules used by school districts to support some digital learning courses were adopted before these types of courses were created, so the rules are not well-suited to the funding and delivery of digital instruction. It is the intent of the legislature to clarify the funding and delivery requirements for digital learning courses." [2005 c 356 § 1.]

**28A.150.520 High-performance public buildings—Compliance with requirements.** Public school districts must comply with high-performance public building[s] requirements under RCW 39.35D.010, 39.35D.020, 39.35D.040, 39.35D.060, and 28A.150.530. [2005 c 12 § 9.]

**28A.150.530 High-performance public buildings—Implementation rules—Energy conservation report review.** (1) In adopting implementation rules, the state board of education, in consultation with the superintendent of public instruction and the department of general administration, shall review and modify the current requirement for an energy conservation report review by the department of general administration as provided in WAC 180-27-075.

(2) In adopting implementation rules, the state board of education, in consultation with the superintendent of public instruction shall:

(a) Review and modify the current requirements for value engineering, constructability review, and building commissioning as provided in WAC 180-27-080;

(b) Review private and public utility providers' capacity and financial/technical assistance programs for affected public school districts to monitor and report utility consumption for purposes of reporting to the superintendent of public instruction as provided in RCW 39.35D.040;

(c) Coordinate with the department of general administration, the state board of health, the department of ecology, federal agencies, and other affected agencies as appropriate

in their consideration of rules to implement this section. [2005 c 12 § 7.]

## Chapter 28A.160 RCW

### STUDENT TRANSPORTATION

#### Sections

28A.160.195 Vehicle acquisition—School bus categories—Competitive specifications—Purchase—Reimbursement—Rules.

**28A.160.195 Vehicle acquisition—School bus categories—Competitive specifications—Purchase—Reimbursement—Rules.** (1) The superintendent of public instruction, in consultation with the regional transportation coordinators of the educational service districts, shall establish a minimum number of school bus categories considering the capacity and type of vehicles required by school districts in Washington. The superintendent, in consultation with the regional transportation coordinators of the educational service districts, shall establish competitive specifications for each category of school bus. The categories shall be developed to produce minimum long-range operating costs, including costs of equipment and all costs in operating the vehicles. The competitive specifications shall meet federal motor vehicle safety standards, minimum state specifications as established by rule by the superintendent, and supported options as determined by the superintendent in consultation with the regional transportation coordinators of the educational service districts. The superintendent may solicit and accept price quotes for a rear-engine category school bus that shall be reimbursed at the price of the corresponding front engine category.

(2) After establishing school bus categories and competitive specifications, the superintendent of public instruction shall solicit competitive price quotes for base buses from school bus dealers to be in effect for one year and shall establish a list of all accepted price quotes in each category obtained under this subsection. The superintendent shall also solicit price quotes for optional features and equipment.

(3) The superintendent shall base the level of reimbursement to school districts and educational service districts for school buses on the lowest quote for the base bus in each category. School districts and educational service districts shall be reimbursed for buses purchased only through a lowest-price competitive bid process conducted under RCW 28A.335.190 or through the state bid process established by this section.

(4) Notwithstanding RCW 28A.335.190, school districts and educational service districts may purchase at the quoted price directly from any dealer who is on the list established under subsection (2) of this section. School districts and educational service districts may make their own selections for school buses, but shall be reimbursed at the rates determined under subsection (3) of this section and RCW 28A.160.200. District-selected options shall not be reimbursed by the state.

(5) This section does not prohibit school districts or educational service districts from conducting their own competitive bid process.

(6) The superintendent of public instruction may adopt rules under chapter 34.05 RCW to implement this section. [2005 c 492 § 1; 2004 c 276 § 904; 1995 1st sp.s. c 10 § 1.]

**Severability—Effective date—2004 c 276:** See notes following RCW 43.330.167.

**Effective dates—1995 1st sp.s. c 10 §§ 1 and 2:** "(1) Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [June 14, 1995].

(2) Section 2 of this act shall take effect September 1, 1995." [1995 1st sp.s. c 10 § 5.]

## Chapter 28A.165 RCW

### LEARNING ASSISTANCE PROGRAM

#### Sections

28A.165.055 Funds—Eligibility—Distribution.

**28A.165.055 Funds—Eligibility—Distribution.** Each school district with an approved program is eligible for state funds provided for the learning assistance program. The funds shall be appropriated for the learning assistance program in accordance with the biennial appropriations act. The distribution formula is for school district allocation purposes only. The distribution formula shall be based on one or more family income factors measuring economic need. [2005 c 489 § 1; 2004 c 20 § 6.]

## Chapter 28A.170 RCW

### SUBSTANCE ABUSE AWARENESS PROGRAM

#### Sections

28A.170.080 Grants—Substance abuse intervention. (*Effective January 1, 2006.*)

**28A.170.080 Grants—Substance abuse intervention.** (*Effective January 1, 2006.*) (1) Grants provided under RCW 28A.170.090 may be used solely for services provided by a substance abuse intervention specialist or for dedicated staff time for counseling and intervention services provided by any school district certificated employee who has been trained by and has access to consultation with a substance abuse intervention specialist. Services shall be directed at assisting students in kindergarten through twelfth grade in overcoming problems of drug and alcohol abuse, and in preventing abuse and addiction to such substances, including nicotine. The grants shall require local matching funds so that the grant amounts support a maximum of eighty percent of the costs of the services funded. The services of a substance abuse intervention specialist may be obtained by means of a contract with a state or community services agency or a drug treatment center. Services provided by a substance abuse intervention specialist may include:

- (a) Individual and family counseling, including preventive counseling;
- (b) Assessment and referral for treatment;
- (c) Referral to peer support groups;
- (d) Aftercare;
- (e) Development and supervision of student mentor programs;

(f) Staff training, including training in the identification of high-risk children and effective interaction with those children in the classroom; and

(g) Development and coordination of school drug and alcohol core teams, involving staff, students, parents, and community members.

(2) For the purposes of this section, "substance abuse intervention specialist" means any one of the following, except that diagnosis and assessment, counseling and after-care specifically identified with treatment of chemical dependency shall be performed only by personnel who meet the same qualifications as are required of a qualified chemical dependency counselor employed by an alcoholism or drug treatment program approved by the department of social and health services.

(a) An educational staff associate employed by a school district or educational service district who holds certification as a school counselor, school psychologist, school nurse, or school social worker under Washington professional educator standards board rules adopted pursuant to RCW 28A.410.210;

(b) An individual who meets the definition of a qualified drug or alcohol counselor established by the bureau of alcohol and substance abuse;

(c) A counselor, social worker, or other qualified professional employed by the department of social and health services;

(d) A psychologist licensed under chapter 18.83 RCW; or

(e) A children's mental health specialist as defined in RCW 71.34.020. [2005 c 497 § 213; 1990 c 33 § 157; 1989 c 271 § 311. Formerly RCW 28A.120.082.]

**Intent—Part headings not law—Effective date—2005 c 497:** See notes following RCW 28A.305.011.

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

## Chapter 28A.175 RCW

### DROPOUT PREVENTION AND RETRIEVAL PROGRAM

#### Sections

28A.175.010 Educational progress information—Reporting requirements—Rules—Reports to legislature.

**28A.175.010 Educational progress information—Reporting requirements—Rules—Reports to legislature.** Each school district shall account for the educational progress of each of its students. To achieve this, school districts shall be required to report annually to the superintendent of public instruction:

(1) For students enrolled in each of a school district's high school programs:

(a) The number of students who graduate in fewer than four years;

(b) The number of students who graduate in four years;

(c) The number of students who remain in school for more than four years but who eventually graduate and the number of students who remain in school for more than four years but do not graduate;

(d) The number of students who transfer to other schools;

(e) The number of students in the ninth through twelfth grade who drop out of school over a four-year period; and

(f) The number of students whose status is unknown.

(2) Dropout rates of students in each of the grades seven through twelve.

(3) Dropout rates for student populations in each of the grades seven through twelve by:

(a) Ethnicity;

(b) Gender;

(c) Socioeconomic status; and

(d) Disability status.

(4) The causes or reasons, or both, attributed to students for having dropped out of school in grades seven through twelve.

(5) The superintendent of public instruction shall adopt rules under chapter 34.05 RCW to assure uniformity in the information districts are required to report under subsections (1) through (4) of this section. In developing rules, the superintendent of public instruction shall consult with school districts, including administrative and counseling personnel, with regard to the methods through which information is to be collected and reported.

(6) In reporting on the causes or reasons, or both, attributed to students for having dropped out of school, school building officials shall, to the extent reasonably practical, obtain such information directly from students. In lieu of obtaining such information directly from students, building principals and counselors shall identify the causes or reasons, or both, based on their professional judgment.

(7) The superintendent of public instruction shall report annually to the legislature the information collected under subsections (1) through (4) of this section. [2005 c 207 § 3; 1991 c 235 § 4; 1986 c 151 § 1. Formerly RCW 28A.58.087.]

**Findings—Intent—2005 c 207:** See note following RCW 28A.600.300.

### Chapter 28A.205 RCW EDUCATION CENTERS (Formerly: Educational clinics)

#### Sections

28A.205.010 "Education center," "basic academic skills," defined—Certification as education center and withdrawal of certification. (*Effective January 1, 2006.*)

28A.205.050 Rules. (*Effective January 1, 2006.*)

**28A.205.010 "Education center," "basic academic skills," defined—Certification as education center and withdrawal of certification. (*Effective January 1, 2006.*)**

(1) As used in this chapter, unless the context thereof shall clearly indicate to the contrary:

"Education center" means any private school operated on a profit or nonprofit basis which does the following:

(a) Is devoted to the teaching of basic academic skills, including specific attention to improvement of student motivation for achieving, and employment orientation.

(b) Operates on a clinical, client centered basis. This shall include, but not be limited to, performing diagnosis of individual educational abilities, determination and setting of individual goals, prescribing and providing individual

courses of instruction therefor, and evaluation of each individual client's progress in his or her educational program.

(c) Conducts courses of instruction by professionally trained personnel certificated by the Washington professional educator standards board according to rules adopted for the purposes of this chapter and providing, for certification purposes, that a year's teaching experience in an education center shall be deemed equal to a year's teaching experience in a common or private school.

(2) For purposes of this chapter, basic academic skills shall include the study of mathematics, speech, language, reading and composition, science, history, literature and political science or civics; it shall not include courses of a vocational training nature and shall not include courses deemed nonessential to the accrediting of the common schools or the approval of private schools under RCW 28A.305.130.

(3) The state board of education shall certify an education center only upon application and (a) determination that such school comes within the definition thereof as set forth in subsection (1) of this section and (b) demonstration on the basis of actual educational performance of such applicants' students which shows after consideration of their students' backgrounds, educational gains that are a direct result of the applicants' educational program. Such certification may be withdrawn if the board finds that a center fails to provide adequate instruction in basic academic skills. No education center certified by the state board of education pursuant to this section shall be deemed a common school under RCW 28A.150.020 or a private school for the purposes of RCW 28A.195.010 through 28A.195.050. [2005 c 497 § 214; 1999 c 348 § 2; 1993 c 211 § 1; 1990 c 33 § 180; 1983 c 3 § 38; 1977 ex.s. c 341 § 1. Formerly RCW 28A.97.010.]

**Intent—Part headings not law—Effective date—2005 c 497:** See notes following RCW 28A.305.011.

**Intent—1999 c 348:** "During 1997 and 1998, a committee of the state board of education reviewed all board rules and related authorizing statutes. Based on the findings and recommendations resulting from the review, the state board prepared a report to the legislature requesting action be taken. It is the intent of this act to implement recommendations of the state board of education." [1999 c 348 § 1.]

**Severability—1977 ex.s. c 341:** "If any provision of this 1977 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 341 § 7.]

**28A.205.050 Rules. (*Effective January 1, 2006.*)** In accordance with chapter 34.05 RCW, the administrative procedure act, the Washington professional educator standards board with respect to the matter of certification, and the superintendent of public instruction with respect to all other matters, shall have the power and duty to make the necessary rules to carry out the purpose and intent of this chapter. [2005 c 497 § 215; 1995 c 335 § 201; 1993 c 211 § 4; 1990 c 33 § 184; 1977 ex.s. c 341 § 5. Formerly RCW 28A.97.050.]

**Intent—Part headings not law—Effective date—2005 c 497:** See notes following RCW 28A.305.011.

**Part headings, table of contents not law—1995 c 335:** See note following RCW 28A.150.360.

**Severability—1977 ex.s. c 341:** See note following RCW 28A.205.010.

## Chapter 28A.210 RCW

## HEALTH—SCREENING AND REQUIREMENTS

## Sections

- 28A.210.080 Immunization program—Attendance of child conditioned upon presentation of alternative proofs—Information regarding meningococcal disease.
- 28A.210.370 Students with asthma.

**28A.210.080 Immunization program—Attendance of child conditioned upon presentation of alternative proofs—Information regarding meningococcal disease.**

(1) The attendance of every child at every public and private school in the state and licensed day care center shall be conditioned upon the presentation before or on each child's first day of attendance at a particular school or center, of proof of either (a) full immunization, (b) the initiation of and compliance with a schedule of immunization, as required by rules of the state board of health, or (c) a certificate of exemption as provided for in RCW 28A.210.090. The attendance at the school or the day care center during any subsequent school year of a child who has initiated a schedule of immunization shall be conditioned upon the presentation of proof of compliance with the schedule on the child's first day of attendance during the subsequent school year. Once proof of full immunization or proof of completion of an approved schedule has been presented, no further proof shall be required as a condition to attendance at the particular school or center.

(2)(a) Beginning with sixth grade entry, every public and private school in the state shall provide parents and guardians with information about meningococcal disease and its vaccine at the beginning of every school year. The information about meningococcal disease shall include:

(i) Its causes and symptoms, how meningococcal disease is spread, and the places where parents and guardians may obtain additional information and vaccinations for their children; and

(ii) Current recommendations from the United States centers for disease control and prevention regarding the receipt of vaccines for meningococcal disease and where the vaccination can be received.

(b) This subsection shall not be construed to require the department of health or the school to provide meningococcal vaccination to students.

(c) The department of health shall prepare the informational materials and shall consult with the office of superintendent of public instruction.

(d) This subsection does not create a private right of action. [2005 c 404 § 1; 1990 c 33 § 192; 1985 c 49 § 1; 1979 ex.s. c 118 § 3. Formerly RCW 28A.31.104.]

**Effective date—Severability—1979 ex.s. c 118:** See notes following RCW 28A.210.060.

**28A.210.370 Students with asthma.** (1) The superintendent of public instruction and the secretary of the department of health shall develop a uniform policy for all school districts providing for the in-service training for school staff on symptoms, treatment, and monitoring of students with asthma and on the additional observations that may be needed in different situations that may arise during the school day and during school-sponsored events. The policy shall

include the standards and skills that must be in place for in-service training of school staff.

(2) All school districts shall adopt policies regarding asthma rescue procedures for each school within the district.

(3) All school districts must require that each public elementary school and secondary school grant to any student in the school authorization for the self-administration of medication to treat that student's asthma or anaphylaxis, if:

(a) A health care practitioner prescribed the medication for use by the student during school hours and instructed the student in the correct and responsible use of the medication;

(b) The student has demonstrated to the health care practitioner, or the practitioner's designee, and a professional registered nurse at the school, the skill level necessary to use the medication and any device that is necessary to administer the medication as prescribed;

(c) The health care practitioner formulates a written treatment plan for managing asthma or anaphylaxis episodes of the student and for medication use by the student during school hours; and

(d) The student's parent or guardian has completed and submitted to the school any written documentation required by the school, including the treatment plan formulated under (c) of this subsection and other documents related to liability.

(4) An authorization granted under subsection (3) of this section must allow the student involved to possess and use his or her medication:

(a) While in school;

(b) While at a school-sponsored activity, such as a sporting event; and

(c) In transit to or from school or school-sponsored activities.

(5) An authorization granted under subsection (3) of this section:

(a) Must be effective only for the same school and school year for which it is granted; and

(b) Must be renewed by the parent or guardian each subsequent school year in accordance with this subsection.

(6) School districts must require that backup medication, if provided by a student's parent or guardian, be kept at a student's school in a location to which the student has immediate access in the event of an asthma or anaphylaxis emergency.

(7) School districts must require that information described in subsection (3)(c) and (d) of this section be kept on file at the student's school in a location easily accessible in the event of an asthma or anaphylaxis emergency.

(8) Nothing in this section creates a cause of action or in any other way increases or diminishes the liability of any person under any other law. [2005 c 462 § 2.]

**Findings—2005 c 462:** "The legislature finds that:

(1) Asthma is a dangerous disease that is growing in prevalence in Washington state. An estimated five hundred thousand residents of the state suffer from asthma. Since 1995, asthma has claimed more than five hundred lives, caused more than twenty-five thousand hospitalizations with costs of more than one hundred twelve million dollars, and resulted in seven million five hundred thousand missed school days. School nurses have identified over four thousand children with life-threatening asthma in the state's schools.

(2) While asthma is found among all populations, its prevalence disproportionately affects low-income and minority populations. Untreated asthma affects worker productivity and results in unnecessary absences from work. In many cases, asthma triggers present in substandard housing and poorly ventilated workplaces contribute directly to asthma.

(3) Although research continues into the causes and cures for asthma, national consensus has been reached on treatment guidelines. People with asthma who are being treated in accordance with these guidelines are far more likely to control the disease than those who are not being treated and therefore are less likely to experience debilitating or life-threatening asthma episodes, less likely to be hospitalized, and less likely to need to curtail normal school or work activities. With treatment, most people with asthma are able to live normal, active lives.

(4) Up to one-third of the people with asthma have not had their disease diagnosed. Among those with diagnosed asthma, thirty to fifty percent are not receiving medicines that are needed to control the disease, and approximately eighty percent of diagnosed asthmatics are not getting yearly spirometry measurements that are a key element in monitoring the disease." [2005 c 462 § 1.]

### Chapter 28A.230 RCW

#### COMPULSORY COURSE WORK AND ACTIVITIES

##### Sections

28A.230.090	High school graduation requirements or equivalencies— Reevaluation and report by state board of education— Credit for courses taken before attending high school— Postsecondary credit equivalencies.
28A.230.185	Family preservation education program.
28A.230.190	Repealed.
28A.230.193	Repealed.
28A.230.195	Test or assessment scores—Adjustments to instructional practices—Notification to parents.
28A.230.230	Repealed.
28A.230.260	Repealed.

**28A.230.090 High school graduation requirements or equivalencies—Reevaluation and report by state board of education—Credit for courses taken before attending high school—Postsecondary credit equivalencies.** (1) The state board of education shall establish high school graduation requirements or equivalencies for students.

(a) Any course in Washington state history and government used to fulfill high school graduation requirements shall consider including information on the culture, history, and government of the American Indian peoples who were the first inhabitants of the state.

(b) The certificate of academic achievement requirements under RCW 28A.655.061 or the certificate of individual achievement requirements under RCW 28A.155.045 are required for graduation from a public high school but are not the only requirements for graduation.

(c) Any decision on whether a student has met the state board's high school graduation requirements for a high school and beyond plan shall remain at the local level.

(2) In recognition of the statutory authority of the state board of education to establish and enforce minimum high school graduation requirements, the state board shall periodically reevaluate the graduation requirements and shall report such findings to the legislature in a timely manner as determined by the state board.

(3) Pursuant to any requirement for instruction in languages other than English established by the state board of education or a local school district, or both, for purposes of high school graduation, students who receive instruction in American sign language or one or more American Indian languages shall be considered to have satisfied the state or local school district graduation requirement for instruction in one or more languages other than English.

(4) If requested by the student and his or her family, a student who has completed high school courses before

attending high school shall be given high school credit which shall be applied to fulfilling high school graduation requirements if:

(a) The course was taken with high school students, if the academic level of the course exceeds the requirements for seventh and eighth grade classes, and the student has successfully passed by completing the same course requirements and examinations as the high school students enrolled in the class; or

(b) The academic level of the course exceeds the requirements for seventh and eighth grade classes and the course would qualify for high school credit, because the course is similar or equivalent to a course offered at a high school in the district as determined by the school district board of directors.

(5) Students who have taken and successfully completed high school courses under the circumstances in subsection (4) of this section shall not be required to take an additional competency examination or perform any other additional assignment to receive credit.

(6) At the college or university level, five quarter or three semester hours equals one high school credit. [2005 c 205 § 3; 2004 c 19 § 103; 1997 c 222 § 2; 1993 c 371 § 3. Prior: 1992 c 141 § 402; 1992 c 60 § 1; 1990 1st ex.s. c 9 § 301; 1988 c 172 § 1; 1985 c 384 § 2; 1984 c 278 § 6. Formerly RCW 28A.05.060.]

**Intent—Findings—2005 c 205:** See note following RCW 28A.320.170.

**Part headings and captions not law—Severability—Effective date—2004 c 19:** See notes following RCW 28A.655.061.

**Intent—1997 c 222:** "In 1994, the legislature directed the higher education board and the state board of education to convene a task force to examine and provide recommendations on establishing credit equivalencies. In November 1994, the task force recommended unanimously that the state board of education maintain the definition of five quarter or three semester college credits as equivalent to one high school credit. Therefore, the legislature intends to adopt the recommendations of the task force." [1997 c 222 § 1.]

**Findings—Part headings—Severability—1992 c 141:** See notes following RCW 28A.410.040.

**Finding—Severability—1990 1st ex.s. c 9:** See notes following RCW 28A.225.220.

**Severability—1984 c 278:** See note following RCW 28A.320.220.

**28A.230.185 Family preservation education program.** Each school district board of directors is encouraged to adopt a family preservation education program curriculum and offer a family preservation unit in high school. The board of directors may adopt the model curriculum developed by the superintendent of public instruction or the board may develop its own curriculum with input from the community. [2005 c 491 § 2.]

**Finding—2005 c 491:** "The legislature finds that effective relationship skills are used in parenting, the workplace, schools, neighborhoods, and other relationships. The state has a compelling interest in encouraging its citizens in developing the parenting and communication skills vital for successful and fulfilling family relationships." [2005 c 491 § 1.]

**28A.230.190 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28A.230.193 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.



**28A.230.195 Test or assessment scores—Adjustments to instructional practices—Notification to parents.**

(1) If students' scores on the test or assessments under RCW 28A.655.070 indicate that students need help in identified areas, the school district shall evaluate its instructional practices and make appropriate adjustments.

(2) Each school district shall notify the parents of each student of their child's performance on the test and assessments conducted under this chapter. [2005 c 217 § 1; 1999 c 373 § 603; 1992 c 141 § 401.]

**Part headings not law—1999 c 373:** See note following RCW 28A.300.310.

**Findings—Part headings—Severability—1992 c 141:** See notes following RCW 28A.410.040.

**28A.230.230 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28A.230.260 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Chapter 28A.235 RCW FOOD SERVICES

### Sections

28A.235.160 Requirements to implement school breakfast, lunch, and summer food service programs—Exemptions.

### **28A.235.160 Requirements to implement school breakfast, lunch, and summer food service programs—Exemptions.** (1) For the purposes of this section:

(a) "Free or reduced-price lunch" means a lunch served by a school district participating in the national school lunch program to a student qualifying for national school lunch program benefits based on family size-income criteria.

(b) "School lunch program" means a meal program meeting the requirements defined by the superintendent of public instruction under subsection (2)(b) of this section.

(c) "School breakfast program" means a program meeting federal requirements defined in 42 U.S.C. Sec. 1773.

(d) "Severe-need school" means a school that qualifies for a severe-need school reimbursement rate from federal funds for school breakfasts served to children from low-income families.

(e) "Summer food service program" means a meal or snack program meeting the requirements defined by the superintendent of public instruction under subsection (4) of this section.

(2) School districts shall implement a school lunch program in each public school in the district in which educational services are provided to children in any of the grades kindergarten through four and in which twenty-five percent or more of the enrolled students qualify for a free or reduced-price lunch. In developing and implementing its school lunch program, each school district may consult with an advisory committee including school staff, community members, and others appointed by the board of directors of the district.

(a) Applications to determine free or reduced-price lunch eligibility shall be distributed and collected for all households of children in schools containing any of the grades kindergarten through four and in which there are no United States

department of agriculture child nutrition programs. The applications that are collected must be reviewed to determine eligibility for free or reduced-price lunches. Nothing in this section shall be construed to require completion or submission of the application by a parent or guardian.

(b) Using the most current available school data on free and reduced-price lunch eligibility, the superintendent of public instruction shall adopt a schedule for implementation of school lunch programs at each school required to offer such a program under subsection (2) of this section as follows:

(i) Schools not offering a school lunch program and in which twenty-five percent or more of the enrolled students are eligible for free or reduced-price lunch shall implement a school lunch program not later than the second day of school in the 2005-06 school year and in each school year thereafter.

(ii) The superintendent shall establish minimum standards defining the lunch meals to be served, and such standards must be sufficient to qualify the meals for any available federal reimbursement.

(iii) Nothing in this section shall be interpreted to prevent a school from implementing a school lunch program earlier than the school is required to do so.

(3) To extent funds are appropriated for this purpose, each school district shall implement a school breakfast program in each school where more than forty percent of students eligible to participate in the school lunch program qualify for free or reduced-price meal reimbursement by the school year 2005-06. For the second year before the implementation of the district's school breakfast program, and for each subsequent school year, each school district shall submit data enabling the superintendent of public instruction to determine which schools within the district will qualify for this requirement. Schools where lunch programs start after the 2003-04 school year, where forty percent of students qualify for free or reduced-price meals, must begin school breakfast programs the second year following the start of a lunch program.

(4) Each school district shall implement a summer food service program in each public school in the district in which a summer program of academic, enrichment, or remedial services is provided and in which fifty percent or more of the children enrolled in the school qualify for free or reduced-price lunch. However, the superintendent of public instruction shall develop rules establishing criteria to permit an exemption for a school that can demonstrate availability of an adequate alternative summer feeding program. Sites providing meals should be open to all children in the area, unless a compelling case can be made to limit access to the program. The superintendent of public instruction shall adopt a definition of compelling case and a schedule for implementation as follows:

(a) Beginning the summer of 2005 if the school currently offers a school breakfast or lunch program; or

(b) Beginning the summer following the school year during which a school implements a school lunch program under subsection (2)(b) of this section.

(5) Schools not offering a breakfast or lunch program may meet the meal service requirements of subsections (2)(b) and (4) of this section through any of the following:

(a) Preparing the meals on-site;

(b) Receiving the meals from another school that participates in a United States department of agriculture child nutrition program; or

(c) Contracting with a nonschool entity that is a licensed food service establishment under RCW 69.07.010.

(6) Requirements that school districts have a school lunch, breakfast, or summer nutrition program under this section shall not create or imply any state funding obligation for these costs. The legislature does not intend to include these programs within the state's obligation for basic education funding under Article IX of the state Constitution.

(7) The requirements in this section shall lapse if the federal reimbursement for any school breakfasts, lunches, or summer food service programs is eliminated.

(8) School districts may be exempted from the requirements of this section by showing good cause why they cannot comply with the office of the superintendent of public instruction to the extent that such exemption is not in conflict with federal or state law. The process and criteria by which school districts are exempted shall be developed by the office of the superintendent of public instruction in consultation with representatives of school directors, school food service, community-based organizations and the Washington state PTA. [2005 c 287 § 1; 2004 c 54 § 2.]

**Findings—2005 c 287; 2004 c 54:** "The legislature recognizes that hunger and food insecurity are serious problems in the state. Since the United States department of agriculture began to collect data on hunger and food insecurity in 1995, Washington has been ranked each year within the top ten states with the highest levels of hunger. A significant number of these households classified as hungry are families with children.

The legislature recognizes the correlation between adequate nutrition and a child's development and school performance. This problem can be greatly diminished through improved access to federal nutrition programs.

The legislature also recognizes that improved access to federal nutrition and assistance programs, such as the federal food stamp program and child nutrition programs, can be a critical factor in enabling recipients to gain the ability to support themselves and their families. This is an important step towards self-sufficiency and decreased long-term reliance on governmental assistance and will serve to strengthen families in this state." [2005 c 287 § 2; 2004 c 54 § 1.]

**Conflict with federal requirements—2004 c 54:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2004 c 54 § 6.]

## Chapter 28A.300 RCW

### SUPERINTENDENT OF PUBLIC INSTRUCTION

#### Sections

28A.300.020	Assistant superintendents, deputy superintendent, assistants—Terms for exempt personnel. ( <i>Effective January 1, 2006.</i> )
28A.300.040	Powers and duties.
28A.300.185	Family preservation education program.
28A.300.370	World War II oral history project.
28A.300.455	Financial literacy public-private partnership responsibilities—Definition of financial literacy—Strategies—Report.
28A.300.801	Legislative youth advisory council. ( <i>Expires June 30, 2007.</i> )

**28A.300.020 Assistant superintendents, deputy superintendent, assistants—Terms for exempt personnel. (*Effective January 1, 2006.*)** The superintendent of public

[2005 RCW Supp—page 206]

instruction may appoint assistant superintendents of public instruction, a deputy superintendent of public instruction, and may employ such other assistants and clerical help as are necessary to carry out the duties of the superintendent and the state board of education. However, the superintendent shall employ without undue delay the executive director of the state board of education and other state board of education office assistants and clerical help, appointed by the state board under RCW 28A.305.130, whose positions are allotted and funded in accordance with moneys appropriated exclusively for the operation of the state board of education. The rate of compensation and termination of any such executive director, state board office assistants, and clerical help shall be subject to the prior consent of the state board of education. The assistant superintendents, deputy superintendent, and such other officers and employees as are exempted from the provisions of chapter 41.06 RCW, shall serve at the pleasure of the superintendent or at the pleasure of the superintendent and the state board of education as provided in this section. Expenditures by the superintendent of public instruction for direct and indirect support of the state board of education are valid operational expenditures by and in behalf of the office of the superintendent of public instruction. [2005 c 497 § 403; 1996 c 25 § 2; 1969 ex.s. c 223 § 28A.03.020. Prior: 1967 c 158 § 3; 1909 c 97 p 234 § 4; RRS § 4524; prior: 1905 c 56 § 1; 1903 c 104 § 10; 1897 c 118 § 23; 1890 p 351 § 5. Formerly RCW 28A.03.020, 28.03.020, 43.11.020.]

**Intent—Part headings not law—Effective date—2005 c 497:** See notes following RCW 28A.305.011.

**28A.300.040 Powers and duties.** In addition to any other powers and duties as provided by law, the powers and duties of the superintendent of public instruction shall be:

(1) To have supervision over all matters pertaining to the public schools of the state;

(2) To report to the governor and the legislature such information and data as may be required for the management and improvement of the schools;

(3) To prepare and have printed such forms, registers, courses of study, rules for the government of the common schools, and such other material and books as may be necessary for the discharge of the duties of teachers and officials charged with the administration of the laws relating to the common schools, and to distribute the same to educational service district superintendents;

(4) To travel, without neglecting his or her other official duties as superintendent of public instruction, for the purpose of attending educational meetings or conventions, of visiting schools, of consulting educational service district superintendents or other school officials;

(5) To prepare and from time to time to revise a manual of the Washington state common school code, copies of which shall be provided in such numbers as determined by the superintendent of public instruction at no cost to those public agencies within the common school system and which shall be sold at approximate actual cost of publication and distribution per volume to all other public and nonpublic agencies or individuals, said manual to contain Titles 28A and 28C RCW, rules related to the common schools, and such other matter as the state superintendent or the state board of education shall determine. Proceeds of the sale of such code

shall be transmitted to the public printer who shall credit the state superintendent's account within the state printing plant revolving fund by a like amount;

(6) To act as ex officio member and the chief executive officer of the state board of education;

(7) To file all papers, reports and public documents transmitted to the superintendent by the school officials of the several counties or districts of the state, each year separately. Copies of all papers filed in the superintendent's office, and the superintendent's official acts, may, or upon request, shall be certified by the superintendent and attested by the superintendent's official seal, and when so certified shall be evidence of the papers or acts so certified to;

(8) To require annually, on or before the 15th day of August, of the president, manager, or principal of every educational institution in this state, a report as required by the superintendent of public instruction; and it is the duty of every president, manager or principal, to complete and return such forms within such time as the superintendent of public instruction shall direct;

(9) To keep in the superintendent's office a record of all teachers receiving certificates to teach in the common schools of this state;

(10) To issue certificates as provided by law;

(11) To keep in the superintendent's office at the capital of the state, all books and papers pertaining to the business of the superintendent's office, and to keep and preserve in the superintendent's office a complete record of statistics, as well as a record of the meetings of the state board of education;

(12) With the assistance of the office of the attorney general, to decide all points of law which may be submitted to the superintendent in writing by any educational service district superintendent, or that may be submitted to the superintendent by any other person, upon appeal from the decision of any educational service district superintendent; and the superintendent shall publish his or her rulings and decisions from time to time for the information of school officials and teachers; and the superintendent's decision shall be final unless set aside by a court of competent jurisdiction;

(13) To administer oaths and affirmations in the discharge of the superintendent's official duties;

(14) To deliver to his or her successor, at the expiration of the superintendent's term of office, all records, books, maps, documents and papers of whatever kind belonging to the superintendent's office or which may have been received by the superintendent's for the use of the superintendent's office;

(15) To administer family services and programs to promote the state's policy as provided in RCW 74.14A.025;

(16) To promote the adoption of school-based curricula and policies that provide quality, daily physical education for all students, and to encourage policies that provide all students with opportunities for physical activity outside of formal physical education classes;

(17) To perform such other duties as may be required by law. [2005 c 360 § 6; 1999 c 348 § 6; 1992 c 198 § 6; 1991 c 116 § 2; 1990 c 33 § 251; 1982 c 160 § 2; 1981 c 249 § 1; 1977 c 75 § 17; 1975 1st ex.s. c 275 § 47; 1971 ex.s. c 100 § 1; 1969 ex.s. c 176 § 102; 1969 ex.s. c 223 § 28A.03.030. Prior: 1967 c 158 § 4; 1909 c 97 p 231 § 3; RRS § 4523; prior: 1907 c 240 § 1; 1903 c 104 § 9; 1901 c 177 § 5; 1901

c 41 § 1; 1899 c 142 § 4; 1897 c 118 § 22; 1891 c 127 §§ 1, 2; 1890 pp 348-351 §§ 3, 4; Code 1881 §§ 3155-3160; 1873 p 419 §§ 2-6; 1861 p 55 §§ 2, 3, 4. Formerly RCW 28A.03.030, 28.03.030, 43.11.030.]

**Findings—Intent—2005 c 360:** See note following RCW 36.70A.070.

**Intent—1999 c 348:** See note following RCW 28A.205.010.

**Severability—Effective date—1992 c 198:** See RCW 70.190.910 and 70.190.920.

**Severability—1982 c 160:** See note following RCW 28A.305.100.

**Rights preserved—Severability—1969 ex.s. c 176:** See notes following RCW 28A.310.010.

**Studies—1969 ex.s. c 283:** "The superintendent of public instruction is directed to develop, prepare and make available information as follows:

(1) A budgetary study of the fiscal impact which would result from payment to substitute teachers, who are on a continuing basis of twelve or more days within any calendar month, at a rate of pay commensurate with their training and experience and at a per diem salary in proportion to the salary for which that teacher would be eligible as a full time teacher;

(2) A study showing the percentage of high school graduates who go on to an institution of higher education, including community colleges, the distribution of such students, and the percentage thereof which continue in higher education through the various grades or years thereof; and

(3) A study of the fiscal impact of establishing one hundred and eighty days as the base salary period for all contracts with certificated employees." [1969 ex.s. c 283 § 8.]

**Severability—1969 ex.s. c 283:** See note following RCW 28A.150.050.

**28A.300.185 Family preservation education program.** The office of the superintendent of public instruction shall develop a family preservation education program model curriculum that is available to each of the school district boards of directors. The model curriculum shall be posted on the superintendent of public instruction's web site. The model curriculum shall include, but is not limited to, instruction on developing conflict management skills, communication skills, domestic violence and dating violence, financial responsibility, and parenting responsibility. [2005 c 491 § 3.]

**Finding—2005 c 491:** See note following RCW 28A.230.185.

**28A.300.370 World War II oral history project.** (1) The World War II oral history project is established for the purpose of providing oral history presentations, documentation, and other materials to assist the office of the superintendent of public instruction and educators in the development of a curriculum for use in kindergarten through twelfth grade.

(2) To the extent funds are appropriated or donated, the project shall be administered by the office of the superintendent of public instruction. The office shall convene an advisory committee to assist in the design and implementation of the project. The committee shall be composed of members of the World War II memorial educational foundation, the department of veterans affairs, the secretary of state's office, and legislators involved with and interested in the development of the oral history project. The committee may select its own chair and may expand its membership to include the services of other individuals, agencies, or organizations on the basis of need. The office shall provide staffing and administrative support to the advisory committee.

(3) The project will preserve for the education of Washington's school children the memories and history of our state's citizens who served their state and country as members of the armed forces or through national or community contri-

butions during World War II. The project is intended to preserve these memories and history through audiotapes, videotapes, films, stories, printed transcripts, digitally, and through other appropriate methods.

(4) Any funding provided to the program through the omnibus appropriations act for the 2005-2007 biennium shall be used to record the memories of women who meet the requirements of subsection (3) of this section.

(5) As part of the project, the office of the superintendent of public instruction shall identify the requirements regarding instructional guides to help educators use the preserved material in age and grade appropriate ways.

(6) In its administration of the project, the office may carry out its responsibilities through contracts with filming and taping specialists, mini-grants to schools, contracts with the World War II memorial educational foundation, and through other means recommended by the foundation.

(7) By December 1, 2000, and every second year thereafter in which the project has received funding, the office shall report on the results of the project to the governor and the house of representatives and senate committees on education. The December 2000 report shall include, but need not be limited to, identification of the project's implementation strategies and resource requirements, and any curriculum standards developed through the project. [2005 c 75 § 2; 2000 c 112 § 2.]

**Findings—2005 c 75:** "The legislature finds that the women of the greatest generation made essential contributions, in many different ways, to our nation's success in World War II. During the war, more than four hundred fifty thousand women served their country in the armed forces of the United States. Another group of women provided nursing and support services to the troops. These women were joined by more than two million women back home who, like Rosie the Riveter, worked in industries that supported service men and women abroad. Other women held the nation together by raising families, educating children, and taking care of the ill and elderly. These women held our families, businesses, and communities together, living with rationed goods and services so that the service men and women fighting in the war would have the materials they needed to be successful. The legislature finds that women in all these roles made sacrifices necessary for the success of our nation's defense and contributions essential to the well-being of the people back home. The legislature further finds that to have a clearer reflection of women's sacrifices on behalf of freedom and democracy, it is necessary to include in the World War II oral history project the memories of women who contributed to the war effort through either military service or other important contributions to our nation, state, or communities." [2005 c 75 § 1.]

**Effective date—2005 c 75:** "This act takes effect August 1, 2005." [2005 c 75 § 3.]

**Findings—Intent—2000 c 112:** "The legislature finds that more than two hundred fifty thousand of Washington's citizens served their country in the armed forces of the United States during World War II. The legislature also finds that almost six thousand of those citizens sacrificed their lives to secure our nation's and the world's peace and freedom. The legislature finds that the hardships and sacrifices endured by the families and communities of these service men and women were critical to the eventual success of our nation's defense. The legislature also finds the memories of these stalwart patriots must be preserved to remind future generations of the price the members of the greatest generation paid to preserve our democratic way of life. The legislature further finds that to have a clearer reflection of these sacrifices on behalf of freedom and democracy, it is necessary to include the memories of all women and men of our armed forces, their family members, and others involved in the war effort so that these memories mirror our nation's rich ethnic diversity. In addition, the legislature recognizes the existence and contributions of the World War II memorial educational foundation. Members of the foundation include World War II veterans, and advisors from the office of veterans affairs, the superintendent of public instruction, and the secretary of state. The legislature intends to honor the veterans who served in World War II and their supportive families by preserving their

memories so Washington's school children will never forget the significant human costs of war and the efforts of their ancestors to preserve and protect our country and the world from tyranny. The legislature further intends that members of the World War II memorial educational foundation have a strong advisory role in the preservation of those memories and the creation of instructional materials on the war." [2000 c 112 § 1.]

**28A.300.455 Financial literacy public-private partnership responsibilities—Definition of financial literacy—Strategies—Report.** (1) By September 30, 2004, the financial literacy public-private partnership shall adopt a definition of financial literacy to be used in educational efforts.

(2) By June 30, 2006, the financial literacy public-private partnership shall identify strategies to increase the financial literacy of public school students in our state. To the extent funds are available, strategies to be considered by the partnership shall include, but not be limited to:

- (a) Identifying and making available to school districts:
  - (i) Important financial literacy skills and knowledge;
  - (ii) Ways in which teachers at different grade levels may integrate financial literacy in mathematics, social studies, and other course content areas;
  - (iii) Instructional materials and programs, including schoolwide programs, that include the important financial literacy skills and knowledge;
  - (iv) Assessments and other outcome measures that schools and communities may use to determine whether students are financially literate; and

(v) Other strategies for expanding and increasing the quality of financial literacy instruction in public schools, including professional development for teachers;

(b) Developing a structure and set of operating principles for the financial literacy public-private partnership to assist interested school districts in improving the financial literacy of their students by providing such things as financial literacy instructional materials and professional development; and

(c) Providing a report to the governor, the house and senate financial institutions and education committees of the legislature, the superintendent of public instruction, the state board of education, and education stakeholder groups, on the results of work of the financial literacy public-private partnership. A final report shall be submitted to the same parties by June 30, 2007. [2005 c 277 § 2; 2004 c 247 § 3.]

**Intent—2005 c 277:** "The legislature has directed the financial literacy public-private partnership to complete certain tasks to support efforts to increase the level of financial literacy in the common schools. In order to promote a greater understanding by students of the consequences of a dishonored check, the legislature intends to extend by one year the date by which the financial literacy public-private partnership must identify strategies to increase the financial literacy of public school students in Washington." [2005 c 277 § 1.]

**Findings—Intent—2004 c 247:** See note following RCW 28A.300.450.

**28A.300.801 Legislative youth advisory council. (Expires June 30, 2007.)** (1) The legislative youth advisory council is established to examine issues of importance to youth, including but not limited to education, employment, strategies to increase youth participation in state and municipal government, safe environments for youth, substance abuse, emotional and physical health, foster care, poverty, homelessness, and youth access to services on a statewide and municipal basis.

(2) The council consists of twenty-two members as provided in this subsection who, at the time of appointment, are aged fourteen to eighteen. The council shall select a chair from among its members.

(a) Five members shall be selected by each of the two major caucuses in the senate, appointed by the secretary of the senate.

(b) Five members shall be selected by each of the two major caucuses in the house of representatives, appointed by the chief clerk of the house of representatives.

(c) The governor shall appoint two members.

(3) Except for initial members, members shall serve two-year terms, and if eligible, may be reappointed for subsequent two-year terms. One-half of the initial members shall be appointed to one-year terms, and these appointments shall be made in such a way as to preserve overall representation on the committee.

(4) The council shall have the following duties:

(a) Advising the legislature on proposed and pending legislation, including state budget expenditures and policy matters relating to youth;

(b) Advising the standing committees of the legislature and study commissions, committees, and task forces regarding issues relating to youth;

(c) Conducting periodic seminars for its members regarding leadership, government, and the legislature; and

(d) Reporting annually by December 1 to the legislature on its activities, including proposed legislation that implements recommendations of the council.

(5) In carrying out its duties under subsection (4) of this section, the council may meet at least three times but not more than six times per year, including not more than two public hearings on issues of importance to youth.

(6) Members shall be reimbursed as provided in RCW 43.03.050 and 43.03.060.

(7) The office of superintendent of public instruction shall provide administration, coordination, and facilitation assistance to the council. The senate and house of representatives may provide policy and fiscal briefings and assistance with drafting proposed legislation. The senate and the house of representatives shall each develop internal policies relating to staff assistance provided to the council. Such policies may include applicable internal personnel and practices guidelines, resource use and expense reimbursement guidelines, and applicable ethics mandates. Provision of funds, resources, and staff, as well as the assignment and direction of staff, remains at all times within the sole discretion of the chamber making the provision.

(8) The office of superintendent of public instruction, the legislature, any agency of the legislature, and any official or employee of such office or agency are immune from liability for any injury that is incurred by or caused by a member of the youth advisory council and that occurs while the member of the council is performing duties of the council or is otherwise engaged in activities or receiving services for which reimbursement is allowed under subsection (6) of this section. The immunity provided by this subsection does not apply to an injury intentionally caused by the act or omission of an employee or official of the superintendent of public instruction or the legislature or any agency of the legislature.

(9) This section expires June 30, 2007. [2005 c 355 § 1.]

## Chapter 28A.305 RCW STATE BOARD OF EDUCATION

### Sections

28A.305.010	Repealed. ( <i>Effective January 1, 2006.</i> )
28A.305.011	Board membership—Terms—Compensation. ( <i>Effective January 1, 2006.</i> )
28A.305.020	Repealed. ( <i>Effective January 1, 2006.</i> )
28A.305.021	Election of board members—Restrictions.
28A.305.030	Repealed. ( <i>Effective January 1, 2006.</i> )
28A.305.035	Joint report to the legislature. ( <i>Effective January 1, 2006.</i> )
28A.305.040	through 28A.305.120 Repealed. ( <i>Effective January 1, 2006.</i> )
28A.305.130	Powers and duties—Purpose.
28A.305.200	Repealed. ( <i>Effective January 1, 2006.</i> )
28A.305.210	Assistance of educational service district boards and superintendents—Scope.
28A.305.900	Transfer of powers and duties—State board of education. ( <i>Effective January 1, 2006.</i> )
28A.305.901	Transfer of powers and duties—Academic achievement and accountability commission.

### **28A.305.010 Repealed. (*Effective January 1, 2006.*)**

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

**28A.305.011 Board membership—Terms—Compensation. (*Effective January 1, 2006.*)** (1) The membership of the state board of education shall be composed of sixteen members who are residents of the state of Washington:

(a) Seven shall be members representing the educational system, as follows:

(i) Five members elected by school district directors. Three of the members elected by school district directors shall be residents of western Washington and two members shall be residents of eastern Washington;

(ii) One member elected at-large by the members of the boards of directors of all private schools in the state meeting the requirements of RCW 28A.195.010; and

(iii) The superintendent of public instruction;

(b) Seven members appointed by the governor; and

(c) Two students selected in a manner determined by the state board of education.

(2) Initial appointments shall be for terms from one to four years in length, with the terms expiring on the second Monday of January of the applicable year. As the terms of the first appointees expire or vacancies on the board occur, the governor shall appoint or reappoint members of the board to complete the initial terms or to four-year terms, as appropriate.

(a) Appointees of the governor must be individuals who have demonstrated interest in public schools and are supportive of educational improvement, have a positive record of service, and who will devote sufficient time to the responsibilities of the board.

(b) In appointing board members, the governor shall consider the diversity of the population of the state.

(c) All appointments to the board made by the governor are subject to confirmation by the senate.

(d) No person may serve as a member of the board, except the superintendent of public instruction, for more than two consecutive full four-year terms.

(3) The governor may remove an appointed member of the board for neglect of duty, misconduct, malfeasance, or misfeasance in office, or for incompetent or unprofessional

conduct as defined in chapter 18.130 RCW. In such a case, the governor shall file with the secretary of state a statement of the causes for and the order of removal from office, and the secretary of state shall send a certified copy of the statement of causes and order of removal to the last known post office address of the member.

(4)(a) The chair of the board shall be elected by a majority vote of the members of the board. The chair of the board shall serve a term of two years, and may be reelected to an additional term. A member of the board may not serve as chair for more than two consecutive terms.

(b) Eight voting members of the board constitute a quorum for the transaction of business.

(c) All members except the student members are voting members.

(5) Members of the board appointed by the governor who are not public employees shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses incurred in carrying out the duties of the board in accordance with RCW 43.03.050 and 43.03.060. [2005 c 497 § 101.]

**Intent—2005 c 497:** "The legislature intends to reconstitute the state board of education and to refocus its purpose; to abolish the academic achievement and accountability commission; to assign policy and rule-making authority for educator preparation and certification to the professional educator standards board and to clearly define its purpose; and to align the missions of the state board of education and the professional educator standards board to create a collaborative and effective governance system that can accelerate progress towards achieving the goals in RCW 28A.150.210." [2005 c 497 § 1.]

**Part headings not law—2005 c 497:** "Part headings used in this act are not any part of the law." [2005 c 497 § 408.]

**Effective date—2005 c 497 §§ 101, 103, 105, 106, 201 through 220, 301, 401, and 403:** "Sections 101, 103, 105, 106, 201 through 220, 301, 401, and 403 through 405 of this act take effect January 1, 2006." [2005 c 497 § 409.]

**28A.305.020 Repealed. (Effective January 1, 2006.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28A.305.021 Election of board members—Restrictions.** The election of state board of education members by school directors and private school board members shall be conducted by the office of the superintendent of public instruction for the members of the state board who begin serving on January 1, 2006, and thereafter.

(1) The superintendent shall adopt rules for the conduct of elections, which shall include, but need not be limited to: The definition of the eastern Washington and western Washington geographic regions of the state for the purpose of determining board member positions; the weighting of votes cast by the number of students in the school director's school district or board member's private school; election and dispute resolution procedures; the process for filling vacancies; and election timelines. The election timeline shall include calling for elections no later than the twenty-fifth of August, and notification of the election results no later than the fifteenth of December.

(2) State board member positions one and two shall be filled by residents of the eastern Washington region and positions three, four, and five shall be filled by residents of the western Washington region.

(3) A school director shall be eligible to vote only for a candidate for each position in the geographic region within which the school director resides.

(4) Initial terms of the individuals elected by the school directors shall be for terms of two to four years in length as follows: Two members, one from eastern Washington and one from western Washington, shall be elected to two-year terms; two members, one from eastern Washington and one from western Washington, shall be elected to four-year terms; and one member from western Washington shall be elected to a three-year term. The term of the private school member shall be two years. All terms shall expire on the second Monday of January of the applicable year.

(5) No person employed in any public or private school, college, university, or other educational institution or any educational service district superintendent's office or in the office of the superintendent of public instruction is eligible for membership on the state board of education. No member of a board of directors of a local school district or private school may continue to serve in that capacity after having been elected to the state board. [2005 c 497 § 102.]

**Effective date—2005 c 497 § 102:** "Section 102 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 16, 2005]." [2005 c 497 § 411.]

**Intent—Part headings not law—2005 c 497:** See notes following RCW 28A.305.011.

**28A.305.030 Repealed. (Effective January 1, 2006.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28A.305.035 Joint report to the legislature. (Effective January 1, 2006.)** By October 15th of each even-numbered year, the state board of education and the professional educator standards board shall submit a joint report to the legislative education committees, the governor, and the superintendent of public instruction. The report shall address the progress the boards have made and the obstacles they have encountered, individually and collectively, in the work of achieving the goals in RCW 28A.150.210. [2005 c 497 § 103.]

**Intent—Part headings not law—Effective date—2005 c 497:** See notes following RCW 28A.305.011.

**28A.305.040 through 28A.305.120 Repealed. (Effective January 1, 2006.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28A.305.130 Powers and duties—Purpose.** The purpose of the state board of education is to adopt statewide policies that promote achievement of the goals of RCW 28A.150.210; implement a standards-based accountability system; and provide leadership in the creation of an education system that respects the diverse cultures, abilities, and learning styles of all students. In addition to any other powers and duties as provided by law, the state board of education shall:

(1) Until January 1, 2006, approve or disapprove the program of courses leading to teacher, school administrator, and school specialized personnel certification offered by all insti-

tutions of higher education within the state which may be accredited and whose graduates may become entitled to receive such certification.

(2) Until January 1, 2006, conduct every five years a review of the program approval standards, including the minimum standards for teachers, administrators, and educational staff associates, to reflect research findings and assure continued improvement of preparation programs for teachers, administrators, and educational staff associates.

(3) Until January 1, 2006, investigate the character of the work required to be performed as a condition of entrance to and graduation from any institution of higher education in this state relative to such certification as provided for in subsection (1) of this section, and prepare a list of accredited institutions of higher education of this and other states whose graduates may be awarded such certificates.

(4) Until January 1, 2006:

(a) Adopt rules to allow a teacher certification candidate to fulfill, in part, teacher preparation program requirements through work experience as a classified teacher's aide in a public school or private school meeting the requirements of RCW 28A.195.010. The rules shall include, but are not limited to, limitations based upon the recency of the teacher preparation candidate's teacher aide work experience, and limitations based on the amount of work experience that may apply toward teacher preparation program requirements under this chapter; and

(b) Require that at the time of the individual's enrollment in a teacher preparation program, the supervising teacher and the building principal shall jointly provide to the teacher preparation program of the higher education institution at which the teacher candidate is enrolled, a written assessment of the performance of the teacher candidate. The assessment shall contain such information as determined by the state board of education and shall include: Evidence that at least fifty percent of the candidate's work as a classified teacher's aide was involved in instructional activities with children under the supervision of a certificated teacher and that the candidate worked a minimum of six hundred thirty hours for one school year; the type of work performed by the candidate; and a recommendation of whether the candidate's work experience as a classified teacher's aide should be substituted for teacher preparation program requirements. In compliance with such rules as may be established by the state board of education under this section, the teacher preparation programs of the higher education institution where the candidate is enrolled shall make the final determination as to what teacher preparation program requirements may be fulfilled by teacher aide work experience.

(5) Until January 1, 2006, supervise the issuance of such certificates as provided for in subsection (1) of this section and specify the types and kinds of certificates necessary for the several departments of the common schools by rule or regulation in accordance with RCW 28A.410.010.

(6) Hold regularly scheduled meetings at such time and place within the state as the board shall determine and may hold such special meetings as may be deemed necessary for the transaction of public business.

(7) Form committees as necessary to effectively and efficiently conduct the work of the board.

(8) Seek advice from the public and interested parties regarding the work of the board.

(9) For purposes of statewide accountability, the board shall:

(a) Adopt and revise performance improvement goals in reading, writing, science, and mathematics, by subject and grade level, once assessments in these subjects are required statewide; academic and technical skills, as appropriate, in secondary career and technical education programs; and student attendance, as the board deems appropriate to improve student learning. The goals shall be consistent with student privacy protection provisions of RCW 28A.655.090(7) and shall not conflict with requirements contained in Title I of the federal elementary and secondary education act of 1965, or the requirements of the Carl D. Perkins vocational education act of 1998, each as amended. The goals may be established for all students, economically disadvantaged students, limited English proficient students, students with disabilities, and students from disproportionately academically under-achieving racial and ethnic backgrounds. The board may establish school and school district goals addressing high school graduation rates and dropout reduction goals for students in grades seven through twelve. The board shall adopt the goals by rule. However, before each goal is implemented, the board shall present the goal to the education committees of the house of representatives and the senate for the committees' review and comment in a time frame that will permit the legislature to take statutory action on the goal if such action is deemed warranted by the legislature;

(b) Identify the scores students must achieve in order to meet the standard on the Washington assessment of student learning and, for high school students, to obtain a certificate of academic achievement. The board shall also determine student scores that identify levels of student performance below and beyond the standard. The board shall consider the incorporation of the standard error of measurement into the decision regarding the award of the certificates. The board shall set such performance standards and levels in consultation with the superintendent of public instruction and after consideration of any recommendations that may be developed by any advisory committees that may be established for this purpose. The initial performance standards and any changes recommended by the board in the performance standards for the tenth grade assessment shall be presented to the education committees of the house of representatives and the senate by November 30th of the school year in which the changes will take place to permit the legislature to take statutory action before the changes are implemented if such action is deemed warranted by the legislature. The legislature shall be advised of the initial performance standards and any changes made to the elementary level performance standards and the middle school level performance standards;

(c) Adopt objective, systematic criteria to identify successful schools and school districts and recommend to the superintendent of public instruction schools and districts to be recognized for two types of accomplishments, student achievement and improvements in student achievement. Recognition for improvements in student achievement shall include consideration of one or more of the following accomplishments:



(i) An increase in the percent of students meeting standards. The level of achievement required for recognition may be based on the achievement goals established by the legislature and by the board under (a) of this subsection;

(ii) Positive progress on an improvement index that measures improvement in all levels of the assessment; and

(iii) Improvements despite challenges such as high levels of mobility, poverty, English as a second language learners, and large numbers of students in special populations as measured by either the percent of students meeting the standard, or the improvement index. When determining the baseline year or years for recognizing individual schools, the board may use the assessment results from the initial years the assessments were administered, if doing so with individual schools would be appropriate;

(d) Adopt objective, systematic criteria to identify schools and school districts in need of assistance and those in which significant numbers of students persistently fail to meet state standards. In its deliberations, the board shall consider the use of all statewide mandated criterion-referenced and norm-referenced standardized tests;

(e) Identify schools and school districts in which state intervention measures will be needed and a range of appropriate intervention strategies after the legislature has authorized a set of intervention strategies. After the legislature has authorized a set of intervention strategies, at the request of the board, the superintendent shall intervene in the school or school district and take corrective actions. This chapter does not provide additional authority for the board or the superintendent of public instruction to intervene in a school or school district;

(f) Identify performance incentive systems that have improved or have the potential to improve student achievement;

(g) Annually review the assessment reporting system to ensure fairness, accuracy, timeliness, and equity of opportunity, especially with regard to schools with special circumstances and unique populations of students, and a recommendation to the superintendent of public instruction of any improvements needed to the system;

(h) Include in the biennial report required under RCW 28A.305.035, information on the progress that has been made in achieving goals adopted by the board.

(10) Accredited, subject to such accreditation standards and procedures as may be established by the state board of education, all schools that apply for accreditation, and approve, subject to the provisions of RCW 28A.195.010, private schools carrying out a program for any or all of the grades kindergarten through twelve: PROVIDED, That no private school may be approved that operates a kindergarten program only: PROVIDED FURTHER, That no public or private schools shall be placed upon the list of accredited schools so long as secret societies are knowingly allowed to exist among its students by school officials: PROVIDED FURTHER, That the state board may elect to require all or certain classifications of the public schools to conduct and participate in such preaccreditation examination and evaluation processes as may now or hereafter be established by the board.

(11) Make rules and regulations governing the establishment in any existing nonhigh school district of any secondary program or any new grades in grades nine through twelve. Before any such program or any new grades are established the district must obtain prior approval of the state board.

(12) Prepare such outline of study for the common schools as the board shall deem necessary, and in conformance with legislative requirements, and prescribe such rules

for the general government of the common schools, as shall seek to secure regularity of attendance, prevent truancy, secure efficiency, and promote the true interest of the common schools.

(13) Continuously reevaluate courses and other requirements and adopt and enforce regulations within the common schools so as to meet the educational needs of students.

(14) Evaluate course of study requirements and articulate with the institutions of higher education, work force representatives, and early learning policymakers and providers to coordinate and unify the work of the public school system.

(15) Carry out board powers and duties relating to the organization and reorganization of school districts.

(16) Hear and decide appeals as otherwise provided by law.

(17) Promulgate information and rules dealing with the prevention of child abuse for purposes of curriculum use in the common schools.

(18) Hire an executive director and an administrative assistant to reside in the office of the superintendent of public instruction for administrative purposes. Any other personnel of the board shall be appointed as provided by RCW 28A.300.020. The executive director, administrative assistant, and all but one of the other personnel of the board are exempt from civil service, together with other staff as now or hereafter designated as exempt in accordance with chapter 41.06 RCW.

(19) Adopt a seal that shall be kept in the office of the superintendent of public instruction. [2005 c 497 § 104; 2002 c 205 § 3; 1997 c 13 § 5; 1996 c 83 § 1; 1995 c 369 § 9; 1991 c 116 § 11; 1990 c 33 § 266. Prior: 1987 c 464 § 1; 1987 c 39 § 1; prior: 1986 c 266 § 86; 1986 c 149 § 3; 1984 c 40 § 2; 1979 ex.s. c 173 § 1; 1975-'76 2nd ex.s. c 92 § 1; 1975 1st ex.s. c 275 § 50; 1974 ex.s. c 92 § 1; 1971 ex.s. c 215 § 1; 1971 c 48 § 2; 1969 ex.s. c 223 § 28A.04.120; prior: 1963 c 32 § 1; 1961 c 47 § 1; prior: (i) 1933 c 80 § 1; 1915 c 161 § 1; 1909 c 97 p 236 § 5; 1907 c 240 § 3; 1903 c 104 § 12; 1897 c 118 § 27; 1895 c 150 § 1; 1890 p 352 § 8; Code 1881 § 3165; RRS § 4529. (ii) 1919 c 89 § 3; RRS § 4684. (iii) 1909 c 97 p 238 § 6; 1897 c 118 § 29; RRS § 4530. Formerly RCW 28A.04.120, 28.04.120, 28.58.280, 28.58.281, 28.58.282, 43.63.140.]

**Effective date—2005 c 497 §§ 104, 302, 402, and 406 through 408:** "Sections 104, 302, 402, and 406 through 408 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2005." [2005 c 497 § 410.]

**Intent—Part headings not law—2005 c 497:** See notes following RCW 28A.305.011.

**Findings—Severability—Effective dates—2002 c 205 §§ 2, 3, and 4:** See notes following RCW 28A.320.125.

**Effective date—1995 c 369:** See note following RCW 43.43.930.

**Severability—1986 c 266:** See note following RCW 38.52.005.

**Severability—1984 c 40:** See note following RCW 28A.195.050.

**Severability—1975-'76 2nd ex.s. c 92:** "If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 92 § 6.]

*Child abuse and neglect—Development of primary prevention program:* RCW 28A.300.160.

*Districts to develop programs and establish programs regarding child abuse and neglect prevention:* RCW 28A.225.200.

*Professional certification not to be required of superintendents, deputy or assistant superintendents:* RCW 28A.410.120.

*Use of force on children—Policy—Actions presumed unreasonable:* RCW 9A.16.100.



**28A.305.200 Repealed.** (*Effective January 1, 2006.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28A.305.210 Assistance of educational service district boards and superintendents—Scope.** (1) The state board of education, by rule or regulation, may require the assistance of educational service district boards and/or superintendents in the performance of any duty, authority, or power imposed upon or granted to the state board of education by law, upon such terms and conditions as the state board of education shall establish. Such authority to assist the state board of education shall be limited to the service function of information collection and dissemination and the attestation to the accuracy and completeness of submitted information.

(2) During the 2005-2007 biennium, educational service districts may, at the request of the state board of education, receive and screen applications for school accreditation, conduct school accreditation site visits pursuant to state board of education rules, and submit to the state board of education postsite visit recommendations for school accreditation. The educational service districts may assess a cooperative service fee to recover actual plus reasonable indirect costs for the purposes of this subsection. [2005 c 518 § 913; 2003 1st sp.s. c 25 § 911; 1975 1st ex.s. c 275 § 51; 1971 ex.s. c 282 § 30. Formerly RCW 28A.04.145.]

**Severability—2005 c 518:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 518 § 1804.]

**Effective date—2005 c 518:** "Except for sections 923 and 931 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 17, 2005]." [2005 c 518 § 1805.]

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Severability—1971 ex.s. c 282:** See note following RCW 28A.310.010.

**28A.305.900 Transfer of powers and duties—State board of education.** (*Effective January 1, 2006.*) (1) The state board of education as constituted prior to January 1, 2006, is hereby abolished and its powers, duties, and functions are hereby transferred to the state board of education as specified in chapter 497, Laws of 2005. All references to the director or the state board of education as constituted prior to January 1, 2006, in the Revised Code of Washington shall be construed to mean the director or the state board of education as specified in chapter 497, Laws of 2005.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the state board of education as constituted prior to January 1, 2006, shall be delivered to the custody of the state board of education as specified in chapter 497, Laws of 2005. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the state board of education as constituted prior to January 1, 2006, shall be made available to the state board of education as specified in chapter 497, Laws of 2005. All funds, credits, or other assets held by the state board of education as constituted prior to January 1, 2006,

shall be assigned to the state board of education as specified in chapter 497, Laws of 2005.

(b) Any appropriations made to the state board of education as constituted prior to January 1, 2006, shall, on January 1, 2006, be transferred and credited to the state board of education as specified in chapter 497, Laws of 2005.

(c) If any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees of the state board of education as constituted prior to January 1, 2006, are transferred to the jurisdiction of the state board of education as specified in chapter 497, Laws of 2005. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the state board of education as specified in chapter 497, Laws of 2005 to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All rules and all pending business before the state board of education as constituted prior to January 1, 2006, shall be continued and acted upon by the state board of education as specified in chapter 497, Laws of 2005. All existing contracts and obligations shall remain in full force and shall be performed by the state board of education as specified in chapter 497, Laws of 2005.

(5) The transfer of the powers, duties, functions, and personnel of the state board of education as constituted prior to January 1, 2006, shall not affect the validity of any act performed before January 1, 2006.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(7) Nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the personnel resources board as provided by law. [2005 c 497 § 301.]

**Intent—Part headings not law—Effective date—2005 c 497:** See notes following RCW 28A.305.011.

**28A.305.901 Transfer of powers and duties—Academic achievement and accountability commission.** (1) The academic achievement and accountability commission is hereby abolished and its powers, duties, and functions are hereby transferred to the state board of education. All references to the director or the academic achievement and accountability commission in the Revised Code of Washington shall be construed to mean the director or the state board of education.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the academic achievement and accountability commission shall be delivered to the custody of the state board of education. All

cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the academic achievement and accountability commission shall be made available to the state board of education. All funds, credits, or other assets held by the academic achievement and accountability commission shall be assigned to the state board of education.

(b) Any appropriations made to the academic achievement and accountability commission shall, on July 1, 2005, be transferred and credited to the state board of education.

(c) If any question arises as to the transfer of any funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All rules and all pending business before the academic achievement and accountability commission shall be continued and acted upon by the state board of education. All existing contracts and obligations shall remain in full force and shall be performed by the state board of education.

(4) The transfer of the powers, duties, and functions of the academic achievement and accountability commission shall not affect the validity of any act performed before July 1, 2005.

(5) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(6) Nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the personnel resources board as provided by law. [2005 c 497 § 302.]

**Effective date—2005 c 497 §§ 104, 302, 402, and 406-408:** See note following RCW 28A.305.130.

### Chapter 28A.310 RCW EDUCATIONAL SERVICE DISTRICTS

#### Sections

28A.310.110 ESD board—Members—Elections, contest of. (*Effective January 1, 2006.*)

**28A.310.110 ESD board—Members—Elections, contest of.** (*Effective January 1, 2006.*) Any common school district board member eligible to vote for a candidate for membership on an educational service district or any candidate for the position, within ten days after the secretary to the state board of education's certification of election, may contest the election of the candidate pursuant to chapter 29A.68 RCW. [2005 c 497 § 404; 1990 c 33 § 272; 1977 ex.s. c 283 § 18. Formerly RCW 28A.21.034.]

**Intent—Part headings not law—Effective date—2005 c 497:** See notes following RCW 28A.305.011.

**Severability—1977 ex.s. c 283:** See note following RCW 28A.310.010.

[2005 RCW Supp—page 214]

### Chapter 28A.315 RCW ORGANIZATION AND REORGANIZATION OF SCHOOL DISTRICTS

#### Sections

28A.315.085 Personnel and supplies—Reimbursement. (*Effective January 1, 2006.*)

**28A.315.085 Personnel and supplies—Reimbursement.** (*Effective January 1, 2006.*) (1) The superintendent of public instruction shall furnish to the state board and to regional committees the services of employed personnel and the materials and supplies necessary to enable them to perform the duties imposed upon them by this chapter and shall reimburse the members thereof for expenses necessarily incurred by them in the performance of their duties, such reimbursement for regional committee members to be in accordance with RCW 28A.315.155, and such reimbursement for state board members to be in accordance with RCW 28A.305.011.

(2) Costs that may be incurred by an educational service district in association with school district negotiations under RCW 28A.315.195 and supporting the regional committee under RCW 28A.315.205 shall be reimbursed by the state from such funds as are appropriated for these purposes. [2005 c 497 § 405; 1999 c 315 § 206.]

**Intent—Part headings not law—Effective date—2005 c 497:** See notes following RCW 28A.305.011.

### Chapter 28A.320 RCW PROVISIONS APPLICABLE TO ALL DISTRICTS

#### Sections

28A.320.015 School boards of directors—Powers—Notice of adoption of policy.

28A.320.160 Alleged sexual misconduct by school employee—Parental notification—Information on public records act. (*Effective July 1, 2006.*)

28A.320.170 Curricula—Tribal history and culture.

**28A.320.015 School boards of directors—Powers—Notice of adoption of policy.** (1) The board of directors of each school district may exercise the following:

(a) The broad discretionary power to determine and adopt written policies not in conflict with other law that provide for the development and implementation of programs, activities, services, or practices that the board determines will:

(i) Promote the education and daily physical activity of kindergarten through twelfth grade students in the public schools; or

(ii) Promote the effective, efficient, or safe management and operation of the school district;

(b) Such powers as are expressly authorized by law; and  
(c) Such powers as are necessarily or fairly implied in the powers expressly authorized by law.

(2) Before adopting a policy under subsection (1)(a) of this section, the school district board of directors shall comply with the notice requirements of the open public meetings act, chapter 42.30 RCW, and shall in addition include in that notice a statement that sets forth or reasonably describes the proposed policy. The board of directors shall provide a rea-

sonable opportunity for public written and oral comment and consideration of the comment by the board of directors. [2005 c 360 § 7; 1992 c 141 § 301.]

**Findings—Intent—2005 c 360:** See note following RCW 36.70A.070.

**Findings—Part headings—Severability—1992 c 141:** See note following RCW 28A.410.040.

**28A.320.160 Alleged sexual misconduct by school employee—Parental notification—Information on public records act. (Effective July 1, 2006.)** School districts must, at the first opportunity but in all cases within forty-eight hours of receiving a report alleging sexual misconduct by a school employee, notify the parents of a student alleged to be the victim, target, or recipient of the misconduct. School districts shall provide parents with information regarding their rights under the public records act, chapter 42.56 RCW, to request the public records regarding school employee discipline. This information shall be provided to all parents on an annual basis. [2005 c 274 § 244; 2004 c 29 § 3.]

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

**Findings—2004 c 29:** See note following RCW 28A.400.301.

**28A.320.170 Curricula—Tribal history and culture.**

(1) Each school district board of directors is encouraged to incorporate curricula about the history, culture, and government of the nearest federally recognized Indian tribe or tribes, so that students learn about the unique heritage and experience of their closest neighbors. School districts near Washington's borders are encouraged to include federally recognized Indian tribes whose traditional lands and territories included parts of Washington, but who now reside in Oregon, Idaho, and British Columbia. School districts and tribes are encouraged to work together to develop such curricula.

(2) As they conduct regularly scheduled reviews and revisions of their social studies and history curricula, school districts are encouraged to collaborate with any federally recognized Indian tribe within their district, and with neighboring Indian tribes, to incorporate expanded and improved curricular materials about Indian tribes, and to create programs of classroom and community cultural exchanges.

(3) School districts are encouraged to collaborate with the office of the superintendent of public instruction on curricular areas regarding tribal government and history that are statewide in nature, such as the concept of tribal sovereignty and the history of federal policy towards federally recognized Indian tribes. The program of Indian education within the office of the superintendent of public instruction is encouraged to help local school districts identify federally recognized Indian tribes whose reservations are in whole or in part within the boundaries of the district and/or those that are nearest to the school district. [2005 c 205 § 4.]

**Intent—Findings—2005 c 205:** "It is the intent of the legislature to promote the full success of the centennial accord, which was signed by state and tribal government leaders in 1989. As those leaders declared in the subsequent millennial accord in 1999, this will require "educating the citizens of our state, particularly the youth who are our future leaders, about tribal history, culture, treaty rights, contemporary tribal and state government institutions and relations and the contribution of Indian nations to the state of Washington." The legislature recognizes that this goal has yet to be achieved in most of our state's schools and districts. As a result, Indian students may not find the school curriculum, especially Washington state history curriculum, relevant to their lives or experiences. In addition, many students may

remain uninformed about the experiences, contributions, and perspectives of their tribal neighbors, fellow citizens, and classmates. The legislature further finds that the lack of accurate and complete curricula may contribute to the persistent achievement gap between Indian and other students. The legislature finds there is a need to establish collaborative government-to-government relationships between elected school boards and tribal councils to create local and/or regional curricula about tribal history and culture, and to promote dialogue and cultural exchanges that can help tribal leaders and school leaders implement strategies to close the achievement gap." [2005 c 205 § 1.]

**Chapter 28A.335 RCW**

**SCHOOL DISTRICTS' PROPERTY**

Sections

- 28A.335.190 Advertising for bids—Competitive bid procedures—Purchases from inmate work programs—Telephone or written quotation solicitation, limitations—Emergencies.  
28A.335.210 Purchase of works of art—Procedure.

**28A.335.190 Advertising for bids—Competitive bid procedures—Purchases from inmate work programs—Telephone or written quotation solicitation, limitations—Emergencies.**

(1) When, in the opinion of the board of directors of any school district, the cost of any furniture, supplies, equipment, building, improvements, or repairs, or other work or purchases, except books, will equal or exceed the sum of fifty thousand dollars, complete plans and specifications for such work or purchases shall be prepared and notice by publication given in at least one newspaper of general circulation within the district, once each week for two consecutive weeks, of the intention to receive bids and that specifications and other information may be examined at the office of the board or any other officially designated location: PROVIDED, That the board without giving such notice may make improvements or repairs to the property of the district through the shop and repair department of such district when the total of such improvements or repair does not exceed the sum of forty thousand dollars. The cost of any public work, improvement or repair for the purposes of this section shall be the aggregate of all amounts to be paid for labor, material, and equipment on one continuous or interrelated project where work is to be performed simultaneously or in close sequence. The bids shall be in writing and shall be opened and read in public on the date and in the place named in the notice and after being opened shall be filed for public inspection.

(2) Every purchase of furniture, equipment or supplies, except books, the cost of which is estimated to be in excess of forty thousand dollars, shall be on a competitive basis. The board of directors shall establish a procedure for securing telephone and/or written quotations for such purchases. Whenever the estimated cost is from forty thousand dollars up to seventy-five thousand dollars, the procedure shall require quotations from at least three different sources to be obtained in writing or by telephone, and recorded for public perusal. Whenever the estimated cost is in excess of seventy-five thousand dollars, the public bidding process provided in subsection (1) of this section shall be followed.

(3) Any school district may purchase goods produced or provided in whole or in part from class II inmate work programs operated by the department of corrections pursuant to RCW 72.09.100, including but not limited to furniture,

equipment, or supplies. School districts are encouraged to set as a target to contract, beginning after June 30, 2006, to purchase up to one percent of the total goods required by the school districts each year, goods produced or provided in whole or in part from class II inmate work programs operated by the department of corrections.

(4) Every building, improvement, repair or other public works project, the cost of which is estimated to be in excess of forty thousand dollars, shall be on a competitive bid process. Whenever the estimated cost of a public works project is one hundred thousand dollars or more, the public bidding process provided in subsection (1) of this section shall be followed unless the contract is let using the small works roster process in RCW 39.04.155 or under any other procedure authorized for school districts. One or more school districts may authorize an educational service district to establish and operate a small works roster for the school district under the provisions of RCW 39.04.155.

(5) The contract for the work or purchase shall be awarded to the lowest responsible bidder as defined in RCW 43.19.1911 but the board may by resolution reject any and all bids and make further calls for bids in the same manner as the original call. On any work or purchase the board shall provide bidding information to any qualified bidder or the bidder's agent, requesting it in person.

(6) In the event of any emergency when the public interest or property of the district would suffer material injury or damage by delay, upon resolution of the board declaring the existence of such an emergency and reciting the facts constituting the same, the board may waive the requirements of this section with reference to any purchase or contract: PROVIDED, That an "emergency", for the purposes of this section, means a condition likely to result in immediate physical injury to persons or to property of the school district in the absence of prompt remedial action.

(7) This section does not apply to the direct purchase of school buses by school districts and educational services in accordance with RCW 28A.160.195. [2005 c 346 § 2; 2005 c 286 § 1; 2000 c 138 § 201; 1995 1st sp.s. c 10 § 3; 1994 c 212 § 1; 1990 c 33 § 362; 1985 c 324 § 1; 1980 c 61 § 1; 1975-'76 2nd ex.s. c 26 § 1; 1969 ex.s. c 49 § 2; 1969 ex.s. c 223 § 28A.58.135. Prior: 1961 c 224 § 1. Formerly RCW 28A.58.135, 28.58.135.]

**Reviser's note:** This section was amended by 2005 c 286 § 1 and by 2005 c 346 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Purpose—Part headings not law—2000 c 138:** See notes following RCW 39.04.155.

*Alternative public works contracting procedures: Chapter 39.10 RCW.*

### **28A.335.210 Purchase of works of art—Procedure.**

The state board of education and superintendent of public instruction shall allocate, as a nondeductible item, out of any moneys appropriated for state assistance to school districts for the original construction of any school plant facility the amount of one-half of one percent of the appropriation to be expended by the Washington state arts commission for the acquisition of works of art. The works of art may be placed in accordance with Article IX, sections 2 and 3 of the state Constitution on public lands, integral to or attached to a pub-

lic building or structure, detached within or outside a public building or structure, part of a portable exhibition or collection, part of a temporary exhibition, or loaned or exhibited in other public facilities. The Washington state arts commission shall, in consultation with the superintendent of public instruction, determine the amount to be made available for the purchase of works of art under this section, and payments therefor shall be made in accordance with law. The designation of projects and sites, selection, contracting, purchase, commissioning, reviewing of design, execution and placement, acceptance, maintenance, and sale, exchange, or disposition of works of art shall be the responsibility of the Washington state arts commission in consultation with the superintendent of public instruction and representatives of school district boards of directors. The superintendent of public instruction and the school district board of directors of the districts where the sites are selected shall have the right to:

(1) Waive its use of the one-half of one percent of the appropriation for the acquisition of works of art before the selection process by the Washington state arts commission;

(2) Appoint a representative to the body established by the Washington state arts commission to be part of the selection process with full voting rights;

(3) Reject the results of the selection process;

(4) Reject the placement of a completed work or works of art on school district premises if such works are portable.

Rejection at any point before or after the selection process shall not cause the loss of or otherwise endanger state construction funds available to the local school district. Any works of art rejected under this section shall be applied to the provision of works of art under this chapter, at the discretion of the Washington state arts commission, notwithstanding any contract or agreement between the affected school district and the artist involved. In addition to the cost of the works of art the one-half of one percent of the appropriation as provided herein shall be used to provide for the administration, including conservation of the state art collection, by the Washington state arts commission and all costs for installation of the work of art. For the purpose of this section building shall not include sheds, warehouses or other buildings of a temporary nature.

The executive director of the arts commission, the superintendent of public instruction and the Washington state school directors association shall appoint a study group to review the operations of the one-half of one percent for works of art under this section. [2005 c 36 § 1; 1983 c 204 § 7; 1982 c 191 § 2; 1974 ex.s. c 176 § 5. Formerly RCW 28A.58.055.]

**Implementation—1983 c 204 § 7:** "Implementation of section 7 of this 1983 act shall become effective upon approval by the arts commission, the superintendent of public instruction and the Washington state school directors association." [1983 c 204 § 10.] "Section 7 of this 1983 act," was the 1983 c 204 amendment to RCW 28A.58.055, now recodified as RCW 28A.335.210.

**Severability—1983 c 204:** See note following RCW 43.46.090.

**Severability—1982 c 191:** "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 191 § 14.]

*Acquisition of works of art for public buildings and lands—Visual arts program established: RCW 43.46.090.*

*Allocation of moneys for acquisition of works of art—Expenditure by arts commission—Conditions: RCW 43.17.200.*

*Purchase of works of art—Interagency reimbursement for expenditure by visual arts program: RCW 43.17.205.*

*State art collection: RCW 43.46.095.*

### Chapter 28A.345 RCW

## WASHINGTON STATE SCHOOL DIRECTORS' ASSOCIATION

### Sections

28A.345.070 Tribal relationships—Achievement gap—Curriculum—Reports to the legislature.

**28A.345.070 Tribal relationships—Achievement gap—Curriculum—Reports to the legislature.** (1) Beginning in 2006, and at least once annually through 2010, the Washington state school directors' association is encouraged to convene regional meetings and invite the tribal councils from the region for the purpose of establishing government-to-government relationships and dialogue between tribal councils and school district boards of directors. Participants in these meetings should discuss issues of mutual concern, and should work to:

(a) Identify the extent and nature of the achievement gap and strategies necessary to close it;

(b) Increase mutual awareness and understanding of the importance of accurate, high-quality curriculum materials about the history, culture, and government of local tribes; and

(c) Encourage school boards to identify and adopt curriculum that includes tribal experiences and perspectives, so that Indian students are more engaged and learn more successfully, and so that all students learn about the history, culture, government, and experiences of their Indian peers and neighbors.

(2) By December 1, 2008, and every two years thereafter through 2012, the school directors' association shall report to the education committees of the legislature regarding the progress made in the development of effective government-to-government relations, the narrowing of the achievement gap, and the identification and adoption of curriculum regarding tribal history, culture, and government. The report shall include information about any obstacles encountered, and any strategies under development to overcome them. [2005 c 205 § 2.]

**Intent—Findings—2005 c 205:** See note following RCW 28A.320.170.

### Chapter 28A.400 RCW

## EMPLOYEES

### Sections

28A.400.301 Information on past sexual misconduct—Requirement for applicants—Limitation on contracts and agreements—Employee right to review personnel file.

**28A.400.301 Information on past sexual misconduct—Requirement for applicants—Limitation on contracts and agreements—Employee right to review personnel file.** (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Applicant" means an applicant for employment in a certificated or classified position who is currently or was previously employed by a school district.

(b) "Employer" means a school district employer.

(2) Before hiring an applicant, a school district shall request the applicant to sign a statement:

(a) Authorizing the applicant's current and past employers, including employers outside of Washington state, to disclose to the hiring school district sexual misconduct, if any, by the applicant and making available to the hiring school district copies of all documents in the previous employer's personnel, investigative, or other files relating to sexual misconduct by the applicant; and

(b) Releasing the applicant's current and past employers, and employees acting on behalf of that employer, from any liability for providing information described in (a) of this subsection, as provided in subsection (4) of this section.

(3) Before hiring an applicant, a school district shall request in writing, electronic or otherwise, the applicant's current and past employers, including out-of-state employers, to provide the information described in subsection (2)(a) of this section, if any. The request shall include a copy of the statement signed by the applicant under subsection (2) of this section.

(4) Not later than twenty business days after receiving a request under subsection (3) of this section, a school district shall provide the information requested and make available to the requesting school district copies of all documents in the applicant's personnel record relating to the sexual misconduct. The school district, or an employee acting on behalf of the school district, who in good faith discloses information under this section is immune from civil liability for the disclosure.

(5) A hiring district shall request from the office of the superintendent of public instruction verification of certification status, including information relating to sexual misconduct as established by the provisions of subsection (11) of this section, if any, for applicants for certificated employment.

(6) A school district shall not hire an applicant who does not sign the statement described in subsection (2) of this section.

(7) School districts may employ applicants on a conditional basis pending the district's review of information obtained under this section. When requests are sent to out-of-state employers under subsection (3) of this section, an applicant who has signed the statement described in subsection (2) of this section, shall not be prevented from gaining employment in Washington public schools if the laws or policies of that other state prevent documents from being made available to Washington state school districts or if the out-of-state school district fails or refuses to cooperate with the request.

(8) Information received under this section shall be used by a school district only for the purpose of evaluating an applicant's qualifications for employment in the position for which he or she has applied. Except as otherwise provided by law, a board member or employee of a school district shall not disclose the information to any person, other than the applicant, who is not directly involved in the process of evaluating the applicant's qualifications for employment. A person who violates this subsection is guilty of a misdemeanor.

(9) Beginning September 1, 2004, the board or an official of a school district shall not enter into a collective bargaining agreement, individual employment contract, resignation agreement, severance agreement, or any other contract or agreement that has the effect of suppressing information about verbal or physical abuse or sexual misconduct by a present or former employee or of expunging information about that abuse or sexual misconduct from any documents in the previous employer's personnel, investigative, or other files relating to verbal or physical abuse or sexual misconduct by the applicant. Any provision of a contract or agreement that is contrary to this subsection is void and unenforceable, and may not be withheld from disclosure by the entry of any administrative or court order. This subsection does not restrict the expungement from a personnel file of information about alleged verbal or physical abuse or sexual misconduct that has not been substantiated.

(10) This section does not prevent a school district from requesting or requiring an applicant to provide information other than that described in this section.

(11) By September 1, 2004, the state board of education has the authority to and shall adopt rules defining "verbal abuse," "physical abuse," and "sexual misconduct" as used in this section for application to all classified and certificated employees. The definitions of verbal and physical abuse and sexual misconduct adopted by the state board of education must include the requirement that the school district has made a determination that there is sufficient information to conclude that the abuse or misconduct occurred and that the abuse or misconduct resulted in the employee's leaving his or her position at the school district.

(12) Except as limited by chapter 49.12 RCW, at the conclusion of a school district's investigation, a school employee has the right to review his or her entire personnel file, investigative file, or other file maintained by the school district relating to sexual misconduct as addressed in this section and to attach rebuttals to any documents as the employee deems necessary. Rebuttal documents shall be disclosed in the same manner as the documents to which they are attached. The provisions of this subsection do not supercede the protections provided individuals under the state whistleblower laws in chapter 42.41 RCW. [2005 c 266 § 1; 2004 c 29 § 2.]

**Findings—2004 c 29:** "The legislature recognizes that state law requires criminal background checks of applicants for school district employment. However, the legislature finds that, because they generally are limited to criminal conviction histories, results of background checks are more complete when supplemented by an applicant's history of past sexual misconduct. Therefore, the legislature finds that additional safeguards are necessary in the hiring of school district employees to ensure the safety of Washington's school children. In order to provide the safest educational environment for children, school districts must provide known information regarding employees' sexual misconduct when those employees attempt to transfer to different school districts." [2004 c 29 § 1.]

## Chapter 28A.405 RCW CERTIFICATED EMPLOYEES

### Sections

28A.405.210 Conditions and contracts of employment—Determination of probable cause for nonrenewal of contracts—Nonrenewal due to enrollment decline or revenue loss—Notice—Opportunity for hearing. (*Effective January 1, 2006.*)

**28A.405.210 Conditions and contracts of employment—Determination of probable cause for nonrenewal of contracts—Nonrenewal due to enrollment decline or revenue loss—Notice—Opportunity for hearing. (*Effective January 1, 2006.*)** No teacher, principal, supervisor, superintendent, or other certificated employee, holding a position as such with a school district, hereinafter referred to as "employee", shall be employed except by written order of a majority of the directors of the district at a regular or special meeting thereof, nor unless he or she is the holder of an effective teacher's certificate or other certificate required by law or the Washington professional educator standards board for the position for which the employee is employed.

The board shall make with each employee employed by it a written contract, which shall be in conformity with the laws of this state, and except as otherwise provided by law, limited to a term of not more than one year. Every such contract shall be made in duplicate, one copy to be retained by the school district superintendent or secretary and one copy to be delivered to the employee. No contract shall be offered by any board for the employment of any employee who has previously signed an employment contract for that same term in another school district of the state of Washington unless such employee shall have been released from his or her obligations under such previous contract by the board of directors of the school district to which he or she was obligated. Any contract signed in violation of this provision shall be void.

In the event it is determined that there is probable cause or causes that the employment contract of an employee should not be renewed by the district for the next ensuing term such employee shall be notified in writing on or before May 15th preceding the commencement of such term of that determination, or if the omnibus appropriations act has not passed the legislature by May 15th, then notification shall be no later than June 1st, which notification shall specify the cause or causes for nonrenewal of contract. Such determination of probable cause for certificated employees, other than the superintendent, shall be made by the superintendent. Such notice shall be served upon the employee personally, or by certified or registered mail, or by leaving a copy of the notice at the house of his or her usual abode with some person of suitable age and discretion then resident therein. Every such employee so notified, at his or her request made in writing and filed with the president, chair or secretary of the board of directors of the district within ten days after receiving such notice, shall be granted opportunity for hearing pursuant to RCW 28A.405.310 to determine whether there is sufficient cause or causes for nonrenewal of contract: PROVIDED, That any employee receiving notice of nonrenewal of contract due to an enrollment decline or loss of revenue may, in his or her request for a hearing, stipulate that initiation of the arrangements for a hearing officer as provided for by RCW 28A.405.310(4) shall occur within ten days following July 15 rather than the day that the employee submits the request for a hearing. If any such notification or opportunity for hearing is not timely given, the employee entitled thereto shall be conclusively presumed to have been reemployed by the district for the next ensuing term upon contractual terms identical with those which would have prevailed if his or her employment had actually been renewed by the board of directors for such ensuing term.

This section shall not be applicable to "provisional employees" as so designated in RCW 28A.405.220; transfer to a subordinate certificated position as that procedure is set forth in RCW 28A.405.230 shall not be construed as a nonrenewal of contract for the purposes of this section. [2005 c 497 § 216; 1996 c 201 § 1; 1990 c 33 § 390. Prior: 1983 c 83 § 1; 1983 c 56 § 11; 1975-'76 2nd ex.s. c 114 § 4; 1975 1st ex.s. c 275 § 133; 1973 c 49 § 2; 1970 ex.s. c 15 § 16; prior: 1969 ex.s. c 176 § 143; 1969 ex.s. c 34 § 12; 1969 ex.s. c 15 § 2; 1969 ex.s. c 223 § 28A.67.070; prior: 1961 c 241 § 1; 1955 c 68 § 3; prior: (i) 1909 c 97 p 307 § 5; 1897 c 118 § 55; 1891 c 127 § 14; 1890 p 369 § 37; 1886 p 18 § 47; Code 1881 § 3200; RRS § 4851. (ii) 1943 c 52 § 1, part; 1941 c 179 § 1, part; 1939 c 131 § 1, part; 1925 ex.s. c 57 § 1, part; 1919 c 89 § 3, part; 1915 c 44 § 1, part; 1909 c 97 p 285 § 2, part; 1907 c 240 § 5, part; 1903 c 104 § 17, part; 1901 c 41 § 3, part; 1897 c 118 § 40, part; 1890 p 364 § 26, part; Rem. Supp. 1943 § 4776, part. Formerly RCW 28A.67.070, 28.67.070.]

**Intent—Part headings not law—Effective date—2005 c 497:** See notes following RCW 28A.305.011.

**Severability—1983 c 56:** See note following RCW 28A.195.010.

**Savings—Severability—1975-'76 2nd ex.s. c 114:** See notes following RCW 28A.400.010.

**Severability—1970 ex.s. c 15:** See note following RCW 28A.230.160.

**Rights preserved—Severability—1969 ex.s. c 176:** See notes following RCW 28A.310.010.

*Minimum criteria for the evaluation of certificated employees, including administrators—Procedure—Scope—Penalty: RCW 28A.405.100.*

*School superintendent—RCW 28A.405.210 not applicable to contract renewal: RCW 28A.400.010.*

## Chapter 28A.410 RCW CERTIFICATION

### Sections

- 28A.410.010 Certification—Duty of professional educator standards board—Rules—Record check—Lapsed certificates—Superintendent of public instruction as administrator. *(Effective January 1, 2006.)*
- 28A.410.032 Qualifications—Teachers of visually impaired—Rules. *(Effective January 1, 2006.)*
- 28A.410.040 Initial-level certificates. *(Effective January 1, 2006.)*
- 28A.410.050 Baccalaureate and masters degree equivalency requirements for vocational instructors—Rules. *(Effective January 1, 2006.)*
- 28A.410.060 Fee for certification—Disposition. *(Effective January 1, 2006.)*
- 28A.410.090 Revocation or suspension of certificate or permit to teach—Investigation by superintendent of public instruction—Written complaints—Crimes against children—Accessing or possessing material depicting sexually explicit conduct.
- 28A.410.095 Violation or noncompliance—Investigatory powers of superintendent of public instruction—Requirements for investigation of alleged sexual misconduct towards a child—Court orders—Contempt—Written findings required. *(Effective July 1, 2006.)*
- 28A.410.100 Revocation of authority to teach—Hearings and appeals. *(Effective January 1, 2006.)*
- 28A.410.120 Professional certification not required of superintendents or deputy or assistant superintendents. *(Effective January 1, 2006.)*
- 28A.410.200 Washington professional educator standards board—Creation—Membership—Executive director. *(Effective January 1, 2006.)*
- 28A.410.210 Washington professional educator standards board—Purpose—Powers and duties. *(Effective January 1, 2006.)*
- 28A.410.225 Washington professional educator standards board—Endorsement requirements—Teachers of deaf and hard of hearing students.
- 28A.410.250 Washington professional educator standards board—Professional certification—Rules.

**28A.410.010 Certification—Duty of professional educator standards board—Rules—Record check—Lapsed certificates—Superintendent of public instruction as administrator. (Effective January 1, 2006.)** The Washington professional educator standards board shall establish, publish, and enforce rules determining eligibility for and certification of personnel employed in the common schools of this state, including certification for emergency or temporary, substitute or provisional duty and under such certificates or permits as the board shall deem proper or as otherwise prescribed by law. The rules shall require that the initial application for certification shall require a record check of the applicant through the Washington state patrol criminal identification system and through the federal bureau of investigation at the applicant's expense. The record check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card. The superintendent of public instruction may waive the record check for any applicant who has had a record check within the two years before application. The rules shall permit a holder of a lapsed certificate but not a revoked or suspended certificate to be employed on a conditional basis by a school district with the requirement that the holder must complete any certificate renewal requirements established by the state board of education within two years of initial reemployment.

In establishing rules pertaining to the qualifications of instructors of American sign language the board shall consult with the national association of the deaf, "sign instructors guidance network" (s.i.g.n.), and the Washington state association of the deaf for evaluation and certification of sign language instructors.

The superintendent of public instruction shall act as the administrator of any such rules and have the power to issue any certificates or permits and revoke the same in accordance with board rules. [2005 c 497 § 203; 2001 c 263 § 1. Prior: 1992 c 159 § 3; 1992 c 60 § 2; prior: 1988 c 172 § 3; 1988 c 97 § 1; 1987 c 486 § 8; 1975-'76 2nd ex.s. c 92 § 2; 1969 ex.s. c 223 § 28A.70.005. Formerly RCW 28A.70.005.]

**Intent—Part headings not law—Effective date—2005 c 497:** See notes following RCW 28A.305.011.

**Findings—1992 c 159:** See note following RCW 28A.400.303.

**Severability—1988 c 97:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 97 § 3.]

**Severability—1975-'76 2nd ex.s. c 92:** See note following RCW 28A.305.130.

**28A.410.032 Qualifications—Teachers of visually impaired—Rules. (Effective January 1, 2006.)** Teachers of visually impaired students shall be qualified according to rules adopted by the professional educator standards board. [2005 c 497 § 220; 1996 c 135 § 4.]

**Intent—Part headings not law—Effective date—2005 c 497:** See notes following RCW 28A.305.011.

**Findings—1996 c 135:** See note following RCW 28A.155.105.

**28A.410.040 Initial-level certificates. (Effective January 1, 2006.)** The Washington professional educator standards board shall adopt rules providing that, except as provided in this section, all individuals qualifying for an initial-

level teaching certificate after August 31, 1992, shall possess a baccalaureate degree in the arts, sciences, and/or humanities and have fulfilled the requirements for teacher certification pursuant to RCW 28A.410.210. However, candidates for grades preschool through eight certificates shall have fulfilled the requirements for a major as part of their baccalaureate degree. If the major is in early childhood education, elementary education, or special education, the candidate must have at least thirty quarter hours or twenty semester hours in one academic field. [2005 c 497 § 204; 1992 c 141 § 101; 1990 c 33 § 406. Prior: 1989 c 402 § 1; 1989 c 29 § 1; 1987 c 525 § 212. Formerly RCW 28A.70.040.]

**Intent—Part headings not law—Effective date—2005 c 497:** See notes following RCW 28A.305.011.

**Findings—1992 c 141:** "The legislature finds that the educational needs of students when they leave the public school system has [have] increased dramatically in the past two decades. If young people are to prosper in our democracy and if our nation is to grow economically, it is imperative that the overall level of learning achieved by students be significantly increased.

To achieve this higher level of learning, the legislature finds that the state of Washington needs to develop a performance-based school system. Instead of maintaining burdensome state accountability laws and rules that dictate educational offerings, the state needs to hold schools accountable for their performance based on what their students learn.

The legislature further finds moving toward a performance-based accountability system will require repealing state laws and rules that inhibit the freedom of school boards and professional educators to carry out their work, and also will require that significantly more decisions be made at the school district and school building levels. In addition, it will be necessary to set high expectations for students, to identify what is expected of all students, and to develop a rigorous academic assessment system to determine if these expectations have been achieved.

The legislature further finds that the governor's council on education reform and funding will, by December 1992, identify broad student learning goals. Subject to decisions made by the 1993 legislature, the legislature finds that it is critical that an organization be established to continue the council's work in identifying necessary student skills and knowledge, to develop student assessment and school accountability systems, and to take other steps necessary to develop a performance-based education system.

The legislature further finds that there is a need for high quality professional development as the state implements a performance-based system. Professional development must be available to schools and school districts to maintain quality control and to assure access to proven research on effective teaching." [1992 c 141 § 1.]

**Part headings—1992 c 141:** "Part headings as used in this act constitute no part of the law." [1992 c 141 § 601.]

**Severability—1992 c 141:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1992 c 141 § 602.]

**Intent—1987 c 525 §§ 201-233:** "The legislature intends to enhance the education of the state's youth by improving the quality of teaching. The legislature intends to establish a framework for teacher and principal preparation programs and to recognize teaching as a profession.

The legislature finds that the quality of teacher preparation programs is enhanced when a planned, sequenced approach is used that provides for the application of practice to academic course work.

The legislature supports better integration of the elements of teacher preparation programs including knowledge of subject matter, teaching methods, and actual teaching experiences.

The legislature finds that establishing: (1) A teaching internship program; (2) a post-baccalaureate program resulting in a masters degree; (3) stronger requirements for earning principal credentials; and (4) a review of the preparation standards for school principals and educational staff associates are appropriate next steps in enhancing the quality of educational personnel in Washington." [1987 c 525 § 201.]

**Short title—1987 c 525 §§ 202-233:** "Sections 202 through 233 of this act shall be known as the professional educator excellence act of 1987." [1987 c 525 § 234.]

**Severability—1987 c 525:** See note following RCW 28A.300.050.

**28A.410.050 Baccalaureate and masters degree equivalency requirements for vocational instructors—Rules. (Effective January 1, 2006.)** The Washington professional educator standards board shall develop and adopt rules establishing baccalaureate and masters degree equivalency standards for vocational instructors performing instructional duties and acquiring certification after August 31, 1992. [2005 c 497 § 205; 1992 c 141 § 102; 1989 c 29 § 2; 1987 c 525 § 215. Formerly RCW 28A.70.042.]

**Intent—Part headings not law—Effective date—2005 c 497:** See notes following RCW 28A.305.011.

**Findings—Part headings—Severability—1992 c 141:** See notes following RCW 28A.410.040.

**Intent—Short title—1987 c 525 §§ 202-233:** See notes following RCW 28A.410.040.

**Severability—1987 c 525:** See note following RCW 28A.300.050.

**28A.410.060 Fee for certification—Disposition. (Effective January 1, 2006.)** The fee for any certificate, or any renewal thereof, issued by the authority of the state of Washington, and authorizing the holder to teach or perform other professional duties in the public schools of the state shall be not less than one dollar or such reasonable fee therefor as the Washington professional educator standards board by rule shall deem necessary therefor. The fee must accompany the application and cannot be refunded unless the application is withdrawn before it is finally considered. The educational service district superintendent, or other official authorized to receive such fee, shall within thirty days transmit the same to the treasurer of the county in which the office of the educational service district superintendent is located, to be by him or her placed to the credit of said school district or educational service district: PROVIDED, That if any school district collecting fees for the certification of professional staff does not hold a professional training institute separate from the educational service district then all such moneys shall be placed to the credit of the educational service district.

Such fees shall be used solely for the purpose of precertification professional preparation, program evaluation, and professional in-service training programs in accord with rules of the Washington professional educator standards board herein authorized. [2005 c 497 § 206; 1990 c 33 § 407; 1975-'76 2nd ex.s. c 92 § 3; 1975-'76 2nd ex.s. c 15 § 17. Prior: 1975 1st ex.s. c 275 § 134; 1975 1st ex.s. c 192 § 1; 1969 ex.s. c 176 § 144; 1969 ex.s. c 223 § 28A.70.110; prior: 1965 c 139 § 20; 1909 c 97 p 336 § 3; RRS § 4968; prior: 1897 c 118 § 142. Formerly RCW 28A.70.110, 28.70.110, 28.70.120.]

**Intent—Part headings not law—Effective date—2005 c 497:** See notes following RCW 28A.305.011.

**Severability—1975-'76 2nd ex.s. c 92:** See note following RCW 28A.305.130.

**Severability—1975 1st ex.s. c 192:** "If any provision of this amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 192 § 3.]

**Rights preserved—Severability—1969 ex.s. c 176:** See notes following RCW 28A.310.010.

**28A.410.090 Revocation or suspension of certificate or permit to teach—Investigation by superintendent of public instruction—Written complaints—Crimes against children—Accessing or possessing material depicting sex-**



**ually explicit conduct.** (1) Any certificate or permit authorized under the provisions of this chapter, chapter 28A.405 RCW, or rules promulgated thereunder may be revoked or suspended by the authority authorized to grant the same based upon a criminal records report authorized by law, or upon the complaint of any school district superintendent, educational service district superintendent, or private school administrator for immorality, violation of written contract, unprofessional conduct, intemperance, or crime against the law of the state.

If the superintendent of public instruction has reasonable cause to believe that an alleged violation of this chapter or rules adopted under it has occurred based on a written complaint alleging physical abuse or sexual misconduct by a certificated school employee filed by a parent or another person, but no complaint has been forwarded to the superintendent by a school district superintendent, educational service district superintendent, or private school administrator, and that a school district superintendent, educational service district superintendent, or private school administrator has sufficient notice of the alleged violation and opportunity to file a complaint, the superintendent of public instruction may cause an investigation to be made of the alleged violation, together with such other matters that may be disclosed in the course of the investigation related to certificated personnel.

(2) A parent or another person may file a written complaint with the superintendent of public instruction alleging physical abuse or sexual misconduct by a certificated school employee if:

(a) The parent or other person has already filed a written complaint with the educational service district superintendent concerning that employee;

(b) The educational service district superintendent has not caused an investigation of the allegations and has not forwarded the complaint to the superintendent of public instruction for investigation; and

(c) The written complaint states the grounds and factual basis upon which the parent or other person believes an investigation should be conducted.

(3) Any such certificate or permit authorized under this chapter or chapter 28A.405 RCW shall be revoked by the authority authorized to grant the certificate upon a guilty plea or the conviction of any felony crime involving the physical neglect of a child under chapter 9A.42 RCW, the physical injury or death of a child under chapter 9A.32 or 9A.36 RCW (excepting motor vehicle violations under chapter 46.61 RCW), sexual exploitation of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under chapter 9A.88 RCW, the sale or purchase of a minor child under RCW 9A.64.030, or violation of similar laws of another jurisdiction. The person whose certificate is in question shall be given an opportunity to be heard. Mandatory permanent revocation upon a guilty plea or the conviction of felony crimes specified under this subsection shall apply to such convictions or guilty pleas which occur after July 23, 1989. Revocation of any certificate or permit authorized under this chapter or chapter 28A.405 RCW for a guilty plea or criminal conviction occurring prior to July 23, 1989, shall be subject to the provisions of subsection (1) of this section.

(4)(a) Any such certificate or permit authorized under this chapter or chapter 28A.405 RCW shall be suspended or revoked, according to the provisions of this subsection, by the authority authorized to grant the certificate upon a finding that an employee has engaged in an unauthorized use of school equipment to intentionally access material depicting sexually explicit conduct or has intentionally possessed on school grounds any material depicting sexually explicit conduct; except for material used in conjunction with established curriculum. A first time violation of this subsection shall result in either suspension or revocation of the employee's certificate or permit as determined by the office of the superintendent of public instruction. A second violation shall result in a mandatory revocation of the certificate or permit.

(b) In all cases under this subsection (4), the person whose certificate is in question shall be given an opportunity to be heard and has the right to appeal as established in RCW 28A.410.100. Certificates or permits shall be suspended or revoked under this subsection only if findings are made on or after July 24, 2005. For the purposes of this subsection, "sexually explicit conduct" has the same definition as provided in RCW 9.68A.011. [2005 c 461 § 2; 2004 c 134 § 2; 1996 c 126 § 2; 1992 c 159 § 4; 1990 c 33 § 408; 1989 c 320 § 1; 1975 1st ex.s. c 275 § 137; 1974 ex.s. c 55 § 2; 1971 c 48 § 51; 1969 ex.s. c 223 § 28A.70.160. Prior: 1909 c 97 p 345 § 1; RRS § 4992; prior: 1897 c 118 § 148. Formerly RCW 28A.70.160, 28.70.160.]

**Effective date—1996 c 126:** See note following RCW 28A.400.305.

**Findings—1992 c 159:** See note following RCW 28A.400.303.

**Severability—1989 c 320:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 320 § 7.]

**Severability—1971 c 48:** See note following RCW 28A.305.040.

*Crimes against children—Notification of conviction or guilty plea of school employee: RCW 43.43.845.*

**28A.410.095 Violation or noncompliance—Investigatory powers of superintendent of public instruction—Requirements for investigation of alleged sexual misconduct towards a child—Court orders—Contempt—Written findings required. (Effective July 1, 2006.)** (1) The superintendent of public instruction may initiate and conduct investigations as may be reasonably necessary to establish the existence of any alleged violations of or noncompliance with this chapter or any rules adopted under it. For the purpose of any investigation or proceeding under this chapter, the superintendent or any officer designated by the superintendent may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records that the superintendent deems relevant and material to the inquiry.

(2) Investigations conducted by the superintendent of public instruction concerning alleged sexual misconduct towards a child shall be completed within one year of the initiation of the investigation or within thirty days of the completion of all proceedings, including court proceedings, resulting from an investigation conducted by law enforcement or child protective services if there is such an investigation. The superintendent of public instruction may take, for

reasonable cause, additional time for completion of the investigation after informing the victim, the individual being investigated, and the school district that employs the individual being investigated of the reasons additional time is needed and the amount of additional time needed. Written notification must be provided to each of the parties who must be informed. The sole remedy for a failure to complete an investigation of sexual misconduct within the time allowed by this subsection is a civil penalty of fifty dollars per day for each day beyond the allowed time.

(3) If any person fails to obey a subpoena or obeys a subpoena but refuses to give evidence, any court of competent jurisdiction, upon application by the superintendent, may issue to that person an order requiring him or her to appear before the court and to show cause why he or she should not be compelled to obey the subpoena, and give evidence material to the matter under investigation. The failure to obey an order of the court may be punishable as contempt.

(4) Once an investigation has been initiated by the superintendent of public instruction, the investigation shall be completed regardless of whether the individual being investigated has resigned his or her position or allowed his or her teaching certificate to lapse. The superintendent shall make a written finding regarding each investigation indicating the actions taken, including a statement of the reasons why a complaint was dismissed or did not warrant further investigation or action by the superintendent, and shall provide such notice to each person who filed the complaint. Written findings under this section are subject to public disclosure under chapter 42.56 RCW.

(5) An investigation into sexual or physical abuse of a student by a school employee shall only be initiated by the superintendent of public instruction after the superintendent of public instruction verifies that the incident has been reported to the proper law enforcement agency or the department of social and health services as required under RCW 26.44.030. [2005 c 274 § 245; 2004 c 134 § 1; 1992 c 159 § 5.]

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

**Findings—1992 c 159:** See note following RCW 28A.400.303.

**28A.410.100 Revocation of authority to teach—Hearings and appeals. (Effective January 1, 2006.)** Any teacher whose certificate to teach has been questioned under RCW 28A.410.090 shall have a right to be heard by the issuing authority before his or her certificate is revoked. Any teacher whose certificate to teach has been revoked shall have a right of appeal to the Washington professional educator standards board if notice of appeal is given by written affidavit to the board within thirty days after the certificate is revoked.

An appeal to the Washington professional educator standards board within the time specified shall operate as a stay of revocation proceedings until the next regular or special meeting of said board and until the board's decision has been rendered. [2005 c 497 § 207; 1992 c 159 § 6; 1990 c 33 § 409; 1975 1st ex.s. c 275 § 138; 1971 c 48 § 52; 1969 ex.s. c 223 § 28A.70.170. Prior: 1909 c 97 p 346 § 3; RRS § 4994. Formerly RCW 28A.70.170, 28.70.170.]

[2005 RCW Supp—page 222]

**Intent—Part headings not law—Effective date—2005 c 497:** See notes following RCW 28A.305.011.

**Findings—1992 c 159:** See note following RCW 28A.400.303.

**Severability—1971 c 48:** See note following RCW 28A.305.040.

**28A.410.120 Professional certification not required of superintendents or deputy or assistant superintendents. (Effective January 1, 2006.)** Notwithstanding any other provision of this title, the Washington professional educator standards board or superintendent of public instruction shall not require any professional certification or other qualifications of any person elected superintendent of a local school district by that district's board of directors, or any person hired in any manner to fill a position designated as, or which is, in fact, deputy superintendent, or assistant superintendent. [2005 c 497 § 208; 1990 c 33 § 411; 1975 1st ex.s. c 254 § 3. Formerly RCW 28A.02.260.]

**Intent—Part headings not law—Effective date—2005 c 497:** See notes following RCW 28A.305.011.

**Severability—1975 1st ex.s. c 254:** "If any provision of this 1975 amendatory act, or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 254 § 4.]

**28A.410.200 Washington professional educator standards board—Creation—Membership—Executive director. (Effective January 1, 2006.)** (1)(a) The Washington professional educator standards board is created, consisting of twenty members to be appointed by the governor to four-year terms and the superintendent of public instruction.

(b) As the four-year terms of the first appointees expire or vacancies to the board occur for the first time, the governor shall appoint or reappoint the members of the board to one-year to four-year staggered terms. Once the one-year to three-year terms expire, all subsequent terms shall be for four years, with the terms expiring on June 30th of the applicable year. The terms shall be staggered in such a way that, where possible, the terms of members representing a specific group do not expire simultaneously.

(c) No person may serve as a member of the board for more than two consecutive full four-year terms.

(d) The governor shall annually appoint the chair of the board from among the teachers and principals on the board. No board member may serve as chair for more than two consecutive years.

(2) Seven of the members shall be public school teachers, one shall be a private school teacher, three shall represent higher education educator preparation programs, four shall be school administrators, two shall be educational staff associates, one shall be a classified employee who assists in public school student instruction, one shall be a parent, and one shall be a member of the public.

(3) Public school teachers appointed to the board must:

(a) Have at least three years of teaching experience in a Washington public school;

(b) Be currently certificated and actively employed in a teaching position; and

(c) Include one teacher currently teaching at the elementary school level, one at the middle school level, one at the high school level, and one vocationally certificated.

(4) Private school teachers appointed to the board must:

(a) Have at least three years of teaching experience in a Washington approved private school; and

(b) Be currently certificated and actively employed in a teaching position in an approved private school.

(5) Appointees from higher education educator preparation programs must include two representatives from institutions of higher education as defined in RCW 28B.10.016 and one representative from an institution of higher education as defined in RCW 28B.07.020(4).

(6) School administrators appointed to the board must:

(a) Have at least three years of administrative experience in a Washington public school district;

(b) Be currently certificated and actively employed in a school administrator position; and

(c) Include two public school principals, one Washington approved private school principal, and one superintendent.

(7) Educational staff associates appointed to the board must:

(a) Have at least three years of educational staff associate experience in a Washington public school district; and

(b) Be currently certificated and actively employed in an educational staff associate position.

(8) Public school classified employees appointed to the board must:

(a) Have at least three years of experience in assisting in the instruction of students in a Washington public school; and

(b) Be currently employed in a position that requires the employee to assist in the instruction of students.

(9) Each major caucus of the house of representatives and the senate shall submit a list of at least one public school teacher. In making the public school teacher appointments, the governor shall select one nominee from each list provided by each caucus. The governor shall appoint the remaining members of the board from a list of qualified nominees submitted to the governor by organizations representative of the constituencies of the board, from applications from other qualified individuals, or from both nominees and applicants.

(10) All appointments to the board made by the governor shall be subject to confirmation by the senate.

(11) The governor shall appoint the members of the initial board no later than June 1, 2000.

(12) In appointing board members, the governor shall consider the diversity of the population of the state.

(13) Each member of the board shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses incurred in carrying out the duties of the board in accordance with RCW 43.03.050 and 43.03.060.

(14) The governor may remove a member of the board for neglect of duty, misconduct, malfeasance or misfeasance in office, or for incompetency or unprofessional conduct as defined in chapter 18.130 RCW. In such a case, the governor shall file with the secretary of state a statement of the causes for and the order of removal from office, and the secretary of state shall send a certified copy of the statement of causes and order of removal to the last known post office address of the member.

(15) If a vacancy occurs on the board, the governor shall appoint a replacement member from the nominees as specified in subsection (9) of this section to fill the remainder of the unexpired term. When filling a vacancy of a member

nominated by a major caucus of the legislature, the governor shall select the new member from a list of at least one name submitted by the same caucus that provided the list from which the retiring member was appointed.

(16) Members of the board shall hire an executive director and an administrative assistant to reside in the office of the superintendent of public instruction for administrative purposes only. [2005 c 497 § 202; 2003 1st sp.s. c 22 § 1; 2002 c 92 § 1; 2000 c 39 § 102.]

**Intent—Part headings not law—Effective date—2005 c 497:** See notes following RCW 28A.305.011.

**Findings—2000 c 39:** "The legislature finds and declares:

(1) Creation of a public body whose focus is educator quality would be likely to bring greater focus and attention to the profession;

(2) Professional educator standards boards are consumer protection boards, establishing assessment policies to ensure the public that its new practitioners have the knowledge to be competent;

(3) The highest possible standards for all educators are essential in ensuring attainment of high academic standards by all students;

(4) Teacher assessment for certification can guard against admission to the teaching profession of persons who have not demonstrated that they are knowledgeable in the subjects they will be assigned to teach; and

(5) Teacher assessment for certification should be implemented as an additional element to the system of teacher preparation and certification." [2000 c 39 § 101.]

**Part headings and section captions not law—2000 c 39:** "Part headings and section captions used in this act are not any part of the law." [2000 c 39 § 301.]

**28A.410.210 Washington professional educator standards board—Purpose—Powers and duties. (Effective January 1, 2006.)** The purpose of the professional educator standards board is to establish policies and requirements for the preparation and certification of educators that provide standards for competency in professional knowledge and practice in the areas of certification; a foundation of skills, knowledge, and attitudes necessary to help students with diverse needs, abilities, cultural experiences, and learning styles meet or exceed the learning goals outlined in RCW 28A.150.210; knowledge of research-based practice; and professional development throughout a career. The Washington professional educator standards board shall:

(1) Establish policies and practices for the approval of programs of courses, requirements, and other activities leading to educator certification including teacher, school administrator, and educational staff associate certification;

(2) Establish policies and practices for the approval of the character of work required to be performed as a condition of entrance to and graduation from any educator preparation program including teacher, school administrator, and educational staff associate preparation program as provided in subsection (1) of this section;

(3) Establish a list of accredited institutions of higher education of this and other states whose graduates may be awarded educator certificates as teacher, school administrator, and educational staff associate and establish criteria and enter into agreements with other states to acquire reciprocal approval of educator preparation programs and certification, including teacher certification from the national board for professional teaching standards;

(4) Establish policies for approval of nontraditional educator preparation programs;

(5) Conduct a review of educator program approval standards at least every five years, beginning in 2006, to reflect

research findings and assure continued improvement of preparation programs for teachers, administrators, and school specialized personnel;

(6) Specify the types and kinds of educator certificates to be issued and conditions for certification in accordance with subsection (1) of this section and RCW 28A.410.010;

(7) Hear and determine educator certification appeals as provided by RCW 28A.410.100;

(8) Apply for and receive federal or other funds on behalf of the state for purposes related to the duties of the board;

(9) Adopt rules under chapter 34.05 RCW that are necessary for the effective and efficient implementation of this chapter;

(10) Maintain data concerning educator preparation programs and their quality, educator certification, educator employment trends and needs, and other data deemed relevant by the board;

(11) Serve as an advisory body to the superintendent of public instruction on issues related to educator recruitment, hiring, mentoring and support, professional growth, retention, educator evaluation including but not limited to peer evaluation, and revocation and suspension of licensure;

(12) Submit, by October 15th of each even-numbered year, a joint report with the state board of education to the legislative education committees, the governor, and the superintendent of public instruction. The report shall address the progress the boards have made and the obstacles they have encountered, individually and collectively, in the work of achieving the goals set out in RCW 28A.150.210;

(13) Establish the prospective teacher assessment system for basic skills and subject knowledge that shall be required to obtain residency certification pursuant to RCW 28A.410.220 through 28A.410.240; and

(14) Conduct meetings under the provisions of chapter 42.30 RCW. [2005 c 497 § 201; 2000 c 39 § 103.]

**Intent—Part headings not law—Effective date—2005 c 497:** See notes following RCW 28A.305.011.

**Findings—Part headings and section captions not law—2000 c 39:** See notes following RCW 28A.410.200.

**28A.410.225 Washington professional educator standards board—Endorsement requirements—Teachers of deaf and hard of hearing students.** The agency responsible for teacher certification shall develop certification endorsement requirements for teachers of deaf and hard of hearing students. The endorsement shall be focused on the specific skills and knowledge necessary to serve the education and communication needs of deaf and hard of hearing students. In establishing rules for the endorsement of teachers who will be working almost exclusively with students who are deaf or hard of hearing, the agency shall consider applicants to have met state endorsement requirements if they possess a baccalaureate or master's degree in deaf education from a teacher training program approved by the council on education of the deaf. [2005 c 493 § 2.]

**Findings—Intent—2005 c 493:** "The legislature finds that the quality of education for children who are deaf or hard of hearing and the expectations for those children's achievement should be equivalent to those for children throughout the state. The legislature also finds that deaf and hard of hearing children can benefit greatly if they are taught by an educator who is trained to understand the learning and communication issues the children face. Educators who received teacher training in a program for the deaf and

hard of hearing are sensitive to the needs of deaf and hard of hearing students and are able to provide appropriate strategies to assist students in reacting to and interacting with their environment. The legislature intends to assist school districts in their efforts to attract teachers who are especially trained to work with deaf and hard of hearing students by directing the state board of education to establish a certification endorsement for teachers of the deaf and hard of hearing." [2005 c 493 § 1.]

**28A.410.250 Washington professional educator standards board—Professional certification—Rules.** The agency responsible for educator certification shall adopt rules for professional certification that:

(1) Provide maximum program choice for applicants, promote portability among programs, and promote maximum efficiency for applicants in attaining professional certification;

(2) Require professional certification no earlier than the fifth year following the year that the teacher first completes provisional status, with an automatic two-year extension upon enrollment;

(3) Grant professional certification to any teacher who attains certification from the national board for professional teaching standards;

(4) Permit any teacher currently enrolled in or participating in a program leading to professional certification to continue the program under administrative rules in place when the teacher began the program;

(5) Provide criteria for the approval of educational service districts, beginning no later than August 31, 2007, to offer programs leading to professional certification. The rules shall be written to encourage institutions of higher education and educational service districts to partner with local school districts or consortia of school districts, as appropriate, to provide instruction for teachers seeking professional certification;

(6) Encourage institutions of higher education to offer professional certificate coursework as continuing education credit hours. This shall not prevent an institution of higher education from providing the option of including the professional certification requirements as part of a master's degree program;

(7) Provide criteria for a liaison relationship between approved programs and school districts in which applicants are employed;

(8) Identify an expedited professional certification process for out-of-state teachers who have five years or more of successful teaching experience to demonstrate skills and impact on student learning commensurate with Washington requirements for professional certification. The rules may require these teachers, within one year of the time they begin to teach in the state's public schools, take a course in or show evidence that they can teach to the state's essential academic learning requirements; and

(9) Identify an evaluation process of approved programs that includes a review of the program coursework and applicant coursework load requirements, linkages of programs to individual teacher professional growth plans, linkages to school district and school improvement plans, and, to the extent possible, linkages to school district professional enrichment and growth programs for teachers, where such programs are in place in school districts. The agency shall provide a preliminary report on the evaluation process to the

senate and house of representatives committees on education policy by November 1, 2005. The board shall identify:

(a) A process for awarding conditional approval of a program that shall include annual evaluations of the program until the program is awarded full approval;

(b) A less intensive evaluation cycle every three years once a program receives full approval unless the responsible agency has reason to intensify the evaluation;

(c) A method for investigating programs that have received numerous complaints from students enrolled in the program and from those recently completing the program;

(d) A method for investigating programs at the reasonable discretion of the agency; and

(e) A method for using, in the evaluation, both program completer satisfaction responses and data on the impact of educators who have obtained professional certification on student work and achievement. [2005 c 498 § 2.]

**Intent—2005 c 498:** "The legislature recognizes the importance of ongoing professional development and growth for teachers with the goal of improving student achievement. It is the intent of the legislature to ensure that professional certification is administered in such a way as to ensure that the professional development and growth of individual teachers is directly aligned to their current and future teaching responsibilities as professional educators." [2005 c 498 § 1.]

**Chapter 28A.415 RCW**

**INSTITUTES, WORKSHOPS, AND TRAINING**

(Formerly: Teachers' institutes, workshops, and other in-service training)

Sections

- 28A.415.023 Credit on salary schedule for approved in-service training, continuing education, or internship—Course content—Rules. (*Effective until January 1, 2006.*)
- 28A.415.023 Credit on salary schedule for approved in-service training, continuing education, or internship—Course content—Rules. (*Effective January 1, 2006.*)
- 28A.415.024 Credit on salary schedule—Accredited institutions—Verification—Penalty for submitting credits from unaccredited institutions.
- 28A.415.060 Credits for educational staff associates to fulfill continuing education requirements. (*Effective January 1, 2006.*)
- 28A.415.205 Minority teacher recruitment program. (*Effective January 1, 2006.*)

**28A.415.023 Credit on salary schedule for approved in-service training, continuing education, or internship—Course content—Rules. (*Effective until January 1, 2006.*)**

(1) Credits earned by certificated instructional staff after September 1, 1995, shall be eligible for application to the salary schedule developed by the legislative evaluation and accountability program committee only if the course content:

(a) Is consistent with a school-based plan for mastery of student learning goals as referenced in RCW 28A.655.110, the annual school performance report, for the school in which the individual is assigned;

(b) Pertains to the individual's current assignment or expected assignment for the subsequent school year;

(c) Is necessary to obtain an endorsement as prescribed by the state board of education;

(d) Is specifically required to obtain advanced levels of certification;

(e) Is included in a college or university degree program that pertains to the individual's current assignment, or potential future assignment, as a certified instructional staff; or

(f) Addresses research-based assessment and instructional strategies for students with dyslexia, dysgraphia, and language disabilities when addressing learning goal one under RCW 28A.150.210, as applicable and appropriate for individual certificated instructional staff.

(2) For the purpose of this section, "credits" mean college quarter hour credits and equivalent credits for approved in-service, approved continuing education, or approved internship hours computed in accordance with RCW 28A.415.020.

(3) The superintendent of public instruction shall adopt rules and standards consistent with the limits established by this section for certificated instructional staff. [2005 c 393 § 1; 1997 c 90 § 1.]

**28A.415.023 Credit on salary schedule for approved in-service training, continuing education, or internship—**

**Course content—Rules. (*Effective January 1, 2006.*)** (1) Credits earned by certificated instructional staff after September 1, 1995, shall be eligible for application to the salary schedule developed by the legislative evaluation and accountability program committee only if the course content:

(a) Is consistent with a school-based plan for mastery of student learning goals as referenced in RCW 28A.655.110, the annual school performance report, for the school in which the individual is assigned;

(b) Pertains to the individual's current assignment or expected assignment for the subsequent school year;

(c) Is necessary to obtain an endorsement as prescribed by the Washington professional educator standards board;

(d) Is specifically required to obtain advanced levels of certification;

(e) Is included in a college or university degree program that pertains to the individual's current assignment, or potential future assignment, as a certified instructional staff; or

(f) Addresses research-based assessment and instructional strategies for students with dyslexia, dysgraphia, and language disabilities when addressing learning goal one under RCW 28A.150.210, as applicable and appropriate for individual certificated instructional staff.

(2) For the purpose of this section, "credits" mean college quarter hour credits and equivalent credits for approved in-service, approved continuing education, or approved internship hours computed in accordance with RCW 28A.415.020.

(3) The superintendent of public instruction shall adopt rules and standards consistent with the limits established by this section for certificated instructional staff. [2005 c 497 § 209; 2005 c 393 § 1; 1997 c 90 § 1.]

**Reviser's note:** This section was amended by 2005 c 393 § 1 and by 2005 c 497 § 209, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Intent—Part headings not law—Effective date—2005 c 497:** See notes following RCW 28A.305.011.

**28A.415.024 Credit on salary schedule—Accredited institutions—Verification—Penalty for submitting credits from unaccredited institutions.**

(1) All credits earned in furtherance of degrees earned by certificated staff, that are used to increase earnings on the salary schedule consistent

with RCW 28A.415.023, must be obtained from an educational institution accredited by an accrediting association recognized by rule of the state board of education.

(2) The office of the superintendent of public instruction shall verify for school districts the accreditation status of educational institutions granting degrees that are used by certificated staff to increase earnings on the salary schedule consistent with RCW 28A.415.023.

(3) The office of the superintendent of public instruction shall provide school districts with training and additional resources to ensure they can verify that degrees earned by certificated staff, that are used to increase earnings on the salary schedule consistent with RCW 28A.415.023, are obtained from an educational institution accredited by an accrediting association recognized by rule of the state board of education.

(4)(a) No school district may submit degree information before there has been verification of accreditation under subsection (3) of this section.

(b) Certificated staff who submit degrees received from an unaccredited educational institution for the purposes of receiving a salary increase shall be fined three hundred dollars. The fine shall be paid to the office of the superintendent of public instruction and used for costs of administering this section.

(c) In addition to the fine in (b) of this subsection, certificated staff who receive salary increases based upon degrees earned from educational institutions that have been verified to be unaccredited must reimburse the district for any compensation received based on these degrees. [2005 c 461 § 1.]

**28A.415.060 Credits for educational staff associates to fulfill continuing education requirements. (Effective January 1, 2006.)** The Washington professional educator standards board rules for continuing education shall provide that educational staff associates may use credits or clock hours that satisfy the continuing education requirements for their state professional licensure, if any, to fulfill the continuing education requirements established by the Washington professional educator standards board. [2005 c 497 § 210; 1991 c 155 § 1.]

**Intent—Part headings not law—Effective date—2005 c 497:** See notes following RCW 28A.305.011.

**28A.415.205 Minority teacher recruitment program. (Effective January 1, 2006.)** (1) The Washington state minority teacher recruitment program is established. The program shall be administered by the Washington professional educator standards board. The Washington professional educator standards board shall consult with the higher education coordinating board, representatives of institutions of higher education, education organizations having an interest in teacher recruitment issues, the superintendent of public instruction, the state board for community and technical colleges, the department of employment security, and the work force training and education coordinating board. The program shall be designed to recruit future teachers from students in the targeted groups who are in the ninth through twelfth grades and from adults in the targeted groups who have entered other occupations.

(2) The program shall include the following:

(a) Encouraging students in targeted groups in grades nine through twelve to acquire the academic and related skills necessary to prepare for the study of teaching at an institution of higher education;

(b) Promoting teaching career opportunities to develop an awareness of opportunities in the education profession;

(c) Providing opportunities for students to experience the application of regular high school course work to activities related to a teaching career; and

(d) Providing for increased cooperation among institutions of higher education including community colleges, the superintendent of public instruction, the Washington professional educator standards board, and local school districts in working toward the goals of the program. [2005 c 497 § 211; 1991 c 238 § 75; 1989 c 146 § 2. Formerly RCW 28A.305.270, 28A.67.260.]

**Intent—Part headings not law—Effective date—2005 c 497:** See notes following RCW 28A.305.011.

**Effective dates—Severability—1991 c 238:** See RCW 28B.50.917 and 28B.50.918.

## Chapter 28A.500 RCW LOCAL EFFORT ASSISTANCE

### Sections

28A.500.030 Allocation of state matching funds—Determination.

**28A.500.030 Allocation of state matching funds—Determination.** Allocation of state matching funds to eligible districts for local effort assistance shall be determined as follows:

(1) Funds raised by the district through maintenance and operation levies shall be matched with state funds using the following ratio of state funds to levy funds:

(a) The difference between the district's twelve percent levy rate and the statewide average twelve percent levy rate; to

(b) The statewide average twelve percent levy rate.

(2) The maximum amount of state matching funds for districts eligible for local effort assistance shall be the district's twelve percent levy amount, multiplied by the following percentage:

(a) The difference between the district's twelve percent levy rate and the statewide average twelve percent levy rate; divided by

(b) The district's twelve percent levy rate.

(3) Calendar year 2003 allocations and maximum eligibility under this chapter shall be multiplied by 0.99.

(4) From January 1, 2004, to December 31, 2005, allocations and maximum eligibility under this chapter shall be multiplied by 0.937.

(5) From January 1, 2006, to June 30, 2007, allocations and maximum eligibility under this chapter shall be multiplied by 0.9563. [2005 c 518 § 914; 2003 1st sp.s. c 25 § 912; 2002 c 317 § 4; 1999 c 317 § 3.]

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Effective date—2002 c 317:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and takes effect immediately [April 2, 2002]." [2002 c 317 § 6.]

## Chapter 28A.505 RCW SCHOOL DISTRICTS' BUDGETS

### Sections

- 28A.505.210 Student achievement funds—Use and accounting of funds—  
Public hearing—Report. (*Effective January 1, 2006.*)  
28A.505.220 Student achievement funds—Allocations.

**28A.505.210 Student achievement funds—Use and accounting of funds—Public hearing—Report. (*Effective January 1, 2006.*)** School districts shall have the authority to decide the best use of student achievement funds to assist students in meeting and exceeding the new, higher academic standards in each district consistent with the provisions of chapter 3, Laws of 2001.

(1) Student achievement funds shall be allocated for the following uses:

(a) To reduce class size by hiring certificated elementary classroom teachers in grades K-4 and paying nonemployee-related costs associated with those new teachers;

(b) To make selected reductions in class size in grades 5-12, such as small high school writing classes;

(c) To provide extended learning opportunities to improve student academic achievement in grades K-12, including, but not limited to, extended school year, extended school day, before-and-after-school programs, special tutoring programs, weekend school programs, summer school, and all-day kindergarten;

(d) To provide additional professional development for educators, including additional paid time for curriculum and lesson redesign and alignment, training to ensure that instruction is aligned with state standards and student needs, reimbursement for higher education costs related to enhancing teaching skills and knowledge, and mentoring programs to match teachers with skilled, master teachers. The funding shall not be used for salary increases or additional compensation for existing teaching duties, but may be used for extended year and extended day teaching contracts;

(e) To provide early assistance for children who need prekindergarten support in order to be successful in school;

(f) To provide improvements or additions to school building facilities which are directly related to the class size reductions and extended learning opportunities under (a) through (c) of this subsection.

(2) Annually on or before May 1st, the school district board of directors shall meet at the time and place designated for the purpose of a public hearing on the proposed use of these funds to improve student achievement for the coming year. Any person may appear or by written submission have the opportunity to comment on the proposed plan for the use of these funds. No later than August 31st, as a part of the process under RCW 28A.505.060, each school district shall adopt a plan for the use of these funds for the upcoming school year. Annually, each school district shall provide to the citizens of their district a public accounting of the funds made available to the district during the previous school year under chapter 3, Laws of 2001, how the funds were used, and the progress the district has made in increasing student

achievement, as measured by required state assessments and other assessments deemed appropriate by the district. Copies of this report shall be provided to the superintendent of public instruction. [2005 c 497 § 105; 2001 c 3 § 3 (Initiative Measure No. 728, approved November 7, 2000).]

**Intent—Part headings not law—Effective date—2005 c 497:** See notes following RCW 28A.305.011.

**Short title—2001 c 3 (Initiative Measure No. 728):** "This act may be known and cited as the K-12 2000 student achievement act." [2001 c 3 § 1 (Initiative Measure No. 728, approved November 7, 2000).]

**Purpose—Intent—2001 c 3 (Initiative Measure No. 728):** "The citizens of Washington state expect and deserve great public schools for our generation of school children and for those who will follow. A quality public education system is crucial for our state's future economic success and prosperity, and for our children and their children to lead successful lives.

The purpose of this act is to improve public education and to achieve higher academic standards for all students through smaller class sizes and other improvements. A portion of the state's surplus general fund revenues is dedicated to this purpose.

In 1993, Washington state made a major commitment to improved public education by passing the Washington education reform act. This act established new, higher standards of academic achievement for all students. It also established new levels of accountability for students, teachers, schools, and school districts. However, the K-12 finance system has not been changed to respond to the new standards and individual student needs.

To make higher student achievement a reality, schools need the additional resources and flexibility to provide all students with more individualized quality instruction, more time, and the extra support that they may require. We need to ensure that curriculum, instruction methods, and assessments of student performance are aligned with the new standards and student needs. The current level of state funding does not provide adequate resources to support higher academic achievement for all students. In fact, inflation-adjusted per-student state funding has declined since the legislature adopted the 1993 education reform act.

The erosion of state funding for K-12 education is directly at odds with the state's "paramount duty to make ample provision for the education of all children...." Now is the time to invest some of our surplus state revenues in K-12 education and redirect state lottery funds to education, as was originally intended, so that we can fulfill the state's paramount duty.

Conditions and needs vary across Washington's two hundred ninety-six school districts. School boards accountable to their local communities should therefore have the flexibility to decide which of the following strategies will be most effective in increasing student performance and in helping students meet the state's new, higher academic standards:

- (1) Major reductions in K-4 class size;
- (2) Selected class size reductions in grades 5-12, such as small high school writing classes;
- (3) Extended learning opportunities for students who need or want additional time in school;
- (4) Investments in educators and their professional development;
- (5) Early assistance for children who need prekindergarten support in order to be successful in school; and
- (6) Providing improvements or additions to facilities to support class size reductions and extended learning opportunities.

### REDUCING CLASS SIZE

Smaller classes in the early grades can significantly increase the amount of learning that takes place in the classroom. Washington state now ranks forty-eighth in the nation in its student-teacher ratio. This is unacceptable.

Significant class size reductions will provide our children with more individualized instruction and the attention they need and deserve and will reduce behavioral problems in classrooms. The state's long-term goal should be to reduce class size in grades K-4 to no more than eighteen students per teacher in a class.

The people recognize that class size reduction should be phased-in over several years. It should be accompanied by the necessary funds for school construction and modernization and for high-quality, well-trained teachers.

### EXTENDED LEARNING OPPORTUNITIES

Student achievement will also be increased if we expand learning opportunities beyond our traditional-length school day and year. In many school districts, educators and parents want a longer school day, a longer school year, and/or all-day kindergarten to help students improve their aca-

ademic performance or explore new learning opportunities. In addition, special programs such as before-and-after-school tutoring will help struggling students catch and keep up with their classmates. Extended learning opportunities will be increasingly important as attainment of a certificate of mastery becomes a high school graduation requirement.

#### TEACHER QUALITY

Key to every student's academic success is a quality teacher in every classroom. Washington state's new standards for student achievement make teacher quality more important than ever. We are asking our teachers to teach more demanding curriculum in new ways, and we are holding our educators and schools to new, higher levels of accountability for student performance. Resources are needed to give teachers the content knowledge and skills to teach to higher standards and to give school leaders the skills to improve instruction and manage organizational change.

The ability of school districts throughout the state to attract and retain the highest quality teaching corps by offering competitive salaries and effective working conditions is an essential element of basic education. The state legislature is responsible for establishing teacher salaries. It is imperative that the legislature fund salary levels that ensure school districts' ability to recruit and retain the highest quality teachers.

#### EARLY ASSISTANCE

The importance of a child's intellectual development in the first five years has been established by widespread scientific research. This is especially true for children with disabilities and special needs. Providing assistance appropriate to children's developmental needs will enhance the academic achievement of these children in grades K-12. Early assistance will also lessen the need for more expensive remedial efforts in later years.

#### NO SUPPLANTING OF EXISTING EDUCATION FUNDS

It is the intent of the people that existing state funding for education, including all sources of such funding, shall not be reduced, supplanted, or otherwise adversely impacted by appropriations or expenditures from the student achievement fund created in RCW 43.135.045 or the education construction fund.

#### INVESTING SURPLUS IN SCHOOLS UNTIL GOAL MET

It is the intent of the people to invest a portion of state surplus revenues in their schools. This investment should continue until the state's contribution to funding public education achieves a reasonable goal. The goal should reflect the state's paramount duty to make ample provision for the education of all children and our citizens' desire that all students receive a quality education. The people set a goal of per-student state funding for the maintenance and operation of K-12 education being equal to at least ninety percent of the national average per-student expenditure from all sources. When this goal is met, further deposits to the student achievement fund shall be required only to the extent necessary to maintain the ninety-percent level." [2001 c 3 § 2 (Initiative Measure No. 728, approved November 7, 2000).]

**Construction—2001 c 3 (Initiative Measure No. 728):** "The provisions of this act are to be liberally construed to effectuate the policies and purposes of this act." [2001 c 3 § 11 (Initiative Measure No. 728, approved November 7, 2000).]

**Severability—2001 c 3 (Initiative Measure No. 728):** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 3 § 12 (Initiative Measure No. 728, approved November 7, 2000).]

**Effective dates—2001 c 3 (Initiative Measure No. 728):** "This act takes effect January 1, 2001, except for section 4 of this act which takes effect July 1, 2001." [2001 c 3 § 13 (Initiative Measure No. 728, approved November 7, 2000).]

**28A.505.220 Student achievement funds—Allocations.** (1) Total distributions from the student achievement fund to each school district shall be based upon the average number of full-time equivalent students in the school district during the previous school year as reported to the office of the superintendent of public instruction by August 31st of the previous school year.

(2) The allocation rate per full-time equivalent student shall be three hundred dollars in the 2005-06 school year, three hundred seventy-five dollars in the 2006-07 school

year, and four hundred fifty dollars in the 2007-08 school year. For each subsequent school year, the amount allocated per full-time equivalent student shall be adjusted for inflation as defined in \*RCW 43.135.025(8). These allocations per full-time equivalent student from the student achievement fund shall be supported from the following sources:

(a) Distributions from state property tax proceeds deposited into the student achievement fund under RCW 84.52.068; and

(b) Distributions from the education legacy trust account created in RCW 83.100.230.

(3) Any funds deposited in the student achievement fund under RCW 43.135.045 shall be allocated to school districts on a one-time basis using a rate per full-time equivalent student. These funds are provided in addition to any amounts allocated in subsection (2) of this section.

(4) The school district annual amounts as defined in subsection (2) of this section shall be distributed on the monthly apportionment schedule as defined in RCW 28A.510.250. [2005 c 514 § 1103.]

**\*Reviser's note:** RCW 43.135.025 was amended by 2005 c 72 § 4 deleting subsection (8).

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

## Chapter 28A.600 RCW STUDENTS

### Sections

- 28A.600.110 Washington scholars' program—Established—Scope.
- 28A.600.150 Washington scholars' program—Selection of scholars and scholars-alternates—Notification process—Certificates—Awards ceremony.
- 28A.600.300 High school students' options—Definition.
- 28A.600.310 High school students' options—Enrollment in institutions of higher education—Transmittal of funds.

**28A.600.110 Washington scholars' program—Established—Scope.** There is established by the legislature of the state of Washington the Washington state scholars program. The purposes of this program annually are to:

(1) Provide for the selection of three seniors residing in each legislative district in the state graduating from high schools who have distinguished themselves academically among their peers, except that during fiscal year 2007, no more than two seniors plus one alternate may be selected.

(2) Maximize public awareness of the academic achievement, leadership ability, and community contribution of Washington state public and private high school seniors through appropriate recognition ceremonies and events at both the local and state level.

(3) Provide a listing of the Washington scholars to all Washington state public and private colleges and universities to facilitate communication regarding academic programs and scholarship availability.

(4) Make available a state level mechanism for utilization of private funds for scholarship awards to outstanding high school seniors.

(5) Provide, on written request and with student permission, a listing of the Washington scholars to private scholar-



ship selection committees for notification of scholarship availability.

(6) Permit a waiver of tuition and services and activities fees as provided for in RCW 28B.15.543 and grants under RCW 28B.76.660. [2005 c 518 § 915; 2004 c 275 § 46; 1994 c 234 § 4; 1988 c 210 § 4; 1987 c 465 § 1; 1981 c 54 § 2. Formerly RCW 28A.58.822.]

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Severability—1981 c 54:** See note following RCW 28A.600.100.

**28A.600.150 Washington scholars' program—Selection of scholars and scholars-alternates—Notification process—Certificates—Awards ceremony.** Each year, three Washington scholars and one Washington scholars-alternate shall be selected from the students nominated under RCW 28A.600.140, except that during fiscal year 2007, no more than two scholars plus one alternate may be selected. The higher education coordinating board shall notify the students so designated, their high school principals, the legislators of their respective districts, and the governor when final selections have been made.

The board, in conjunction with the governor's office, shall prepare appropriate certificates to be presented to the Washington scholars and the Washington scholars-alternates. An awards ceremony at an appropriate time and place shall be planned by the board in cooperation with the Washington association of secondary school principals, and with the approval of the governor. [2005 c 518 § 916; 1999 c 159 § 2; 1985 c 370 § 35; 1981 c 54 § 6. Formerly RCW 28A.58.830.]

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

**Findings—Intent—1999 c 159:** "The legislature finds that approximately thirty-five percent of the recipients of the Washington scholars award under RCW 28A.600.100 through 28A.600.150 choose to enroll in an out-of-state college and therefore do not use the grants that would have been available to them under RCW 28B.80.245 had they chosen to attend a college or university in the state of Washington. It is the intent of the legislature to require high school seniors who are announced as recipients of the Washington scholars award to demonstrate in a timely manner that they will be using any grants they may receive with their awards to enroll in a college or university in Washington state during the fall term of the same year in which they receive the award. Any grants not used by initial recipients should be awarded to alternate recipients who must also demonstrate in a timely manner that they will be using their grants to enroll in a Washington college or university in Washington state during the fall term." [1999 c 159 § 1.]

**Severability—1981 c 54:** See note following RCW 28A.600.100.

**28A.600.300 High school students' options—Definition.** For the purposes of RCW 28A.600.310 through 28A.600.400, "participating institution of higher education" or "institution of higher education" means:

(1) A community or technical college as defined in RCW 28B.50.030;

(2) A public tribal college located in Washington and accredited by the northwest commission on colleges and universities or another accrediting association recognized by the United States department of education; and

(3) Central Washington University, Eastern Washington University, Washington State University, and The Evergreen State College, if the institution's governing board decides to

participate in the program in RCW 28A.600.310 through 28A.600.400. [2005 c 207 § 5; 2002 c 80 § 1; 1994 c 205 § 1; 1990 1st ex.s. c 9 § 401.]

**Findings—Intent—2005 c 207:** "The legislature finds that the dropout rate of the state's Native American students is the highest in the state. Approximately one-half of all Native American high school students drop out before graduating with a diploma. The legislature also finds that culturally relevant educational opportunities are important contributors to other efforts to increase the rates of high school graduation for Native American students. The legislature further finds that the higher education participation rate for Native American students is the lowest in the state, and that more can be done to encourage Native American students to pursue higher educational opportunities. The legislature intends to authorize accredited public tribal colleges to participate in the running start program for the purposes of reducing the dropout rate of Native American students and encouraging greater participation rates in higher education." [2005 c 207 § 4.]

**Finding—Severability—1990 1st ex.s. c 9:** See notes following RCW 28A.225.220.

**28A.600.310 High school students' options—Enrollment in institutions of higher education—Transmittal of funds.** (1) Eleventh and twelfth grade students or students who have not yet received the credits required for the award of a high school diploma and are eligible to be in the eleventh or twelfth grades may apply to a participating institution of higher education to enroll in courses or programs offered by the institution of higher education. A student receiving home-based instruction enrolling in a public high school for the sole purpose of participating in courses or programs offered by institutions of higher education shall not be counted by the school district in any required state or federal accountability reporting if the student's parents or guardians filed a declaration of intent to provide home-based instruction and the student received home-based instruction during the school year before the school year in which the student intends to participate in courses or programs offered by the institution of higher education. Students receiving home-based instruction under chapter 28A.200 RCW and students attending private schools approved under chapter 28A.195 RCW shall not be required to meet the student learning goals, obtain a certificate of academic achievement or a certificate of individual achievement to graduate from high school, or to master the essential academic learning requirements. However, students are eligible to enroll in courses or programs in participating universities only if the board of directors of the student's school district has decided to participate in the program. Participating institutions of higher education, in consultation with school districts, may establish admission standards for these students. If the institution of higher education accepts a secondary school pupil for enrollment under this section, the institution of higher education shall send written notice to the pupil and the pupil's school district within ten days of acceptance. The notice shall indicate the course and hours of enrollment for that pupil.

(2) The pupil's school district shall transmit to the institution of higher education an amount per each full-time equivalent college student at statewide uniform rates for vocational and nonvocational students. The superintendent of public instruction shall separately calculate and allocate moneys appropriated for basic education under RCW 28A.150.260 to school districts for purposes of making such payments and for granting school districts seven percent thereof to offset program related costs. The calculations and

allocations shall be based upon the estimated statewide annual average per full-time equivalent high school student allocations under RCW 28A.150.260, excluding small high school enhancements, and applicable rules adopted under chapter 34.05 RCW. The superintendent of public instruction, the higher education coordinating board, and the state board for community and technical colleges shall consult on the calculation and distribution of the funds. The institution of higher education shall not require the pupil to pay any other fees. The funds received by the institution of higher education from the school district shall not be deemed tuition or operating fees and may be retained by the institution of higher education. A student enrolled under this subsection shall not be counted for the purpose of determining any enrollment restrictions imposed by the state on the institution of higher education. [2005 c 125 § 1; 1994 c 205 § 2; 1993 c 222 § 1; 1990 1st ex.s. c 9 § 402.]

**Effective date—1993 c 222:** "This act shall take effect September 1, 1993." [1993 c 222 § 2.]

**Finding—Severability—1990 1st ex.s. c 9:** See notes following RCW 28A.225.220.

### Chapter 28A.630 RCW

#### TEMPORARY PROVISIONS—SPECIAL PROJECTS

##### Sections

##### COMPREHENSIVE EDUCATION STUDY STEERING COMMITTEE

28A.630.025 Committee created. (*Expires July 1, 2007.*)  
28A.630.026 Studies—Reports to the legislature. (*Expires July 1, 2007.*)

##### COMPREHENSIVE EDUCATION STUDY STEERING COMMITTEE

**28A.630.025 Committee created. (*Expires July 1, 2007.*)** (1) The comprehensive education study steering committee is created.

(2) Members of the steering committee shall include: The governor who shall chair the steering committee; the director of the office of financial management; two members from the house of representatives with one appointed by each major caucus; two members from the senate with one appointed by each major caucus; four citizens appointed by the governor; and the chairs of each of the three advisory committees created under subsection (3) of this section. The chair of the advisory committee on K-12 shall be the superintendent of public instruction. The chair of the advisory committee on early learning shall be the nongovernmental cochair of the Washington early learning council, created in chapter 490, Laws of 2005. The chair of the advisory committee on higher education shall be selected by the governor from a list of three or more names submitted by the state board for community and technical colleges, the higher education coordinating board, and the council of presidents.

(3) The steering committee shall appoint the members of the advisory committee on K-12 and the advisory committee on higher education. In addition, the two major caucuses in the senate and the two major caucuses in the house of representatives shall each appoint one member to serve on the K-12 advisory committee and one member to serve on the higher education advisory committee. The Washington early

learning council, created in chapter 490, Laws of 2005, shall serve as the advisory committee on early learning.

(4) The steering committee shall receive staff and logistical support from the office of financial management.

(5) Nonlegislative members of the steering committee shall be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060. [2005 c 496 § 2.]

**Findings—2005 c 496:** "The legislature finds that:

(1) The early years mark the most extraordinary period of growth for young children. The state's role in providing access to early learning opportunities has never been consistently defined;

(2) More than a quarter of a century has passed since the current school finance system was first created, and the challenges facing our schools and students have grown and changed dramatically during that time. Policies have been established creating new expectations and goals for students under education reform;

(3) Demographic pressures and work force needs will continue to increase demand for access to postsecondary education and training. Public two-year and four-year institutions of higher education are also important avenues for programs such as adult basic education and English as a second language that are the foundation for employment and further education for an increasing number of people. Washington ranks thirty-third in the nation in the number of bachelor's degrees earned per one thousand residents ages twenty through twenty-nine years, and will graduate the largest high school class in its history in 2008. Washington citizens deserve access to baccalaureate degree opportunities. Washington's public universities and colleges engage in research that contributes to the economic and social well-being of the state. Students have paid an increasing cost of their education with tuition growing faster than personal income or inflation; and

(4) Through a comprehensive study, the legislature will have solid information to determine how best to use its resources to create a strong education system that will provide an educated citizenry and a thriving economy in this state." [2005 c 496 § 1.]

**Expiration date—2005 c 496:** "This act expires July 1, 2007." [2005 c 496 § 4.]

**28A.630.026 Studies—Reports to the legislature. (*Expires July 1, 2007.*)** (1) The steering committee:

(a) Shall direct and coordinate the studies created in this section. In conducting the studies, consideration shall be given to recently completed, related finance studies, with particular attention to those initiated by or completed at the request of the legislature;

(b) May enter into contracts as needed to support the work of the study;

(c) Shall develop recommendations based on the work of the studies in this section; and

(d) Shall develop recommendations about how the state can best provide stable funding for student learning for young children, students in the public schools, and students in the public colleges and universities.

(2) A comprehensive K-12 finance study shall include, but not be limited to:

(a) The constitutional and legal requirements underlying the current finance system and how those requirements are affected by the goal under education reform to provide all students with the opportunity to achieve the state standards;

(b) The strengths and weaknesses of the current state and local finance formulas and how those formulas are used by local school districts to meet state requirements and student learning goals;

(c) Information regarding remediation particularly in the subject areas of mathematics, science, and language arts;

(d) Potential changes to the current finance system including the methods of allocating funds, levels of funding, and how student achievement is affected;

(e) Reviewing the funding systems in at least five other states;

(f) Specific issues facing schools: Assuring program accountability; improving effectiveness in state-level governance; identifying efficiencies in district spending practices; providing programs that assist students in meeting standards; helping students stay in school; impacts of the certification requirements for teachers; improving the effectiveness of English language learner instruction; and appropriate preparation requirements for paraeducators;

(g) Local and regional funding challenges faced by individual school districts throughout the state; and

(h) Potential changes to the current salary system that would be more closely related to professional development and enhancement of student performance.

(3) A comprehensive study of early learning shall include, but not be limited to:

(a) Defining the populations being served, those that could be served, and program access;

(b) Determining the state's role in supporting quality early learning opportunities;

(c) Determining the state's role in training persons providing services; and

(d) Providing for smooth transitions to K-12 programs.

(4) A comprehensive study of higher education shall include, but not be limited to:

(a) Options for creating a new funding system;

(b) The number and distribution of enrollments at two and four-year institutions of higher education needed to meet demographic and work force training needs;

(c) Methods for determining the cost of instruction in various program areas;

(d) Methods for developing common articulation of lower division work;

(e) The appropriate share of the cost of instruction that should be funded through tuition, general fund-state subsidies, and financial aid;

(f) Providing for smooth transitions from high school to college, including dual credit options and adequate preparation for college-level coursework;

(g) Identifying strategies and associated costs to increase opportunity for access to baccalaureate degrees at public institutions of higher education;

(h) Identifying incentives to optimize research conducted by public universities and colleges that has the potential to stimulate the economy and address economic and social issues relevant to Washington citizens;

(i) Options for using existing capacity in independent colleges and universities;

(j) A review of higher education governance as it relates to fiscal policy for higher education; and

(k) Options for coordinating capital and operating appropriations.

(5) The steering committee shall provide interim reports to the appropriate fiscal and policy committees of the senate and the house of representatives by November 15, 2005, and June 16, 2006. These interim reports shall document ongoing work to-date, initial findings, and next steps. The November 15, 2005, interim report may recommend possible action items for consideration in the 2006 legislative session.

(6) The final report and recommendations of the steering committee shall be submitted to the legislature by November 15, 2006. [2005 c 496 § 3.]

**Findings—Expiration date—2005 c 496:** See notes following RCW 28A.630.025.

### Chapter 28A.655 RCW

## ACADEMIC ACHIEVEMENT AND ACCOUNTABILITY

### Sections

28A.655.020 Repealed.

28A.655.030 Repealed.

28A.655.070 Essential academic learning requirements and assessments—Duties of the superintendent of public instruction. (*Effective January 1, 2006.*)

28A.655.185 Intent—Apple award program.

28A.655.200 Norm-referenced assessments—Diagnostic assessments.

28A.655.900 Repealed.

**28A.655.020 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28A.655.030 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28A.655.070 Essential academic learning requirements and assessments—Duties of the superintendent of public instruction. (*Effective January 1, 2006.*)** (1) The superintendent of public instruction shall develop essential academic learning requirements that identify the knowledge and skills all public school students need to know and be able to do based on the student learning goals in RCW 28A.150.210, develop student assessments, and implement the accountability recommendations and requests regarding assistance, rewards, and recognition of the state board of education.

(2) The superintendent of public instruction shall:

(a) Periodically revise the essential academic learning requirements, as needed, based on the student learning goals in RCW 28A.150.210. Goals one and two shall be considered primary. To the maximum extent possible, the superintendent shall integrate goal four and the knowledge and skill areas in the other goals in the essential academic learning requirements; and

(b) Review and prioritize the essential academic learning requirements and identify, with clear and concise descriptions, the grade level content expectations to be assessed on the Washington assessment of student learning and used for state or federal accountability purposes. The review, prioritization, and identification shall result in more focus and targeting with an emphasis on depth over breadth in the number of grade level content expectations assessed at each grade level. Grade level content expectations shall be articulated over the grades as a sequence of expectations and performances that are logical, build with increasing depth after foundational knowledge and skills are acquired, and reflect, where appropriate, the sequential nature of the discipline. The office of the superintendent of public instruction, within seven working days, shall post on its web site any grade level content expectations provided to an assessment vendor for

use in constructing the Washington assessment of student learning.

(3) In consultation with the state board of education, the superintendent of public instruction shall maintain and continue to develop and revise a statewide academic assessment system in the content areas of reading, writing, mathematics, and science for use in the elementary, middle, and high school years designed to determine if each student has mastered the essential academic learning requirements identified in subsection (1) of this section. School districts shall administer the assessments under guidelines adopted by the superintendent of public instruction. The academic assessment system shall include a variety of assessment methods, including criterion-referenced and performance-based measures.

(4) If the superintendent proposes any modification to the essential academic learning requirements or the statewide assessments, then the superintendent shall, upon request, provide opportunities for the education committees of the house of representatives and the senate to review the assessments and proposed modifications to the essential academic learning requirements before the modifications are adopted.

(5)(a) The assessment system shall be designed so that the results under the assessment system are used by educators as tools to evaluate instructional practices, and to initiate appropriate educational support for students who have not mastered the essential academic learning requirements at the appropriate periods in the student's educational development.

(b) Assessments measuring the essential academic learning requirements in the content area of science shall be available for mandatory use in middle schools and high schools by the 2003-04 school year and for mandatory use in elementary schools by the 2004-05 school year unless the legislature takes action to delay or prevent implementation of the assessment.

(6) By September 2007, the results for reading and mathematics shall be reported in a format that will allow parents and teachers to determine the academic gain a student has acquired in those content areas from one school year to the next.

(7) To assist parents and teachers in their efforts to provide educational support to individual students, the superintendent of public instruction shall provide as much individual student performance information as possible within the constraints of the assessment system's item bank. The superintendent shall also provide to school districts:

(a) Information on classroom-based and other assessments that may provide additional achievement information for individual students; and

(b) A collection of diagnostic tools that educators may use to evaluate the academic status of individual students. The tools shall be designed to be inexpensive, easily administered, and quickly and easily scored, with results provided in a format that may be easily shared with parents and students.

(8) To the maximum extent possible, the superintendent shall integrate knowledge and skill areas in development of the assessments.

(9) Assessments for goals three and four of RCW 28A.150.210 shall be integrated in the essential academic learning requirements and assessments for goals one and two.

(10) The superintendent shall develop assessments that are directly related to the essential academic learning requirements, and are not biased toward persons with different learning styles, racial or ethnic backgrounds, or on the basis of gender.

(11) The superintendent shall consider methods to address the unique needs of special education students when developing the assessments under this section.

(12) The superintendent shall consider methods to address the unique needs of highly capable students when developing the assessments under this section.

(13) The superintendent shall post on the superintendent's web site lists of resources and model assessments in social studies, the arts, and health and fitness. [2005 c 497 § 106; 2004 c 19 § 204; 1999 c 388 § 501.]

**Intent—Part headings not law—Effective date—2005 c 497:** See notes following RCW 28A.305.011.

**Part headings and captions not law—Severability—Effective date—2004 c 19:** See notes following RCW 28A.655.061.

**28A.655.185 Intent—Apple award program.** (1) It is the intent of the legislature, through the creation of the apple award, to honor and reward students in Washington's public elementary schools who have shown significant improvement in their school's results on the Washington assessment of student learning.

(2) The apple award program is created to honor and reward public elementary schools that have the greatest combined average increase in the percentage of students meeting the fourth grade reading, mathematics, and writing standards on the Washington assessment of student learning each school year. The program shall be administered by the state board of education.

(3) Within the amounts appropriated for this purpose, each school that receives an apple award shall be provided with a twenty-five thousand dollar grant to be used for capital construction purposes that have been selected by students in the school and approved by the district's school directors. The funds may be used exclusively for capital construction projects on school property or on other public property in the community, city, or county in which the school is located. [2005 c 495 § 1.]

**28A.655.200 Norm-referenced assessments—Diagnostic assessments.** (1) The legislature finds that the mandatory norm-referenced student assessments eliminated under chapter 217, Laws of 2005 provide information that teachers and parents use to improve student learning. The legislature intends to permit school districts to offer norm-referenced assessments at the districts' own expense and make diagnostic tools available that provide information that is at least as valuable as the information eliminated under chapter 217, Laws of 2005.

(2) School districts may, at their own expense, administer norm-referenced assessments to students.

(3) By September 1, 2005, subject to available funds, the office of the superintendent of public instruction shall post on its web site for voluntary use by school districts, a guide of diagnostic assessments. The assessments in the guide, to the extent possible, shall include the characteristics listed in subsection (4)(a) through (e) of this section.

(4) By September 1, 2006, subject to the availability of amounts appropriated for this specific purpose, the office of the superintendent of public instruction shall make available to school districts diagnostic assessments that help improve student learning. To the greatest extent possible, the assessments shall be:

- (a) Aligned to the state's grade level expectations;
- (b) Individualized to each student's performance level;
- (c) Administered efficiently to provide results either immediately or within two weeks;
- (d) Capable of measuring individual student growth over time; and
- (e) Cost-effective.

(5) The office of the superintendent of public instruction is encouraged to offer at their statewide and regional staff development activities training opportunities that would assist practitioners in:

- (a) The interpretation of diagnostic assessments; and
- (b) Application of instructional strategies that will increase student learning based on diagnostic assessment data. [2005 c 217 § 2.]

**28A.655.900 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Title 28B

### HIGHER EDUCATION

#### Chapters

- 28B.10** Colleges and universities generally.
- 28B.12** State work-study program.
- 28B.14H** Washington's future bond issue.
- 28B.15** College and university fees.
- 28B.20** University of Washington.
- 28B.30** Washington State University.
- 28B.45** Branch campuses.
- 28B.50** Community and technical colleges.
- 28B.76** Higher education coordinating board.
- 28B.85** Degree-granting institutions.
- 28B.92** State student financial aid program.
- 28B.95** Advanced college tuition payment program.
- 28B.102** Future teachers conditional scholarship and loan repayment program.
- 28B.116** Foster care endowed scholarship program.
- 28B.135** Child care for higher education students.

#### Chapter 28B.10 RCW

#### COLLEGES AND UNIVERSITIES GENERALLY

##### Sections

- 28B.10.025 Purchases of works of art—Procedure.
- 28B.10.027 Allocation of moneys for acquisition of works of art—Expenditure by arts commission—Conditions.
- 28B.10.140 Teachers' training courses. (*Effective January 1, 2006.*)
- 28B.10.265 Repealed.
- 28B.10.354 High-performance public buildings requirements.
- 28B.10.618 Credit card marketing policies.

**28B.10.025 Purchases of works of art—Procedure.** The Washington state arts commission shall, in consultation with the boards of regents of the University of Washington and Washington State University and with the boards of

trustees of the regional universities, The Evergreen State College, and the community college districts, determine the amount to be made available for the purchases of art under RCW 28B.10.027, and payment therefor shall be made in accordance with law. The designation of projects and sites, the selection, contracting, purchase, commissioning, reviewing of design, execution and placement, acceptance, maintenance, and sale, exchange, or disposition of works of art shall be the responsibility of the Washington state arts commission in consultation with the board of regents or trustees. [2005 c 36 § 2; 1990 c 33 § 557; 1983 c 204 § 8; 1977 ex.s. c 169 § 8; 1974 ex.s. c 176 § 4.]

**Purpose—Statutory references—Severability—1990 c 33:** See RCW 28A.900.100 through 28A.900.102.

**Severability—1983 c 204:** See note following RCW 43.46.090.

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

*Acquisition of works of art for public buildings and lands—Visual arts program established:* RCW 43.46.090.

*Allocation of moneys for acquisition of works of art—Expenditure by arts commission—Conditions:* RCW 43.17.200.

*Purchase of works of art—Interagency reimbursement for expenditure by visual arts program:* RCW 43.17.205.

*State art collection:* RCW 43.46.095.

**28B.10.027 Allocation of moneys for acquisition of works of art—Expenditure by arts commission—Conditions.** All universities and colleges shall allocate as a non-deductible item, out of any moneys appropriated for the original construction or any major renovation or remodel work exceeding two hundred thousand dollars of any building, an amount of one-half of one percent of the appropriation to be expended by the Washington state arts commission with the approval of the board of regents or trustees for the acquisition of works of art. The works of art may be placed on public lands of institutions of higher education, integral to or attached to a public building or structure of institutions of higher education, detached within or outside a public building or structure of institutions of higher education, part of a portable exhibition or collection, part of a temporary exhibition, or loaned or exhibited in other public facilities.

In addition to the cost of the works of art, the one-half of one percent of the appropriation shall be used to provide for the administration of the visual arts program, including conservation of the state art collection, by the Washington state arts commission and all costs for installation of the work of art. For the purpose of this section building shall not include sheds, warehouses, and other buildings of a temporary nature. [2005 c 36 § 3; 1983 c 204 § 9.]

**Severability—1983 c 204:** See note following RCW 43.46.090.

**28B.10.140 Teachers' training courses. (*Effective January 1, 2006.*)** The University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, and The Evergreen State College are each authorized to train teachers and other personnel for whom teaching certificates or special credentials prescribed by the Washington professional educator standards board are required, for any grade, level, department, or position of the public schools of the state. [2005 c 497 § 217; 2004 c 60 § 1; 1977 ex.s. c 169 §

10; 1969 ex.s. c 223 § 28B.10.140. Prior: 1967 c 47 § 17; 1949 c 34 § 1; Rem. Supp. 1949 § 4618-3. Formerly RCW 28.76.120.]

**Intent—Part headings not law—Effective date—2005 c 497:** See notes following RCW 28A.305.011.

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.10.265 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28B.10.354 High-performance public buildings requirements.** Institutions of higher education must comply with high-performance public building[s] requirements under RCW 39.35D.010 through 39.35D.030 and 39.35D.060. [2005 c 12 § 8.]

**28B.10.618 Credit card marketing policies.** (1)(a) Subject to subsection (2) of this section, institutions of higher education shall develop policies regarding the marketing or merchandising of credit cards on institutional property to students, except as provided in newspapers, magazines, or similar publications or within any location of a financial services business regularly doing business on the institution's property.

(b) "Merchandising" means the offering of free merchandise or incentives to students as part of the credit card marketing effort.

(c) "Student" means any student enrolled for one or more credit hours at an institution of higher education.

(2) Institutions of higher education shall each develop official credit card marketing policies. The process of development of these policies must include consideration of student comments. The official credit card marketing policies must, at a minimum, include consideration of and decisions regarding:

(a) The registration of credit card marketers;

(b) Limitations on the times and locations of credit card marketing; and

(c) Prohibitions on material inducements to complete a credit card application unless the student has been provided credit card debt education literature, which includes, but is not limited to, brochures of written or electronic information.

(3)(a) The policies shall include the following elements: A requirement for credit card marketers to inform students about good credit management practices through programs developed in concert with the institution of higher education; and

(b) A requirement to make the official credit card marketing policy available to all students upon their request. [2005 c 74 § 1.]

## Chapter 28B.12 RCW

### STATE WORK-STUDY PROGRAM

(Formerly: College work-study program)

Sections

28B.12.060 Rules—Mandatory provisions.

[2005 RCW Supp—page 234]

**28B.12.060 Rules—Mandatory provisions.** The higher education coordinating board shall adopt rules as may be necessary or appropriate for effecting the provisions of this chapter, and not in conflict with this chapter, in accordance with the provisions of chapter 34.05 RCW, the state higher education administrative procedure act. Such rules shall include provisions designed to make employment under the work-study program reasonably available, to the extent of available funds, to all eligible students in eligible post-secondary institutions in need thereof. The rules shall include:

(1) Providing work under the state work-study program that will not result in the displacement of employed workers or impair existing contracts for services;

(2) Furnishing work only to a student who:

(a) Is capable, in the opinion of the eligible institution, of maintaining good standing in such course of study while employed under the program covered by the agreement; and

(b) Has been accepted for enrollment as at least a half-time student at the eligible institution or, in the case of a student already enrolled in and attending the eligible institution, is in good standing and in at least half-time attendance there either as an undergraduate, graduate or professional student; and

(c) Is not pursuing a degree in theology;

(3) Placing priority on providing:

(a) Work opportunities for students who are residents of the state of Washington as defined in RCW 28B.15.012 and 28B.15.013, particularly former foster youth as defined in RCW 28B.92.060, except resident students defined in RCW 28B.15.012(2)(g);

(b) Job placements in fields related to each student's academic or vocational pursuits, with an emphasis on off-campus job placements whenever appropriate; and

(c) Off-campus community service placements;

(4) Provisions to assure that in the state institutions of higher education, utilization of this work-study program:

(a) Shall only supplement and not supplant classified positions under jurisdiction of chapter 41.06 RCW;

(b) That all positions established which are comparable shall be identified to a job classification under the director of personnel's classification plan and shall receive equal compensation;

(c) Shall not take place in any manner that would replace classified positions reduced due to lack of funds or work; and

(d) That work study positions shall only be established at entry level positions of the classified service unless the overall scope and responsibilities of the position indicate a higher level; and

(5) Provisions to encourage job placements in occupations that meet Washington's economic development goals, especially those in international trade and international relations. The board shall permit appropriate job placements in other states and other countries. [2005 c 93 § 4; 2002 c 354 § 224; 1994 c 130 § 6. Prior: 1993 sp.s. c 18 § 3; 1993 c 281 § 14; 1987 c 330 § 202; 1985 c 370 § 60; 1974 ex.s. c 177 § 6.]

**Findings—Intent—2005 c 93:** See note following RCW 74.13.570.

**Short title—Headings, captions not law—Severability—Effective dates—2002 c 354:** See RCW 41.80.907 through 41.80.910.

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.10.265.

**Effective date—1993 c 281:** See note following RCW 41.06.022.

**Construction—Application of rules—Severability—1987 c 330:** See notes following RCW 28B.12.050.

**Severability—1974 ex.s. c 177:** See note following RCW 28B.12.010.

### Chapter 28B.14H RCW

#### WASHINGTON'S FUTURE BOND ISSUE

##### Sections

28B.14H.050 Proceeds.

**28B.14H.050 Proceeds.** (1)(a) The proceeds from the sale of the bonds authorized in RCW 28B.14H.020 shall be deposited in the Gardner-Evans higher education construction account created in RCW 28B.14H.110.

(b) If the state finance committee deems it necessary to issue the bonds authorized in RCW 28B.14H.020 as taxable bonds in order to comply with federal internal revenue service rules and regulations pertaining to the use of nontaxable bond proceeds, the proceeds of such taxable bonds shall be deposited to the state taxable building construction account in lieu of any deposit otherwise provided by this section. The state treasurer shall submit written notice to the director of financial management if it is determined that any such deposit to the state taxable building construction account is necessary. Moneys in the account may be spent only after appropriation.

(2) The proceeds shall be used exclusively for the purposes in RCW 28B.14H.020 and for the payment of the expenses incurred in connection with the sale and issuance of the bonds. [2005 c 487 § 6; 2003 1st sp.s. c 18 § 7.]

**Severability—Effective date—2005 c 487:** See RCW 43.99S.900 and 43.99S.901.

### Chapter 28B.15 RCW

#### COLLEGE AND UNIVERSITY FEES

##### Sections

28B.15.0131	Resident tuition rates—American Indian students.
28B.15.069	Building fees—Services and activities fees—Other fees.
28B.15.380	Exemption from payment of fees at state universities, regional universities, and The Evergreen State College—Children of certain law enforcement officers or fire fighters.
28B.15.558	Waiver of tuition and fees for state employees.
28B.15.620	Repealed.
28B.15.621	Tuition waivers—Veterans and national guard members—Dependents—Private institutions.
28B.15.628	Repealed.
28B.15.629	Repealed.
28B.15.910	Limitation on total operating fees revenue waived, exempted, or reduced.

**28B.15.0131 Resident tuition rates—American Indian students.** For the purposes of determining resident tuition rates, resident students shall include American Indian students who meet two conditions. First, for a period of one year immediately prior to enrollment at a state institution of higher education as defined in RCW 28B.10.016, the student must have been domiciled in one or a combination of the following states: Idaho; Montana; Oregon; or Washington. Second, the students must be members of one of the federally recognized Indian tribes whose traditional and customary tribal boundaries included portions of the state of Washington, or whose tribe was granted reserved lands within the

state of Washington. Federal recognition of an Indian tribe shall be as determined under 25 C.F.R. by the United States bureau of Indian affairs.

Any student enrolled at a state institution of higher education as defined in RCW 28B.10.016 who is paying resident tuition under this section, and who has not established domicile in the state of Washington at least one year before enrollment, shall not be included in any calculation of state-funded enrollment for budgeting purposes, and no state general fund moneys shall be appropriated to a state institution of higher education for the support of such student. [2005 c 163 § 1; 1994 c 188 § 1.]

**28B.15.069 Building fees—Services and activities fees—Other fees.** (1) The building fee for each academic year shall be a percentage of total tuition fees. This percentage shall be calculated by the higher education coordinating board and be based on the actual percentage the building fee is of total tuition for each tuition category in the 1994-95 academic year, rounded up to the nearest half percent.

(2) The governing boards of each institution of higher education, except for the technical colleges, shall charge to and collect from each student a services and activities fee. A governing board may increase the existing fee annually, consistent with budgeting procedures set forth in RCW 28B.15.045, by a percentage not to exceed the annual percentage increase in student tuition fees for resident undergraduate students: PROVIDED, That such percentage increase shall not apply to that portion of the services and activities fee previously committed to the repayment of bonded debt. These rate adjustments may exceed the fiscal growth factor. For the 2003-04 academic year, the services and activities fee shall be based upon the resident undergraduate services and activities fee in 2002-03. The services and activities fee committee provided for in RCW 28B.15.045 may initiate a request to the governing board for a fee increase.

(3) Tuition and services and activities fees consistent with subsection (2) of this section shall be set by the state board for community and technical colleges for community college summer school students unless the community college charges fees in accordance with RCW 28B.15.515.

(4) Subject to the limitations of RCW 28B.15.910, each governing board of a community college may charge such fees for ungraded courses, noncredit courses, community services courses, and self-supporting courses as it, in its discretion, may determine, consistent with the rules of the state board for community and technical colleges.

(5) The governing board of a college offering an applied baccalaureate degree program under RCW 28B.50.810 may charge tuition fees for those courses above the associate degree level at rates consistent with rules adopted by the state board for community and technical colleges, not to exceed tuition fee rates at the regional universities. [2005 c 258 § 10; 2003 c 232 § 5; 1997 c 403 § 2; 1995 1st sp.s. c 9 § 5.]

**Findings—Intent—2005 c 258:** See note following RCW 28B.45.014.

**Finding—Intent—2003 c 232:** See note following RCW 28B.15.031.

**Intent—Purpose—Effective date—1995 1st sp.s. c 9:** See notes following RCW 28B.15.031.

**28B.15.380 Exemption from payment of fees at state universities, regional universities, and The Evergreen State College—Children of certain law enforcement officers or fire fighters.** Subject to the limitations of RCW 28B.15.910, the governing boards of the state universities, the regional universities, and The Evergreen State College may exempt the following students from the payment of all or a portion of tuition fees and services and activities fees: Children of any law enforcement officer or fire fighter who lost his or her life or became totally disabled in the line of duty while employed by any public law enforcement agency or full time or volunteer fire department in this state: PROVIDED, That such persons may receive the exemption only if they begin their course of study at a state-supported college or university within ten years of their graduation from high school. [2005 c 249 § 2; 1993 sp.s. c 18 § 10; 1992 c 231 § 9; 1990 c 154 § 1; 1985 c 390 § 23; 1979 c 82 § 1; 1977 ex.s. c 322 § 10; 1977 ex.s. c 169 § 37; 1973 1st ex.s. c 191 § 1; 1971 ex.s. c 279 § 8; 1969 ex.s. c 269 § 8; 1969 ex.s. c 223 § 28B.15.380. Prior: (i) 1947 c 46 § 1; 1921 c 139 § 5; Rem. Supp. 1947 § 4550. Formerly RCW 28.77.070. (ii) 1921 c 164 § 4, part; RRS § 4572, part. Formerly RCW 28.80.060, part.]

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.10.265.

**Effective date—1992 c 231:** See note following RCW 28B.10.016.

**Severability—1979 c 82:** "If any provision of this amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1979 c 82 § 3.]

**Severability—1977 ex.s. c 322:** See note following RCW 28B.15.065.

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**Effective date—1973 1st ex.s. c 191:** "This 1973 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1973." [1973 1st ex.s. c 191 § 4.]

**Severability—1971 ex.s. c 279:** See note following RCW 28B.15.005.  
"Totally disabled" defined for certain purposes: RCW 28B.15.385.

**28B.15.558 Waiver of tuition and fees for state employees.** (1) The governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges may waive all or a portion of the tuition and services and activities fees for state employees as defined under subsection (2) of this section. The enrollment of these persons is pursuant to the following conditions:

(a) Such persons shall register for and be enrolled in courses on a space available basis and no new course sections shall be created as a result of the registration;

(b) Enrollment information on persons registered pursuant to this section shall be maintained separately from other enrollment information and shall not be included in official enrollment reports, nor shall such persons be considered in any enrollment statistics that would affect budgetary determinations; and

(c) Persons registering on a space available basis shall be charged a registration fee of not less than five dollars.

(2) For the purposes of this section, "state employees" means persons employed half-time or more in one or more of the following employee classifications:

(a) Permanent employees in classified service under chapter 41.06 RCW;

(b) Permanent employees governed by chapter 41.56 RCW pursuant to the exercise of the option under \*RCW 41.56.201;

(c) Permanent classified employees and exempt paraprofessional employees of technical colleges; and

(d) Faculty, counselors, librarians, and exempt professional and administrative employees at institutions of higher education as defined in RCW 28B.10.016.

(3) In awarding waivers, an institution of higher education may award waivers to eligible persons employed by the institution before considering waivers for eligible persons who are not employed by the institution.

(4) If an institution of higher education exercises the authority granted under this section, it shall include all eligible state employees in the pool of persons eligible to participate in the program.

(5) In establishing eligibility to receive waivers, institutions of higher education may not discriminate between full-time employees and employees who are employed half-time or more. [2005 c 249 § 4; 2003 c 160 § 2; 1997 c 211 § 1; 1996 c 305 § 3; 1992 c 231 § 20; 1990 c 88 § 1.]

**\*Reviser's note:** RCW 41.56.201 was repealed by 2002 c 354 § 403, effective July 1, 2005.

**Finding—Intent—2003 c 160:** "The legislature finds that military and naval veterans who have served their country in wars on foreign soil have risked their own lives to defend both the lives of all Americans and the freedom that define[s] and distinguish[es] our nation. It is the intent of the legislature to honor veterans of the Korean conflict for the public service they have provided to their country." [2003 c 160 § 1.]

**Effective date—1996 c 305 § 3:** "Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 30, 1996]." [1996 c 305 § 4.]

**Severability—1996 c 305:** See note following RCW 28B.85.020.

**Effective date—1992 c 231:** See note following RCW 28B.10.016.

**28B.15.620 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28B.15.621 Tuition waivers—Veterans and national guard members—Dependents—Private institutions.** (1) The legislature finds that active military and naval veterans, reserve military and naval veterans, and national guard members called to active duty have served their country and have risked their lives to defend the lives of all Americans and the freedoms that define and distinguish our nation. The legislature intends to honor active military and naval veterans, reserve military and naval veterans, and national guard members who have served on active military or naval duty for the public service they have provided to this country.

(2) Subject to the limitations in RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges, may waive all or a portion of tuition and fees for the following persons:

(a) An eligible veteran or national guard member;

(b) A child and the spouse of an eligible veteran or national guard member who became totally disabled as defined in RCW 28B.15.385 while engaged in active federal military or naval service, or who is determined by the federal government to be a prisoner of war or missing in action;



(c) A child and the surviving spouse of an eligible veteran or national guard member who lost his or her life while engaged in active federal military or naval service. However, upon remarriage, the surviving spouse of an eligible veteran or national guard member is ineligible for a waiver under this section.

(3) The governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges, may waive all or a portion of tuition and fees for a military or naval veteran who is a Washington domiciliary, but who did not serve on foreign soil or in international waters or in another location in support of those serving on foreign soil or in international waters and who does not qualify as an eligible veteran or national guard member under subsection (5) of this section. However, there shall be no state general fund support for waivers granted under this subsection.

(4) Private vocational schools and private higher education institutions are encouraged to provide waivers consistent with the terms in subsections (2) and (3) of this section.

(5) As used in this section "eligible veteran or national guard member" means a Washington domiciliary who was an active or reserve member of the United States military or naval forces, or a national guard member called to active duty, who served in active federal service, under either Title 10 or Title 32 of the United States Code, in a war or conflict fought on foreign soil or in international waters or in another location in support of those serving on foreign soil or in international waters, and if discharged from service, has received an honorable discharge. [2005 c 249 § 1.]

**28B.15.628 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28B.15.629 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28B.15.910 Limitation on total operating fees revenue waived, exempted, or reduced.** (1) For the purpose of providing state general fund support to public institutions of higher education, except for revenue waived under programs listed in subsections (3) and (4) of this section, and unless otherwise expressly provided in the omnibus state appropriations act, the total amount of operating fees revenue waived, exempted, or reduced by a state university, a regional university, The Evergreen State College, or the community colleges as a whole, shall not exceed the percentage of total gross authorized operating fees revenue in this subsection. As used in this section, "gross authorized operating fees revenue" means the estimated gross operating fees revenue as estimated under RCW 82.33.020 or as revised by the office of financial management, before granting any waivers. This limitation applies to all tuition waiver programs established before or after July 1, 1992.

- (a) University of Washington 21 percent
- (b) Washington State University 20 percent
- (c) Eastern Washington University 11 percent
- (d) Central Washington University 8 percent
- (e) Western Washington University 10 percent
- (f) The Evergreen State College 6 percent

(g) Community colleges as a whole 35 percent  
 (2) The limitations in subsection (1) of this section apply to waivers, exemptions, or reductions in operating fees contained in the following:

- (a) RCW 28B.15.014;
- (b) RCW 28B.15.100;
- (c) RCW 28B.15.225;
- (d) RCW 28B.15.380;
- (e) RCW 28B.15.520;
- (f) RCW 28B.15.526;
- (g) RCW 28B.15.527;
- (h) RCW 28B.15.543;
- (i) RCW 28B.15.545;
- (j) RCW 28B.15.555;
- (k) RCW 28B.15.556;
- (l) RCW 28B.15.615;
- (m) RCW 28B.15.730;
- (n) RCW 28B.15.740;
- (o) RCW 28B.15.750;
- (p) RCW 28B.15.756;
- (q) RCW 28B.50.259;
- (r) RCW 28B.70.050; and
- (s) RCW 28B.15.621(2).

(3) The limitations in subsection (1) of this section do not apply to waivers, exemptions, or reductions in services and activities fees contained in the following:

- (a) RCW 28B.15.522;
- (b) RCW 28B.15.540; and
- (c) RCW 28B.15.558.

(4) The total amount of operating fees revenue waived, exempted, or reduced by institutions of higher education participating in the western interstate commission for higher education western undergraduate exchange program under RCW 28B.15.544 shall not exceed the percentage of total gross authorized operating fees revenue in this subsection.

- (a) Washington State University 1 percent
- (b) Eastern Washington University 3 percent
- (c) Central Washington University 3 percent

[2005 c 249 § 3; 2004 c 275 § 51; 2000 c 152 § 3; 1999 c 344 § 3; 1998 c 346 § 904; 1997 c 433 § 5; 1993 sp.s. c 18 § 31; 1992 c 231 § 33.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Findings—Intent—1999 c 344:** See note following RCW 28B.15.544.

**Construction—Severability—Effective date—1998 c 346:** See notes following RCW 50.24.014.

**Intent—Severability—1997 c 433:** See notes following RCW 28B.15.725.

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.10.265.

**Effective date—1992 c 231:** See note following RCW 28B.10.016.

**Chapter 28B.20 RCW**

**UNIVERSITY OF WASHINGTON**

Sections

- 28B.20.297 Washington technology center—Small business innovation research assistance program.
- 28B.20.426 Repealed.

**28B.20.297 Washington technology center—Small business innovation research assistance program.** (1) The legislature finds that small technology-based firms are the source of approximately one-half of the economy's major innovations and that it is in the interest of the state to increase participation by Washington state small businesses in the federal small business innovation research program by assisting them in becoming small business innovation research program grant recipients.

The legislature further finds that many small business innovators lack the grant-writing skills necessary to prepare a successful small business innovation research program proposal, and the federal program that funded grant-writing assistance has stopped operations. Nearly fifty percent of small businesses trained under the federal program won grants compared to less than ten percent of those that did not receive training.

(2) As used in this section:

(a) "Small business innovation research program" means the program, enacted pursuant to the small business innovation development act of 1982, P.L. 97-219, that provided funds to small businesses to conduct innovative research having commercial application.

(b) "Small business" means a corporation, partnership, sole proprietorship, or individual, operating a business for profit, with two hundred fifty employees or fewer, including employees employed in a subsidiary or affiliated corporation, that otherwise meets the requirements of the federal small business innovation research program.

(3) The Washington technology center shall establish a small business innovation research assistance program, including a proposal review process, to train and assist Washington small businesses to win phase I small business innovation research program awards.

(a) The Washington technology center shall give priority to first-time small business innovation research program applicants, new businesses, and firms with fewer than ten employees.

(b) The Washington technology center may charge a fee for this service. [2005 c 357 § 1.]

**28B.20.426 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

### Chapter 28B.30 RCW

#### WASHINGTON STATE UNIVERSITY

Sections

28B.30.820 Repealed.

**28B.30.820 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

### Chapter 28B.45 RCW

#### BRANCH CAMPUSES

Sections

28B.45.014 Mission—Collaboration with community and technical colleges—Alternative models—Legislative intent—Monitoring and evaluation—Reports to the legislature.

28B.45.020 University of Washington Tacoma—University of Washington Bothell.

28B.45.030 Washington State University—Tri-Cities area.

28B.45.040 Washington State University Vancouver.

### **28B.45.014 Mission—Collaboration with community and technical colleges—Alternative models—Legislative intent—Monitoring and evaluation—Reports to the legislature.**

(1) The primary mission of the higher education branch campuses created under this chapter remains to expand access to baccalaureate and master's level graduate education in underserved urban areas of the state in collaboration with community and technical colleges. The top priority for each of the campuses is to expand courses and degree programs for transfer and graduate students. New degree programs should be driven by the educational needs and demands of students and the community, as well as the economic development needs of local businesses and employers.

(2) Branch campuses shall collaborate with the community and technical colleges in their region to develop articulation agreements, dual admissions policies, and other partnerships to ensure that branch campuses serve as innovative models of a two plus two educational system. Other possibilities for collaboration include but are not limited to joint development of curricula and degree programs, collocation of instruction, and arrangements to share faculty.

(3) In communities where a private postsecondary institution is located, representatives of the private institution may be invited to participate in the conversation about meeting the baccalaureate and master's level graduate needs in underserved urban areas of the state.

(4) However, the legislature recognizes there are alternative models for achieving this primary mission. Some campuses may have additional missions in response to regional needs and demands. At selected branch campuses, an innovative combination of instruction and research targeted to support regional economic development may be appropriate to meet the region's needs for both access and economic viability. Other campuses should focus on becoming models of a two plus two educational system through continuous improvement of partnerships and agreements with community and technical colleges. Still other campuses may be best suited to transition to a four-year university or be removed from designation as a branch campus entirely.

(5) The legislature recognizes that size, mix of degree programs, and proportion of lower versus upper division and graduate enrollments are factors that affect costs at branch campuses. However over time, the legislature intends that branch campuses be funded more similarly to regional universities.

(6) In consultation with the higher education coordinating board, a branch campus may propose legislation to authorize practice-oriented or professional doctoral programs if: (a) Unique research facilities and equipment are located near the campus; or (b) the campus can clearly demonstrate student and employer demand in the region that is linked to regional economic development.

(7) It is not the legislature's intent to have each campus chart its own future path without legislative guidance. Instead, the legislature intends to consider carefully the mission and model of education that best suits each campus and best meets the needs of students, the community, and the

region. The higher education coordinating board shall monitor and evaluate the addition of lower division students to the branch campuses and periodically report and make recommendations to the higher education committees of the legislature to ensure the campuses continue to follow the priorities established under this chapter. [2005 c 258 § 2; 2004 c 57 § 2.]

**Findings—Intent—2005 c 258:** "(1) Since their creation in 1989, the research university branch campuses have significantly expanded access to baccalaureate and graduate education for placebound students in Washington's urban and metropolitan cities. Furthermore, the campuses have contributed to community revitalization and economic development in their regions. The campuses have met their overall mission through the development of new degree programs and through collaboration with community and technical colleges. These findings were confirmed by a comprehensive review of the campuses by the Washington state institute for public policy in 2002 and 2003, and reaffirmed through legislation enacted in 2004 that directed four of the campuses to make recommendations for their future evolution.

(2) The self-studies conducted by the University of Washington Bothell, University of Washington Tacoma, Washington State University Tri-Cities, and Washington State University Vancouver reflect thoughtful and strategic planning and involved the input of numerous students, faculty, community and business leaders, community colleges, advisory committees, and board members. The higher education coordinating board's careful review provides a statewide context for the legislature to implement the next stage of the campuses.

(3) Concurrently, the higher education coordinating board has developed a strategic master plan for higher education that sets a goal of increasing the number of students who earn college degrees at all levels: Associate, baccalaureate, and graduate. The strategic master plan also sets a goal to increase the higher education system's responsiveness to the state's economic needs.

(4) The legislature finds that to meet both of the master plan's goals and to provide adequate educational opportunities for Washington's citizens, additional access is needed to baccalaureate degree programs. Expansion of the four campuses is one strategy for achieving the desired outcomes of the master plan. Other strategies must also be implemented through service delivery models that reflect both regional demands and statewide priorities.

(5) Therefore, the legislature intends to increase baccalaureate access and encourage economic development through overall expansion of upper division capacity, continued development of two plus two programs in some areas of the state, authorization of four-year university programs in other areas of the state, and creation of new types of baccalaureate programs on a pilot basis. These steps will make significant progress toward achieving the master plan goals, but the legislature will also continue to monitor the development of the higher education system and evaluate what additional changes or expansion may be necessary." [2005 c 258 § 1.]

**28B.45.020 University of Washington Tacoma—University of Washington Bothell.** (1) The University of Washington is responsible for ensuring the expansion of baccalaureate and graduate educational programs in the central Puget Sound area under rules or guidelines adopted by the higher education coordinating board and in accordance with proportionality agreements emphasizing access for transfer students developed with the state board for community and technical colleges. The University of Washington shall meet that responsibility through the operation of at least two branch campuses. One branch campus shall be located in the Tacoma area. Another branch campus shall be collocated with Cascadia Community College in the Bothell-Woodinville area.

(2) At the University of Washington Tacoma, a top priority is expansion of upper division capacity for transfer students and graduate capacity and programs. Beginning in the fall of 2006, the campus may offer lower division courses linked to specific majors in fields not addressed at local com-

munity colleges. The campus shall admit lower division students through coadmission or coenrollment agreements with a community college, or through direct transfer for students who have accumulated approximately one year of transferable college credits. In addition to offering lower division courses linked to specific majors as addressed above, the campus may also directly admit freshmen and sophomores gradually and deliberately in accordance with the campus plan submitted to the higher education coordinating board in 2004.

(3) At the University of Washington Bothell, a top priority is expansion of upper division capacity for transfer students and graduate capacity and programs. The campus shall also seek additional opportunities to collaborate with and maximize its collocation [colocation] with Cascadia Community College. Beginning in the fall of 2006, the campus may offer lower division courses linked to specific majors in fields not addressed at local community colleges. The campus may admit lower division students through coadmission or coenrollment agreements with a community college, or through direct transfer for students who have accumulated approximately one year of transferable college credits. In addition to offering lower division courses linked to specific majors as addressed above, the campus may also directly admit freshmen and sophomores gradually and deliberately in accordance with the campus plan submitted to the higher education coordinating board in 2004. [2005 c 258 § 3; 1994 c 217 § 3; 1989 1st ex.s. c 7 § 3.]

**Findings—Intent—2005 c 258:** See note following RCW 28B.45.014.

**Effective date—1994 c 217:** See note following RCW 28B.45.0201.

**28B.45.030 Washington State University—Tri-Cities area.** (1) Washington State University is responsible for providing baccalaureate and graduate level higher education programs to the citizens of the Tri-Cities area, under rules or guidelines adopted by the higher education coordinating board and in accordance with proportionality agreements emphasizing access for transfer students developed with the state board for community and technical colleges. Washington State University shall meet that responsibility through the operation of a branch campus in the Tri-Cities area. The branch campus shall replace and supersede the Tri-Cities university center. All land, facilities, equipment, and personnel of the Tri-Cities university center shall be transferred from the University of Washington to Washington State University.

(2) Washington State University Tri-Cities shall continue providing innovative coadmission and coenrollment options with Columbia Basin College, and expand its upper division capacity for transfer students and graduate capacity and programs. The campus shall also seek additional opportunities to collaborate with the Pacific Northwest national laboratory. Beginning in the fall of 2006, the campus may offer lower division courses linked to specific majors in fields not addressed at local community colleges. The campus may admit lower division students through coadmission or coenrollment agreements with a community college, or through direct transfer for students who have accumulated approximately one year of transferable college credits. In addition to offering lower division courses linked to specific

majors as addressed above, the campus may also directly admit freshmen and sophomores for a bachelor's degree program in biotechnology subject to approval by the higher education coordinating board. The campus may not directly admit freshmen and sophomores for degree programs other than biotechnology, however this topic shall be the subject of further study and recommendations by the higher education coordinating board. [2005 c 258 § 4; 1989 1st ex.s. c 7 § 4.]

**Findings—Intent—2005 c 258:** See note following RCW 28B.45.014.

#### **28B.45.040 Washington State University Vancouver.**

(1) Washington State University is responsible for providing baccalaureate and graduate level higher education programs to the citizens of the southwest Washington area, under rules or guidelines adopted by the higher education coordinating board and in accordance with proportionality agreements emphasizing access for transfer students developed with the state board for community and technical colleges. Washington State University shall meet that responsibility through the operation of a branch campus in the southwest Washington area.

(2) Washington State University Vancouver shall expand upper division capacity for transfer students and graduate capacity and programs and continue to collaborate with local community colleges on coadmission and coenrollment programs. In addition, beginning in the fall of 2006, the campus may admit lower division students directly. By simultaneously admitting freshmen and sophomores, increasing transfer enrollment, coadmitting transfer students, and expanding graduate and professional programs, the campus shall develop into a four-year institution serving the southwest Washington region. [2005 c 258 § 5; 1989 1st ex.s. c 7 § 5.]

**Findings—Intent—2005 c 258:** See note following RCW 28B.45.014.

### **Chapter 28B.50 RCW**

#### **COMMUNITY AND TECHNICAL COLLEGES**

(Formerly: Community colleges)

##### Sections

28B.50.020	Purpose.
28B.50.030	Definitions.
28B.50.140	Boards of trustees—Powers and duties.
28B.50.360	Construction, reconstruction, equipping, and demolition of community and technical college facilities and acquisition of property—Community and technical college capital projects account—Disposition of building fees.
28B.50.4892	Part-time academic employees—Best practices compensation and employment—Task force—Report.
28B.50.810	Applied baccalaureate degree—Pilot programs.
28B.50.820	Baccalaureate degree programs—Agreements with regional universities, branch campuses, or the state college.
28B.50.895	Apprentice education waivers.
28B.50.901	Regional higher education consortium management and leadership—Everett Community College—Educational plan.

**28B.50.020 Purpose.** The purpose of this chapter is to provide for the dramatically increasing number of students requiring high standards of education either as a part of the continuing higher education program or for occupational education and training, or for adult basic skills and literacy education, by creating a new, independent system of community and technical colleges which will:

(1) Offer an open door to every citizen, regardless of his or her academic background or experience, at a cost normally within his or her economic means;

(2) Ensure that each college district shall offer thoroughly comprehensive educational, training and service programs to meet the needs of both the communities and students served by combining high standards of excellence in academic transfer courses; realistic and practical courses in occupational education, both graded and ungraded; community services of an educational, cultural, and recreational nature; and adult education, including basic skills and general, family, and work force literacy programs and services. However, college districts containing only technical colleges shall maintain programs solely for occupational education, basic skills, and literacy purposes, and, for as long as a need exists, may continue those programs, activities, and services offered by the technical colleges during the twelve-month period preceding September 1, 1991;

(3) Provide for basic skills and literacy education, and occupational education and technical training at technical colleges in order to prepare students for careers in a competitive work force;

(4) Provide or coordinate related and supplemental instruction for apprentices at community and technical colleges;

(5) Provide administration by state and local boards which will avoid unnecessary duplication of facilities or programs; and which will encourage efficiency in operation and creativity and imagination in education, training and service to meet the needs of the community and students;

(6) Allow for the growth, improvement, flexibility and modification of the community colleges and their education, training and service programs as future needs occur; and

(7) Establish firmly that, except on a pilot basis as provided under RCW 28B.50.810, community colleges are, for purposes of academic training, two year institutions, and are an independent, unique, and vital section of our state's higher education system, separate from both the common school system and other institutions of higher learning, and never to be considered for conversion into four-year liberal arts colleges. [2005 c 258 § 7; 1991 c 238 § 21; 1969 ex.s. c 261 § 17; 1969 ex.s. c 223 § 28B.50.020. Prior: 1967 ex.s. c 8 § 2.]

**Findings—Intent—2005 c 258:** See note following RCW 28B.45.014.

**Severability—1969 ex.s. c 261:** "If any provision of this 1969 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 261 § 37. Formerly RCW 28.85.911.]

**28B.50.030 Definitions.** As used in this chapter, unless the context requires otherwise, the term:

(1) "System" shall mean the state system of community and technical colleges, which shall be a system of higher education.

(2) "Board" shall mean the work force training and education coordinating board.

(3) "College board" shall mean the state board for community and technical colleges created by this chapter.

(4) "Director" shall mean the administrative director for the state system of community and technical colleges.

(5) "District" shall mean any one of the community and technical college districts created by this chapter.

(6) "Board of trustees" shall mean the local community and technical college board of trustees established for each college district within the state.

(7) "Occupational education" shall mean that education or training that will prepare a student for employment that does not require a baccalaureate degree, and education and training leading to an applied baccalaureate degree.

(8) "K-12 system" shall mean the public school program including kindergarten through the twelfth grade.

(9) "Common school board" shall mean a public school district board of directors.

(10) "Community college" shall include those higher education institutions that conduct education programs under RCW 28B.50.020.

(11) "Technical college" shall include those higher education institutions with the sole mission of conducting occupational education, basic skills, literacy programs, and offering on short notice, when appropriate, programs that meet specific industry needs. The programs of technical colleges shall include, but not be limited to, continuous enrollment, competency-based instruction, industry-experienced faculty, curriculum integrating vocational and basic skills education, and curriculum approved by representatives of employers and labor. For purposes of this chapter, technical colleges shall include Lake Washington Vocational-Technical Institute, Renton Vocational-Technical Institute, Bates Vocational-Technical Institute, Clover Park Vocational Institute, and Bellingham Vocational-Technical Institute.

(12) "Adult education" shall mean all education or instruction, including academic, vocational education or training, basic skills and literacy training, and "occupational education" provided by public educational institutions, including common school districts for persons who are eighteen years of age and over or who hold a high school diploma or certificate. However, "adult education" shall not include academic education or instruction for persons under twenty-one years of age who do not hold a high school degree or diploma and who are attending a public high school for the sole purpose of obtaining a high school diploma or certificate, nor shall "adult education" include education or instruction provided by any four year public institution of higher education.

(13) "Dislocated forest product worker" shall mean a forest products worker who: (a)(i) Has been terminated or received notice of termination from employment and is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for his or her skills in that occupation or industry; or (ii) is self-employed and has been displaced from his or her business because of the diminishing demand for the business' services or goods; and (b) at the time of last separation from employment, resided in or was employed in a rural natural resources impact area.

(14) "Forest products worker" shall mean a worker in the forest products industries affected by the reduction of forest fiber enhancement, transportation, or production. The workers included within this definition shall be determined by the employment security department, but shall include workers employed in the industries assigned the major group standard

industrial classification codes "24" and "26" and the industries involved in the harvesting and management of logs, transportation of logs and wood products, processing of wood products, and the manufacturing and distribution of wood processing and logging equipment. The commissioner may adopt rules further interpreting these definitions. For the purposes of this subsection, "standard industrial classification code" means the code identified in RCW 50.29.025(3).

(15) "Dislocated salmon fishing worker" means a finfish products worker who: (a)(i) Has been terminated or received notice of termination from employment and is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for his or her skills in that occupation or industry; or (ii) is self-employed and has been displaced from his or her business because of the diminishing demand for the business's services or goods; and (b) at the time of last separation from employment, resided in or was employed in a rural natural resources impact area.

(16) "Salmon fishing worker" means a worker in the finfish industry affected by 1994 or future salmon disasters. The workers included within this definition shall be determined by the employment security department, but shall include workers employed in the industries involved in the commercial and recreational harvesting of finfish including buying and processing finfish. The commissioner may adopt rules further interpreting these definitions.

(17) "Rural natural resources impact area" means:

(a) A nonmetropolitan county, as defined by the 1990 decennial census, that meets three of the five criteria set forth in subsection (18) of this section;

(b) A nonmetropolitan county with a population of less than forty thousand in the 1990 decennial census, that meets two of the five criteria as set forth in subsection (18) of this section; or

(c) A nonurbanized area, as defined by the 1990 decennial census, that is located in a metropolitan county that meets three of the five criteria set forth in subsection (18) of this section.

(18) For the purposes of designating rural natural resources impact areas, the following criteria shall be considered:

(a) A lumber and wood products employment location quotient at or above the state average;

(b) A commercial salmon fishing employment location quotient at or above the state average;

(c) Projected or actual direct lumber and wood products job losses of one hundred positions or more;

(d) Projected or actual direct commercial salmon fishing job losses of one hundred positions or more; and

(e) An unemployment rate twenty percent or more above the state average. The counties that meet these criteria shall be determined by the employment security department for the most recent year for which data is available. For the purposes of administration of programs under this chapter, the United States post office five-digit zip code delivery areas will be used to determine residence status for eligibility purposes. For the purpose of this definition, a zip code delivery area of which any part is ten miles or more from an urbanized area is considered nonurbanized. A zip code totally surrounded by zip codes qualifying as nonurbanized under this definition is

also considered nonurbanized. The office of financial management shall make available a zip code listing of the areas to all agencies and organizations providing services under this chapter.

(19) "Applied baccalaureate degree" means a baccalaureate degree awarded by a college under RCW 28B.50.810 for successful completion of a program of study that is:

(a) Specifically designed for individuals who hold an associate of applied science degree, or its equivalent, in order to maximize application of their technical course credits toward the baccalaureate degree; and

(b) Based on a curriculum that incorporates both theoretical and applied knowledge and skills in a specific technical field. [2005 c 258 § 8; 2003 2nd sp.s. c 4 § 33; 1997 c 367 § 13; 1995 c 226 § 17; 1992 c 21 § 5. Prior: 1991 c 315 § 15; 1991 c 238 § 22; 1985 c 461 § 14; 1982 1st ex.s. c 53 § 24; 1973 c 62 § 12; 1969 ex.s. c 261 § 18; 1969 ex.s. c 223 § 28B.50.030; prior: 1967 ex.s. c 8 § 3.]

**Findings—Intent—2005 c 258:** See note following RCW 28B.45.014.

**Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4:** See notes following RCW 50.01.010.

**Severability—Conflict with federal requirements—Effective date—1997 c 367:** See notes following RCW 43.160.020.

**Severability—Conflict with federal requirements—Effective date—1995 c 226:** See notes following RCW 43.160.020.

**Intent—1991 c 315:** "The legislature finds that:

(1) The economic health and well-being of timber-dependent communities is of substantial public concern. The significant reduction in annual timber harvest levels likely will result in reduced economic activity and persistent unemployment and underemployment over time, which would be a serious threat to the safety, health, and welfare of residents of the timber impact areas, decreasing the value of private investments and jeopardizing the sources of public revenue.

(2) Timber impact areas are most often located in areas that are experiencing little or no economic growth, creating an even greater risk to the health, safety, and welfare of these communities. The ability to remedy problems caused by the substantial reduction in harvest activity is beyond the power and control of the regulatory process and influence of the state, and the ordinary operations of private enterprise without additional governmental assistance are insufficient to adequately remedy the resulting problems of poverty and unemployment.

(3) To address these concerns, it is the intent of the legislature to increase training and retraining services accessible to timber impact areas, and provide for coordination of noneconomic development services in timber impact areas as economic development efforts will not succeed unless social, housing, health, and other needs are addressed." [1991 c 315 § 1.]

**Severability—Conflict with federal requirements—Effective date—1991 c 315:** See RCW 50.70.900 through 50.70.902.

**Severability—1985 c 461:** See note following RCW 41.06.020.

**Severability—1982 1st ex.s. c 53:** See note following RCW 41.06.020.

**Savings—Severability—1973 c 62:** See notes following RCW 28B.10.510.

**Severability—1969 ex.s. c 261:** See note following RCW 28B.50.020.

### **28B.50.140 Boards of trustees—Powers and duties.**

Each board of trustees:

(1) Shall operate all existing community and technical colleges in its district;

(2) Shall create comprehensive programs of community and technical college education and training and maintain an open-door policy in accordance with the provisions of RCW 28B.50.090(3). However, technical colleges, and college districts containing only technical colleges, shall maintain programs solely for occupational education, basic skills, and literacy purposes. For as long as a need exists, technical col-

leges may continue those programs, activities, and services they offered during the twelve-month period preceding September 1, 1991;

(3) Shall employ for a period to be fixed by the board a college president for each community and technical college and, may appoint a president for the district, and fix their duties and compensation, which may include elements other than salary. Compensation under this subsection shall not affect but may supplement retirement, health care, and other benefits that are otherwise applicable to the presidents as state employees. The board shall also employ for a period to be fixed by the board members of the faculty and such other administrative officers and other employees as may be necessary or appropriate and fix their salaries and duties. Compensation and salary increases under this subsection shall not exceed the amount or percentage established for those purposes in the state appropriations act by the legislature as allocated to the board of trustees by the state board for community and technical colleges. The state board for community and technical colleges shall adopt rules defining the permissible elements of compensation under this subsection;

(4) May establish, under the approval and direction of the college board, new facilities as community needs and interests demand. However, the authority of boards of trustees to purchase or lease major off-campus facilities shall be subject to the approval of the higher education coordinating board pursuant to RCW 28B.76.230;

(5) May establish or lease, operate, equip and maintain dormitories, food service facilities, bookstores and other self-supporting facilities connected with the operation of the community and technical college;

(6) May, with the approval of the college board, borrow money and issue and sell revenue bonds or other evidences of indebtedness for the construction, reconstruction, erection, equipping with permanent fixtures, demolition and major alteration of buildings or other capital assets, and the acquisition of sites, rights-of-way, easements, improvements or appurtenances, for dormitories, food service facilities, and other self-supporting facilities connected with the operation of the community and technical college in accordance with the provisions of RCW 28B.10.300 through 28B.10.330 where applicable;

(7) May establish fees and charges for the facilities authorized hereunder, including reasonable rules and regulations for the government thereof, not inconsistent with the rules of the college board; each board of trustees operating a community and technical college may enter into agreements, subject to rules of the college board, with owners of facilities to be used for housing regarding the management, operation, and government of such facilities, and any board entering into such an agreement may:

(a) Make rules for the government, management and operation of such housing facilities deemed necessary or advisable; and

(b) Employ necessary employees to govern, manage and operate the same;

(8) May receive such gifts, grants, conveyances, devises and bequests of real or personal property from private sources, as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out the community and technical college programs

as specified by law and the rules of the state college board; sell, lease or exchange, invest or expend the same or the proceeds, rents, profits and income thereof according to the terms and conditions thereof; and adopt rules to govern the receipt and expenditure of the proceeds, rents, profits and income thereof;

(9) May establish and maintain night schools whenever in the discretion of the board of trustees it is deemed advisable, and authorize classrooms and other facilities to be used for summer or night schools, or for public meetings and for any other uses consistent with the use of such classrooms or facilities for community and technical college purposes;

(10) May make rules for pedestrian and vehicular traffic on property owned, operated, or maintained by the district;

(11) Shall prescribe, with the assistance of the faculty, the course of study in the various departments of the community and technical college or colleges under its control, and publish such catalogues and bulletins as may become necessary;

(12) May grant to every student, upon graduation or completion of a course of study, a suitable diploma, degree, or certificate. Technical colleges shall offer only technical degrees under the rules of the state board for community and technical colleges that are appropriate to their work force education and training mission. The primary purpose of these degrees is to lead the individual directly to employment in a specific occupation. Technical colleges may not offer transfer degrees. Only pilot colleges under RCW 28B.50.810 may award baccalaureate degrees. The board, upon recommendation of the faculty, may also confer honorary associate of arts degrees upon persons other than graduates of the community college, in recognition of their learning or devotion to education, literature, art, or science. No degree may be conferred in consideration of the payment of money or the donation of any kind of property;

(13) Shall enforce the rules prescribed by the state board for community and technical colleges for the government of community and technical colleges, students and teachers, and adopt such rules and perform all other acts not inconsistent with law or rules of the state board for community and technical colleges as the board of trustees may in its discretion deem necessary or appropriate to the administration of college districts: PROVIDED, That such rules shall include, but not be limited to, rules relating to housing, scholarships, conduct at the various community and technical college facilities, and discipline: PROVIDED, FURTHER, That the board of trustees may suspend or expel from community and technical colleges students who refuse to obey any of the duly adopted rules;

(14) May, by written order filed in its office, delegate to the president or district president any of the powers and duties vested in or imposed upon it by this chapter. Such delegated powers and duties may be exercised in the name of the district board;

(15) May perform such other activities consistent with this chapter and not in conflict with the directives of the college board;

(16) Notwithstanding any other provision of law, may offer educational services on a contractual basis other than the tuition and fee basis set forth in chapter 28B.15 RCW for a special fee to private or governmental entities, consistent

with rules adopted by the state board for community and technical colleges: PROVIDED, That the whole of such special fee shall go to the college district and be not less than the full instructional costs of such services including any salary increases authorized by the legislature for community and technical college employees during the term of the agreement: PROVIDED FURTHER, That enrollments generated hereunder shall not be counted toward the official enrollment level of the college district for state funding purposes;

(17) Notwithstanding any other provision of law, may offer educational services on a contractual basis, charging tuition and fees as set forth in chapter 28B.15 RCW, counting such enrollments for state funding purposes, and may additionally charge a special supplemental fee when necessary to cover the full instructional costs of such services: PROVIDED, That such contracts shall be subject to review by the state board for community and technical colleges and to such rules as the state board may adopt for that purpose in order to assure that the sum of the supplemental fee and the normal state funding shall not exceed the projected total cost of offering the educational service: PROVIDED FURTHER, That enrollments generated by courses offered on the basis of contracts requiring payment of a share of the normal costs of the course will be discounted to the percentage provided by the college;

(18) Shall be authorized to pay dues to any association of trustees that may be formed by the various boards of trustees; such association may expend any or all of such funds to submit biennially, or more often if necessary, to the governor and to the legislature, the recommendations of the association regarding changes which would affect the efficiency of such association;

(19) May participate in higher education centers and consortia that involve any four-year public or independent college or university: PROVIDED, That new degree programs or off-campus programs offered by a four-year public or independent college or university in collaboration with a community or technical college are subject to approval by the higher education coordinating board under RCW 28B.76.230; and

(20) Shall perform any other duties and responsibilities imposed by law or rule of the state board. [2005 c 258 § 9; 2004 c 275 § 58; 1997 c 281 § 1. Prior: 1991 c 238 § 39; 1991 c 58 § 1; 1990 c 135 § 1; prior: 1987 c 407 § 1; 1987 c 314 § 14; 1985 c 370 § 96; 1981 c 246 § 3; 1979 ex.s. c 226 § 11; 1979 c 14 § 6; prior: 1977 ex.s. c 282 § 5; 1977 c 75 § 28; 1973 c 62 § 19; 1970 ex.s. c 15 § 17; prior: 1969 ex.s. c 283 § 30; 1969 ex.s. c 261 § 23; 1969 ex.s. c 223 § 28B.50.140; prior: 1967 ex.s. c 8 § 14.]

**Findings—Intent—2005 c 258:** See note following RCW 28B.45.014.

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Severability—1987 c 314:** See RCW 28B.52.900.

**Severability—1981 c 246:** See note following RCW 28B.50.090.

**Effective date—Severability—1979 ex.s. c 226:** See notes following RCW 28B.59C.010.

**Severability—1977 ex.s. c 282:** See note following RCW 28B.50.870.

**Savings—Severability—1973 c 62:** See notes following RCW 28B.10.510.

**Severability—1970 ex.s. c 15:** See note following RCW 28A.230.160.

**Severability—1969 ex.s. c 283:** See note following RCW 28A.150.050.

**Severability—1969 ex.s. c 261:** See note following RCW 28B.50.020.

**28B.50.360 Construction, reconstruction, equipping, and demolition of community and technical college facilities and acquisition of property—Community and technical college capital projects account—Disposition of building fees.** Within thirty-five days from the date of start of each quarter all collected building fees of each such community and technical college shall be paid into the state treasury, and shall be credited as follows:

(1) On or before June 30th of each year the college board if issuing bonds payable out of building fees shall certify to the state treasurer the amounts required in the ensuing twelve-month period to pay and secure the payment of the principal of and interest on such bonds. The state treasurer shall thereupon deposit the amounts so certified in the community and technical college capital projects account. Such amounts of the funds deposited in the community and technical college capital projects account as are necessary to pay and secure the payment of the principal of and interest on the building bonds issued by the college board as authorized by this chapter shall be exclusively devoted to that purpose. If in any twelve-month period it shall appear that the amount certified by the college board is insufficient to pay and secure the payment of the principal of and interest on the outstanding building bonds, the state treasurer shall notify the college board and such board shall adjust its certificate so that all requirements of moneys to pay and secure the payment of the principal and interest on all such bonds then outstanding shall be fully met at all times.

(2) The community and technical college capital projects account is hereby created in the state treasury. The sums deposited in the capital projects account shall be appropriated and expended exclusively to pay and secure the payment of the principal of and interest on bonds payable out of the building fees and for the construction, reconstruction, erection, equipping, maintenance, demolition and major alteration of buildings and other capital assets owned by the state board for community and technical colleges in the name of the state of Washington, and the acquisition of sites, rights-of-way, easements, improvements or appurtenances in relation thereto, engineering and architectural services provided by the department of general administration, and for the payment of principal of and interest on any bonds issued for such purposes. [2005 c 488 § 922; 2004 c 277 § 910; 2002 c 238 § 303; 2000 c 65 § 1; 1997 c 42 § 1; 1991 sp.s. c 13 §§ 47, 48; 1991 c 238 § 51. Prior: 1985 c 390 § 56; 1985 c 57 § 16; 1974 ex.s. c 112 § 4; 1971 ex.s. c 279 § 20; 1970 ex.s. c 15 § 20; prior: 1969 ex.s. c 261 § 28; 1969 ex.s. c 238 § 7; 1969 ex.s. c 223 § 28B.50.360; prior: 1967 ex.s. c 8 § 36.]

**Part headings not law—2005 c 488:** "Part headings in this act are not any part of the law." [2005 c 488 § 956.]

**Severability—2005 c 488:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 488 § 958.]

**Effective dates—2005 c 488:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately

[May 16, 2005], except for sections 920 and 921 of this act, which take effect June 30, 2005." [2005 c 488 § 959.]

**Severability—Effective dates—2004 c 277:** See notes following RCW 89.08.550.

**Severability—Effective date—2002 c 238:** See notes following RCW 28B.30.730.

**Effective date—2000 c 65:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 22, 2000]." [2000 c 65 § 3.]

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

**Effective date—1985 c 57:** See note following RCW 18.04.105.

**Severability—1974 ex.s. c 112:** See note following RCW 28B.50.403.

**Severability—1971 ex.s. c 279:** See note following RCW 28B.15.005.

**Severability—1970 ex.s. c 15:** See note following RCW 28A.230.160.

*Transfer of moneys in community and technical college bond retirement fund to state general fund: RCW 28B.50.401 and 28B.50.402.*

**28B.50.4892 Part-time academic employees—Best practices compensation and employment—Task force—Report.** (1) The legislature finds that community colleges and technical colleges have an obligation to carry out their roles and missions in an equitable fashion. The legislature also finds that governing boards for community colleges and technical colleges have a responsibility to provide leadership and guidance to their colleges in the equitable treatment of part-time faculty teaching in the community and technical colleges.

(2) The state board for community and technical colleges shall convene a task force to conduct a review and update of the best practices audit of compensation packages and conditions of employment for part-time faculty in the community and technical college system conducted in 1996 and reported on in 1998. The task force shall include but need not be limited to part-time faculty, full-time faculty, members of the state board, community college administrators, and members of community college and technical college governing boards. In performing the review and update of the audit, the task force shall focus on the employment of part-time faculty, and shall include the following issues in its deliberations: Salary issues, provision of health and retirement benefits, the implications of increased reliance on part-time rather than full-time faculty, the implications of workload definitions, and tangible and intangible ways to recognize the professional stature of part-time faculty.

(3) The task force shall report its findings to the state board, local governing boards, and other interested parties by December 1, 2005. The report shall include recommendations on a review of the status of the set of best practices principles for the colleges to follow in their employment of part-time faculty developed in 1996. The state board for community and technical colleges shall adopt and periodically update a set of best practices principles for colleges in the community and technical college system to follow in their employment of part-time faculty. The board shall use the best practices principles in the development of each biennial operating budget request. The board shall encourage and, to the extent possible, require each local governing board to adopt, revise, and implement the principles. [2005 c 119 § 2; 1996 c 120 § 3.]



**Findings—2005 c 119:** "The legislature finds that:

- (1) The part-time faculty in the community and technical colleges provide a valuable contribution to quality instruction;
- (2) The part-time faculty are essential to the success of the open access opportunities provided by the two-year colleges to the citizens of Washington;
- (3) The two-year colleges employ a core of skilled, well-trained faculty whose contributions are critical to the quality and breadth of program offerings;
- (4) The community and technical colleges have an essential role in educating and retraining high-skilled workers who are vital to the economic health of the communities of Washington;
- (5) It is vital to attract and retain highly skilled faculty capable of preparing students to transfer to four-year colleges and universities and for the work force;
- (6) Low and stagnating salaries as well as the lack of career advancement options for part-time faculty are detrimental to the morale of all faculty;
- (7) Part-time faculty contribute to the learning environment offered to the students through advising and attention that all good educators bring to their profession; and
- (8) Although progress has been made since the initial work of the best practices task force in 1996, additional progress needs to be made to improve and implement best practices for part-time community and technical college faculty." [2005 c 119 § 1.]

**28B.50.810 Applied baccalaureate degree—Pilot programs.** (1) The college board shall select four community or technical colleges to develop and offer programs of study leading to an applied baccalaureate degree. At least one of the four pilot programs chosen must lead to a baccalaureate of applied science degree which builds on an associate of applied science degree. The college board shall convene a task force that includes representatives of both the community and technical colleges to develop objective selection criteria.

(2) Colleges may submit an application to become a pilot college under this section. The college board shall review the applications and select the pilot colleges using objective criteria, including:

- (a) The college demonstrates the capacity to make a long-term commitment of resources to build and sustain a high quality program;
- (b) The college has or can readily engage faculty appropriately qualified to develop and deliver a high quality curriculum at the baccalaureate level;
- (c) The college can demonstrate demand for the proposed program from a sufficient number of students within its service area to make the program cost-effective and feasible to operate;
- (d) The college can demonstrate that employers demand the level of technical training proposed within the program, making it cost-effective for students to seek the degree; and
- (e) The proposed program fills a gap in options available for students because it is not offered by a public four-year institution of higher education in the college's geographic area.

(3) A college selected as a pilot college under this section may develop the curriculum for and design and deliver courses leading to an applied baccalaureate degree. However, degree programs developed under this section are subject to approval by the college board under RCW 28B.50.090 and by the higher education coordinating board under RCW 28B.76.230 before a pilot college may enroll students in upper division courses. A pilot college may not enroll stu-

dents in upper division courses before the fall academic quarter of 2006. [2005 c 258 § 6.]

**Findings—Intent—2005 c 258:** See note following RCW 28B.45.014.

**28B.50.820 Baccalaureate degree programs—Agreements with regional universities, branch campuses, or the state college.** (1) One strategy to accomplish expansion of baccalaureate capacity in underserved regions of the state is to allocate state funds for student enrollment to a community and technical college and authorize the college to enter into agreements with a regional university or state college as defined in RCW 28B.10.016 or a branch campus under chapter 28B.45 RCW, to offer baccalaureate degree programs.

(2) Subject to legislative appropriation for the purpose described in this section, the college board shall select and allocate funds to three community or technical colleges for the purpose of entering into an agreement with one or more regional universities, branch campuses, or the state college to offer baccalaureate degree programs on the college campus.

(3) The college board shall select the community or technical college based on analysis of gaps in service delivery, capacity, and student and employer demand for programs. Before taking effect, the agreement under this section must be approved by the higher education coordinating board.

(4) Students enrolled in programs under this section are considered students of the regional university, branch campus, or state college for all purposes including tuition and reporting of state-funded enrollments. [2005 c 258 § 12.]

**Findings—Intent—2005 c 258:** See note following RCW 28B.45.014.

**28B.50.895 Apprentice education waivers.** With regard to waivers for courses offered for the purpose of satisfying related or supplemental educational requirements for apprentices registered with the Washington state apprenticeship council or the federal bureau of apprenticeship and training, colleges may at the request of an apprenticeship organization, deduct the tuition owed from training contracts with that apprentice organization. [2005 c 159 § 1.]

**28B.50.901 Regional higher education consortium management and leadership—Everett Community College—Educational plan.** (1) The legislature finds that access to baccalaureate and graduate degree programs continues to be limited for residents of North Snohomish, Island, and Skagit counties. Studies conducted by the state board for community and technical colleges, the higher education coordinating board, and the council of presidents confirm that enrollment in higher education in this geographic region lags enrollment in other parts of the state, particularly for upper division courses leading to advanced degrees. The higher education consortium created to serve the region has not been able to successfully address the region's access needs. The university center model of service delivery, centered on a community college campus with a single point of accountability, has proven more effective in developing degree programs and attracting students.

(2) Therefore the legislature intends to refocus the consortium by assigning management and leadership responsibility for consortium operations to Everett Community College. Everett Community College shall collaborate with

community and business leaders, other local community colleges, the public four-year institutions of higher education, and the higher education coordinating board to develop an educational plan for the North Snohomish, Island, and Skagit county region based on the university center model. The plan should provide for projections of student enrollment demand, coordinated delivery of lower and upper division courses, expanded availability of baccalaureate degree programs and high demand degree and certificate programs in the region, and a timeline and cost estimates for moving the physical location of the consortium to the college campus. The college shall submit preliminary recommendations to the higher education and fiscal committees of the legislature by December 1, 2005. [2005 c 258 § 13.]

**Findings—Intent—2005 c 258:** See note following RCW 28B.45.014.

### Chapter 28B.76 RCW

#### HIGHER EDUCATION COORDINATING BOARD

##### Sections

28B.76.230	Needs assessment process and analysis—Activities requiring board approval.
28B.76.2301	Outcomes and performance measures resulting from chapter 258, Laws of 2005—Report to legislature. ( <i>Expires July 1, 2009.</i> )
28B.76.525	State financial aid account.
28B.76.660	Washington scholars award and Washington scholars-alternate award.

**28B.76.230 Needs assessment process and analysis—Activities requiring board approval.** (1) The board shall develop a comprehensive and ongoing assessment process to analyze the need for additional degrees and programs, additional off-campus centers and locations for degree programs, and consolidation or elimination of programs by the four-year institutions.

(2) As part of the needs assessment process, the board shall examine:

(a) Projections of student, employer, and community demand for education and degrees, including liberal arts degrees, on a regional and statewide basis;

(b) Current and projected degree programs and enrollment at public and private institutions of higher education, by location and mode of service delivery; and

(c) Data from the work force training and education coordinating board and the state board for community and technical colleges on the supply and demand for work force education and certificates and associate degrees.

(3) Every two years the board shall produce, jointly with the state board for community and technical colleges and the work force training and education coordinating board, an assessment of the number and type of higher education and training credentials required to match employer demand for a skilled and educated work force. The assessment shall include the number of forecasted net job openings at each level of higher education and training and the number of credentials needed to match the forecast of net job openings.

(4) The board shall determine whether certain major lines of study or types of degrees, including applied degrees or research-oriented degrees, shall be assigned uniquely to some institutions or institutional sectors in order to create centers of excellence that focus resources and expertise.

(5) The following activities are subject to approval by the board:

(a) New degree programs by a four-year institution;

(b) Creation of any off-campus program by a four-year institution;

(c) Purchase or lease of major off-campus facilities by a four-year institution or a community or technical college;

(d) Creation of higher education centers and consortia;

(e) New degree programs and creation of off-campus programs by an independent college or university in collaboration with a community or technical college; and

(f) Applied baccalaureate degree programs developed by colleges under RCW 28B.50.810.

(6) Institutions seeking board approval under this section must demonstrate that the proposal is justified by the needs assessment developed under this section. Institutions must also demonstrate how the proposals align with or implement the statewide strategic master plan for higher education under RCW 28B.76.200.

(7) The board shall develop clear guidelines and objective decision-making criteria regarding approval of proposals under this section, which must include review and consultation with the institution and other interested agencies and individuals.

(8) The board shall periodically recommend consolidation or elimination of programs at the four-year institutions, based on the needs assessment analysis. [2005 c 258 § 11; 2004 c 275 § 9.]

**Findings—Intent—2005 c 258:** See note following RCW 28B.45.014.

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**28B.76.2301 Outcomes and performance measures resulting from chapter 258, Laws of 2005—Report to legislature. (*Expires July 1, 2009.*)** (1) The higher education coordinating board shall define potential outcomes resulting from chapter 258, Laws of 2005 and develop performance measures for those outcomes, including but not limited to increased numbers of baccalaureate degrees awarded; expansion of upper division and graduate capacity at the University of Washington Bothell and Tacoma and Washington State University Tri-Cities and Vancouver; enhanced regional access to baccalaureate programs; and creation and award of applied baccalaureate degrees. The board shall provide a progress report on the outcomes to the higher education committees of the senate and the house of representatives by December 1, 2008.

(2) This section expires July 1, 2009. [2005 c 258 § 14.]

**Findings—Intent—2005 c 258:** See note following RCW 28B.45.014.

**28B.76.525 State financial aid account.** (1) The state financial aid account is created in the custody of the state treasurer. The primary purpose of the account is to ensure that all appropriations designated for financial aid through statewide student financial aid programs are made available to eligible students. The account shall be a nontreasury account.

(2) The higher education coordinating board shall deposit in the account all money received for the state need grant program established under RCW 28B.92.010, the state

work-study program established under chapter 28B.12 RCW, the Washington scholars program established under RCW 28A.600.110, the Washington award for vocational excellence program established under RCW 28C.04.525, and the educational opportunity grant program established under chapter 28B.101 RCW. The account shall consist of funds appropriated by the legislature for the programs listed in this subsection and private contributions to the programs. Moneys deposited in the account do not lapse at the close of the fiscal period for which they were appropriated. Both during and after the fiscal period in which moneys were deposited in the account, the board may expend moneys in the account only for the purposes for which they were appropriated, and the expenditures are subject to any other conditions or limitations placed on the appropriations.

(3) Expenditures from the account shall be used for scholarships to students eligible for the programs according to program rules and policies.

(4) Disbursements from the account are exempt from appropriations and the allotment provisions of chapter 43.88 RCW.

(5) Only the executive director of the higher education coordinating board or the executive director's designee may authorize expenditures from the account. [2005 c 139 § 1.]

**Reviser's note:** 2005 c 139 directed that this section be added to chapter 28B.10 RCW. This section has been codified as part of chapter 28B.76 RCW, which relates more directly to duties of the higher education coordinating board.

**28B.76.660 Washington scholars award and Washington scholars-alternate award.** (1) Recipients of the Washington scholars award or the Washington scholars-alternate award under RCW 28A.600.100 through 28A.600.150 who choose to attend an independent college or university in this state, as defined in subsection (4) of this section, and recipients of the award named after June 30, 1994, who choose to attend a public college or university in the state may receive grants under this section if moneys are available. The higher education coordinating board shall distribute grants to eligible students under this section from moneys appropriated for this purpose. The individual grants shall not exceed, on a yearly basis, the yearly, full-time, resident, undergraduate tuition and service and activities fees in effect at the state-funded research universities. Grants to recipients attending an independent institution shall be contingent upon the institution matching on at least a dollar-for-dollar basis, either with actual money or by a waiver of fees, the amount of the grant received by the student from the state. The higher education coordinating board shall establish procedures, by rule, to disburse the awards as direct grants to the students.

(2) The higher education coordinating board shall establish rules that provide for the annual awarding of grants, if moneys are available, to three Washington scholars per legislative district except for fiscal year 2007 when no more than two scholars per district shall be selected; and, if not used by an original recipient, to the Washington scholars-alternate from the same legislative district.

Beginning with scholars selected in the year 2000, if the recipients of grants fail to demonstrate in a timely manner that they will enroll in a Washington institution of higher

education in the fall term of the academic year following the award of the grant or are deemed by the higher education coordinating board to have withdrawn from college during the first academic year following the award, then the grant shall be considered relinquished. The higher education coordinating board may then award any remaining grant amounts to the Washington scholars-alternate from the same legislative district if the grants are awarded within one calendar year of the recipient being named a Washington scholars-alternate. Washington scholars-alternates named as recipients of the grant must also demonstrate in a timely manner that they will enroll in a Washington institution of higher education during the next available term, as determined by the higher education coordinating board. The board may accept appeals and grant waivers to the enrollment requirements of this section based on exceptional mitigating circumstances of individual grant recipients.

To maintain eligibility for the grants, recipients must maintain a minimum grade point average at the college or university equivalent to 3.30. Students shall be eligible to receive a maximum of twelve quarters or eight semesters of grants for undergraduate study and may transfer among in-state public and independent colleges and universities during that period and continue to receive the grant as provided under RCW 28B.76.665. If the student's cumulative grade point average falls below 3.30 during the first three quarters or two semesters, that student may petition the higher education coordinating board which shall have the authority to establish a probationary period until such time as the student's grade point average meets required standards.

(3) No grant shall be awarded to any student who is pursuing a degree in theology.

(4) As used in this section, "independent college or university" means a private, nonprofit educational institution, the main campus of which is permanently situated in the state, open to residents of the state, providing programs of education beyond the high school level leading at least to the baccalaureate degree, and accredited by the northwest association of schools and colleges as of June 9, 1988, and other institutions as may be developed that are approved by the higher education coordinating board as meeting equivalent standards as those institutions accredited under this section.

(5) As used in this section, "public college or university" means an institution of higher education as defined in RCW 28B.10.016. [2005 c 518 § 917; 2004 c 275 § 24; 1999 c 159 § 3; 1995 1st sp.s. c 5 § 3; 1990 c 33 § 560; 1988 c 210 § 1. Formerly RCW 28B.80.245.]

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Findings—Intent—1999 c 159:** See note following RCW 28A.600.150.

**Severability—Effective date—1995 1st sp.s. c 5:** See notes following RCW 28A.600.130.

**Purpose—Statutory references—Severability—1990 c 33:** See RCW 28A.900.100 through 28A.900.102.

**Application—1988 c 210 § 1:** "RCW 28B.80.245 shall apply to persons holding the Washington scholars award as of June 9, 1988, as well as persons holding the award after June 9, 1988." [1988 c 210 § 3.]

## Chapter 28B.85 RCW

## DEGREE-GRANTING INSTITUTIONS

## Sections

28B.85.020 Board's duties—Rules—Investigations—Interagency agreements for degree and nondegree programs—Information on institutions offering substandard or fraudulent degree programs—Financial disclosure exempt from public disclosure. (*Effective July 1, 2006.*)

**28B.85.020 Board's duties—Rules—Investigations—Interagency agreements for degree and nondegree programs—Information on institutions offering substandard or fraudulent degree programs—Financial disclosure exempt from public disclosure. (*Effective July 1, 2006.*)**

(1) The board:

(a) Shall adopt by rule minimum standards for degree-granting institutions concerning granting of degrees, quality of education, unfair business practices, financial stability, and other necessary measures to protect citizens of this state against substandard, fraudulent, or deceptive practices. The rules may require that an institution be accredited or be making progress toward accreditation by an accrediting agency recognized by the United States department of education. The board shall adopt the rules in accordance with chapter 34.05 RCW;

(b) May investigate any entity the board reasonably believes to be subject to the jurisdiction of this chapter. In connection with the investigation, the board may administer oaths and affirmations, issue subpoenas and compel attendance, take evidence, and require the production of any books, papers, correspondence, memorandums, or other records which the board deems relevant or material to the investigation. The board, including its staff and any other authorized persons, may conduct site inspections, the cost of which shall be borne by the institution, and examine records of all institutions subject to this chapter;

(c) Shall develop an interagency agreement with the work force training and education coordinating board to regulate degree-granting private vocational schools with respect to degree and nondegree programs; and

(d) Shall develop and disseminate information to the public about entities that sell or award degrees without requiring appropriate academic achievement at the postsecondary level, including but not limited to, a description of the substandard and potentially fraudulent practices of these entities, and advice about how the public can recognize and avoid the entities. To the extent feasible, the information shall include links to additional resources that may assist the public in identifying specific institutions offering substandard or fraudulent degree programs.

(2) Financial disclosures provided to the board by degree-granting private vocational schools are not subject to public disclosure under chapter 42.56 RCW. [2005 c 274 § 246; 2004 c 96 § 1; 1996 c 305 § 1; 1994 c 38 § 1; 1986 c 136 § 2.]

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

**Severability—1996 c 305:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 305 § 5.]

[2005 RCW Supp—page 248]

## Chapter 28B.92 RCW

## STATE STUDENT FINANCIAL AID PROGRAM

## Sections

28B.92.060 State need grant awards.

**28B.92.060 State need grant awards.** In awarding need grants, the board shall proceed substantially as follows: PROVIDED, That nothing contained herein shall be construed to prevent the board, in the exercise of its sound discretion, from following another procedure when the best interest of the program so dictates:

(1) The board shall annually select the financial aid award recipients from among Washington residents applying for student financial aid who have been ranked according to:

(a) Financial need as determined by the amount of the family contribution; and

(b) Other considerations, such as whether the student is a former foster youth.

(2) The financial need of the highest ranked students shall be met by grants depending upon the evaluation of financial need until the total allocation has been disbursed. Funds from grants which are declined, forfeited or otherwise unused shall be reawarded until disbursed, except that eligible former foster youth shall be assured receipt of a grant.

(3) A student shall be eligible to receive a state need grant for up to five years, or the credit or clock hour equivalent of five years, or up to one hundred twenty-five percent of the published length of time of the student's program. A student may not start a new associate degree program as a state need grant recipient until at least five years have elapsed since earning an associate degree as a need grant recipient, except that a student may earn two associate degrees concurrently. Qualifications for renewal will include maintaining satisfactory academic progress toward completion of an eligible program as determined by the board. Should the recipient terminate his or her enrollment for any reason during the academic year, the unused portion of the grant shall be returned to the state educational grant fund by the institution according to the institution's own policy for issuing refunds, except as provided in RCW 28B.92.070.

(4) In computing financial need, the board shall determine a maximum student expense budget allowance, not to exceed an amount equal to the total maximum student expense budget at the public institutions plus the current average state appropriation per student for operating expense in the public institutions.

(5) As used in this section, "former foster youth" means a person who is at least eighteen years of age, but not more than twenty-four years of age, who was a dependent of the department of social and health services at the time he or she attained the age of eighteen. [2005 c 93 § 3; 2004 c 275 § 37; 1999 c 345 § 5; 1991 c 164 § 4; 1989 c 254 § 4; 1969 ex.s. c 222 § 12. Formerly RCW 28B.10.808, 28.76.470.]

**Findings—Intent—2005 c 93:** See note following RCW 74.13.570.

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Intent—1989 c 254:** See note following RCW 28B.92.030.

**Chapter 28B.95 RCW**  
**ADVANCED COLLEGE TUITION**  
**PAYMENT PROGRAM**

## Sections

28B.95.020	Definitions.
28B.95.030	Administration of program—Tuition units—Promotion of program—Authority of governing body.
28B.95.090	Discontinuation of program—Use of units—Refunds.
28B.95.110	Refunds.
28B.95.120	Tuition units exempt from bankruptcy and enforcement of judgments.

**28B.95.020 Definitions.** The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Academic year" means the regular nine-month, three-quarter, or two-semester period annually occurring between August 1st and July 31st.

(2) "Account" means the Washington advanced college tuition payment program account established for the deposit of all money received by the board from eligible purchasers and interest earnings on investments of funds in the account, as well as for all expenditures on behalf of eligible beneficiaries for the redemption of tuition units and for the development of any authorized college savings program pursuant to RCW 28B.95.150.

(3) "Board" means the higher education coordinating board as defined in chapter 28B.76 RCW.

(4) "Committee on advanced tuition payment" or "committee" means a committee of the following members: The state treasurer, the director of the office of financial management, the executive director of the higher education coordinating board, or their designees, and two members to be appointed by the governor, one representing program participants and one private business representative with marketing, public relations, or financial expertise.

(5) "Governing body" means the committee empowered by the legislature to administer the Washington advanced college tuition payment program.

(6) "Contractual obligation" means a legally binding contract of the state with the purchaser and the beneficiary establishing that purchases of tuition units will be worth the same number of tuition units at the time of redemption as they were worth at the time of the purchase.

(7) "Eligible beneficiary" means the person for whom the tuition unit will be redeemed for attendance at an institution of higher education. The beneficiary is that person named by the purchaser at the time that a tuition unit contract is accepted by the governing body. Qualified organizations, as allowed under section 529 of the federal internal revenue code, purchasing tuition unit contracts as future scholarships need not designate a beneficiary at the time of purchase.

(8) "Eligible purchaser" means an individual or organization that has entered into a tuition unit contract with the governing body for the purchase of tuition units for an eligible beneficiary.

(9) "Full-time tuition charges" means resident tuition charges at a state institution of higher education for enrollments between ten credits and eighteen credit hours per academic term.

(10) "Institution of higher education" means an institution that offers education beyond the secondary level and is

recognized by the internal revenue service under chapter 529 of the internal revenue code.

(11) "Investment board" means the state investment board as defined in chapter 43.33A RCW.

(12) "State institution of higher education" means institutions of higher education as defined in RCW 28B.10.016.

(13) "Tuition and fees" means undergraduate tuition and services and activities fees as defined in RCW 28B.15.020 and 28B.15.041 rounded to the nearest whole dollar. For purposes of this chapter, services and activities fees do not include fees charged for the payment of bonds heretofore or hereafter issued for, or other indebtedness incurred to pay, all or part of the cost of acquiring, constructing, or installing any lands, buildings, or facilities.

(14) "Tuition unit contract" means a contract between an eligible purchaser and the governing body, or a successor agency appointed for administration of this chapter, for the purchase of tuition units for a specified beneficiary that may be redeemed at a later date for an equal number of tuition units.

(15) "Unit purchase price" means the minimum cost to purchase one tuition unit for an eligible beneficiary. Generally, the minimum purchase price is one percent of the undergraduate tuition and fees for the current year, rounded to the nearest whole dollar, adjusted for the costs of administration and adjusted to ensure the actuarial soundness of the account. The analysis for price setting shall also include, but not be limited to consideration of past and projected patterns of tuition increases, program liability, past and projected investment returns, and the need for a prudent stabilization reserve. [2005 c 272 § 1; 2004 c 275 § 59; 2001 c 184 § 1; 2000 c 14 § 1; 1997 c 289 § 2.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**28B.95.030 Administration of program—Tuition units—Promotion of program—Authority of governing body.** (1) The Washington advanced college tuition payment program shall be administered by the committee on advanced tuition payment which shall be chaired by the executive director of the board. The committee shall be supported by staff of the board.

(2)(a) The Washington advanced college tuition payment program shall consist of the sale of tuition units, which may be redeemed by the beneficiary at a future date for an equal number of tuition units regardless of any increase in the price of tuition, that may have occurred in the interval.

(b) Each purchase shall be worth a specific number of or fraction of tuition units at each state institution of higher education as determined by the governing body.

(c) The number of tuition units necessary to pay for a full year's, full-time undergraduate tuition and fee charges at a state institution of higher education shall be set by the governing body at the time a purchaser enters into a tuition unit contract.

(d) The governing body may limit the number of tuition units purchased by any one purchaser or on behalf of any one beneficiary, however, no limit may be imposed that is less than that necessary to achieve four years of full-time, undergraduate tuition charges at a state institution of higher education. The governing body also may, at its discretion, limit the

number of participants, if needed, to ensure the actuarial soundness and integrity of the program.

(e) While the Washington advanced college tuition payment program is designed to help all citizens of the state of Washington, the governing body may determine residency requirements for eligible purchasers and eligible beneficiaries to ensure the actuarial soundness and integrity of the program.

(3)(a) No tuition unit may be redeemed until two years after the purchase of the unit. Units may be redeemed for enrollment at any institution of higher education that is recognized by the internal revenue service under chapter 529 of the internal revenue code.

(b) Units redeemed at a nonstate institution of higher education or for graduate enrollment shall be redeemed at the rate for state public institutions in effect at the time of redemption.

(4) The governing body shall determine the conditions under which the tuition benefit may be transferred to another family member. In permitting such transfers, the governing body may not allow the tuition benefit to be bought, sold, bartered, or otherwise exchanged for goods and services by either the beneficiary or the purchaser.

(5) The governing body shall administer the Washington advanced college tuition payment program in a manner reasonably designed to be actuarially sound, such that the assets of the trust will be sufficient to defray the obligations of the trust including the costs of administration. The governing body may, at its discretion, discount the minimum purchase price for certain kinds of purchases such as those from families with young children, as long as the actuarial soundness of the account is not jeopardized.

(6) The governing body shall annually determine current value of a tuition unit.

(7) The governing body shall promote, advertise, and publicize the Washington advanced college tuition payment program.

(8) In addition to any other powers conferred by this chapter, the governing body may:

(a) Impose reasonable limits on the number of tuition units or units that may be used in any one year;

(b) Determine and set any time limits, if necessary, for the use of benefits under this chapter;

(c) Impose and collect administrative fees and charges in connection with any transaction under this chapter;

(d) Appoint and use advisory committees as needed to provide program direction and guidance;

(e) Formulate and adopt all other policies and rules necessary for the efficient administration of the program;

(f) Consider the addition of an advanced payment program for room and board contracts and also consider a college savings program;

(g) Purchase insurance from insurers licensed to do business in the state, to provide for coverage against any loss in connection with the account's property, assets, or activities or to further insure the value of the tuition units;

(h) Make, execute, and deliver contracts, conveyances, and other instruments necessary to the exercise and discharge of its powers and duties under this chapter;

(i) Contract for the provision for all or part of the services necessary for the management and operation of the pro-

gram with other state or nonstate entities authorized to do business in the state;

(j) Contract for other services or for goods needed by the governing body in the conduct of its business under this chapter;

(k) Contract with financial consultants, actuaries, auditors, and other consultants as necessary to carry out its responsibilities under this chapter;

(l) Solicit and accept cash donations and grants from any person, governmental agency, private business, or organization; and

(m) Perform all acts necessary and proper to carry out the duties and responsibilities of this program under this chapter. [2005 c 272 § 2; 2000 c 14 § 3; 1997 c 289 § 3.]

**28B.95.090 Discontinuation of program—Use of units—Refunds.** (1) In the event that the state determines that the program is not financially feasible, or for any other reason, the state may declare the discontinuance of the program. At the time of such declaration, the governing body will cease to accept any further tuition unit contracts or purchases.

(2) The remaining tuition units for all beneficiaries who have either enrolled in higher education or who are within four years of graduation from a secondary school shall be honored until such tuition units have been exhausted, or for ten fiscal years from the date that the program has been discontinued, whichever comes first. All other contract holders shall receive a refund equal to the value of the current tuition units in effect at the time that the program was declared discontinued.

(3) At the end of the ten-year period, any tuition units remaining unused by currently active beneficiaries enrolled in higher education shall be refunded at the value of the current tuition unit in effect at the end of that ten-year period.

(4) At the end of the ten-year period, all other funds remaining in the account not needed to make refunds or to pay for administrative costs shall be deposited to the state general fund.

(5) The governing body may make refunds under other exceptional circumstances as it deems fit, however, no tuition units may be honored after the end of the tenth fiscal year following the declaration of discontinuance of the program. [2005 c 272 § 3; 1997 c 289 § 9.]

**28B.95.110 Refunds.** (1) The intent of the Washington advanced college tuition payment program is to redeem tuition units for attendance at an institution of higher education. Refunds shall be issued under specific conditions that may include the following:

(a) Certification that the beneficiary, who is eighteen years of age or older, will not attend an institution of higher education, will result in a refund not to exceed the current value, as determined by the governing body, in effect at the time of such certification minus a penalty at the rate established by the governing body. The refund shall be made no sooner than ninety days after such certification, less any administrative processing fees assessed by the governing body;

(b) If there is certification of the death or disability of the beneficiary, the refund shall be equal to one hundred percent of any remaining unused tuition units at the current value, as determined by the governing body, at the time that such certification is submitted to the governing body, less any administrative processing fees assessed by the governing body;

(c) If there is certification by the student of graduation or program completion, the refund shall be as great as one hundred percent of any remaining unused tuition units at the current value, as determined by the governing body, at the time that such certification is submitted to the governing body, less any administrative processing fees assessed by the governing body. The governing body may, at its discretion, impose a penalty if needed to comply with federal tax rules;

(d) If there is certification of other tuition and fee scholarships, which will cover the cost of tuition for the eligible beneficiary. The refund shall be equal to one hundred percent of the current value of tuition units, as determined by the governing body, in effect at the time of the refund request, less any administrative processing fees assessed by the governing body. The refund under this subsection may not exceed the value of the scholarship;

(e) Incorrect or misleading information provided by the purchaser or beneficiaries may result in a refund of the purchaser's investment, less any administrative processing fees assessed by the governing body. The value of the refund will not exceed the actual dollar value of the purchaser's contributions; and

(f) The governing body may determine other circumstances qualifying for refunds of remaining unused tuition units and may determine the value of that refund.

(2) With the exception of subsection (1)(b), (e), and (f) of this section no refunds may be made before the units have been held for two years. [2005 c 272 § 4; 2001 c 184 § 3; 2000 c 14 § 8; 1997 c 289 § 12.]

**Effective date—2001 c 184 § 3:** "Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 184 § 5.]

**28B.95.120 Tuition units exempt from bankruptcy and enforcement of judgments.** In regard to bankruptcy filings and enforcement of judgments under Title 6 RCW, tuition units purchased more than two years prior to the date of filing or judgment will be considered excluded personal assets. [2005 c 272 § 5.]

**Chapter 28B.102 RCW  
FUTURE TEACHERS CONDITIONAL  
SCHOLARSHIP AND LOAN  
REPAYMENT PROGRAM**

Sections

28B.102.040 Selection of participants—Processes—Criteria.

**28B.102.040 Selection of participants—Processes—Criteria.** (1) The board may select participants based on an application process conducted by the board or the board may utilize selection processes for similar students in cooperation with the professional educator standards board or the office of the superintendent of public instruction.

(2) If the board selects participants for the program, it shall establish a selection committee for screening and selecting recipients of the conditional scholarships. The criteria shall emphasize factors demonstrating excellence including but not limited to superior scholastic achievement, leadership ability, community contributions, bilingual ability, willingness to commit to providing teaching service in shortage areas, and an ability to act as a role model for students. Priority will be given to individuals seeking certification or an additional endorsement in math, science, technology, or special education.

For fiscal years 2006 and 2007, additional priority shall be given to such individuals who are also bilingual. It is the intent of the legislature to develop a pool of dual-language teachers in order to meet the challenge of educating students who are dominant in languages other than English. [2005 c 518 § 918. Prior: 2004 c 276 § 905; 2004 c 275 § 68; 2004 c 58 § 4; 1987 c 437 § 4.]

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

**Severability—Effective date—2004 c 276:** See notes following RCW 43.330.167.

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Chapter 28B.116 RCW  
FOSTER CARE ENDOWED  
SCHOLARSHIP PROGRAM**

Sections

28B.116.005 Findings.  
28B.116.010 Definitions.  
28B.116.020 Program created—Duties of the higher education coordinating board.  
28B.116.030 Award of scholarships.  
28B.116.040 Foster care endowed scholarship advisory board.  
28B.116.050 Foster care endowed scholarship trust fund.  
28B.116.060 Foster care scholarship endowment fund.  
28B.116.070 State matching funds—Transfer of funds from trust fund to endowment fund.

**28B.116.005 Findings.** The legislature finds that children who grow up in the foster care system face many financial challenges. The legislature also finds that these financial challenges can discourage or prevent these children from pursuing a higher education. The legislature further finds that access to a higher education will give children who are in foster care hope for the future. Moreover, the legislature finds that financial assistance will help these children become successful, productive, contributing citizens and avoid cycles of abuse, poverty, violence, and delinquency. [2005 c 215 § 1.]

**28B.116.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Institution of higher education" means a college or university in the state of Washington that is accredited by an accrediting association recognized as such by rule of the higher education coordinating board.

(2) "Eligible student" means a student who:

(a) Is between the ages of sixteen and twenty-three;

(b) Has been in foster care in the state of Washington for a minimum of six months since his or her fourteenth birthday;

(c) Is a financially needy student, as defined in RCW 28B.92.030;

(d) Is a resident student, as defined in RCW 28B.15.012(2);

(e) Has entered or will enter an institution of higher education in Washington state within three years of high school graduation or having successfully completed his or her GED;

(f) Is not pursuing a degree in theology; and

(g) Makes satisfactory progress towards the completion of a degree or certificate program.

(3) "Cost of attendance" means the cost associated with the attendance of the institution of higher education as determined by the higher education coordinating board, including but not limited to tuition, room, board, and books. [2005 c 215 § 2.]

**28B.116.020 Program created—Duties of the higher education coordinating board.** (1) The foster care endowed scholarship program is created. The purpose of the program is to help students who were in foster care attend an institution of higher education in the state of Washington. The foster care endowed scholarship program shall be administered by the higher education coordinating board.

(2) In administering the program, the higher education coordinating board's powers and duties shall include but not be limited to:

(a) Adopting necessary rules and guidelines;

(b) Administering the foster care endowed scholarship trust fund and the foster care scholarship endowment fund; and

(c) Establishing and assisting the foster care endowed scholarship advisory board in its duties as described in RCW 28B.116.040.

(3) In administering the program, the higher education coordinating board's powers and duties may include but not be limited to:

(a) Working with the department of social and health services and the superintendent of public instruction to provide information about the foster care endowed scholarship program to children in foster care in the state of Washington and to students over the age of sixteen who could be eligible for this program;

(b) Publicizing the program; and

(c) Contracting with a private agency to perform outreach to the potentially eligible students. [2005 c 215 § 3.]

**28B.116.030 Award of scholarships.** (1) The higher education coordinating board may award scholarships to eligible students from the foster care scholarship endowment fund in RCW 28B.116.060, from funds appropriated to the board for this purpose, from any private donations, or from any other funds given to the board for the program.

(2) The board may award scholarships to eligible students from moneys earned from the foster care scholarship endowment fund created in RCW 28B.116.060, or from funds appropriated to the board for this purpose, or from any private donations, or from any other funds given to the board for this program. For an undergraduate student, the amount of the scholarship shall not exceed the student's demonstrated financial need. For a graduate student, the amount of the

scholarship shall not exceed the student's demonstrated need; or the stipend of a teaching assistant, including tuition, at the University of Washington; whichever is higher. In calculating a student's need, the board shall consider the student's costs for tuition, fees, books, supplies, transportation, room, board, personal expenses, and child care. The student's scholarship awarded under this chapter shall not exceed the amount received by a student attending a state research university. A student is eligible to receive a scholarship for a maximum of five years. However, the length of the scholarship shall be determined at the discretion of the board.

(3) Grants under this chapter shall not affect eligibility for the state student financial aid program. [2005 c 215 § 4.]

**28B.116.040 Foster care endowed scholarship advisory board.** (1) The foster care endowed scholarship advisory board is created.

(2) The advisory board shall be composed of not more than seven members appointed by the higher education coordinating board. The advisory board should include representatives from the higher education coordinating board, the office of the superintendent of public instruction, the foster parent community, and community organizations serving the foster children and former foster children community. The advisory board membership shall be reflective of the cultural diversity of the state.

(3) The advisory board:

(a) Shall assist the higher education coordinating board in publicizing the foster care endowed scholarship program;

(b) Shall solicit grants and donations from public and private sources for the program;

(c) Shall assist the higher education coordinating board in the program development and the application screening process; and

(d) May assist in performing outreach to the targeted students. [2005 c 215 § 5.]

**28B.116.050 Foster care endowed scholarship trust fund.** (1) The foster care endowed scholarship trust fund is created in the custody of the state treasurer.

(2) Funds appropriated by the legislature for the foster care endowed scholarship trust fund shall be deposited in the foster care endowed scholarship trust fund. When conditions in RCW 28B.116.070 are met, the higher education coordinating board shall deposit state matching moneys from the trust fund into the foster care scholarship endowment fund.

(3) No appropriation is required for expenditures from the trust fund. [2005 c 215 § 6.]

**28B.116.060 Foster care scholarship endowment fund.** The foster care scholarship endowment fund is created in the custody of the state treasurer.

(1) Moneys received from the higher education coordinating board, private donations, state matching moneys, and funds received from any other source may be deposited into the foster care scholarship endowment fund. Private moneys received as a gift subject to conditions may be deposited into the endowment fund if the conditions do not violate state or federal law.



(2) The higher education coordinating board may disburse grants to eligible students from the foster care scholarship endowment fund. No appropriation is required for expenditures from the endowment fund.

(3) When notified by court order that a condition attached to a gift of private moneys from the foster care scholarship endowment fund has failed, the higher education coordinating board shall release those moneys to the donors according to the terms of the conditional gift.

(4) The principal of the foster care scholarship endowment fund shall not be invaded. For the purposes of this section, only the first twenty-five thousand dollars deposited into the foster care scholarship endowment fund shall be considered the principal. The release of moneys under subsection (3) of this section shall not constitute an invasion of the corpus.

(5) The foster care scholarship endowment fund shall be used solely for the purposes in this chapter, except when the conditional gift of private moneys in the endowment fund require a portion of the earnings on such moneys be reinvested in the endowment fund. [2005 c 215 § 7.]

**28B.116.070 State matching funds—Transfer of funds from trust fund to endowment fund.** (1) The higher education coordinating board may deposit twenty-five thousand dollars of state matching funds into the foster care scholarship endowment fund when the board can match state funds with an equal amount of private cash donations.

(2) After the initial match of twenty-five thousand dollars, state matching funds from the foster care endowed scholarship trust fund shall be released to the foster care scholarship endowment fund semiannually so long as there are funds available in the foster care endowed scholarship trust fund. [2005 c 215 § 8.]

### Chapter 28B.135 RCW CHILD CARE FOR HIGHER EDUCATION STUDENTS

#### Sections

28B.135.030 Program administration—Duties of higher education coordinating board—Duties of state board for community and technical colleges.

**28B.135.030 Program administration—Duties of higher education coordinating board—Duties of state board for community and technical colleges.** The higher education coordinating board shall administer the program for four-year institutions of higher education. The state board for community and technical colleges shall administer the program for community and technical colleges. The higher education coordinating board and the state board for community and technical colleges shall have the following powers and duties in administering each program:

- (1) To adopt rules necessary to carry out the program;
- (2) To establish one or more review committees to assist in the evaluation of proposals for funding. The review committee shall include but not be limited to individuals from the Washington association for the education of young children and the child care resource and referral network;

(3) To establish each biennium specific guidelines for submitting grant proposals consistent with the overall goals of the program. During the 1999-2001 biennium the guidelines shall be consistent with the following desired outcomes of increasing access to child care for students, addressing the demand for infant and toddler care, providing affordable child care alternatives, creating more cooperative preschool programs, creating models that can be replicated at other institutions, creating a partnership between university or college administrations and student government, or its equivalent and increasing efficiency and innovation at campus child care centers;

(4) To establish guidelines for an allocation system based on factors that include but are not limited to: The amount of money available in the trust fund; characteristics of the institutions including the size of the faculty and student body; and the number of child care grants received;

(5) To solicit grant proposals and provide information to the institutions of higher education about the program; and

(6) To establish reporting, evaluation, accountability, monitoring, and dissemination requirements for the recipients of the grants. [2005 c 490 § 8; 1999 c 375 § 3.]

**Effective date—2005 c 490:** See note following RCW 74.15.350.

## Title 28C

### VOCATIONAL EDUCATION

#### Chapters

**28C.10 Private vocational schools.**

#### Chapter 28C.10 RCW

### PRIVATE VOCATIONAL SCHOOLS

#### Sections

28C.10.050 Minimum standards—Denial, revocation, or suspension of licenses. (*Effective July 1, 2006.*)

**28C.10.050 Minimum standards—Denial, revocation, or suspension of licenses.** (*Effective July 1, 2006.*) (1) The agency shall adopt by rule minimum standards for entities operating private vocational schools. The minimum standards shall include, but not be limited to, requirements for each school to:

(a) Disclose to the agency information about its ownership and financial position and to demonstrate that it has sufficient financial resources to fulfill its commitments to students. Financial disclosures provided to the agency shall not be subject to public disclosure under chapter 42.56 RCW;

(b) Follow a uniform statewide cancellation and refund policy as specified by the agency;

(c) Disclose through use of a school catalog, brochure, or other written material, necessary information to students so that students may make informed enrollment decisions. The agency shall specify what information is required;

(d) Use an enrollment contract or agreement that includes: (i) The cancellation and refund policy, (ii) a brief statement that the school is licensed under this chapter and that inquiries may be made to the agency, and (iii) other necessary information as determined by the agency;

(e) Describe accurately and completely in writing to students before their enrollment prerequisites and requirements for (i) completing successfully the programs of study in which they are interested and (ii) qualifying for the fields of employment for which their education is designed;

(f) Comply with the requirements of RCW 28C.10.084;

(g) Assess the basic skills and relevant aptitudes of each potential student to determine that a potential student has the basic skills and relevant aptitudes necessary to complete and benefit from the program in which the student plans to enroll. Guidelines for such assessments shall be developed by the agency, in consultation with the schools. The method of assessment shall be reported to the agency. Assessment records shall be maintained in the student's file;

(h) Discuss with each potential student the potential student's obligations in signing any enrollment contract and/or incurring any debt for educational purposes. The discussion shall include the inadvisability of acquiring an excessive educational debt burden that will be difficult to repay given employment opportunities and average starting salaries in the potential student's chosen occupation.

(2) Any enrollment contract shall have an attachment in a format provided by the agency. The attachment shall be signed by both the school and the student. The attachment shall stipulate that the school has complied with subsection (1)(h) of this section and that the student understands and accepts his or her responsibilities in signing any enrollment contract or debt application. The attachment shall also stipulate that the enrollment contract shall not be binding for at least five days, excluding Sundays and holidays, following signature of the enrollment contract by both parties.

(3) The agency shall deny, revoke, or suspend the license of any school that does not meet or maintain the minimum standards. [2005 c 274 § 247; 2001 c 23 § 1; 1990 c 188 § 7; 1987 c 459 § 3; 1986 c 299 § 5.]

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

**Severability—1990 c 188:** See note following RCW 28C.10.020.

## Title 29A ELECTIONS

### Chapters

<b>29A.04</b>	<b>General provisions.</b>
<b>29A.08</b>	<b>Voters and registration.</b>
<b>29A.12</b>	<b>Voting systems.</b>
<b>29A.24</b>	<b>Filing for office.</b>
<b>29A.28</b>	<b>Vacancies.</b>
<b>29A.32</b>	<b>Voters' pamphlets.</b>
<b>29A.36</b>	<b>Ballots and other voting forms.</b>
<b>29A.40</b>	<b>Absentee voting.</b>
<b>29A.44</b>	<b>Polling place elections and poll workers.</b>
<b>29A.48</b>	<b>Voting by mail.</b>
<b>29A.52</b>	<b>Primaries and elections.</b>
<b>29A.53</b>	<b>Instant runoff voting pilot project.</b>
<b>29A.60</b>	<b>Canvassing.</b>
<b>29A.64</b>	<b>Recounts.</b>
<b>29A.68</b>	<b>Contesting an election.</b>
<b>29A.72</b>	<b>State initiative and referendum.</b>
<b>29A.80</b>	<b>Political parties.</b>
<b>29A.84</b>	<b>Crimes and penalties.</b>

## Chapter 29A.04 RCW GENERAL PROVISIONS

### Sections

29A.04.008	Ballot and related terms.
29A.04.110	Partisan office. <i>(Effective if unconstitutionality of Initiative Measure No. 872 is reversed by pending appeal.)</i>
29A.04.127	Primary. <i>(Effective if unconstitutionality of Initiative Measure No. 872 is reversed by pending appeal.)</i>
29A.04.127	Primary.
29A.04.157	Repealed. <i>(Effective if unconstitutionality of Initiative Measure No. 872 is reversed by pending appeal.)</i>
29A.04.206	Voters' rights. <i>(Effective if unconstitutionality of Initiative Measure No. 872 is reversed by pending appeal.)</i>
29A.04.225	Public disclosure reports. <i>(Effective July 1, 2006.)</i>
29A.04.236	Manual of election laws and rules.
29A.04.310	Primaries. <i>(Effective if unconstitutionality of Initiative Measure No. 872 is reversed by pending appeal.)</i>
29A.04.310	Primaries.
29A.04.530	Duties of secretary of state.
29A.04.570	Review of county election procedures.

**29A.04.008 Ballot and related terms.** As used in this title:

(1) "Ballot" means, as the context implies, either:

(a) The issues and offices to be voted upon in a jurisdiction or portion of a jurisdiction at a particular primary, general election, or special election;

(b) A facsimile of the contents of a particular ballot whether printed on a paper ballot or ballot card or as part of a voting machine or voting device;

(c) A physical or electronic record of the choices of an individual voter in a particular primary, general election, or special election; or

(d) The physical document on which the voter's choices are to be recorded;

(2) "Paper ballot" means a piece of paper on which the ballot for a particular election or primary has been printed, on which a voter may record his or her choices for any candidate or for or against any measure, and that is to be tabulated manually;

(3) "Ballot card" means any type of card or piece of paper of any size on which a voter may record his or her choices for any candidate and for or against any measure and that is to be tabulated on a vote tallying system;

(4) "Sample ballot" means a printed facsimile of all the issues and offices on the ballot in a jurisdiction and is intended to give voters notice of the issues, offices, and candidates that are to be voted on at a particular primary, general election, or special election;

(5) "Provisional ballot" means a ballot issued at the polling place on election day by the precinct election board to a voter who would otherwise be denied an opportunity to vote a regular ballot, for any reason authorized by the Help America Vote Act, including but not limited to the following:

(a) The voter's name does not appear in the poll book;

(b) There is an indication in the poll book that the voter has requested an absentee ballot, but the voter wishes to vote at the polling place;

(c) There is a question on the part of the voter concerning the issues or candidates on which the voter is qualified to vote;

(d) Any other reason allowed by law;

(6) "Party ballot" means a primary election ballot specific to a particular major political party that lists all partisan

offices to be voted on at that primary, and the candidates for those offices who affiliate with that same major political party;

(7) "Nonpartisan ballot" means a primary election ballot that lists all nonpartisan races and ballot measures to be voted on at that primary. [2005 c 243 § 1; 2004 c 271 § 102.]

**29A.04.110 Partisan office.** (*Effective if unconstitutionality of Initiative Measure No. 872 is reversed by pending appeal.*) "Partisan office" means a public office for which a candidate may indicate a political party preference on his or her declaration of candidacy and have that preference appear on the primary and general election ballot in conjunction with his or her name. The following are partisan offices:

(1) United States senator and United States representative;

(2) All state offices, including legislative, except (a) judicial offices and (b) the office of superintendent of public instruction;

(3) All county offices except (a) judicial offices and (b) those offices for which a county home rule charter provides otherwise. [2005 c 2 § 4 (Initiative Measure No. 872, approved November 2, 2004).]

**Reviser's note:** Initiative Measure No. 872 was declared unconstitutional in its entirety in *Washington State Republican Party, et al. v. Logan, et al.*, U.S.D.C. No. CV05-0927-TSZ (W.D. Wash. 2005). The decision was under appeal at the time this material was published.

**Short title—Intent—Contingent effective date—2005 c 2 (Initiative Measure No. 872):** See notes following RCW 29A.52.112.

**29A.04.127 Primary.** (*Effective if unconstitutionality of Initiative Measure No. 872 is reversed by pending appeal.*) "Primary" or "primary election" means a procedure for winnowing candidates for public office to a final list of two as part of a special or general election. Each voter has the right to cast a vote for any candidate for each office without any limitation based on party preference or affiliation, of either the voter or the candidate. [2005 c 2 § 5 (Initiative Measure No. 872, approved November 2, 2004); 2003 c 111 § 122. Prior: 1965 c 9 § 29.01.130; prior: 1907 c 209 § 1, part; RRS § 5177(a). See also 1950 ex.s. c 14 § 2. Formerly RCW 29.01.130.]

**Reviser's note:** (1) Initiative Measure No. 872 was declared unconstitutional in its entirety in *Washington State Republican Party, et al. v. Logan, et al.*, U.S.D.C. No. CV05-0927-TSZ (W.D. Wash. 2005). The decision was under appeal at the time this material was published.

(2) RCW 29A.04.127 was amended by 2005 c 2 § 5 (Initiative Measure No. 872) without cognizance of its repeal by 2004 c 271 § 193. For rule of construction, see RCW 1.12.025.

**Short title—Intent—Contingent effective date—2005 c 2 (Initiative Measure No. 872):** See notes following RCW 29A.52.112.

*Nonpartisan primaries:* RCW 29A.52.210 through 29A.52.240.

*Partisan primaries:* RCW 29A.28.010, 29A.28.020, 29A.52.111 through 29A.52.130.

*Presidential primary:* RCW 29A.56.010 through 29A.56.060.

*Times for holding primaries:* RCW 29A.04.311.

**29A.04.127 Primary.** [2003 c 111 § 122. Prior: 1965 c 9 § 29.01.130; prior: 1907 c 209 § 1, part; RRS § 5177(a). See also 1950 ex.s. c 14 § 2. Formerly RCW 29.01.130.] Repealed by 2004 c 271 § 193.

**Reviser's note:** (1) Initiative Measure No. 872 was declared unconstitutional in its entirety in *Washington State Republican Party, et al. v. Logan, et al.*, U.S.D.C. No. CV05-0927-TSZ (W.D. Wash. 2005). The decision was under appeal at the time this material was published.

(2) RCW 29A.04.127 was amended by 2005 c 2 § 5 (Initiative Measure No. 872) without cognizance of its repeal by 2004 c 271 § 193. For rule of construction, see RCW 1.12.025.

**29A.04.157 Repealed.** (*Effective if unconstitutionality of Initiative Measure No. 872 is reversed by pending appeal.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Reviser's note:** Initiative Measure No. 872 was declared unconstitutional in its entirety in *Washington State Republican Party, et al. v. Logan, et al.*, U.S.D.C. No. CV05-0927-TSZ (W.D. Wash. 2005). The decision was under appeal at the time this material was published.

**29A.04.206 Voters' rights.** (*Effective if unconstitutionality of Initiative Measure No. 872 is reversed by pending appeal.*) The rights of Washington voters are protected by its constitution and laws and include the following fundamental rights:

(1) The right of qualified voters to vote at all elections;

(2) The right of absolute secrecy of the vote. No voter may be required to disclose political faith or adherence in order to vote;

(3) The right to cast a vote for any candidate for each office without any limitation based on party preference or affiliation, of either the voter or the candidate. [2005 c 2 § 3 (Initiative Measure No. 872, approved November 2, 2004).]

**Reviser's note:** Initiative Measure No. 872 was declared unconstitutional in its entirety in *Washington State Republican Party, et al. v. Logan, et al.*, U.S.D.C. No. CV05-0927-TSZ (W.D. Wash. 2005). The decision was under appeal at the time this material was published.

**Short title—Intent—Contingent effective date—2005 c 2 (Initiative Measure No. 872):** See notes following RCW 29A.52.112.

**29A.04.225 Public disclosure reports.** (*Effective July 1, 2006.*) Each county auditor or county elections official shall ensure that reports filed pursuant to chapter 42.56 RCW are arranged, handled, indexed, and disclosed in a manner consistent with the rules of the public disclosure commission adopted under RCW 42.17.375. [2005 c 274 § 248; 2003 c 111 § 136. Prior: 1983 c 294 § 2. Formerly RCW 29.04.025.]

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

**29A.04.236 Manual of election laws and rules.** The secretary of state shall prepare a manual that explains all election laws and rules in easy-to-understand, plain language for use during the vote counting, recounting, tabulation, and canvassing process. The secretary of state shall print and distribute sufficient copies of the manual so that it is available for use in all vote-counting centers throughout the state. The secretary of state may also make the manual available in electronic form. [2005 c 244 § 1.]

**29A.04.310 Primaries.** (*Effective if unconstitutionality of Initiative Measure No. 872 is reversed by pending appeal.*) Primaries for general elections to be held in November must be held on:

(1) The third Tuesday of the preceding September; or

(2) The seventh Tuesday immediately preceding that general election, whichever occurs first. [2005 c 2 § 8 (Initiative Measure No. 872, approved November 2, 2004); 2003 c 111 § 143; 1977 ex.s. c 361 § 29; 1965 ex.s. c 103 § 6; 1965 c 9 § 29.13.070. Prior: 1963 c 200 § 25; 1907 c 209 § 3; RRS § 5179. Formerly RCW 29.13.070.]

**Reviser's note:** (1) Initiative Measure No. 872 was declared unconstitutional in its entirety in *Washington State Republican Party, et al. v. Logan, et al.*, U.S.D.C. No. CV05-0927-TSZ (W.D. Wash. 2005). The decision was under appeal at the time this material was published.

(2) RCW 29A.04.310 was amended by 2005 c 2 § 8 (Initiative Measure

No. 872) without cognizance of its repeal by 2004 c 271 § 193. For rule of construction, see RCW 1.12.025.

**Short title—Intent—Contingent effective date—2005 c 2 (Initiative Measure No. 872):** See notes following RCW 29A.52.112.

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

**29A.04.310 Primaries.** [2003 c 111 § 143; 1977 ex.s. c 361 § 29; 1965 ex.s. c 103 § 6; 1965 c 9 § 29.13.070. Prior: 1963 c 200 § 25; 1907 c 209 § 3; RRS § 5179. Formerly RCW 29.13.070.] Repealed by 2004 c 271 § 193.

**Reviser's note:** (1) Initiative Measure No. 872 was declared unconstitutional in its entirety in *Washington State Republican Party, et al. v. Logan, et al.*, U.S.D.C. No. CV05-0927-TSZ (W.D. Wash. 2005). The decision was under appeal at the time this material was published.

(2) RCW 29A.04.310 was amended by 2005 c 2 § 8 (Initiative Measure No. 872) without cognizance of its repeal by 2004 c 271 § 193. For rule of construction, see RCW 1.12.025.

**29A.04.530 Duties of secretary of state.** The secretary of state shall:

(1) Establish and operate, or provide by contract, training and certification programs for state and county elections administration officials and personnel, including training on the various types of election law violations and discrimination, and training programs for political party observers which conform to the rules for such programs established under RCW 29A.04.630;

(2) Establish guidelines, in consultation with state and local law enforcement or certified document examiners, for signature verification processes. All election personnel assigned to verify signatures must receive training on the guidelines;

(3) Administer tests for state and county officials and personnel who have received such training and issue certificates to those who have successfully completed the training and passed such tests;

(4) Maintain a record of those individuals who have received such training and certificates; and

(5) Provide the staffing and support services required by the board created under RCW 29A.04.510. [2005 c 243 § 2; 2003 c 111 § 151. Prior: 2001 c 41 § 11; 1992 c 163 § 5. Formerly RCW 29.60.030.]

**Effective date—1992 c 163 §§ 5-13:** "Sections 5 through 13 of this act shall take effect July 1, 1993." [1992 c 163 § 15.]

**29A.04.570 Review of county election procedures.**

(1)(a) The election review staff of the office of the secretary of state shall conduct a review of election-related policies, procedures, and practices in an affected county or counties:

(i) If the unofficial returns of a primary or general election for a position in the state legislature indicate that a mandatory recount is likely for that position; or

(ii) If unofficial returns indicate a mandatory recount is likely in a statewide election or an election for federal office.

Reviews conducted under (ii) of this subsection shall be performed in as many selected counties as time and staffing permit. Reviews conducted as a result of mandatory recounts shall be performed between the time the unofficial returns are complete and the time the recount is to take place, if possible.

(b) In addition to conducting reviews under (a) of this subsection, the election review staff shall also conduct such a review in a county at least once in each three-year period, in

conjunction with a county primary or special or general election, at the direction of the secretary of state or at the request of the county auditor. If staffing or budget levels do not permit a three-year election cycle for reviews, then reviews must be done as often as possible. If any resident of this state believes that an aspect of a primary or election has been conducted inappropriately in a county, the resident may file a complaint with the secretary of state. The secretary shall consider such complaints in scheduling periodic reviews under this section.

(c) Before an election review is conducted in a county, the secretary of state shall provide the county auditor of the affected county and the chair of the state central committee of each major political party with notice that the review is to be conducted. When a periodic review is to be conducted in a county at the direction of the secretary of state under (b) of this subsection, the secretary shall provide the affected county auditor not less than thirty days' notice.

(2) Reviews shall be conducted in conformance with rules adopted under RCW 29A.04.630. In performing a review in a county under this chapter, the election review staff shall evaluate the policies and procedures established for conducting the primary or election in the county and the practices of those conducting it. As part of the review, the election review staff shall issue to the county auditor and the members of the county canvassing board a report of its findings and recommendations regarding such policies, procedures, and practices. A review conducted under this chapter shall not include any evaluation, finding, or recommendation regarding the validity of the outcome of a primary or election or the validity of any canvass of returns nor does the election review staff have any jurisdiction to make such an evaluation, finding, or recommendation under this title.

(3) The county auditor or the county canvassing board shall respond to the review report in writing, listing the steps that will be taken to correct any problems listed in the report. The secretary of state shall visit the county before the next state primary or general election to verify that the county has taken the steps they listed to correct the problems noted in the report.

(4) The county auditor of the county in which a review is conducted under this section or a member of the canvassing board of the county may appeal the findings or recommendations of the election review staff regarding the review by filing an appeal with the board created under RCW 29A.04.510. [2005 c 240 § 1; 2003 c 111 § 155. Prior: 1997 c 284 § 1; 1992 c 163 § 9. Formerly RCW 29.60.070.]

**Effective date—1992 c 163 §§ 5-13:** See note following RCW 29A.04.530.

**Chapter 29A.08 RCW**

**VOTERS AND REGISTRATION**

Sections

- 29A.08.010 "Information required for voter registration." (*Effective January 1, 2006.*)
- 29A.08.030 Notices, various. (*Effective January 1, 2006.*)
- 29A.08.107 Review by secretary of state. (*Effective January 1, 2006.*)
- 29A.08.110 Auditor's procedure. (*Effective January 1, 2006.*)
- 29A.08.112 Nontraditional address. (*Effective January 1, 2006.*)
- 29A.08.113 Alternative forms of identification—Voting procedure. (*Effective January 1, 2006.*)

- 29A.08.115 Registration by other than auditor or secretary of state. (*Effective January 1, 2006.*)
- 29A.08.125 Data base of voter registration records. (*Effective January 1, 2006.*)
- 29A.08.145 Late registration—Special procedure. (*Effective January 1, 2006.*)
- 29A.08.155 Repealed. (*Effective January 1, 2006.*)
- 29A.08.210 Application—Information required—Warning. (*Effective January 1, 2006.*)
- 29A.08.250 Furnished by secretary of state. (*Effective January 1, 2006.*)
- 29A.08.330 Registration at designated agencies—Procedures. (*Effective January 1, 2006.*)
- 29A.08.520 Felony conviction—Restoration of voting rights. (*Effective January 1, 2006.*)
- 29A.08.651 Voter registration data base. (*Effective January 1, 2006.*)
- 29A.08.660 Felony offender—Completion of sentence. (*Effective January 1, 2006.*)
- 29A.08.710 Originals and automated files. (*Effective January 1, 2006.*)
- 29A.08.720 Registration, voting records—As public records—Information furnished—Restrictions, confidentiality. (*Effective January 1, 2006.*)
- 29A.08.730 Repealed. (*Effective January 1, 2006.*)
- 29A.08.740 Violations of restricted use of registered voter data—Penalties—Liabilities. (*Effective January 1, 2006.*)
- 29A.08.775 Use and maintenance of statewide list. (*Effective January 1, 2006.*)

**29A.08.010 "Information required for voter registration."** (*Effective January 1, 2006.*) As used in this chapter: "Information required for voter registration" means the minimum information provided on a voter registration application that is required by the county auditor in order to place a voter registration applicant on the voter registration rolls. This information includes:

- (1) Name;
- (2) Residential address;
- (3) Date of birth;
- (4) Washington state driver's license number or Washington state identification card number, or the last four digits of the applicant's Social Security number if the applicant does not have a Washington state driver's license or Washington state identification card;
- (5) A signature attesting to the truth of the information provided on the application; and
- (6) A check or indication in the box confirming the individual is a United States citizen.

If the individual does not have a driver's license, state identification card, or Social Security number, the registrant must be issued a unique voter registration number in order to be placed on the voter registration rolls. All other information supplied is ancillary and not to be used as grounds for not registering an applicant to vote. Modification of the language of the official Washington state voter registration form by the voter will not be accepted and will cause the rejection of the registrant's application. [2005 c 246 § 2; 2004 c 267 § 102; 2003 c 111 § 201; 1994 c 57 § 9. Formerly RCW 29.07.005.]

**Effective date—2005 c 246:** See note following RCW 10.64.140.

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—1994 c 57:** See note following RCW 10.64.021.

**29A.08.030 Notices, various.** (*Effective January 1, 2006.*) The definitions set forth in this section apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Verification notice" means a notice sent by the county auditor or secretary of state to a voter registration applicant and is used to verify or collect information about the applicant in order to complete the registration. The veri-

fication notice must be designed to include a postage prepaid, preaddressed return form by which the applicant may verify or send information.

(2) "Acknowledgement notice" means a notice sent by nonforwardable mail by the county auditor or secretary of state to a registered voter to acknowledge a voter registration transaction, which can include initial registration, transfer, or reactivation of an inactive registration. An acknowledgement notice may be a voter registration card.

(3) "Confirmation notice" means a notice sent to a registered voter by first class forwardable mail at the address indicated on the voter's permanent registration record and to any other address at which the county auditor or secretary of state could reasonably expect mail to be received by the voter in order to confirm the voter's residence address. The confirmation notice must be designed to include a postage prepaid, preaddressed return form by which the registrant may verify the address information. [2005 c 246 § 3; 2004 c 267 § 104; 2003 c 111 § 203. Prior: 1994 c 57 § 33. Formerly RCW 29.10.011.]

**Effective date—2005 c 246:** See note following RCW 10.64.140.

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**29A.08.107 Review by secretary of state.** (*Effective January 1, 2006.*) (1) The secretary of state must review the information provided by each voter registration applicant to ensure that the provided driver's license number, state identification card number, or last four digits of the Social Security number match the information maintained by the Washington department of licensing or the Social Security administration. If a match cannot be made, the secretary of state or county auditor must correspond with the applicant to resolve the discrepancy.

(2) If the applicant fails to respond to any correspondence required in this section to confirm information provided on a voter registration application within forty-five days, the applicant will not be registered to vote. The secretary of state shall forward the application to the appropriate county auditor for document storage.

(3) Only after the secretary of state has confirmed that the provided driver's license number, state identification card number, or last four digits of the applicant's Social Security number match existing records with the Washington department of licensing or the Social Security administration, or determined that the applicant does not have a driver's license number, state identification card number, or Social Security number may the applicant be placed on the official list of registered voters.

(4) In order to prevent duplicate registration records, all complete voter registration applications must be screened against existing voter registration records in the official statewide voter registration list. If a match of an existing record is found in the official list, the record must be updated with the new information provided on the application. If the new information indicates that the voter has changed his or her county of residence, the application must be forwarded to the voter's new county of residence for processing. [2005 c 246 § 4; 2004 c 267 § 106.]

**Effective date—2005 c 246:** See note following RCW 10.64.140.

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.08.110 Auditor's procedure. (Effective January 1, 2006.)** (1) An application is considered complete only if it contains the applicant's name, complete valid residence address, date of birth, signature attesting to the truth of the information provided, a mark in the check-off box confirming United States citizenship, and an indication that the provided driver's license number, state identification card number, or Social Security number has been confirmed by the secretary of state. If it is not complete, the auditor shall promptly mail a verification notice of the deficiency to the applicant. This verification notice shall require the applicant to provide the missing information. If the verification notice is not returned by the applicant within forty-five days or is returned as undeliverable, the name of the applicant shall not be placed on the official list of registered voters. If the applicant provides the required verified information, the applicant shall be registered to vote as of the original date of mailing or date of delivery, whichever is applicable.

(2) If the information required in subsection (1) of this section is complete, the applicant is considered to be registered to vote as of the original date of mailing or date of delivery, whichever is applicable. The auditor shall record the appropriate precinct identification, taxing district identification, and date of registration on the voter's record in the state voter registration list. Within forty-five days after the receipt of an application but no later than seven days before the next primary, special election, or general election, the auditor shall send to the applicant, by first class mail, an acknowledgement notice identifying the registrant's precinct and containing such other information as may be required by the secretary of state. The postal service shall be instructed not to forward a voter registration card to any other address and to return to the auditor any card which is not deliverable.

(3) If an acknowledgement notice card is properly mailed as required by this section to the address listed by the voter as being the voter's mailing address and the notice is subsequently returned to the auditor by the postal service as being undeliverable to the voter at that address, the auditor shall promptly send the voter a confirmation notice. The auditor shall place the voter's registration on inactive status pending a response from the voter to the confirmation notice. [2005 c 246 § 5; 2004 c 267 § 107; 2003 c 111 § 206. Prior: 1994 c 57 § 32; 1993 c 434 § 6. Formerly RCW 29.08.060.]

**Effective date—2005 c 246:** See note following RCW 10.64.140.

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**29A.08.112 Nontraditional address. (Effective January 1, 2006.)** No person registering to vote, who meets all the qualifications of a registered voter in the state of Washington, shall be disqualified because of a nontraditional address being used as a residence address. Voters using such an address will be registered and assigned to a precinct based on the location provided. Voters without a traditional address will be registered at the county courthouse, city hall, or other public building near the area that the voter considers his or her residence. Registering at a nontraditional address will not

disqualify a voter from requesting ongoing absentee voter status if the voter designates a valid mailing address.

For the purposes of this section, "nontraditional address" includes shelters, parks, or other identifiable locations that the voter deems to be his or her residence. [2005 c 246 § 6.]

**Effective date—2005 c 246:** See note following RCW 10.64.140.

**29A.08.113 Alternative forms of identification—Voting procedure. (Effective January 1, 2006.)** (1) If a voter who registered by mail indicates on the voter registration form that he or she does not have a Washington state driver's license, Washington state identification card, or Social Security number, he or she must provide one of the following forms of identification the first time he or she votes after registering:

- (a) Valid photo identification;
- (b) A valid enrollment card of a federally recognized Indian tribe in Washington state;
- (c) A copy of a current utility bill;
- (d) A current bank statement;
- (e) A copy of a current government check;
- (f) A copy of a current paycheck; or
- (g) A government document that shows both the name and address of the voter.

(2) If the voter fails to provide one of the above forms of identification prior to or at the time of voting, the ballot must be treated as a provisional ballot regardless of whether the voter is voting at a poll site or by mail. The ballot may only be counted if the voter's signature on the outside envelope matches the signature in the voter registration records.

(3) The requirements of this section do not apply to an out-of-state, overseas, or service voter who registers to vote by signing the return envelope of the absentee ballot. [2005 c 246 § 7.]

**Effective date—2005 c 246:** See note following RCW 10.64.140.

**29A.08.115 Registration by other than auditor or secretary of state. (Effective January 1, 2006.)** A person or organization collecting voter registration application forms must transmit the forms to the secretary of state or a county auditor at least once weekly. The registration date on such forms will be the date they are received by the secretary of state or county auditor. [2005 c 246 § 8; 2004 c 267 § 108; 2003 c 111 § 207; 1971 ex.s. c 202 § 15; 1965 c 9 § 29.07.110. Prior: 1957 c 251 § 11; prior: 1947 c 68 § 1, part; 1945 c 95 § 1, part; 1933 c 1 § 6, part; Rem. Supp. 1947 § 5114-6, part; prior: 1919 c 163 § 6, part; 1915 c 16 § 6, part; 1901 c 135 § 5, part; 1893 c 45 § 1, part; 1889 p 415 § 6, part; RRS § 5124, part. Formerly RCW 29.07.110.]

**Effective date—2005 c 246:** See note following RCW 10.64.140.

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.08.125 Data base of voter registration records. (Effective January 1, 2006.)** (1) Each county auditor shall maintain a computer file containing a copy of each record of all registered voters within the county contained on the official statewide voter registration list for that county.

(2) The secretary of state shall at least quarterly review and update the records of all registered voters on the official

statewide voter registration data base to make additions and corrections.

(3) The computer file must include, but not be limited to, each voter's last name, first name, middle initial, date of birth, residence address, gender, date of registration, applicable taxing district and precinct codes, and the last date on which the individual voted.

(4) The county auditor shall subsequently record each consecutive date upon which the individual has voted and retain all such consecutive dates. [2005 c 246 § 9; 2004 c 267 § 110; 2003 c 111 § 209; 1993 c 408 § 11; 1991 c 81 § 22; 1974 ex.s. c 127 § 12. Formerly RCW 29.07.220.]

**Effective date—2005 c 246:** See note following RCW 10.64.140.

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

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

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**29A.08.145 Late registration—Special procedure. (Effective January 1, 2006.)** This section establishes a special procedure which an elector may use to register to vote or transfer a voter registration by changing his or her address during the period beginning after the closing of registration for voting at the polls under RCW 29A.08.140 and ending on the fifteenth day before a primary, special election, or general election. A qualified elector in the state may register to vote or change his or her registration address in person in the office of the county auditor of the county in which the applicant resides, or at a voter registration location specifically designated for this purpose by the county auditor or secretary of state, and apply for an absentee ballot for that primary or election. The auditor or registration assistant shall register that individual in the manner provided in this chapter. The application for an absentee ballot executed by the newly registered or transferred voter for the primary or election that follows the execution of the registration shall be promptly transmitted to the auditor with the completed voter registration form. [2005 c 246 § 10; 2004 c 267 § 113; 2003 c 111 § 213; 1993 c 383 § 1. Formerly RCW 29.07.152.]

**Effective date—2005 c 246:** See note following RCW 10.64.140.

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.08.155 Repealed. (Effective January 1, 2006.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**29A.08.210 Application—Information required—Warning. (Effective January 1, 2006.)** An applicant for voter registration shall complete an application providing the following information concerning his or her qualifications as a voter in this state:

- (1) The address of the last former registration of the applicant as a voter in the state;
- (2) The applicant's full name;
- (3) The applicant's date of birth;
- (4) The address of the applicant's residence for voting purposes;
- (5) The mailing address of the applicant if that address is not the same as the address in subsection (4) of this section;
- (6) The sex of the applicant;

(7) The applicant's Washington state driver's license number or Washington state identification card number, or the last four digits of the applicant's Social Security number if he or she does not have a Washington state driver's license or Washington state identification card;

(8) A check box for the applicant to indicate that he or she does not have a Washington state driver's license, Washington state identification card, or Social Security number;

(9) A check box allowing the applicant to indicate that he or she is a member of the armed forces, national guard, or reserves, or that he or she is an overseas voter;

(10) A check box allowing the applicant to confirm that he or she is at least eighteen years of age;

(11) Clear and conspicuous language, designed to draw the applicant's attention, stating that the applicant must be a United States citizen in order to register to vote;

(12) A check box and declaration confirming that the applicant is a citizen of the United States;

(13) The following warning:

"If you knowingly provide false information on this voter registration form or knowingly make a false declaration about your qualifications for voter registration you will have committed a class C felony that is punishable by imprisonment for up to five years, a fine of up to ten thousand dollars, or both."

(14) The following affirmation by the applicant:

"By signing this document, I hereby assert, under penalty of perjury, that I am legally eligible to vote. If I am found to have voted illegally, I may be prosecuted and/or fined for this illegal act. In addition, I hereby acknowledge that my name and last known address will be forwarded to the appropriate state and/or federal authorities if I am found to have voted illegally."

(15) The oath required by RCW 29A.08.230 and a space for the applicant's signature; and

(16) Any other information that the secretary of state determines is necessary to establish the identity of the applicant and prevent duplicate or fraudulent voter registrations.

This information shall be recorded on a single registration form to be prescribed by the secretary of state.

If the applicant fails to provide the information required for voter registration, the auditor shall send the applicant a verification notice. The applicant may not be registered until the required information is provided. If a verification notice is returned as undeliverable or the applicant fails to respond to the notice within forty-five days, the applicant shall not be registered to vote. [2005 c 246 § 11; 2003 c 111 § 216; 1994 c 57 § 11; 1990 c 143 § 7; 1973 1st ex.s. c 21 § 3; 1971 ex.s. c 202 § 9; 1965 c 9 § 29.07.070. Prior: 1947 c 68 § 3, part; 1933 c 1 § 11, part; Rem. Supp. 1947 § 5114-11, part; prior: 1921 c 177 § 7, part; 1915 c 16 § 8, part; 1901 c 135 § 4, part; 1893 c 45 § 3, part; 1889 p 416 § 8, part; RRS § 5126, part. Formerly RCW 29.07.070.]

**Effective date—2005 c 246:** See note following RCW 10.64.140.

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**Effective date—1990 c 143 §§ 1-8:** See note following RCW 29A.08.340.

*Civil disabilities of wife abolished:* RCW 26.16.160.

*Civil rights*

*loss of:* State Constitution Art. 6 § 3, RCW 29A.08.520.

*restoration of:* RCW 9.92.066, 9.94A.637, 9.94A.885, 9.95.260, chapter 9.96 RCW.

*Copy of instrument restoring civil rights as evidence:* RCW 5.44.090.

*Qualifications of electors:* State Constitution Art. 6 § 1 (Amendment 5).

*Residence defined:* RCW 29A.04.151.

*Subversive activities as disqualification for voting:* RCW 9.81.040.

**29A.08.250 Furnished by secretary of state. (Effective January 1, 2006.)** The secretary of state shall furnish registration forms necessary to carry out the registration of voters as provided by this chapter without cost to the respective counties. [2005 c 246 § 13; 2004 c 267 § 117; 2003 c 111 § 220; 2001 c 41 § 8; 1999 c 298 § 7; 1993 c 434 § 8. Formerly RCW 29.08.080.]

**Effective date—2005 c 246:** See note following RCW 10.64.140.

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.08.330 Registration at designated agencies—Procedures. (Effective January 1, 2006.)** (1) The secretary of state shall prescribe the method of voter registration for each designated agency. The agency shall use either the state voter registration by mail form with a separate declination form for the applicant to indicate that he or she declines to register at this time, or the agency may use a separate form approved for use by the secretary of state.

(2) The person providing service at the agency shall offer voter registration services to every client whenever he or she applies for service or assistance and with each renewal, recertification, or change of address. The person providing service shall give the applicant the same level of assistance with the voter registration application as is offered to fill out the agency's forms and documents, including information about age and citizenship requirements for voter registration.

(3) The person providing service at the agency shall determine if the prospective applicant wants to register to vote or transfer his or her voter registration by asking the following question:

"Do you want to register to vote or transfer your voter registration?"

If the applicant chooses to register or transfer a registration, the service agent shall ask the following:

(a) "Are you a United States citizen?"

(b) "Are you or will you be eighteen years of age on or before the next election?"

If the applicant answers in the affirmative to both questions, the agent shall then provide the applicant with a voter registration form and instructions and shall record that the applicant has requested to register to vote or transfer a voter registration. If the applicant answers in the negative to either question, the agent shall not provide the applicant with a voter registration form.

(4) If an agency uses a computerized application process, it may, in consultation with the secretary of state, develop methods to capture simultaneously the information required for voter registration during a person's computerized application process.

(5) Each designated agency shall provide for the voter registration application forms to be collected from each

agency office at least once each week. The agency shall then forward the application forms to the secretary of state each week. The secretary of state shall forward the forms to the county in which the applicant has registered to vote no later than ten days after the date on which the forms were received by the secretary of state. [2005 c 246 § 14; 2003 c 111 § 224. Prior: 2001 c 41 § 7; 1994 c 57 § 28. Formerly RCW 29.07.440.]

**Effective date—2005 c 246:** See note following RCW 10.64.140.

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**29A.08.520 Felony conviction—Restoration of voting rights. (Effective January 1, 2006.)** (1) Upon receiving official notice of a person's conviction of a felony in either state or federal court, if the convicted person is a registered voter in the county, the county auditor shall cancel the defendant's voter registration. Additionally, the secretary of state in conjunction with the department of corrections, the Washington state patrol, the office of the administrator for the courts, and other appropriate state agencies shall arrange for a quarterly comparison of a list of known felons with the statewide voter registration list. If a person is found on a felon list and the statewide voter registration list, the secretary of state or county auditor shall confirm the match through a date of birth comparison and suspend the voter registration from the official state voter registration list. The canceling authority shall send to the person at his or her last known voter registration address a notice of the proposed cancellation and an explanation of the requirements for restoring the right to vote once all terms of sentencing have been completed. If the person does not respond within thirty days, the registration must be canceled.

(2) The right to vote may be restored by, for each felony conviction, one of the following:

(a) A certificate of discharge issued by the sentencing court, as provided in RCW 9.94A.637;

(b) A court order restoring the right, as provided in RCW 9.92.066;

(c) A final order of discharge issued by the indeterminate sentence review board, as provided in RCW 9.96.050; or

(d) A certificate of restoration issued by the governor, as provided in RCW 9.96.020. [2005 c 246 § 15; 2004 c 267 § 126; 2003 c 111 § 233. Prior: 1994 c 57 § 42. Formerly RCW 29.10.097.]

**Effective date—2005 c 246:** See note following RCW 10.64.140.

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

*Restoration of civil rights:* RCW 9.92.066, 9.94A.637, 9.94A.885, 9.95.260, chapter 9.96 RCW.

**29A.08.651 Voter registration data base. (Effective January 1, 2006.)** (1) The office of the secretary of state shall create and maintain a statewide voter registration data base. This data base must be a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the state level that contains the name and registration information of every legally registered voter in the state and assigns a unique identifier to each legally registered voter in the state.



(2) The computerized list must serve as the single system for storing and maintaining the official list of registered voters throughout the state.

(3) The computerized list must contain the name and registration information of every legally registered voter in the state.

(4) Under the computerized list, a unique identifier is assigned to each legally registered voter in the state.

(5) The computerized list must be coordinated with other agency data bases within the state, including but not limited to the department of corrections, the department of licensing, the department of health, the Washington state patrol, and the office of the administrator for the courts. The computerized list may also be coordinated with the data bases of election officials in other states.

(6) Any election officer in the state, including any local election officer, may obtain immediate electronic access to the information contained in the computerized list.

(7) All voter registration information obtained by any local election officer in the state must be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local officer.

(8) The chief state election officer shall provide support, as may be required, so that local election officers are able to enter information as described in subsection (3) of this section.

(9) The computerized list serves as the official voter registration list for the conduct of all elections.

(10) The secretary of state has data authority on all voter registration data.

(11) The voter registration data base must be designed to accomplish at a minimum, the following:

(a) Comply with the Help America Vote Act of 2002 (P.L. 107-252);

(b) Identify duplicate voter registrations;

(c) Identify suspected duplicate voters;

(d) Screen against the department of corrections, the Washington state patrol, and other appropriate state agency data bases to aid in the cancellation of voter registration of felons, of persons who have declined to serve on juries by virtue of not being citizens of the United States, and of persons determined to be legally incompetent to vote;

(e) Provide up-to-date signatures of voters for the purposes of initiative signature checking;

(f) Provide for a comparison between the voter registration data base and the department of licensing change of address data base;

(g) Provide online access for county auditors with the goal of real time duplicate checking and update capabilities; and

(h) Provide for the cancellation of voter registration for persons who have moved to other states and surrendered their Washington state drivers' licenses.

(12) In order to maintain the statewide voter registration data base, the secretary of state may, upon agreement with other appropriate jurisdictions, screen against data bases maintained by election officials in other states and data bases maintained by federal agencies including, but not limited to, the federal bureau of investigation, the federal court system, the federal bureau of prisons, and the bureau of citizenship and immigration services.

(13) The secretary of state shall retain information regarding previous successful appeals of proposed cancellations of registrations in order to avoid repeated cancellations for the same reason.

(14) The secretary of state must review and update the records of all registered voters on the computerized list on a quarterly basis to make additions and corrections. [2005 c 246 § 16; 2004 c 267 § 101.]

**Effective date—2005 c 246:** See note following RCW 10.64.140.

**Effective dates—2004 c 267:** "(1) Sections 103, 104, and 115 through 118 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 31, 2004].

(2) Sections 119, 140, 201 through 203, 321, 401, 501, and 702 of this act take effect July 1, 2004.

(3) Sections 301 through 320 of this act take effect January 1, 2005.

(4) Sections 101, 102, 105 through 114, 120 through 139, 601, 701, and 704 of this act take effect January 1, 2006." [2004 c 267 § 707.]

*Department of licensing negative file: RCW 46.20.118.*

**29A.08.660 Felony offender—Completion of sentence. (Effective January 1, 2006.)** (1) When a felony offender has completed all the requirements of his or her sentence, the county clerk shall immediately transmit this information to the secretary of state along with information about the county where the conviction occurred and the county that is the last known residence of the offender. The secretary of state shall maintain such records as part of the elections data base.

(2) If the offender has completed all the requirements of all of his or her sentences for all of his or her felony convictions, the secretary of state shall transmit information about the restoration of the former felon's voting rights to the county auditor where the conviction took place and, if different, the county where the felon was last known to reside. [2005 c 246 § 12.]

**Effective date—2005 c 246:** See note following RCW 10.64.140.

**29A.08.710 Originals and automated files. (Effective January 1, 2006.)** (1) The county auditor shall have custody of the original voter registration records for each county. The original voter registration form must be filed without regard to precinct and is considered confidential and unavailable for public inspection and copying. An automated file of all registered voters must be maintained pursuant to RCW 29A.08.125. An auditor may maintain the automated file in lieu of filing or maintaining the original voter registration forms if the automated file includes all of the information from the original voter registration forms including, but not limited to, a retrievable facsimile of each voter's signature.

(2) The following information contained in voter registration records or files regarding a voter or a group of voters is available for public inspection and copying, except as provided in RCW 40.24.060: The voter's name, address, political jurisdiction, gender, date of birth, voting record, date of registration, and registration number. No other information from voter registration records or files is available for public inspection or copying. [2005 c 246 § 17; 2004 c 267 § 133; 2003 c 111 § 246; 1994 c 57 § 17; 1991 c 81 § 21; 1971 ex.s. c 202 § 17; 1965 c 9 § 29.07.130. Prior: 1933 c 1 § 13, part; RRS § 5114-13, part. Formerly RCW 29.07.130.]

**Effective date—2005 c 246:** See note following RCW 10.64.140.

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—1994 c 57:** See note following RCW 10.64.021.

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**29A.08.720 Registration, voting records—As public records—Information furnished—Restrictions, confidentiality.** (*Effective January 1, 2006.*) (1) In the case of voter registration records received through the department of licensing, the identity of the office at which any particular individual registered to vote is not available for public inspection and shall not be disclosed to the public. In the case of voter registration records received through an agency designated under RCW 29A.08.310, the identity of the agency at which any particular individual registered to vote is not available for public inspection and shall not be disclosed to the public. Any record of a particular individual's choice not to register to vote at an office of the department of licensing or a state agency designated under RCW 29A.08.310 is not available for public inspection and any information regarding such a choice by a particular individual shall not be disclosed to the public.

(2) Subject to the restrictions of RCW 29A.08.710, poll books, precinct lists, and current lists of registered voters are public records and must be made available for public inspection and copying under such reasonable rules and regulations as the county auditor or secretary of state may prescribe. The county auditor or secretary of state shall promptly furnish current lists of registered voters in his or her possession, at actual reproduction cost, to any person requesting such information. The lists shall not be used for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value. However, the lists and labels may be used for any political purpose. The county auditor or secretary of state must provide a copy of RCW 29A.08.740 to the person requesting the material that is released under this section. [2005 c 246 § 18; 2004 c 266 § 9; 2003 c 111 § 247; 1994 c 57 § 5; 1975-'76 2nd ex.s. c 46 § 1; 1974 ex.s. c 127 § 2; 1973 1st ex.s. c 111 § 2; 1971 ex.s. c 202 § 3; 1965 ex.s. c 156 § 6. Formerly RCW 29.04.100.]

**Effective date—2005 c 246:** See note following RCW 10.64.140.

**Effective date—2004 c 266:** See note following RCW 29A.04.575.

**Severability—1994 c 57:** See note following RCW 10.64.021.

*Forms, secretary of state to design—Availability to public:* RCW 29A.08.850.

*Signature required to vote—Procedure if voter unable to sign name:* RCW 29A.44.210.

**29A.08.730 Repealed.** (*Effective January 1, 2006.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**29A.08.740 Violations of restricted use of registered voter data—Penalties—Liabilities.** (*Effective January 1, 2006.*) (1) Any person who uses registered voter data furnished under RCW 29A.08.720 for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services,

[2005 RCW Supp—page 262]

or anything of value is guilty of a class C felony punishable by imprisonment in a state correctional facility for a period of not more than five years or a fine of not more than ten thousand dollars or both such fine and imprisonment, and is liable to each person provided such advertisement or solicitation, without the person's consent, for the nuisance value of such person having to dispose of it, which value is herein established at five dollars for each item mailed or delivered to the person's residence. However, a person who mails or delivers any advertisement, offer, or solicitation for a political purpose is not liable under this section unless the person is liable under subsection (2) of this section. For purposes of this subsection, two or more attached papers or sheets or two or more papers that are enclosed in the same envelope or container or are folded together are one item. Merely having a mailbox or other receptacle for mail on or near the person's residence is not an indication that the person consented to receive the advertisement or solicitation. A class action may be brought to recover damages under this section, and the court may award a reasonable attorney's fee to any party recovering damages under this section.

(2) Each person furnished data under RCW 29A.08.720 shall take reasonable precautions designed to assure that the data is not used for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value. However, the data may be used for any political purpose. Where failure to exercise due care in carrying out this responsibility results in the data being used for such purposes, then such person is jointly and severally liable for damages under subsection (1) of this section along with any other person liable under subsection (1) of this section for the misuse of such data. [2005 c 246 § 19. Prior: 2003 c 111 § 249; 2003 c 53 § 176; 1999 c 298 § 2; 1992 c 7 § 32; 1974 ex.s. c 127 § 3; 1973 1st ex.s. c 111 § 4. Formerly RCW 29.04.120.]

**Effective date—2005 c 246:** See note following RCW 10.64.140.

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

**29A.08.775 Use and maintenance of statewide list.** (*Effective January 1, 2006.*) Only voters who appear on the official statewide voter registration list are eligible to participate in elections. Each county shall maintain a copy of that county's portion of the state list. The county must ensure that data used for the production of poll lists and other lists and mailings done in the administration of each election are the same as the official statewide voter registration list. [2005 c 246 § 20; 2004 c 267 § 136.]

**Effective date—2005 c 246:** See note following RCW 10.64.140.

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

## Chapter 29A.12 RCW VOTING SYSTEMS

### Sections

29A.12.085 Paper record.

**29A.12.085 Paper record.** Beginning on January 1, 2006, all electronic voting devices must produce a paper record of each vote that may be accepted or rejected by the voter before finalizing his or her vote. This record may not be removed from the polling place, and must be human readable without an interface and machine readable for counting purposes. If the device is programmed to display the ballot in multiple languages, the paper record produced must be printed in the language used by the voter. Rejected records must either be destroyed or marked in order to clearly identify the record as rejected. [2005 c 242 § 1.]

## Chapter 29A.24 RCW FILING FOR OFFICE

### Sections

29A.24.030	Declaration of candidacy. ( <i>Effective if unconstitutionality of Initiative Measure No. 872 is reversed by pending appeal.</i> )
29A.24.030	Declaration of candidacy.
29A.24.070	Declaration of candidacy—Where filed—Copy to public disclosure commission.
29A.24.091	Declaration—Fees and petitions.
29A.24.210	Vacancy in partisan elective office—Special filing period. ( <i>Effective if unconstitutionality of Initiative Measure No. 872 is reversed by pending appeal.</i> )

**29A.24.030 Declaration of candidacy.** (*Effective if unconstitutionality of Initiative Measure No. 872 is reversed by pending appeal.*) A candidate who desires to have his or her name printed on the ballot for election to an office other than president of the United States, vice president of the United States, or an office for which ownership of property is a prerequisite to voting shall complete and file a declaration of candidacy. The secretary of state shall adopt, by rule, a declaration of candidacy form for the office of precinct committee officer and a separate standard form for candidates for all other offices filing under this chapter. Included on the standard form shall be:

- (1) A place for the candidate to declare that he or she is a registered voter within the jurisdiction of the office for which he or she is filing, and the address at which he or she is registered;
- (2) A place for the candidate to indicate the position for which he or she is filing;
- (3) For partisan offices only, a place for the candidate to indicate his or her major or minor party preference, or independent status;
- (4) A place for the candidate to indicate the amount of the filing fee accompanying the declaration of candidacy or for the candidate to indicate that he or she is filing a nominating petition in lieu of the filing fee under \*RCW 29A.24.090;
- (5) A place for the candidate to sign the declaration of candidacy, stating that the information provided on the form is true and swearing or affirming that he or she will support the Constitution and laws of the United States and the Constitution and laws of the state of Washington.

In the case of a declaration of candidacy filed electronically, submission of the form constitutes agreement that the information provided with the filing is true, that he or she will support the Constitutions and laws of the United States and the state of Washington, and that he or she agrees to electronic payment of the filing fee established in \*RCW 29A.24.090.

The secretary of state may require any other information on the form he or she deems appropriate to facilitate the filing process. [2005 c 2 § 9 (Initiative Measure No. 872, approved November 2, 2004); 2003 c 111 § 603; 2002 c 140 § 1; 1990 c 59 § 82. Formerly RCW 29.15.010.]

**Reviser's note:** (1) Initiative Measure No. 872 was declared unconstitutional in its entirety in *Washington State Republican Party, et al. v. Logan, et al.*, U.S.D.C. No. CV05-0927-TSZ (W.D. Wash. 2005). The decision was under appeal at the time this material was published.

\*(2) RCW 29A.24.090 was repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.24.091.

(3) RCW 29A.24.030 was amended by 2005 c 2 § 9 (Initiative Measure No. 872) without cognizance of its repeal by 2004 c 271 § 193. For rule of construction, see RCW 1.12.025.

**Short title—Intent—Contingent effective date—2005 c 2 (Initiative Measure No. 872):** See notes following RCW 29A.52.112.

**Implementation—2002 c 140:** "The secretary of state may take the necessary steps to ensure that this act is implemented on its effective date." [2002 c 140 § 5.]

**Captions not law—2002 c 140:** "Section captions used in this act are not part of the law." [2002 c 140 § 6.]

**29A.24.030 Declaration of candidacy.** [2003 c 111 § 603; 2002 c 140 § 1; 1990 c 59 § 82. Formerly RCW 29.15.010.] Repealed by 2004 c 271 § 193.

**Reviser's note:** (1) Initiative Measure No. 872 was declared unconstitutional in its entirety in *Washington State Republican Party, et al. v. Logan, et al.*, U.S.D.C. No. CV05-0927-TSZ (W.D. Wash. 2005). The decision was under appeal at the time this material was published.

(2) RCW 29A.24.030 was amended by 2005 c 2 § 9 (Initiative Measure No. 872) without cognizance of its repeal by 2004 c 271 § 193. For rule of construction, see RCW 1.12.025.

**29A.24.070 Declaration of candidacy—Where filed—Copy to public disclosure commission.** Declarations of candidacy shall be filed with the following filing officers:

(1) The secretary of state for declarations of candidacy for statewide offices, United States senate, and United States house of representatives;

(2) The secretary of state for declarations of candidacy for the state legislature, the court of appeals, and the superior court when the candidate is seeking office in a district comprised of voters from two or more counties. The secretary of state and the county auditor may accept declarations of candidacy for candidates for the state legislature, the court of appeals, and the superior court when the candidate is seeking office in a district comprised of voters from one county;

(3) The county auditor for all other offices. For any non-partisan office, other than judicial offices and school director in joint districts, where voters from a district comprising more than one county vote upon the candidates, a declaration of candidacy shall be filed with the county auditor of the county in which a majority of the registered voters of the district reside. For school directors in joint school districts, the declaration of candidacy shall be filed with the county auditor of the county designated by the state board of education as the county to which the joint school district is considered as belonging under RCW 28A.323.040;

(4) For all other purposes of this title, a declaration of candidacy for the state legislature, the court of appeals, and the superior court filed with the secretary of state shall be deemed to have been filed with the county auditor when the candidate is seeking office in a district composed of voters from one county.

Each official with whom declarations of candidacy are filed under this section, within one business day following the closing of the applicable filing period, shall transmit to the public disclosure commission the information required in RCW 29A.24.031 (1) through (4) for each declaration of candidacy filed in his or her office during such filing period or a list containing the name of each candidate who files such a declaration in his or her office during such filing period together with a precise identification of the position sought by each such candidate and the date on which each such declaration was filed. Such official, within three days following his or her receipt of any letter withdrawing a person's name as a candidate, shall also forward a copy of such withdrawal letter to the public disclosure commission. [2005 c 221 § 1;

2003 c 111 § 607; 2002 c 140 § 4; 1998 c 22 § 1; 1990 c 59 § 84; 1977 ex.s. c 361 § 30; 1975-'76 2nd ex.s. c 112 § 1; 1965 c 9 § 29.18.040. Prior: 1907 c 209 § 7; RRS § 5184. Formerly RCW 29.15.030, 29.18.040.]

**Implementation—Captions not law—2002 c 140:** See notes following RCW 29A.24.040.

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

**Construction—1975-'76 2nd ex.s. c 112:** RCW 42.17.945.

**Severability—1975-'76 2nd ex.s. c 112:** RCW 42.17.912.

*Public disclosure—Campaign finances, lobbying, records: Chapter 42.17 RCW.*

**29A.24.091 Declaration—Fees and petitions.** A filing fee of one dollar shall accompany each declaration of candidacy for precinct committee officer; a filing fee of ten dollars shall accompany the declaration of candidacy for any office with a fixed annual salary of one thousand dollars or less; a filing fee equal to one percent of the annual salary of the office at the time of filing shall accompany the declaration of candidacy for any office with a fixed annual salary of more than one thousand dollars per annum. No filing fee need accompany a declaration of candidacy for any office for which compensation is on a per diem or per meeting attended basis.

A candidate who lacks sufficient assets or income at the time of filing to pay the filing fee required by this section shall submit with his or her declaration of candidacy a nominating petition. The petition shall contain not less than a number of signatures of registered voters equal to the number of dollars of the filing fee. The signatures shall be of voters registered to vote within the jurisdiction of the office for which the candidate is filing.

When the candidacy is for:

(1) A legislative or judicial office that includes territory from more than one county, the fee shall be paid to the secretary of state for equal division between the treasuries of the counties comprising the district.

(2) A legislative or judicial office that includes territory from only one county:

(a) The fee shall be paid to the county auditor if the candidate filed his or her declaration of candidacy with the county auditor;

(b) The fee shall be paid to the secretary of state if the candidate filed his or her declaration of candidacy with the secretary of state. The secretary of state shall then promptly transmit the fee to the county auditor of the county in which the legislative or judicial office is located.

(3) A city or town office, the fee shall be paid to the county auditor who shall transmit it to the city or town clerk for deposit in the city or town treasury. [2005 c 221 § 2; 2004 c 271 § 160.]

**29A.24.210 Vacancy in partisan elective office—Special filing period.** Filings for a partisan elective office shall be opened for a period of three normal business days whenever, on or after the first day of the regular filing period and before the sixth Tuesday prior to an election, a vacancy occurs in that office, leaving an unexpired term to be filled by an election for which filings have not been held.

[2005 RCW Supp—page 264]

Any special three-day filing period shall be fixed by the election officer with whom declarations of candidacy for that office are filed. The election officer shall give notice of the special three-day filing period by notifying the press, radio, and television in the county or counties involved, and by any other means as may be required by law.

Candidacies validly filed within the special three-day filing period shall appear on the primary or general election ballot as if filed during the regular filing period.

The procedures for filings for partisan offices where a vacancy occurs under this section or a void in candidacy occurs under \*RCW 29A.24.140 must be substantially similar to the procedures for nonpartisan offices under \*RCW 29A.24.150 through 29A.24.170. [2005 c 2 § 10 (Initiative Measure No. 872, approved November 2, 2004); 2003 c 111 § 621. Prior: 2001 c 46 § 3; 1981 c 180 § 2. Formerly RCW 29.15.230, 29.18.032.]

**Reviser's note:** (1) Initiative Measure No. 872 was declared unconstitutional in its entirety in *Washington State Republican Party, et al. v. Logan, et al.*, U.S.D.C. No. CV05-0927-TSZ (W.D. Wash. 2005). The decision was under appeal at the time this material was published.

\*(2) RCW 29A.24.140, 29A.24.150, 29A.24.160, and 29A.24.170 were repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.24.141, 29A.24.151, 29A.24.161, and 29A.24.171.

**Short title—Intent—Contingent effective date—2005 c 2 (Initiative Measure No. 872):** See notes following RCW 29A.52.112.

**Severability—1981 c 180:** See note following RCW 42.12.040.

*Vacancy in partisan elective office, successor elected, when: RCW 42.12.040.*

*Vacancy in United States senate, special filing period in 1983: Chapter 1, Laws of 1983 3rd ex. sess. (uncodified).*

## Chapter 29A.28 RCW

### VACANCIES

#### Sections

29A.28.010 Repealed. (*Effective if unconstitutionality of Initiative Measure No. 872 is reversed by pending appeal.*)

29A.28.020 Repealed. (*Effective if unconstitutionality of Initiative Measure No. 872 is reversed by pending appeal.*)

**29A.28.010 Repealed.** (*Effective if unconstitutionality of Initiative Measure No. 872 is reversed by pending appeal.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Reviser's note:** Initiative Measure No. 872 was declared unconstitutional in its entirety in *Washington State Republican Party, et al. v. Logan, et al.*, U.S.D.C. No. CV05-0927-TSZ (W.D. Wash. 2005). The decision was under appeal at the time this material was published.

**29A.28.020 Repealed.** (*Effective if unconstitutionality of Initiative Measure No. 872 is reversed by pending appeal.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Reviser's note:** Initiative Measure No. 872 was declared unconstitutional in its entirety in *Washington State Republican Party, et al. v. Logan, et al.*, U.S.D.C. No. CV05-0927-TSZ (W.D. Wash. 2005). The decision was under appeal at the time this material was published.

## Chapter 29A.32 RCW VOTERS' PAMPHLETS

### Sections

29A.32.032 Party preference. (*Effective if unconstitutionality of Initiative Measure No. 872 is reversed by pending appeal.*)

**29A.32.032 Party preference.** (*Effective if unconstitutionality of Initiative Measure No. 872 is reversed by pending appeal.*) The voters' pamphlet must also contain the political party preference or independent status where a candidate appearing on the ballot has expressed such a preference on his or her declaration of candidacy. [2005 c 2 § 11 (Initiative Measure No. 872, approved November 2, 2004).]

**Reviser's note:** Initiative Measure No. 872 was declared unconstitutional in its entirety in *Washington State Republican Party, et al. v. Logan, et al.*, U.S.D.C. No. CV05-0927-TSZ (W.D. Wash. 2005). The decision was under appeal at the time this material was published.

**Short title—Intent—Contingent effective date—2005 c 2 (Initiative Measure No. 872):** See notes following RCW 29A.52.112.

## Chapter 29A.36 RCW BALLOTS AND OTHER VOTING FORMS

### Sections

29A.36.010 Certifying primary candidates. (*Effective if unconstitutionality of Initiative Measure No. 872 is reversed by pending appeal.*)

29A.36.010 Certifying primary candidates.

29A.36.115 Provisional and absentee ballots.

29A.36.170 Top two candidates qualified for general election—Exception. (*Effective if unconstitutionality of Initiative Measure No. 872 is reversed by pending appeal.*)

29A.36.170 Nonpartisan candidates qualified for general election.

29A.36.190 Repealed. (*Effective if unconstitutionality of Initiative Measure No. 872 is reversed by pending appeal.*)

**29A.36.010 Certifying primary candidates.** (*Effective if unconstitutionality of Initiative Measure No. 872 is reversed by pending appeal.*)

On or before the day following the last day allowed for candidates to withdraw under \*RCW 29A.24.130, the secretary of state shall certify to each county auditor a list of the candidates who have filed declarations of candidacy in his or her office for the primary. For each office, the certificate shall include the name of each candidate, his or her address, and his or her party preference or independent designation as shown on filed declarations. [2005 c 2 § 12 (Initiative Measure No. 872, approved November 2, 2004); 2003 c 111 § 901. Prior: 1990 c 59 § 8; 1965 ex.s. c 103 § 4; 1965 c 9 § 29.27.020; prior: 1949 c 161 § 10, part; 1947 c 234 § 2, part; 1935 c 26 § 1, part; 1921 c 178 § 4, part; 1907 c 209 § 8, part; Rem. Supp. 1949 § 5185, part. Formerly RCW 29.27.020.]

**Reviser's note:** (1) Initiative Measure No. 872 was declared unconstitutional in its entirety in *Washington State Republican Party, et al. v. Logan, et al.*, U.S.D.C. No. CV05-0927-TSZ (W.D. Wash. 2005). The decision was under appeal at the time this material was published.

\* (2) RCW 29A.24.130 was repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.24.131.

(3) RCW 29A.36.010 was amended by 2005 c 2 § 12 (Initiative Measure No. 872) without cognizance of its repeal by 2004 c 271 § 193. For rule of construction, see RCW 1.12.025.

**Short title—Intent—Contingent effective date—2005 c 2 (Initiative Measure No. 872):** See notes following RCW 29A.52.112.

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.36.010 Certifying primary candidates.** [2003 c 111 § 901. Prior: 1990 c 59 § 8; 1965 ex.s. c 103 § 4; 1965 c 9 § 29.27.020; prior: 1949 c 161 § 10, part; 1947 c 234 § 2, part; 1935 c 26 § 1, part; 1921 c 178 § 4, part; 1907 c 209 § 8, part; Rem. Supp. 1949 § 5185, part. Formerly RCW 29.27.020.] Repealed by 2004 c 271 § 193.

**Reviser's note:** (1) Initiative Measure No. 872 was declared unconstitutional in its entirety in *Washington State Republican Party, et al. v. Logan, et al.*, U.S.D.C. No. CV05-0927-TSZ (W.D. Wash. 2005). The decision was under appeal at the time this material was published.

(2) RCW 29A.36.010 was amended by 2005 c 2 § 12 (Initiative Measure No. 872) without cognizance of its repeal by 2004 c 271 § 193. For rule of construction, see RCW 1.12.025.

**29A.36.115 Provisional and absentee ballots.** All provisional and absentee ballots must be visually distinguishable from each other and must be either:

(1) Printed on colored paper; or

(2) Imprinted with a bar code for the purpose of identifying the ballot as a provisional or absentee ballot. The bar code must not identify the voter.

Provisional and absentee ballots must be incapable of being tabulated by poll-site counting devices. [2005 c 243 § 3.]

**29A.36.170 Top two candidates qualified for general election—Exception.** (*Effective if unconstitutionality of Initiative Measure No. 872 is reversed by pending appeal.*)

(1) For any office for which a primary was held, only the names of the top two candidates will appear on the general election ballot; the name of the candidate who received the greatest number of votes will appear first and the candidate who received the next greatest number of votes will appear second. No candidate's name may be printed on the subsequent general election ballot unless he or she receives at least one percent of the total votes cast for that office at the preceding primary, if a primary was conducted. On the ballot at the general election for an office for which no primary was held, the names of the candidates shall be listed in the order determined under \*RCW 29A.36.130.

(2) For the office of justice of the supreme court, judge of the court of appeals, judge of the superior court, or state superintendent of public instruction, if a candidate in a contested primary receives a majority of all the votes cast for that office or position, only the name of that candidate may be printed for that position on the ballot at the general election. [2005 c 2 § 6 (Initiative Measure No. 872, approved November 2, 2004); 2003 c 111 § 917. Prior: 1992 c 181 § 2; 1990 c 59 § 95. Formerly RCW 29.30.085.]

**Reviser's note:** (1) Initiative Measure No. 872 was declared unconstitutional in its entirety in *Washington State Republican Party, et al. v. Logan, et al.*, U.S.D.C. No. CV05-0927-TSZ (W.D. Wash. 2005). The decision was under appeal at the time this material was published.

\* (2) RCW 29A.36.130 was repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.36.131.

(3) RCW 29A.36.170 was amended by 2005 c 2 § 6 (Initiative Measure No. 872) without cognizance of its repeal by 2004 c 271 § 193. For rule of construction, see RCW 1.12.025.

**Short title—Intent—Contingent effective date—2005 c 2 (Initiative Measure No. 872):** See notes following RCW 29A.52.112.

**Effective date—1992 c 181:** See note following RCW 29A.36.180.

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.007.

**29A.36.170 Nonpartisan candidates qualified for general election.** [2004 c 75 § 1; 2003 c 111 § 917. Prior: 1992 c 181 § 2; 1990 c 59 § 95. Formerly RCW 29.30.085.] Repealed by 2004 c 271 § 193.

**Reviser's note:** (1) Initiative Measure No. 872 was declared unconstitutional in its entirety in *Washington State Republican Party, et al. v. Logan, et al.*, U.S.D.C. No. CV05-0927-TSZ (W.D. Wash. 2005). The decision was under appeal at the time this material was published.

(2) RCW 29A.36.170 was amended by 2005 c 2 § 6 (Initiative Measure No. 872) without cognizance of its repeal by 2004 c 271 § 193. For rule of construction, see RCW 1.12.025.

**29A.36.190 Repealed.** (*Effective if unconstitutionality of Initiative Measure No. 872 is reversed by pending appeal.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Reviser's note:** Initiative Measure No. 872 was declared unconstitutional in its entirety in *Washington State Republican Party, et al. v. Logan, et al.*, U.S.D.C. No. CV05-0927-TSZ (W.D. Wash. 2005). The decision was under appeal at the time this material was published.

## Chapter 29A.40 RCW ABSENTEE VOTING

### Sections

- 29A.40.091 Envelopes and instructions. (*Effective January 1, 2006.*)  
 29A.40.110 Processing incoming ballots.  
 29A.40.150 Out-of-state, overseas, service voters.

**29A.40.091 Envelopes and instructions.** (*Effective January 1, 2006.*) The county auditor shall send each absentee voter a ballot, a security envelope in which to seal the ballot after voting, a larger envelope in which to return the security envelope, and instructions on how to mark the ballot and how to return it to the county auditor. The instructions that accompany an absentee ballot for a partisan primary must include instructions for voting the applicable ballot style, as provided in chapter 29A.36 RCW. The absentee voter's name and address must be printed on the larger return envelope, which must also contain a declaration by the absentee voter reciting his or her qualifications and stating that he or she has not voted in any other jurisdiction at this election, together with a summary of the penalties for any violation of any of the provisions of this chapter. The declaration must clearly inform the voter that it is illegal to vote if he or she is not a United States citizen; it is illegal to vote if he or she has been convicted of a felony and has not had his or her voting rights restored; and, except as otherwise provided by law, it is illegal to cast a ballot or sign an absentee envelope on behalf of another voter. The return envelope must provide space for the voter to indicate the date on which the ballot was voted and for the voter to sign the oath. It must also contain a space so that the voter may include a telephone number. A summary of the applicable penalty provisions of this chapter must be printed on the return envelope immediately adjacent to the space for the voter's signature. The signature of the voter on the return envelope must affirm and attest to the statements regarding the qualifications of that voter and to the validity of the ballot. The return envelope must also have a secrecy flap that the voter may seal that will cover the voter's signature and optional telephone number. For out-of-state voters, overseas voters, and service voters, the signed declaration on the return envelope constitutes the equivalent of a voter registration for the election or primary for which the ballot has been issued. The voter must be instructed to either return the ballot to the county auditor by whom it was issued or attach sufficient first class postage, if applicable, and mail the ballot to the appropriate county auditor no later than the day of the election or primary for which the ballot was issued.

If the county auditor chooses to forward absentee ballots, he or she must include with the ballot a clear explanation of the qualifications necessary to vote in that election and must also advise a voter with questions about his or her eligibility to contact the county auditor. This explanation may be provided on the ballot envelope, on an enclosed insert, or printed directly on the ballot itself. If the information is not included, the envelope must clearly indicate that the ballot is not to be

forwarded and that return postage is guaranteed. [2005 c 246 § 21; 2004 c 271 § 135.]

**Effective date—2005 c 246:** See note following RCW 10.64.140.

**29A.40.110 Processing incoming ballots.** (1) The opening and subsequent processing of return envelopes for any primary or election may begin upon receipt. The tabulation of absentee ballots must not commence until after 8:00 p.m. on the day of the primary or election.

(2) All received absentee return envelopes must be placed in secure locations from the time of delivery to the county auditor until their subsequent opening. After opening the return envelopes, the county canvassing board shall place all of the ballots in secure storage until after 8:00 p.m. of the day of the primary or election. Absentee ballots that are to be tabulated on an electronic vote tallying system may be taken from the inner envelopes and all the normal procedural steps may be performed to prepare these ballots for tabulation.

(3) Before opening a returned absentee ballot, the canvassing board, or its designated representatives, shall examine the postmark, statement, and signature on the return envelope that contains the security envelope and absentee ballot. They shall verify that the voter's signature on the return envelope is the same as the signature of that voter in the registration files of the county. For registered voters casting absentee ballots, the date on the return envelope to which the voter has attested determines the validity, as to the time of voting for that absentee ballot if the postmark is missing or is illegible. For out-of-state voters, overseas voters, and service voters stationed in the United States, the date on the return envelope to which the voter has attested determines the validity as to the time of voting for that absentee ballot. For any absentee ballot, a variation between the signature of the voter on the return envelope and the signature of that voter in the registration files due to the substitution of initials or the use of common nicknames is permitted so long as the surname and handwriting are clearly the same. [2005 c 243 § 5; 2003 c 111 § 1011. Prior: 2001 c 241 § 10; 1991 c 81 § 32; 1987 c 346 § 14; 1977 ex.s. c 361 § 78; 1973 c 140 § 1; 1965 c 9 § 29.36.060; prior: 1963 ex.s. c 23 § 5; 1955 c 167 § 7; 1955 c 50 § 2; prior: 1933 ex.s. c 41 § 5, part; 1921 c 143 § 6, part; 1917 c 159 § 4, part; 1915 c 189 § 4, part; RRS § 5285, part. Formerly RCW 29.36.310, 29.36.060.]

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**Legislative intent—Effective date—1987 c 346:** See notes following RCW 29A.40.010.

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

*County canvassing board, meeting to process absentee ballots, canvass returns:* RCW 29A.60.160.

*Unsigned absentee or provisional ballots:* RCW 29A.60.165.

**29A.40.150 Out-of-state, overseas, service voters.** The secretary of state shall produce and furnish envelopes and instructions for out-of-state voters, overseas voters, and service voters to the county auditors. The information on the envelopes or instructions must explain that:

(1) Return postage is free if the ballot is mailed through the United States postal service, United States armed forces postal service, or the postal service of a United States foreign embassy;

(2) The date of the signature is considered the date of mailing;

(3) The envelope must be signed by election day;

(4) The signed declaration on the envelope is the equivalent of voter registration;

(5) A voter may fax a voted ballot and the accompanying envelope if the voter agrees to waive secrecy. The ballot will be counted if the original documents are received before certification of the election; and

(6) A voter may obtain a ballot via electronic mail, which the voter may print out, vote, and return by mail. In order to facilitate the electronic acquisition of ballots by out-of-state, overseas, and service voters, the ballot instructions shall include the web site of the office of the secretary of state. [2005 c 245 § 1; 2003 c 111 § 1015; 1993 c 417 § 7; 1987 c 346 § 19; 1983 1st ex.s. c 71 § 8. Formerly RCW 29.36.360, 29.36.150.]

**Legislative intent—Effective date—1987 c 346:** See notes following RCW 29A.40.010.

### Chapter 29A.44 RCW POLLING PLACE ELECTIONS AND POLL WORKERS

#### Sections

- 29A.44.045 Electronic voting devices—Paper records.
- 29A.44.205 Identification required.
- 29A.44.207 Provisional ballots.
- 29A.44.225 Voter using electronic voting device.

**29A.44.045 Electronic voting devices—Paper records.** Paper records produced by electronic voting devices are subject to all the requirements of this chapter and chapter 29A.60 RCW for ballot handling, preservation, reconciliation, transit to the counting center, and storage. The paper records must be preserved in the same manner and for the same period of time as ballots. [2005 c 242 § 2.]

*Unauthorized removal of paper record from polling place:* RCW 29A.84.545.

**29A.44.205 Identification required.** Any person desiring to vote at any primary or election is required to provide identification to the election officer before signing the poll book. The identification required in this section can be satisfied by providing a valid photo identification, such as a driver's license or state identification card, student identification card, or tribal identification card, a voter's voter identification issued by a county elections officer, or a copy of a current utility bill, bank statement, paycheck, or government check or other government document. Any individual who desires to vote in person but cannot provide identification as required by this section shall be issued a provisional ballot.

The secretary of state may adopt rules to carry out this section. [2005 c 243 § 7.]

**29A.44.207 Provisional ballots.** Provisional ballots must be issued, along with a provisional ballot outer envelope and a security envelope, to voters as appropriate under RCW 29A.04.008. The provisional ballot outer envelope must include a place for the voter's name; registered address, both present and former if applicable; date of birth; reason for the

provisional ballot; the precinct number and the precinct polling location at which the voter has voted; and a space for the county auditor to list the disposition of the provisional ballot. The provisional ballot outer envelope must also contain a declaration as required for absentee ballot outer envelopes under RCW 29A.40.091; a place for the voter to sign the oath; and a summary of the applicable penalty provisions of this chapter. The voter shall vote the provisional ballot in secrecy and, when done, place the provisional ballot in the security envelope, then place the security envelope into the outer envelope, and return it to the precinct election official. The election official shall ensure that the required information is completed on the outer envelope, have the voter sign it in the appropriate space, and place the envelope in a secure container. The official shall then give the voter written information advising the voter how to ascertain whether the vote was counted and, if applicable, the reason why the vote was not counted. [2005 c 243 § 6.]

**29A.44.225 Voter using electronic voting device.** A voter voting on an electronic voting device may not leave the device during the voting process, except to request assistance from the precinct election officers, until the voting process is completed. [2005 c 242 § 4.]

### Chapter 29A.48 RCW VOTING BY MAIL

#### Sections

- 29A.48.010 Mail ballot counties and precincts.

**29A.48.010 Mail ballot counties and precincts.** (1) With express authorization from the county legislative authority, the county auditor may conduct all primary, special, and general elections entirely by mail ballot. The county legislative authority must give the county auditor at least ninety days' notice before the first election to be conducted entirely by mail ballot. If the county legislative authority and the county auditor decide to return to a polling place election environment, the county legislative authority must give the county auditor at least one hundred eighty days' notice before the first election to be conducted using polling places. Authorization under this subsection must apply to all primary, special, and general elections conducted by the county auditor.

(2) The county auditor may designate any precinct having fewer than two hundred active registered voters at the time of closing of voter registration as provided in RCW 29A.08.140 as a mail ballot precinct. Authorization from the county legislative authority is not required to designate a precinct as a mail ballot precinct under this subsection. In determining the number of registered voters in a precinct for the purposes of this section, persons who are ongoing absentee voters under RCW 29A.40.040 shall not be counted. Nothing in this section may be construed as altering the vote tallying requirements of RCW 29A.60.230.

(3) The county auditor shall notify each registered voter by mail that for all future primaries and elections the voting will be by mail ballot only. The auditor shall mail each active voter a ballot at least eighteen days before a primary, general

election, or special election. The auditor shall send each inactive voter either a ballot or an application to receive a ballot at least eighteen days before a primary, general election, or special election. The auditor shall determine which of the two is to be sent. If the inactive voter returns a voted ballot, the ballot shall be counted and the voter's status restored to active. If the inactive voter completes and returns an application, a ballot shall be sent and the voter's status restored to active. The requirements regarding certification, reporting, and the mailing of overseas and military ballots in RCW 29A.40.070 apply to elections conducted by mail ballot.

(4) If the county legislative authority and county auditor determine under subsection (1) of this section, or if the county auditor determines under subsection (2) of this section, to return to a polling place election environment, the auditor shall notify each registered voter, by mail, of this and shall provide the address of the polling place to be used. [2005 c 241 § 1; 2004 c 266 § 14. Prior: 2003 c 162 § 3; 2003 c 111 § 1201; prior: 2001 c 241 § 15; prior: 1994 c 269 § 1; 1994 c 57 § 48; 1993 c 417 § 1; 1983 1st ex.s. c 71 § 1; 1974 ex.s. c 35 § 3; 1967 ex.s. c 109 § 6. Formerly RCW 29.38.010, 29.36.120.]

**Effective date—2004 c 266:** See note following RCW 29A.04.575.

**Policy—2003 c 162:** See note following RCW 29A.40.070.

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

## Chapter 29A.52 RCW PRIMARIES AND ELECTIONS

### Sections

- 29A.52.010 Elections to fill unexpired term—No primary, when. (*Effective if unconstitutionality of Initiative Measure No. 872 is reversed by pending appeal.*)
- 29A.52.010 Elections to fill unexpired term—No primary, when.
- 29A.52.112 Top two candidates—Party or independent preference. (*Effective if unconstitutionality of Initiative Measure No. 872 is reversed by pending appeal.*)
- 29A.52.220 When no local primary permitted—Procedure—Expiration of subsection.

**29A.52.010 Elections to fill unexpired term—No primary, when. (*Effective if unconstitutionality of Initiative Measure No. 872 is reversed by pending appeal.*)** Whenever it shall be necessary to hold a special election in an odd-numbered year to fill an unexpired term of any office which is scheduled to be voted upon for a full term in an even-numbered year, no primary election shall be held in the odd-numbered year if, after the last day allowed for candidates to withdraw, no more than two candidates have filed a declaration of candidacy for a single office to be filled.

In this event, the officer with whom the declarations of candidacy were filed shall immediately notify all candidates concerned and the names of the candidates that would have been printed upon the primary ballot, but for the provisions of this section, shall be printed as candidates for the positions sought upon the general election ballot. [2005 c 2 § 13 (Initiative Measure No. 872, approved November 2, 2004); 2003 c 111 § 1301. Prior: 1973 c 4 § 3. Formerly RCW 29.15.150, 29.13.075.]

**Reviser's note:** (1) Initiative Measure No. 872 was declared unconstitutional in its entirety in *Washington State Republican Party, et al. v. Logan, et al.*, U.S.D.C. No. CV05-0927-TSZ (W.D. Wash. 2005). The decision was under appeal at the time this material was published.

(2) RCW 29A.52.010 was amended by 2005 c 2 § 13 (Initiative Measure No. 872) without cognizance of its repeal by 2004 c 271 § 193. For rule of construction, see RCW 1.12.025.

**Short title—Intent—Contingent effective date—2005 c 2 (Initiative Measure No. 872):** See notes following RCW 29A.52.112.

[2005 RCW Supp—page 268]

**29A.52.010 Elections to fill unexpired term—No primary, when.** [2003 c 111 § 1301. Prior: 1973 c 4 § 3. Formerly RCW 29.15.150, 29.13.075.] Repealed by 2004 c 271 § 193.

**Reviser's note:** (1) Initiative Measure No. 872 was declared unconstitutional in its entirety in *Washington State Republican Party, et al. v. Logan, et al.*, U.S.D.C. No. CV05-0927-TSZ (W.D. Wash. 2005). The decision was under appeal at the time this material was published.

(2) RCW 29A.52.010 was amended by 2005 c 2 § 13 (Initiative Measure No. 872) without cognizance of its repeal by 2004 c 271 § 193. For rule of construction, see RCW 1.12.025.

**29A.52.112 Top two candidates—Party or independent preference. (*Effective if unconstitutionality of Initiative Measure No. 872 is reversed by pending appeal.*)** (1) A primary is a first stage in the public process by which voters elect candidates to public office.

(2) Whenever candidates for a partisan office are to be elected, the general election must be preceded by a primary conducted under this chapter. Based upon votes cast at the primary, the top two candidates will be certified as qualified to appear on the general election ballot, unless only one candidate qualifies as provided in \*RCW 29A.36.170.

(3) For partisan office, if a candidate has expressed a party or independent preference on the declaration of candidacy, then that preference will be shown after the name of the candidate on the primary and general election ballots by appropriate abbreviation as set forth in rules of the secretary of state. A candidate may express no party or independent preference. Any party or independent preferences are shown for the information of voters only and may in no way limit the options available to voters. [2005 c 2 § 7 (Initiative Measure No. 872, approved November 2, 2004).]

**Reviser's note:** (1) Initiative Measure No. 872 was declared unconstitutional in its entirety in *Washington State Republican Party, et al. v. Logan, et al.*, U.S.D.C. No. CV05-0927-TSZ (W.D. Wash. 2005). The decision was under appeal at the time this material was published.

\* (2) RCW 29A.36.170 was repealed by 2004 c 271 § 193 and was subsequently amended by 2005 c 2 § 6 (Initiative Measure No. 872). Later enactment, see RCW 29A.36.171.

**Short title—2005 c 2 (Initiative Measure No. 872):** "This act may be known and cited as the People's Choice Initiative of 2004." [2005 c 2 § 1 (Initiative Measure No. 872, approved November 2, 2004).]

**Intent—2005 c 2 (Initiative Measure No. 872):** "The Washington Constitution and laws protect each voter's right to vote for any candidate for any office. The Washington State Supreme Court has upheld the blanket primary as protecting compelling state interests "allowing each voter to keep party identification, if any, secret; allowing the broadest possible participation in the primary election; and giving each voter a free choice among all candidates in the primary." *Heavey v. Chapman*, 93 Wn.2d 700, 705, 611 P.2d 1256 (1980). The Ninth Circuit Court of Appeals has threatened this system through a decision, that, if not overturned by the United States Supreme Court, may require change. In the event of a final court judgment invalidating the blanket primary, this People's Choice Initiative will become effective to implement a system that best protects the rights of voters to make such choices, increases voter participation, and advances compelling interests of the state of Washington." [2005 c 2 § 2 (Initiative Measure No. 872, approved November 2, 2004).]

**Contingent effective date—2005 c 2 (Initiative Measure No. 872):** "This act takes effect only if the Ninth Circuit Court of Appeals' decision in *Democratic Party of Washington State v. Reed*, 343 F.3d 1198 (9th Cir. 2003) holding the blanket primary election system in Washington state invalid becomes final and a Final Judgment is entered to that effect." [2005 c 2 § 18 (Initiative Measure No. 872, approved November 2, 2004).]

**Reviser's note:** On February 28, 2004, the United States Supreme Court refused to take the case on appeal; therefore the Ninth Circuit's decision stands.



**29A.52.220 When no local primary permitted—Procedure—Expiration of subsection.** (1) No primary may be held for any single position in any city, town, district, or district court, as required by RCW 29A.52.210, if, after the last day allowed for candidates to withdraw, there are no more than two candidates filed for the position. The county auditor shall, as soon as possible, notify all the candidates so affected that the office for which they filed will not appear on the primary ballot.

(2) No primary may be held for nonpartisan offices in any first class city if the city:

(a) Is a qualifying city that has been certified to participate in the pilot project authorized by RCW 29A.53.020; and

(b) Is conducting an election using the instant runoff voting method for the pilot project authorized by RCW 29A.53.020.

(c) This subsection (2) expires July 1, 2013.

(3) No primary may be held for the office of commissioner of a park and recreation district or for the office of cemetery district commissioner.

(4) Names of candidates for offices that do not appear on the primary ballot shall be printed upon the general election ballot in the manner specified by RCW 29A.36.131. [2005 c 153 § 10; 2003 c 111 § 1306. Prior: 1998 c 19 § 1; 1996 c 324 § 1; 1990 c 59 § 90; 1975-'76 2nd ex.s. c 120 § 2; 1965 c 9 § 29.21.015; prior: 1955 c 101 § 2; 1955 c 4 § 1. Formerly RCW 29.21.015.]

**Captions not law—Severability—2005 c 153:** See RCW 29A.53.901 and 29A.53.902.

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**Severability—1975-'76 2nd ex.s. c 120:** See note following RCW 29A.52.210.

## Chapter 29A.53 RCW

### INSTANT RUNOFF VOTING PILOT PROJECT

*(Expires July 1, 2013.)*

#### Sections

29A.53.010	Finding—Intent. <i>(Expires July 1, 2013.)</i>
29A.53.020	Participant qualifications, procedures, report. <i>(Expires July 1, 2013.)</i>
29A.53.030	Definitions. <i>(Expires July 1, 2013.)</i>
29A.53.040	Application of election laws. <i>(Expires July 1, 2013.)</i>
29A.53.050	Tabulation of ballots—Counting stages. <i>(Expires July 1, 2013.)</i>
29A.53.060	Voting conditions and limitations. <i>(Expires July 1, 2013.)</i>
29A.53.070	Local option authorized. <i>(Expires July 1, 2013.)</i>
29A.53.080	Ballot specifications and directions to voters. <i>(Expires July 1, 2013.)</i>
29A.53.090	Changes in voting devices and counting methods. <i>(Expires July 1, 2013.)</i>
29A.53.900	Expiration date.
29A.53.901	Captions not law—2005 c 153.
29A.53.902	Severability—2005 c 153.

#### **29A.53.010 Finding—Intent. *(Expires July 1, 2013.)***

(1) The legislature finds that it is in the public interest to examine the use of a voting system that requires all victorious candidates to be elected with a majority vote rather than a plurality of effective votes, and that allows voters to designate secondary and other preferences for potential tabulation if their first choice candidate does not receive a majority of the votes cast. The legislature recognizes that the system known as instant runoff voting achieves these purposes.

(2) The legislature wishes to examine whether voter interest and participation in elections will increase when instant runoff voting, a voting method that promotes additional voter choices and a more meaningful recognition of all voter selections, is used to elect nonpartisan candidates. The legislature declares that it is in the interest of participatory democracy for voters to be given the opportunity to vote for their first choice candidate while still making effective secondary choices among the remaining candidates.

(3) The legislature therefore intends to authorize a limited pilot project to study the effects of using instant runoff voting as a local option for nonpartisan offices in any qualifying city. [2005 c 153 § 1.]

**29A.53.020 Participant qualifications, procedures, report. *(Expires July 1, 2013.)*** The legislature intends to establish an instant runoff voting pilot project to be completed by willing state and local election administrators in full partnership and cooperation.

If the county auditor of a county containing any city that has demonstrated support for instant runoff voting, as provided by subsection (1)(c) of this section, provides written notification of pilot project participation to the secretary of state by January 1, 2007, the secretary of state shall conduct a pilot project to examine the use of instant runoff voting as a local option for nonpartisan offices in any qualifying city in that county. Following the timely receipt by the secretary of state of the written notification, the pilot project must begin by August 1, 2008, and conclude no later than July 1, 2013.

(1) For the purposes of this chapter, a qualifying city must:

(a) Be classified as a first class city as defined by chapter 35.22 RCW;

(b) Have a population greater than one hundred forty thousand and less than two hundred thousand as of July 24, 2005, as determined by the office of financial management; and

(c) Have demonstrated support for instant runoff voting by approving a city charter amendment authorizing the city council to use instant runoff voting for the election of city officers.

(2)(a) Following the timely receipt by the secretary of state of a notification of participation from a county auditor, and in accordance with the provisions of this section, the secretary of state shall certify at least one city in that county to qualify and participate in the pilot project. Only a qualifying city or cities certified for participation by the secretary of state may participate in the pilot project.

(b) The county auditor of a county containing a qualifying and certified city who has submitted a timely notification of participation shall participate in the pilot project.

(3) Elections conducted under the instant runoff voting method for the pilot project must comply with this chapter and may be held only on the dates specified by RCW 29A.04.330(1).

(4) For the purpose of implementing this chapter, the secretary of state shall develop and adopt:

(a) Rules governing the conduct of instant runoff voting elections; and

(b) A pilot project timeline. The secretary of state may consult with appropriate local officials to develop this time-

line. The timeline is subject to review and modification by the secretary of state, as necessary.

(5) All election equipment and related processes shall be certified by the secretary of state before an election may be conducted under the instant runoff voting method.

(6) The secretary of state shall submit a report of findings to the appropriate committees of the legislature by July 1, 2013, that includes, but is not limited to:

(a) An assessment of all elections conducted using the instant runoff voting method;

(b) Recommendations for statutory, rule, and local voting procedural modifications that would be required prior to implementing instant runoff voting as a permanent alternative election method for special and general elections;

(c) An inventory of available election equipment necessary for conducting elections under the instant runoff method, including costs associated with the equipment; and

(d) Any recommendations from any city legislative body or county auditor participating in this pilot project. [2005 c 153 § 2.]

**29A.53.030 Definitions. (Expires July 1, 2013.)** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Candidates who remain" means all candidates who have not been eliminated at a previous stage.

(2) "Choice" means an indication on a ballot of a voter's ranking of candidates for any single office according to the voter's preference.

(3) "Continuing ballot" means a ballot that is not exhausted.

(4) "Exhausted ballot" means a ballot on which all indicated choices have become votes for the candidates so designated or when the ballot contains only choices for eliminated candidates.

(5) "Instant runoff voting" means a system of voting in which voters may designate as many as three candidates for the same office in order of preference by indicating a first choice, a second choice, and a third choice.

(6) "Last place candidate" means a candidate who has received the fewest votes among the candidates who remain at any stage. Two or more candidates simultaneously become last place candidates when their combined votes are equal to or fewer than all votes for the candidate with the third highest vote total.

(7) "Next choice" means the highest ranked choice for a remaining candidate that has not become a vote at a previous stage.

(8) "Remaining candidate" means a candidate who has not been eliminated.

(9) "Stage" or "stage in the counting" means a step in the counting process during which votes for all remaining candidates are tabulated for the purpose of determining whether a candidate has achieved a majority of the votes cast for a particular office, and, absent a majority, which candidate or candidates must be eliminated.

(10) "Vote" means a ballot choice that is counted toward election of a candidate. Except as provided by RCW 29A.53.050 and 29A.53.060, all first choices are votes. Lower ranked choices are potential votes that may, in accordance with the requirements of this chapter, be credited to and become votes for a candidate. [2005 c 153 § 3.]

dance with the requirements of this chapter, be credited to and become votes for a candidate. [2005 c 153 § 3.]

**29A.53.040 Application of election laws. (Expires July 1, 2013.)** To the extent they are not inconsistent with this chapter, the laws governing elections apply to the pilot project on instant runoff voting authorized by this chapter. The authority of a city meeting the criteria of RCW 29A.53.020 and 29A.53.070 to participate in an election conducted under the instant runoff voting method expires on July 1, 2013. [2005 c 153 § 4.]

**29A.53.050 Tabulation of ballots—Counting stages. (Expires July 1, 2013.)** The following provisions, subject to the conditions of RCW 29A.53.060, govern how votes for candidates for each office shall be tabulated under the instant runoff voting method:

(1) All first choice votes cast for the office shall be tabulated in the first counting stage. If, following this first counting stage, a candidate receives a majority of the votes cast for the office, that candidate is deemed elected to the office and counting ends;

(2) If no candidate receives a majority of the votes cast for the office during the first counting stage, the second counting stage begins by eliminating the last place candidate for that office. On ballots that indicate a first choice preference for the eliminated candidate, the second choice preferences are counted as votes for the candidates so designated. If, following this second counting stage, a candidate receives a majority of the votes cast for the office, that candidate is deemed elected to the office and counting ends;

(3) If, following the second counting stage, no candidate receives a majority of the votes cast for the office, the third counting stage begins by eliminating the last place candidate for that office. On ballots that indicate a first choice preference for the eliminated candidate, the next choice preferences are counted as votes for the candidates so designated. If, following this third counting stage, a candidate receives a majority of votes cast for the office, that candidate is deemed elected to the office and counting ends;

(4) If, following the third counting stage, no candidate receives a majority of the votes cast for the office, the counting process provided by subsection (3) of this section continues in succession until either a candidate receives a majority of the votes cast for the office or all but one candidate has been eliminated. In accordance with the provisions of this subsection, a candidate who receives either a majority of the votes cast for the office or who is the sole remaining candidate shall be deemed elected to the office; and

(5) If at any stage in the counting process there are two or more last place candidates for the office, these candidates must be eliminated simultaneously. On ballots that indicate a first choice preference for the eliminated candidates, the next choice preferences shall be counted as votes for the candidates so designated. [2005 c 153 § 5.]

**29A.53.060 Voting conditions and limitations. (Expires July 1, 2013.)** (1)(a) Once a ballot is exhausted, it is disregarded and not subject to additional tabulation procedures.

(b) A ballot assigning the same ranking to more than one candidate for an office is exhausted when the duplicate ranking is reached. No vote may be recorded for any candidates designated with the same ranking on the same ballot.

(2) The county auditor may not count more than three choices for any one office from a ballot.

(3) If the total number of votes for all write-in candidates in each race during any counting stage is fewer than the last place candidate among the candidates appearing on the ballot, all write-in candidates must be eliminated for that counting stage and subsequent counting stages.

(4) If, following the conclusion of the counting stages, the tabulated ballots do not contain a sufficient number of effective second and lower choices for a candidate to receive a majority of the votes cast for any office, the candidate who either has the highest number of votes credited to him or her for that office, or who is the sole remaining candidate shall be deemed elected to the office.

(5) No votes may be counted for a candidate who has been eliminated. [2005 c 153 § 6.]

**29A.53.070 Local option authorized. (Expires July 1, 2013.)** (1) In accordance with the provisions of RCW 29A.53.020, the legislative body of a qualifying city may, for a specific election or elections, adopt instant runoff voting as the method for electing candidates for all nonpartisan city offices.

(2)(a) After adoption of instant runoff voting by the legislative body of a qualifying city for a specific election or elections as provided for by subsection (1) of this section, the city shall, before conducting an election using the instant runoff voting method, notify the county auditor and the secretary of state of its intent to hold such an election.

(b) If the county auditor notifies the city that existing election equipment of the county is insufficient for conducting an election under the instant runoff voting method, the city and the auditor shall negotiate an agreement for the purchase of any new equipment specifically required for this election method. Nothing in this subsection precludes the auditor from canvassing the returns of an instant runoff voting election by hand.

(3) The date of any election conducted under the instant runoff voting method must be consistent with the timeline required by RCW 29A.53.020. [2005 c 153 § 7.]

**29A.53.080 Ballot specifications and directions to voters. (Expires July 1, 2013.)** Ballots for elections conducted under the instant runoff voting method should be clear and easily understood. Sample ballots illustrating voting procedures must be posted in or near voting booths and included within instruction packets for absentee ballots. Directions provided to voters must conform substantially to the following specifications:

"You may choose a maximum of three candidates for each office in order of preference. Indicate your first choice designation by marking the number "1" beside a candidate's name (or by marking in the column labeled "First Choice"). Indicate your second choice designation by marking the number "2" beside a candidate's name (or by marking in the col-

umn labeled "Second Choice"). Indicate your third choice designation by marking the number "3" beside a candidate's name (or by marking in the column labeled "Third Choice"). You are not required to choose more than one candidate for each office. Designating two or more candidates in order of preference will not affect your first choice designation. Do not mark the same designation number beside more than one candidate or put more than one mark in each column for the office on which you are voting. Do not skip designation numbers."

[2005 c 153 § 8.]

**29A.53.090 Changes in voting devices and counting methods. (Expires July 1, 2013.)** Participating state and local election officials may provide for voting directions and the design, processing, and tabulation of instant runoff voting ballots used in the pilot project authorized by RCW 29A.53.020. State and local actions must be consistent with the provisions of this chapter.

Election officials should provide voters with a ballot that has a distinctive design, format, or layout for offices to which instant runoff voting applies. Ballot sections for contests that have fewer than three candidates for the same office, however, may differ from ballot sections for which the instant runoff voting method applies. [2005 c 153 § 9.]

**29A.53.900 Expiration date.** This chapter expires July 1, 2013. [2005 c 153 § 13.]

**29A.53.901 Captions not law—2005 c 153.** Captions used in this act are not part of the law. [2005 c 153 § 16.]

**29A.53.902 Severability—2005 c 153.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2005 c 153 § 17.]

**Chapter 29A.60 RCW  
CANVASSING**

Sections

- 29A.60.021 Write-in voting—Declaration of candidacy—Counting of vote.
- 29A.60.050 Questions on validity of ballot—Rejection—Preservation and return.
- 29A.60.070 Returns, precinct and cumulative—Delivery. (*Effective until July 1, 2006.*)
- 29A.60.070 Returns, precinct and cumulative—Delivery. (*Effective July 1, 2006.*)
- 29A.60.095 Electronic voting devices—Record maintenance.
- 29A.60.125 Damaged ballots.
- 29A.60.140 Canvassing board—Membership—Authority—Delegation of authority—Rule making. (*Effective July 1, 2006.*)
- 29A.60.160 Absentee ballots. (*Expires July 1, 2013.*)
- 29A.60.160 Absentee ballots. (*Effective July 1, 2013.*)
- 29A.60.165 Unsigned absentee or provisional ballots.
- 29A.60.185 Audit of results.
- 29A.60.190 Certification of election results—Unofficial returns. (*Expires July 1, 2013.*)
- 29A.60.190 Certification of election results—Unofficial returns. (*Effective July 1, 2013.*)
- 29A.60.195 Provisional ballots—Disposition.
- 29A.60.210 Recanvass—Generally.
- 29A.60.235 Certification reports.
- 29A.60.250 Secretary of state—Final returns—Scope.

**29A.60.021 Write-in voting—Declaration of candidacy—Counting of vote.** (1) For any office at any election or primary, any voter may write in on the ballot the name of any person for an office who has filed as a write-in candidate for the office in the manner provided by RCW 29A.24.311 and such vote shall be counted the same as if the name had been printed on the ballot and marked by the voter. No write-in vote made for any person who has not filed a declaration of candidacy pursuant to RCW 29A.24.311 is valid if that person filed for the same office, either as a regular candidate or a write-in candidate, at the preceding primary. Any abbreviation used to designate office or position will be accepted if the canvassing board can determine, to its satisfaction, the voter's intent.

(2) The number of write-in votes cast for each office must be recorded and reported with the canvass for the election.

(3) A write-in vote for an individual candidate for an office whose name appears on the ballot for that same office is a valid vote for that candidate as long as the candidate's name is clearly discernible, even if other requirements of RCW 29A.24.311 are not satisfied and even if the voter also marked a vote for that candidate such as to register an over-vote. These votes need not be tabulated unless: (a) The difference between the number of votes cast for the candidate apparently qualified to appear on the general election ballot or elected and the candidate receiving the next highest number of votes is less than the sum of the total number of write-in votes cast for the office plus the overvotes and undervotes recorded by the vote tabulating system; or (b) a manual recount is conducted for that office.

(4) Write-in votes cast for an individual candidate for an office whose name does not appear on the ballot need not be tallied unless the total number of write-in votes and undervotes recorded by the vote tabulation system for the office is greater than the number of votes cast for the candidate apparently qualified to appear on the general election ballot or elected.

(5) In the case of write-in votes for a statewide office or any office whose jurisdiction encompasses more than one county, write-in votes for an individual candidate must be tallied when the county auditor is notified by either the secretary of state or another county auditor in the multicounty jurisdiction that it appears that the write-in votes must be tabulated under the terms of this section. In all other cases, the county auditor determines when write-in votes must be tabulated. Any abstract of votes must be modified to reflect the tabulation and certified by the canvassing board. Tabulation of write-in votes may be performed simultaneously with a recount. [2005 c 243 § 12; 2004 c 271 § 147.]

**29A.60.050 Questions on validity of ballot—Rejection—Preservation and return.** Whenever the precinct election officers or the counting center personnel have a question about the validity of a ballot or the votes for an office or issue that they are unable to resolve, they shall prepare and sign a concise record of the facts in question or dispute. These ballots shall be delivered to the canvassing board for processing. A ballot is not considered rejected until the canvassing board has rejected the ballot individually, or the ballot was included in a batch or on a report of ballots that

was rejected in its entirety by the canvassing board. All ballots shall be preserved in the same manner as valid ballots for that primary or election. [2005 c 243 § 13; 2003 c 111 § 1505. Prior: 1990 c 59 § 57; 1977 ex.s. c 361 § 89; 1965 c 9 § 29.54.060; prior: Code 1881 § 3080, part; 1865 p 34 § 5, part; RRS § 5324, part. Formerly RCW 29.54.060.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

**29A.60.070 Returns, precinct and cumulative—Delivery. (Effective until July 1, 2006.)** The county auditor shall produce cumulative and precinct returns for each primary and election and deliver them to the canvassing board for verification and certification. The precinct and cumulative returns of any primary or election are public records under chapter 42.17 RCW.

Cumulative returns for state offices, judicial offices, the United States senate, and congress must be electronically transmitted to the secretary of state immediately. [2005 c 243 § 14; 2003 c 111 § 1507. Prior: 1990 c 59 § 60. Formerly RCW 29.54.105.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.60.070 Returns, precinct and cumulative—Delivery. (Effective July 1, 2006.)** The county auditor shall produce cumulative and precinct returns for each primary and election and deliver them to the canvassing board for verification and certification. The precinct and cumulative returns of any primary or election are public records under chapter 42.56 RCW.

Cumulative returns for state offices, judicial offices, the United States senate, and congress must be electronically transmitted to the secretary of state immediately. [2005 c 274 § 249; 2005 c 243 § 14; 2003 c 111 § 1507. Prior: 1990 c 59 § 60. Formerly RCW 29.54.105.]

**Reviser's note:** This section was amended by 2005 c 243 § 14 and by 2005 c 274 § 249, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.60.095 Electronic voting devices—Record maintenance.** (1) The electronic record produced and counted by electronic voting devices is the official record of each vote for election purposes. The paper record produced under RCW 29A.12.085 must be stored and maintained for use only in the following circumstances:

- (a) In the event of a manual recount;
- (b) By order of the county canvassing board;
- (c) By order of a court of competent jurisdiction; or
- (d) For use in the random audit of results described in RCW 29A.60.185.

(2) When such paper record is used in any of the circumstances listed in subsection (1) of this section, it shall be the official record of the election. [2005 c 242 § 3.]

*Unauthorized removal of paper record from polling place: RCW 29A.84.545.*

**29A.60.125 Damaged ballots.** If inspection of the ballot reveals a physically damaged ballot or ballot that may be otherwise unreadable or uncountable by the tabulating system, the county auditor may refer the ballot to the county canvassing board or duplicate the ballot if so authorized by the county canvassing board. The voter's original ballot may not be altered. A ballot may be duplicated only if the intent of the voter's marks on the ballot is clear and the electronic voting equipment might not otherwise properly tally the ballot to reflect the intent of the voter. Ballots must be duplicated by teams of two or more people working together. When duplicating ballots, the county auditor shall take the following steps to create and maintain an audit trail of the action taken:

(1) Each original ballot and duplicate ballot must be assigned the same unique control number, with the number being marked upon the face of each ballot, to ensure that each duplicate ballot may be tied back to the original ballot;

(2) A log must be kept of the ballots duplicated, which must at least include:

(a) The control number of each original ballot and the corresponding duplicate ballot;

(b) The initials of at least two people who participated in the duplication of each ballot; and

(c) The total number of ballots duplicated.

Original and duplicate ballots must be sealed in secure storage at all times, except during duplication, inspection by the canvassing board, or tabulation. [2005 c 243 § 10.]

**29A.60.140 Canvassing board—Membership—Authority—Delegation of authority—Rule making. (Effective July 1, 2006.)**

(1) Members of the county canvassing board are the county auditor, who is the chair, the county prosecuting attorney, and the chair of the county legislative body. If a member of the board is not available to carry out the duties of the board, then the auditor may designate a deputy auditor, the prosecutor may designate a deputy prosecuting attorney, and the chair of the county legislative body may designate another member of the county legislative body. Any such designation may be made on an election-by-election basis or may be on a permanent basis until revoked by the designating authority. Any such designation must be in writing, and if for a specific election, must be filed with the county auditor not later than the day before the first day duties are to be undertaken by the canvassing board. If the designation is permanent until revoked by the designating authority, then the designation must be on file in the county auditor's office no later than the day before the first day the designee is to undertake the duties of the canvassing board.

(2) The county canvassing board may adopt rules that delegate in writing to the county auditor or the county auditor's staff the performance of any task assigned by law to the canvassing board.

(3) The county canvassing board may not delegate the responsibility of certifying the returns of a primary or election, of determining the validity of challenged ballots, or of determining the validity of provisional ballots referred to the board by the county auditor.

(4) The county canvassing board shall adopt administrative rules to facilitate and govern the canvassing process in that jurisdiction.

(5) Meetings of the county canvassing board are public meetings under chapter 42.30 RCW. All rules adopted by the county canvassing board must be adopted in a public meeting under chapter 42.30 RCW, and once adopted must be available to the public to review and copy under chapter 42.56 RCW. [2005 c 274 § 250; 2003 c 111 § 1514.]

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

**29A.60.160 Absentee ballots. (Expires July 1, 2013.)**

Except for an election conducted under the instant runoff voting method for the pilot project authorized by RCW 29A.53.020, [and] except Sundays and legal holidays, the county auditor, as delegated by the county canvassing board, shall process absentee ballots and canvass the votes cast at that primary or election on a daily basis in counties with a population of seventy-five thousand or more, or at least every third day for counties with a population of less than seventy-five thousand, if the county auditor is in possession of more than twenty-five ballots that have yet to be canvassed. The county auditor, as delegated by the county canvassing board, may use his or her discretion in determining when to process the remaining absentee ballots and canvass the votes during the final four days before the certification of election results in order to protect the secrecy of any ballot. In counties where this process has not been delegated to the county auditor, the county auditor shall convene the county canvassing board to process absentee ballots and canvass the votes cast at the primary or election as set forth in this section.

Except for an election conducted under the instant runoff voting method for the pilot project authorized by RCW 29A.53.020, each absentee ballot previously not canvassed that was received by the county auditor two days or more before processing absentee ballots and canvassing the votes as delegated by or processed by the county canvassing board, that either was received by the county auditor before the closing of the polls on the day of the primary or election for which it was issued, or that bears a postmark on or before the primary or election for which it was issued, must be processed at that time. The tabulation of votes that results from that day's canvass must be made available to the general public immediately upon completion of the canvass. [2005 c 243 § 15; 2005 c 153 § 11; 2003 c 111 § 1516; 1999 c 259 § 4; 1995 c 139 § 2; 1987 c 54 § 2; 1965 c 9 § 29.62.020. Prior: 1957 c 195 § 15; prior: 1919 c 163 § 21, part; Code 1881 § 3095, part; 1868 p 20 § 1, part; 1865 p 39 § 6, part; RRS § 5340, part. Formerly RCW 29.62.020.]

**Reviser's note:** This section was amended by 2005 c 153 § 11 and by 2005 c 243 § 15, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Expiration date—2005 c 153 §§ 11 and 12:** "Sections 11 and 12 of this act expire July 1, 2013." [2005 c 153 § 14.]

**Captions not law—Severability—2005 c 153:** See RCW 29A.53.901 and 29A.53.902.

*Absentee ballots, canvassing: RCW 29A.40.110.*

**29A.60.160 Absentee ballots. (Effective July 1, 2013.)**

Except Sundays and legal holidays, the county auditor, as delegated by the county canvassing board, shall process absentee ballots and canvass the votes cast at that primary or election on a daily basis in counties with a population of seventy-five thousand or more, or at least every third day for counties with a population of less than seventy-five thousand, if the county auditor is in possession of more than twenty-five ballots that have yet to be canvassed. The county auditor, as delegated by the county canvassing board, may use his or her discretion in determining when to process the remaining absentee ballots and canvass the votes during the final four days before the certification of election results in order to protect the secrecy of any ballot. In counties where this process has not been delegated to the county auditor, the county auditor shall convene the county canvassing board to process absentee ballots and canvass the votes cast at the primary or election as set forth in this section.

Each absentee ballot previously not canvassed that was received by the county auditor two days or more before processing absentee ballots and canvassing the votes as delegated by or processed by the county canvassing board, that either was received by the county auditor before the closing of the polls on the day of the primary or election for which it was issued, or that bears a postmark on or before the primary or election for which it was issued, must be processed at that time. The tabulation of votes that results from that day's canvass must be made available to the general public immediately upon completion of the canvass. [2005 c 243 § 15; 2003 c 111 § 1516; 1999 c 259 § 4; 1995 c 139 § 2; 1987 c 54 § 2; 1965 c 9 § 29.62.020. Prior: 1957 c 195 § 15; prior: 1919 c 163 § 21, part; Code 1881 § 3095, part; 1868 p 20 § 1, part; 1865 p 39 § 6, part; RRS § 5340, part. Formerly RCW 29.62.020.]

*Absentee ballots, canvassing: RCW 29A.40.110.*

**29A.60.165 Unsigned absentee or provisional ballots.**

(1) If the voter neglects to sign the outside envelope of an absentee or provisional ballot, the auditor shall notify the voter by telephone and advise the voter of the correct procedures for completing the unsigned affidavit. If the auditor is not able to provide the information personally to the voter by telephone, then the voter must be contacted by first class mail and advised of the correct procedures for completing the unsigned affidavit. Leaving a voice mail message for the voter is not to be considered as personally contacting the voter. In order for the ballot to be counted, the voter must either:

(a) Appear in person and sign the envelope no later than the day before the certification of the primary or election; or

(b) Sign a copy of the envelope provided by the auditor, and return it to the auditor no later than the day before the certification of the primary or election.

(2)(a) If the handwriting of the signature on an absentee or provisional ballot envelope is not the same as the handwriting of the signature on the registration file, the auditor shall notify the voter by telephone and advise the voter of the correct procedures for updating his or her signature on the voter registration file. If the auditor is not able to provide the information personally to the voter by telephone, then the voter must be contacted by first class mail and advised of the

correct procedures for completing the unsigned affidavit. Leaving a voice mail message for the voter is not to be considered as personally contacting the voter. In order for the ballot to be counted, the voter must either:

(i) Appear in person and sign a new registration form no later than the day before the certification of the primary or election; or

(ii) Sign a copy of the affidavit provided by the auditor and return it to the auditor no later than the day before the certification of the primary or election. If the signature on the copy of the affidavit does not match the signature on file, the voter must appear in person and sign a new registration form no later than the day before the certification of the primary or election in order for the ballot to be counted.

(b) If the signature on an absentee or provisional ballot envelope is not the same as the signature on the registration file because the name is different, the ballot may be counted as long as the handwriting is clearly the same. The auditor shall send the voter a change-of-name form under RCW 29A.08.440 and direct the voter to complete the form.

(c) If the signature on an absentee or provisional ballot envelope is not the same as the signature on the registration file because the voter used initials or a common nickname, the ballot may be counted as long as the surname and handwriting are clearly the same.

(3) A voter may not cure a missing or mismatched signature for purposes of counting the ballot in a recount.

(4) A record must be kept of all ballots with missing and mismatched signatures. The record must contain the date on which the voter was contacted or the notice was mailed, as well as the date on which the voter signed the envelope, a copy of the envelope, a new registration form, or a change-of-name form. That record is a public record under chapter 42.17 RCW and may be disclosed to interested parties on written request. [2005 c 243 § 8.]

**29A.60.185 Audit of results.** Prior to certification of the election as required by RCW 29A.60.190, the county auditor shall conduct an audit of results of votes cast on the direct recording electronic voting devices used in the county. This audit must be conducted by randomly selecting by lot up to four percent of the direct recording electronic voting devices or one direct recording electronic voting device, whichever is greater, and, for each device, comparing the results recorded electronically with the results recorded on paper. For purposes of this audit, the results recorded on paper must be tabulated as follows: On one-fourth of the devices selected for audit, the paper records must be tabulated manually; on the remaining devices, the paper records may be tabulated by a mechanical device determined by the secretary of state to be capable of accurately reading the votes cast and printed thereon and qualified for use in the state under applicable state and federal laws. Three races or issues, randomly selected by lot, must be audited on each device. This audit procedure must be subject to observation by political party representatives if representatives have been appointed and are present at the time of the audit. [2005 c 242 § 5.]

**29A.60.190 Certification of election results—Unofficial returns. (Expires July 1, 2013.)** (1) Except as provided by subsection (3) of this section, ten days after a primary or special election and twenty-one days after a general election, the county canvassing board shall complete the canvass and certify the results. Each absentee ballot that was returned before the closing of the polls on the date of the primary or election for which it was issued, and each absentee ballot with a postmark on or before the date of the primary or election for which it was issued and received on or before the date on which the primary or election is certified, must be included in the canvass report.

(2) At the request of a caucus of the state legislature, the county auditor shall transmit copies of all unofficial returns of state and legislative primaries or elections prepared by or for the county canvassing board to either the secretary of the senate or the chief clerk of the house of representatives.

(3) On or before the thirtieth day after an election conducted under the instant runoff voting method for the pilot project authorized by RCW 29A.53.020, the canvassing board shall complete the canvass and certify the results. [2005 c 243 § 16; 2005 c 153 § 12; 2004 c 266 § 18; 2003 c 111 § 1519.]

**Reviser's note:** This section was amended by 2005 c 153 § 12 and by 2005 c 243 § 16, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Expiration date—2005 c 153 §§ 11 and 12:** See note following RCW 29A.60.160.

**Captions not law—Severability—2005 c 153:** See RCW 29A.53.901 and 29A.53.902.

**Effective date—2004 c 266:** See note following RCW 29A.04.575.

**29A.60.190 Certification of election results—Unofficial returns. (Effective July 1, 2013.)** (1) Ten days after a primary or special election and twenty-one days after a general election, the county canvassing board shall complete the canvass and certify the results. Each absentee ballot that was returned before the closing of the polls on the date of the primary or election for which it was issued, and each absentee ballot with a postmark on or before the date of the primary or election for which it was issued and received on or before the date on which the primary or election is certified, must be included in the canvass report.

(2) At the request of a caucus of the state legislature, the county auditor shall transmit copies of all unofficial returns of state and legislative primaries or elections prepared by or for the county canvassing board to either the secretary of the senate or the chief clerk of the house of representatives. [2005 c 243 § 16; 2004 c 266 § 18; 2003 c 111 § 1519.]

**Effective date—2004 c 266:** See note following RCW 29A.04.575.

**29A.60.195 Provisional ballots—Disposition.** Before certification of the primary or election, the county auditor must examine and investigate all received provisional ballots to determine whether the ballot can be counted. The auditor shall provide the disposition of the provisional ballot and, if the ballot was not counted, the reason why it was not counted, on a free access system such as a toll-free telephone number, web site, mail, or other means. The auditor must notify the voter in accordance with RCW 29A.60.165 when the enve-

lope is unsigned or when the signatures do not match. [2005 c 243 § 9.]

**29A.60.210 Recanvass—Generally.** Whenever the canvassing board finds during the initial counting process, or during any subsequent recount thereof, that there is an apparent discrepancy or an inconsistency in the returns of a primary or election, or that election staff has made an error regarding the treatment or disposition of a ballot, the board may recanvass the ballots or voting devices in any precincts of the county. The canvassing board shall conduct any necessary recanvass activity on or before the last day to certify or recertify the results of the primary, election, or subsequent recount and correct any error and document the correction of any error that it finds. [2005 c 243 § 17; 2003 c 111 § 1521; 1990 c 59 § 64; 1965 c 9 § 29.62.050. Prior: 1951 c 193 § 1; 1917 c 7 § 1, part; 1913 c 58 § 15, part; RRS § 5315, part. Formerly RCW 29.62.050.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

*Voting systems: Chapter 29A.12 RCW.*

**29A.60.235 Certification reports.** (1) The county auditor shall prepare, make publicly available at the auditor's office or on the auditor's web site, and submit at the time of certification an election reconciliation report that discloses the following information:

- (a) The number of registered voters;
- (b) The number of ballots counted;
- (c) The number of provisional ballots issued;
- (d) The number of provisional ballots counted;
- (e) The number of provisional ballots rejected;
- (f) The number of absentee ballots issued;
- (g) The number of absentee ballots counted;
- (h) The number of absentee ballots rejected;
- (i) The number of federal write-in ballots counted;
- (j) The number of out-of-state, overseas, and service ballots issued;
- (k) The number of out-of-state, overseas, and service ballots counted; and
- (l) The number of out-of-state, overseas, and service ballots rejected.

(2) The county auditor shall prepare and make publicly available at the auditor's office or on the auditor's web site within thirty days of certification a final election reconciliation report that discloses the following information:

- (a) The number of registered voters;
- (b) The total number of voters credited with voting;
- (c) The number of poll voters credited with voting;
- (d) The number of provisional voters credited with voting;
- (e) The number of absentee voters credited with voting;
- (f) The number of federal write-in voters credited with voting;
- (g) The number of out-of-state, overseas, and service voters credited with voting;
- (h) The total number of voters credited with voting even though their ballots were postmarked after election day and were not counted; and

(i) Any other information the auditor deems necessary to reconcile the number of ballots counted with the number of voters credited with voting.

(3) The county auditor may also prepare such reports for jurisdictions located, in whole or in part, in the county. [2005 c 243 § 11.]

**29A.60.250 Secretary of state—Final returns—Scope.** As soon as the returns have been received from all the counties of the state, but not later than the thirtieth day after the election, the secretary of state shall canvass and certify the returns of the general election as to candidates for state offices, the United States senate, congress, and all other candidates whose districts extend beyond the limits of a single county. The secretary of state shall transmit a copy of the certification to the governor, president of the senate, and speaker of the house of representatives. [2005 c 243 § 18; 2003 c 111 § 1525; 1965 c 9 § 29.62.120. Prior: Code 1881 § 3100, part; No RRS. Formerly RCW 29.62.120.]

## Chapter 29A.64 RCW RECOUNTS

### Sections

29A.64.021 Mandatory.  
29A.64.030 Deposit of fees—Notice—Public proceeding.  
29A.64.061 Amended abstracts.

**29A.64.021 Mandatory.** (1) If the official canvass of all of the returns for any office at any primary or election reveals that the difference in the number of votes cast for a candidate apparently nominated or elected to any office and the number of votes cast for the closest apparently defeated opponent is less than two thousand votes and also less than one-half of one percent of the total number of votes cast for both candidates, the county canvassing board shall conduct a recount of all votes cast on that position.

(a) Whenever such a difference occurs in the number of votes cast for candidates for a position the declaration of candidacy for which was filed with the secretary of state, the secretary of state shall, within three business days of the day that the returns of the primary or election are first certified by the canvassing boards of those counties, direct those boards to recount all votes cast on the position.

(b)(i) For statewide elections, if the difference in the number of votes cast for the apparent winner and the closest apparently defeated opponent is less than one thousand votes and also less than one-fourth of one percent of the total number of votes cast for both candidates, the votes shall be recounted manually or as provided in subsection (3) of this section.

(ii) For elections not included in (b)(i) of this subsection, if the difference in the number of votes cast for the apparent winner and the closest apparently defeated opponent is less than one hundred fifty votes and also less than one-fourth of one percent of the total number of votes cast for both candidates, the votes shall be recounted manually or as provided in subsection (3) of this section.

(2) A mandatory recount shall be conducted in the manner provided by RCW 29A.64.030, 29A.64.041, and

[2005 RCW Supp—page 276]

29A.64.061. No cost of a mandatory recount may be charged to any candidate.

(3) The apparent winner and closest apparently defeated opponent for an office for which a manual recount is required under subsection (1)(b) of this section may select an alternative method of conducting the recount. To select such an alternative, the two candidates shall agree to the alternative in a signed, written statement filed with the election official for the office. The recount shall be conducted using the alternative method if: It is suited to the balloting system that was used for casting the votes for the office; it involves the use of a vote tallying system that is approved for use in this state by the secretary of state; and the vote tallying system is readily available in each county required to conduct the recount. If more than one balloting system was used in casting votes for the office, an alternative to a manual recount may be selected for each system. [2005 c 243 § 19; 2004 c 271 § 178.]

**29A.64.030 Deposit of fees—Notice—Public proceeding.** An application for a recount shall state the office for which a recount is requested and whether the request is for all or only a portion of the votes cast in that jurisdiction of that office. The person filing an application for a manual recount shall, at the same time, deposit with the county canvassing board or secretary of state, in cash or by certified check, a sum equal to twenty-five cents for each ballot cast in the jurisdiction or portion of the jurisdiction for which the recount is requested as security for the payment of any costs of conducting the recount. If the application is for a machine recount, the deposit must be equal to fifteen cents for each ballot. These charges shall be determined by the county canvassing board or boards under RCW 29A.64.081.

The county canvassing board shall determine the date, time, and place or places at which the recount will be conducted. Not less than two days before the date of the recount, the county auditor shall mail a notice of the time and place of the recount to the applicant or affected parties and, if the recount involves an office, to any person for whom votes were cast for that office. The county auditor shall also notify the affected parties by either telephone, fax, e-mail, or other electronic means at the time of mailing. At least three attempts must be made over a two-day period to notify the affected parties or until the affected parties have received the notification. Each attempt to notify affected parties must request a return response indicating that the notice has been received. Each person entitled to receive notice of the recount may attend, witness the recount, and be accompanied by counsel.

Proceedings of the canvassing board are public under chapter 42.30 RCW. Subject to reasonable and equitable guidelines adopted by the canvassing board, all interested persons may attend and witness a recount. [2005 c 243 § 20; 2003 c 111 § 1603. Prior: 2001 c 225 § 5; 1991 c 81 § 36; 1987 c 54 § 5; 1977 ex.s. c 361 § 99; 1965 c 9 § 29.64.020; prior: 1961 c 50 § 2; 1955 c 215 § 2. Formerly RCW 29.64.020.]

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.



**29A.64.061 Amended abstracts.** Upon completion of the canvass of a recount, the canvassing board shall prepare and certify an amended abstract showing the votes cast in each precinct for which the recount was conducted. Copies of the amended abstracts must be transmitted to the same officers who received the abstract on which the recount was based.

If the nomination, election, or issue for which the recount was conducted was submitted only to the voters of a county, the canvassing board shall file the amended abstract with the original results of that election or primary.

If the nomination, election, or issue for which a recount was conducted was submitted to the voters of more than one county, the secretary of state shall canvass the amended abstracts and shall file an amended abstract with the original results of that election. The secretary of state may require that the amended abstracts be certified by each canvassing board on a uniform date. An amended abstract certified under this section supersedes any prior abstract of the results for the same offices or issues at the same primary or election. [2005 c 243 § 21; 2004 c 271 § 180.]

**Chapter 29A.68 RCW  
CONTESTING AN ELECTION**

Sections

29A.68.011 Prevention and correction of election frauds and errors.

**29A.68.011 Prevention and correction of election frauds and errors.** Any justice of the supreme court, judge of the court of appeals, or judge of the superior court in the proper county shall, by order, require any person charged with error, wrongful act, or neglect to forthwith correct the error, desist from the wrongful act, or perform the duty and to do as the court orders or to show cause forthwith why the error should not be corrected, the wrongful act desisted from, or the duty or order not performed, whenever it is made to appear to such justice or judge by affidavit of an elector that:

- (1) An error or omission has occurred or is about to occur in printing the name of any candidate on official ballots; or
- (2) An error other than as provided in subsections (1) and (3) of this section has been committed or is about to be committed in printing the ballots; or
- (3) The name of any person has been or is about to be wrongfully placed upon the ballots; or
- (4) A wrongful act other than as provided for in subsections (1) and (3) of this section has been performed or is about to be performed by any election officer; or
- (5) Any neglect of duty on the part of an election officer other than as provided for in subsections (1) and (3) of this section has occurred or is about to occur; or
- (6) An error or omission has occurred or is about to occur in the issuance of a certificate of election.

An affidavit of an elector under subsections (1) and (3) of this section when relating to a primary election must be filed with the appropriate court no later than the second Friday following the closing of the filing period for nominations for such office and shall be heard and finally disposed of by the court not later than five days after the filing thereof. An affidavit of an elector under subsections (1) and (3) of this

section when relating to a general election must be filed with the appropriate court no later than three days following the official certification of the primary election returns and shall be heard and finally disposed of by the court not later than five days after the filing thereof. An affidavit of an elector under subsection (6) of this section shall be filed with the appropriate court no later than ten days following the official certification of the election as provided in RCW 29A.60.190, 29A.60.240, or 29A.60.250 or, in the case of a recount, ten days after the official certification of the amended abstract as provided in RCW 29A.64.061. [2005 c 243 § 22; 2004 c 271 § 182.]

**Chapter 29A.72 RCW  
STATE INITIATIVE AND REFERENDUM**

Sections

- 29A.72.110 Petitions to legislature—Form. (*Effective January 1, 2006.*)
- 29A.72.120 Petitions to people—Form. (*Effective January 1, 2006.*)
- 29A.72.130 Referendum petitions—Form. (*Effective January 1, 2006.*)

**29A.72.110 Petitions to legislature—Form. (*Effective January 1, 2006.*)** Petitions for proposing measures for submission to the legislature at its next regular session must be substantially in the following form:

The warning prescribed by RCW 29A.72.140; followed by:

**INITIATIVE PETITION FOR SUBMISSION  
TO THE LEGISLATURE**

To the Honorable . . . . ., Secretary of State of the State of Washington:

We, the undersigned citizens and legal voters of the State of Washington, respectfully direct that this petition and the proposed measure known as Initiative Measure No. . . . . and entitled (here set forth the established ballot title of the measure), a full, true, and correct copy of which is printed on the reverse side of this petition, be transmitted to the legislature of the State of Washington at its next ensuing regular session, and we respectfully petition the legislature to enact said proposed measure into law; and each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington in the city (or town) and county written after my name, my residence address is correctly stated, and I have knowingly signed this petition only once.

The following declaration must be printed on the reverse side of the petition:

I, . . . . ., swear or affirm under penalty of law that I circulated this sheet of the foregoing petition, and that, to the best of my knowledge, every person who signed this sheet of the foregoing petition knowingly and without any compensation or promise of compensation willingly signed his or her true name and that the information provided therewith is true and correct. I further acknowledge that under chapter 29A.84 RCW, forgery of signatures on this petition constitutes a class C felony, and that offering any consideration or gratuity to any person to induce them to sign a petition is a gross misdemeanor, such violations being punishable by fine or imprisonment or both.

RCW 9A.46.020 applies to any conduct constituting harassment against a petition signature gatherer. This penalty does not preclude the victim from seeking any other remedy otherwise available under law.

The petition must include a place for each petitioner to sign and print his or her name, and the address, city, and county at which he or she is registered to vote. [2005 c 239 § 1; 2003 c 111 § 1812; 1982 c 116 § 9; 1965 c 9 § 29.79.090. Prior: 1913 c 138 § 5, part; RRS § 5401, part. Formerly RCW 29.79.090.]

**Effective date—2005 c 239:** "This act takes effect January 1, 2006." [2005 c 239 § 4.]

**29A.72.120 Petitions to people—Form. (Effective January 1, 2006.)** Petitions for proposing measures for submission to the people for their approval or rejection at the next ensuing general election must be substantially in the following form:

The warning prescribed by RCW 29A.72.140; followed by:

INITIATIVE PETITION FOR SUBMISSION TO THE PEOPLE

To the Honorable . . . . ., Secretary of State of the State of Washington:

We, the undersigned citizens and legal voters of the State of Washington, respectfully direct that the proposed measure known as Initiative Measure No. . . . ., entitled (here insert the established ballot title of the measure), a full, true and correct copy of which is printed on the reverse side of this petition, be submitted to the legal voters of the State of Washington for their approval or rejection at the general election to be held on the . . . . . day of November, (year); and each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington, in the city (or town) and county written after my name, my residence address is correctly stated, and I have knowingly signed this petition only once.

The following declaration must be printed on the reverse side of the petition:

I, . . . . ., swear or affirm under penalty of law that I circulated this sheet of the foregoing petition, and that, to the best of my knowledge, every person who signed this sheet of the foregoing petition knowingly and without any compensation or promise of compensation willingly signed his or her true name and that the information provided therewith is true and correct. I further acknowledge that under chapter 29A.84 RCW, forgery of signatures on this petition constitutes a class C felony, and that offering any consideration or gratuity to any person to induce them to sign a petition is a gross misdemeanor, such violations being punishable by fine or imprisonment or both.

RCW 9A.46.020 applies to any conduct constituting harassment against a petition signature gatherer. This penalty does not preclude the victim from seeking any other remedy otherwise available under law.

The petition must include a place for each petitioner to sign and print his or her name, and the address, city, and

county at which he or she is registered to vote. [2005 c 239 § 2; 2003 c 111 § 1813; 1982 c 116 § 10; 1965 c 9 § 29.79.100. Prior: 1913 c 138 § 6, part; RRS § 5402, part. Formerly RCW 29.79.100.]

**Effective date—2005 c 239:** See note following RCW 29A.72.110.

**29A.72.130 Referendum petitions—Form. (Effective January 1, 2006.)** Petitions ordering that acts or parts of acts passed by the legislature be referred to the people at the next ensuing general election, or special election ordered by the legislature, must be substantially in the following form:

The warning prescribed by RCW 29A.72.140; followed by:

PETITION FOR REFERENDUM

To the Honorable . . . . ., Secretary of State of the State of Washington:

We, the undersigned citizens and legal voters of the State of Washington, respectfully order and direct that Referendum Measure No. . . . ., filed to revoke a (or part or parts of a) bill that (concise statement required by RCW 29A.36.071) and that was passed by the . . . . . legislature of the State of Washington at the last regular (special) session of said legislature, shall be referred to the people of the state for their approval or rejection at the regular (special) election to be held on the . . . . . day of November, (year); and each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington, in the city (or town) and county written after my name, my residence address is correctly stated, and I have knowingly signed this petition only once.

The following declaration must be printed on the reverse side of the petition:

I, . . . . ., swear or affirm under penalty of law that I circulated this sheet of the foregoing petition, and that, to the best of my knowledge, every person who signed this sheet of the foregoing petition knowingly and without any compensation or promise of compensation willingly signed his or her true name and that the information provided therewith is true and correct. I further acknowledge that under chapter 29A.84 RCW, forgery of signatures on this petition constitutes a class C felony, and that offering any consideration or gratuity to any person to induce them to sign a petition is a gross misdemeanor, such violations being punishable by fine or imprisonment or both.

RCW 9A.46.020 applies to any conduct constituting harassment against a petition signature gatherer. This penalty does not preclude the victim from seeking any other remedy otherwise available under law.

The petition must include a place for each petitioner to sign and print his or her name, and the address, city, and county at which he or she is registered to vote. [2005 c 239 § 3; 2003 c 111 § 1814; 1993 c 256 § 10; 1982 c 116 § 11; 1965 c 9 § 29.79.110. Prior: 1913 c 138 § 7, part; RRS § 5403, part. Formerly RCW 29.79.110.]

**Effective date—2005 c 239:** See note following RCW 29A.72.110.

**Severability—Effective date—1993 c 256:** See notes following RCW 29A.84.280.

## Chapter 29A.80 RCW POLITICAL PARTIES

### Sections

- 29A.80.010 Rule-making authority. (*Effective if unconstitutionality of Initiative Measure No. 872 is reversed by pending appeal.*)  
29A.80.010 Authority—Generally.

**29A.80.010 Rule-making authority.** (*Effective if unconstitutionality of Initiative Measure No. 872 is reversed by pending appeal.*) Each political party organization may adopt rules governing its own organization and the nonstatutory functions of that organization. [2005 c 2 § 14 (Initiative Measure No. 872, approved November 2, 2004); 2003 c 111 § 2001; 1977 ex.s. c 329 § 16; 1965 c 9 § 29.42.010. Prior: 1961 c 130 § 2; prior: 1943 c 178 § 1, part; 1939 c 48 § 1, part; 1927 c 200 § 1, part; 1925 ex.s. c 158 § 1, part; 1909 c 82 § 6, part; 1907 c 209 § 22, part; Rem. Supp. 1943 § 5198, part. Formerly RCW 29.42.010.]

**Reviser's note:** (1) Initiative Measure No. 872 was declared unconstitutional in its entirety in *Washington State Republican Party, et al. v. Logan, et al.*, U.S.D.C. No. CV05-0927-TSZ (W.D. Wash. 2005). The decision was under appeal at the time this material was published.

(2) RCW 29A.80.010 was amended by 2005 c 2 § 14 (Initiative Measure No. 872) without cognizance of its repeal by 2004 c 271 § 193. For rule of construction, see RCW 1.12.025.

**Short title—Intent—Contingent effective date—2005 c 2 (Initiative Measure No. 872):** See notes following RCW 29A.52.112.

*Vacancies on ticket—How filled:* RCW 29A.28.010, 29A.28.020.

**29A.80.010 Authority—Generally.** [2003 c 111 § 2001; 1977 ex.s. c 329 § 16; 1965 c 9 § 29.42.010. Prior: 1961 c 130 § 2; prior: 1943 c 178 § 1, part; 1939 c 48 § 1, part; 1927 c 200 § 1, part; 1925 ex.s. c 158 § 1, part; 1909 c 82 § 6, part; 1907 c 209 § 22, part; Rem. Supp. 1943 § 5198, part. Formerly RCW 29.42.010.] Repealed by 2004 c 271 § 193.

**Reviser's note:** (1) Initiative Measure No. 872 was declared unconstitutional in its entirety in *Washington State Republican Party, et al. v. Logan, et al.*, U.S.D.C. No. CV05-0927-TSZ (W.D. Wash. 2005). The decision was under appeal at the time this material was published.

(2) RCW 29A.80.010 was amended by 2005 c 2 § 14 (Initiative Measure No. 872) without cognizance of its repeal by 2004 c 271 § 193. For rule of construction, see RCW 1.12.025.

## Chapter 29A.84 RCW CRIMES AND PENALTIES

### Sections

- 29A.84.050 Tampering with registration form, absentee or provisional ballots.  
29A.84.140 Unqualified registration. (*Effective January 1, 2006.*)  
29A.84.545 Paper record from electronic voting device—Removing from polling place.  
29A.84.650 Repeaters.

**29A.84.050 Tampering with registration form, absentee or provisional ballots.** A person who knowingly destroys, alters, defaces, conceals, or discards a completed voter registration form or signed absentee or provisional ballot signature affidavit is guilty of a gross misdemeanor. This section does not apply to (1) the voter who completed the voter registration form, or (2) a county auditor or registration assistant who acts as authorized by voter registration law. [2005 c 243 § 23.]

**29A.84.140 Unqualified registration.** (*Effective January 1, 2006.*) A person who knows that he or she does not possess the legal qualifications of a voter and who registers to vote is guilty of a class C felony. [2005 c 246 § 22; 2003 c

111 § 2108. Prior: 2001 c 41 § 13. Formerly RCW 29.85.249.]

**Effective date—2005 c 246:** See note following RCW 10.64.140.

**29A.84.545 Paper record from electronic voting device—Removing from polling place.** Anyone who, without authorization, removes from a polling place a paper record produced by an electronic voting device is guilty of a class C felony punishable under RCW 9A.20.021. [2005 c 242 § 6.]

*Paper records:* RCW 29A.44.045, 29A.60.095.

**29A.84.650 Repeaters.** (1) Any person who intentionally votes or attempts to vote in this state more than once at any election, or who intentionally votes or attempts to vote in both this state and another state at any election, is guilty of a class C felony.

(2) Any person who recklessly or negligently violates this section commits a class 1 civil infraction as provided in RCW 7.80.120. [2005 c 243 § 24; 2003 c 111 § 2131. Prior: 1991 c 81 § 13; 1965 c 9 § 29.85.210; prior: 1911 c 89 § 1, part; Code 1881 § 903; 1873 p 204 § 102; 1865 p 51 § 5; 1854 p 93 § 93; RRS § 5383. Formerly RCW 29.85.210.]

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

## Title 30

## BANKS AND TRUST COMPANIES

### Chapters

- 30.04 General provisions.  
30.38 Interstate banking.

## Chapter 30.04 RCW GENERAL PROVISIONS

### Sections

- 30.04.075 Examination reports and information—Confidentiality—Disclosure—Penalty. (*Effective July 1, 2006.*)  
30.04.230 Authority of corporation or association to acquire stock of bank, trust company, or national banking association. (*Effective July 1, 2006.*)  
30.04.410 Bank acquisition or control—Disapproval by director—Change of officers. (*Effective July 1, 2006.*)

**30.04.075 Examination reports and information—Confidentiality—Disclosure—Penalty.** (*Effective July 1, 2006.*) (1) All examination reports and all information obtained by the director and the director's staff in conducting examinations of banks, trust companies, or alien banks, and information obtained by the director and the director's staff from other state or federal bank regulatory authorities with whom the director has entered into agreements pursuant to RCW 30.04.060(2), and information obtained by the director and the director's staff relating to examination and supervision of bank holding companies owning a bank in this state or subsidiaries of such holding companies, is confidential and privileged information and shall not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) Subsection (1) of this section notwithstanding, the director may furnish all or any part of examination reports prepared by the director's office to:

(a) Federal agencies empowered to examine state banks, trust companies, or alien banks;

(b) Bank regulatory authorities with whom the director has entered into agreements pursuant to RCW 30.04.060(2), and other bank regulatory authorities who are the primary regulatory authority or insurer of accounts for a bank holding company owning a bank, trust company, or national banking association the principal operations of which are conducted in this state or a subsidiary of such holding company; provided that the director shall first find that the reports of examination to be furnished shall receive protection from disclosure comparable to that accorded by this section;

(c) Officials empowered to investigate criminal charges subject to legal process, valid search warrant, or subpoena. If the director furnishes any examination report to officials empowered to investigate criminal charges, the director may only furnish that part of the report which is necessary and pertinent to the investigation, and the director may do this only after notifying the affected bank, trust company, or alien bank and any customer of the bank, trust company, or alien bank who is named in that part of the examination or report ordered to be furnished unless the officials requesting the report first obtain a waiver of the notice requirement from a court of competent jurisdiction for good cause;

(d) The examined bank, trust company, or alien bank, or holding company thereof;

(e) The attorney general in his or her role as legal advisor to the director;

(f) Liquidating agents of a distressed bank, trust company, or alien bank;

(g) A person or organization officially connected with the bank as officer, director, attorney, auditor, or independent attorney or independent auditor;

(h) The Washington public deposit protection commission as provided by RCW 39.58.105.

(3) All examination reports furnished under subsections (2) and (4) of this section shall remain the property of the department of financial institutions, and be confidential and no person, agency, or authority to whom reports are furnished or any officer, director, or employee thereof shall disclose or make public any of the reports or any information contained therein except in published statistical material that does not disclose the affairs of any individual or corporation: PROVIDED, That nothing herein shall prevent the use in a criminal prosecution of reports furnished under subsection (2) of this section.

(4) The examination report made by the department of financial institutions is designed for use in the supervision of the bank, trust company, or alien bank. The report shall remain the property of the director and will be furnished to the bank, trust company, or alien bank solely for its confidential use. Under no circumstances shall the bank, trust company, or alien bank or any of its directors, officers, or employees disclose or make public in any manner the report or any portion thereof, to any person or organization not connected with the bank as officer, director, employee, attorney, auditor, or candidate for executive office with the bank. The bank may also, after execution of an agreement not to dis-

close information in the report, disclose the report or relevant portions thereof to a party proposing to acquire or merge with the bank.

(5) Examination reports and information obtained by the director and the director's staff in conducting examinations, or obtained from other state and federal bank regulatory authorities with whom the director has entered into agreements pursuant to RCW 30.04.060(2), or relating to examination and supervision of bank holding companies owning a bank, trust company, or national banking association the principal operations of which are conducted in this state or a subsidiary of such holding company, or information obtained as a result of applications or investigations pursuant to RCW 30.04.230, shall not be subject to public disclosure under chapter 42.56 RCW.

(6) In any civil action in which the reports are sought to be discovered or used as evidence, any party may, upon notice to the director, petition the court for an in camera review of the report. The court may permit discovery and introduction of only those portions of the report which are relevant and otherwise unobtainable by the requesting party. This subsection shall not apply to an action brought or defended by the director.

(7) This section shall not apply to investigation reports prepared by the director and the director's staff concerning an application for a new bank or trust company or an application for a branch of a bank, trust company, or alien bank: PROVIDED, That the director may adopt rules making confidential portions of the reports if in the director's opinion the public disclosure of the portions of the report would impair the ability to obtain the information which the director considers necessary to fully evaluate the application.

(8) Every person who violates any provision of this section shall be guilty of a gross misdemeanor. [2005 c 274 § 251; 1994 c 92 § 11; 1989 c 180 § 2; 1986 c 279 § 2; 1977 ex.s. c 245 § 1.]

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

**Severability—1977 ex.s. c 245:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 245 § 6.]

*Examination reports and information from financial institutions exempt:*  
RCW 42.56.400.

**30.04.230 Authority of corporation or association to acquire stock of bank, trust company, or national banking association. (Effective July 1, 2006.)** (1) A corporation or association organized under the laws of this state or licensed to transact business in the state may acquire any or all shares of stock of any bank, trust company, or national banking association. Nothing in this section shall be construed to prohibit the merger, consolidation, or reorganization of a bank or trust company in accordance with this title.

(2) Unless the terms of this section or RCW 30.04.232 are complied with, an out-of-state bank holding company shall not acquire more than five percent of the shares of the voting stock or all or substantially all of the assets of a bank, trust company, or national banking association the principal operations of which are conducted within this state.

(3) As used in this section a "bank holding company" means a company that is a bank holding company as defined by the Bank Holding Company Act of 1956, as amended (12 U.S.C. Sec. 1841 et seq.). An "out-of-state bank holding company" is a bank holding company that principally conducts its operations outside this state, as measured by total deposits held or controlled by its bank subsidiaries on the date on which it became a holding company. A "domestic bank holding company" is a bank holding company that principally conducts its operations within this state, as measured by total deposits held or controlled by its bank subsidiaries on the date on which it became a bank holding company.

(4) Any such acquisition referred to under subsection (2) of this section by an out-of-state bank holding company requires the express written approval of the director. Approval shall not be granted unless and until the following conditions are met:

(a) An out-of-state bank holding company desiring to make an acquisition referred to under subsection (2) of this section and the bank, trust company, national banking association, or domestic bank holding company parent thereof, if any, proposed to be acquired shall file an application in writing with the director. The director shall by rule establish the fee schedule to be collected from the applicant in connection with the application. The fee shall not exceed the cost of processing the application. The application shall contain such information as the director may prescribe by rule as necessary or appropriate for the purpose of making a determination under this section. The application and supporting information and all examination reports and information obtained by the director and the director's staff in conducting its investigation shall be confidential and privileged and not subject to public disclosure under chapter 42.56 RCW. The application and information may be disclosed to federal bank regulatory agencies and to officials empowered to investigate criminal charges, subject to legal process, valid search warrant, or subpoena. In any civil action in which such application or information is sought to be discovered or used as evidence, any party may, upon notice to the director and other parties, petition for an in camera review. The court may permit discovery and introduction of only those portions that are relevant and otherwise unobtainable by the requesting party. The application and information shall be discoverable in any judicial action challenging the approval of an acquisition by the director as arbitrary and capricious or unlawful.

(b) The director shall find that:

(i) The bank, trust company, or national banking association that is proposed to be acquired or the domestic bank holding company controlling such bank, trust company, or national banking association is in such a liquidity or financial condition as to be in danger of closing, failing, or insolvency. In making any such determination the director shall be guided by the criteria developed by the federal regulatory agencies with respect to emergency acquisitions under the provisions of 12 U.S.C. Sec. 1828(c);

(ii) There is no state bank, trust company, or national banking association doing business in the state of Washington or domestic bank holding company with sufficient resources willing to acquire the entire bank, trust company, or national banking association on at least as favorable terms

as the out-of-state bank holding company is willing to acquire it;

(iii) The applicant out-of-state bank holding company has provided all information and documents requested by the director in relation to the application; and

(iv) The applicant out-of-state bank holding company has demonstrated an acceptable record of meeting the credit needs of its entire community, including low and moderate income neighborhoods, consistent with the safe and sound operation of such institution.

(c) The director shall consider:

(i) The financial institution structure of this state; and

(ii) The convenience and needs of the public of this state.

(5) Nothing in this section may be construed to prohibit, limit, restrict, or subject to further regulation the ownership by a bank of the stock of a bank service corporation or a banker's bank. [2005 c 274 § 252; 1994 c 92 § 22; 1987 c 420 § 2. Prior: 1985 c 310 § 2; 1985 c 305 § 4; 1983 c 157 § 9; 1982 c 196 § 7; 1981 c 89 § 2; 1973 1st ex.s. c 92 § 1; 1961 c 69 § 1; 1955 c 33 § 30.04.230; prior: 1933 c 42 § 10; RRS § 3243-1.]

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

**Construction—Effective date—1985 c 310:** See notes following RCW 30.04.232.

**Severability—1983 c 157:** See note following RCW 30.04.060.

**Severability—1982 c 196:** See note following RCW 30.04.550.

**Severability—1981 c 89:** See note following RCW 30.04.180.

### **30.04.410 Bank acquisition or control—Disapproval by director—Change of officers. (Effective July 1, 2006.)**

(1) The director may disapprove the acquisition of a bank or trust company within thirty days after the filing of a complete application pursuant to RCW 30.04.405 or an extended period not exceeding an additional fifteen days if:

(a) The poor financial condition of any acquiring party might jeopardize the financial stability of the bank or might prejudice the interests of the bank depositors, borrowers, or shareholders;

(b) The plan or proposal of the acquiring party to liquidate the bank, to sell its assets, to merge it with any person, or to make any other major change in its business or corporate structure or management is not fair and reasonable to the bank's depositors, borrowers, or stockholders or is not in the public interest;

(c) The banking and business experience and integrity of any acquiring party who would control the operation of the bank indicates that approval would not be in the interest of the bank's depositors, borrowers, or shareholders;

(d) The information provided by the application is insufficient for the director to make a determination or there has been insufficient time to verify the information provided and conduct an examination of the qualification of the acquiring party; or

(e) The acquisition would not be in the public interest.

(2) An acquisition may be made prior to expiration of the disapproval period if the director issues written notice of intent not to disapprove the action.

(3) The director shall set forth the basis for disapproval of any proposed acquisition in writing and shall provide a copy of such findings and order to the applicants and to the

bank involved. Such findings and order shall not be disclosed to any other party and shall not be subject to public disclosure under chapter 42.56 RCW unless the findings and/or order are appealed pursuant to chapter 34.05 RCW.

(4) Whenever such a change in control occurs, each party to the transaction shall report promptly to the director any changes or replacement of its chief executive officer, or of any director, that occurs in the next twelve-month period, including in its report a statement of the past and present business and professional affiliations of the new chief executive officer or directors. [2005 c 274 § 253; 1994 c 92 § 30; 1989 c 180 § 3; 1977 ex.s. c 246 § 3.]

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

### Chapter 30.38 RCW INTERSTATE BANKING

#### Sections

30.38.005	Definitions.
30.38.010	Out-of-state bank may engage in banking in this state—Conditions—Director's approval of interstate combination.
30.38.015	Out-of-state bank without a branch in this state—Options—Director's approval required—State reciprocity.

**30.38.005 Definitions.** As used in this chapter, unless a different meaning is required by the context, the following words and phrases have the following meanings:

(1) "Bank" means any national bank, state bank, and district bank, as those terms are defined in 12 U.S.C. Sec. 1813(a), and any savings association, as defined in 12 U.S.C. Sec. 1813(b).

(2) "Bank holding company" has the meaning set forth in 12 U.S.C. Sec. 1841(a)(1), and also means a savings and loan holding company, as defined in 12 U.S.C. Sec. 1467a.

(3) "Bank supervisory agency" means:

(a) Any agency of another state with primary responsibility for chartering and supervising banks; and

(b) The office of the comptroller of the currency, the federal deposit insurance corporation, the board of governors of the federal reserve system, and any successor to these agencies.

(4) "Control" shall be construed consistently with the provisions of 12 U.S.C. Sec. 1841(a)(2).

(5) "Home state" means with respect to a:

(a) State bank, the state by which the bank is chartered; or

(b) Federally chartered bank, the state in which the main office of the bank is located under federal law.

(6) "Home state regulator" means, with respect to an out-of-state state bank, the bank supervisory agency of the state in which the bank is chartered.

(7) "Host state" means a state, other than the home state of a bank, in which the bank maintains, or seeks to establish and maintain a branch.

(8) "Interstate combination" means the:

(a) Merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; or

(b) Purchase of all or substantially all of the assets, including all or substantially all of the branches, of a bank whose home state is different from the home state of the acquiring bank.

(9) "Out-of-state bank" means a bank whose home state is a state other than Washington.

(10) "Out-of-state state bank" means a bank chartered under the laws of any state other than Washington.

(11) "Resulting bank" means a bank that has resulted from an interstate combination under this chapter.

(12) "State" means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(13) "Washington bank" means a bank whose home state is Washington.

(14) "Washington state bank" means a bank organized under Washington banking law.

(15) "Branch" means an office of a bank through which it receives deposits, other than its principal office. Any of the functions or services authorized to be engaged in by a bank may be carried out in an authorized branch office.

(16) "De novo branch" means a branch of a bank located in a host state which:

(a) Is originally established by the bank as a branch; and

(b) Does not become a branch of the bank as a result of:

(i) The acquisition of another bank or a branch of another bank; or

(ii) A merger, consolidation, or conversion involving any such bank or branch. [2005 c 348 § 1; 1996 c 2 § 10.]

**Effective date—2005 c 348:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 2005]." [2005 c 348 § 7.]

**30.38.010 Out-of-state bank may engage in banking in this state—Conditions—Director's approval of interstate combination.** (1) An out-of-state bank may engage in banking in this state without violating RCW 30.04.280 only if the conditions and filing requirements of this chapter are met and the bank was lawfully engaged in banking in this state on June 6, 1996, or the bank's in-state banking activities:

(a) Resulted from an interstate combination pursuant to RCW 30.49.125 or 32.32.500;

(b) Resulted from a relocation of a head office of a state bank pursuant to 12 U.S.C. Sec. 30 and RCW 30.04.215(3);

(c) Resulted from a relocation of a main office of a national bank pursuant to 12 U.S.C. Sec. 30;

(d) Resulted from the establishment of a branch of a savings bank in compliance with \*RCW 32.04.030(2); or

(e) Resulted from interstate branching under RCW 30.38.015.

Nothing in this section affects the authorities of alien banks as defined by RCW 30.42.020 to engage in banking within this state.

(2) The director, consistent with 12 U.S.C. Sec. 1831u(b)(2)(D), may approve an interstate combination if the standard on which the approval is based does not discriminate against out-of-state banks, out-of-state bank holding

companies, or subsidiaries of those banks or holding companies. [2005 c 348 § 2; 1996 c 2 § 11.]

\*Reviser's note: RCW 32.04.030 was amended by 2005 c 348 § 4, changing subsection (2) to subsection (6).

Effective date—2005 c 348: See note following RCW 30.38.005.

**30.38.015 Out-of-state bank without a branch in this state—Options—Director's approval required—State reciprocity.** (1) An out-of-state bank that does not have a branch in Washington may, under this chapter, establish and maintain:

(a) A de novo branch in this state; or

(b) A branch in this state through the acquisition of a branch.

(2) An out-of-state bank desiring to establish and maintain a de novo branch or to acquire a branch in this state shall provide written application of the proposed transaction to the director, accompanied by the fee prescribed by the director, not later than three days after the date of filing with the responsible federal bank supervisory agency for approval to establish or acquire the branch.

(3) The director may not approve an application under subsection (2) of this section unless it is found that:

(a) In the case of a de novo branch, the laws of the home state of the out-of-state bank permit Washington banks to establish and maintain de novo branches in that state under substantially the same, or at least as favorable, terms and conditions as set forth in this chapter; or

(b) In the case of a branch established through the acquisition of a branch, the laws of the home state of the out-of-state bank permit Washington banks to establish and maintain branches in that state through the acquisition of branches under terms and conditions that are substantially the same, or at least as favorable, as set forth in this chapter. [2005 c 348 § 3.]

Effective date—2005 c 348: See note following RCW 30.38.005.

## Title 31

### MISCELLANEOUS LOAN AGENCIES

#### Chapters

**31.12** Washington state credit union act.

**31.45** Check cashers and sellers.

#### Chapter 31.12 RCW

#### WASHINGTON STATE CREDIT UNION ACT

##### Sections

31.12.565 Examination reports and information confidential—Exceptions—Penalty. (*Effective July 1, 2006.*)

**31.12.565 Examination reports and information confidential—Exceptions—Penalty.** (*Effective July 1, 2006.*)

(1) The following are confidential and privileged and not subject to public disclosure under chapter 42.56 RCW:

(a) Examination reports and information obtained by the director in conducting examinations and investigations under this chapter and chapter 31.13 RCW;

(b) Examination reports and related information from other financial institution regulators obtained by the director;

(c) Reports or parts of reports accepted in lieu of an examination under RCW 31.12.545; and

(d) Business plans and other proprietary information obtained by the director in connection with a credit union's application or notice to the director.

(2) Notwithstanding subsection (1) of this section, the director may furnish examination reports prepared by the director to:

(a) Federal agencies empowered to examine credit unions or other financial institutions;

(b) Officials empowered to investigate criminal charges. The director may furnish only that part of the report which is necessary and pertinent to the investigation, and only after notifying the affected credit union and members of the credit union who are named in that part of the examination report, or other person examined, that the report is being furnished to the officials, unless the officials requesting the report obtain a waiver of the notice requirement for good cause from a court of competent jurisdiction;

(c) The examined credit union or other person examined, solely for its confidential use;

(d) The attorney general in his or her role as legal advisor to the director;

(e) Prospective merger partners or conservators, receivers, or liquidating agents of a distressed credit union;

(f) Credit union regulators in other states or foreign jurisdictions regarding an out-of-state or foreign credit union conducting business in this state under this chapter, or regarding a credit union conducting business in the other state or jurisdiction;

(g) A person officially connected with the credit union or other person examined, as officer, director, supervisory committee member, attorney, auditor, accountant, independent attorney, independent auditor, or independent accountant;

(h) Organizations that have bonded the credit union to the extent that information is relevant to the renewal of the bond coverage or to a claim under the bond coverage;

(i) Organizations insuring or guaranteeing the shares of, or deposits in, the credit union; or

(j) Other persons as the director may determine necessary to protect the public interest and confidence.

(3) Examination reports furnished under subsection (2) of this section remain the property of the director and no person to whom reports are furnished or any officer, director, or employee thereof may disclose or make public the reports or information contained in the reports except in published statistical information that does not disclose the affairs of a person, except that nothing prevents the use in a criminal prosecution of reports furnished under subsection (2)(b) of this section.

(4) In a civil action in which the reports or information are sought to be discovered or used as evidence, a party may, upon notice to the director, petition the court for an in-camera review of the reports or information. The court may permit discovery and introduction of only those portions of the report or information which are relevant and otherwise unobtainable by the requesting party. This subsection does not apply to an action brought or defended by the director.

(5) This section does not apply to investigation reports prepared by the director concerning an application for a new credit union or a notice of intent to establish a branch of a credit union, except that the director may adopt rules making portions of the reports confidential, if in the director's opinion the public disclosure of that portion of the report would impair the ability to obtain information the director considers necessary to fully evaluate the application.

(6) Any person who knowingly violates a provision of this section is guilty of a gross misdemeanor. [2005 c 274 § 254; 2001 c 83 § 28; 1997 c 397 § 48. Prior: 1994 c 256 § 90; 1994 c 92 § 209; 1984 c 31 § 58.]

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

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

*Examination reports and information from financial institutions exempt: RCW 42.56.400.*

## Chapter 31.45 RCW

### CHECK CASHERS AND SELLERS

#### Sections

- 31.45.030 License required—Small loan endorsement—Application—Fee—Bond—Deposit in lieu of bond—Director's duties. (*Effective July 1, 2006.*)
- 31.45.077 Small loan endorsement—Application—Form—Information—Exemption from disclosure—Fees. (*Effective July 1, 2006.*)
- 31.45.090 Report requirements—Disclosure of information—Rules. (*Effective July 1, 2006.*)
- 31.45.210 Military borrowers—Licensee's duty—Definition.

#### **31.45.030 License required—Small loan endorsement—Application—Fee—Bond—Deposit in lieu of bond—Director's duties. (*Effective July 1, 2006.*)**

(1) Except as provided in RCW 31.45.020, no check casher or seller may engage in business without first obtaining a license from the director in accordance with this chapter. A license is required for each location where a licensee engages in the business of cashing or selling checks or drafts.

(2) Each application for a license shall be in writing in a form prescribed by the director and shall contain the following information:

(a) The legal name, residence, and business address of the applicant and, if the applicant is a partnership, association, or corporation, of every member, officer, and director thereof;

(b) The location where the initial registered office of the applicant will be located in this state;

(c) The complete address of any other locations at which the applicant proposes to engage in business as a check casher or seller; and

(d) Such other data, financial statements, and pertinent information as the director may require with respect to the applicant, its directors, trustees, officers, members, or agents.

(3) Any information in the application regarding the personal residential address or telephone number of the applicant, and any trade secret as defined in RCW 19.108.010 including any financial statement that is a trade secret, is exempt from the public records disclosure requirements of chapter 42.56 RCW.

(4) The application shall be filed together with an investigation and supervision fee established by rule by the direc-

tor. Such fees collected shall be deposited to the credit of the financial services regulation fund in accordance with RCW 43.320.110.

(5)(a) Before granting a license to sell checks, drafts, or money orders under this chapter, the director shall require that the licensee file with the director a surety bond running to the state of Washington, which bond shall be issued by a surety insurer which meets the requirements of chapter 48.28 RCW, and be in a format acceptable to the director. The director shall adopt rules to determine the penal sum of the bond that shall be filed by each licensee. The bond shall be conditioned upon the licensee paying all persons who purchase checks, drafts, or money orders from the licensee the face value of any check, draft, or money order which is dishonored by the drawee bank, savings bank, or savings and loan association due to insufficient funds or by reason of the account having been closed. The bond shall only be liable for the face value of the dishonored check, draft, or money order, and shall not be liable for any interest or consequential damages.

(b) Before granting a small loan endorsement under this chapter, the director shall require that the licensee file with the director a surety bond, in a format acceptable to the director, issued by a surety insurer that meets the requirements of chapter 48.28 RCW. The director shall adopt rules to determine the penal sum of the bond that shall be filed by each licensee. A licensee who wishes to engage in both check selling and making small loans may combine the penal sums of the bonding requirements and file one bond in a form acceptable to the director. The bond shall run to the state of Washington as obligee, and shall run to the benefit of the state and any person or persons who suffer loss by reason of the licensee's violation of this chapter or any rules adopted under this chapter. The bond shall only be liable for damages suffered by borrowers as a result of the licensee's violation of this chapter or rules adopted under this chapter, and shall not be liable for any interest or consequential damages.

(c) The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the director and licensee of its intent to cancel the bond. The cancellation is effective thirty days after the notice is received by the director. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond shall not be liable for any liability of the licensee for tortious acts, whether or not such liability is imposed by statute or common law, or is imposed by contract. The bond shall not be a substitute or supplement to any liability or other insurance required by law or by the contract. If the surety desires to make payment without awaiting court action against it, the penal sum of the bond shall be reduced to the extent of any payment made by the surety in good faith under the bond.

(d) Any person who is a purchaser of a check, draft, or money order from the licensee having a claim against the licensee for the dishonor of any check, draft, or money order by



the drawee bank, savings bank, or savings and loan association due to insufficient funds or by reason of the account having been closed, or who obtained a small loan from the licensee and was damaged by the licensee's violation of this chapter or rules adopted under this chapter, may bring suit upon such bond or deposit in the superior court of the county in which the check, draft, or money order was purchased, or in the superior court of a county in which the licensee maintains a place of business. Jurisdiction shall be exclusively in the superior court. Any such action must be brought not later than one year after the dishonor of the check, draft, or money order on which the claim is based. In the event valid claims against a bond or deposit exceed the amount of the bond or deposit, each claimant shall only be entitled to a pro rata amount, based on the amount of the claim as it is valid against the bond, or deposit, without regard to the date of filing of any claim or action.

(e) In lieu of the surety bond required by this section, the applicant for a check seller license may file with the director a deposit consisting of cash or other security acceptable to the director in an amount equal to the penal sum of the required bond. In lieu of the surety bond required by this section, the applicant for a small loan endorsement may file with the director a deposit consisting of cash or other security acceptable to the director in an amount equal to the penal sum of the required bond, or may demonstrate to the director net worth in excess of three times the amount of the penal sum of the required bond.

The director may adopt rules necessary for the proper administration of the security or to establish reporting requirements to ensure that the net worth requirements continue to be met. A deposit given instead of the bond required by this section is not an asset of the licensee for the purpose of complying with the liquid asset provisions of this chapter. A deposit given instead of the bond required by this section is a fund held in trust for the benefit of eligible claimants under this section and is not an asset of the estate of any licensee that seeks protection voluntarily or involuntarily under the bankruptcy laws of the United States.

(f) Such security may be sold by the director at public auction if it becomes necessary to satisfy the requirements of this chapter. Notice of the sale shall be served upon the licensee who placed the security personally or by mail. If notice is served by mail, service shall be addressed to the licensee at its address as it appears in the records of the director. Bearer bonds of the United States or the state of Washington without a prevailing market price must be sold at public auction. Such bonds having a prevailing market price may be sold at private sale not lower than the prevailing market price. Upon any sale, any surplus above amounts due shall be returned to the licensee, and the licensee shall deposit with the director additional security sufficient to meet the amount required by the director. A deposit given instead of the bond required by this section shall not be deemed an asset of the licensee for the purpose of complying with the liquid asset provisions of this chapter. [2005 c 274 § 255; 2003 c 86 § 3; 2001 c 177 § 11; 1995 c 18 § 4; 1994 c 92 § 276; 1993 c 176 § 1; 1991 c 355 § 3.]

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

**Effective date—2001 c 177:** See note following RCW 43.320.080.

**Effective date—1993 c 176:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 30, 1993]." [1993 c 176 § 2.]

*Examination reports and information from financial institutions exempt:* RCW 42.56.400.

**31.45.077 Small loan endorsement—Application—Form—Information—Exemption from disclosure—Fees. (Effective July 1, 2006.)** (1) Each application for a small loan endorsement to a check casher or check seller license must be in writing and in a form prescribed by the director and shall contain the following information:

(a) The legal name, residence, and business address of the applicant, and if the applicant is a partnership, corporation, or association, the name and address of every member, partner, officer, and director thereof;

(b) The street and mailing address of each location where the licensee will engage in the business of making small loans;

(c) A surety bond, or other security allowed under RCW 31.45.030, in the amount required; and

(d) Any other pertinent information, including financial statements, as the director may require with respect to the licensee and its directors, officers, trustees, members, or employees.

(2) Any information in the application regarding the licensee's personal residential address or telephone number, and any trade secrets of the licensee as defined under RCW 19.108.010 including any financial statement that is a trade secret, is exempt from the public records disclosure requirements of chapter 42.56 RCW.

(3) The application shall be filed together with an investigation and review fee established by rule by the director. Fees collected shall be deposited to the credit of the financial services regulation fund in accordance with RCW 43.320.110. [2005 c 274 § 256; 2003 c 86 § 9; 2001 c 177 § 13; 1995 c 18 § 3.]

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

**Effective date—2001 c 177:** See note following RCW 43.320.080.

**31.45.090 Report requirements—Disclosure of information—Rules. (Effective July 1, 2006.)** (1) Each licensee shall submit to the director, in a form approved by the director, a report containing financial statements covering the calendar year or, if the licensee has an established fiscal year, then for such fiscal year, within one hundred five days after the close of each calendar or fiscal year. The licensee shall also file such additional relevant information as the director may require. Any information provided by a licensee in an annual report that constitutes a trade secret under chapter 19.108 RCW is exempt from disclosure under chapter 42.56 RCW, unless aggregated with information supplied by other licensees in such a manner that the licensee's individual information is not identifiable. Any information provided by the licensee that allows identification of the licensee may only be used for purposes reasonably related to the regulation of licensees to ensure compliance with this chapter.

(2) A licensee whose license has been suspended or revoked shall submit to the director, at the licensee's expense,

within one hundred five days after the effective date of such surrender or revocation, a closing audit report containing audited financial statements as of such effective date for the twelve months ending with such effective date.

(3) The director shall adopt rules specifying the form and content of such audit reports and may require additional reporting as is necessary for the director to ensure compliance with this chapter. [2005 c 274 § 257; 2003 c 86 § 15; 1994 c 92 § 282; 1991 c 355 § 9.]

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

### 31.45.210 Military borrowers—Licensee's duty—

**Definition.** (1) A licensee shall:

(a) When collecting any delinquent small loan, not garnish any wages or salary paid for service in the armed forces;

(b) Defer for the duration of the posting all collection activity against a military borrower who has been deployed to a combat or combat support posting for the duration of the posting;

(c) Not contact the military chain of command of a military borrower in an effort to collect a delinquent small loan;

(d) Honor the terms of any repayment agreement between the licensee and any military borrower, including any repayment agreement negotiated through military counselors or third party credit counselors; and

(e) Not make a loan from a specific location to a person that the licensee knows is a military borrower when the military borrower's commander has notified the licensee in writing that the specific location is designated off-limits to military personnel under their command.

(2) For purposes of this section, "military borrower" means any active duty member of the armed forces of the United States, or any member of the national guard or the reserves of the armed forces of the United States who has been called to active duty. [2005 c 256 § 1.]

## Title 32

### MUTUAL SAVINGS BANKS

#### Chapters

**32.04 General provisions.**

**32.32 Conversion of mutual savings bank to capital stock savings bank.**

#### Chapter 32.04 RCW

#### GENERAL PROVISIONS

##### Sections

- 32.04.030 Branches—Director's approval—State reciprocity—Definition.
- 32.04.220 Examination reports and information—Confidential—Privileged—Penalty. (*Effective July 1, 2006.*)

**32.04.030 Branches—Director's approval—State reciprocity—Definition.** (1) A savings bank may not, without the written approval of the director, establish and operate branches in any place.

(2) A savings bank headquartered in this state desiring to establish a branch shall file a written application with the director, who shall approve or disapprove the application.

(3) The director's approval shall be conditioned on a finding that the savings bank has a satisfactory record of compliance with applicable laws and has a satisfactory financial condition. In making such findings, the director may rely on an application in the form filed with the federal deposit insurance corporation pursuant to 12 U.S.C. Sec. 1828(d). If the application for a branch is not approved, the savings bank shall have the right to appeal in the same manner and within the same time as provided by RCW 32.08.050 and 32.08.060. The savings bank when delivering the application to the director shall transmit to the director a check in an amount established by rule to cover the expense of the investigation. A savings bank headquartered in this state shall not move its headquarters or any branch more than two miles from its existing location without prior approval of the director. On or before the date on which it opens any office at which it will transact business in any state, territory, province, or other jurisdiction, a savings bank shall give written notice to the director of the location of this office. No such notice shall become effective until it has been delivered to the director.

(4) The board of trustees of a savings bank, after notice to the director, may discontinue the operation of a branch. The savings bank shall keep the director informed in the matter and shall notify the director of the date operation of the branch is discontinued.

(5) A savings bank that is headquartered in this state and is operating branches in another state, territory, province, or other jurisdiction may provide copies of state examination reports and reports of condition of the savings bank to the regulator having oversight responsibility with regard to its operations in that other jurisdiction, including the regulator of savings associations in the event such a savings bank is transacting savings and loan business pursuant to RCW 32.08.142 in that other jurisdiction.

(6) No savings bank headquartered in another state may establish, or acquire pursuant to RCW 32.32.500, and operate branches as a savings bank in any place within the state unless:

(a) The savings bank has filed with the director an agreement to comply with the requirements of RCW 30.38.040 for periodic reports by the savings bank or by the appropriate state superintendent or equivalent regulator of the savings bank under the laws of the state in which the savings bank is incorporated, unless the laws expressly require the provision of all the reports to the director;

(b) The savings bank has filed with the director (i) a duly executed instrument in writing, by its terms of indefinite duration and irrevocable, appointing the director and his or her successors its true and lawful attorney, upon whom all process in any action or proceeding against it in a cause of action arising out of business transacted by such savings bank in this state, may be served with the same force and effect as if it were a domestic corporation and had been lawfully served with process within the state, and (ii) a written certificate of designation, which may be changed from time to time by the filing of a new certificate of designation, specifying the name and address of the officer, agent, or other person to whom such process shall be forwarded by the director;

(c) The savings bank has supplied the director with such information as he or she shall require by rule, not to exceed the information on which the director may rely in approving a branch application pursuant to this section by a savings bank headquartered in this state; and

(d) The laws of the state in which the out-of-state savings bank is chartered permit savings banks chartered under this title to establish or acquire, and maintain branches in that state, under terms and conditions that are substantially the same as, or at least as favorable to, the terms and conditions for the chartering of savings banks under this title.

(7) A savings bank headquartered in another state may not establish and operate branches as a foreign savings association in any place within the state except upon compliance with chapter 33.32 RCW.

(8) Notwithstanding any provision of this title to the contrary, an out-of-state depository institution may not branch in the state of Washington, unless a Washington state bank, bank holding company, savings bank, savings bank holding company, savings and loan association, or savings and loan holding company is permitted to branch in the state in which that out-of-state depository institution is chartered or in which its principal office is located, under terms and conditions that are substantially the same as, or at least as favorable to entry as, the terms and conditions for branching of savings banks under this title. As used in this subsection, "out-of-state depository institution" means a bank or bank holding company, or a converted mutual savings bank or the holding company of a mutual savings bank, which is chartered in or whose principal office is located in another state, or a savings and loan association or the holding company of a savings and loan association, which is chartered in another state. [2005 c 348 § 4; 1996 c 2 § 21. Prior: 1994 c 256 § 93; 1994 c 92 § 294; 1985 c 56 § 2; 1955 c 80 § 1; 1955 c 13 § 32.04.030; prior: 1933 c 143 § 1; 1925 ex.s. c 86 § 10; 1915 c 175 § 15; RRS § 3344.]

**Effective date—2005 c 348:** See note following RCW 30.38.005.

**Severability—1996 c 2:** See RCW 30.38.900.

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**32.04.220 Examination reports and information—Confidential—Privileged—Penalty. (Effective July 1, 2006.)** (1) All examination reports and all information obtained by the director and the director's staff in conducting examinations of mutual savings banks, and information obtained by the director and the director's staff from other state or federal bank regulatory authorities with whom the director has entered into agreements pursuant to RCW 32.04.211, and information obtained by the director and the director's staff relating to examination and supervision of holding companies owning a savings bank in this state or subsidiaries of such holding companies, is confidential and privileged information and shall not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) Subsection (1) of this section notwithstanding, the director may furnish all or any part of examination reports prepared by the director's office to:

(a) Federal agencies empowered to examine mutual savings banks;

(b) Bank regulatory authorities with whom the director has entered into agreements pursuant to RCW 32.04.211, and other bank regulatory authorities who are the primary regulatory authority or insurer of accounts for a holding company owning a savings bank the principal operations of which are conducted in this state or a subsidiary of such holding company; provided that the director shall first find that the reports of examination to be furnished shall receive protection from disclosure comparable to that accorded by this section;

(c) Officials empowered to investigate criminal charges subject to legal process, valid search warrant, or subpoena. If the director furnishes any examination report to officials empowered to investigate criminal charges, the director may only furnish that part of the report which is necessary and pertinent to the investigation, and the director may do this only after notifying the affected mutual savings bank and any customer of the mutual savings bank who is named in that part of the report of the order to furnish the part of the examination report unless the officials requesting the report first obtain a waiver of the notice requirement from a court of competent jurisdiction for good cause;

(d) The examined savings bank or holding company thereof;

(e) The attorney general in his or her role as legal advisor to the director;

(f) Liquidating agents of a distressed savings bank;

(g) A person or organization officially connected with the savings bank as officer, director, attorney, auditor, or independent attorney or independent auditor;

(h) The Washington public deposit protection commission as provided by RCW 39.58.105.

(3) All examination reports furnished under subsections (2) and (4) of this section shall remain the property of the department of financial institutions, and be confidential, and no person, agency, or authority to whom reports are furnished or any officer, director, or employee thereof shall disclose or make public any of the reports or any information contained therein except in published statistical material that does not disclose the affairs of any individual or corporation: PROVIDED, That nothing herein shall prevent the use in a criminal prosecution of reports furnished under subsection (2) of this section.

(4) The examination report made by the department of financial institutions is designed for use in the supervision of the mutual savings bank, and the director may furnish a copy of the report to the mutual savings bank examined. The report shall remain the property of the director and will be furnished to the mutual savings bank solely for its confidential use. Under no circumstances shall the mutual savings bank or any of its trustees, officers, or employees disclose or make public in any manner the report or any portion thereof, to any person or organization not connected with the savings bank as officer, director, employee, attorney, auditor, or candidate for executive office with the bank. The savings bank may also, after execution of an agreement not to disclose information in the report, disclose the report or relevant portions thereof to a party proposing to acquire or merge with the savings bank.

(5) Examination reports and information obtained by the director and the director's staff in conducting examinations, or from other state and federal bank regulatory authorities

with whom the director has entered into agreements pursuant to RCW 32.04.211, or relating to examination and supervision of holding companies owning a savings bank the principal operations of which are conducted in this state or a subsidiary of such holding company, shall not be subject to public disclosure under chapter 42.56 RCW.

(6) In any civil action in which the reports are sought to be discovered or used as evidence, any party may, upon notice to the director, petition the court for an in camera review of the report. The court may permit discovery and introduction of only those portions of the report which are relevant and otherwise unobtainable by the requesting party. This subsection shall not apply to an action brought or defended by the director.

(7) This section shall not apply to investigation reports prepared by the director and the director's staff concerning an application for a new mutual savings bank or an application for a branch of a mutual savings bank: PROVIDED, That the director may adopt rules making confidential portions of the reports if in the director's opinion the public disclosure of the portions of the report would impair the ability to obtain the information which the director considers necessary to fully evaluate the application.

(8) Every person who violates any provision of this section shall forfeit the person's office or employment and be guilty of a gross misdemeanor. [2005 c 274 § 258; 1994 c 92 § 301; 1989 c 180 § 5; 1977 ex.s. c 245 § 2.]

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

**Severability—1977 ex.s. c 245:** See note following RCW 30.04.075.

*Examination reports and information from financial institutions exempt: RCW 42.56.400.*

### Chapter 32.32 RCW

#### CONVERSION OF MUTUAL SAVINGS BANK TO CAPITAL STOCK SAVINGS BANK

##### Sections

- 32.32.228 Acquisition of control of a converted savings bank—State reciprocity—Definitions. (*Effective until July 1, 2006.*)  
 32.32.228 Acquisition of control of a converted savings bank—State reciprocity—Definitions. (*Effective July 1, 2006.*)  
 32.32.275 Applications available for public inspection—Confidential information. (*Effective July 1, 2006.*)

**32.32.228 Acquisition of control of a converted savings bank—State reciprocity—Definitions.** (*Effective until July 1, 2006.*) (1) As used in this section, the following definitions apply:

(a) "Control" means directly or indirectly alone or in concert with others to own, control, or hold the power to vote twenty-five percent or more of the outstanding stock or voting power of the controlled entity;

(b) "Acquiring depository institution" means a bank or bank holding company, or a converted mutual savings bank or the holding company of a mutual savings bank, or a savings and loan association or the holding company of a savings and loan association, which is chartered in or whose principal office is located in another state, and which seeks to acquire control of a Washington savings bank;

(c) "Acquiring party" means the person acquiring control of a bank through the purchase of stock;

(d) "Person" means any individual, corporation, partnership, group acting in concert, association, business trust, or other organization.

(2)(a) It is unlawful for any person to acquire control of a converted savings bank until thirty days after filing with the director a completed application. The application shall be under oath or affirmation, and shall contain substantially all of the following information plus any additional information that the director may prescribe as necessary or appropriate in the particular instance for the protection of bank depositors, borrowers, or shareholders and the public interest:

(i) The identity and banking and business experience of each person by whom or on whose behalf acquisition is to be made;

(ii) The financial and managerial resources and future prospects of each person involved in the acquisition;

(iii) The terms and conditions of any proposed acquisition and the manner in which the acquisition is to be made;

(iv) The source and amount of the funds or other consideration used or to be used in making the acquisition, and a description of the transaction and the names of the parties if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition;

(v) Any plan or proposal which any person making the acquisition may have to liquidate the bank, to sell its assets, to merge it with any other bank, or to make any other major change in its business or corporate structure or management;

(vi) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on its behalf, who makes solicitations or recommendations to shareholders for the purpose of assisting in the acquisition and a brief description of the terms of the employment, retainer, or arrangement for compensation;

(vii) Copies of all invitations for tenders or advertisements making a tender offer to shareholders for the purchase of their stock to be used in connection with the proposed acquisition; and

(viii) Such additional information as shall be necessary to satisfy the director, in the exercise of the director's discretion, that each such person and associate meets the standards of character, responsibility, and general fitness established for incorporators of a savings bank under RCW 32.08.040.

(b)(i) Notwithstanding any other provision of this section, and subject to (b)(ii) of this subsection, an acquiring depository institution must apply to the director and notify the savings bank to be acquired of an intent to acquire control and the date of the proposed acquisition of control at least thirty days before the date of the acquisition of control.

(ii) Except to the extent of any conflict with applicable federal law, (b)(i) of this subsection does not apply to an acquiring depository institution that is seeking to acquire control of a Washington savings bank unless the home state of the acquiring depository institution permits a Washington converted mutual savings bank, or the Washington-chartered holding company of a mutual savings bank, to acquire control of a controlled entity that is chartered in or whose principal office is located in that home state, unless under terms and conditions that are substantially the same as, or at least as favorable to entry as, those provided under (b)(i) of this subsection.

(c) When a person, other than an individual or corporation, is required to file an application under this section, the director may require that the information required by (a)(i), (ii), (vi), and (viii) of this subsection be given with respect to each person, as defined in subsection (1)(d) of this section, who has an interest in or controls a person filing an application under this subsection.

(d) When a corporation is required to file an application under this section, the director may require that information required by (a)(i), (ii), (vi), and (viii) of this subsection be given for the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of twenty-five percent or more of the outstanding voting securities of the corporation.

(e) If any tender offer, request, or invitation for tenders or other agreements to acquire control is proposed to be made by means of a registration statement under the securities act of 1933 (48 Stat. 74, 15 U.S.C. Sec. 77(a)), as amended, or in circumstances requiring the disclosure of similar information under the securities exchange act of 1934 (48 Stat. 881, 15 U.S.C. Sec. 78(a)), as amended, the registration statement or application may be filed with the director in lieu of the requirements of this section.

(f) Any acquiring party shall also deliver a copy of any notice or application required by this section to the savings bank proposed to be acquired within two days after such notice or application is filed with the director.

(g) Any acquisition of control in violation of this section shall be ineffective and void.

(h) Any person who willfully or intentionally violates this section or any rule adopted under this section is guilty of a gross misdemeanor pursuant to chapter 9A.20 RCW. Each day's violation shall be considered a separate violation, and any person shall upon conviction be fined not more than one thousand dollars for each day the violation continues.

(3) The director may disapprove the acquisition of a savings bank within thirty days after the filing of a complete application pursuant to subsections (1) and (2) of this section or an extended period not exceeding an additional fifteen days if:

(a) The poor financial condition of any acquiring party might jeopardize the financial stability of the savings bank or might prejudice the interest of depositors, borrowers, or shareholders;

(b) The plan or proposal of the acquiring party to liquidate the savings bank, to sell its assets, to merge it with any person, or to make any other major change in its business or corporate structure or management is not fair and reasonable to its depositors, borrowers, or stockholders or is not in public interest;

(c) The banking and business experience and integrity of any acquiring party who would control the operation of the savings bank indicates that approval would not be in the interest of the savings bank's depositors, borrowers, or shareholders;

(d) The information provided by the application is insufficient for the director to make a determination or there has been insufficient time to verify the information provided and conduct an examination of the qualification of the acquiring party; or

(e) The acquisition would not be in the public interest.

An acquisition may be made prior to expiration of the disapproval period if the director issues written notice of intent not to disapprove the action.

The director shall set forth the basis for disapproval of any proposed acquisition in writing and shall provide a copy of such findings and order to the applicants and to the bank involved. Such findings and order shall not be disclosed to any other party and shall not be subject to public disclosure under chapter 42.17 RCW unless the findings and/or order are appealed pursuant to chapter 34.05 RCW.

Whenever such a change in control occurs, each party to the transaction shall report promptly to the director any changes or replacement of its chief executive officer or of any director occurring in the next twelve-month period, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer or directors.

(4)(a) For a period of ten years following the acquisition of control by any person, neither such acquiring party nor any associate shall receive any loan or the use of any of the funds of, nor purchase, lease, or otherwise receive any property from, nor receive any consideration from the sale, lease, or any other conveyance of property to, any savings bank in which the acquiring party has control except as provided in (b) of this subsection.

(b) Upon application by any acquiring party or associate subject to (a) of this subsection, the director may approve a transaction between a converted savings bank and such acquiring party, person, or associate, upon finding that the terms and conditions of the transaction are at least as advantageous to the savings bank as the savings bank would obtain in a comparable transaction with an unaffiliated person.

(5) Except with the consent of the director, no converted savings bank shall, for the purpose of enabling any person to purchase any or all shares of its capital stock, pledge or otherwise transfer any of its assets as security for a loan to such person or to any associate, or pay any dividend to any such person or associate. Nothing in this section shall prohibit a dividend of stock among shareholders in proportion to their shareholdings. In the event any clause of this section is declared to be unconstitutional or otherwise invalid, all remaining dependent and independent clauses of this section shall remain in full force and effect. [2005 c 348 § 5; 1994 c 92 § 366; 1989 c 180 § 6; 1985 c 56 § 25.]

**Effective date—2005 c 348:** See note following RCW 30.38.005.

**32.32.228 Acquisition of control of a converted savings bank—State reciprocity—Definitions. (Effective July 1, 2006.)** (1) As used in this section, the following definitions apply:

(a) "Control" means directly or indirectly alone or in concert with others to own, control, or hold the power to vote twenty-five percent or more of the outstanding stock or voting power of the controlled entity;

(b) "Acquiring depository institution" means a bank or bank holding company, or a converted mutual savings bank or the holding company of a mutual savings bank, or a savings and loan association or the holding company of a savings and loan association, which is chartered in or whose principal

office is located in another state, and which seeks to acquire control of a Washington savings bank;

(c) "Acquiring party" means the person acquiring control of a bank through the purchase of stock;

(d) "Person" means any individual, corporation, partnership, group acting in concert, association, business trust, or other organization.

(2)(a) It is unlawful for any person to acquire control of a converted savings bank until thirty days after filing with the director a completed application. The application shall be under oath or affirmation, and shall contain substantially all of the following information plus any additional information that the director may prescribe as necessary or appropriate in the particular instance for the protection of bank depositors, borrowers, or shareholders and the public interest:

(i) The identity and banking and business experience of each person by whom or on whose behalf acquisition is to be made;

(ii) The financial and managerial resources and future prospects of each person involved in the acquisition;

(iii) The terms and conditions of any proposed acquisition and the manner in which the acquisition is to be made;

(iv) The source and amount of the funds or other consideration used or to be used in making the acquisition, and a description of the transaction and the names of the parties if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition;

(v) Any plan or proposal which any person making the acquisition may have to liquidate the bank, to sell its assets, to merge it with any other bank, or to make any other major change in its business or corporate structure or management;

(vi) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on its behalf, who makes solicitations or recommendations to shareholders for the purpose of assisting in the acquisition and a brief description of the terms of the employment, retainer, or arrangement for compensation;

(vii) Copies of all invitations for tenders or advertisements making a tender offer to shareholders for the purchase of their stock to be used in connection with the proposed acquisition; and

(viii) Such additional information as shall be necessary to satisfy the director, in the exercise of the director's discretion, that each such person and associate meets the standards of character, responsibility, and general fitness established for incorporators of a savings bank under RCW 32.08.040.

(b)(i) Notwithstanding any other provision of this section, and subject to (b)(ii) of this subsection, an acquiring depository institution must apply to the director and notify the savings bank to be acquired of an intent to acquire control and the date of the proposed acquisition of control at least thirty days before the date of the acquisition of control.

(ii) Except to the extent of any conflict with applicable federal law, (b)(i) of this subsection does not apply to an acquiring depository institution that is seeking to acquire control of a Washington savings bank unless the home state of the acquiring depository institution permits a Washington converted mutual savings bank, or the Washington-chartered holding company of a mutual savings bank, to acquire control of a controlled entity that is chartered in or whose principal

office is located in that home state, unless under terms and conditions that are substantially the same as, or at least as favorable to entry as, those provided under (b)(i) of this subsection.

(c) When a person, other than an individual or corporation, is required to file an application under this section, the director may require that the information required by (a)(i), (ii), (vi), and (viii) of this subsection be given with respect to each person, as defined in subsection (1)(d) of this section, who has an interest in or controls a person filing an application under this subsection.

(d) When a corporation is required to file an application under this section, the director may require that information required by (a)(i), (ii), (vi), and (viii) of this subsection be given for the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of twenty-five percent or more of the outstanding voting securities of the corporation.

(e) If any tender offer, request, or invitation for tenders or other agreements to acquire control is proposed to be made by means of a registration statement under the securities act of 1933 (48 Stat. 74, 15 U.S.C. Sec. 77(a)), as amended, or in circumstances requiring the disclosure of similar information under the securities exchange act of 1934 (48 Stat. 881, 15 U.S.C. Sec. 78(a)), as amended, the registration statement or application may be filed with the director in lieu of the requirements of this section.

(f) Any acquiring party shall also deliver a copy of any notice or application required by this section to the savings bank proposed to be acquired within two days after such notice or application is filed with the director.

(g) Any acquisition of control in violation of this section shall be ineffective and void.

(h) Any person who willfully or intentionally violates this section or any rule adopted under this section is guilty of a gross misdemeanor pursuant to chapter 9A.20 RCW. Each day's violation shall be considered a separate violation, and any person shall upon conviction be fined not more than one thousand dollars for each day the violation continues.

(3) The director may disapprove the acquisition of a savings bank within thirty days after the filing of a complete application pursuant to subsections (1) and (2) of this section or an extended period not exceeding an additional fifteen days if:

(a) The poor financial condition of any acquiring party might jeopardize the financial stability of the savings bank or might prejudice the interest of depositors, borrowers, or shareholders;

(b) The plan or proposal of the acquiring party to liquidate the savings bank, to sell its assets, to merge it with any person, or to make any other major change in its business or corporate structure or management is not fair and reasonable to its depositors, borrowers, or stockholders or is not in public interest;

(c) The banking and business experience and integrity of any acquiring party who would control the operation of the savings bank indicates that approval would not be in the interest of the savings bank's depositors, borrowers, or shareholders;

(d) The information provided by the application is insufficient for the director to make a determination or there has

been insufficient time to verify the information provided and conduct an examination of the qualification of the acquiring party; or

(e) The acquisition would not be in the public interest.

An acquisition may be made prior to expiration of the disapproval period if the director issues written notice of intent not to disapprove the action.

The director shall set forth the basis for disapproval of any proposed acquisition in writing and shall provide a copy of such findings and order to the applicants and to the bank involved. Such findings and order shall not be disclosed to any other party and shall not be subject to public disclosure under chapter 42.56 RCW unless the findings and/or order are appealed pursuant to chapter 34.05 RCW.

Whenever such a change in control occurs, each party to the transaction shall report promptly to the director any changes or replacement of its chief executive officer or of any director occurring in the next twelve-month period, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer or directors.

(4)(a) For a period of ten years following the acquisition of control by any person, neither such acquiring party nor any associate shall receive any loan or the use of any of the funds of, nor purchase, lease, or otherwise receive any property from, nor receive any consideration from the sale, lease, or any other conveyance of property to, any savings bank in which the acquiring party has control except as provided in (b) of this subsection.

(b) Upon application by any acquiring party or associate subject to (a) of this subsection, the director may approve a transaction between a converted savings bank and such acquiring party, person, or associate, upon finding that the terms and conditions of the transaction are at least as advantageous to the savings bank as the savings bank would obtain in a comparable transaction with an unaffiliated person.

(5) Except with the consent of the director, no converted savings bank shall, for the purpose of enabling any person to purchase any or all shares of its capital stock, pledge or otherwise transfer any of its assets as security for a loan to such person or to any associate, or pay any dividend to any such person or associate. Nothing in this section shall prohibit a dividend of stock among shareholders in proportion to their shareholdings. In the event any clause of this section is declared to be unconstitutional or otherwise invalid, all remaining dependent and independent clauses of this section shall remain in full force and effect. [2005 c 348 § 5; 2005 c 274 § 259; 1994 c 92 § 366; 1989 c 180 § 6; 1985 c 56 § 25.]

**Reviser's note:** This section was amended by 2005 c 274 § 259 and by 2005 c 348 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2005 c 348:** See note following RCW 30.38.005.

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

**32.32.275 Applications available for public inspection—Confidential information. (Effective July 1, 2006.)** Should the applicant desire to submit any information it deems to be of a confidential nature regarding any item or a part of any exhibit included in any application under this

chapter, the information pertaining to the item or exhibit shall be separately bound and labeled "confidential", and a statement shall be submitted therewith briefly setting forth the grounds on which the information should be treated as confidential. Only general reference thereto need be made in that portion of the application which the applicant deems not to be confidential. Applications under this chapter shall be made available for inspection by the public, except for portions which are bound and labeled "confidential" and which the director determines to withhold from public availability under chapter 42.56 RCW. The applicant shall be advised of any decision by the director to make public information designated as "confidential" by the applicant. Even though sections of the application are considered "confidential" as far as public inspection thereof is concerned, to the extent the director deems necessary the director may comment on the confidential submissions in any public statement in connection with the director's decision on the application without prior notice to the applicant. [2005 c 274 § 260; 1994 c 92 § 374; 1981 c 85 § 54.]

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

## Title 33

### SAVINGS AND LOAN ASSOCIATIONS

#### Chapters

#### 33.04 General provisions.

#### Chapter 33.04 RCW

#### GENERAL PROVISIONS

#### Sections

33.04.110 Examination reports and information—Confidential and privileged—Exceptions, limitations and procedure—Penalty. (Effective July 1, 2006.)

**33.04.110 Examination reports and information—Confidential and privileged—Exceptions, limitations and procedure—Penalty. (Effective July 1, 2006.)** (1) Except as otherwise provided in this section, all examination reports and all information obtained by the director and the director's staff in conducting examinations of associations are confidential and privileged information and shall not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) Subsection (1) of this section notwithstanding, the director may furnish in whole or in part examination reports prepared by the director's office to federal agencies empowered to examine state associations, to savings and loan supervisory agencies of other states which have authority to examine associations doing business in this state, to the attorney general in his or her role as legal advisor to the director, to the examined association as provided in subsection (4) of this section, and to officials empowered to investigate criminal charges. If the director furnishes any examination report to officials empowered to investigate criminal charges, the director may only furnish that part of the report which is necessary and pertinent to the investigation, and the director may do this only after notifying the affected savings and loan

association and any customer of the savings and loan association who is named in that part of the report of the order to furnish the part of the examination report unless the officials requesting the report first obtain a waiver of the notice requirement from a court of competent jurisdiction for good cause. The director may also furnish in whole or in part examination reports concerning any association in danger of insolvency to the directors or officers of a potential acquiring party when, in the director's opinion, it is necessary to do so in order to protect the interests of members, depositors, or borrowers of the examined association.

(3) All examination reports furnished under subsection (2) of this section shall remain the property of the department of financial institutions and, except as provided in subsection (4) of this section, no person, agency, or authority to whom reports are furnished or any officer, director, or employee thereof shall disclose or make public any of the reports or any information contained therein except in published statistical material that does not disclose the affairs of any individual or corporation: PROVIDED, That nothing herein shall prevent the use in a criminal prosecution of reports furnished under subsection (2) of this section.

(4) The examination report made by the department of financial institutions is designed for use in the supervision of the association, and the director may furnish a copy of the report to the savings and loan association examined. The report shall remain the property of the director and will be furnished to the association solely for its confidential use. Neither the association nor any of its directors, officers, or employees may disclose or make public in any manner the report or any portion thereof without permission of the board of directors of the examined association. The permission shall be entered in the minutes of the board.

(5) Examination reports and information obtained by the director and the director's staff in conducting examinations shall not be subject to public disclosure under chapter 42.56 RCW.

(6) In any civil action in which the reports are sought to be discovered or used as evidence, any party may, upon notice to the director, petition the court for an in camera review of the report. The court may permit discovery and introduction of only those portions of the report which are relevant and otherwise unobtainable by the requesting party. This subsection shall not apply to an action brought or defended by the director.

(7) This section shall not apply to investigation reports prepared by the director and the director's staff concerning an application for a new association or an application for a branch of an association. The director may adopt rules making confidential portions of such reports if in the director's opinion the public disclosure of the portions of the report would impair the ability to obtain the information which the director considers necessary to fully evaluate the application.

(8) Every person who intentionally violates any provision of this section is guilty of a gross misdemeanor. [2005 c 274 § 261; 1994 c 92 § 425; 1982 c 3 § 6; 1977 ex.s. c 245 § 3.]

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

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1977 ex.s. c 245:** See note following RCW 30.04.075.

*Examination reports and information from financial institutions exempt: RCW 42.56.400.*

## Title 34

### ADMINISTRATIVE LAW

#### Chapters

#### 34.05 Administrative procedure act.

#### Chapter 34.05 RCW

#### ADMINISTRATIVE PROCEDURE ACT

#### Sections

34.05.325 Public participation—Concise explanatory statement. (*Effective July 1, 2006.*)

**34.05.325 Public participation—Concise explanatory statement. (*Effective July 1, 2006.*)** (1) The agency shall make a good faith effort to insure that the information on the proposed rule published pursuant to RCW 34.05.320 accurately reflects the rule to be presented and considered at the oral hearing on the rule. Written comment about a proposed rule, including supporting data, shall be accepted by an agency if received no later than the time and date specified in the notice, or such later time and date established at the rule-making hearing.

(2) The agency shall provide an opportunity for oral comment to be received by the agency in a rule-making hearing.

(3) If the agency possesses equipment capable of receiving telefacsimile transmissions or recorded telephonic communications, the agency may provide in its notice of hearing filed under RCW 34.05.320 that interested parties may comment on proposed rules by these means. If the agency chooses to receive comments by these means, the notice of hearing shall provide instructions for making such comments, including, but not limited to, appropriate telephone numbers to be used; the date and time by which comments must be received; required methods to verify the receipt and authenticity of the comments; and any limitations on the number of pages for telefacsimile transmission comments and on the minutes of tape recorded comments. The agency shall accept comments received by these means for inclusion in the official record if the comments are made in accordance with the agency's instructions.

(4) The agency head, a member of the agency head, or a presiding officer designated by the agency head shall preside at the rule-making hearing. Rule-making hearings shall be open to the public. The agency shall cause a record to be made of the hearing by stenographic, mechanical, or electronic means. Regardless of whether the agency head has delegated rule-making authority, the presiding official shall prepare a memorandum for consideration by the agency head, summarizing the contents of the presentations made at the rule-making hearing, unless the agency head presided or was present at substantially all of the hearings. The summarizing memorandum is a public document and shall be made available to any person in accordance with chapter 42.56 RCW.

(5) Rule-making hearings are legislative in character and shall be reasonably conducted by the presiding official to



afford interested persons the opportunity to present comment. Rule-making hearings may be continued to a later time and place established on the record without publication of further notice under RCW 34.05.320.

(6)(a) Before it files an adopted rule with the code reviser, an agency shall prepare a concise explanatory statement of the rule:

- (i) Identifying the agency's reasons for adopting the rule;
- (ii) Describing differences between the text of the proposed rule as published in the register and the text of the rule as adopted, other than editing changes, stating the reasons for differences; and
- (iii) Summarizing all comments received regarding the proposed rule, and responding to the comments by category or subject matter, indicating how the final rule reflects agency consideration of the comments, or why it fails to do so.

(b) The agency shall provide the concise explanatory statement to any person upon request or from whom the agency received comment. [2005 c 274 § 262; 1998 c 125 § 1; 1995 c 403 § 304; 1994 c 249 § 7; 1992 c 57 § 1; 1988 c 288 § 304.]

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

**Application—1995 c 403 §§ 201, 301-305, 401-405, and 801:** See note following RCW 34.05.328.

**Findings—Short title—Intent—1995 c 403:** See note following RCW 34.05.328.

**Part headings not law—Severability—1995 c 403:** See RCW 43.05.903 and 43.05.904.

**Severability—Application—1994 c 249:** See notes following RCW 34.05.310.

## Title 35

### CITIES AND TOWNS

#### Chapters

- 35.02 Incorporation proceedings.**
- 35.13A Water or sewer districts—Assumption of jurisdiction.**
- 35.20 Municipal courts—Cities over four hundred thousand.**
- 35.21 Miscellaneous provisions.**
- 35.22 First class cities.**
- 35.23 Second class cities.**
- 35.27 Towns.**
- 35.30 Unclassified cities.**
- 35.58 Metropolitan municipal corporations.**
- 35.61 Metropolitan park districts.**
- 35.63 Planning commissions.**
- 35.77 Streets—Planning, establishment, construction, and maintenance.**
- 35.80 Unfit dwellings, buildings, and structures.**
- 35.87A Parking and business improvement areas.**
- 35.91 Municipal water and sewer facilities act.**
- 35.95A City transportation authority—Monorail transportation.**
- 35.102 Municipal business and occupation tax.**
- 35.103 Fire departments—Performance measures.**

#### Chapter 35.02 RCW

### INCORPORATION PROCEEDINGS

#### Sections

- 35.02.130 Newly incorporated city or town—Effective date of incorporation—Powers during interim period—Terms of elected officers—First municipal election. *(Effective July 1, 2006.)*

**35.02.130 Newly incorporated city or town—Effective date of incorporation—Powers during interim period—Terms of elected officers—First municipal election. *(Effective July 1, 2006.)*** The city or town officially shall become incorporated at a date from one hundred eighty days to three hundred sixty days after the date of the election on the question of incorporation. An interim period shall exist between the time the newly elected officials have been elected and qualified and this official date of incorporation. During this interim period, the newly elected officials are authorized to adopt ordinances and resolutions which shall become effective on or after the official date of incorporation, and to enter into contracts and agreements to facilitate the transition to becoming a city or town and to ensure a continuation of governmental services after the official date of incorporation. Periods of time that would be required to elapse between the enactment and effective date of such ordinances, including but not limited to times for publication or for filing referendums, shall commence upon the date of such enactment as though the city or town were officially incorporated.

During this interim period, the city or town governing body may adopt rules establishing policies and procedures under the state environmental policy act, chapter 43.21C RCW, and may use these rules and procedures in making determinations under the state environmental policy act, chapter 43.21C RCW.

During this interim period, the newly formed city or town and its governing body shall be subject to the following as though the city or town were officially incorporated: RCW 4.24.470 relating to immunity; chapter 42.17 RCW relating to open government; chapter 42.56 RCW relating to public records; chapter 40.14 RCW relating to the preservation and disposition of public records; chapters 42.20 and 42.23 RCW relating to ethics and conflicts of interest; chapters 42.30 and 42.32 RCW relating to open public meetings and minutes; RCW 35.22.288, 35.23.221, 35.27.300, 35A.12.160, as appropriate, and chapter 35A.65 RCW relating to the publication of notices and ordinances; RCW 35.21.875 and 35A.21.230 relating to the designation of an official newspaper; RCW 36.16.138 relating to liability insurance; RCW 35.22.620, 35.23.352, and 35A.40.210, as appropriate, and statutes referenced therein relating to public contracts and bidding; and chapter 39.34 RCW relating to interlocal cooperation. Tax anticipation or revenue anticipation notes or warrants and other short-term obligations may be issued and funds may be borrowed on the security of these instruments during this interim period, as provided in chapter 39.50 RCW. Funds also may be borrowed from federal, state, and other governmental agencies in the same manner as if the city or town were officially incorporated.

RCW 84.52.020 and 84.52.070 shall apply to the extent that they may be applicable, and the governing body of such city or town may take appropriate action by ordinance during

the interim period to adopt the property tax levy for its first full calendar year following the interim period.

The governing body of the new city or town may acquire needed facilities, supplies, equipment, insurance, and staff during this interim period as if the city or town were in existence. An interim city manager or administrator, who shall have such administrative powers and duties as are delegated by the governing body, may be appointed to serve only until the official date of incorporation. After the official date of incorporation the governing body of such a new city organized under the council manager form of government may extend the appointment of such an interim manager or administrator with such limited powers as the governing body determines, for up to ninety days. This governing body may submit ballot propositions to the voters of the city or town to authorize taxes to be collected on or after the official date of incorporation, or authorize an annexation of the city or town by a fire protection district or library district to be effective immediately upon the effective date of the incorporation as a city or town.

The boundaries of a newly incorporated city or town shall be deemed to be established for purposes of RCW 84.09.030 on the date that the results of the initial election on the question of incorporation are certified or the first day of January following the date of this election if the newly incorporated city or town does not impose property taxes in the same year that the voters approve the incorporation.

The newly elected officials shall take office immediately upon their election and qualification with limited powers during this interim period as provided in this section. They shall acquire their full powers as of the official date of incorporation and shall continue in office until their successors are elected and qualified at the next general municipal election after the official date of incorporation: PROVIDED, That if the date of the next general municipal election is less than twelve months after the date of the first election of councilmembers, those initially elected councilmembers shall serve until their successors are elected and qualified at the next following general municipal election as provided in RCW 29A.20.040. For purposes of this section, the general municipal election shall be the date on which city and town general elections are held throughout the state of Washington, pursuant to RCW 29A.04.330.

In any newly incorporated city that has adopted the council-manager form of government, the term of office of the mayor, during the interim period only, shall be set by the council, and thereafter shall be as provided by law.

The official date of incorporation shall be on a date from one hundred eighty to three hundred sixty days after the date of the election on the question of incorporation, as specified in a resolution adopted by the governing body during this interim period. A copy of the resolution shall be filed with the county legislative authority of the county in which all or the major portion of the newly incorporated city or town is located. If the governing body fails to adopt such a resolution, the official date of incorporation shall be three hundred sixty days after the date of the election on the question of incorporation. The county legislative authority of the county in which all or the major portion of the newly incorporated city or town is located shall file a notice with the county assessor that the city or town has been authorized to be incor-

porated immediately after the favorable results of the election on the question of incorporation have been certified. The county legislative authority shall file a notice with the secretary of state that the city or town is incorporated as of the official date of incorporation. [2005 c 274 § 263; 1997 c 361 § 11; 1994 c 154 § 308; 1991 c 360 § 3; 1986 c 234 § 16; 1965 c 7 § 35.02.130. Prior: 1953 c 219 § 7; 1890 p 133 § 3, part; RRS § 8885, part.]

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

**Parts and captions not law—Effective date—Severability—1994 c 154:** See RCW 42.52.902, 42.52.904, and 42.52.905.

*Times for holding elections: RCW 29A.04.311 through 29A.04.330.*

## Chapter 35.13A RCW

### WATER OR SEWER DISTRICTS—ASSUMPTION OF JURISDICTION

#### Sections

35.13A.111 Assumption of water-sewer district with fewer than two hundred fifty customers.

**35.13A.111 Assumption of water-sewer district with fewer than two hundred fifty customers.** The board of commissioners of a water-sewer district, with fewer than two hundred fifty customers on July 24, 2005, and the city council of a code city with a population greater than one hundred thousand on July 24, 2005, may provide for assumption by the city of the district in accordance with RCW 35.13A.020, except as provided herein, pursuant to the terms and conditions of a contract executed in accordance with RCW 35.13A.070. None of the territory of the water-sewer district need be included within the territory of the city. The contract and assumption shall be approved by resolution of the board of commissioners and ordinance of the city council. If the water-sewer district has no indebtedness or monetary obligations on the date of assumption, the city shall use any surplus funds only for water services delivered to and water facilities constructed in the former territory of the district, unless provided otherwise in the contract. In connection with the assumption, the water-sewer district or the city, or both, may provide for dissolution of the district pursuant to RCW 35.13A.080. [2005 c 43 § 1.]

## Chapter 35.20 RCW

### MUNICIPAL COURTS—CITIES OVER FOUR HUNDRED THOUSAND

#### Sections

35.20.010 Municipal court established—Termination of court—Agreement covering costs of handling resulting criminal cases—Arbitration—Notice. (*Effective January 1, 2006.*)

35.20.030 Jurisdiction—Maximum penalties for criminal violations—Review—Costs.

35.20.255 Deferral or suspension of sentences—Probation—Maximum term—Transfer to another state.

35.20.280 City trial court improvement account—Contribution by city to account—Use of funds.

**35.20.010 Municipal court established—Termination of court—Agreement covering costs of handling resulting criminal cases—Arbitration—Notice. (*Effective January 1, 2006.*)** (1) There is hereby created and estab-

lished in each incorporated city of this state having a population of more than four hundred thousand inhabitants, as shown by the federal or state census, whichever is the later, a municipal court, which shall be styled "The Municipal Court of . . . . (name of city)," hereinafter designated and referred to as the municipal court, which court shall have jurisdiction and shall exercise all the powers by this chapter declared to be vested in such municipal court, together with such powers and jurisdiction as is generally conferred in this state either by common law or statute.

(2) A municipality operating a municipal court under this section may terminate that court if the municipality has reached an agreement with the county under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the termination. The agreement shall provide for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04A RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04A RCW.

(3) A city that has entered into an agreement for court services with the county must provide written notice of the intent to terminate the agreement to the county legislative authority not less than one year prior to February 1st of the year in which all district court judges are subject to election. A city that terminates an agreement for court services to be provided by a district court may terminate the agreement only at the end of a four-year district court judicial term.

(4) A county that wishes to terminate an agreement with a city for the provision of court services must provide written notice of the intent to terminate the agreement to the city legislative authority not less than one year prior to the expiration of the agreement. [2005 c 433 § 37; 2001 c 68 § 3; 1984 c 258 § 201; 1975 c 33 § 4; 1965 c 7 § 35.20.010. Prior: 1955 c 290 § 1.]

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

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

**Severability—1975 c 33:** See note following RCW 35.21.780.

**35.20.030 Jurisdiction—Maximum penalties for criminal violations—Review—Costs.** The municipal court shall have jurisdiction to try violations of all city ordinances and all other actions brought to enforce or recover license penalties or forfeitures declared or given by any such ordinances. It is empowered to forfeit cash bail or bail bonds and issue execution thereon, to hear and determine all causes, civil or criminal, arising under such ordinances, and to pronounce judgment in accordance therewith: PROVIDED, That for a violation of the criminal provisions of an ordinance no greater punishment shall be imposed than a fine of five thousand dollars or imprisonment in the city jail not to exceed one year, or both such fine and imprisonment, but the punish-

ment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. All civil and criminal proceedings in municipal court, and judgments rendered therein, shall be subject to review in the superior court by writ of review or on appeal: PROVIDED, That an appeal from the court's determination or order in a traffic infraction proceeding may be taken only in accordance with RCW 46.63.090(5). Costs in civil and criminal cases may be taxed as provided in district courts. A municipal court participating in the program established by the administrative office of the courts pursuant to RCW 2.56.160 shall have jurisdiction to take recognizance, approve bail, and arraign defendants held within its jurisdiction on warrants issued by any court of limited jurisdiction participating in the program. [2005 c 282 § 41; 2000 c 111 § 7; 1993 c 83 § 3; 1984 c 258 § 801; 1979 ex.s. c 136 § 23; 1965 c 7 § 35.20.030. Prior: 1955 c 290 § 3.]

**Effective date—1993 c 83:** See note following RCW 35.21.163.

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

**Effective date—Severability—1979 ex.s. c 136:** See notes following RCW 46.63.010.

**35.20.255 Deferral or suspension of sentences—Prohibition—Maximum term—Transfer to another state.** (1) Judges of the municipal court, in their discretion, shall have the power in all criminal proceedings within their jurisdiction including violations of city ordinances, to defer imposition of any sentence, suspend all or part of any sentence including installment payment of fines, fix the terms of any such deferral or suspension, and provide for such probation as in their opinion is reasonable and necessary under the circumstances of the case, but in no case shall it extend for more than five years from the date of conviction for a defendant to be sentenced under RCW 46.61.5055 and two years from the date of conviction for all other offenses. A defendant who has been sentenced, or whose sentence has been deferred, and who then fails to appear for any hearing to address the defendant's compliance with the terms of probation when ordered to do so by the court, shall have the term of probation tolled until such time as the defendant makes his or her presence known to the court on the record. However, the jurisdiction period in this section does not apply to the enforcement of orders issued under RCW 46.20.720. Any time before entering an order terminating probation, the court may modify or revoke its order suspending or deferring the imposition or execution of the sentence.

(2)(a) If a defendant whose sentence has been deferred requests permission to travel or transfer to another state, the director of probation services or a designee thereof shall determine whether such request is subject to RCW 9.94A.745, the interstate compact for adult offender supervision. If such request is subject to the compact, the director or designee shall:

(i) Notify the department of corrections of the defendant's request;

(ii) Provide the department of corrections with the supporting documentation it requests for processing an application for transfer;

(iii) Notify the defendant of the fee due to the department of corrections for processing an application under the compact;

(iv) Cease supervision of the defendant while another state supervises the defendant pursuant to the compact;

(v) Resume supervision if the defendant returns to this state before the period of deferral expires.

(b) The defendant shall receive credit for time served while being supervised by another state.

(c) If the probationer is returned to the state at the request of the receiving state under rules of the interstate compact for adult offender supervision, the department of corrections is responsible for the cost of returning the probationer.

(d) The state of Washington, the department of corrections and its employees, and any city and its employees are not liable for civil damages resulting from any act or omission authorized or required under this section unless the act or omission constitutes gross negligence. [2005 c 400 § 5; 2001 c 94 § 3; 1999 c 56 § 3; 1983 c 156 § 8; 1969 ex.s. c 147 § 9.]

**Application—Effective date—2005 c 400:** See notes following RCW 9.94A.74504.

**35.20.280 City trial court improvement account—Contribution by city to account—Use of funds.** Any city operating a municipal court under this chapter that receives state contribution for municipal court judges' salaries under RCW 2.56.030 shall create a city trial court improvement account. An amount equal to one hundred percent of the state's contribution for the payment of municipal judges' salaries shall be deposited into the account. Money in the account shall be used to fund improvements to the municipal court's staffing, programs, facilities, or services, as appropriated by the city legislative authority. [2005 c 457 § 5.]

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

## Chapter 35.21 RCW

### MISCELLANEOUS PROVISIONS

#### Sections

35.21.225	Transportation benefit districts.
35.21.228	Rail fixed guideway system—Safety and security program plan. ( <i>Effective July 1, 2006.</i> )
35.21.698	Regulation of financial transactions—Limitations.
35.21.759	Public corporations, commissions, and authorities—Applicability of general laws. ( <i>Effective July 1, 2006.</i> )
35.21.766	Ambulance services—Establishment authorized.
35.21.7661	Study and review of ambulance utilities.
35.21.851	Taxation of chamber of commerce, similar business for operation of parking/business improvement area.

**35.21.225 Transportation benefit districts.** The legislative authority of a city may establish a transportation benefit district subject to the provisions of chapter 36.73 RCW. [2005 c 336 § 22; 1989 c 53 § 2; 1987 c 327 § 3.]

**Effective date—2005 c 336:** See note following RCW 36.73.015.

**Severability—1989 c 53:** See note following RCW 36.73.020.

*Transportation benefit districts: Chapter 36.73 RCW.*

**35.21.228 Rail fixed guideway system—Safety and security program plan. (*Effective July 1, 2006.*)** (1) Each city or town that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system

safety and security program plan for that guideway to the state department of transportation by September 1, 1999, or at least three months before beginning operations or instituting revisions to its plan. This plan must describe the city's procedures for (a) reporting and investigating reportable accidents, unacceptable hazardous conditions, and security breaches, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee security. The plan must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the city or town shall revise its plan to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plan for review.

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

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

(4) The security section of the safety and security plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter 42.56 RCW. However, the activities and plans as described in subsections (1)(a), (b), and (c), (2), and (3) of this section are not subject to this exemption. [2005 c 274 § 264; 1999 c 202 § 1.]

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

**Effective date—1999 c 202:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 1999]." [1999 c 202 § 10.]

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

**Finding—Intent—2005 c 338:** "The legislature finds that consumers, financial services providers, and financial institutions need uniformity and certainty in their financial transactions. It is the intent of the legislature to reserve the authority to regulate customer financial transactions involving consumers, financial services providers, and financial institutions." [2005 c 338 § 1.]

**35.21.759 Public corporations, commissions, and authorities—Applicability of general laws. (Effective July 1, 2006.)** A public corporation, commission, or authority created under this chapter, and officers and multimember governing body thereof, are subject to general laws regulating local governments, multimember governing bodies, and local governmental officials, including, but not limited to, the requirement to be audited by the state auditor and various accounting requirements provided under chapter 43.09 RCW, the open public record requirements of chapter 42.56 RCW, the prohibition on using its facilities for campaign purposes under RCW 42.17.130, the open public meetings law of chapter 42.30 RCW, the code of ethics for municipal officers under chapter 42.23 RCW, and the local government whistleblower law under chapter 42.41 RCW. [2005 c 274 § 265; 1999 c 246 § 1.]

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

**35.21.766 Ambulance services—Establishment authorized.** (1) Whenever a regional fire protection service authority determines that the fire protection jurisdictions that are members of the authority are not adequately served by existing private ambulance service, the governing board of the authority may by resolution provide for the establishment of a system of ambulance service to be operated by the authority as a public utility operated by contract after a call for bids.

(2) The legislative authority of any city or town may establish an ambulance service to be operated as a public utility. However, the legislative authority of the city or town shall not provide for the establishment of an ambulance service utility that would compete with any existing private ambulance service, unless the legislative authority of the city or town determines that the city or town, or a substantial portion of the city or town, is not adequately served by an existing private ambulance service. In determining the adequacy of an existing private ambulance service, the legislative authority of the city or town shall take into consideration objective generally accepted medical standards and reasonable levels of service which shall be published by the city or town legislative authority. The decision of the city council or legislative body shall be a discretionary, legislative act. When it is preliminarily concluded that the private ambulance service is inadequate, before issuing a call for bids or before the city or town establishes an ambulance service utility, the legislative authority of the city or town shall allow a minimum of sixty days for the private ambulance service to meet the generally accepted medical standards and reasonable levels of service. In the event of a second preliminary conclusion of inadequacy within a twenty-four month period, the legislative authority of the city or town may immediately issue a call for bids or establish an ambulance service utility and is not required to afford the private ambulance service another sixty-day period to meet the generally accepted med-

ical standards and reasonable levels of service. Nothing in chapter 482, Laws of 2005 is intended to supersede requirements and standards adopted by the department of health. A private ambulance service which is not licensed by the department of health or whose license is denied, suspended, or revoked shall not be entitled to a sixty-day period within which to demonstrate adequacy and the legislative authority may immediately issue a call for bids or establish an ambulance service utility.

(3) The city or town legislative authority is authorized to set and collect rates and charges in an amount sufficient to regulate, operate, and maintain an ambulance utility. Prior to setting such rates and charges, the legislative authority must determine, through a cost-of-service study, the total cost necessary to regulate, operate, and maintain the ambulance utility. Total costs shall not include capital cost for the construction, major renovation, or major repair of the physical plant. Once the legislative authority determines the total costs, the legislative authority shall then identify that portion of the total costs that are attributable to the availability of the ambulance service and that portion of the total costs that are attributable to the demand placed on the ambulance utility.

(a) Availability costs are those costs attributable to the basic infrastructure needed to respond to a single call for service within the utility's response criteria. Availability costs may include costs for dispatch, labor, training of personnel, equipment, patient care supplies, and maintenance of equipment.

(b) Demand costs are those costs that are attributable to the burden placed on the ambulance service by individual calls for ambulance service. Demand costs shall include costs related to frequency of calls, distances from hospitals, and other factors identified in the cost-of-service study conducted to assess burdens imposed on the ambulance utility.

(4) A city or town legislative authority is authorized to set and collect rates and charges as follows:

(a) The rate attributable to costs for availability described under subsection (3)(a) of this section shall be uniformly applied across user classifications within the utility;

(b) The rate attributable to costs for demand described under subsection (3)(b) of this section shall be established and billed to each utility user classification based on each user classification's burden on the utility;

(c) The fee charged by the utility shall reflect a combination of the availability cost and the demand cost;

(d)(i) Except as provided in (d)(ii) of this subsection, the combined rates charged shall reflect an exemption for persons who are medicaid eligible and who reside in a nursing facility, boarding home, adult family home, or receive in-home services. The combined rates charged may reflect an exemption or reduction for designated classes consistent with Article VIII, section 7 of the state Constitution. The amounts of exemption or reduction shall be a general expense of the utility, and designated as an availability cost, to be spread uniformly across the utility user classifications.

(ii) For cities with a population less than two thousand five hundred that established an ambulance utility before May 6, 2004, the combined rates charged may reflect an exemption or reduction for persons who are medicaid eligible, and for designated classes consistent with Article VIII, section 7 of the state Constitution;

(e) The legislative authority must continue to allocate at least seventy percent of the total amount of general fund revenues expended, as of May 5, 2004, toward the total costs necessary to regulate, operate, and maintain the ambulance service utility. However, cities or towns that operated an ambulance service before May 6, 2004, and commingled general fund dollars and ambulance service dollars, may reasonably estimate that portion of general fund dollars that were, as of May 5, 2004, applied toward the operation of the ambulance service, and at least seventy percent of such estimated amount must then continue to be applied toward the total cost necessary to regulate, operate, and maintain the ambulance utility. Cities and towns which first established an ambulance service utility after May 6, 2004, must allocate, from the general fund or emergency medical service levy funds, or a combination of both, at least an amount equal to seventy percent of the total costs necessary to regulate, operate, and maintain the ambulance service utility as of May 5, 2004, or the date that the utility is established;

(f) The legislative authority must allocate available emergency medical service levy funds, in an amount proportionate to the percentage of the ambulance service costs to the total combined operating costs for emergency medical services and ambulance services, towards the total costs necessary to regulate, operate, and maintain the ambulance utility;

(g) The legislative authority must allocate all revenues received through direct billing to the individual user of the ambulance service to the demand-related costs under subsection (3)(b) of this section;

(h) The total revenue generated by the rates and charges shall not exceed the total costs necessary to regulate, operate, and maintain an ambulance utility; and

(i) Revenues generated by the rates and charges must be deposited in a separate fund or funds and be used only for the purpose of paying for the cost of regulating, maintaining, and operating the ambulance utility.

(5) Ambulance service rates charged pursuant to this section do not constitute taxes or charges under RCW 82.02.050 through 82.02.090, or 35.21.768, or charges otherwise prohibited by law. [2005 c 482 § 2; 2004 c 129 § 34; 1975 1st ex.s. c 24 § 1.]

**Finding—Intent—2005 c 482:** "The legislature finds that ambulance and emergency medical services are essential services and the availability of these services is vital to preserving and promoting the health, safety, and welfare of people in local communities throughout the state. All persons, businesses, and industries benefit from the availability of ambulance and emergency medical services, and survival rates can be increased when these services are available, adequately funded, and appropriately regulated. It is the legislature's intent to explicitly recognize local jurisdictions' ability and authority to collect utility service charges to fund ambulance and emergency medical service systems that are based, at least in some part, upon a charge for the availability of these services." [2005 c 482 § 1.]

**Captions not law—Severability—2004 c 129:** See RCW 52.26.900 and 52.26.901.

*Ambulance services by counties authorized: RCW 36.01.100.*

**35.21.7661 Study and review of ambulance utilities.** The joint legislative audit and review committee shall study and review ambulance utilities established and operated by cities under chapter 482, Laws of 2005. The committee shall examine, but not be limited to, the following factors: The number and operational status of utilities established under chapter 482, Laws of 2005; whether the utility rate structures

[2005 RCW Supp—page 298]

and user classifications used by cities were established in accordance with generally accepted utility rate-making practices; and rates charged by the utility to the user classifications. The committee shall provide a final report on this review by December 2007. [2005 c 482 § 3.]

**Finding—Intent—2005 c 482:** See note following RCW 35.21.766.

**35.21.851 Taxation of chamber of commerce, similar business for operation of parking/business improvement area.** (1) A city shall not impose a gross receipts tax on amounts received by a chamber of commerce or other similar business association for administering the operation of a parking and business improvement area within the meaning of RCW 35.87A.110.

(2) For the purposes of this section, the following definitions apply:

(a) "Gross receipts tax" means a tax measured by gross proceeds of sales, gross income of the business, or value proceeding or accruing.

(b) "City" includes cities, code cities, and towns. [2005 c 476 § 2.]

## Chapter 35.22 RCW

### FIRST CLASS CITIES

#### Sections

35.22.425 Criminal code repeals by city operating municipal court—Agreement covering costs of handling resulting criminal cases—Arbitration. (*Effective January 1, 2006.*)

**35.22.425 Criminal code repeals by city operating municipal court—Agreement covering costs of handling resulting criminal cases—Arbitration.** (*Effective January 1, 2006.*) A city of the first class operating a municipal court may not repeal in its entirety that portion of its municipal code defining crimes or repeal a provision of its municipal code which defines a crime equivalent to an offense listed in RCW 46.63.020 unless the municipality has reached an agreement with the appropriate county under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the repeal. The agreement shall include provisions for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04A RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04A RCW. [2005 c 433 § 38; 1984 c 258 § 204.]

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

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

## Chapter 35.23 RCW SECOND CLASS CITIES

### Sections

- 35.23.555 Criminal code repeals by city operating municipal court—Agreement covering costs of handling resulting criminal cases—Arbitration. (*Effective January 1, 2006.*)

**35.23.555 Criminal code repeals by city operating municipal court—Agreement covering costs of handling resulting criminal cases—Arbitration.** (*Effective January 1, 2006.*) A city of the second class operating a municipal court may not repeal in its entirety that portion of its municipal code defining crimes or repeal a provision of its municipal code which defines a crime equivalent to an offense listed in RCW 46.63.020 unless the municipality has reached an agreement with the appropriate county under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the repeal. The agreement shall include provisions for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04A RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04A RCW. [2005 c 433 § 39; 1994 c 81 § 52; 1984 c 258 § 206. Formerly RCW 35.24.455.]

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

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

## Chapter 35.27 RCW TOWNS

### Sections

- 35.27.515 Criminal code repeals by town operating municipal court—Agreement covering costs of handling resulting criminal cases—Arbitration. (*Effective January 1, 2006.*)

**35.27.515 Criminal code repeals by town operating municipal court—Agreement covering costs of handling resulting criminal cases—Arbitration.** (*Effective January 1, 2006.*) A town operating a municipal court may not repeal in its entirety that portion of its municipal code defining crimes or repeal a provision of its municipal code which defines a crime equivalent to an offense listed in RCW 46.63.020 unless the municipality has reached an agreement with the appropriate county under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the repeal. The agreement shall include provisions for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration

under chapter 7.04A RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04A RCW. [2005 c 433 § 40; 1984 c 258 § 207.]

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

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

## Chapter 35.30 RCW UNCLASSIFIED CITIES

### Sections

- 35.30.100 Criminal code repeal by city operating municipal court—Agreement covering costs of handling resulting criminal cases—Arbitration. (*Effective January 1, 2006.*)

**35.30.100 Criminal code repeal by city operating municipal court—Agreement covering costs of handling resulting criminal cases—Arbitration.** (*Effective January 1, 2006.*) A city operating a municipal court may not repeal in its entirety that portion of its municipal code defining crimes unless the municipality has reached an agreement with the appropriate county under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the repeal. The agreement shall include provisions for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04A RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04A RCW. [2005 c 433 § 41; 1984 c 258 § 208.]

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

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

## Chapter 35.58 RCW METROPOLITAN MUNICIPAL CORPORATIONS

### Sections

- 35.58.2796 Public transportation systems—Annual report by department.

**35.58.2796 Public transportation systems—Annual report by department.** The department of transportation shall develop an annual report summarizing the status of public transportation systems in the state. By September 1st of each year, copies of the report shall be submitted to the transportation committees of the legislature and to each municipality, as defined in RCW 35.58.272, and to individual members of the municipality's legislative authority.

To assist the department with preparation of the report, each municipality shall file a system report by April 1st of

each year with the state department of transportation identifying its public transportation services for the previous calendar year and its objectives for improving the efficiency and effectiveness of those services. The system report shall address those items required for each public transportation system in the department's report.

The department report shall describe individual public transportation systems, including contracted transportation services and dial-a-ride services, and include a statewide summary of public transportation issues and data. The descriptions shall include the following elements and such other elements as the department deems appropriate after consultation with the municipalities and the transportation committees of the legislature:

- (1) Equipment and facilities, including vehicle replacement standards;
- (2) Services and service standards;
- (3) Revenues, expenses, and ending balances, by fund source;
- (4) Policy issues and system improvement objectives, including community participation in development of those objectives and how those objectives address statewide transportation priorities;
- (5) Operating indicators applied to public transportation services, revenues, and expenses. Operating indicators shall include operating cost per passenger trip, operating cost per revenue vehicle service hour, passenger trips per revenue service hour, passenger trips per vehicle service mile, vehicle service hours per employee, and farebox revenue as a percent of operating costs. [2005 c 319 § 101; 1989 c 396 § 2.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Chapter 35.61 RCW**

**METROPOLITAN PARK DISTRICTS**

Sections

- 35.61.132 Disposition of surplus property—Projects benefiting disadvantaged youth. (*Expires December 31, 2006.*)
- 35.61.290 Transfer of property by city, county, or other municipal corporation—Emergency grant, loan, of funds by city.
- 35.61.300 Transfer of property by city, county, or other municipal corporation—Assumption of indebtedness—Issuance of refunding bonds.

**35.61.132 Disposition of surplus property—Projects benefiting disadvantaged youth. (*Expires December 31, 2006.*)** For any real estate transaction proposed to result in a project that provides programming and activities for disadvantaged youth, the funding endowment for which equals or exceeds twenty million dollars, and that requires the transfer of title of surplus district property to a charitable organization as so recognized by its 501(c)(3) federal income taxation status, every metropolitan park district may, by simple majority vote of its board of park commissioners, sell, exchange, or otherwise dispose of any real or personal property acquired for park or recreational purposes when such property is declared surplus for park or other recreational purposes: PROVIDED, That where the property is acquired by donation or dedication for park or recreational purposes, the consent of the donor or dedicator, his or her heirs, successors, or assigns is first obtained if the consent of the donor is required

in the instrument conveying the property to the metropolitan park district. In the event the donor or dedicator, his or her heirs, successors, or assigns cannot be located after a reasonable search, the metropolitan park district may petition the superior court in the county where the property is located for approval of the sale. If sold, all sales shall be by public bids and sale made only to the highest or best bidder.

Every metropolitan park district may, by unanimous decision of its board of park commissioners, sell, exchange, or otherwise dispose of any real or personal property acquired for park or recreational purposes when such property is declared surplus for park or other recreational purposes: PROVIDED, That where the property is acquired by donation or dedication for park or recreational purposes, the consent of the donor or dedicator, his or her heirs, successors, or assigns is first obtained if the consent of the donor is required in the instrument conveying the property to the metropolitan park district. In the event the donor or dedicator, his or her heirs, successors, or assigns cannot be located after a reasonable search, the metropolitan park district may petition the superior court in the county where the property is located for approval of the sale. If sold, all sales shall be by public bids and sale made only to the highest and best bidder. [2005 c 4 § 1; 1989 c 319 § 4; 1965 c 7 § 35.61.132. Prior: 1959 c 93 § 1.]

**Expiration date—2005 c 4 § 1:** "Section 1 of this act expires December 31, 2006." [2005 c 4 § 2.]

**Effective date—2005 c 4:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [February 24, 2005]." [2005 c 4 § 3.]

**35.61.290 Transfer of property by city, county, or other municipal corporation—Emergency grant, loan, of funds by city.**

(1) Any city within or comprising any metropolitan park district may turn over to the park district any lands which it may own, or any street, avenue, or public place within the city for playground, park or parkway purposes, and thereafter its control and management shall vest in the board of park commissioners: PROVIDED, That the police regulations of such city shall apply to all such premises.

At any time that any such metropolitan park district is unable, through lack of sufficient funds, to provide for the continuous operation, maintenance and improvement of the parks and playgrounds and other properties or facilities owned by it or under its control, and the legislative body of any city within or comprising such metropolitan park district shall determine that an emergency exists requiring the financial aid of such city to be extended in order to provide for such continuous operation, maintenance and/or improvement of parks, playgrounds facilities, other properties, and programs of such park district within its limits, such city may grant or loan to such metropolitan park district such of its available funds, or such funds which it may lawfully procure and make available, as it shall find necessary to provide for such continuous operation and maintenance and, pursuant thereto, any such city and the board of park commissioners of such district are authorized and empowered to enter into an agreement embodying such terms and conditions of any such grant or loan as may be mutually agreed upon.



The board of metropolitan park commissioners may accept public streets of the city and grounds for public purposes when donated for park, playground, boulevard and park purposes.

(2) Counties and other municipal corporations, including but not limited to park and recreation districts operating under chapter 36.69 RCW, may transfer to the metropolitan park district, with or without consideration therefor, any lands, facilities, equipment, other interests in real or personal property, or interests under contracts, leases, or similar agreements. The board of metropolitan park commissioners may accept, for metropolitan park district purposes, such transfer of lands, facilities, equipment, other interests in real or personal property, and interests under contracts, leases, or similar agreements. [2005 c 226 § 1; 1985 c 416 § 5; 1965 c 7 § 35.61.290. Prior: 1953 c 194 § 1. Formerly: (i) 1943 c 264 § 18; Rem. Supp. 1943 § 6741-18; prior: 1907 c 98 § 16; RRS § 6735. (ii) 1943 c 264 § 19; Rem. Supp. 1943 § 6741-19; prior: 1907 c 98 § 19; RRS § 6738.]

**Application—2005 c 226:** "Sections 1 through 3 of this act apply retroactively to metropolitan park district elections occurring on or after May 1, 2004." [2005 c 226 § 4.]

**Effective date—2005 c 226:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 28, 2005]." [2005 c 226 § 5.]

**35.61.300 Transfer of property by city, county, or other municipal corporation—Assumption of indebtedness—Issuance of refunding bonds.** (1) When any metropolitan park district is formed pursuant to this chapter and assumes control of the parks, parkways, boulevards, and park property of the city in which said park district is created, or the metropolitan park district accepts, pursuant to RCW 35.61.290, any lands, facilities, equipment, other interests in real or personal property, or interests under contracts, leases, or similar agreements from a county or other municipal corporation (including but not limited to a park and recreation district operating under chapter 36.69 RCW), such metropolitan park district may assume all existing indebtedness, bonded or otherwise, incurred in relation to the transferred property or interest, in which case it shall arrange by taxation or issuing bonds, as herein provided, for the payment of such indebtedness, and shall relieve such city, county, or municipal corporation from such payment.

(2) A metropolitan park district is hereby given authority to issue refunding bonds when necessary, subject to chapters 39.36 and 39.53 RCW, in order to enable it to comply with this section.

(3)(a) In addition, refunding bonds issued under subsection (2) of this section for the purpose of assuming existing voter-approved indebtedness may be issued, by majority vote of the commissioners, as voter-approved indebtedness, if:

(i) The boundaries of the metropolitan park district are identical to the boundaries of the taxing district in which voter approval was originally obtained;

(ii) The governing body of the original taxing district has adopted a resolution declaring its intent to dissolve its operations and has named the metropolitan park district as its successor; and

(iii) The requisite number of voters of the original taxing district approved issuance of the indebtedness and the levy of excess taxes to pay and retire that indebtedness.

(b) A metropolitan park district acting under this subsection (3) is deemed the successor to the original taxing district and any refunding bonds issued under this subsection (3) constitute voter-approved indebtedness. The metropolitan park district shall levy and collect annual property taxes in excess of the district's regular property tax levy, in an amount sufficient to pay and retire the principal of and interest on those refunding bonds. [2005 c 226 § 2; 1985 c 416 § 6; 1965 c 7 § 35.61.300. Prior: 1943 c 264 § 22; Rem. Supp. 1943 § 6741-22; prior: 1907 c 98 § 22; RRS § 6741.]

**Application—Effective date—2005 c 226:** See notes following RCW 35.61.290.

## Chapter 35.63 RCW

### PLANNING COMMISSIONS

#### Sections

35.63.260 Conditional and special use permit applications by parties licensed or certified by the department of social and health services or the department of corrections—Mediation prior to appeal required. (*Effective January 1, 2006.*)

**35.63.260 Conditional and special use permit applications by parties licensed or certified by the department of social and health services or the department of corrections—Mediation prior to appeal required.** (*Effective January 1, 2006.*) (1) Prior to filing an appeal of a final decision by a hearing examiner involving a conditional or special use permit application requested by a party that is licensed or certified by the department of social and health services or the department of corrections, the aggrieved party must, within five days after the final decision, initiate formal mediation procedures in an attempt to resolve the parties' differences. If, after initial evaluation of the dispute, the parties agree to proceed with a mediation, the mediation shall be conducted by a trained mediator selected by agreement of the parties. The agreement to mediate shall be in writing and subject to chapter 7.07 RCW. If the parties are unable to agree on a mediator, each party shall nominate a mediator and the mediator shall be selected by lot from among the nominees. The mediator must be selected within five days after formal mediation procedures are initiated. The mediation process must be completed within fourteen days from the time the mediator is selected except that the mediation process may extend beyond fourteen days by agreement of the parties. The mediator shall, within the fourteen-day period or within the extension if an extension is agreed to, provide the parties with a written summary of the issues and any agreements reached. If the parties agree, the mediation report shall be made available to the governing jurisdiction. The cost of the mediation shall be shared by the parties.

(2) Any time limits for filing of appeals are tolled during the pendency of the mediation process.

(3) As used in this section, "party" does not include county, city, or town. [2005 c 172 § 18; 1998 c 119 § 1.]

**Short title—Captions not law—Severability—Effective date—2005 c 172:** See RCW 7.07.900 through 7.07.902 and 7.07.904.

## Chapter 35.77 RCW

STREETS—PLANNING, ESTABLISHMENT,  
CONSTRUCTION, AND MAINTENANCE

## Sections

35.77.010 Perpetual advanced six-year plans for coordinated transportation program expenditures—Nonmotorized transportation—Railroad right-of-way.

**35.77.010 Perpetual advanced six-year plans for coordinated transportation program expenditures—Nonmotorized transportation—Railroad right-of-way.** (1) The legislative body of each city and town, pursuant to one or more public hearings thereon, shall prepare and adopt a comprehensive transportation program for the ensuing six calendar years. If the city or town has adopted a comprehensive plan pursuant to chapter 35.63 or 35A.63 RCW, the inherent authority of a first class city derived from its charter, or chapter 36.70A RCW, the program shall be consistent with this comprehensive plan. The program shall include any new or enhanced bicycle or pedestrian facilities identified pursuant to RCW 36.70A.070(6) or other applicable changes that promote nonmotorized transit.

The program shall be filed with the secretary of transportation not more than thirty days after its adoption. Annually thereafter the legislative body of each city and town shall review the work accomplished under the program and determine current city transportation needs. Based on these findings each such legislative body shall prepare and after public hearings thereon adopt a revised and extended comprehensive transportation program before July 1st of each year, and each one-year extension and revision shall be filed with the secretary of transportation not more than thirty days after its adoption. The purpose of this section is to assure that each city and town shall perpetually have available advanced plans looking to the future for not less than six years as a guide in carrying out a coordinated transportation program. The program may at any time be revised by a majority of the legislative body of a city or town, but only after a public hearing.

The six-year plan for each city or town shall specifically set forth those projects and programs of regional significance for inclusion in the transportation improvement program within that region.

(2) Each six-year transportation program forwarded to the secretary in compliance with subsection (1) of this section shall contain information as to how a city or town will expend its moneys, including funds made available pursuant to chapter 47.30 RCW, for nonmotorized transportation purposes.

(3) Each six-year transportation program forwarded to the secretary in compliance with subsection (1) of this section shall contain information as to how a city or town shall act to preserve railroad right-of-way in the event the railroad ceases to operate in the city's or town's jurisdiction. [2005 c 360 § 4. Prior: 1994 c 179 § 1; 1994 c 158 § 7; 1990 1st ex.s. c 17 § 59; 1988 c 167 § 6; 1984 c 7 § 23; 1977 ex.s. c 317 § 7; 1975 1st ex.s. c 215 § 1; 1967 ex.s. c 83 § 27; 1965 c 7 § 35.77.010; prior: 1961 c 195 § 2.]

**Findings—Intent—2005 c 360:** See note following RCW 36.70A.070.

**Captions not law—Severability—Effective date—1994 c 158:** See RCW 47.80.902 through 47.80.904.

**Severability—Part, section headings not law—1990 1st ex.s. c 17:** See RCW 36.70A.900 and 36.70A.901.

[2005 RCW Supp—page 302]

**Savings—Severability—1988 c 167:** See notes following RCW 47.26.121.

**Severability—1984 c 7:** See note following RCW 47.01.141.

**Effective dates—Severability—1977 ex.s. c 317:** See notes following RCW 82.36.010.

**Severability—Effective dates—1967 ex.s. c 83:** See RCW 47.26.900 and 47.26.910.

*Highways, roads, streets in urban areas, urban arterials, development: Chapter 47.26 RCW.*

*Long-range arterial construction planning, counties and cities to prepare data: RCW 47.26.170.*

*Perpetual advanced six-year plans for coordinated transportation program: RCW 36.81.121.*

*Transportation improvement board: Chapter 47.26 RCW.*

## Chapter 35.80 RCW

UNFIT DWELLINGS, BUILDINGS,  
AND STRUCTURES

## Sections

35.80.030 Permissible ordinances—Appeal.

**35.80.030 Permissible ordinances—Appeal.** (1) Whenever the local governing body of a municipality finds that one or more conditions of the character described in RCW 35.80.010 exist within its territorial limits, that governing body may adopt ordinances relating to such dwellings, buildings, structures, or premises. Such ordinances may provide for the following:

(a) That an "improvement board" or officer be designated or appointed to exercise the powers assigned to such board or officer by the ordinance as specified in this section. The board or officer may be an existing municipal board or officer in the municipality, or may be a separate board or officer appointed solely for the purpose of exercising the powers assigned by the ordinance.

If a board is created, the ordinance shall specify the terms, method of appointment, and type of membership of the board, which may be limited, if the local governing body chooses, to public officers under this section.

(b) That if a board is created, a public officer, other than a member of the improvement board, may be designated to work with the board and carry out the duties and exercise the powers assigned to the public officer by the ordinance.

(c) That if, after a preliminary investigation of any dwelling, building, structure, or premises, the board or officer finds that it is unfit for human habitation or other use, he or she shall cause to be served either personally or by certified mail, with return receipt requested, upon all persons having any interest therein, as shown upon the records of the auditor's office of the county in which such property is located, and shall post in a conspicuous place on such property, a complaint stating in what respects such dwelling, building, structure, or premises is unfit for human habitation or other use. If the whereabouts of any of such persons is unknown and the same cannot be ascertained by the board or officer in the exercise of reasonable diligence, and the board or officer makes an affidavit to that effect, then the serving of such complaint or order upon such persons may be made either by personal service or by mailing a copy of the complaint and order by certified mail, postage prepaid, return receipt

requested, to each such person at the address of the building involved in the proceedings, and mailing a copy of the complaint and order by first class mail to any address of each such person in the records of the county assessor or the county auditor for the county where the property is located. Such complaint shall contain a notice that a hearing will be held before the board or officer, at a place therein fixed, not less than ten days nor more than thirty days after the serving of the complaint; and that all parties in interest shall be given the right to file an answer to the complaint, to appear in person, or otherwise, and to give testimony at the time and place in the complaint. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the board or officer. A copy of such complaint shall also be filed with the auditor of the county in which the dwelling, building, structure, or premises is located, and such filing of the complaint or order shall have the same force and effect as other lis pendens notices provided by law.

(d) That the board or officer may determine that a dwelling, building, structure, or premises is unfit for human habitation or other use if it finds that conditions exist in such dwelling, building, structure, or premises which are dangerous or injurious to the health or safety of the occupants of such dwelling, building, structure, or premises, the occupants of neighboring dwellings, or other residents of such municipality. Such conditions may include the following, without limitations: Defects therein increasing the hazards of fire or accident; inadequate ventilation, light, or sanitary facilities, dilapidation, disrepair, structural defects, uncleanness, overcrowding, or inadequate drainage. The ordinance shall state reasonable and minimum standards covering such conditions, including those contained in ordinances adopted in accordance with subsection (7)(a) of this section, to guide the board or the public officer and the agents and employees of either, in determining the fitness of a dwelling for human habitation, or building, structure, or premises for other use.

(e) That the determination of whether a dwelling, building, structure, or premises should be repaired or demolished, shall be based on specific stated standards on (i) the degree of structural deterioration of the dwelling, building, structure, or premises, or (ii) the relationship that the estimated cost of repair bears to the value of the dwelling, building, structure, or premises, with the method of determining this value to be specified in the ordinance.

(f) That if, after the required hearing, the board or officer determines that the dwelling is unfit for human habitation, or building or structure or premises is unfit for other use, it shall state in writing its findings of fact in support of such determination, and shall issue and cause to be served upon the owner or party in interest thereof, as is provided in (c) of this subsection, and shall post in a conspicuous place on the property, an order that (i) requires the owner or party in interest, within the time specified in the order, to repair, alter, or improve such dwelling, building, structure, or premises to render it fit for human habitation, or for other use, or to vacate and close the dwelling, building, structure, or premises, if such course of action is deemed proper on the basis of the standards set forth as required in (e) of this subsection; or (ii) requires the owner or party in interest, within the time specified in the order, to remove or demolish such dwelling, building, structure, or premises, if this course of action is deemed proper on the

basis of those standards. If no appeal is filed, a copy of such order shall be filed with the auditor of the county in which the dwelling, building, structure, or premises is located.

(g) That the owner or any party in interest, within thirty days from the date of service upon the owner and posting of an order issued by the board under (c) of this subsection, may file an appeal with the appeals commission.

The local governing body of the municipality shall designate or establish a municipal agency to serve as the appeals commission. The local governing body shall also establish rules of procedure adequate to assure a prompt and thorough review of matters submitted to the appeals commission, and such rules of procedure shall include the following, without being limited thereto: (i) All matters submitted to the appeals commission must be resolved by the commission within sixty days from the date of filing therewith and (ii) a transcript of the findings of fact of the appeals commission shall be made available to the owner or other party in interest upon demand.

The findings and orders of the appeals commission shall be reported in the same manner and shall bear the same legal consequences as if issued by the board, and shall be subject to review only in the manner and to the extent provided in subsection (2) of this section.

If the owner or party in interest, following exhaustion of his or her rights to appeal, fails to comply with the final order to repair, alter, improve, vacate, close, remove, or demolish the dwelling, building, structure, or premises, the board or officer may direct or cause such dwelling, building, structure, or premises to be repaired, altered, improved, vacated, and closed, removed, or demolished.

(h) That the amount of the cost of such repairs, alterations or improvements; or vacating and closing; or removal or demolition by the board or officer, shall be assessed against the real property upon which such cost was incurred unless such amount is previously paid. For purposes of this subsection, the cost of vacating and closing shall include (i) the amount of relocation assistance payments that a property owner has not repaid to a municipality or other local government entity that has advanced relocation assistance payments to tenants under RCW 59.18.085 and (ii) all penalties and interest that accrue as a result of the failure of the property owner to timely repay the amount of these relocation assistance payments under RCW 59.18.085. Upon certification to him or her by the treasurer of the municipality in cases arising out of the city or town or by the county improvement board or officer, in cases arising out of the county, of the assessment amount being due and owing, the county treasurer shall enter the amount of such assessment upon the tax rolls against the property for the current year and the same shall become a part of the general taxes for that year to be collected at the same time and with interest at such rates and in such manner as provided for in RCW 84.56.020 for delinquent taxes, and when collected to be deposited to the credit of the general fund of the municipality. If the dwelling, building, structure, or premises is removed or demolished by the board or officer, the board or officer shall, if possible, sell the materials of such dwelling, building, structure, or premises in accordance with procedures set forth in the ordinance, and shall credit the proceeds of such sale against the cost of the removal or demolition and if there be any balance remaining, it shall be paid to

the parties entitled thereto, as determined by the board or officer, after deducting the costs incident thereto.

The assessment shall constitute a lien against the property which shall be of equal rank with state, county and municipal taxes.

(2) Any person affected by an order issued by the appeals commission pursuant to subsection (1)(g) of this section may, within thirty days after the posting and service of the order, petition to the superior court for an injunction restraining the public officer or members of the board from carrying out the provisions of the order. In all such proceedings the court is authorized to affirm, reverse, or modify the order and such trial shall be heard de novo.

(3) An ordinance adopted by the local governing body of the municipality may authorize the board or officer to exercise such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this section. These powers shall include the following in addition to others granted in this section: (a)(i) To determine which dwellings within the municipality are unfit for human habitation; (ii) to determine which buildings, structures, or premises are unfit for other use; (b) to administer oaths and affirmations, examine witnesses, and receive evidence; and (c) to investigate the dwelling and other property conditions in the municipality or county and to enter upon premises for the purpose of making examinations when the board or officer has reasonable ground for believing they are unfit for human habitation, or for other use: PROVIDED, That such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession, and to obtain an order for this purpose after submitting evidence in support of an application which is adequate to justify such an order from a court of competent jurisdiction in the event entry is denied or resisted.

(4) The local governing body of any municipality adopting an ordinance pursuant to this chapter may appropriate the necessary funds to administer such ordinance.

(5) This section does not abrogate or impair the powers of the courts or of any department of any municipality to enforce any provisions of its charter or its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this section shall be in addition and supplemental to the powers conferred by any other law.

(6) This section does not impair or limit in any way the power of the municipality to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise.

(7) Any municipality may by ordinance adopted by its governing body (a) prescribe minimum standards for the use and occupancy of dwellings throughout the municipality or county, (b) prescribe minimum standards for the use or occupancy of any building, structure, or premises used for any other purpose, (c) prevent the use or occupancy of any dwelling, building, structure, or premises, that is injurious to the public health, safety, morals, or welfare, and (d) prescribe punishment for the violation of any provision of such ordinance. [2005 c 364 § 3; 1989 c 133 § 3; 1984 c 213 § 1; 1973 1st ex.s. c 144 § 1; 1969 ex.s. c 127 § 3; 1967 c 111 § 3; 1965 c 7 § 35.80.030. Prior: 1959 c 82 § 3.]

**Purpose—Construction—2005 c 364:** See notes following RCW 59.18.085.

## Chapter 35.87A RCW

### PARKING AND BUSINESS IMPROVEMENT AREAS

#### Sections

35.87A.010 Authorized—Purposes—Special assessments.

**35.87A.010 Authorized—Purposes—Special assessments.** To aid general economic development and neighborhood revitalization, and to facilitate the cooperation of merchants, businesses, and residential property owners which assists trade, economic viability, and liveability, the legislature hereby authorizes all counties and all incorporated cities and towns, including unclassified cities and towns operating under special charters:

(1) To establish, after a petition submitted by the operators responsible for sixty percent of the assessments by businesses and multifamily residential or mixed-use projects within the area, parking and business improvement areas, hereafter referred to as area or areas, for the following purposes:

- (a) The acquisition, construction or maintenance of parking facilities for the benefit of the area;
- (b) Decoration of any public place in the area;
- (c) Sponsorship or promotion of public events which are to take place on or in public places in the area;
- (d) Furnishing of music in any public place in the area;
- (e) Providing professional management, planning, and promotion for the area, including the management and promotion of retail trade activities in the area;
- (f) Providing maintenance and security for common, public areas; or
- (g) Providing transportation services for the benefit of the area.

(2) To levy special assessments on all businesses and multifamily residential or mixed-use projects within the area and specially benefited by a parking and business improvement area to pay in whole or in part the damages or costs incurred therein as provided in this chapter. [2005 c 178 § 1; 2000 c 201 § 1; 1993 c 429 § 1; 1985 c 128 § 1; 1981 c 279 § 1; 1971 ex.s. c 45 § 1.]

## Chapter 35.91 RCW

### MUNICIPAL WATER AND SEWER FACILITIES ACT

#### Sections

35.91.040 Contract payment to be made prior to tap, connection, or use—Removal of tap or connection.

**35.91.040 Contract payment to be made prior to tap, connection, or use—Removal of tap or connection.** (1) A person, firm, or corporation may not be granted a permit or be authorized to tap into, or use any such water or sewer facilities or extensions thereof during the period of time prescribed in such contract without first paying to the municipality, in addition to any and all other costs and charges made or assessed for such tap, or use, or for the water lines or sewers constructed in connection therewith, the amount required by the provisions of the contract under which the water or sewer facilities so tapped into or used were constructed. All amounts so received by the municipality shall be paid out by it under the terms of such contract within sixty days after the

receipt thereof. Whenever any tap or connection is made into any such contracted water or sewer facilities without such payment having first been made, the governing body of the municipality may remove, or cause to be removed, such unauthorized tap or connection and all connecting tile, or pipe located in the facility right of way and dispose of unauthorized material so removed without any liability whatsoever.

(2) A tap or connection charge under this section for service to a manufactured housing community, as defined in RCW 59.20.030, applies to an individual lot within that community only if the municipality provides and maintains the tap-in connection. [2005 c 324 § 1; 1965 c 7 § 35.91.040. Prior: 1959 c 261 § 4.]

### Chapter 35.95A RCW

#### CITY TRANSPORTATION AUTHORITY— MONORAIL TRANSPORTATION

##### Sections

35.95A.140 Requirements for signage.

**35.95A.140 Requirements for signage.** Each authority shall incorporate in plans for stations along any monorail project signing that is easily understood by the traveling public, including, but not limited to, persons with disabilities, non-English speaking persons, and visitors from other nations. The signage must employ graphics consistent with international symbols for transportation facilities and signage that are consistent with department of transportation guidelines and programs. The signage must also use distinguishing pictograms as a means to identify stations and points of interest along the monorail corridor for persons who use languages that are not Roman-alphabet based. These requirements are intended to apply to new sign installation and not to existing signs. The authority may replace existing signs as it chooses; however, it shall use the new signing designs when existing signs are replaced. All signage must comply with requirements of applicable federal law and may include recommendations contained in federal publications providing directions on way-finding for persons with disabilities. [2005 c 19 § 2.]

**Intent—Findings—2005 c 19:** "It is the intent of the legislature to promote the use of icons and pictograms that incorporate the use of commonly accepted symbols that can be understood and interpreted by a variety of people from all walks of life and different nations in order to assist them in the navigation of this state. These signs can be used on roadways and for other transportation-related facilities such as transit stations, airports, bus and train stations, and ferry terminals. Pictograms are signs that depict services, facilities, or destinations in picture form and are used throughout the world. Pictograms are useful for traveling within a transit system as well as for locating transit system stations and stops.

The legislature finds that many signing methods such as icons, already in use by the Washington state department of transportation and other agencies, facilitate use of the transportation systems in the state and connections between modes. The legislature also finds that the development of pictograms for use within transit systems will assist system users, complement other signing methods, and increase transit system ridership through easier way-finding. The pictograms may reflect the unique characteristics of the facility, and those characteristics should be considered and are acceptable in icon and pictogram design. It is the intent of the legislature to have icons and pictograms in use as new systems are put into service to promote tourism and be in place by 2010 to assist international visitors coming to Washington during the Olympic Games in Vancouver, British Columbia, Canada." [2005 c 19 § 1.]

### Chapter 35.102 RCW

#### MUNICIPAL BUSINESS AND OCCUPATION TAX

##### Sections

35.102.040 Model ordinance—Mandatory provisions. (*Effective July 1, 2006.*)

**35.102.040 Model ordinance—Mandatory provisions. (*Effective July 1, 2006.*)** (1)(a) The cities, working through the association of Washington cities, shall form a model ordinance development committee made up of a representative sampling of cities that as of July 27, 2003, impose a business and occupation tax. This committee shall work through the association of Washington cities to adopt a model ordinance on municipal gross receipts business and occupation tax. The model ordinance and subsequent amendments shall be adopted using a process that includes opportunity for substantial input from business stakeholders and other members of the public. Input shall be solicited from statewide business associations and from local chambers of commerce and downtown business associations in cities that levy a business and occupation tax.

(b) The municipal research council shall contract to post the model ordinance on an internet web site and to make paper copies available for inspection upon request. The department of revenue and the department of licensing shall post copies of or links to the model ordinance on their internet web sites. Additionally, a city that imposes a business and occupation tax must make copies of its ordinance available for inspection and copying as provided in chapter 42.56 RCW.

(c) The definitions and tax classifications in the model ordinance may not be amended more frequently than once every four years, however the model ordinance may be amended at any time to comply with changes in state law. Any amendment to a mandatory provision of the model ordinance must be adopted with the same effective date by all cities.

(2) A city that imposes a business and occupation tax must adopt the mandatory provisions of the model ordinance. The following provisions are mandatory:

(a) A system of credits that meets the requirements of RCW 35.102.060 and a form for such use;

(b) A uniform, minimum small business tax threshold of at least the equivalent of twenty thousand dollars in gross income annually. A city may elect to deviate from this requirement by creating a higher threshold or exemption but it shall not deviate lower than the level required in this subsection. If a city has a small business threshold or exemption in excess of that provided in this subsection as of January 1, 2003, and chooses to deviate below the threshold or exemption level that was in place as of January 1, 2003, the city must notify all businesses licensed to do business within the city at least one hundred twenty days prior to the potential implementation of a lower threshold or exemption amount;

(c) Tax reporting frequencies that meet the requirements of RCW 35.102.070;

(d) Penalty and interest provisions that meet the requirements of RCW 35.102.080 and 35.102.090;

(e) Claim periods that meet the requirements of RCW 35.102.100;

(f) Refund provisions that meet the requirements of RCW 35.102.110; and

(g) Definitions, which at a minimum, must include the definitions enumerated in RCW 35.102.030 and 35.102.120. The definitions in chapter 82.04 RCW shall be used as the baseline for all definitions in the model ordinance, and any deviation in the model ordinance from these definitions must be described by a comment in the model ordinance.

(3) Except for the system of credits developed to address multiple taxation under subsection (2)(a) of this section, a city may adopt its own provisions for tax exemptions, tax credits, and tax deductions.

(4) Any city that adopts an ordinance that deviates from the nonmandatory provisions of the model ordinance shall make a description of such differences available to the public, in written and electronic form. [2005 c 274 § 266; 2003 c 79 § 4.]

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

### Chapter 35.103 RCW FIRE DEPARTMENTS— PERFORMANCE MEASURES

#### Sections

35.103.010	Intent.
35.103.020	Definitions.
35.103.030	Policy statement—Service delivery objectives.
35.103.040	Annual evaluations—Annual report.
35.103.900	Part headings not law—2005 c 376.

**35.103.010 Intent.** The legislature intends for city fire departments to set standards for addressing the reporting and accountability of substantially career fire departments, and to specify performance measures applicable to response time objectives for certain major services. The legislature acknowledges the efforts of the international city/county management association, the international association of fire chiefs, and the national fire protection association for the organization and deployment of resources for fire departments. The arrival of first responders with automatic external defibrillator capability before the onset of brain death, and the arrival of adequate fire suppression resources before flash-over is a critical event during the mitigation of an emergency, and is in the public's best interest. For these reasons, this chapter contains performance measures, comparable to that research, relating to the organization and deployment of fire suppression operations, emergency medical operations, and special operations by substantially career fire departments. This chapter does not, and is not intended to, in any way modify or limit the authority of cities and towns to set levels of service. [2005 c 376 § 101.]

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

(1) "Advanced life support" means functional provision of advanced airway management, including intubation, advanced cardiac monitoring, manual defibrillation, establishment and maintenance of intravenous access, and drug therapy.

(2) "Aircraft rescue and fire fighting" means the fire fighting actions taken to rescue persons and to control or extinguish fire involving or adjacent to aircraft on the ground.

(3) "Brain death" as defined by the American heart association means the irreversible death of brain cells that begins four to six minutes after cardiac arrest.

(4) "City" means a first class city or a second class city that provides fire protection services in a specified geographic area.

(5) "Fire department" means a city or town fire department responsible for fire fighting actions, emergency medical services, and other special operations in a specified geographic area. The department must be a substantially career fire department, and not a substantially volunteer fire department.

(6) "Fire suppression" means the activities involved in controlling and extinguishing fires.

(7) "First responder" means provision of initial assessment and basic first-aid intervention, including cardiac pulmonary resuscitation and automatic external defibrillator capability.

(8) "Flash-over" as defined by national institute of standards and technology means when all combustibles in a room burst into flame and the fire spreads rapidly.

(9) "Marine rescue and fire fighting" means the fire fighting actions taken to prevent, control, or extinguish fire involved in or adjacent to a marine vessel and the rescue actions for occupants using normal and emergency routes for egress.

(10) "Response time" means the time immediately following the turnout time that begins when units are en route to the emergency incident and ends when units arrive at the scene.

(11) "Special operations" means those emergency incidents to which the fire department responds that require specific and advanced training and specialized tools and equipment.

(12) "Town" means a town that provides fire protection services, which may include fire fighting actions, emergency medical services, and other special operations, in a specified geographic area.

(13) "Turnout time" means the time beginning when units receive notification of the emergency to the beginning point of response time. [2005 c 376 § 102.]

**35.103.030 Policy statement—Service delivery objectives.** (1) Every city and town shall maintain a written statement or policy that establishes the following:

- (a) The existence of a fire department;
- (b) Services that the fire department is required to provide;
- (c) The basic organizational structure of the fire department;
- (d) The expected number of fire department employees; and
- (e) Functions that fire department employees are expected to perform.

(2) Every city and town shall include service delivery objectives in the written statement or policy required under subsection (1) of this section. These objectives shall include

specific response time objectives for the following major service components, if appropriate:

- (a) Fire suppression;
- (b) Emergency medical services;
- (c) Special operations;
- (d) Aircraft rescue and fire fighting;
- (e) Marine rescue and fire fighting; and
- (f) Wild land fire fighting.

(3) Every city and town, in order to measure the ability to arrive and begin mitigation operations before the critical events of brain death or flash-over, shall establish time objectives for the following measurements:

- (a) Turnout time;
- (b) Response time for the arrival of the first arriving engine company at a fire suppression incident and response time for the deployment of a full first alarm assignment at a fire suppression incident;
- (c) Response time for the arrival of a unit with first responder or higher level capability at an emergency medical incident; and
- (d) Response time for the arrival of an advanced life support unit at an emergency medical incident, where this service is provided by the fire department.

(4) Every city and town shall also establish a performance objective of not less than ninety percent for the achievement of each response time objective established under subsection (3) of this section. [2005 c 376 § 103.]

**35.103.040 Annual evaluations—Annual report.** (1) Every city and town shall evaluate its level of service and deployment delivery and response time objectives on an annual basis. The evaluations shall be based on data relating to level of service, deployment, and the achievement of each response time objective in each geographic area within the jurisdiction of the city or town.

(2) Beginning in 2007, every city and town shall issue an annual written report which shall be based on the annual evaluations required by subsection (1) of this section.

(a) The annual report shall define the geographic areas and circumstances in which the requirements of this standard are not being met.

(b) The annual report shall explain the predictable consequences of any deficiencies and address the steps that are necessary to achieve compliance. [2005 c 376 § 104.]

**35.103.900 Part headings not law—2005 c 376.** Part headings used in this act are not any part of the law. [2005 c 376 § 501.]

## Title 35A

### OPTIONAL MUNICIPAL CODE

#### Chapters

- 35A.11** Laws governing noncharter code cities and charter code cities—Powers.
- 35A.16** Reduction of city limits.
- 35A.21** Provisions affecting all code cities.
- 35A.92** Fire departments—Performance measures.

## Chapter 35A.11 RCW

### LAWS GOVERNING NONCHARTER CODE CITIES AND CHARTER CODE CITIES—POWERS

#### Sections

- 35A.11.110** Members of legislative bodies authorized to serve as volunteer fire fighters, volunteer ambulance personnel, or reserve law enforcement officers.
- 35A.11.200** Criminal code repeal by city operating municipal court—Agreement covering costs of handling resulting criminal cases—Arbitration. (*Effective January 1, 2006.*)

**35A.11.110 Members of legislative bodies authorized to serve as volunteer fire fighters, volunteer ambulance personnel, or reserve law enforcement officers.** Notwithstanding any other provision of law, the legislative body of any code city, by resolution adopted by a two-thirds vote of the full legislative body, may authorize any of its members to serve as volunteer fire fighters, volunteer ambulance personnel, or reserve law enforcement officers, or two or more of such positions, and to receive the same compensation, insurance, and other benefits as are applicable to other volunteer fire fighters, volunteer ambulance personnel, or reserve law enforcement officers employed by the code city. [2005 c 38 § 1; 1993 c 303 § 2; 1974 ex.s. c 60 § 2.]

**35A.11.200 Criminal code repeal by city operating municipal court—Agreement covering costs of handling resulting criminal cases—Arbitration.** (*Effective January 1, 2006.*) A code city operating a municipal court may not repeal in its entirety that portion of its municipal code defining crimes unless the municipality has reached an agreement with the appropriate county under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the repeal. The agreement shall include provisions for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04A RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04A RCW. [2005 c 433 § 42; 1984 c 258 § 209.]

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

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

## Chapter 35A.16 RCW

### REDUCTION OF CITY LIMITS

#### Sections

- 35A.16.080** Exclusion of agricultural land from the incorporated area of a code city.

**35A.16.080 Exclusion of agricultural land from the incorporated area of a code city.** Proceedings for excluding agricultural land from the boundaries of a charter code city or

noncharter code city may be commenced by the filing of a petition which is sufficient as determined by RCW 35A.01.040 by property owners of the agricultural land proposed to be excluded, in the following manner which is alternative to other methods provided in this chapter:

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

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

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

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

### Chapter 35A.21 RCW

#### PROVISIONS AFFECTING ALL CODE CITIES

##### Sections

- 35A.21.300 Rail fixed guideway system—Safety and security program plan. (*Effective July 1, 2006.*)  
 35A.21.330 Regulation of financial transactions—Limitations.

**35A.21.300 Rail fixed guideway system—Safety and security program plan.** (*Effective July 1, 2006.*) (1) Each code city that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety and security program plan for that guideway to the state department of transportation by September 1, 1999, or at least three months before beginning operations or instituting revisions to its plan. This plan must describe the code city's procedures for (a) reporting and investigating reportable accidents, unacceptable hazardous conditions, and security breaches, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee security. The plan must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the code city shall revise its plan to incor-

[2005 RCW Supp—page 308]

porate the department's review comments within sixty days after their receipt, and resubmit its revised plan for review.

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

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

(4) The security section of the safety and security plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter 42.56 RCW. However, the activities and plans as described in subsections (1)(a), (b), and (c), (2), and (3) of this section are not subject to this exemption. [2005 c 274 § 267; 1999 c 202 § 2.]

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

**Effective date—1999 c 202:** See note following RCW 35.21.228.

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

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

### Chapter 35A.92 RCW

#### FIRE DEPARTMENTS— PERFORMANCE MEASURES

##### Sections

- 35A.92.010 Intent.  
 35A.92.020 Definitions.  
 35A.92.030 Policy statement—Service delivery objectives.  
 35A.92.040 Annual evaluations—Annual report.  
 35A.92.900 Part headings not law—2005 c 376.

**35A.92.010 Intent.** The legislature intends for code cities to set standards for addressing the reporting and accountability of substantially career fire departments, and to specify performance measures applicable to response time objectives



for certain major services. The legislature acknowledges the efforts of the international city/county management association, the international association of fire chiefs, and the national fire protection association for the organization and deployment of resources for fire departments. The arrival of first responders with automatic external defibrillator capability before the onset of brain death, and the arrival of adequate fire suppression resources before flash-over is a critical event during the mitigation of an emergency, and is in the public's best interest. For these reasons, this chapter contains performance measures, comparable to that research, relating to the organization and deployment of fire suppression operations, emergency medical operations, and special operations by substantially career fire departments. This chapter does not, and is not intended to, in any way modify or limit the authority of code cities to set levels of service. [2005 c 376 § 201.]

**35A.92.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advanced life support" means functional provision of advanced airway management, including intubation, advanced cardiac monitoring, manual defibrillation, establishment and maintenance of intravenous access, and drug therapy.

(2) "Aircraft rescue and fire fighting" means the fire fighting actions taken to rescue persons and to control or extinguish fire involving or adjacent to aircraft on the ground.

(3) "Brain death" as defined by the American heart association means the irreversible death of brain cells that begins four to six minutes after cardiac arrest.

(4) "Code city" means a code city that provides fire protection services, which may include fire fighting actions, emergency medical services, and other special operations, in a specified geographic area.

(5) "Fire department" means a code city fire department responsible for fire fighting actions, emergency medical services, and other special operations in a specified geographic area. The department must be a substantially career fire department, and not a substantially volunteer fire department.

(6) "Fire suppression" means the activities involved in controlling and extinguishing fires.

(7) "First responder" means provision of initial assessment and basic first-aid intervention, including cardiac pulmonary resuscitation and automatic external defibrillator capability.

(8) "Flash-over" as defined by national institute of standards and technology means when all combustibles in a room burst into flame and the fire spreads rapidly.

(9) "Marine rescue and fire fighting" means the fire fighting actions taken to prevent, control, or extinguish fire involved in or adjacent to a marine vessel and the rescue actions for occupants using normal and emergency routes for egress.

(10) "Response time" means the time immediately following the turnout time that begins when units are en route to the emergency incident and ends when units arrive at the scene.

(11) "Special operations" means those emergency incidents to which the fire department responds that require spe-

cific and advanced training and specialized tools and equipment.

(12) "Turnout time" means the time beginning when units receive notification of the emergency to the beginning point of response time. [2005 c 376 § 202.]

**35A.92.030 Policy statement—Service delivery objectives.** (1) Every code city shall maintain a written statement or policy that establishes the following:

- (a) The existence of a fire department;
- (b) Services that the fire department is required to provide;
- (c) The basic organizational structure of the fire department;
- (d) The expected number of fire department employees; and
- (e) Functions that fire department employees are expected to perform.

(2) Every code city shall include service delivery objectives in the written statement or policy required under subsection (1) of this section. These objectives shall include specific response time objectives for the following major service components, if appropriate:

- (a) Fire suppression;
- (b) Emergency medical services;
- (c) Special operations;
- (d) Aircraft rescue and fire fighting;
- (e) Marine rescue and fire fighting; and
- (f) Wild land fire fighting.

(3) Every code city, in order to measure the ability to arrive and begin mitigation operations before the critical events of brain death or flash-over, shall establish time objectives for the following measurements:

- (a) Turnout time;
- (b) Response time for the arrival of the first arriving engine company at a fire suppression incident and response time for the deployment of a full first alarm assignment at a fire suppression incident;
- (c) Response time for the arrival of a unit with first responder or higher level capability at an emergency medical incident; and
- (d) Response time for the arrival of an advanced life support unit at an emergency medical incident, where this service is provided by the fire department.

(4) Every code city shall also establish a performance objective of not less than ninety percent for the achievement of each response time objective established under subsection (3) of this section. [2005 c 376 § 203.]

**35A.92.040 Annual evaluations—Annual report.** (1) Every code city shall evaluate its level of service and deployment delivery and response time objectives on an annual basis. The evaluations shall be based on data relating to level of service, deployment, and the achievement of each response time objective in each geographic area within the code city's jurisdiction.

(2) Beginning in 2007, every code city shall issue an annual written report which shall be based on the annual evaluations required by subsection (1) of this section.

(a) The annual report shall define the geographic areas and circumstances in which the requirements of this standard are not being met.

(b) The annual report shall explain the predictable consequences of any deficiencies and address the steps that are necessary to achieve compliance. [2005 c 376 § 204.]

**35A.92.900 Part headings not law—2005 c 376.** See RCW 35.103.900.

## Title 36 COUNTIES

### Chapters

<b>36.01</b>	<b>General provisions.</b>
<b>36.04</b>	<b>County boundaries.</b>
<b>36.18</b>	<b>Fees of county officers.</b>
<b>36.22</b>	<b>County auditor.</b>
<b>36.28A</b>	<b>Association of sheriffs and police chiefs.</b>
<b>36.29</b>	<b>County treasurer.</b>
<b>36.57</b>	<b>County public transportation authority.</b>
<b>36.57A</b>	<b>Public transportation benefit areas.</b>
<b>36.69</b>	<b>Park and recreation districts.</b>
<b>36.70A</b>	<b>Growth management—Planning by selected counties and cities.</b>
<b>36.70B</b>	<b>Local project review.</b>
<b>36.70C</b>	<b>Judicial review of land use decisions.</b>
<b>36.73</b>	<b>Transportation benefit districts.</b>
<b>36.75</b>	<b>Roads and bridges—General provisions.</b>
<b>36.77</b>	<b>Roads and bridges—Construction.</b>
<b>36.78</b>	<b>Roads and bridges—County road administration board.</b>
<b>36.81</b>	<b>Roads and bridges—Establishment.</b>
<b>36.94</b>	<b>Sewerage, water, and drainage systems.</b>
<b>36.102</b>	<b>Stadium and exhibition centers.</b>

### Chapter 36.01 RCW GENERAL PROVISIONS

#### Sections

36.01.050	Venue of actions by or against counties.
36.01.210	Rail fixed guideway system—Safety and security program plan. ( <i>Effective July 1, 2006.</i> )
36.01.240	Regulation of financial transactions—Limitations.

**36.01.050 Venue of actions by or against counties.** (1) All actions against any county may be commenced in the superior court of such county, or in the superior court of either of the two nearest judicial districts. All actions by any county shall be commenced in the superior court of the county in which the defendant resides, or in either of the two judicial districts nearest to the county bringing the action.

(2) The determination of the nearest judicial districts is measured by the travel time between county seats using major surface routes, as determined by the administrative office of the courts. [2005 c 282 § 42; 2000 c 244 § 1; 1997 c 401 § 1; 1963 c 4 § 36.01.050. Prior: 1854 p 329 § 6; No RRS.]

**36.01.210 Rail fixed guideway system—Safety and security program plan.** (*Effective July 1, 2006.*) (1) Each county functioning under chapter 36.56 RCW that owns or

[2005 RCW Supp—page 310]

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

(2) Each county functioning under chapter 36.56 RCW shall implement and comply with its system safety and security program plan. The county shall perform internal safety and security audits to evaluate its compliance with the plan, and submit its audit schedule to the department of transportation no later than December 15th each year. The county shall prepare an annual report for its internal safety and security audits undertaken in the prior year and submit it to the department no later than February 15th. This annual report must include the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity, and the results of each audit in terms of the adequacy and effectiveness of the plan.

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

(4) The security section of the safety and security plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter 42.56 RCW. However, the activities and plans as described in subsections (1)(a), (b), and (c), (2), and (3) of this section are not subject to this exemption. [2005 c 274 § 268; 1999 c 202 § 3.]

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

**Effective date—1999 c 202:** See note following RCW 35.21.228.

**36.01.240 Regulation of financial transactions—Limitations.** A county or governmental entity subject to this title may not regulate the terms, conditions, or disclosures of any lawful financial transaction between a consumer and (1) a business or professional under the jurisdiction of the department of financial institutions, or (2) any financial institution as defined under RCW 30.22.041. [2005 c 338 § 4.]

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

**Chapter 36.04 RCW  
COUNTY BOUNDARIES**

Sections

36.04.170 King county.

**36.04.170 King county.** King county shall consist of the territory bounded as follows, to wit: Beginning at the point of intersection of the center of East Passage (also known as Admiralty Inlet) on Puget Sound and the northerly line of the Puyallup Indian Reservation (projected northwesterly); thence southeasterly in a straight line along said northerly line of Puyallup Indian Reservation and same extended to a point on the east line of section thirty-one, township twenty-one, north, range four east, Willamette Meridian; thence south along said east line of section thirty-one, township twenty-one, range four east, Willamette Meridian, to the township line between township twenty north and township twenty-one north (being the fifth standard parallel north); thence east along said township line between township twenty north and township twenty-one north to the middle of the main channel of White river, near the northeast corner of section three, township twenty north, range five east, Willamette Meridian; thence upstream along the middle of the main channel of White river to the forks of White river and Greenwater river; thence upstream along the middle of the main channel of the Greenwater river to the forks of the Greenwater river and Meadow creek; thence upstream along the middle of the main channel of Meadow creek to the summit of the Cascade mountains, at a point known as Naches Pass, said point lying in the southwest quarter of section thirty-five, township nineteen north, range eleven east, Willamette Meridian; thence northerly along the summit of the Cascade mountains to a point on the township line between township twenty-six north and township twenty-seven north, said point lying near the north quarter-corner of section three, township twenty-six north, range thirteen east, Willamette Meridian; thence west along said township line between township twenty-six north and township twenty-seven north to the middle of the channel known as Admiralty Inlet on Puget Sound; thence southerly along said middle of channel known as Admiralty Inlet through Colvo's Passage (West Passage) on the west side of Vashon Island to a point due north of Point Defiance; thence southeasterly along middle of channel between Vashon Island and Point Defiance (Dalcos Passage) to a point due south of Quartermaster Harbor; thence northeasterly along middle of channel known as Admiralty Inlet to point of beginning. King county is renamed in honor of the Reverend Doctor Martin Luther King, Jr. [2005 c 90 § 1; 1 H.C. § 13; 1869 p 293 § 1; 1867 p 46 § 1; 1854 p 470 § 1; RRS § 3941.]

**Reviser's note:** Change in boundary by virtue of election in 1901 under chapter 36.08 RCW incorporated herein.

**Chapter 36.18 RCW  
FEES OF COUNTY OFFICERS**

Sections

36.18.010 Auditor's fees.  
36.18.012 Fees—Division for deposit in public safety and education account—Court transcript or abstract—Tax warrant—Other papers—Unlawful detainer—Striking discriminatory provi-

sions in real estate—Will with no probate—Nonjudicial probate dispute—Common law liens—Certification of delinquent taxes.

36.18.016 Various fees—Not subject to division.  
36.18.018 Fees to state court, administrative office of the courts—Appellate review—Variable fee for copies and reports.  
36.18.020 Clerk's fees.  
36.18.022 Filing fees may be waived—When.

**36.18.010 Auditor's fees.** County auditors or recording officers shall collect the following fees for their official services:

(1) For recording instruments, for the first page eight and one-half by fourteen inches or less, five dollars; for each additional page eight and one-half by fourteen inches or less, one dollar. The fee for recording multiple transactions contained in one instrument will be calculated for each transaction requiring separate indexing as required under RCW 65.04.050 as follows: The fee for each title or transaction is the same fee as the first page of any additional recorded document; the fee for additional pages is the same fee as for any additional pages for any recorded document; the fee for the additional pages may be collected only once and may not be collected for each title or transaction;

(2) For preparing and certifying copies, for the first page eight and one-half by fourteen inches or less, three dollars; for each additional page eight and one-half by fourteen inches or less, one dollar;

(3) For preparing noncertified copies, for each page eight and one-half by fourteen inches or less, one dollar;

(4) For administering an oath or taking an affidavit, with or without seal, two dollars;

(5) For issuing a marriage license, eight dollars, (this fee includes taking necessary affidavits, filing returns, indexing, and transmittal of a record of the marriage to the state registrar of vital statistics) plus an additional five-dollar fee for use and support of the prevention of child abuse and neglect activities to be transmitted monthly to the state treasurer and deposited in the state general fund plus an additional ten-dollar fee to be transmitted monthly to the state treasurer and deposited in the state general fund. The legislature intends to appropriate an amount at least equal to the revenue generated by this fee for the purposes of the displaced homemaker act, chapter 28B.04 RCW;

(6) For searching records per hour, eight dollars;

(7) For recording plats, fifty cents for each lot except cemetery plats for which the charge shall be twenty-five cents per lot; also one dollar for each acknowledgment, dedication, and description: PROVIDED, That there shall be a minimum fee of twenty-five dollars per plat;

(8) For recording of miscellaneous records not listed above, for the first page eight and one-half by fourteen inches or less, five dollars; for each additional page eight and one-half by fourteen inches or less, one dollar;

(9) For modernization and improvement of the recording and indexing system, a surcharge as provided in RCW 36.22.170;

(10) For recording an emergency nonstandard document as provided in RCW 65.04.047, fifty dollars, in addition to all other applicable recording fees;

(11) For recording instruments, a surcharge as provided in RCW 36.22.178; and

[(12)] For recording instruments, except for documents recording a birth, marriage, divorce, or death or any documents otherwise exempted from a recording fee under state law, a surcharge as provided in RCW 36.22.179. [2005 c 484 § 19; 2005 c 374 § 1; 2002 c 294 § 3; 1999 c 233 § 3; 1996 c 143 § 1; 1995 c 246 § 37; 1991 c 26 § 2. Prior: 1989 c 304 § 1; 1989 c 204 § 6; 1987 c 230 § 1; 1985 c 44 § 2; 1984 c 261 § 4; 1982 1st ex.s. c 15 § 7; 1982 c 4 § 12; 1977 ex.s. c 56 § 1; 1967 c 26 § 8; 1963 c 4 § 36.18.010; prior: 1959 c 263 § 6; 1953 c 214 § 2; 1951 c 51 § 4; 1907 c 56 § 1, part, p 92; 1903 c 151 § 1, part, p 295; 1893 c 130 § 1, part, p 423; Code 1881 § 2086, part, p 358; 1869 p 369 § 3; 1865 p 94 § 1; part; 1863 p 391 § 1, part, p 394; 1861 p 34 § 1, part, p 37; 1854 p 368 § 1, part, p 371; RRS §§ 497, part, 4105.]

**Reviser's note:** This section was amended by 2005 c 374 § 1 and by 2005 c 484 § 19, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Conflict with federal requirements—Effective date—2005 c 484:** See RCW 43.185C.005, 43.185C.901, and 43.185C.902.

**Findings—2002 c 294:** See note following RCW 36.22.178.

**Effective date—1999 c 233:** See note following RCW 4.28.320.

**Effective date—1996 c 143:** "This act shall take effect January 1, 1997." [1996 c 143 § 5.]

**Effective date—1995 c 246 § 37:** "Section 37 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 5, 1995]." [1995 c 246 § 39.]

**Severability—1995 c 246:** See note following RCW 26.50.010.

**Findings—1989 c 204:** See note following RCW 36.22.160.

**Effective date—1987 c 230:** "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 c 230 § 4.]

**Severability—1984 c 261:** See note following RCW 43.121.020.

**Severability—1982 c 4:** See RCW 43.121.910.

**Effective date—1967 c 26:** See note following RCW 43.70.150.

*Family court funding, marriage license fee increase authorized: RCW 26.12.220.*

**36.18.012 Fees—Division for deposit in public safety and education account—Court transcript or abstract—Tax warrant—Other papers—Unlawful detainer—Striking discriminatory provisions in real estate—Will with no probate—Nonjudicial probate dispute—Common law liens—Certification of delinquent taxes.** (1) Revenue collected under this section is subject to division with the state for deposit in the public safety and education account under RCW 36.18.025.

(2) The party filing a transcript or abstract of judgment or verdict from a United States court held in this state, or from the superior court of another county or from a district court in the county of issuance, shall pay at the time of filing a fee of twenty dollars.

(3) The clerk shall collect a fee of twenty dollars for: Filing a paper not related to or a part of a proceeding, civil or criminal, or a probate matter, required or permitted to be filed in the clerk's office for which no other charge is provided by law.

(4) If the defendant serves or files an answer to an unlawful detainer complaint under chapter 59.18 or 59.20 RCW,

the plaintiff shall pay before proceeding with the unlawful detainer action one hundred twelve dollars.

(5) For a restrictive covenant for filing a petition to strike discriminatory provisions in real estate under RCW 49.60.227 a fee of twenty dollars must be charged.

(6) A fee of twenty dollars must be charged for filing a will only, when no probate of the will is contemplated.

(7) A fee of twenty dollars must be charged for filing a petition, written agreement, or written memorandum in a nonjudicial probate dispute under RCW 11.96A.220, if it is filed within an existing case in the same court.

(8) A fee of thirty-five dollars must be charged for filing a petition regarding a common law lien under RCW 60.70.060.

(9) For certification of delinquent taxes by a county treasurer under RCW 84.64.190, a fee of five dollars must be charged.

(10) For the filing of a tax warrant for unpaid taxes or overpayment of benefits by any agency of the state of Washington, a fee of five dollars on or after July 22, 2001, and for the filing of such a tax warrant or overpayment of benefits on or after July 1, 2003, a fee of twenty dollars, of which forty-six percent of the first five dollars is directed to the public safety and education account established under RCW 43.08.250. [2005 c 457 § 17; 2001 c 146 § 1; 1999 c 42 § 634; 1996 c 211 § 1; 1995 c 292 § 12.]

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

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

**36.18.016 Various fees—Not subject to division.** (1) Revenue collected under this section is not subject to division under RCW 36.18.025 or 27.24.070.

(2)(a) For the filing of a petition for modification of a decree of dissolution or paternity, within the same case as the original action, a fee of thirty-six dollars must be paid.

(b) The party filing the first or initial petition for dissolution, legal separation, or declaration concerning the validity of marriage shall pay, at the time and in addition to the filing fee required under RCW 36.18.020, a fee of thirty dollars. The clerk of the superior court shall transmit monthly twenty-four dollars of the thirty-dollar fee collected under this subsection to the state treasury for deposit in the domestic violence prevention account. The remaining six dollars shall be retained by the county for the purpose of supporting community-based services within the county for victims of domestic violence, except for five percent of the six dollars, which may be retained by the court for administrative purposes.

(3)(a) The party making a demand for a jury of six in a civil action shall pay, at the time, a fee of one hundred twenty-five dollars; if the demand is for a jury of twelve, a fee of two hundred fifty dollars. If, after the party demands a jury of six and pays the required fee, any other party to the action requests a jury of twelve, an additional one hundred twenty-five dollar fee will be required of the party demanding the increased number of jurors.

(b) Upon conviction in criminal cases a jury demand charge of one hundred twenty-five dollars for a jury of six, or two hundred fifty dollars for a jury of twelve may be imposed as costs under RCW 10.46.190.

(4) For preparing a certified copy of an instrument on file or of record in the clerk's office, for the first page or portion of the first page, a fee of five dollars, and for each additional page or portion of a page, a fee of one dollar must be charged. For authenticating or exemplifying an instrument, a fee of two dollars for each additional seal affixed must be charged. For preparing a copy of an instrument on file or of record in the clerk's office without a seal, a fee of fifty cents per page must be charged. When copying a document without a seal or file that is in an electronic format, a fee of twenty-five cents per page must be charged. For copies made on a compact disc, an additional fee of twenty dollars for each compact disc must be charged.

(5) For executing a certificate, with or without a seal, a fee of two dollars must be charged.

(6) For a garnishee defendant named in an affidavit for garnishment and for a writ of attachment, a fee of twenty dollars must be charged.

(7) For filing a supplemental proceeding, a fee of twenty dollars must be charged.

(8) For approving a bond, including justification on the bond, in other than civil actions and probate proceedings, a fee of two dollars must be charged.

(9) For the issuance of a certificate of qualification and a certified copy of letters of administration, letters testamentary, or letters of guardianship, there must be a fee of two dollars.

(10) For the preparation of a passport application, the clerk may collect an execution fee as authorized by the federal government.

(11) For clerk's services such as processing ex parte orders, performing historical searches, compiling statistical reports, and conducting exceptional record searches, the clerk may collect a fee not to exceed twenty dollars per hour or portion of an hour.

(12) For duplicated recordings of court's proceedings there must be a fee of ten dollars for each audio tape and twenty-five dollars for each video tape or other electronic storage medium.

(13) For registration of land titles, Torrens Act, under RCW 65.12.780, a fee of twenty dollars must be charged.

(14) For the issuance of extension of judgment under RCW 6.17.020 and chapter 9.94A RCW, a fee of two hundred dollars must be charged.

(15) A facilitator surcharge of up to twenty dollars must be charged as authorized under RCW 26.12.240.

(16) For filing a water rights statement under RCW 90.03.180, a fee of twenty-five dollars must be charged.

(17) For filing a claim of frivolous lien under RCW 60.04.081, a fee of thirty-five dollars must be charged.

(18) For preparation of a change of venue, a fee of twenty dollars must be charged by the originating court in addition to the per page charges in subsection (4) of this section.

(19) A service fee of three dollars for the first page and one dollar for each additional page must be charged for receiving faxed documents, pursuant to Washington state rules of court, general rule 17.

(20) For preparation of clerk's papers under RAP 9.7, a fee of fifty cents per page must be charged.

(21) For copies and reports produced at the local level as permitted by RCW 2.68.020 and supreme court policy, a variable fee must be charged.

(22) Investment service charge and earnings under RCW 36.48.090 must be charged.

(23) Costs for nonstatutory services rendered by clerk by authority of local ordinance or policy must be charged.

(24) For filing a request for mandatory arbitration, a filing fee may be assessed against the party filing a statement of arbitrability not to exceed two hundred twenty dollars as established by authority of local ordinance. This charge shall be used solely to offset the cost of the mandatory arbitration program.

(25) For filing a request for trial de novo of an arbitration award, a fee not to exceed two hundred fifty dollars as established by authority of local ordinance must be charged.

(26) A public agency may not charge a fee to a law enforcement agency, for preparation, copying, or mailing of certified copies of the judgment and sentence, information, affidavit of probable cause, and/or the notice of requirement to register, of a sex offender convicted in a Washington court, when such records are necessary for risk assessment, preparation of a case for failure to register, or maintenance of a sex offender's registration file.

(27) For the filing of a will or codicil under the provisions of chapter 11.12 RCW, a fee of twenty dollars must be charged.

The revenue to counties from the fees established in this section shall be deemed to be complete reimbursement from the state for the state's share of benefits paid to the superior court judges of the state prior to July 24, 2005, and no claim shall lie against the state for such benefits. [2005 c 457 § 18; 2005 c 374 § 2; 2005 c 202 § 1; 2002 c 338 § 2; 2001 c 146 § 2; 2000 c 170 § 1; 1999 c 397 § 8; 1996 c 56 § 5; 1995 c 292 § 14.]

**Reviser's note:** This section was amended by 2005 c 202 § 1, 2005 c 374 § 2, and by 2005 c 457 § 18, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

**36.18.018 Fees to state court, administrative office of the courts—Appellate review—Variable fee for copies and reports.** (1) State revenue collected by county clerks under subsection (2) of this section must be transmitted to the appropriate state court. The administrative office of the courts shall retain fees collected under subsection (3) of this section.

(2) For appellate review under RAP 5.1(b), two hundred fifty dollars must be charged.

(3) For all copies and reports produced by the administrative office of the courts as permitted under RCW 2.68.020 and supreme court policy, a variable fee must be charged. [2005 c 282 § 43; 1995 c 292 § 15.]

**36.18.020 Clerk's fees.** (1) Revenue collected under this section is subject to division with the state public safety and education account under RCW 36.18.025 and with the county or regional law library fund under RCW 27.24.070.

(2) Clerks of superior courts shall collect the following fees for their official services:

(a) In addition to any other fee required by law, the party filing the first or initial paper in any civil action, including, but not limited to an action for restitution, adoption, or change of name, and any party filing a counterclaim, cross-claim, or third-party claim in any such civil action, shall pay, at the time the paper is filed, a fee of two hundred dollars except, in an unlawful detainer action under chapter 59.18 or 59.20 RCW for which the plaintiff shall pay a case initiating filing fee of forty-five dollars, or in proceedings filed under RCW 28A.225.030 alleging a violation of the compulsory attendance laws where the petitioner shall not pay a filing fee. The forty-five dollar filing fee under this subsection for an unlawful detainer action shall not include an order to show cause or any other order or judgment except a default order or default judgment in an unlawful detainer action.

(b) Any party, except a defendant in a criminal case, filing the first or initial paper on an appeal from a court of limited jurisdiction or any party on any civil appeal, shall pay, when the paper is filed, a fee of two hundred dollars.

(c) For filing of a petition for judicial review as required under RCW 34.05.514 a filing fee of two hundred dollars.

(d) For filing of a petition for unlawful harassment under RCW 10.14.040 a filing fee of fifty-three dollars.

(e) For filing the notice of debt due for the compensation of a crime victim under RCW 7.68.120(2)(a) a fee of two hundred dollars.

(f) In probate proceedings, the party instituting such proceedings, shall pay at the time of filing the first paper therein, a fee of two hundred dollars.

(g) For filing any petition to contest a will admitted to probate or a petition to admit a will which has been rejected, or a petition objecting to a written agreement or memorandum as provided in RCW 11.96A.220, there shall be paid a fee of two hundred dollars.

(h) Upon conviction or plea of guilty, upon failure to prosecute an appeal from a court of limited jurisdiction as provided by law, or upon affirmance of a conviction by a court of limited jurisdiction, a defendant in a criminal case shall be liable for a fee of two hundred dollars.

(i) With the exception of demands for jury hereafter made and garnishments hereafter issued, civil actions and probate proceedings filed prior to midnight, July 1, 1972, shall be completed and governed by the fee schedule in effect as of January 1, 1972: PROVIDED, That no fee shall be assessed if an order of dismissal on the clerk's record be filed as provided by rule of the supreme court.

(3) No fee shall be collected when a petition for relinquishment of parental rights is filed pursuant to RCW 26.33.080 or for forms and instructional brochures provided under RCW 26.50.030. [2005 c 457 § 19; 2005 c 374 § 5; 2000 c 9 § 1; 1999 c 42 § 635; 1996 c 211 § 2. Prior: 1995 c 312 § 70; 1995 c 292 § 10; 1993 c 435 § 1; 1992 c 54 § 1; 1989 c 342 § 1; prior: 1987 c 382 § 3; 1987 c 202 § 201; 1987 c 56 § 3; prior: 1985 c 24 § 1; 1985 c 7 § 104; 1984 c 263 § 29; 1981 c 330 § 5; 1980 c 70 § 1; 1977 ex.s. c 107 § 1; 1975 c 30 § 1; 1973 c 16 § 1; 1973 c 38 § 1; prior: 1972 ex.s. c 57 § 5; 1972 ex.s. c 20 § 1; 1970 ex.s. c 32 § 1; 1967 c 26 § 9; 1963 c 4 § 36.18.020; prior: 1961 c 304 § 1; 1961 c 41 § 1; 1951 c 51 § 5; 1907 c 56 § 1, part, p 89; 1903 c 151 § 1, part, p 294; 1893 c 130 § 1, part, p 421; Code 1881 § 2086, part, p

355; 1869 p 364 § 1, part; 1863 p 391 § 1, part; 1861 p 34 § 1, part; 1854 p 368 § 1, part; RRS § 497, part.]

**Rules of court:** Cf. *RAP 14.3, 18.22.*

**Reviser's note:** This section was amended by 2005 c 374 § 5 and by 2005 c 457 § 19, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

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

**Short title—1995 c 312:** See note following RCW 13.32A.010.

**Effective date—1992 c 54:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 1, 1992." [1992 c 54 § 7.]

**Severability—Effective date—1989 c 342:** See RCW 59.18.910 and 59.18.911.

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

**Effective date—Severability—1984 c 263:** See RCW 26.50.901 and 26.50.902.

**Severability—1981 c 330:** See note following RCW 3.62.060.

**Effective date—1972 ex.s. c 20:** "This act shall take effect July 1, 1972." [1972 ex.s. c 20 § 3.]

**Effective date—1967 c 26:** See note following RCW 43.70.150.

**36.18.022 Filing fees may be waived—When.** The court may waive the filing fees provided for under RCW 36.18.016(2)(b) and \*36.18.020(2) (a) and (b) upon affidavit by a party that the party is unable to pay the fee due to financial hardship. [2005 c 374 § 6; 1995 c 292 § 16; 1992 c 54 § 5.]

**\*Reviser's note:** RCW 36.18.020 was amended twice during the 1995 legislative session. The reference to RCW 36.18.020(2) (a) and (b) appears to apply to the changes in 1995 c 292 § 10.

**Effective date—1992 c 54:** See note following RCW 36.18.020.

## Chapter 36.22 RCW COUNTY AUDITOR

### Sections

- |           |   |
|-----------|---|
| 36.22.170 | Surcharge for preservation of historical documents—Distribution of revenue to county and state treasurer—Creation of account. |
| 36.22.178 | Surcharge for low-income housing projects—Forty percent to state treasurer—Permissible uses.                                  |
| 36.22.179 | Surcharge for homeless housing and assistance—Use.  |

**36.22.170 Surcharge for preservation of historical documents—Distribution of revenue to county and state treasurer—Creation of account.** (1)(a) Except as provided in (b) of this subsection, a surcharge of five dollars per instrument shall be charged by the county auditor for each document recorded, which will be in addition to any other charge authorized by law. One dollar of the surcharge shall be deposited in the county general fund to be used at the discretion of the county commissioners to promote historical preservation or historical programs, which may include preservation of historic documents.

(b) A surcharge of two dollars per instrument shall be charged by the county auditor for each document presented for recording by the employment security department, which will be in addition to any other charge authorized by law.

(2) Of the remaining revenue generated through the surcharges under subsection (1) of this section:

(a) Fifty percent shall be transmitted monthly to the state treasurer who shall distribute such funds to each county treasurer within the state in July of each year in accordance with the formula described in RCW 36.22.190. The county treasurer shall place the funds received in a special account titled the auditor's centennial document preservation and modernization account to be used solely for ongoing preservation of historical documents of all county offices and departments and shall not be added to the county current expense fund; and

(b) Fifty percent shall be retained by the county and deposited in the auditor's operation and maintenance fund for ongoing preservation of historical documents of all county offices and departments.

(3) The centennial document preservation and modernization account is hereby created in the custody of the state treasurer and shall be classified as a treasury trust account. State distributions from the centennial document preservation and modernization account shall be made without appropriation. [2005 c 442 § 1; 1993 c 37 § 1; 1989 c 204 § 3.]

**Findings—1989 c 204:** See note following RCW 36.22.160.

**36.22.178 Surcharge for low-income housing projects—Forty percent to state treasurer—Permissible uses.** (1) Except as provided in subsection (2) of this section, a surcharge of ten dollars per instrument shall be charged by the county auditor for each document recorded, which will be in addition to any other charge authorized by law. The county may retain up to five percent of these funds collected solely for the collection, administration, and local distribution of these funds. Of the remaining funds, forty percent of the revenue generated through this surcharge will be transmitted monthly to the state treasurer who will deposit the funds into the Washington housing trust account. The office of community development of the department of community, trade, and economic development will develop guidelines for the use of these funds to support building operation and maintenance costs of housing projects or units within housing projects that are affordable to extremely low-income persons with incomes at or below thirty percent of the area median income, and that require a supplement to rent income to cover ongoing operating expenses. All of the remaining funds generated by this surcharge will be retained by the county and deposited into a fund that must be used by the county and its cities and towns for housing projects or units within housing projects that are affordable to very low-income persons with incomes at or below fifty percent of the area median income. The portion of the surcharge retained by a county shall be allocated to very low-income housing projects or units within such housing projects in the county and the cities within a county according to an interlocal agreement between the county and the cities within the county, consistent with countywide and local housing needs and policies. The funds generated with this surcharge shall not be used for construction of new housing if at any time the vacancy rate for available low-income housing within the county rises above ten percent. The vacancy rate for each county shall be developed using the state low-income vacancy rate standard developed

under subsection (3) of this section. Uses of these local funds are limited to:

(a) Acquisition, construction, or rehabilitation of housing projects or units within housing projects that are affordable to very low-income persons with incomes at or below fifty percent of the area median income;

(b) Supporting building operation and maintenance costs of housing projects or units within housing projects eligible to receive housing trust funds, that are affordable to very low-income persons with incomes at or below fifty percent of the area median income, and that require a supplement to rent income to cover ongoing operating expenses;

(c) Rental assistance vouchers for housing projects or units within housing projects that are affordable to very low-income persons with incomes at or below fifty percent of the area median income, to be administered by a local public housing authority or other local organization that has an existing rental assistance voucher program, consistent with the United States department of housing and urban development's section 8 rental assistance voucher program standards; and

(d) Operating costs for emergency shelters and licensed overnight youth shelters.

(2) The surcharge imposed in this section does not apply to assignments or substitutions of previously recorded deeds of trust.

(3) The real estate research center at Washington State University shall develop a vacancy rate standard for low-income housing in the state as described in RCW 18.85.540(1)(i). [2005 c 484 § 18; 2002 c 294 § 2.]

**Findings—Conflict with federal requirements—Effective date—2005 c 484:** See RCW 43.185C.005, 43.185C.901, and 43.185C.902.

**Findings—2002 c 294:** "The legislature recognizes housing affordability has become a significant problem for a large portion of society in many parts of Washington state in recent years. The state has traditionally focused its resources on housing for low-income populations. Additional funding resources are needed for building operation and maintenance activities for housing projects affordable to extremely low-income people, for example farmworkers or people with developmental disabilities. Affordable rents for extremely low-income people are not sufficient to cover the cost of building operations and maintenance. In addition resources are needed at the local level to assist in development and preservation of affordable low-income housing to address critical local housing needs." [2002 c 294 § 1.]

**36.22.179 Surcharge for homeless housing and assistance—Use.** (1) In addition to the surcharge authorized in RCW 36.22.178, and except as provided in subsection (2) of this section, an additional surcharge of ten dollars shall be charged by the county auditor for each document recorded, which will be in addition to any other charge allowed by law. The funds collected pursuant to this section are to be distributed and used as follows:

(a) The auditor shall retain two percent for collection of the fee, and of the remainder shall remit sixty percent to the county to be deposited into a fund that must be used by the county and its cities and towns to accomplish the purposes of chapter 484, Laws of 2005, six percent of which may be used by the county for administrative costs related to its homeless housing plan, and the remainder for programs which directly accomplish the goals of the county's homeless housing plan, except that for each city in the county which elects as authorized in RCW 43.185C.080 to operate its own homeless housing program, a percentage of the surcharge assessed

under this section equal to the percentage of the city's local portion of the real estate excise tax collected by the county shall be transmitted at least quarterly to the city treasurer, without any deduction for county administrative costs, for use by the city for program costs which directly contribute to the goals of the city's homeless housing plan; of the funds received by the city, it may use six percent for administrative costs for its homeless housing program.

(b) The auditor shall remit the remaining funds to the state treasurer for deposit in the homeless housing account. The department may use twelve and one-half percent of this amount for administration of the program established in RCW 43.185C.020, including the costs of creating the statewide homeless housing strategic plan, measuring performance, providing technical assistance to local governments, and managing the homeless housing grant program. The remaining eighty-seven and one-half percent is to be distributed by the department to local governments through the homeless housing grant program.

(2) The surcharge imposed in this section does not apply to assignments or substitutions of previously recorded deeds of trust. [2005 c 484 § 9.]

**Findings—Conflict with federal requirements—Effective date—2005 c 484:** See RCW 43.185C.005, 43.185C.901, and 43.185C.902.

### Chapter 36.28A RCW

## ASSOCIATION OF SHERIFFS AND POLICE CHIEFS

### Sections

36.28A.060 Statewide first responder building mapping information system—Creation—Data must be available to law enforcement, military, and fire safety agencies—Standards—Public disclosure exemption. (*Effective July 1, 2006.*)

**36.28A.060 Statewide first responder building mapping information system—Creation—Data must be available to law enforcement, military, and fire safety agencies—Standards—Public disclosure exemption. (*Effective July 1, 2006.*)** (1) When funded, the Washington association of sheriffs and police chiefs shall create and operate a statewide first responder building mapping information system.

(2) All state agencies and local governments must utilize building mapping software that complies with the building mapping software standards established under RCW 36.28A.070 for any building mapped for this purpose after the statewide first responder building mapping information system is operational. If, prior to creation of the statewide building mapping information system, a local government has utilized building mapping software standards established under RCW 36.28A.070, the local government may continue to use its own building mapping system unless the Washington association of sheriffs and police chiefs provides funding to bring the local government's system in compliance with the standards established under RCW 36.28A.070.

(3) All state and local government-owned buildings that are occupied by state or local government employees must be mapped when funding is provided by the Washington association of sheriffs and police chiefs, or from other sources. Nothing in chapter 102, Laws of 2003 requires any state agency or local government to map a building unless the

[2005 RCW Supp—page 316]

entire cost of mapping the building is provided by the Washington association of sheriffs and police chiefs, or from other sources.

(4) Once the statewide first responder building mapping information system is operational, all state and local government buildings that are mapped must forward their building mapping information data to the Washington association of sheriffs and police chiefs. All participating privately, federally, and tribally owned buildings may voluntarily forward their mapping and emergency information data to the Washington association of sheriffs and police chiefs. The Washington association of sheriffs and police chiefs may refuse any building mapping information that does not comply with the specifications described in RCW 36.28A.070.

(5) Consistent with the guidelines developed under RCW 36.28A.070, the Washington association of sheriffs and police chiefs shall electronically make the building mapping information available to all state, local, federal, and tribal law enforcement agencies, the military department of Washington state, and fire departments.

(6) Consistent with the guidelines developed under RCW 36.28A.070, the Washington association of sheriffs and police chiefs shall develop building mapping software standards that must be used to participate in the statewide first responder building mapping information system.

(7) The Washington association of sheriffs and police chiefs shall pursue federal funds to:

(a) Create the statewide first responder building mapping information system; and

(b) Develop grants for the mapping of all state and local government buildings in the order determined under RCW 36.28A.070.

(8) All tactical and intelligence information provided to the Washington association of sheriffs and police chiefs under chapter 102, Laws of 2003 is exempt from public disclosure as provided in RCW 42.56.240. [2005 c 274 § 269; 2003 c 102 § 2.]

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

**Intent—2003 c 102:** "The legislature recognizes the extreme dangers present when the safety of our citizens requires first responders such as police and fire fighters to evacuate and secure a building. In an effort to prepare for responding to unintended disasters, criminal acts, and acts of terrorism, the legislature intends to create a statewide first responder building mapping information system that will provide all first responders with the information they need to be successful when disaster strikes. The first responder building mapping system in this act is to be developed for a limited and specific purpose and is in no way to be construed as imposing standards or system requirements on any other mapping systems developed and used for any other local government purposes." [2003 c 102 § 1.]

### Chapter 36.29 RCW COUNTY TREASURER

#### Sections

36.29.010 General duties.

**36.29.010 General duties.** The county treasurer:

(1) Shall receive all money due the county and disburse it on warrants issued and attested by the county auditor and electronic funds transfer under RCW 39.58.750 as attested by the county auditor;



(2) Shall issue a receipt in duplicate for all money received other than taxes; the treasurer shall deliver immediately to the person making the payment the original receipt and the duplicate shall be retained by the treasurer;

(3) Shall affix on the face of all paid warrants the date of redemption or, in the case of proper contract between the treasurer and a qualified public depository, the treasurer may consider the date affixed by the financial institution as the date of redemption;

(4) Shall endorse, before the date of issue by the county or by any taxing district for whom the county treasurer acts as treasurer, on the face of all warrants for which there are not sufficient funds for payment, "interest bearing warrant." When there are funds to redeem outstanding warrants, the county treasurer shall give notice:

(a) By publication in a legal newspaper published or circulated in the county; or

(b) By posting at three public places in the county if there is no such newspaper; or

(c) By notification to the financial institution holding the warrant;

(5) Shall pay interest on all interest-bearing warrants from the date of issue to the date of notification;

(6) Shall maintain financial records reflecting receipts and disbursement by fund in accordance with generally accepted accounting principles;

(7) Shall account for and pay all bonded indebtedness for the county and all special districts for which the county treasurer acts as treasurer;

(8) Shall invest all funds of the county or any special district in the treasurer's custody, not needed for immediate expenditure, in a manner consistent with appropriate statutes. If cash is needed to redeem warrants issued from any fund in the custody of the treasurer, the treasurer shall liquidate investments in an amount sufficient to cover such warrant redemptions; and

(9) May provide certain collection services for county departments.

The treasurer, at the expiration of the term of office, shall make a complete settlement with the county legislative authority, and shall deliver to the successor all public money, books, and papers in the treasurer's possession.

Money received by all entities for whom the county treasurer serves as treasurer must be deposited within twenty-four hours in an account designated by the county treasurer unless a waiver is granted by the county treasurer in accordance with RCW 43.09.240. [2005 c 502 § 2; 2002 c 168 § 4; 2001 c 299 § 4; 1998 c 106 § 3; 1995 c 38 § 4; 1994 c 301 § 7; 1991 c 245 § 4; 1963 c 4 § 36.29.010. Prior: (i) 1893 c 104 § 1; Code 1881 § 2740; 1863 p 553 § 3; 1854 p 427 § 3; RRS § 4109. (ii) Code 1881 § 2742; 1863 p 553 § 5; 1854 p 427 § 5; RRS § 4110. (iii) Code 1881 § 2743; 1863 p 553 § 6; 1854 p 427 § 6; RRS § 4111. (iv) 1895 c 73 § 4; Code 1881 § 2744; 1863 p 553 § 7; 1854 p 427 § 7; RRS § 4113. (v) Code 1881 § 2745; 1863 p 553 § 8; RRS § 4114. (vi) 1893 c 104 § 3; Code 1881 § 2748; 1863 p 554 § 11; 1854 p 428 § 11; RRS § 4120. (vii) Code 1881 § 2750; 1863 p 554 § 13; 1854 p 428 § 13; RRS § 4121. (viii) 1895 c 73 § 3; RRS § 4122.]

**Effective date—2005 c 502:** See note following RCW 1.12.070.

**Acts of municipal officers ratified and confirmed—1995 c 38:** See note following RCW 3.02.045.

## Chapter 36.57 RCW

### COUNTY PUBLIC TRANSPORTATION AUTHORITY

#### Sections

36.57.120 Rail fixed guideway system—Safety and security program plan. (*Effective July 1, 2006.*)

**36.57.120 Rail fixed guideway system—Safety and security program plan. (*Effective July 1, 2006.*)** (1) Each county transportation authority that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety and security program plan for that guideway to the state department of transportation by September 1, 1999, or at least three months before beginning operations or instituting revisions to its plan. This plan must describe the county transportation authority's procedures for (a) reporting and investigating reportable accidents, unacceptable hazardous conditions, and security breaches, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee security. The plan must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the county transportation authority shall revise its plan to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plan for review.

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

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

(4) The security section of the safety and security plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter 42.56 RCW. However, the activities and plans as described in subsections (1)(a), (b),

and (c), (2), and (3) of this section are not subject to this exemption. [2005 c 274 § 270; 1999 c 202 § 4.]

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

**Effective date—1999 c 202:** See note following RCW 35.21.228.

### Chapter 36.57A RCW

#### PUBLIC TRANSPORTATION BENEFIT AREAS

##### Sections

36.57A.170 Rail fixed guideway system—Safety and security program plan. (*Effective July 1, 2006.*)

**36.57A.170 Rail fixed guideway system—Safety and security program plan.** (*Effective July 1, 2006.*) (1) Each public transportation benefit area that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety and security program plan for that guideway to the state department of transportation by September 1, 1999, or at least three months before beginning operations or instituting revisions to its plan. This plan must describe the public transportation benefit area's procedures for (a) reporting and investigating reportable accidents, unacceptable hazardous conditions, and security breaches, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee security. The plan must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the public transportation benefit area shall revise its plan to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plan for review.

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

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

[2005 RCW Supp—page 318]

(4) The security section of the safety and security plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter 42.56 RCW. However, the activities and plans as described in subsections (1)(a), (b), and (c), (2), and (3) of this section are not subject to this exemption. [2005 c 274 § 271; 1999 c 202 § 5.]

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

**Effective date—1999 c 202:** See note following RCW 35.21.228.

### Chapter 36.69 RCW

#### PARK AND RECREATION DISTRICTS

(Formerly: Recreation districts act)

##### Sections

36.69.310 Dissolution.

**36.69.310 Dissolution.** Any park and recreation district formed under the provisions of this chapter may be dissolved in the manner provided in chapter 53.48 RCW, relating to port districts.

In order to facilitate the dissolution of a park and recreation district, such a district may declare its intent to dissolve and may name a successor taxing district. It may transfer any lands, facilities, equipment, other interests in real or personal property, or interests under contracts, leases, or similar agreements to the successor district, and may take all action necessary to enable the successor district to assume any indebtedness of the park and recreation district relating to the transferred property and interests. [2005 c 226 § 3; 1963 c 4 § 36.69.310. Prior: 1957 c 58 § 32.]

**Application—Effective date—2005 c 226:** See notes following RCW 35.61.290.

*Alternative procedure for dissolution of special districts: Chapter 36.96 RCW.*

### Chapter 36.70A RCW

#### GROWTH MANAGEMENT—PLANNING BY SELECTED COUNTIES AND CITIES

##### Sections

36.70A.030 Definitions.  
 36.70A.060 Natural resource lands and critical areas—Development regulations.  
 36.70A.070 Comprehensive plans—Mandatory elements.  
 36.70A.108 Comprehensive plans—Transportation element—Multimodal transportation improvements and strategies.  
 36.70A.130 Comprehensive plans—Review—Amendments.  
 36.70A.1701 Certain agricultural lands may be designated as recreational lands. (*Expires June 30, 2006.*)  
 36.70A.171 Playing fields—Compliance with this chapter.

**36.70A.030 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Adopt a comprehensive land use plan" means to enact a new comprehensive land use plan or to update an existing comprehensive land use plan.

(2) "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by \*RCW 84.33.100 through

84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.

(3) "City" means any city or town, including a code city.

(4) "Comprehensive land use plan," "comprehensive plan," or "plan" means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.

(5) "Critical areas" include the following areas and ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas.

(6) "Department" means the department of community, trade, and economic development.

(7) "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

(8) "Forest land" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under \*RCW 84.33.100 through 84.33.140, and that has long-term commercial significance. In determining whether forest land is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered: (a) The proximity of the land to urban, suburban, and rural settlements; (b) surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses; (c) long-term local economic conditions that affect the ability to manage for timber production; and (d) the availability of public facilities and services conducive to conversion of forest land to other uses.

(9) "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

(10) "Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

(11) "Minerals" include gravel, sand, and valuable metallic substances.

(12) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

(13) "Public services" include fire protection and suppression, law enforcement, public health, education, recre-

ation, environmental protection, and other governmental services.

(14) "Recreational land" means land so designated under RCW 36.70A.1701 and that, immediately prior to this designation, was designated as agricultural land of long-term commercial significance under RCW 36.70A.170. Recreational land must have playing fields and supporting facilities existing before July 1, 2004, for sports played on grass playing fields.

(15) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

(a) In which open space, the natural landscape, and vegetation predominate over the built environment;

(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(c) That provide visual landscapes that are traditionally found in rural areas and communities;

(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(f) That generally do not require the extension of urban governmental services; and

(g) That are consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas.

(16) "Rural development" refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW 36.70A.170. Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.

(17) "Rural governmental services" or "rural services" include those public services and public facilities historically and typically delivered at an intensity usually found in rural areas, and may include domestic water systems, fire and police protection services, transportation and public transit services, and other public utilities associated with rural development and normally not associated with urban areas. Rural services do not include storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).

(18) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.070(5)(d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

(19) "Urban growth areas" means those areas designated by a county pursuant to RCW 36.70A.110.

(20) "Urban governmental services" or "urban services" include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas.

(21) "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands. [2005 c 423 § 2; 1997 c 429 § 3; 1995 c 382 § 9. Prior: 1994 c 307 § 2; 1994 c 257 § 5; 1990 1st ex.s. c 17 § 3.]

**\*Reviser's note:** RCW 84.33.100 through 84.33.118 were repealed or decodified by 2001 c 249 §§ 15 and 16. RCW 84.33.120 was repealed by 2001 c 249 § 16 and by 2003 c 170 § 7.

**Intent—2005 c 423:** "The legislature recognizes the need for playing fields and supporting facilities for sports played on grass as well as the need to preserve agricultural land of long-term commercial significance. With thoughtful and deliberate planning, and adherence to the goals and requirements of the growth management act, both needs can be met.

The legislature acknowledges the state's interest in preserving the agricultural industry and family farms, and recognizes that the state's rich and productive lands enable agricultural production. Because of its unique qualities and limited quantities, designated agricultural land of long-term commercial significance is best suited for agricultural and farm uses, not recreational uses.

The legislature acknowledges also that certain local governments have either failed or neglected to properly plan for population growth and the sufficient number of playing fields and supporting facilities needed to accommodate this growth. The legislature recognizes that citizens responded to this lack of planning, fields, and supporting facilities by constructing non-conforming fields and facilities on agricultural lands of long-term commercial significance. It is the intent of the legislature to permit the continued existence and use of these fields and facilities in very limited circumstances if specific criteria are satisfied within a limited time frame. It is also the intent of the legislature to grant this authorization without diminishing the designation and preservation requirements of the growth management act pertaining to Washington's invaluable farmland." [2005 c 423 § 1.]

**Effective date—2005 c 423:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 12, 2005]." [2005 c 423 § 7.]

**Prospective application—1997 c 429 §§ 1-21:** See note following RCW 36.70A.3201.

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**Finding—Intent—1994 c 307:** "The legislature finds that it is in the public interest to identify and provide long-term conservation of those productive natural resource lands that are critical to and can be managed economically and practically for long-term commercial production of food, fiber, and minerals. Successful achievement of the natural resource industries' goal set forth in RCW 36.70A.020 requires the conservation of a land

base sufficient in size and quality to maintain and enhance those industries and the development and use of land use techniques that discourage uses incompatible to the management of designated lands. The 1994 amendment to RCW 36.70A.030(8) (section 2(8), chapter 307, Laws of 1994) is intended to clarify legislative intent regarding the designation of forest lands and is not intended to require every county that has already complied with the interim forest land designation requirement of RCW 36.70A.170 to review its actions until the adoption of its comprehensive plans and development regulations as provided in RCW 36.70A.060(3)." [1994 c 307 § 1.]

**Effective date—1994 c 257 § 5:** "Section 5 of this act shall take effect July 1, 1994." [1994 c 257 § 25.]

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

**36.70A.060 Natural resource lands and critical areas—Development regulations.** (1)(a) Except as provided in RCW 36.70A.1701, each county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, shall adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170. Regulations adopted under this subsection may not prohibit uses legally existing on any parcel prior to their adoption and shall remain in effect until the county or city adopts development regulations pursuant to RCW 36.70A.040. Such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.

(b) Counties and cities shall require that all plats, short plats, development permits, and building permits issued for development activities on, or within five hundred feet of, lands designated as agricultural lands, forest lands, or mineral resource lands, contain a notice that the subject property is within or near designated agricultural lands, forest lands, or mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration. The notice for mineral resource lands shall also inform that an application might be made for mining-related activities, including mining, extraction, washing, crushing, stockpiling, blasting, transporting, and recycling of minerals.

(2) Each county and city shall adopt development regulations that protect critical areas that are required to be designated under RCW 36.70A.170. For counties and cities that are required or choose to plan under RCW 36.70A.040, such development regulations shall be adopted on or before September 1, 1991. For the remainder of the counties and cities, such development regulations shall be adopted on or before March 1, 1992.

(3) Such counties and cities shall review these designations and development regulations when adopting their comprehensive plans under RCW 36.70A.040 and implementing development regulations under RCW 36.70A.120 and may alter such designations and development regulations to insure consistency.

(4) Forest land and agricultural land located within urban growth areas shall not be designated by a county or city as forest land or agricultural land of long-term commercial significance under RCW 36.70A.170 unless the city or county

has enacted a program authorizing transfer or purchase of development rights. [2005 c 423 § 3; 1998 c 286 § 5; 1991 sp.s. c 32 § 21; 1990 1st ex.s. c 17 § 6.]

**Intent—Effective date—2005 c 423:** See notes following RCW 36.70A.030.

**36.70A.070 Comprehensive plans—Mandatory elements.** The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. The plan shall be an internally consistent document and all elements shall be consistent with the future land use map. A comprehensive plan shall be adopted and amended with public participation as provided in RCW 36.70A.140.

Each comprehensive plan shall include a plan, scheme, or design for each of the following:

(1) A land use element designating the proposed general distribution and general location and extent of the uses of land, where appropriate, for agriculture, timber production, housing, commerce, industry, recreation, open spaces, general aviation airports, public utilities, public facilities, and other land uses. The land use element shall include population densities, building intensities, and estimates of future population growth. The land use element shall provide for protection of the quality and quantity of ground water used for public water supplies. Wherever possible, the land use element should consider utilizing urban planning approaches that promote physical activity. Where applicable, the land use element shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(2) A housing element ensuring the vitality and character of established residential neighborhoods that: (a) Includes an inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to manage projected growth; (b) includes a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing, including single-family residences; (c) identifies sufficient land for housing, including, but not limited to, government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities; and (d) makes adequate provisions for existing and projected needs of all economic segments of the community.

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan

element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

(4) A utilities element consisting of the general location, proposed location, and capacity of all existing and proposed utilities, including, but not limited to, electrical lines, telecommunication lines, and natural gas lines.

(5) Rural element. Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element:

(a) Growth management act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter.

(b) Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. To achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character.

(c) Measures governing rural development. The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:

(i) Containing or otherwise controlling rural development;

(ii) Assuring visual compatibility of rural development with the surrounding rural area;

(iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;

(iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and ground water resources; and

(v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.

(d) Limited areas of more intensive rural development. Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the rural element may allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area as follows:

(i) Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments.

(A) A commercial, industrial, residential, shoreline, or mixed-use area shall be subject to the requirements of (d)(iv) of this subsection, but shall not be subject to the requirements of (c)(ii) and (iii) of this subsection.

(B) Any development or redevelopment other than an industrial area or an industrial use within a mixed-use area or an industrial area under this subsection (5)(d)(i) must be principally designed to serve the existing and projected rural population.

(C) Any development or redevelopment in terms of building size, scale, use, or intensity shall be consistent with the character of the existing areas. Development and redevelopment may include changes in use from vacant land or a previously existing use so long as the new use conforms to the requirements of this subsection (5);

(ii) The intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting, but that do not include new residential development. A small-scale recreation or tourist use is not required to be principally designed to serve the existing and projected rural population. Public services and public facilities shall be limited to those necessary to serve the recreation or tourist use and shall be provided in a manner that does not permit low-density sprawl;

(iii) The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents. Rural counties may allow the expansion of small-scale businesses as long as those small-scale businesses conform with the rural character of the area as defined by the local government according to \*RCW 36.70A.030(14). Rural counties may also allow new small-scale businesses to utilize a site previously occupied by an existing business as long as the new small-scale business conforms to the rural character of the area as defined by the local government according to \*RCW 36.70A.030(14). Public services and public facilities shall be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl;

(iv) A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection. Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl. Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this subsection. The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries such as bodies of water, streets and highways, and land forms and contours, (C) the prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities and public services in a manner that does not permit low-density sprawl;

(v) For purposes of (d) of this subsection, an existing area or existing use is one that was in existence:

(A) On July 1, 1990, in a county that was initially required to plan under all of the provisions of this chapter;

(B) On the date the county adopted a resolution under RCW 36.70A.040(2), in a county that is planning under all of the provisions of this chapter under RCW 36.70A.040(2); or

(C) On the date the office of financial management certifies the county's population as provided in RCW 36.70A.040(5), in a county that is planning under all of the provisions of this chapter pursuant to RCW 36.70A.040(5).

(e) Exception. This subsection shall not be interpreted to permit in the rural area a major industrial development or a master planned resort unless otherwise specifically permitted under RCW 36.70A.360 and 36.70A.365.

(6) A transportation element that implements, and is consistent with, the land use element.

(a) The transportation element shall include the following subelements:

(i) Land use assumptions used in estimating travel;

(ii) Estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;

(iii) Facilities and services needs, including:

(A) An inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels as a basis for future planning. This inventory must include state-owned transportation facilities within the city or county's jurisdictional boundaries;

(B) Level of service standards for all locally owned arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;

(C) For state-owned transportation facilities, level of service standards for highways, as prescribed in chapters 47.06 and 47.80 RCW, to gauge the performance of the system. The purposes of reflecting level of service standards for state highways in the local comprehensive plan are to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six-year street, road, or transit program and the department of transportation's six-year investment program. The concurrency requirements of (b) of this subsection do not apply to transportation facilities and services of statewide significance except for counties consisting of islands whose only connection to the mainland are state highways or ferry routes. In these island counties, state highways and ferry route capacity must be a factor in meeting the concurrency requirements in (b) of this subsection;

(D) Specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below an established level of service standard;

(E) Forecasts of traffic for at least ten years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth;

(F) Identification of state and local system needs to meet current and future demands. Identified needs on state-owned transportation facilities must be consistent with the statewide

multimodal transportation plan required under chapter 47.06 RCW;

(iv) Finance, including:

(A) An analysis of funding capability to judge needs against probable funding resources;

(B) A multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should be coordinated with the six-year improvement program developed by the department of transportation as required by \*\*RCW 47.05.030;

(C) If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met;

(v) Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;

(vi) Demand-management strategies;

(vii) Pedestrian and bicycle component to include collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors that address and encourage enhanced community access and promote healthy lifestyles.

(b) After adoption of the comprehensive plan by jurisdictions required to plan or who choose to plan under RCW 36.70A.040, local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development. These strategies may include increased public transportation service, ride sharing programs, demand management, and other transportation systems management strategies. For the purposes of this subsection (6) "concurrent with the development" shall mean that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years.

(c) The transportation element described in this subsection (6), and the six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, RCW 35.58.2795 for public transportation systems, and \*\*RCW 47.05.030 for the state, must be consistent.

(7) An economic development element establishing local goals, policies, objectives, and provisions for economic growth and vitality and a high quality of life. The element shall include: (a) A summary of the local economy such as population, employment, payroll, sectors, businesses, sales, and other information as appropriate; (b) a summary of the strengths and weaknesses of the local economy defined as the commercial and industrial sectors and supporting factors such as land use, transportation, utilities, education, work force, housing, and natural/cultural resources; and (c) an identification of policies, programs, and projects to foster

economic growth and development and to address future needs. A city that has chosen to be a residential community is exempt from the economic development element requirement of this subsection.

(8) A park and recreation element that implements, and is consistent with, the capital facilities plan element as it relates to park and recreation facilities. The element shall include: (a) Estimates of park and recreation demand for at least a ten-year period; (b) an evaluation of facilities and service needs; and (c) an evaluation of intergovernmental coordination opportunities to provide regional approaches for meeting park and recreational demand.

(9) It is the intent that new or amended elements required after January 1, 2002, be adopted concurrent with the scheduled update provided in RCW 36.70A.130. Requirements to incorporate any such new or amended elements shall be null and void until funds sufficient to cover applicable local government costs are appropriated and distributed by the state at least two years before local government must update comprehensive plans as required in RCW 36.70A.130. [2005 c 360 § 2; (2005 c 477 § 1 expired August 31, 2005); 2004 c 196 § 1; 2003 c 152 § 1. Prior: 2002 c 212 § 2; 2002 c 154 § 2; 1998 c 171 § 2; 1997 c 429 § 7; 1996 c 239 § 1; prior: 1995 c 400 § 3; 1995 c 377 § 1; 1990 1st ex.s. c 17 § 7.]

**Reviser's note:** \*(1) RCW 36.70A.030 was amended by 2005 c 423 § 2, changing subsection (14) to subsection (15).

\*\* (2) RCW 47.05.030 was amended by 2005 c 319 § 9, changing the six-year improvement program to a ten-year improvement program.

**Expiration date—2005 c 477 § 1:** "Section 1 of this act expires August 31, 2005." [2005 c 477 § 3.]

**Effective date—2005 c 477:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 13, 2005]." [2005 c 477 § 2.]

**Findings—Intent—2005 c 360:** "The legislature finds that regular physical activity is essential to maintaining good health and reducing the rates of chronic disease. The legislature further finds that providing opportunities for walking, biking, horseback riding, and other regular forms of exercise is best accomplished through collaboration between the private sector and local, state, and institutional policymakers. This collaboration can build communities where people find it easy and safe to be physically active. It is the intent of the legislature to promote policy and planning efforts that increase access to inexpensive or free opportunities for regular exercise in all communities around the state." [2005 c 360 § 1.]

**Prospective application—1997 c 429 §§ 1-21:** See note following RCW 36.70A.3201.

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**Construction—Application—1995 c 400:** "A comprehensive plan adopted or amended before May 16, 1995, shall be considered to be in compliance with RCW 36.70A.070 or 36.70A.110, as in effect before their amendment by this act, if the comprehensive plan is in compliance with RCW 36.70A.070 and 36.70A.110 as amended by this act. This section shall not be construed to alter the relationship between a county-wide planning policy and comprehensive plans as specified under RCW 36.70A.210.

As to any appeal relating to compliance with RCW 36.70A.070 or 36.70A.110 pending before a growth management hearings board on May 16, 1995, the board may take up to an additional ninety days to resolve such appeal. By mutual agreement of all parties to the appeal, this additional ninety-day period may be extended." [1995 c 400 § 4.]

**Effective date—1995 c 400:** See note following RCW 36.70A.040.

**36.70A.108 Comprehensive plans—Transportation element—Multimodal transportation improvements and strategies.** (1) The transportation element required by RCW 36.70A.070 may include, in addition to improvements or strategies to accommodate the impacts of development

authorized under RCW 36.70A.070(6)(b), multimodal transportation improvements or strategies that are made concurrent with the development. These transportation improvements or strategies may include, but are not limited to, measures implementing or evaluating:

(a) Multiple modes of transportation with peak and non-peak hour capacity performance standards for locally owned transportation facilities; and

(b) Modal performance standards meeting the peak and nonpeak hour capacity performance standards.

(2) Nothing in this section or RCW 36.70A.070(6)(b) shall be construed as prohibiting a county or city planning under RCW 36.70A.040 from exercising existing authority to develop multimodal improvements or strategies to satisfy the concurrency requirements of this chapter.

(3) Nothing in this section is intended to affect or otherwise modify the authority of jurisdictions planning under RCW 36.70A.040. [2005 c 328 § 1.]

**36.70A.130 Comprehensive plans—Review—Amendments.** (1)(a) Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopted them. Except as otherwise provided, a county or city shall take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter according to the time periods specified in subsection (4) of this section.

(b) Except as otherwise provided, a county or city not planning under RCW 36.70A.040 shall take action to review and, if needed, revise its policies and development regulations regarding critical areas and natural resource lands adopted according to this chapter to ensure these policies and regulations comply with the requirements of this chapter according to the time periods specified in subsection (4) of this section. Legislative action means the adoption of a resolution or ordinance following notice and a public hearing indicating at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefor.

(c) The review and evaluation required by this subsection may be combined with the review required by subsection (3) of this section. The review and evaluation required by this subsection shall include, but is not limited to, consideration of critical area ordinances and, if planning under RCW 36.70A.040, an analysis of the population allocated to a city or county from the most recent ten-year population forecast by the office of financial management.

(d) Any amendment of or revision to a comprehensive land use plan shall conform to this chapter. Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.

(2)(a) Each county and city shall establish and broadly disseminate to the public a public participation program consistent with RCW 36.70A.035 and 36.70A.140 that identifies procedures and schedules whereby updates, proposed amendments, or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year. "Updates" means to review and revise, if needed, according to subsection (1) of this sec-

tion, and the time periods specified in subsection (4) of this section or in accordance with the provisions of subsection (8) of this section. Amendments may be considered more frequently than once per year under the following circumstances:

(i) The initial adoption of a subarea plan that does not modify the comprehensive plan policies and designations applicable to the subarea;

(ii) The adoption or amendment of a shoreline master program under the procedures set forth in chapter 90.58 RCW;

(iii) The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of a county or city budget; and

(iv) Until June 30, 2006, the designation of recreational lands under RCW 36.70A.1701. A county amending its comprehensive plan pursuant to this subsection (2)(a)(iv) may not do so more frequently than every eighteen months.

(b) Except as otherwise provided in (a) of this subsection, all proposals shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained. However, after appropriate public participation a county or city may adopt amendments or revisions to its comprehensive plan that conform with this chapter whenever an emergency exists or to resolve an appeal of a comprehensive plan filed with a growth management hearings board or with the court.

(3)(a) Each county that designates urban growth areas under RCW 36.70A.110 shall review, at least every ten years, its designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area. In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas.

(b) The county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period. The review required by this subsection may be combined with the review and evaluation required by RCW 36.70A.215.

(4) The department shall establish a schedule for counties and cities to take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter. Except as provided in subsection (8) of this section, the schedule established by the department shall provide for the reviews and evaluations to be completed as follows:

(a) On or before December 1, 2004, and every seven years thereafter, for Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties and the cities within those counties;

(b) On or before December 1, 2005, and every seven years thereafter, for Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and Skamania counties and the cities within those counties;



(c) On or before December 1, 2006, and every seven years thereafter, for Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and Yakima counties and the cities within those counties; and

(d) On or before December 1, 2007, and every seven years thereafter, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

(5)(a) Nothing in this section precludes a county or city from conducting the review and evaluation required by this section before the time limits established in subsection (4) of this section. Counties and cities may begin this process early and may be eligible for grants from the department, subject to available funding, if they elect to do so.

(b) State agencies are encouraged to provide technical assistance to the counties and cities in the review of critical area ordinances, comprehensive plans, and development regulations.

(6) A county or city subject to the time periods in subsection (4)(a) of this section that, pursuant to an ordinance adopted by the county or city establishing a schedule for periodic review of its comprehensive plan and development regulations, has conducted a review and evaluation of its comprehensive plan and development regulations and, on or after January 1, 2001, has taken action in response to that review and evaluation shall be deemed to have conducted the first review required by subsection (4)(a) of this section. Subsequent review and evaluation by the county or city of its comprehensive plan and development regulations shall be conducted in accordance with the time periods established under subsection (4)(a) of this section.

(7) The requirements imposed on counties and cities under this section shall be considered "requirements of this chapter" under the terms of RCW 36.70A.040(1). Only those counties and cities in compliance with the schedules in this section and those counties and cities demonstrating substantial progress towards compliance with the schedules in this section for development regulations that protect critical areas may receive grants, loans, pledges, or financial guarantees from those accounts established in RCW 43.155.050 and 70.146.030. A county or city that is fewer than twelve months out of compliance with the schedules in this section for development regulations that protect critical areas is deemed to be making substantial progress towards compliance. Only those counties and cities in compliance with the schedules in this section may receive preference for grants or loans subject to the provisions of RCW 43.17.250.

(8)(a) Counties and cities required to satisfy the requirements of this section according to the schedule established by subsection (4)(b) through (d) of this section may comply with the requirements of this section for development regulations that protect critical areas one year after the dates established in subsection (4)(b) through (d) of this section.

(b) Counties and cities complying with the requirements of this section one year after the dates established in subsection (4)(b) through (d) of this section for development regulations that protect critical areas shall be deemed in compliance with the requirements of this section.

(c) This subsection (8) applies only to the counties and cities specified in subsection (4)(b) through (d) of this sec-

tion, and only to the requirements of this section for development regulations that protect critical areas that must be satisfied by December 1, 2005, December 1, 2006, and December 1, 2007.

(9) Notwithstanding subsection (8) of this section and the substantial progress provisions of subsections (7) and (10) of this section, only those counties and cities complying with the schedule in subsection (4) of this section may receive preferences for grants, loans, pledges, or financial guarantees from those accounts established in RCW 43.155.050 and 70.146.030.

(10) Until December 1, 2005, and notwithstanding subsection (7) of this section, a county or city subject to the time periods in subsection (4)(a) of this section demonstrating substantial progress towards compliance with the schedules in this section for its comprehensive land use plan and development regulations may receive grants, loans, pledges, or financial guarantees from those accounts established in RCW 43.155.050 and 70.146.030. A county or city that is fewer than twelve months out of compliance with the schedules in this section for its comprehensive land use plan and development regulations is deemed to be making substantial progress towards compliance. [2005 c 423 § 6; 2005 c 294 § 2; 2002 c 320 § 1; 1997 c 429 § 10; 1995 c 347 § 106; 1990 1st ex.s. c 17 § 13.]

**Reviser's note:** This section was amended by 2005 c 294 § 2 and by 2005 c 423 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Intent—Effective date—2005 c 423:** See notes following RCW 36.70A.030.

**Intent—2005 c 294:** "The legislature recognizes the importance of appropriate and meaningful land use measures and that such measures are critical to preserving and fostering the quality of life enjoyed by Washingtonians. The legislature recognizes also that the growth management act requires counties and cities to review and, if needed, revise their comprehensive plans and development regulations on a cyclical basis. These requirements, which often require significant compliance efforts by local governments are, in part, an acknowledgment of the continual changes that occur within the state, and the need to ensure that land use measures reflect the collective wishes of its citizenry.

The legislature acknowledges that only those jurisdictions in compliance with the review and revision schedules of the growth management act are eligible to receive funds from the public works assistance and water quality accounts in the state treasury. The legislature further recognizes that some jurisdictions that are not yet in compliance with these review and revision schedules have demonstrated substantial progress towards compliance.

The legislature, therefore, intends to grant jurisdictions that are not in compliance with requirements for development regulations that protect critical areas, but are demonstrating substantial progress towards compliance with these requirements, twelve months of additional eligibility to receive grants, loans, pledges, or financial guarantees from the public works assistance and water quality accounts in the state treasury. The legislature intends to specify, however, that only counties and cities in compliance with the review and revision schedules of the growth management act may receive preference for financial assistance from these accounts." [2005 c 294 § 1.]

**Effective date—2005 c 294:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 5, 2005]." [2005 c 294 § 3.]

**Prospective application—1997 c 429 §§ 1-21:** See note following RCW 36.70A.3201.

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

*RCW 36.70A.130(2) does not apply to master planned locations in industrial land banks: RCW 36.70A.367(5).*

**36.70A.1701 Certain agricultural lands may be designated as recreational lands. (Expires June 30, 2006.)**

(1)(a) The legislative authority of a county subject to the provisions of RCW 36.70A.215 with a population fewer than one million and a total market value of production greater than one hundred twenty-five million dollars as reported by the United States department of agriculture's 2002 census of agriculture county profile may, by resolution, and in accordance with the requirements of RCW 36.70A.035 and 36.70A.140, designate agricultural lands designated pursuant to RCW 36.70A.170 as recreational lands. Lands eligible for designation as recreational lands must not be in use for the commercial production of food or other agricultural products and must have playing fields and supporting facilities existing before July 1, 2004, for sports played on grass playing fields.

(b) Designated recreational lands may be used only for athletic or related activities, playing fields, and supporting facilities for sports played on grass playing fields or for agricultural uses.

(c) The recreational lands designation shall supersede previous designations and shall require an amendment to the comprehensive plan prepared pursuant to RCW 36.70A.070.

(2) Lands eligible for designation as recreational land must be registered by the property owner or owners with the county within which the land is located no fewer than ninety days before being designated as recreational land.

(3) Agricultural lands of long-term commercial significance designated under RCW 36.70A.170: (a) That were purchased in full or in part with public funds; or (b) with property rights or interests that were purchased in full or in part with public funds, may not be designated as recreational land.

(4) Playing fields and supporting facilities for sports played on grass playing fields must comply with applicable permitting requirements and development regulations. The size and capacity of the playing fields and supporting facilities, irrespective of parcel size, may not exceed the infrastructure capacity of the county within which the fields and facilities are located.

(5) The designation of recreational land shall not affect other lands designated under RCW 36.70A.170(1)(b), and shall not preclude reversion to agricultural uses.

(6) This section expires June 30, 2006. [2005 c 423 § 4.]

**Intent—Effective date—2005 c 423:** See notes following RCW 36.70A.030.

**36.70A.171 Playing fields—Compliance with this chapter.** In accordance with RCW 36.70A.030, 36.70A.060, 36.70A.1701, and 36.70A.130, playing fields and supporting facilities existing before July 1, 2004, on designated recreational lands shall be considered in compliance with the requirements of this chapter. [2005 c 423 § 5.]

**Intent—Effective date—2005 c 423:** See notes following RCW 36.70A.030.

### Chapter 36.70B RCW LOCAL PROJECT REVIEW

#### Sections

36.70B.220 Permit assistance staff. (Effective July 1, 2006.)

[2005 RCW Supp—page 326]

**36.70B.220 Permit assistance staff. (Effective July 1, 2006.)** (1) Each county and city having populations of ten thousand or more that plan under RCW 36.70A.040 shall designate permit assistance staff whose function it is to assist permit applicants. An existing employee may be designated as the permit assistance staff.

(2) Permit assistance staff designated under this section shall:

(a) Make available to permit applicants all current local government regulations and adopted policies that apply to the subject application. The local government shall provide counter copies thereof and, upon request, provide copies according to chapter 42.56 RCW. The staff shall also publish and keep current one or more handouts containing lists and explanations of all local government regulations and adopted policies;

(b) Establish and make known to the public the means of obtaining the handouts and related information; and

(c) Provide assistance regarding the application of the local government's regulations in particular cases.

(3) Permit assistance staff designated under this section may obtain technical assistance and support in the compilation and production of the handouts under subsection (2) of this section from the municipal research council and the department of community, trade, and economic development. [2005 c 274 § 272; 1996 c 206 § 9.]

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

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

### Chapter 36.70C RCW

#### JUDICIAL REVIEW OF LAND USE DECISIONS

##### Sections

36.70C.120 Scope of review—Discovery. (Effective July 1, 2006.)

**36.70C.120 Scope of review—Discovery. (Effective July 1, 2006.)** (1) When the land use decision being reviewed was made by a quasi-judicial body or officer who made factual determinations in support of the decision and the parties to the quasi-judicial proceeding had an opportunity consistent with due process to make a record on the factual issues, judicial review of factual issues and the conclusions drawn from the factual issues shall be confined to the record created by the quasi-judicial body or officer, except as provided in subsections (2) through (4) of this section.

(2) For decisions described in subsection (1) of this section, the record may be supplemented by additional evidence only if the additional evidence relates to:

(a) Grounds for disqualification of a member of the body or of the officer that made the land use decision, when such grounds were unknown by the petitioner at the time the record was created;

(b) Matters that were improperly excluded from the record after being offered by a party to the quasi-judicial proceeding; or

(c) Matters that were outside the jurisdiction of the body or officer that made the land use decision.

(3) For land use decisions other than those described in subsection (1) of this section, the record for judicial review

may be supplemented by evidence of material facts that were not made part of the local jurisdiction's record.

(4) The court may require or permit corrections of ministerial errors or inadvertent omissions in the preparation of the record.

(5) The parties may not conduct pretrial discovery except with the prior permission of the court, which may be sought by motion at any time after service of the petition. The court shall not grant permission unless the party requesting it makes a prima facie showing of need. The court shall strictly limit discovery to what is necessary for equitable and timely review of the issues that are raised under subsections (2) and (3) of this section. If the court allows the record to be supplemented, the court shall require the parties to disclose before the hearing or trial on the merits the specific evidence they intend to offer. If any party, or anyone acting on behalf of any party, requests records under chapter 42.56 RCW relating to the matters at issue, a copy of the request shall simultaneously be given to all other parties and the court shall take such request into account in fashioning an equitable discovery order under this section. [2005 c 274 § 273; 1995 c 347 § 713.]

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

**Chapter 36.73 RCW**

**TRANSPORTATION BENEFIT DISTRICTS**

Sections

36.73.010	Intent.
36.73.015	Definitions.
36.73.020	Establishment of district by county or city—Participation by other jurisdictions.
36.73.040	General powers of district.
36.73.050	Establishment of district—Public hearing.
36.73.060	Authority to levy property tax.
36.73.065	Taxes, fees, charges, tolls—Voter approval required.
36.73.070	Authority to issue general obligation bonds, revenue bonds.
36.73.080	Local improvement districts authorized—Special assessments—Bonds.
36.73.100	Use of bond proceeds.
36.73.110	Acceptance and use of gifts and grants.
36.73.120	Imposition of fees on building construction or land development—Limitations.
36.73.130	Power of eminent domain.
36.73.140	Authority to contract for street and highway improvements.
36.73.150	Department of transportation, counties, cities, and other jurisdictions may fund transportation improvements.
36.73.160	Transportation improvement projects—Material change policy—Annual report.
36.73.170	Completion of transportation improvement—Termination of district operations—Termination of taxes, fees, charges, and tolls—Dissolution of district.

**36.73.010 Intent.** The legislature finds that the citizens of the state can benefit by cooperation of the public and private sectors in addressing transportation needs. This cooperation can be fostered through enhanced capability for cities, towns, and counties to make and fund transportation improvements necessitated by economic development and to improve the performance of the transportation system.

It is the intent of the legislature to encourage joint efforts by the state, local governments, and the private sector to respond to the need for those transportation improvements on state highways, county roads, and city streets. This goal can be better achieved by allowing cities, towns, and counties to establish transportation benefit districts in order to respond to

the special transportation needs and economic opportunities resulting from private sector development for the public good. The legislature also seeks to facilitate the equitable participation of private developers whose developments may generate the need for those improvements in the improvement costs. [2005 c 336 § 2; 1987 c 327 § 1.]

**Effective date—2005 c 336:** See note following RCW 36.73.015.

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

(1) "District" means a transportation benefit district created under this chapter.

(2) "City" means a city or town.

(3) "Transportation improvement" means a project contained in the transportation plan of the state or a regional transportation planning organization that is of statewide or regional significance. A project may include investment in new or existing highways of statewide significance, principal arterials of regional significance, high-capacity transportation, public transportation, and other transportation projects and programs of regional or statewide significance including transportation demand management. Projects may also include the operation, preservation, and maintenance of these facilities or programs. Not more than forty percent of the revenues generated by a district may be expended on city streets, county roads, existing highways other than highways of statewide significance, and the creation of a new highway that intersects with a highway of statewide significance. [2005 c 336 § 1.]

**Effective date—2005 c 336:** "This act takes effect August 1, 2005." [2005 c 336 § 26.]

**36.73.020 Establishment of district by county or city—Participation by other jurisdictions.** (1) The legislative authority of a county or city may establish a transportation benefit district within the county or city area or within the area specified in subsection (2) of this section, for the purpose of acquiring, constructing, improving, providing, and funding a transportation improvement within the district that is consistent with any existing state, regional, and local transportation plans and necessitated by existing or reasonably foreseeable congestion levels. The transportation improvements shall be owned by the county of jurisdiction if located in an unincorporated area, by the city of jurisdiction if located in an incorporated area, or by the state in cases where the transportation improvement is or becomes a state highway. However, if deemed appropriate by the governing body of the transportation benefit district, a transportation improvement may be owned by a participating port district or transit district, unless otherwise prohibited by law. Transportation improvements shall be administered and maintained as other public streets, roads, highways, and transportation improvements. To the extent practicable, the district shall consider the following criteria when selecting transportation improvements:

- (a) Reduced risk of transportation facility failure and improved safety;
- (b) Improved travel time;
- (c) Improved air quality;
- (d) Increases in daily and peak period trip capacity;

- (e) Improved modal connectivity;
- (f) Improved freight mobility;
- (g) Cost-effectiveness of the investment;
- (h) Optimal performance of the system through time; and
- (i) Other criteria, as adopted by the governing body.

(2) Subject to subsection (6) of this section, the district may include area within more than one county, city, port district, county transportation authority, or public transportation benefit area, if the legislative authority of each participating jurisdiction has agreed to the inclusion as provided in an interlocal agreement adopted pursuant to chapter 39.34 RCW. However, the boundaries of the district shall include all territory within the boundaries of the participating jurisdictions comprising the district.

(3) The members of the legislative authority proposing to establish the district, acting ex officio and independently, shall constitute the governing body of the district: PROVIDED, That where a district includes area within more than one jurisdiction under subsection (2) of this section, the district shall be governed under an interlocal agreement adopted pursuant to chapter 39.34 RCW. However, the governing body shall be composed of at least five members including at least one elected official from the legislative authority of each participating jurisdiction.

(4) The treasurer of the jurisdiction proposing to establish the district shall act as the ex officio treasurer of the district, unless an interlocal agreement states otherwise.

(5) The electors of the district shall all be registered voters residing within the district.

(6) The authority under this section, regarding the establishment of or the participation in a district, shall not apply to:

(a) Counties with a population greater than one million five hundred thousand persons and any adjoining counties with a population greater than five hundred thousand persons;

(b) Cities with any area within the counties under (a) of this subsection; and

(c) Other jurisdictions with any area within the counties under (a) of this subsection. [2005 c 336 § 3; 1989 c 53 § 1; 1987 c 327 § 2.]

**Effective date—2005 c 336:** See note following RCW 36.73.015.

**Severability—1989 c 53:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 53 § 5.]

**36.73.040 General powers of district.** (1) A transportation benefit district is a quasi-municipal corporation, an independent taxing "authority" within the meaning of Article VII, section 1 of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2 of the state Constitution.

(2) A transportation benefit district constitutes a body corporate and possesses all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by statute, including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, to acquire, hold, and dispose of real and personal property, and to sue and be sued. Public works contract limits applicable to the jurisdiction that established the district apply to the district.

(3) To carry out the purposes of this chapter, and subject to the provisions of RCW 36.73.065, a district is authorized to impose the following taxes, fees, charges, and tolls:

(a) A sales and use tax in accordance with RCW 82.14.0455;

(b) A vehicle fee in accordance with RCW 82.80.140;

(c) A fee or charge in accordance with RCW 36.73.120.

However, if a county or city within the district area is levying a fee or charge for a transportation improvement, the fee or charge shall be credited against the amount of the fee or charge imposed by the district. Developments consisting of less than twenty residences are exempt from the fee or charge under RCW 36.73.120; and

(d) Vehicle tolls on state routes or federal highways, city streets, or county roads, within the boundaries of the district, unless otherwise prohibited by law. The department of transportation shall administer the collection of vehicle tolls authorized on state routes or federal highways, unless otherwise specified in law or by contract, and the state transportation commission, or its successor, may approve, set, and impose the tolls in amounts sufficient to implement the district's transportation improvement finance plan. The district shall administer the collection of vehicle tolls authorized on city streets or county roads, and shall set and impose, only with approval of the transportation commission, or its successor, the tolls in amounts sufficient to implement the district's transportation improvement plan. [2005 c 336 § 4; 1989 c 53 § 3; 1987 c 327 § 4.]

**Effective date—2005 c 336:** See note following RCW 36.73.015.

**Severability—1989 c 53:** See note following RCW 36.73.020.

### **36.73.050 Establishment of district—Public hearing.**

(1) The legislative authorities proposing to establish a district, or to modify the boundaries of an existing district, or to dissolve an existing district shall conduct a hearing at the time and place specified in a notice published at least once, not less than ten days before the hearing, in a newspaper of general circulation within the proposed district. Subject to the provisions of RCW 36.73.170, the legislative authorities shall make provision for a district to be automatically dissolved when all indebtedness of the district has been retired and anticipated responsibilities have been satisfied. This notice shall be in addition to any other notice required by law to be published. The notice shall, where applicable, specify the functions or activities proposed to be provided or funded, or the additional functions or activities proposed to be provided or funded, by the district. Additional notice of the hearing may be given by mail, by posting within the proposed district, or in any manner the legislative authorities deem necessary to notify affected persons. All hearings shall be public and the legislative authorities shall hear objections from any person affected by the formation, modification of the boundaries, or dissolution of the district.

(2) Following the hearing held pursuant to subsection (1) of this section, the legislative authorities may establish a district, modify the boundaries or functions of an existing district, or dissolve an existing district, if the legislative authorities find the action to be in the public interest and adopt an ordinance providing for the action. The ordinance establishing a district shall specify the functions or activities to be

exercised or funded and establish the boundaries of the district. Subject to the provisions of RCW 36.73.160, functions or activities proposed to be provided or funded by the district may not be expanded beyond those specified in the notice of hearing, unless additional notices are made, further hearings on the expansion are held, and further determinations are made that it is in the public interest to so expand the functions or activities proposed to be provided or funded. [2005 c 336 § 5; 1987 c 327 § 5.]

**Effective date—2005 c 336:** See note following RCW 36.73.015.

**36.73.060 Authority to levy property tax.** (1) A district may levy an ad valorem property tax in excess of the one percent limitation upon the property within the district for a one-year period whenever authorized by the voters of the district pursuant to RCW 84.52.052 and Article VII, section 2(a) of the state Constitution.

(2) A district may provide for the retirement of voter-approved general obligation bonds, issued for capital purposes only, by levying bond retirement ad valorem property tax levies in excess of the one percent limitation whenever authorized by the voters of the district pursuant to Article VII, section 2(b) of the state Constitution and RCW 84.52.056. [2005 c 336 § 6; 1987 c 327 § 6.]

**Effective date—2005 c 336:** See note following RCW 36.73.015.

**36.73.065 Taxes, fees, charges, tolls—Voter approval required.** (1) Taxes, fees, charges, and tolls may not be imposed by a district without approval of a majority of the voters in the district voting on a proposition at a general or special election. The proposition must include a specific description of the transportation improvement or improvements proposed by the district and the proposed taxes, fees, charges, and the range of tolls imposed by the district to raise revenue to fund the improvement or improvements.

(2) Voter approval under this section shall be accorded substantial weight regarding the validity of a transportation improvement as defined in RCW 36.73.015.

(3) A district may not increase any taxes, fees, charges, or range of tolls imposed under this chapter once the taxes, fees, charges, or tolls take effect, unless authorized by the district voters pursuant to RCW 36.73.160. [2005 c 336 § 17.]

**Effective date—2005 c 336:** See note following RCW 36.73.015.

**36.73.070 Authority to issue general obligation bonds, revenue bonds.** (1) To carry out the purposes of this chapter and notwithstanding RCW 39.36.020(1), a district may issue general obligation bonds, not to exceed an amount, together with any other outstanding nonvoter-approved general obligation indebtedness, equal to one and one-half percent of the value of taxable property within the district, as the term "value of taxable property" is defined in RCW 39.36.015. A district may additionally issue general obligation bonds for capital purposes only, together with any outstanding general obligation indebtedness, not to exceed an amount equal to five percent of the value of the taxable property within the district, as the term "value of taxable property" is defined in RCW 39.36.015, when authorized by the voters of the district pursuant to Article VIII, section 6 of the state

Constitution, and may also provide for the retirement thereof by excess property tax levies as provided in RCW 36.73.060(2). The district may, if applicable, submit a single proposition to the voters that, if approved, authorizes both the issuance of the bonds and the bond retirement property tax levies.

(2) General obligation bonds with a maturity in excess of forty years shall not be issued. The governing body of the district shall by resolution determine for each general obligation bond issue the amount, date, terms, conditions, denominations, maximum fixed or variable interest rate or rates, maturity or maturities, redemption rights, registration privileges, manner of execution, manner of sale, callable provisions, if any, covenants, and form, including registration as to principal and interest, registration as to principal only, or bearer. Registration may include, but not be limited to: (a) A book entry system of recording the ownership of a bond whether or not physical bonds are issued; or (b) recording the ownership of a bond together with the requirement that the transfer of ownership may only be effected by the surrender of the old bond and either the reissuance of the old bond or the issuance of a new bond to the new owner. Facsimile signatures may be used on the bonds and any coupons. Refunding general obligation bonds may be issued in the same manner as general obligation bonds are issued.

(3) Whenever general obligation bonds are issued to fund specific projects or enterprises that generate revenues, charges, user fees, or special assessments, the district may specifically pledge all or a portion of the revenues, charges, user fees, or special assessments to refund the general obligation bonds. The district may also pledge any other revenues that may be available to the district.

(4) In addition to general obligation bonds, a district may issue revenue bonds to be issued and sold in accordance with chapter 39.46 RCW. [2005 c 336 § 7; 1987 c 327 § 7.]

**Effective date—2005 c 336:** See note following RCW 36.73.015.

**36.73.080 Local improvement districts authorized—Special assessments—Bonds.** (1) A district may form a local improvement district to provide any transportation improvement it has the authority to provide, impose special assessments on all property specially benefited by the transportation improvements, and issue special assessment bonds or revenue bonds to fund the costs of the transportation improvement. Local improvement districts shall be created and administered, and assessments shall be made and collected, in the manner and to the extent provided by law to cities and towns pursuant to chapters 35.43, 35.44, 35.49, 35.50, 35.51, 35.53, and 35.54 RCW. However, the duties devolving upon the city or town treasurer under these chapters shall be imposed upon the district treasurer for the purposes of this section. A local improvement district may only be formed under this section pursuant to the petition method under RCW 35.43.120 and 35.43.125.

(2) The governing body of a district shall by resolution establish for each special assessment bond issue the amount, date, terms, conditions, denominations, maximum fixed or variable interest rate or rates, maturity or maturities, redemption rights, registration privileges, if any, covenants, and form, including registration as to principal and interest, regis-

tration as to principal only, or bearer. Registration may include, but not be limited to: (a) A book entry system of recording the ownership of a bond whether or not physical bonds are issued; or (b) recording the ownership of a bond together with the requirement that the transfer of ownership may only be effected by the surrender of the old bond and either the reissuance of the old bond or the issuance of a new bond to the new owner. Facsimile signatures may be used on the bonds and any coupons. The maximum term of any special assessment bonds shall not exceed thirty years beyond the date of issue. Special assessment bonds issued pursuant to this section shall not be an indebtedness of the district issuing the bonds, and the interest and principal on the bonds shall only be payable from special assessments made for the improvement for which the bonds were issued and any local improvement guaranty fund that the district has created. The owner or bearer of a special assessment bond or any interest coupon issued pursuant to this section shall not have any claim against the district arising from the bond or coupon except for the payment from special assessments made for the improvement for which the bonds were issued and any local improvement guaranty fund the district has created. The district issuing the special assessment bonds is not liable to the owner or bearer of any special assessment bond or any interest coupon issued pursuant to this section for any loss occurring in the lawful operation of its local improvement guaranty fund. The substance of the limitations included in this subsection (2) shall be plainly printed, written, or engraved on each special assessment bond issued pursuant to this section.

(3) Assessments shall reflect any credits given by a district for real property or property right donations made pursuant to RCW 47.14.030.

(4) The governing body may establish, administer, and pay money into a local improvement guaranty fund, in the manner and to the extent provided by law to cities and towns under chapter 35.54 RCW, to guarantee special assessment bonds issued by the district. [2005 c 336 § 8; 1987 c 327 § 8.]

**Effective date—2005 c 336:** See note following RCW 36.73.015.

**36.73.100 Use of bond proceeds.** (1) The proceeds of any bond issued pursuant to RCW 36.73.070 or 36.73.080 may be used to pay costs incurred on a bond issue related to the sale and issuance of the bonds. These costs include payments for fiscal and legal expenses, obtaining bond ratings, printing, engraving, advertising, and other similar activities.

(2) In addition, proceeds of bonds used to fund capital projects may be used to pay the necessary and related engineering, architectural, planning, and inspection costs. [2005 c 336 § 9; 1987 c 327 § 10.]

**Effective date—2005 c 336:** See note following RCW 36.73.015.

**36.73.110 Acceptance and use of gifts and grants.** A district may accept and expend or use gifts, grants, and donations. [2005 c 336 § 10; 1987 c 327 § 11.]

**Effective date—2005 c 336:** See note following RCW 36.73.015.

**36.73.120 Imposition of fees on building construction or land development—Limitations.** (1) Subject to the provisions in RCW 36.73.065, a district may impose a fee or

[2005 RCW Supp—page 330]

charge on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance, or on the development, subdivision, classification, or reclassification of land, only if done in accordance with chapter 39.92 RCW.

(2) Any fee or charge imposed under this section shall be used exclusively for transportation improvements constructed by a district. The fees or charges imposed must be reasonably necessary as a result of the impact of development, construction, or classification or reclassification of land on identified transportation needs.

(3) If a county or city within the district area is levying a fee or charge for a transportation improvement, the fee or charge shall be credited against the amount of the fee or charge imposed by the district.

(4) Developments consisting of less than twenty residences are exempt from the fee or charge under this section. [2005 c 336 § 11; 1988 c 179 § 7; 1987 c 327 § 12.]

**Effective date—2005 c 336:** See note following RCW 36.73.015.

**Severability—Prospective application—Section captions—1988 c 179:** See RCW 39.92.900 and 39.92.901.

**36.73.130 Power of eminent domain.** A district may exercise the power of eminent domain to obtain property for its authorized purposes in the same manner as authorized for the city or county legislative authority that established the district. [2005 c 336 § 12; 1987 c 327 § 13.]

**Effective date—2005 c 336:** See note following RCW 36.73.015.

**36.73.140 Authority to contract for street and highway improvements.** A district has the same powers as a county or city to contract for street, road, or state highway improvement projects and to enter into reimbursement contracts provided for in chapter 35.72 RCW. [2005 c 336 § 13; 1987 c 327 § 14.]

**Effective date—2005 c 336:** See note following RCW 36.73.015.

**36.73.150 Department of transportation, counties, cities, and other jurisdictions may fund transportation improvements.** The department of transportation, counties, cities, and other jurisdictions may give funds to districts for the purposes of financing transportation improvements under this chapter. [2005 c 336 § 14; 1987 c 327 § 15.]

**Effective date—2005 c 336:** See note following RCW 36.73.015.

**36.73.160 Transportation improvement projects—Material change policy—Annual report.** (1) The district governing body shall develop a material change policy to address major plan changes that affect project delivery or the ability to finance the plan. The policy must at least address material changes to cost, scope, and schedule, the level of change that will require governing body involvement, and how the governing body will address those changes. At a minimum, in the event that a transportation improvement cost exceeds its original cost by more than twenty percent as identified in a district's original finance plan, the governing body shall hold a public hearing to solicit comment from the public regarding how the cost change should be resolved.

(2) A district shall issue an annual report, indicating the status of transportation improvement costs, transportation improvement expenditures, revenues, and construction schedules, to the public and to newspapers of record in the district. [2005 c 336 § 18.]

**Effective date—2005 c 336:** See note following RCW 36.73.015.

**36.73.170 Completion of transportation improvement—Termination of district operations—Termination of taxes, fees, charges, and tolls—Dissolution of district.** Within thirty days of the completion of the construction of the transportation improvement or series of improvements authorized by a district, the district shall terminate day-to-day operations and exist solely as a limited entity that oversees the collection of revenue and the payment of debt service or financing still in effect, if any and to carry out the requirements of RCW 36.73.160. The district shall accordingly adjust downward its employees, administration, and overhead expenses. Any taxes, fees, charges, or tolls imposed by the district terminate when the financing or debt service on the transportation improvement or series of improvements constructed is completed and paid and notice is provided to the departments administering the taxes. Any excess revenues collected must be disbursed to the participating jurisdictions of the district in proportion to their population, using population estimates prepared by the office of financial management. The district shall dissolve itself and cease to exist thirty days after the financing or debt service on the transportation improvement, or series of improvements, constructed is completed and paid. If there is no debt outstanding, then the district shall dissolve within thirty days from completion of construction of the transportation improvement or series of improvements authorized by the district. Notice of dissolution must be published in newspapers of general circulation within the district at least three times in a period of thirty days. Creditors must file claims for payment of claims due within thirty days of the last published notice or the claim is extinguished. [2005 c 336 § 19.]

**Effective date—2005 c 336:** See note following RCW 36.73.015.

## Chapter 36.75 RCW

### ROADS AND BRIDGES—GENERAL PROVISIONS

#### Sections

36.75.010 Definitions.

**36.75.010 Definitions.** As used in this title with relation to roads and bridges, the following terms mean:

- (1) "Alley," a highway not designed for general travel and primarily used as a means of access to the rear of residences and business establishments;
- (2) "Board," the board of county commissioners or the county legislative authority, however organized;
- (3) "Center line," the line, marked or unmarked, parallel to and equidistant from the sides of a two-way traffic roadway of a highway except where otherwise indicated by painted lines or markers;
- (4) "City street," every highway or part thereof, located within the limits of incorporated cities and towns, except alleys;

(5) "County engineer" means the county road engineer, county engineer, and engineer, and shall refer to the statutorily required position of county engineer appointed under RCW 36.80.010; and may include the county director of public works when the person in that position also meets the requirements of a licensed professional engineer and is duly appointed by the county legislative authority under RCW 36.80.010;

(6) "County road," every highway or part thereof, outside the limits of incorporated cities and towns and which has not been designated as a state highway;

(7) "Department," the state department of transportation;

(8) "Director" or "secretary," the state secretary of transportation or his or her duly authorized assistant;

(9) "Pedestrian," any person afoot;

(10) "Private road or driveway," every way or place in private ownership and used for travel of vehicles by the owner or those having express or implied permission from the owner, but not by other persons;

(11) "Highway," every way, lane, road, street, boulevard, and every way or place in the state of Washington open as a matter of right to public vehicular travel both inside and outside the limits of incorporated cities and towns;

(12) "Railroad," a carrier of persons or property upon vehicles, other than streetcars, operated upon stationary rails, the route of which is principally outside incorporated cities and towns;

(13) "Roadway," the paved, improved, or proper driving portion of a highway designed or ordinarily used for vehicular travel;

(14) "Sidewalk," property between the curb lines or the lateral lines of a roadway, and the adjacent property, set aside and intended for the use of pedestrians or such portion of private property parallel and in proximity to a highway and dedicated to use by pedestrians;

(15) "State highway," includes every highway as herein defined, or part thereof, that has been designated as a state highway, or branch thereof, by legislative enactment. [2005 c 161 § 1; 1984 c 7 § 26; 1975 c 62 § 1; 1969 ex.s. c 182 § 1; 1963 c 4 § 36.75.010. Prior: 1937 c 187 § 1; RRS § 6450-1.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

**Severability—1975 c 62:** "If any provision of this amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 c 62 § 52.]

## Chapter 36.77 RCW

### ROADS AND BRIDGES—CONSTRUCTION

#### Sections

36.77.065 Day labor construction projects or programs—"County road construction budget" defined—Amounts—Violations.

**36.77.065 Day labor construction projects or programs—"County road construction budget" defined—Amounts—Violations.** The board may cause any county road to be constructed or improved by day labor as provided in this section.

(1) As used in this section, "county road construction budget" means the aggregate total of those costs as defined by the budgeting, accounting, and reporting system for counties

and cities and other local governments authorized under RCW 43.09.200 and 43.09.230 as prescribed in the state auditor's budget, accounting, and reporting manual's (BARS) road and street construction accounts: PROVIDED, That such costs shall not include those costs assigned to the right of way account, ancillary operations account, and that portion of the engineering account that is preliminary engineering in the budget, accounting, and reporting manual.

(2) For counties with a population that equals or exceeds fifty thousand people, the total amount of day labor construction programs one county may perform annually shall total no more than the amounts determined in the following manner:

(a) Any county with a total annual county road construction budget of four million dollars or more may accumulate a day labor road construction budget equal to no more than eight hundred thousand dollars or fifteen percent of the county's total annual county road construction budget, whichever is greater.

(b) Any county with a total annual county road construction budget of one million five hundred thousand dollars or more and less than four million dollars may accumulate a day labor road construction budget equal to not more than five hundred twenty-five thousand dollars or twenty percent of the county's total annual county road construction budget, whichever is greater.

(c) Any county with a total annual county road construction budget of five hundred thousand dollars or more and less than one million five hundred thousand dollars may accumulate a day labor road construction budget equal to two hundred fifty thousand dollars or thirty-five percent of the county's total annual county road construction budget, whichever is greater.

(d) Any county with a total annual county road construction budget less than five hundred thousand dollars may accumulate a day labor road construction budget equal to two hundred fifty thousand dollars: PROVIDED, That any county with a total annual road construction budget of less than five hundred thousand dollars may, by resolution of the board at the time the county road construction budget is adopted, elect to construct or improve county roads by day labor in an amount not to exceed thirty-five thousand dollars on any one project, including labor, equipment, and materials; such election to be in lieu of the two hundred fifty thousand dollar limit provided for in this section, except that any project means a complete project and the division of any project into units of work or classes of work so as to permit construction by day labor is not authorized.

(3) For counties with a population of less than fifty thousand people, the total amount of day labor construction programs one county may perform annually may total no more than the amounts determined in the following manner:

(a) A county with a total annual county road construction budget of four million dollars or more may accumulate a day labor road construction budget equal to not more than eight hundred eighty thousand dollars or twenty-five percent of the county's total annual county road construction budget, whichever is greater;

(b) A county with a total annual county road construction budget of one million five hundred thousand dollars or more and less than four million dollars may accumulate a day labor

road construction budget equal to not more than five hundred seventy-seven thousand dollars or thirty percent of the county's total annual county road construction budget, whichever is greater;

(c) A county with a total annual county road construction budget of five hundred thousand dollars or more and less than one million five hundred thousand dollars may accumulate a day labor road construction budget equal to two hundred seventy-five thousand dollars or forty-five percent of the county's total annual county road construction budget, whichever is greater;

(d) A county with a total annual county road construction budget less than five hundred thousand dollars may accumulate a day labor road construction budget equal to two hundred seventy-five thousand dollars. However, such a county may, by resolution of the board at the time the county road construction budget is adopted, elect instead to construct or improve county roads by day labor in an amount not to exceed thirty-eight thousand five hundred dollars on any one project, including labor, equipment, and materials. That election is in lieu of the two hundred seventy-five thousand dollar limit provided for in this section. As used in this section, "any project" means a complete project, and a county may not divide a project into units of work or classes of work so as to permit construction by day labor.

(4) Any county that adopts a county road construction budget unreasonably exceeding that county's actual road construction expenditures for the same budget year which has the effect of permitting the county to exceed the day labor amounts established in this section is in violation of the county road administration board's standards of good practice under RCW 36.78.020 and is in violation of this section. Any county, whose expenditure for day labor for road construction projects unreasonably exceeds the limits specified in this section, is in violation of the county road administration board's standards of good practice under RCW 36.78.020 and is in violation of this section.

(5) Notwithstanding any other provision in this section, whenever the construction work or improvement is the installation of electrical traffic control devices, highway illumination equipment, electrical equipment, wires, or equipment to convey electrical current, in an amount exceeding ten thousand dollars for any one project including labor, equipment, and materials, such work shall be performed by contract as in this chapter provided. This section means a complete project and does not permit the construction of any project by day labor by division of the project into units of work or classes of work. [2005 c 162 § 1; 2001 c 108 § 1; 1980 c 40 § 1.]

**Effective date—1980 c 40:** "This act shall take effect on January 1, 1981." [1980 c 40 § 3.]

### Chapter 36.78 RCW

#### ROADS AND BRIDGES—COUNTY ROAD ADMINISTRATION BOARD

##### Sections

36.78.040	Composition of board—Qualifications of members.
36.78.070	Duties of board.

**36.78.040 Composition of board—Qualifications of members.** Six members of the county road administration



board shall be county legislative authority members and three members shall be county engineers. If any member, during the term for which he or she is appointed ceases to be either a member of a county legislative authority or a county engineer, as the case may be, his or her membership on the county road administration board is likewise terminated. Three members of the board shall be from counties with a population of one hundred twenty-five thousand or more. Four members shall be from counties with a population of from twenty thousand to less than one hundred twenty-five thousand. Two members shall be from counties with a population of less than twenty thousand. Not more than one member of the board shall be from any one county. [2005 c 233 § 1; 1991 c 363 § 83; 1965 ex.s. c 120 § 4.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.78.070 Duties of board.** The county road administration board shall:

(1) Establish by rule, standards of good practice for the administration of county roads and the efficient movement of people and goods over county roads;

(2) Establish reporting requirements for counties with respect to the standards of good practice adopted by the board;

(3) Receive and review reports from counties and reports from its executive director to determine compliance with legislative directives and the standards of good practice adopted by the board;

(4) Advise counties on issues relating to county roads and the safe and efficient movement of people and goods over county roads and assist counties in developing uniform and efficient transportation-related information technology resources;

(5) Report annually before the fifteenth day of January, and throughout the year as appropriate, to the state department of transportation and to the chairs of the house and senate transportation committees, and to other entities as appropriate on the status of county road administration in each county, including one copy to the staff of each of the committees. The annual report shall contain recommendations for improving administration of the county road programs;

(6) Administer the rural arterial program established by chapter 36.79 RCW and the program funded by the county arterial preservation account established by RCW 46.68.090, as well as any other programs provided for in law. [2005 c 319 § 102; 1999 c 269 § 1; 1993 c 65 § 3; 1990 c 266 § 2; 1987 c 505 § 19; 1983 1st ex.s. c 49 § 19; 1977 ex.s. c 235 § 4; 1965 ex.s. c 120 § 7.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Effective date—1999 c 269:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1999." [1999 c 269 § 18.]

**Severability—Effective date—1983 1st ex.s. c 49:** See RCW 36.79.900 and 36.79.901.

## Chapter 36.81 RCW

### ROADS AND BRIDGES—ESTABLISHMENT

#### Sections

- 36.81.121 Perpetual advanced six-year plans for coordinated transportation program, expenditures—Nonmotorized transportation—Railroad right-of-way.
- 36.81.130 Procedure specified for establishment, construction, and maintenance.

#### **36.81.121 Perpetual advanced six-year plans for coordinated transportation program, expenditures—Nonmotorized transportation—Railroad right-of-way.**

(1) At any time before adoption of the budget, the legislative authority of each county, after one or more public hearings thereon, shall prepare and adopt a comprehensive transportation program for the ensuing six calendar years. If the county has adopted a comprehensive plan pursuant to chapter 35.63 or 36.70 RCW, the inherent authority of a charter county derived from its charter, or chapter 36.70A RCW, the program shall be consistent with this comprehensive plan.

The program shall include proposed road and bridge construction work and other transportation facilities and programs deemed appropriate, and for those counties operating ferries shall also include a separate section showing proposed capital expenditures for ferries, docks, and related facilities. The program shall include any new or enhanced bicycle or pedestrian facilities identified pursuant to RCW 36.70A.070(6) or other applicable changes that promote nonmotorized transit. Copies of the program shall be filed with the county road administration board and with the state secretary of transportation not more than thirty days after its adoption by the legislative authority. The purpose of this section is to assure that each county shall perpetually have available advanced plans looking to the future for not less than six years as a guide in carrying out a coordinated transportation program. The program may at any time be revised by a majority of the legislative authority but only after a public hearing thereon.

(2) Each six-year transportation program forwarded to the secretary in compliance with subsection (1) of this section shall contain information as to how a county will expend its moneys, including funds made available pursuant to chapter 47.30 RCW, for nonmotorized transportation purposes.

(3) Each six-year transportation program forwarded to the secretary in compliance with subsection (1) of this section shall contain information as to how a county shall act to preserve railroad right-of-way in the event the railroad ceases to operate in the county's jurisdiction.

(4) The six-year plan for each county shall specifically set forth those projects and programs of regional significance for inclusion in the transportation improvement program within that region. [2005 c 360 § 3; 1997 c 188 § 1. Prior: 1994 c 179 § 2; 1994 c 158 § 8; 1990 1st ex.s. c 17 § 58; 1988 c 167 § 8; 1983 1st ex.s. c 49 § 20; prior: 1975 1st ex.s. c 215 § 2; 1975 1st ex.s. c 21 § 3; 1967 ex.s. c 83 § 26; 1963 c 4 § 36.81.121; prior: 1961 c 195 § 1.]

**Findings—Intent—2005 c 360:** See note following RCW 36.70A.070.

**Captions not law—Severability—Effective date—1994 c 158:** See RCW 47.80.902 through 47.80.904.

**Severability—Part, section headings not law—1990 1st ex.s. c 17:** See RCW 36.70A.900 and 36.70A.901.

**Savings—Severability—1988 c 167:** See notes following RCW 47.26.121.

**Severability—Effective date—1983 1st ex.s. c 49:** See RCW 36.79.900 and 36.79.901.

**Severability—Effective dates—1967 ex.s. c 83:** See RCW 47.26.900 and 47.26.910.

*Highways, roads, streets in urban areas, urban arterials, development: Chapter 47.26 RCW.*

*Long range arterial construction planning, counties and cities to prepare data: RCW 47.26.170.*

**36.81.130 Procedure specified for establishment, construction, and maintenance.** The laying out, construction, and maintenance of all county roads shall hereafter be in accordance with the following procedure:

On or before the first Monday in October of each year each county road engineer shall file with the county legislative authority a recommended plan for the laying out, construction, and maintenance of county roads for the ensuing fiscal year. Such recommended plan need not be limited to but shall include the following items: Recommended projects, including capital expenditures for ferries, docks, and related facilities, and their priority; the estimated cost of all work, including labor and materials for each project recommended; a statement as to whether such work is to be done by the county forces or by publicly advertised contract; a list of all recommended purchases of road equipment, together with the estimated costs thereof. Amounts to be expended for maintenance shall be recommended, but details of these proposed expenditures shall not be made. The recommended plan shall conform as nearly as practicable to the county's long range road program.

After filing of the road engineer's recommended plan, the county legislative authority shall consider the same. Revisions and changes may be made until a plan which is agreeable to a majority of the members of the county legislative authority has been adopted: PROVIDED, That such revisions shall conform as nearly as practicable to the county's long range road program. Any appropriations contained in the county road budget shall be void unless the county's road plan was adopted prior to such appropriation.

The final road plan for the fiscal year shall not thereafter be changed except by unanimous vote of the county legislative authority. [2005 c 162 § 2; 1991 c 363 § 86; 1975 1st ex.s. c 21 § 4; 1963 c 4 § 36.81.130. Prior: 1949 c 156 § 7; Rem. Supp. 1949 § 6450-8f.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

## Chapter 36.94 RCW

### SEWERAGE, WATER, AND DRAINAGE SYSTEMS

#### Sections

36.94.140 Authority of county to operate system—Rates and charges, fixing of—Factors to be considered—Assistance for low-income persons.

**36.94.140 Authority of county to operate system—Rates and charges, fixing of—Factors to be considered—Assistance for low-income persons.** (1) Every county, in the operation of a system of sewerage and/or water, shall have full jurisdiction and authority to manage, regulate, and

[2005 RCW Supp—page 334]

control it. Except as provided in subsection (3) of this section, every county shall have full jurisdiction and authority to fix, alter, regulate, and control the rates and charges for the service and facilities to those to whom such service and facilities are available, and to levy charges for connection to the system.

(2) The rates for availability of service and facilities, and connection charges so charged must be uniform for the same class of customers or service and facility. In classifying customers served, service furnished or made available by such system of sewerage and/or water, or the connection charges, the county legislative authority may consider any or all of the following factors:

(a) The difference in cost of service to the various customers within or without the area;

(b) The difference in cost of maintenance, operation, repair and replacement of the various parts of the systems;

(c) The different character of the service and facilities furnished various customers;

(d) The quantity and quality of the sewage and/or water delivered and the time of its delivery;

(e) Capital contributions made to the system or systems, including, but not limited to, assessments;

(f) The cost of acquiring the system or portions of the system in making system improvements necessary for the public health and safety;

(g) The nonprofit public benefit status, as defined in RCW 24.03.490, of the land user; and

(h) Any other matters which present a reasonable difference as a ground for distinction.

(3) The rate a county may charge under this section for storm or surface water sewer systems or the portion of the rate allocable to the storm or surface water sewer system of combined sanitary sewage and storm or surface water sewer systems shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting systems shall be properly sized to utilize the available roof surface of the building. The jurisdiction shall consider rate reductions in excess of ten percent dependent upon the amount of rainwater harvested.

(4) A county may provide assistance to aid low-income persons in connection with services provided under this chapter.

(5) The service charges and rates shall produce revenues sufficient to take care of the costs of maintenance and operation, revenue bond and warrant interest and principal amortization requirements, and all other charges necessary for the efficient and proper operation of the system.

(6) A connection charge under this section for service to a manufactured housing community, as defined in RCW 59.20.030, applies to an individual lot within that community only if the system of water or sewerage provides and maintains the connection. [2005 c 324 § 2; 2003 c 394 § 4; 1997 c 447 § 12; 1995 c 124 § 2; 1990 c 133 § 2; 1975 1st ex.s. c 188 § 2; 1967 c 72 § 14.]

**Finding—Purpose—1997 c 447:** See note following RCW 70.05.074.

**Findings—1990 c 133:** "The legislature finds the best interests of the citizens of the state are served if:

(1) Customers served by public water systems are assured of an adequate quantity and quality of water supply at reasonable rates;

(2) There is improved coordination between state agencies engaged in water system planning and public health regulation and local governments responsible for land use regulation and public health and safety;

(3) Public water systems in violation of health and safety standards adopted under RCW 43.20.050 remain in operation and continue providing water service providing that public health is not compromised, assuming a suitable replacement purveyor is found and deficiencies are corrected in an expeditious manner consistent with public health and safety; and

(4) The state address[es], in a systematic and comprehensive fashion, new operating requirements which will be imposed on public water systems under the federal Safe Drinking Water Act." [1990 c 133 § 1.]

**Severability—1990 c 133:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 133 § 12.]

**Severability—1975 1st ex.s. c 188:** See RCW 36.94.921.

## Chapter 36.102 RCW

### STADIUM AND EXHIBITION CENTERS

#### Sections

36.102.200 Public stadium authority—Confidentiality of financial information. (*Effective July 1, 2006.*)

**36.102.200 Public stadium authority—Confidentiality of financial information.** (*Effective July 1, 2006.*) The public stadium authority may refuse to disclose financial information on the master tenant, concessioners, the team affiliate, or sublessee under RCW 42.56.270. [2005 c 274 § 274; 1997 c 220 § 119 (Referendum Bill No. 48, approved June 17, 1997).]

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

## Title 38

### MILITIA AND MILITARY AFFAIRS

#### Chapters

- 38.08 Powers and duties of governor.**
- 38.20 Armories and rifle ranges.**
- 38.24 Claims and compensation.**
- 38.40 Miscellaneous provisions.**
- 38.42 Service members' civil relief.**
- 38.52 Emergency management.**

## Chapter 38.08 RCW

### POWERS AND DUTIES OF GOVERNOR

#### Sections

38.08.040 Governor may order out organized militia.

**38.08.040 Governor may order out organized militia.** In event of war, insurrection, rebellion, invasion, tumult, riot, mob, or organized body acting together by force with intent to commit a felony or to offer violence to persons or property, or by force and violence to break and resist the laws of this state, or the United States, or in case of the imminent danger of the occurrence of any of said events, or at the lawful request of competent state or local authority in support of enforcement of controlled substance statutes, or whenever responsible civil authorities shall, for any reason, fail to preserve law and order, or protect life or property, or the gover-

nor believes that such failure is imminent, or in event of public disaster, or when otherwise required for the public health, safety, or welfare, or to perform any military duty authorized by state law, or to prepare for or recover from any of these events or the consequences thereof, the governor shall have power to order the organized militia of Washington, or any part thereof, into active service of the state to execute the laws, and to perform such duty as the governor shall deem proper. [2005 c 9 § 1; 1993 c 263 § 1; 1989 c 19 § 7; 1943 c 130 § 6; Rem. Supp. 1943 § 8603-6. Prior: 1917 c 107 § 7; 1913 c 66 § 2; 1909 c 134 § 15.]

**Effective date—2005 c 9:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 28, 2005]." [2005 c 9 § 3.]

## Chapter 38.20 RCW

### ARMORIES AND RIFLE RANGES

#### Sections

38.20.010 Regulations governing armories.

**38.20.010 Regulations governing armories.** Except as provided in this section, state-owned armories shall be used strictly for military purposes.

(1) One room, together with the necessary furniture, heat, light, and janitor service, may be set aside for the exclusive use of bona fide veterans' organizations subject to the direction of the officer in charge. Members of these veterans' organizations and their auxiliaries shall have access to the room and its use at all times.

(2) A bona fide veterans' organization may use any state armory for athletic and social events without payment of rent whenever the armory is not being used by the organized militia. The adjutant general may require the veterans' organization to pay the cost of heating, lighting, or other miscellaneous expenses incidental to this use.

(3) The adjutant general may, during an emergency, permit transient lodging of service personnel in armories.

(4) The adjutant general may, upon the recommendation of the executive head or governing body of a county, city or town, permit transient lodging of anyone in armories. The adjutant general may require the county, city or town to pay no more than the actual cost of staffing, heating, lighting and other miscellaneous expenses incidental to this use.

(5) Civilian rifle clubs affiliated with the National Rifle Association of America are permitted to use small arms ranges in the armories at least one night each week under regulations prescribed by the adjutant general.

(6) State-owned armories shall be available, at the discretion of the adjutant general, for use for casual civic purposes, and amateur and professional sports and theatricals upon payment of fixed rental charges and compliance with regulations of the state military department. Children attending primary and high schools have a preferential right to use these armories.

The adjutant general shall prepare a schedule of rental charges, including a cleaning deposit, and utility costs for each state-owned armory which may not be waived except for activities sponsored by the organized militia or activities provided for in subsection (4) of this section. The rental

charges derived from armory rentals less the cleaning deposit shall be paid into the military department rental and lease account under RCW 38.40.210. [2005 c 252 § 3; 1989 c 19 § 33; 1985 c 295 § 1; 1983 c 268 § 1; 1975 1st ex.s. c 121 § 1; 1973 1st ex.s. c 154 § 56; 1963 c 149 § 1; 1949 c 125 § 1; 1947 c 204 § 1; 1943 c 130 § 93; Rem. Supp. 1949 § 8603-93. Prior: 1923 c 49 § 5; 1917 c 8 § 1; 1909 c 134 § 97; 1907 c 55 § 11; 1903 c 115 §§ 19, 20.]

**Effective date—1975 1st ex.s. c 121:** "The effective date of this act shall be July 1, 1977." [1975 1st ex.s. c 121 § 2.]

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

**SPECIAL ACTS RELATING TO ARMORIES:** *The following special or temporary acts relating to particular armories are not codified herein:*

- (1) 1959 c 181; 1961 c 135; 1963 c 146, Seattle
- (2) 1967 c 37, Prosser
- (3) 1967 c 43, Centralia
- (4) 1967 c 44, Chewelah
- (5) 1967 c 214, Stevens County
- (6) 1967 c 224, Tacoma and Pierce County
- (7) 1967 c 226, Yakima
- (8) 1969 ex.s. c 22, Kirkland.

### Chapter 38.24 RCW

#### CLAIMS AND COMPENSATION

##### Sections

38.24.010 Payment of military claims.

**38.24.010 Payment of military claims.** All bills, claims and demands for military purposes shall be certified or verified and audited in the manner prescribed by regulations promulgated by the governor and shall be paid by the state treasurer from funds available for that purpose. In all cases where the organized militia, or any part of the organized militia, is called into the service of the state to perform duties under RCW 38.08.040, except for anticipated planning, training, exercises, and other administrative duties that are not of an emergent nature, warrants for allowed pay and expenses for such services or compensation for injuries or death shall be drawn upon the general fund of the state treasury and paid out of any moneys in said fund not otherwise appropriated. All such warrants shall be the obligation of the state and shall bear interest at the legal rate from the date of their presentation for payment. [2005 c 9 § 2; 1991 c 43 § 4; 1989 c 19 § 36; 1973 c 106 § 14; 1943 c 130 § 42; Rem. Supp. 1943 § 8603-42. Prior: 1917 c 107 § 36; 1909 c 134 § 56, part; 1895 c 108 § 91, part.]

**Effective date—2005 c 9:** See note following RCW 38.08.040.

### Chapter 38.40 RCW

#### MISCELLANEOUS PROVISIONS

##### Sections

38.40.200 Military department capital account.  
38.40.210 Military department rental and lease account.

**38.40.200 Military department capital account.** The military department capital account is created in the state treasury. All receipts from the sale of state-owned military department property must be deposited into the account. Money in the account may be spent only after appropriation.

[2005 RCW Supp—page 336]

Expenditures from the account may be used only for military department capital projects. [2005 c 252 § 1.]

**38.40.210 Military department rental and lease account.** The military department rental and lease account is created in the state treasury. All receipts from the rental or lease of state-owned military department property must be deposited into the account. Money in the account may be spent only after appropriation. Expenditures from the account may be used only for operating and maintenance costs of military property. [2005 c 252 § 2.]

### Chapter 38.42 RCW

#### SERVICE MEMBERS' CIVIL RELIEF

##### Sections

38.42.010 Definitions.  
38.42.020 Applicability of chapter.  
38.42.030 Protection of persons secondarily liable.  
38.42.040 Waiver of rights pursuant to written agreement.  
38.42.050 Protection of service members against default judgments.  
38.42.060 Stay of proceedings when service member has notice.  
38.42.070 Fines and penalties under contracts.  
38.42.080 Codefendants.  
38.42.090 Computation of statutes of limitation.  
38.42.100 Inappropriate use of chapter.  
38.42.900 Short title.  
38.42.901 Captions not law—2005 c 254.  
38.42.902 Severability—2005 c 254.  
38.42.903 Effective date—2005 c 254.

**38.42.010 Definitions.** The definitions in this section apply throughout this chapter.

(1) "Dependent" means:

- (a) The service member's spouse;
- (b) The service member's minor child; or
- (c) An individual for whom the service member provided more than one-half of the individual's support for one hundred eighty days immediately preceding an application for relief under this chapter.

(2) "Judgment" does not include temporary orders as issued by a judicial court or administrative tribunal in domestic relations cases under Title 26 RCW, including but not limited to establishment of a temporary child support obligation, creation of a temporary parenting plan, or entry of a temporary protective or restraining order.

(3) "Military service" means a service member under a call to active service authorized by the president of the United States or the secretary of defense for a period of more than thirty consecutive days.

(4) "National guard" has the meaning in RCW 38.04.010.

(5) "Service member" means any resident of Washington state that is a member of the national guard or member of a military reserve component. [2005 c 254 § 1.]

**38.42.020 Applicability of chapter.** (1) Any service member who is ordered to report for military service and his or her dependents are entitled to the rights and protections of this chapter during the period beginning on the date on which the service member receives the order and ending one hundred eighty days after termination of or release from military service.

(2) This chapter applies to any judicial or administrative proceeding commenced in any court or agency in Washington state in which a service member or his or her dependent is a defendant. This chapter does not apply to criminal proceedings.

(3) This chapter shall be construed liberally so as to provide fairness and do substantial justice to service members and their dependents. [2005 c 254 § 2.]

#### **38.42.030 Protection of persons secondarily liable.**

(1) Whenever pursuant to this chapter a court stays, postpones, or suspends (a) the enforcement of an obligation or liability, (b) the prosecution of a suit or proceeding, (c) the entry or enforcement of an order, writ, judgment, or decree, or (d) the performance of any other act, the court may likewise grant such a stay, postponement, or suspension to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily subject to the obligation or liability the performance or enforcement of which is stayed, postponed, or suspended.

(2) When a judgment or decree is vacated or set aside, in whole or in part, pursuant to this chapter, the court may also set aside or vacate, as the case may be, the judgment or decree as to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily liable on the contract or liability for the enforcement of the judgment decree. [2005 c 254 § 3.]

**38.42.040 Waiver of rights pursuant to written agreement.** (1) A service member may waive any of the rights and protections provided by this chapter. In the case of a waiver that permits an action described in subsection (2) of this section, the waiver is effective only if made pursuant to a written agreement of the parties that is executed during or after the service member's period of military service. The written agreement shall specify the legal instrument to which the waiver applies and, if the service member is not party to that instrument, the service member concerned.

(2) The requirement in subsection (1) of this section for a written waiver applies to the following: (a) The modification, termination, or cancellation of a contract, lease, or bailment; or an obligation secured by a mortgage, trust, deed, lien, or other security in the nature of a mortgage; and (b) the repossession, retention, foreclosure, sale, forfeiture, or taking possession of property that is security for any obligation or was purchased or received under a contract, lease, or bailment. [2005 c 254 § 4.]

**38.42.050 Protection of service members against default judgments.** (1) This section applies to any civil action or proceeding in which a service member or his or her dependent is a defendant and does not make an appearance under applicable court rules or by law.

(2) In any action or proceeding covered by this section, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit:

(a) Stating whether the defendant is in military service, or is a dependent of a service member in military service, and showing necessary facts to support the affidavit; or

(b) If the plaintiff is unable to determine whether the defendant is in military service or is a dependent of a service member in military service, stating that the plaintiff is unable to determine whether the defendant is in military service or is a dependent of a service member in military service.

(3) If in an action covered by this section it appears that the defendant is in military service or is a dependent of a service member in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed under this section to represent a service member or his or her dependent cannot locate the service member or dependent, actions by the attorney in the case do not waive any defense of the service member or dependent or otherwise bind the service member or dependent.

(4) In an action covered by this section in which the defendant is in military service or is a dependent of a service member in military service, the court shall grant a stay of proceedings until one hundred eighty days after termination of or release from military service, upon application of defense counsel, or on the court's own motion, if the court determines that:

(a) There may be a defense to the action and a defense cannot be presented without presence of the defendant; or

(b) After due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

(5) No bar to entry of judgment under subsection (3) of this section or requirement for grant of stay under subsection (4) of this section precludes the entry of temporary orders in domestic relations cases. If a court or administrative tribunal enters a temporary order as allowed under this subsection, it shall include a finding that failure to act, despite the absence of the service member, would result in manifest injustice to the other interested parties. Temporary orders issued without the service member's participation shall not set any precedent for the final disposition of the matters addressed therein.

(6) If a service member or dependent who is a defendant in an action covered by this section receives actual notice of the action, the service member or dependent may request a stay of proceedings pursuant to RCW 38.42.060.

(7) A person who makes or uses an affidavit permitted under this section knowing it to be false, is guilty of a class C felony.

(8) If a default judgment is entered in an action covered by this section against a service member or his or her dependent during the service member's period of military service or within one hundred eighty days after termination of or release from military service, the court entering the judgment shall, upon application by or on behalf of the service member or his or her dependent, reopen the judgment for the purpose of allowing the service member or his or her dependent to defend the action if it appears that:

(a) The service member or dependent was materially affected by reason of that military service in making a defense to the action; and

(b) The service member or dependent has a meritorious or legal defense to the action or some part of it.

(9) If a court vacates, sets aside, or reverses a default judgment against a service member or his or her dependent and the vacating, setting aside, or reversing is because of a

provision of this chapter, that action does not impair a right or title acquired by a bona fide purchaser for value. [2005 c 254 § 5.]

**38.42.060 Stay of proceedings when service member has notice.** (1) This section applies to any civil action or proceeding in which a defendant at the time of filing an application under this section:

(a)(i) Is in military service, or it is within one hundred eighty days after termination of or release from military service; or

(ii) Is a dependent of a service member in military service; and

(b) Has received actual notice of the action or proceeding.

(2) At any stage before final judgment in a civil action or proceeding in which a service member or his or her dependent described in subsection (1) of this section is a party, the court may on its own motion and shall, upon application by the service member or his or her dependent, stay the action until one hundred eighty days after termination of or release from military service, if the conditions in subsection (3) of this section are met.

(3) An application for a stay under subsection (2) of this section shall include the following:

(a) A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the service member's or dependent's ability to appear and stating a date when the service member or dependent will be available to appear; and

(b) A letter or other communication from the service member's commanding officer stating that the service member's current military duty prevents either the service member's or dependent's appearance and that military leave is not authorized for the service member at the time of the letter.

(4) An application for a stay under this section does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense, including a defense relating to lack of personal jurisdiction.

(5) A service member or dependent who is granted a stay of a civil action or proceeding under subsection (2) of this section may apply for an additional stay based on the continuing material affect of military duty on the service member's or dependent's ability to appear. Such application may be made by the service member or his or her dependent at the time of the initial application under subsection (2) of this section or when it appears that the service member or his or her dependent is unable to prosecute or defend the action. The same information required under subsection (3) of this subsection shall be included in an application under this subsection.

(6) If the court refuses to grant an additional stay of proceedings under subsection (2) of this section, the court shall appoint counsel to represent the service member or his or her dependent in the action or proceeding.

(7) A service member or dependent who applies for a stay under this section and is unsuccessful may not seek the protections afforded by RCW 38.42.050. [2005 c 254 § 6.]

**38.42.070 Fines and penalties under contracts.** (1) If an action for compliance with the terms of a contract is stayed pursuant to this chapter, a penalty shall not accrue for failure to comply with the terms of the contract during the period of the stay.

(2) If a service member or his or her dependent fails to perform an obligation arising under a contract and a penalty is incurred arising from that nonperformance, a court may reduce or waive the fine or penalty if:

(a)(i) The service member was in military service at the time the fine or penalty was incurred; or

(ii) The action is against a dependent of the service member and the service member was in military service at the time the fine or penalty was incurred; and

(b) The ability of the service member or dependent to perform the obligation was materially affected by the military service. [2005 c 254 § 7.]

**38.42.080 Codefendants.** If the service member or his or her dependent is a codefendant with others who are not in military service and who are not entitled to the relief and protections provided under this chapter, the plaintiff may proceed against those other defendants with the approval of the court. [2005 c 254 § 8.]

**38.42.090 Computation of statutes of limitation.** (1) The period of a service member's military service may not be included in computing any period limited by law, rule, or order, for the bringing of any action or proceeding in a court, or in any board bureau, commission, department, or other agency of a state, or political subdivision of a state, or the United States by or against the service member or the service member's dependents, heirs, executors, administrators, or assigns.

(2) A period of military service may not be included in computing any period provided by law for the redemption of real property sold or forfeited to enforce an obligation, tax, or assessment.

(3) This section does not apply to any period of limitation prescribed by or under the internal revenue laws of the United States. [2005 c 254 § 9.]

**38.42.100 Inappropriate use of chapter.** If a court determines, in any proceeding to enforce a civil right, that any interest, property, or contract has been transferred or acquired with the intent to delay the just enforcement of such right by taking advantage of this chapter, the court shall enter such judgment or make such order as might lawfully be entered or made concerning such transfer or acquisition. [2005 c 254 § 10.]

**38.42.900 Short title.** This chapter may be known and cited as the Washington service members' civil relief act. [2005 c 254 § 11.]

**38.42.901 Captions not law—2005 c 254.** Captions used in this act are no part of the law. [2005 c 254 § 12.]

**38.42.902 Severability—2005 c 254.** If any provision of this act or its application to any person or circumstance is

held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2005 c 254 § 14.]

**38.42.903 Effective date—2005 c 254.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 3, 2005]. [2005 c 254 § 15.]

### Chapter 38.52 RCW EMERGENCY MANAGEMENT

#### Sections

38.52.105 Disaster response account.

**38.52.105 Disaster response account.** The disaster response account is created in the state treasury. Moneys may be placed in the account from legislative appropriations and transfers, federal appropriations, or any other lawful source. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for support of state agency and local government disaster response and recovery efforts and to reimburse the workers' compensation funds and self-insured employers under RCW 51.16.220. During the 2001-03 biennium, funds from the account may also be used for costs associated with national security preparedness activities. [2005 c 422 § 2; 2002 c 371 § 903; 1997 c 251 § 1.]

**Rules—Effective date—2005 c 422:** See notes following RCW 51.16.220.

**Severability—Effective date—2002 c 371:** See notes following RCW 9.46.100.

**Effective date—1997 c 251:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 5, 1997]." [1997 c 251 § 2.]

## Title 39 PUBLIC CONTRACTS AND INDEBTEDNESS

#### Chapters

**39.04 Public works.**  
**39.08 Contractor's bond.**  
**39.10 Alternative public works contracting procedures.**  
**39.19 Office of minority and women's business enterprises.**  
**39.35D High-performance public buildings.**  
**39.53 Refunding bond act.**  
**39.58 Public funds—Deposits and investments—Public depositaries.**  
**39.96 Payment agreements.**

### Chapter 39.04 RCW PUBLIC WORKS

#### Sections

39.04.300 Apprenticeship training programs—Purpose.  
 39.04.310 Apprenticeship training programs—Definitions.

39.04.320 Apprenticeship training programs—Public works contracts of one million dollars or more—Fifteen percent of labor hours to be performed by apprentices—Exceptions.  
 39.04.330 Use of wood products—Compliance with chapter 39.35D RCW.

**39.04.300 Apprenticeship training programs—Purpose.** A well-trained construction trades work force is critical to the ability of the state of Washington to construct public works. Studies of the state's work force highlight population trends that, without a concerted effort to offset them, will lead to an inadequate supply of skilled workers in the construction industry. State government regularly constructs public works. The efficient and economical construction of public works projects will be harmed if there is not an ample supply of trained construction workers. Apprenticeship training programs are particularly effective in providing training and experience to individuals seeking to enter or advance in the work force. By providing for apprenticeship utilization on public works projects, state government can create opportunities for training and experience that will help assure that a trained work force will be available in sufficient numbers in the future for the construction of public works. [2005 c 3 § 1.]

**Effective date—2005 c 3:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [February 24, 2005]." [2005 c 3 § 5.]

**39.04.310 Apprenticeship training programs—Definitions.** The definitions in this section apply throughout this section and RCW 39.04.300 and 39.04.320 unless the context clearly requires otherwise.

(1) "Apprentice" means an apprentice enrolled in a state-approved apprenticeship training program.

(2) "Apprentice utilization requirement" means the requirement that the appropriate percentage of labor hours be performed by apprentices.

(3) "Labor hours" means the total hours of workers receiving an hourly wage who are directly employed on the site of the public works project. "Labor hours" includes hours performed by workers employed by the contractor and all subcontractors working on the project. "Labor hours" does not include hours worked by foremen, superintendents, owners, and workers who are not subject to prevailing wage requirements.

(4) "State-approved apprenticeship training program" means an apprenticeship training program approved by the Washington state apprenticeship council. [2005 c 3 § 2.]

**Effective date—2005 c 3:** See note following RCW 39.04.300.

**39.04.320 Apprenticeship training programs—Public works contracts of one million dollars or more—Fifteen percent of labor hours to be performed by apprentices—Exceptions.** (1) From January 1, 2005, and thereafter, for all public works estimated to cost one million dollars or more, all specifications shall require that no less than fifteen percent of the labor hours be performed by apprentices.

(2) Awarding agency directors may adjust the requirements of this section for a specific project for the following reasons:

(a) The demonstrated lack of availability of apprentices in specific geographic areas;

(b) A disproportionately high ratio of material costs to labor hours, which does not make feasible the required minimum levels of apprentice participation;

(c) Participating contractors have demonstrated a good faith effort to comply with the requirements of chapter 3, Laws of 2005; or

(d) Other criteria the awarding agency director deems appropriate, which are subject to review by the office of the governor.

(3) This section applies only to public works contracts awarded by the state. However, this section does not apply to contracts awarded by state four-year institutions of higher education, state agencies headed by a separately elected public official, or the department of transportation.

(4)(a) The department of general administration must provide information and technical assistance to affected agencies and collect the following data from affected agencies for each project covered by this section:

(i) The name of each apprentice and apprentice registration number;

(ii) The name of each project;

(iii) The dollar value of each project;

(iv) The date of the contractor's notice to proceed;

(v) The number of apprentices and labor hours worked by them, categorized by trade or craft;

(vi) The number of journey level workers and labor hours worked by them, categorized by trade or craft; and

(vii) The number, type, and rationale for the exceptions granted under subsection (2) of this section.

(b) The department of labor and industries shall assist the department of general administration in providing information and technical assistance.

(5) At the request of the senate labor, commerce, research and development committee, the house of representatives commerce and labor committee, or their successor committees, and the governor, the department of general administration and the department of labor and industries shall compile and summarize the agency data and provide a joint report to both committees. The report shall include recommendations on modifications or improvements to the apprentice utilization program and information on skill shortages in each trade or craft. [2005 c 3 § 3.]

**Effective date—2005 c 3:** See note following RCW 39.04.300.

**39.04.330 Use of wood products—Compliance with chapter 39.35D RCW.** For purposes of determining compliance with chapter 39.35D RCW, the department of general administration shall credit the project for using wood products with a credible third party sustainable forest certification or from forests regulated under chapter 76.09 RCW, the Washington forest practices act. [2005 c 12 § 11.]

### Chapter 39.08 RCW CONTRACTOR'S BOND

#### Sections

39.08.100 Marine vessel construction—Security in lieu of bond.

[2005 RCW Supp—page 340]

**39.08.100 Marine vessel construction—Security in lieu of bond.** On contracts for construction, maintenance, or repair of a marine vessel, the department of transportation or any county may permit, subject to specified format and conditions, the substitution of one or more of the following alternate forms of security in lieu of all or part of the bond: Certified check, replacement bond, cashier's check, treasury bills, an irrevocable bank letter of credit, assignment of a savings account, or other liquid assets specifically approved by the secretary of transportation or county engineer, for their respective projects. The secretary of transportation or county engineer, respectively, shall predetermine and include in the special provisions of the bid package the amount of this alternative form of security or bond, or a combination of the two, on a case-by-case basis, in an amount adequate to protect one hundred percent of the state's or county's exposure to loss. Assets used as an alternative form of security shall not be used to secure the bond. By October 1, 1989, the department shall develop and adopt rules under chapter 34.05 RCW that establish the procedures for determining the state's exposure to loss on contracts for construction, maintenance, or repair of a marine vessel. Prior to awarding any contract limiting security to the county's exposure to loss, a county shall develop and adopt an ordinance that establishes the procedure for determining the county's exposure to loss on contracts for construction, maintenance, or repair of a marine vessel. [2005 c 101 § 1; 1989 c 58 § 2.]

**Effective date—2005 c 101:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 20, 2005]." [2005 c 101 § 2.]

### Chapter 39.10 RCW ALTERNATIVE PUBLIC WORKS CONTRACTING PROCEDURES

#### Sections

39.10.020	Definitions. ( <i>Effective until July 1, 2007.</i> )
39.10.063	City demonstration projects—Conditions—Contract deadline.
39.10.100	Public inspection of certain records—Protection of trade secrets. ( <i>Effective July 1, 2006, until July 1, 2007.</i> )
39.10.800	Capital projects advisory review board—Membership—Vacancies.
39.10.810	Capital projects advisory review board—Powers and duties.
39.10.902	Repealer.

**39.10.020 Definitions.** (*Effective until July 1, 2007.*) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Alternative public works contracting procedure" means the design-build and the general contractor/construction manager contracting procedures authorized in RCW 39.10.051 and 39.10.061, respectively. Public bodies eligible to enter into agreements with service providers for the furnishing of services in connection with water pollution control facilities under the authority of chapter 70.150 RCW may elect to use either RCW 39.10.051 and 39.10.061 or chapter 70.150 RCW as their method of procurement for such services.

(2) "Public body" means the state department of general administration; the University of Washington; Washington State University; every city with a population greater than seventy thousand and any public authority chartered by such



city under RCW 35.21.730 through 35.21.755 and specifically authorized as provided in RCW 39.10.120(4); every county with a population greater than four hundred fifty thousand; every port district with total revenues greater than fifteen million dollars per year; every public hospital district with total revenues greater than fifteen million dollars per year utilizing the design-build procedure authorized by RCW 39.10.051 and every public hospital district, regardless of total revenues, proposing projects that are considered and approved by the public hospital district project review board under RCW 39.10.117; every public utility district with revenues from energy sales greater than twenty-three million dollars per year; those school districts proposing projects that are considered and approved by the school district project review board under RCW 39.10.115; and the state ferry system.

(3) "Public works project" means any work for a public body within the definition of the term public work in RCW 39.04.010.

(4) "Job order contract" means a contract between a public body or any school district and a registered or licensed contractor in which the contractor agrees to a fixed period, indefinite quantity delivery order contract which provides for the use of negotiated, definitive work orders for public works as defined in RCW 39.04.010.

(5) "Job order contractor" means a registered or licensed contractor awarded a job order contract.

(6) "Unit price book" means a book containing specific prices, based on generally accepted industry standards and information, where available, for various items of work to be performed by the job order contractor. The prices may include: All the costs of materials; labor; equipment; overhead, including bonding costs; and profit for performing the items of work. The unit prices for labor must be at the rates in effect at the time the individual work order is issued.

(7) "Work order" means an order issued for a definite scope of work to be performed pursuant to a job order contract. [2005 c 469 § 3. Prior: 2003 c 352 § 1; 2003 c 301 § 2; 2003 c 300 § 3; 2001 c 328 § 1; 2000 c 209 § 1; 1997 c 376 § 1; 1994 c 132 § 2.]

**Effective date—2001 c 328:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 328 § 8.]

**Effective date—1997 c 376:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 376 § 10.]

**39.10.063 City demonstration projects—Conditions—Contract deadline.** Notwithstanding any other provision of law, and after complying with RCW 39.10.030, any city that: (1) Is located in a county authorized under this chapter to use alternative public works procedures or is located in a county that is a member of the Puget Sound regional council; (2) reports in the state auditor's local government financial reporting system combined general fund, special revenue, debt service, capital projects, and enterprise funds revenues that exceed sixty million dollars; and (3) has a population greater than twenty-five thousand but less than forty-five thousand, is authorized to use the general contractor/construction manager or design-build procedure for one demonstration project valued over ten million dollars.

All contracts authorized under this section must be entered into before March 1, 2006. [2005 c 377 § 3.]

**39.10.100 Public inspection of certain records—Protection of trade secrets.** (*Effective July 1, 2006, until July 1, 2007.*) (1) Except as provided in subsection (2) of this section, all proceedings, records, contracts, and other public records relating to alternative public works transactions under this chapter shall be open to the inspection of any interested person, firm, or corporation in accordance with chapter 42.56 RCW.

(2) Trade secrets, as defined in RCW 19.108.010, or other proprietary information submitted by a bidder, offeror, or contractor in connection with an alternative public works transaction under this chapter shall not be subject to chapter 42.56 RCW if the bidder, offeror, or contractor specifically states in writing the reasons why protection is necessary, and identifies the data or materials to be protected. [2005 c 274 § 275; 1994 c 132 § 10.]

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

**39.10.800 Capital projects advisory review board—Membership—Vacancies.** (1) The capital projects advisory review board is created in the department of general administration to provide an evaluation of public capital projects construction processes, including the impact of contracting methods on project outcomes, and to advise the legislature on policies related to alternative public works delivery methods.

(2)(a) The capital projects advisory review board shall consist of the following members appointed by the governor: One representative from construction general contracting; one representative from the design industries; two representatives from construction specialty subcontracting; one representative from a construction trades labor organization; one representative from the office of minority and women's business enterprises; one representative from a higher education institution; one representative from the department of general administration; and one representative of a domestic insurer authorized to write surety bonds for contractors in Washington state. All appointed members must be actively engaged in or authorized to use alternative public works contracting procedures.

(b) Two members shall be at-large positions representing local public owners. The two at-large positions shall serve on a rotating basis to be determined and appointed by the association of Washington cities, the Washington state association of counties, and the Washington public ports association.

(c) One member shall be a member of the public hospital district project review board, selected by that board, who shall be nonvoting.

(d) One member shall be a member of the school district project review board, selected by that board, who shall be nonvoting.

(e) The advisory review board shall include two members of the house of representatives, one from each major caucus, appointed by the speaker of the house of representatives, and two members of the senate, one from each major caucus, appointed by the president of the senate. Legislative members are nonvoting.

(3) Members selected under subsection (2)(a) of this section shall serve for terms of four years, with the terms expiring on June 30th on the fourth year of the term. However, in the case of the initial members, four members shall serve four-year terms, four members shall serve three-year terms, and three members shall serve a two-year term, with each of the terms expiring on June 30th of the applicable year. Appointees may be reappointed to serve more than one term.

(4) The capital projects advisory review board chair is selected from among the appointed members by the majority vote of the voting members.

(5) Legislative members of the capital projects advisory review board shall be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members of the capital projects advisory review board, including any subcommittee members, except those representing an employer or organization, shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(6) If a vacancy occurs of the appointive members of the board, the governor shall fill the vacancy for the unexpired term. Members of the board may be removed for malfeasance or misfeasance in office, upon specific written charges by the governor, under chapter 34.05 RCW.

(7) The capital projects advisory review board shall convene as soon as practical after July 1, 2005, and may meet as often as necessary thereafter.

(8) Capital projects advisory review board members are expected to consistently attend review board meetings. The chair of the capital projects advisory review board may ask the governor to remove any member who misses more than two meetings in any calendar year without cause.

(9) The department of general administration shall provide staff support as may be required for the proper discharge of the function of the capital projects advisory review board.

(10) The capital projects advisory review board may establish subcommittees as it desires and may invite nonmembers of the capital projects advisory review board to serve as committee members.

(11) The board shall encourage participation from persons and entities not represented on the capital projects advisory review board. [2005 c 377 § 1.]

**39.10.810 Capital projects advisory review board—Powers and duties.** The capital projects advisory review board has the following powers and duties:

(1) Develop and recommend to the legislature criteria that may be used to determine effective and feasible use of alternative contracting procedures;

(2) Develop and recommend to the legislature qualification standards for general contractors bidding on alternative public works projects;

(3) Develop and recommend to the legislature policies to further enhance the quality, efficiency, and accountability of capital construction projects through the use of traditional and alternative delivery methods in Washington, and make recommendations regarding expansion, continuation, elimination, or modification of the alternative public works contracting methods;

(4) Evaluate the potential future use of other alternative contracting procedures including competitive negotiation contracts. [2005 c 377 § 2.]

[2005 RCW Supp—page 342]

**39.10.902 Repealer.** The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective July 1, 2007:

(1) RCW 39.10.010 and 1994 c 132 § 1;

(2) RCW 39.10.020 and 2005 c 469 § 3, 2003 c 352 § 1, 2003 c 301 § 2, 2003 c 300 § 3, 2001 c 328 § 1, 2000 c 209 § 1, 1997 c 376 § 1, & 1994 c 132 § 2;

(3) RCW 39.10.030 and 1997 c 376 § 2 & 1994 c 132 § 3;

(4) RCW 39.10.040 and 1994 c 132 § 4;

(5) RCW 39.10.051 and 2003 c 352 § 2, 2003 c 300 § 4, 2002 c 46 § 1, & 2001 c 328 § 2;

(6) RCW 39.10.061 and 2003 c 352 § 3, 2003 c 300 § 5, 2002 c 46 § 2, & 2001 c 328 § 3;

(7) RCW 39.10.065 and 1997 c 376 § 5;

(8) RCW 39.10.067 and 2003 c 301 § 3, 2002 c 46 § 3, & 2000 c 209 § 3;

(9) RCW 39.10.070 and 1994 c 132 § 7;

(10) RCW 39.10.080 and 1994 c 132 § 8;

(11) RCW 39.10.090 and 1994 c 132 § 9;

(12) RCW 39.10.100 and 1994 c 132 § 10;

(13) RCW 39.10.115 and 2001 c 328 § 4 & 2000 c 209 § 4;

(14) RCW 39.10.900 and 1994 c 132 § 13;

(15) RCW 39.10.901 and 1994 c 132 § 14;

(16) RCW 39.10.068 and 2003 c 300 § 6;

(17) RCW 39.10.117 and 2003 c 300 § 7; and

(18) RCW 39.10.130 and 2003 c 301 § 1. [2005 c 469 § 5. Prior: 2003 c 301 § 8; 2003 c 300 § 8; 2002 c 46 § 4; 2001 c 328 § 6; 1997 c 376 § 8; 1995 3rd sp.s. c 1 § 306; 1994 c 132 § 15.]

**Effective date—2002 c 46:** See note following RCW 39.10.051.

**Effective date—2001 c 328:** See note following RCW 39.10.020.

**Effective date—1997 c 376:** See note following RCW 39.10.020.

**Part headings not law—Effective date—1995 3rd sp.s. c 1:** See notes following RCW 82.14.0485.

## Chapter 39.19 RCW

### OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES

#### Sections

39.19.240 Linked deposit program—Compilation of information—Notification regarding enterprises no longer certified—Monitoring loans.

**39.19.240 Linked deposit program—Compilation of information—Notification regarding enterprises no longer certified—Monitoring loans.** (1) The office shall, in consultation with the state treasurer and the department of community, trade, and economic development, compile information on minority and women's business enterprises that have received financial assistance through a qualified public depository under the provisions of RCW 43.86A.060. The information shall include, but is not limited to:

(a) Name of the qualified public depository;

(b) Geographic location of the minority or women's business enterprise;

(c) Name of the minority or women's business enterprise;

(d) Date of last certification by the office and certification number;

(e) Type of business;

(f) Amount and term of the loan to the minority or women's business enterprise; and

(g) Other information the office deems necessary for the implementation of this section.

(2) The office shall notify the state treasurer of minority or women's business enterprises that are no longer certified under the provisions of this chapter. The written notification shall contain information regarding the reason for the decertification and information on financing provided to the minority or women's business enterprise under RCW 43.86A.060.

(3) The office shall, in consultation with the state treasurer and the department of community, trade, and economic development, monitor the performance of loans made to minority and women-owned business enterprises under RCW 43.86A.060. [2005 c 302 § 5; 2002 c 305 § 2.]

**Intent—2005 c 302:** See note following RCW 43.86A.030.

## Chapter 39.35D RCW

### HIGH-PERFORMANCE PUBLIC BUILDINGS

#### Sections

39.35D.010	Finding—Intent.
39.35D.020	Definitions.
39.35D.030	Standards for major facility projects—Annual reports.
39.35D.040	Public school district major facility projects—Standards—Annual reports—Advisory committee.
39.35D.050	Annual reports—Submission to legislature.
39.35D.060	Guidelines for administration of chapter—Amendment of fee schedules—Architecture and engineering services—Building commissioning—Preproposal conferences—Advisory committee.
39.35D.070	Liability for failure to meet standards.
39.35D.080	Affordable housing projects—Exemption.
39.35D.090	Use of local building materials and products—Intent.
39.35D.800	Performance review—Report.

**39.35D.010 Finding—Intent.** (1) The legislature finds that public buildings can be built and renovated using high-performance methods that save money, improve school performance, and make workers more productive. High-performance public buildings are proven to increase student test scores, reduce worker absenteeism, and cut energy and utility costs.

(2) It is the intent of the legislature that state-owned buildings and schools be improved by adopting recognized standards for high-performance public buildings and allowing flexible methods and choices in how to achieve those standards. The legislature also intends that public agencies and public school districts shall document costs and savings to monitor this program and ensure that economic, community, and environmental goals are achieved each year, and that an independent performance review be conducted to evaluate this program and determine the extent to which the results intended by this chapter are being met. [2005 c 12 § 1.]

**39.35D.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of general administration.

(2) "High-performance public buildings" means high-performance public buildings designed, constructed, and certified to a standard as identified in this chapter.

(3) "Institutions of higher education" means the state universities, the regional universities, The Evergreen State College, the community colleges, and the technical colleges.

(4) "LEED silver standard" means the United States green building council leadership in energy and environmental design green building rating standard, referred to as silver standard.

(5)(a) "Major facility project" means: (i) A construction project larger than five thousand gross square feet of occupied or conditioned space as defined in the Washington state energy code; or (ii) a building renovation project when the cost is greater than fifty percent of the assessed value and the project is larger than five thousand gross square feet of occupied or conditioned space as defined in the Washington state energy code.

(b) "Major facility project" does not include: (i) Projects for which the department, public school district, or other applicable agency and the design team determine the LEED silver standard or the Washington sustainable school design protocol to be not practicable; or (ii) transmitter buildings, pumping stations, hospitals, research facilities primarily used for sponsored laboratory experimentation, laboratory research, or laboratory training in research methods, or other similar building types as determined by the department. When the LEED silver standard is determined to be not practicable for a project, then it must be determined if any LEED standard is practicable for the project. If LEED standards or the Washington sustainable school design protocol are not followed for the project, the public school district or public agency shall report these reasons to the department.

(6) "Public agency" means every state office, officer, board, commission, committee, bureau, department, and public higher education institution.

(7) "Public school district" means a school district eligible to receive state basic education moneys pursuant to RCW 28A.150.250 and 28A.150.260.

(8) "Washington sustainable school design protocol" means the school design protocol and related information developed by the state board of education and the office of the superintendent of public instruction, in conjunction with school districts and the school facilities advisory board. [2005 c 12 § 2.]

**39.35D.030 Standards for major facility projects—Annual reports.** (1) All major facility projects of public agencies receiving any funding in a state capital budget, or projects financed through a financing contract as defined in RCW 39.94.020, must be designed, constructed, and certified to at least the LEED silver standard. This subsection applies to major facility projects that have not entered the design phase prior to July 24, 2005, and to the extent appropriate LEED silver standards exist for that type of building or facility.

(2) All major facility projects of any entity other than a public agency or public school district receiving any funding in a state capital budget must be designed, constructed, and

certified to at least the LEED silver standard. This subsection applies to major facility projects that have not entered the grant application process prior to July 24, 2005, and to the extent appropriate LEED silver standards exist for that type of building or facility.

(3)(a) Public agencies, under this section, shall monitor and document ongoing operating savings resulting from major facility projects designed, constructed, and certified as required under this section.

(b) Public agencies, under this section, shall report annually to the department on major facility projects and operating savings.

(4) The department shall consolidate the reports required in subsection (3) of this section into one report and report to the governor and legislature by September 1st of each even-numbered year beginning in 2006 and ending in 2016. In its report, the department shall also report on the implementation of this chapter, including reasons why the LEED standard was not used as required by RCW 39.35D.020(5)(b). The department shall make recommendations regarding the ongoing implementation of this chapter, including a discussion of incentives and disincentives related to implementing this chapter. [2005 c 12 § 3.]

**39.35D.040 Public school district major facility projects—Standards—Annual reports—Advisory committee.** (1) All major facility projects of public school districts receiving any funding in a state capital budget must be designed and constructed to at least the LEED silver standard or the Washington sustainable school design protocol. To the extent appropriate LEED silver or Washington sustainable school design protocol standards exist for the type of building or facility, this subsection applies to major facility projects that have not received project approval from the superintendent of public instruction prior to: (a) July 1, 2006, for volunteering school districts; (b) July 1, 2007, for class one school districts; and (c) July 1, 2008, for class two school districts.

(2) Public school districts under this section shall: (a) Monitor and document appropriate operating benefits and savings resulting from major facility projects designed and constructed as required under this section for a minimum of five years following local board acceptance of a project receiving state funding; and (b) report annually to the superintendent of public instruction. The form and content of each report must be mutually developed by the office of the superintendent of public instruction in consultation with school districts.

(3) The superintendent of public instruction shall consolidate the reports required in subsection (2) of this section into one report and report to the governor and legislature by September 1st of each even-numbered year beginning in 2006 and ending in 2016. In its report, the superintendent of public instruction shall also report on the implementation of this chapter, including reasons why the LEED standard or Washington sustainable school design protocol was not used as required by RCW 39.35D.020(5)(b). The superintendent of public instruction shall make recommendations regarding the ongoing implementation of this chapter, including a discussion of incentives and disincentives related to implementing this chapter.

(4) The state board of education, in consultation with the superintendent of public instruction, shall develop and issue guidelines for administering this chapter for public school districts. The purpose of the guidelines is to define a procedure and method for employing and verifying compliance with the LEED silver standard or the Washington sustainable school design protocol.

(5) The superintendent of public instruction shall utilize the school facilities advisory board as a high-performance buildings advisory committee comprised of affected public schools, the state board of education, the superintendent of public instruction, the department, and others at the superintendent of public instruction's discretion to provide advice on implementing this chapter. Among other duties, the advisory committee shall make recommendations regarding an education and training process and an ongoing evaluation or feedback process to help the superintendent of public instruction and the state board of education implement this chapter. [2005 c 12 § 4.]

**39.35D.050 Annual reports—Submission to legislature.** On or before January 1, 2009, the department and the superintendent of public instruction shall summarize the reports submitted under RCW 39.35D.030(4) and 39.35D.040(3) and submit the individual reports to the legislative committees on capital budget and ways and means for review of the program's performance and consideration of any changes that may be needed to adapt the program to any new or modified standards for high-performance buildings that meet the intent of this chapter. [2005 c 12 § 5.]

**39.35D.060 Guidelines for administration of chapter—Amendment of fee schedules—Architecture and engineering services—Building commissioning—Preproposal conferences—Advisory committee.** (1)(a) The department, in consultation with affected public agencies, shall develop and issue guidelines for administering this chapter for public agencies. The purpose of the guidelines is to define a procedure and method for employing and verifying activities necessary for certification to at least the LEED silver standard for major facility projects.

(b) The department and the office of the superintendent of public instruction shall amend their fee schedules for architectural and engineering services to accommodate the requirements in the design of major facility projects under this chapter.

(c) The department and the office of the superintendent of public instruction shall procure architecture and engineering services consistent with chapter 39.80 RCW.

(d) Major facility projects designed to meet standards identified in this chapter must include building commissioning as a critical cost-saving part of the construction process. This process includes input from the project design and construction teams and the project ownership representatives.

(e) As provided in the request for proposals for construction services, the operating agency shall hold a preproposal conference for prospective bidders to discuss compliance with and achievement of standards identified in this chapter for prospective respondents.

(2) The department shall create a high-performance buildings advisory committee comprised of representatives from the design and construction industry involved in public works contracting, personnel from the affected public agencies responsible for overseeing public works projects, the state board of education, the office of the superintendent of public instruction, and others at the department's discretion to provide advice on implementing this chapter. Among other duties, the advisory committee shall make recommendations regarding an education and training process and an ongoing evaluation or feedback process to help the department implement this chapter.

(3) The department and the state board of education shall adopt rules to implement this section. [2005 c 12 § 6.]

**39.35D.070 Liability for failure to meet standards.** A member of the design or construction teams may not be held liable for the failure of a major facility project to meet the LEED silver standard or other LEED standard established for the project as long as a good faith attempt was made to achieve the LEED standard set for the project. [2005 c 12 § 10.]

**39.35D.080 Affordable housing projects—Exemption.** Except as provided in this section, affordable housing projects funded out of the state capital budget are exempt from the provisions of this chapter. On or before July 1, 2008, the department of community, trade, and economic development shall identify, implement, and apply a sustainable building program for affordable housing projects that receive housing trust fund (under chapter 43.185 RCW) funding in a state capital budget. The department of community, trade, and economic development shall not develop its own sustainable building standard, but shall work with stakeholders to adopt an existing sustainable building standard or criteria appropriate for affordable housing. Any application of the program to affordable housing, including any monitoring to track the performance of either sustainable features or energy standards or both, is the responsibility of the department of community, trade, and economic development. Beginning in 2009 and ending in 2016, the department of community, trade, and economic development shall report to the department as required under RCW 39.35D.030(3)(b). [2005 c 12 § 12.]

**39.35D.090 Use of local building materials and products—Intent.** It is the intent and an established goal of the LEED program as authored by the United States green building council to increase demand for building materials and products that are extracted and manufactured locally, thereby reducing the environmental impacts and to support the local economy. Therefore, it is the intent of the legislature to emphasize this defined goal and establish a priority to use Washington state based resources, building materials, products, industries, manufacturers, and other businesses to provide economic development to Washington state and to meet the objectives of this chapter. [2005 c 12 § 13.]

**39.35D.800 Performance review—Report.** The joint legislative audit and review committee, or its successor legis-

lative agency, shall conduct a performance review of the high-performance buildings program established under this chapter.

(1) The performance audit shall include, but not be limited to:

(a) The identification of the costs of implementation of high-performance building[s] standards in the design and construction of major facility projects subject to this chapter;

(b) The identification of operating savings attributable to the implementation of high-performance building[s] standards, including but not limited to savings in energy, utility, and maintenance costs;

(c) The identification of any impacts of high-performance buildings standards on worker productivity and student performance; and

(d) An evaluation of the effectiveness of the high-performance building[s] standards established under this chapter, and recommendations for any changes in those standards that may be supported by the committee's findings.

(2) The committee shall make a preliminary report of its findings and recommendations on or before December 1, 2010, and a final report on or before July 1, 2011. [2005 c 12 § 14.]

## Chapter 39.53 RCW

### REFUNDING BOND ACT

#### Sections

39.53.120 Refunding bonds to be issued in accordance with laws applicable to type of bonds to be refunded—Transfer of funds to applicable bond retirement account.

**39.53.120 Refunding bonds to be issued in accordance with laws applicable to type of bonds to be refunded—Transfer of funds to applicable bond retirement account.** (1) Except as specifically provided in this chapter, refunding bonds issued under this chapter shall be issued in accordance with the provisions of law applicable to the type of bonds of the issuer to be refunded, at the time of the issuance of either the refunding bonds or the bonds to be refunded.

(2) For all refunding bonds previously or hereafter issued by the state of Washington under this chapter, the state treasurer shall transfer from the designated funds or accounts the amount necessary for the payment of principal of and interest on the refunding bonds to the applicable bond retirement account for such refunding bonds on each date on which the interest or principal and interest payment is due on such refunding bonds unless an earlier transfer date, as determined by the state finance committee, is necessary or appropriate to the financial framework of the refunding bonds. [2005 c 487 § 7; 1999 c 230 § 11; 1965 ex.s. c 138 § 13.]

**Severability—Effective date—2005 c 487:** See RCW 43.99S.900 and 43.99S.901.

**Application—Construction—Severability—1999 c 230:** See notes following RCW 39.53.010.

## Chapter 39.58 RCW

PUBLIC FUNDS—DEPOSITS AND INVESTMENTS—  
PUBLIC DEPOSITARIES

## Sections

- 39.58.080 Deposit of public funds in public depository required—Deposits in institutions located outside the state.
- 39.58.085 Demand accounts in out-of-state and alien banks—Limitations.

**39.58.080 Deposit of public funds in public depository required—Deposits in institutions located outside the state.** (1) Except for funds deposited pursuant to a fiscal agency contract with the state fiscal agent or its correspondent bank, funds deposited pursuant to a custodial bank contract with the state's custodial bank, and funds deposited pursuant to a local government multistate joint self-insurance program as provided in RCW 48.62.081, no public funds shall be deposited in demand or investment deposits except in a public depository located in this state or as otherwise expressly permitted by statute: PROVIDED, That the commission, or the chair upon delegation by the commission, upon good cause shown, may authorize, for such time and upon such terms and conditions as the commission or chair deem appropriate, a treasurer to maintain a demand deposit account with a banking institution located outside the state of Washington solely for the purpose of transmitting money received to public depositories in the state of Washington for deposit.

(2) Notwithstanding subsection (1) of this section, the commission, or the chair upon delegation by the commission, upon good cause shown, may authorize, for that time and upon the terms and conditions as the commission or chair deems appropriate, a treasurer to maintain a demand deposit account with a banking institution located outside the state of Washington for deposit of certain higher education endowment funds, for a specified instructional program or research project being performed outside the state of Washington. [2005 c 203 § 1; 1996 c 256 § 8; 1991 sp.s. c 30 § 27; 1986 c 160 § 1; 1984 c 177 § 14; 1983 c 66 § 11; 1969 ex.s. c 193 § 8.]

**Effective date, implementation, application—Severability—1991 sp.s. c 30:** See RCW 48.62.900 and 48.62.901.

**Severability—1983 c 66:** See note following RCW 39.58.010.

**39.58.085 Demand accounts in out-of-state and alien banks—Limitations.** (1)(a) The commission, or the chair upon delegation by the commission, may authorize state and local governmental entities to establish demand accounts in out-of-state and alien banks in an aggregate amount not to exceed one million dollars. No single governmental entity shall be authorized to hold more than fifty thousand dollars in one demand account.

(b) The governmental entities establishing such demand accounts shall be solely responsible for their proper and prudent management and shall bear total responsibility for any losses incurred by such accounts. Accounts established under the provisions of this section shall not be considered insured by the commission.

(c) The state auditor shall annually monitor compliance with this section and the financial status of such demand accounts.

(2) Subsection (1)(a) of this section does not apply to RCW 39.58.080(2). [2005 c 203 § 2; 1996 c 256 § 9; 1987 c 505 § 21; 1986 c 160 § 2.]

## Chapter 39.96 RCW

## PAYMENT AGREEMENTS

## Sections

- 39.96.020 Definitions.

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

(1) "Financial advisor" means a financial services or financial advisory firm:

(a) With recognized knowledge and experience in connection with the negotiation and execution of payment agreements;

(b) That is acting solely as financial advisor to the governmental entity in connection with the execution of the payment agreement and the issuance or incurring of any related obligations, and not as a principal, placement agent, purchaser, underwriter, or other similar party, and that does not control, nor is it controlled by or under common control with, any such party;

(c) That is compensated for its services in connection with the execution of payment agreements, either directly or indirectly, solely by the governmental entity; and

(d) Whose compensation is not based on a percentage of the notional amount of the payment agreement or of the principal amount of any related obligations.

(2) "Governmental entity" means state government or local government.

(3) "Local government" means any city, county, city transportation authority, regional transit authority established under chapter 81.112 RCW, port district, public hospital district, public facilities district, or public utility district, or any joint operating agency formed under RCW 43.52.360, that has or will have outstanding obligations in an aggregate principal amount of at least one hundred million dollars as of the date a payment agreement is executed or is scheduled by its terms to commence or had at least one hundred million dollars in gross revenues during the preceding calendar year.

(4) "Obligations" means bonds, notes, bond anticipation notes, commercial paper, or other obligations for borrowed money, or lease, installment purchase, or other similar financing agreements or certificates of participation in such agreements.

(5) "Payment agreement" means a written agreement which provides for an exchange of payments based on interest rates, or for ceilings or floors on these payments, or an option on these payments, or any combination, entered into on either a current or forward basis.

(6) "State government" means (a) the state of Washington, acting by and through its state finance committee, (b) the Washington health care facilities authority, (c) the Washington higher education facilities authority, (d) the Washington state housing finance commission, or (e) the state finance committee upon adoption of a resolution approving a payment agreement on behalf of any state institution of higher

education as defined under RCW 28B.10.016: PROVIDED, That such approval shall not constitute the pledge of the full faith and credit of the state, but a pledge of only those funds specified in the approved agreement. [2005 c 154 § 1; 2004 c 108 § 2; 2003 c 47 § 1; 1993 c 273 § 2.]

## Title 40

### PUBLIC DOCUMENTS, RECORDS, AND PUBLICATIONS

#### Chapters

**40.07 Management and control of state publications.**

**40.14 Preservation and destruction of public records.**

#### Chapter 40.07 RCW

#### MANAGEMENT AND CONTROL OF STATE PUBLICATIONS

##### Sections

40.07.040 Duties of the governor. (*Effective July 1, 2006.*)

**40.07.040 Duties of the governor.** (*Effective July 1, 2006.*) (1) The governor or the governor's designee shall take such other action as may be necessary to maximize the economy, efficiency, and effectiveness of state publications and to do so may eliminate, consolidate, or simplify state agency publications.

(2) Nothing in this chapter shall be construed in any way as restricting public access to public records or the public right to copy such records as provided by chapter 42.56 RCW. [2005 c 274 § 276; 1977 ex.s. c 232 § 4.]

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

#### Chapter 40.14 RCW

#### PRESERVATION AND DESTRUCTION OF PUBLIC RECORDS

##### Sections

40.14.070 Destruction, disposition, donation of local government records—Preservation for historical interest—Local records committee, duties—Record retention schedules—Sealed records.

**40.14.070 Destruction, disposition, donation of local government records—Preservation for historical interest—Local records committee, duties—Record retention schedules—Sealed records.** (1)(a) County, municipal, and other local government agencies may request authority to destroy noncurrent public records having no further administrative or legal value by submitting to the division of archives and records management lists of such records on forms prepared by the division. The archivist, a representative appointed by the state auditor, and a representative appointed by the attorney general shall constitute a committee, known as the local records committee, which shall review such lists and which may veto the destruction of any or all items contained therein.

(b) A local government agency, as an alternative to submitting lists, may elect to establish a records control program

based on recurring disposition schedules recommended by the agency to the local records committee. The schedules are to be submitted on forms provided by the division of archives and records management to the local records committee, which may either veto, approve, or amend the schedule. Approval of such schedule or amended schedule shall be by unanimous vote of the local records committee. Upon such approval, the schedule shall constitute authority for the local government agency to destroy the records listed thereon, after the required retention period, on a recurring basis until the schedule is either amended or revised by the committee.

(2)(a) Except as otherwise provided by law, no public records shall be destroyed until approved for destruction by the local records committee. Official public records shall not be destroyed unless:

(i) The records are six or more years old;

(ii) The department of origin of the records has made a satisfactory showing to the state records committee that the retention of the records for a minimum of six years is both unnecessary and uneconomical, particularly where lesser federal retention periods for records generated by the state under federal programs have been established; or

(iii) The originals of official public records less than six years old have been copied or reproduced by any photographic, photostatic, microfilm, miniature photographic, or other process approved by the state archivist which accurately reproduces or forms a durable medium for so reproducing the original.

An automatic reduction of retention periods from seven to six years for official public records on record retention schedules existing on June 10, 1982, shall not be made, but the same shall be reviewed individually by the local records committee for approval or disapproval of the change to a retention period of six years.

The state archivist may furnish appropriate information, suggestions, and guidelines to local government agencies for their assistance in the preparation of lists and schedules or any other matter relating to the retention, preservation, or destruction of records under this chapter. The local records committee may adopt appropriate regulations establishing procedures to be followed in such matters.

Records of county, municipal, or other local government agencies, designated by the archivist as of primarily historical interest, may be transferred to a recognized depository agency.

(b)(i) Records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenders contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020 that are not required in the current operation of the law enforcement agency or for pending judicial proceedings shall, following the expiration of the applicable schedule of the law enforcement agency's retention of the records, be transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval. Upon electronic retention of any document, the association shall be permitted to destroy the paper copy of the document.

(ii) Any sealed record transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval, including records sealed after

transfer, shall be electronically retained in such a way that the record is clearly marked as sealed.

(iii) The Washington association of sheriffs and police chiefs shall be permitted to destroy both the paper copy and electronic record of any offender verified as deceased.

(c) Any record transferred to the Washington association of sheriffs and police chiefs pursuant to (b) of this subsection shall be deemed to no longer constitute a public record pursuant to RCW 42.17.020 and shall be exempt from public disclosure. Such records shall be disseminated only to criminal justice agencies as defined in RCW 10.97.030 for the purpose of determining if a sex offender met the criteria of a sexually violent predator as defined in chapter 71.09 RCW and the end-of-sentence review committee as defined by RCW 72.09.345 for the purpose of fulfilling its duties under RCW 71.09.025 and 9.95.420.

Electronic records marked as sealed shall only be accessible by criminal justice agencies as defined in RCW 10.97.030 who would otherwise have access to a sealed paper copy of the document, the end-of-sentence review committee as defined by RCW 72.09.345 for the purpose of fulfilling its duties under RCW 71.09.025 and 9.95.420, and the system administrator for the purposes of system administration and maintenance.

(3) Except as otherwise provided by law, county, municipal, and other local government agencies may, as an alternative to destroying noncurrent public records having no further administrative or legal value, donate the public records to the state library, local library, historical society, genealogical society, or similar society or organization.

Public records may not be donated under this subsection unless:

- (a) The records are seventy years old or more;
- (b) The local records committee has approved the destruction of the public records; and
- (c) The state archivist has determined that the public records have no historic interest. [2005 c 227 § 1; 2003 c 240 § 1; 1999 c 326 § 2; 1995 c 301 § 71; 1982 c 36 § 6; 1973 c 54 § 5; 1971 ex.s. c 10 § 1; 1957 c 246 § 7.]

*Copying, preserving, and indexing of documents recorded by county auditor: RCW 36.22.160 through 36.22.190.*

*Destruction and reproduction of court records: RCW 36.23.065 through 36.23.070.*

## Title 41

### PUBLIC EMPLOYMENT, CIVIL SERVICE, AND PENSIONS

#### Chapters

- 41.04** General provisions.
- 41.05** State health care authority.
- 41.06** State civil service law.
- 41.24** Volunteer fire fighters' and reserve officers' relief and pensions.
- 41.26** Law enforcement officers' and fire fighters' retirement system.
- 41.32** Teachers' retirement.
- 41.34** Plan 3 retirement system contributions.
- 41.35** Washington school employees' retirement system.

- 41.37** Washington public safety employees' retirement system.
- 41.40** Washington public employees' retirement system.
- 41.45** Actuarial funding of state retirement systems.
- 41.50** Department of retirement systems.
- 41.56** Public employees' collective bargaining.

#### Chapter 41.04 RCW GENERAL PROVISIONS

##### Sections

- 41.04.005 "Veteran" defined for certain purposes.
- 41.04.007 "Veteran" defined for certain purposes.
- 41.04.270 Public retirement systems—Members or beneficiaries estopped from becoming a member or accruing rights in any other public retirement system—Exceptions.
- 41.04.276 Select committee on pension policy—Creation—Membership—Terms of office—Staff support.
- 41.04.385 Child care—Legislative findings—State policy—Responsibilities of director of personnel.

##### **41.04.005 "Veteran" defined for certain purposes.**

(1) As used in RCW 41.04.005, 41.16.220, 41.20.050, 41.40.170, and \*28B.15.380 "veteran" includes every person, who at the time he or she seeks the benefits of RCW 41.04.005, 41.16.220, 41.20.050, 41.40.170, or \*28B.15.380 has received an honorable discharge, is actively serving honorably, or received a discharge for physical reasons with an honorable record and who meets at least one of the following criteria:

(a) The person has served between World War I and World War II or during any period of war, as defined in subsection (2) of this section, as either:

- (i) A member in any branch of the armed forces of the United States;
- (ii) A member of the women's air forces service pilots;
- (iii) A U.S. documented merchant mariner with service aboard an oceangoing vessel operated by the war shipping administration, the office of defense transportation, or their agents, from December 7, 1941, through December 31, 1946; or

(iv) A civil service crewmember with service aboard a U.S. army transport service or U.S. naval transportation service vessel in oceangoing service from December 7, 1941, through December 31, 1946; or

(b) The person has received the armed forces expeditionary medal, or marine corps and navy expeditionary medal, for opposed action on foreign soil, for service:

(i) In any branch of the armed forces of the United States; or

(ii) As a member of the women's air forces service pilots.

(2) A "period of war" includes:

- (a) World War I;
- (b) World War II;
- (c) The Korean conflict;
- (d) The Vietnam era, which means:

(i) The period beginning on February 28, 1961, and ending on May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during that period;

(ii) The period beginning August 5, 1964, and ending on May 7, 1975;



(e) The Persian Gulf War, which was the period beginning August 2, 1990, and ending on the date prescribed by presidential proclamation or law;

(f) The period beginning on the date of any future declaration of war by the congress and ending on the date prescribed by presidential proclamation or concurrent resolution of the congress; and

(g) The following armed conflicts, if the participant was awarded the respective campaign badge or medal: The crisis in Lebanon; the invasion of Grenada; Panama, Operation Just Cause; Somalia, Operation Restore Hope; Haiti, Operation Uphold Democracy; Bosnia, Operation Joint Endeavor; Operation Noble Eagle; southern or central Asia, Operation Enduring Freedom; and Persian Gulf, Operation Iraqi Freedom. [2005 c 255 § 1; 2005 c 247 § 1. Prior: 2002 c 292 § 1; 2002 c 27 § 1; 1999 c 65 § 1; 1996 c 300 § 1; 1991 c 240 § 1; 1984 c 36 § 1; 1983 c 230 § 1; 1982 1st ex.s. c 37 § 20; 1969 ex.s. c 269 § 1.]

**Reviser's note:** \*(1) RCW 28B.15.380 was amended by 2005 c 249 § 2 and no longer applies to veterans. For later enactment, see RCW 28B.15.621.

(2) This section was amended by 2005 c 247 § 1 and by 2005 c 255 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—2005 c 247:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 247 § 3.]

**Effective date—2005 c 247:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 3, 2005]." [2005 c 247 § 4.]

**Effective date—1983 c 230:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1983." [1983 c 230 § 3.]

**Effective date—Severability—1982 1st ex.s. c 37:** See notes following RCW 28B.15.012.

#### **41.04.007 "Veteran" defined for certain purposes.**

"Veteran" includes every person, who at the time he or she seeks the benefits of RCW 46.16.30920, 72.36.030, 41.04.010, 73.04.090, 73.04.110, 73.08.010, 73.08.060, 73.08.070, or 73.08.080 has received an honorable discharge or received a discharge for medical reasons with an honorable record, where applicable, and who has served in at least one of the following capacities:

(1) As a member in any branch of the armed forces of the United States, including the national guard and armed forces reserves, and has fulfilled his or her initial military service obligation;

(2) As a member of the women's air forces service pilots;

(3) As a member of the armed forces reserves, national guard, or coast guard, and has been called into federal service by a presidential select reserve call up for at least one hundred eighty cumulative days;

(4) As a civil service crewmember with service aboard a U.S. army transport service or U.S. naval transportation service vessel in oceangoing service from December 7, 1941, through December 31, 1946;

(5) As a member of the Philippine armed forces/scouts during the period of armed conflict from December 7, 1941, through August 15, 1945; or

(6) A United States documented merchant mariner with service aboard an oceangoing vessel operated by the department of defense, or its agents, from both June 25, 1950, through July 27, 1953, in Korean territorial waters and from August 5, 1964, through May 7, 1975, in Vietnam territorial waters, and who received a military commendation. [2005 c 251 § 1; 2005 c 216 § 7; 2002 c 292 § 2.]

**Reviser's note:** This section was amended by 2005 c 216 § 7 and by 2005 c 251 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

#### **41.04.270 Public retirement systems—Members or beneficiaries estopped from becoming a member or accruing rights in any other public retirement system—Exceptions.**

(1) Except as provided in chapter 2.10, 2.12, 41.26, 41.28, 41.32, 41.35, 41.40, or 43.43 RCW, on and after March 19, 1976, any member or former member who (a) receives a retirement allowance earned by said former member as deferred compensation from any public retirement system authorized by the general laws of this state, or (b) is eligible to receive a retirement allowance from any public retirement system listed in RCW 41.50.030, but chooses not to apply, or (c) is the beneficiary of a disability allowance from any public retirement system listed in RCW 41.50.030 shall be estopped from becoming a member of or accruing any contractual rights whatsoever in any other public retirement system listed in RCW 41.50.030: PROVIDED, That (a) and (b) of this subsection shall not apply to persons who have accumulated less than fifteen years service credit in any such system.

(2) Nothing in this section is intended to apply to any retirement system except those listed in RCW 41.50.030 and the city employee retirement systems for Seattle, Tacoma, and Spokane. Subsection (1)(b) of this section does not apply to a dual member as defined in RCW 41.54.010. [2005 c 327 § 1; 2001 c 180 § 4; 1988 c 195 § 5; 1987 c 192 § 9; 1980 c 29 § 1; 1975-'76 2nd ex.s. c 105 § 1.]

**Effective date—1988 c 195:** See RCW 41.54.901.

**Effective dates—1987 c 192:** See RCW 41.54.900.

**Severability—1975-'76 2nd ex.s. c 105:** "If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 105 § 28.]

#### **41.04.276 Select committee on pension policy—Creation—Membership—Terms of office—Staff support.**

(1) The select committee on pension policy is created. The select committee consists of:

(a) Four members of the senate appointed by the president of the senate, two of whom are members of the majority party and two of whom are members of the minority party. At least three of the appointees shall be members of the senate ways and means committee;

(b) Four members of the house of representatives appointed by the speaker, two of whom are members of the majority party and two of whom are members of the minority

party. At least three of the appointees shall be members of the house of representatives appropriations committee;

(c) Four active members or representatives from organizations of active members of the state retirement systems appointed by the governor for staggered three-year terms, with no more than two appointees representing any one employee retirement system;

(d) Two retired members or representatives of retired members' organizations of the state retirement systems appointed by the governor for staggered three-year terms, with no two members from the same system;

(e) Four employer representatives of members of the state retirement systems appointed by the governor for staggered three-year terms; and

(f) The directors of the department of retirement systems and office of financial management.

(2)(a) The term of office of each member of the house of representatives or senate serving on the committee runs from the close of the session in which he or she is appointed until the close of the next regular session held in an odd-numbered year. If a successor is not appointed during a session, the member's term continues until the member is reappointed or a successor is appointed. The term of office for a committee member who is a member of the house of representatives or the senate who does not continue as a member of the senate or house of representatives ceases upon the convening of the next session of the legislature during the odd-numbered year following the member's appointment, or upon the member's resignation, whichever is earlier. All vacancies of positions held by members of the legislature must be filled from the same political party and from the same house as the member whose seat was vacated.

(b) Following the terms of members and representatives appointed under subsection (1)(d) of this section, the retiree positions shall be rotated to ensure that each system has an opportunity to have a retiree representative on the committee.

(3) The committee shall elect a chairperson and a vice-chairperson. The chairperson shall be a member of the senate in even-numbered years and a member of the house of representatives in odd-numbered years and the vice-chairperson shall be a member of the house of representatives in even-numbered years and a member of the senate in odd-numbered years.

(4) The committee shall establish an executive committee of six members, including the chairperson, the vice-chairperson, one member from subsection (1)(c) of this section, one member from subsection (1)(d) of this section, one member from subsection (1)(e) of this section, and the director of the department of retirement systems.

(5) Nonlegislative members of the select committee serve without compensation, but shall be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060.

(6) The office of state actuary under chapter 44.44 RCW shall provide staff and technical support to the committee. [2005 c 24 § 1; 2003 c 295 § 1.]

**41.04.385 Child care—Legislative findings—State policy—Responsibilities of director of personnel.** The legislature finds that (1) demographic, economic, and social trends underlie a critical and increasing demand for child care in the state of Washington; (2) working parents and their chil-

dren benefit when the employees' child care needs have been resolved; (3) the state of Washington should serve as a model employer by creating a supportive atmosphere, to the extent feasible, in which its employees may meet their child care needs; and (4) the state of Washington should encourage the development of partnerships between state agencies, state employees, state employee labor organizations, and private employers to expand the availability of affordable quality child care. The legislature finds further that resolving employee child care concerns not only benefits the employees and their children, but may benefit the employer by reducing absenteeism, increasing employee productivity, improving morale, and enhancing the employer's position in recruiting and retaining employees. Therefore, the legislature declares that it is the policy of the state of Washington to assist state employees by creating a supportive atmosphere in which they may meet their child care needs. Policies and procedures for state agencies to address employee child care needs will be the responsibility of the director of personnel in consultation with state employee representatives. [2005 c 490 § 9; 2002 c 354 § 236; 1993 c 194 § 5; 1986 c 135 § 1.]

**Effective date—2005 c 490:** See note following RCW 74.15.350.

**Short title—Headings, captions not law—Severability—Effective dates—2002 c 354:** See RCW 41.80.907 through 41.80.910.

## Chapter 41.05 RCW

### STATE HEALTH CARE AUTHORITY

(Formerly: State employees' insurance and health care)

#### Sections

41.05.008	Duties of employing agencies.
41.05.011	Definitions.
41.05.013	State purchased health care programs—Uniform policies—Report to the legislature.
41.05.021	State health care authority—Administrator—Cost control and delivery strategies—Managed competition.
41.05.026	Contracts—Proprietary data, trade secrets, actuarial formulas, statistics, cost and utilization data—Exemption from public inspection—Executive sessions. ( <i>Effective July 1, 2006.</i> )
41.05.050	Contributions for employees and dependents.
41.05.065	Public employees' benefits board—Duties.
41.05.068	Federal employer incentive program—Authority to participate.
41.05.075	Employee benefit plans—Contracts with insuring entities—Performance measures—Financial incentives.
41.05.085	Retired or disabled school employee health insurance subsidy.
41.05.120	Public employees' and retirees' insurance account.
41.05.123	Medical flexible spending account.
41.05.190	Repealed.
41.05.195	Medicare supplemental insurance policies.
41.05.197	Medicare supplemental insurance policies.
41.05.205	Tricare supplemental insurance policy—Authority to offer—Rules.
41.05.540	Worksite health promotion program—Report.
41.05.550	Prescription drug assistance foundation—Nonprofit and tax-exempt corporation—Liability.
41.05.600	Mental health services—Definition—Coverage required, when.
41.05.601	Mental health services—Rules.

**41.05.008 Duties of employing agencies.** (1) Every employing agency shall fully cooperate with the authority and shall carry out all actions necessary for the operation of benefit plans, education of employees, claims administration, and other activities that may be required by the authority for administration of this chapter.

(2) Employing agencies shall report all data relating to employees eligible to participate in benefits or plans adminis-

tered by the authority in a format designed and communicated by the authority. [2005 c 143 § 4.]

**41.05.011 Definitions.** Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this chapter.

(1) "Administrator" means the administrator of the authority.

(2) "State purchased health care" or "health care" means medical and health care, pharmaceuticals, and medical equipment purchased with state and federal funds by the department of social and health services, the department of health, the basic health plan, the state health care authority, the department of labor and industries, the department of corrections, the department of veterans affairs, and local school districts.

(3) "Authority" means the Washington state health care authority.

(4) "Insuring entity" means an insurer as defined in chapter 48.01 RCW, a health care service contractor as defined in chapter 48.44 RCW, or a health maintenance organization as defined in chapter 48.46 RCW.

(5) "Flexible benefit plan" means a benefit plan that allows employees to choose the level of health care coverage provided and the amount of employee contributions from among a range of choices offered by the authority.

(6) "Employee" includes all full-time and career seasonal employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; and includes any or all part-time and temporary employees under the terms and conditions established under this chapter by the authority; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature or of the legislative authority of any county, city, or town who are elected to office after February 20, 1970. "Employee" also includes: (a) Employees of a county, municipality, or other political subdivision of the state if the legislative authority of the county, municipality, or other political subdivision of the state seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205; (b) employees of employee organizations representing state civil service employees, at the option of each such employee organization, and, effective October 1, 1995, employees of employee organizations currently pooled with employees of school districts for the purpose of purchasing insurance benefits, at the option of each such employee organization; and (c) employees of a school district if the authority agrees to provide any of the school districts' insurance programs by contract with the authority as provided in RCW 28A.400.350.

(7) "Board" means the public employees' benefits board established under RCW 41.05.055.

(8) "Retired or disabled school employee" means:

(a) Persons who separated from employment with a school district or educational service district and are receiving a retirement allowance under chapter 41.32 or 41.40 RCW as of September 30, 1993;

(b) Persons who separate from employment with a school district or educational service district on or after Octo-

ber 1, 1993, and immediately upon separation receive a retirement allowance under chapter 41.32, 41.35, or 41.40 RCW;

(c) Persons who separate from employment with a school district or educational service district due to a total and permanent disability, and are eligible to receive a deferred retirement allowance under chapter 41.32, 41.35, or 41.40 RCW.

(9) "Benefits contribution plan" means a premium only contribution plan, a medical flexible spending arrangement, or a cafeteria plan whereby state and public employees may agree to a contribution to benefit costs which will allow the employee to participate in benefits offered pursuant to 26 U.S.C. Sec. 125 or other sections of the internal revenue code.

(10) "Salary" means a state employee's monthly salary or wages.

(11) "Participant" means an individual who fulfills the eligibility and enrollment requirements under the benefits contribution plan.

(12) "Plan year" means the time period established by the authority.

(13) "Separated employees" means persons who separate from employment with an employer as defined in:

(a) RCW 41.32.010(11) on or after July 1, 1996; or

(b) RCW 41.35.010 on or after September 1, 2000; or

(c) RCW 41.40.010 on or after March 1, 2002;

and who are at least age fifty-five and have at least ten years of service under the teachers' retirement system plan 3 as defined in RCW 41.32.010(40), the Washington school employees' retirement system plan 3 as defined in RCW 41.35.010, or the public employees' retirement system plan 3 as defined in RCW 41.40.010.

(14) "Emergency service personnel killed in the line of duty" means law enforcement officers and fire fighters as defined in RCW 41.26.030, and reserve officers and fire fighters as defined in RCW 41.24.010 who die as a result of injuries sustained in the course of employment as determined consistent with Title 51 RCW by the department of labor and industries.

(15) "Employer" means the state of Washington.

(16) "Employing agency" means a division, department, or separate agency of state government and a county, municipality, school district, educational service district, or other political subdivision, covered by this chapter. [2005 c 143 § 1; 2001 c 165 § 2. Prior: 2000 c 247 § 604; 2000 c 230 § 3; 1998 c 341 § 706; 1996 c 39 § 21; 1995 1st sp.s. c 6 § 2; 1994 c 153 § 2; prior: 1993 c 492 § 214; 1993 c 386 § 5; 1990 c 222 § 2; 1988 c 107 § 3.]

**Effective date—2001 c 165 § 2:** "Section 2 of this act takes effect March 1, 2002." [2001 c 165 § 5.]

**Effective date—Application—2001 c 165:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and except for section 2 of this act takes effect immediately [May 7, 2001]. This act applies to surviving spouses and dependent children of emergency service personnel killed in the line of duty on or after January 1, 1998." [2001 c 165 § 6.]

**Effective date—2000 c 230:** See note following RCW 41.35.630.

**Effective date—1998 c 341:** See RCW 41.35.901.

**Effective dates—1996 c 39:** See note following RCW 41.32.010.

**Effective date—1995 1st sp.s. c 6:** See note following RCW 28A.400.410.

**Intent—1994 c 153:** "It is the intent of the legislature to increase access to health insurance for retired and disabled state and school district employees and to increase equity between state and school employees and between state and school retirees." [1994 c 153 § 1.]

**Effective dates—1994 c 153:** "This act shall take effect January 1, 1995, except section 15 of this act, which takes effect October 1, 1995." [1994 c 153 § 16.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

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

**Intent—1993 c 386:** See note following RCW 28A.400.391.

**Effective date—1993 c 386 §§ 1, 2, 4-6, 8-10, and 12-16:** See note following RCW 28A.400.391.

**41.05.013 State purchased health care programs—Uniform policies—Report to the legislature.** (1) The authority shall coordinate state agency efforts to develop and implement uniform policies across state purchased health care programs that will ensure prudent, cost-effective health services purchasing, maximize efficiencies in administration of state purchased health care programs, improve the quality of care provided through state purchased health care programs, and reduce administrative burdens on health care providers participating in state purchased health care programs. The policies adopted should be based, to the extent possible, upon the best available scientific and medical evidence and shall endeavor to address:

(a) Methods of formal assessment, such as health technology assessment. Consideration of the best available scientific evidence does not preclude consideration of experimental or investigational treatment or services under a clinical investigation approved by an institutional review board;

(b) Monitoring of health outcomes, adverse events, quality, and cost-effectiveness of health services;

(c) Development of a common definition of medical necessity; and

(d) Exploration of common strategies for disease management and demand management programs, including asthma, diabetes, heart disease, and similar common chronic diseases. Strategies to be explored include individual asthma management plans. On January 1, 2007, and January 1, 2009, the authority shall issue a status report to the legislature summarizing any results it attains in exploring and coordinating strategies for asthma, diabetes, heart disease, and other chronic diseases.

(2) The administrator may invite health care provider organizations, carriers, other health care purchasers, and consumers to participate in efforts undertaken under this section.

(3) For the purposes of this section "best available scientific and medical evidence" means the best available external clinical evidence derived from systematic research. [2005 c 462 § 3; 2003 c 276 § 1.]

**Findings—2005 c 462:** See note following RCW 28A.210.370.

**Rule making—2003 c 276:** "Agencies administering state purchased health care programs shall cooperatively adopt rules necessary to implement this act." [2003 c 276 § 2.]

**41.05.021 State health care authority—Administrator—Cost control and delivery strategies—Managed competition.** (1) The Washington state health care authority is created within the executive branch. The authority shall

have an administrator appointed by the governor, with the consent of the senate. The administrator shall serve at the pleasure of the governor. The administrator may employ up to seven staff members, who shall be exempt from chapter 41.06 RCW, and any additional staff members as are necessary to administer this chapter. The administrator may delegate any power or duty vested in him or her by this chapter, including authority to make final decisions and enter final orders in hearings conducted under chapter 34.05 RCW. The primary duties of the authority shall be to: Administer state employees' insurance benefits and retired or disabled school employees' insurance benefits; administer the basic health plan pursuant to chapter 70.47 RCW; study state-purchased health care programs in order to maximize cost containment in these programs while ensuring access to quality health care; and implement state initiatives, joint purchasing strategies, and techniques for efficient administration that have potential application to all state-purchased health services. The authority's duties include, but are not limited to, the following:

(a) To administer health care benefit programs for employees and retired or disabled school employees as specifically authorized in RCW 41.05.065 and in accordance with the methods described in RCW 41.05.075, 41.05.140, and other provisions of this chapter;

(b) To analyze state-purchased health care programs and to explore options for cost containment and delivery alternatives for those programs that are consistent with the purposes of those programs, including, but not limited to:

(i) Creation of economic incentives for the persons for whom the state purchases health care to appropriately utilize and purchase health care services, including the development of flexible benefit plans to offset increases in individual financial responsibility;

(ii) Utilization of provider arrangements that encourage cost containment, including but not limited to prepaid delivery systems, utilization review, and prospective payment methods, and that ensure access to quality care, including assuring reasonable access to local providers, especially for employees residing in rural areas;

(iii) Coordination of state agency efforts to purchase drugs effectively as provided in RCW 70.14.050;

(iv) Development of recommendations and methods for purchasing medical equipment and supporting services on a volume discount basis;

(v) Development of data systems to obtain utilization data from state-purchased health care programs in order to identify cost centers, utilization patterns, provider and hospital practice patterns, and procedure costs, utilizing the information obtained pursuant to RCW 41.05.031; and

(vi) In collaboration with other state agencies that administer state purchased health care programs, private health care purchasers, health care facilities, providers, and carriers, use evidence-based medicine principles to develop common performance measures and implement financial incentives in contracts with insuring entities, health care facilities, and providers that:

(A) Reward improvements in health outcomes for individuals with chronic diseases, increased utilization of appropriate preventive health services, and reductions in medical errors; and

(B) Increase, through appropriate incentives to insuring entities, health care facilities, and providers, the adoption and use of information technology that contributes to improved health outcomes, better coordination of care, and decreased medical errors;

(c) To analyze areas of public and private health care interaction;

(d) To provide information and technical and administrative assistance to the board;

(e) To review and approve or deny applications from counties, municipalities, and other political subdivisions of the state to provide state-sponsored insurance or self-insurance programs to their employees in accordance with the provisions of RCW 41.04.205, setting the premium contribution for approved groups as outlined in RCW 41.05.050;

(f) To establish billing procedures and collect funds from school districts and educational service districts under \*RCW 28A.400.400 in a way that minimizes the administrative burden on districts;

(g) To publish and distribute to nonparticipating school districts and educational service districts by October 1st of each year a description of health care benefit plans available through the authority and the estimated cost if school districts and educational service district employees were enrolled; and

(h) To promulgate and adopt rules consistent with this chapter as described in RCW 41.05.160.

(2) On and after January 1, 1996, the public employees' benefits board may implement strategies to promote managed competition among employee health benefit plans. Strategies may include but are not limited to:

(a) Standardizing the benefit package;

(b) Soliciting competitive bids for the benefit package;

(c) Limiting the state's contribution to a percent of the lowest priced qualified plan within a geographical area;

(d) Monitoring the impact of the approach under this subsection with regards to: Efficiencies in health service delivery, cost shifts to subscribers, access to and choice of managed care plans statewide, and quality of health services. The health care authority shall also advise on the value of administering a benchmark employer-managed plan to promote competition among managed care plans. [2005 c 446 § 1; 2002 c 142 § 1; 1999 c 372 § 4; 1997 c 274 § 1; 1995 1st sp.s. c 6 § 7; 1994 c 309 § 1. Prior: 1993 c 492 § 215; 1993 c 386 § 6; 1990 c 222 § 3; 1988 c 107 § 4.]

\*Reviser's note: RCW 28A.400.400 was repealed by 1994 c 153 § 15, effective October 1, 1995.

**Effective date—1997 c 274:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 274 § 10.]

**Effective date—1995 1st sp.s. c 6:** See note following RCW 28A.400.410.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

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

**Intent—1993 c 386:** See note following RCW 28A.400.391.

**Effective date—1993 c 386 §§ 1, 2, 4-6, 8-10, and 12-16:** See note following RCW 28A.400.391.

#### **41.05.026 Contracts—Proprietary data, trade secrets, actuarial formulas, statistics, cost and utilization**

**data—Exemption from public inspection—Executive sessions. (Effective July 1, 2006.)** (1) When soliciting proposals for the purpose of awarding contracts for goods or services, the administrator shall, upon written request by the bidder, exempt from public inspection and copying such proprietary data, trade secrets, or other information contained in the bidder's proposal that relate to the bidder's unique methods of conducting business or of determining prices or premium rates to be charged for services under terms of the proposal.

(2) When soliciting information for the development, acquisition, or implementation of state purchased health care services, the administrator shall, upon written request by the respondent, exempt from public inspection and copying such proprietary data, trade secrets, or other information submitted by the respondent that relate to the respondent's unique methods of conducting business, data unique to the product or services of the respondent, or to determining prices or rates to be charged for services.

(3) Actuarial formulas, statistics, cost and utilization data, or other proprietary information submitted upon request of the administrator, board, or a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under this chapter by a contracting insurer, health care service contractor, health maintenance organization, vendor, or other health services organization may be withheld at any time from public inspection when necessary to preserve trade secrets or prevent unfair competition.

(4) The board, or a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under this chapter, may hold an executive session in accordance with chapter 42.30 RCW during any regular or special meeting to discuss information submitted in accordance with subsections (1) through (3) of this section.

(5) A person who challenges a request for or designation of information as exempt under this section is entitled to seek judicial review pursuant to chapter 42.56 RCW. [2005 c 274 § 277; 2003 c 277 § 2; 1991 c 79 § 1; 1990 c 222 § 6.]

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

#### **41.05.050 Contributions for employees and dependents.**

(1) Every department, division, or separate agency of state government, and such county, municipal, school district, educational service district, or other political subdivisions as are covered by this chapter, shall provide contributions to insurance and health care plans for its employees and their dependents, the content of such plans to be determined by the authority. Contributions, paid by the county, the municipality, or other political subdivision for their employees, shall include an amount determined by the authority to pay such administrative expenses of the authority as are necessary to administer the plans for employees of those groups, except as provided in subsection (4) of this section.

(2) If the authority at any time determines that the participation of a county, municipal, or other political subdivision covered under this chapter adversely impacts insurance rates for state employees, the authority shall implement limitations

on the participation of additional county, municipal, or other political subdivisions.

(3) The contributions of any department, division, or separate agency of the state government, and such county, municipal, or other political subdivisions as are covered by this chapter, shall be set by the authority, subject to the approval of the governor for availability of funds as specifically appropriated by the legislature for that purpose. Insurance and health care contributions for ferry employees shall be governed by RCW 47.64.270.

(4)(a) Beginning September 1, 2003, the authority shall collect from each participating school district and educational service district an amount equal to the composite rate charged to state agencies, plus an amount equal to the employee premiums by plan and family size as would be charged to state employees, for groups of district employees enrolled in authority plans as of January 1, 2003. However, during the 2005-07 fiscal biennium, the authority shall collect from each participating school district and educational service district an amount equal to the insurance benefit allocations provided in section 504, chapter 518, Laws of 2005, plus any additional funding provided by the legislature for school employee health benefits, plus an amount equal to the employee premiums by plan and family size as would be charged to state employees, for groups of district employees enrolled in authority plans as of July 1, 2005.

(b) For all groups of district employees enrolling in authority plans for the first time after September 1, 2003, the authority shall collect from each participating school district an amount equal to the composite rate charged to state agencies, plus an amount equal to the employee premiums by plan and by family size as would be charged to state employees, only if the authority determines that this method of billing the districts will not result in a material difference between revenues from districts and expenditures made by the authority on behalf of districts and their employees.

(c) If the authority determines at any time that the conditions in (b) of this subsection cannot be met, the authority shall offer enrollment to additional groups of district employees on a tiered rate structure until such time as the authority determines there would be no material difference between revenues and expenditures under a composite rate structure for all district employees enrolled in authority plans.

(d) The authority may charge districts a one-time set-up fee for employee groups enrolling in authority plans for the first time.

(e) For the purposes of this subsection:

(i) "District" means school district and educational service district; and

(ii) "Tiered rates" means the amounts the authority must pay to insuring entities by plan and by family size.

(f) Notwithstanding this subsection and RCW 41.05.065(3), the authority may allow districts enrolled on a tiered rate structure prior to September 1, 2002, to continue participation based on the same rate structure and under the same conditions and eligibility criteria.

(5) The authority shall transmit a recommendation for the amount of the employer contribution to the governor and the director of financial management for inclusion in the proposed budgets submitted to the legislature. [2005 c 518 § 919; 2003 c 158 § 1. Prior: 2002 c 319 § 4; 2002 c 142 § 2;

prior: 1995 1st sp.s. c 6 § 22; 1994 c 309 § 2; 1994 c 153 § 4; prior: 1993 c 492 § 216; 1993 c 386 § 7; 1988 c 107 § 18; 1987 c 122 § 4; 1984 c 107 § 1; 1983 c 15 § 20; 1983 c 2 § 9; prior: 1982 1st ex.s. c 34 § 2; 1981 c 344 § 6; 1979 c 151 § 55; 1977 ex.s. c 136 § 4; 1975-76 2nd ex.s. c 106 § 4; 1975 1st ex.s. c 38 § 2; 1973 1st ex.s. c 147 § 3; 1970 ex.s. c 39 § 5.]

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

**Intent—2002 c 319:** See note following RCW 41.04.208.

**Effective date—1995 1st sp.s. c 6:** See note following RCW 28A.400.410.

**Intent—Effective dates—1994 c 153:** See notes following RCW 41.05.011.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

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

**Effective date—1993 c 386 §§ 3, 7, and 11:** See note following RCW 41.04.205.

**Intent—1993 c 386:** See note following RCW 28A.400.391.

**Severability—1983 c 15:** See RCW 47.64.910.

**Severability—1983 c 2:** See note following RCW 18.71.030.

**Severability—1981 c 344:** See note following RCW 47.60.326.

**Effective date—Conditions prerequisite to implementing sections—1977 ex.s. c 136:** "This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1977: PROVIDED, That if the state operating budget appropriations act does not contain the funds necessary for the implementation of this 1977 amendatory act in an appropriated amount sufficient to fully fund the employer's contribution to the state employee insurance benefits program which is established by the board in accordance with RCW 41.05.050 (2) and (3) as now or hereafter amended, sections 1, 5, and 6 of this 1977 amendatory act shall be null and void." [1977 ex.s. c 136 § 8.]

**Effective date—Effect of veto—1973 1st ex.s. c 147:** "This bill shall not take effect until the funds necessary for its implementation have been specifically appropriated by the legislature and such appropriation itself has become law. It is the intention of the legislature that if the governor shall veto this section or any item thereof, none of the provisions of this bill shall take effect." [1973 1st ex.s. c 147 § 10.]

**Savings—1973 1st ex.s. c 147:** "Nothing contained in this 1973 amendatory act shall be deemed to amend, alter or affect the provisions of Chapter 23, Laws of 1972, Extraordinary Session, and RCW 28B.10.840 through 28B.10.844 as now or hereafter amended." [1973 1st ex.s. c 147 § 13.]

**Severability—1973 1st ex.s. c 147:** "If any provision of this 1973 amendatory act, or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 147 § 9.]

**Severability—1970 ex.s. c 39:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1970 ex.s. c 39 § 14.]

#### 41.05.065 Public employees' benefits board—Duties.

(1) The board shall study all matters connected with the provision of health care coverage, life insurance, liability insurance, accidental death and dismemberment insurance, and disability income insurance or any of, or a combination of, the enumerated types of insurance for employees and their dependents on the best basis possible with relation both to the welfare of the employees and to the state. However, liability insurance shall not be made available to dependents.

(2) The board shall develop employee benefit plans that include comprehensive health care benefits for all employ-

ees. In developing these plans, the board shall consider the following elements:

(a) Methods of maximizing cost containment while ensuring access to quality health care;

(b) Development of provider arrangements that encourage cost containment and ensure access to quality care, including but not limited to prepaid delivery systems and prospective payment methods;

(c) Wellness incentives that focus on proven strategies, such as smoking cessation, injury and accident prevention, reduction of alcohol misuse, appropriate weight reduction, exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education;

(d) Utilization review procedures including, but not limited to a cost-efficient method for prior authorization of services, hospital inpatient length of stay review, requirements for use of outpatient surgeries and second opinions for surgeries, review of invoices or claims submitted by service providers, and performance audit of providers;

(e) Effective coordination of benefits;

(f) Minimum standards for insuring entities; and

(g) Minimum scope and content of public employee benefit plans to be offered to enrollees participating in the employee health benefit plans. To maintain the comprehensive nature of employee health care benefits, employee eligibility criteria related to the number of hours worked and the benefits provided to employees shall be substantially equivalent to the state employees' health benefits plan and eligibility criteria in effect on January 1, 1993. Nothing in this subsection (2)(g) shall prohibit changes or increases in employee point-of-service payments or employee premium payments for benefits.

(3) The board shall design benefits and determine the terms and conditions of employee and retired employee participation and coverage, including establishment of eligibility criteria. The same terms and conditions of participation and coverage, including eligibility criteria, shall apply to state employees and to school district employees and educational service district employees.

(4) The board may authorize premium contributions for an employee and the employee's dependents in a manner that encourages the use of cost-efficient managed health care systems. During the 2005-2007 fiscal biennium, the board may only authorize premium contributions for an employee and the employee's dependents that are the same, regardless of an employee's status as represented or nonrepresented by a collective bargaining unit under the personnel system reform act of 2002. The board shall require participating school district and educational service district employees to pay at least the same employee premiums by plan and family size as state employees pay.

(5) Employees shall choose participation in one of the health care benefit plans developed by the board and may be permitted to waive coverage under terms and conditions established by the board.

(6) The board shall review plans proposed by insuring entities that desire to offer property insurance and/or accident and casualty insurance to state employees through payroll deduction. The board may approve any such plan for payroll deduction by insuring entities holding a valid certificate of authority in the state of Washington and which the board

determines to be in the best interests of employees and the state. The board shall promulgate rules setting forth criteria by which it shall evaluate the plans.

(7) Before January 1, 1998, the public employees' benefits board shall make available one or more fully insured long-term care insurance plans that comply with the requirements of chapter 48.84 RCW. Such programs shall be made available to eligible employees, retired employees, and retired school employees as well as eligible dependents which, for the purpose of this section, includes the parents of the employee or retiree and the parents of the spouse of the employee or retiree. Employees of local governments and employees of political subdivisions not otherwise enrolled in the public employees' benefits board sponsored medical programs may enroll under terms and conditions established by the administrator, if it does not jeopardize the financial viability of the public employees' benefits board's long-term care offering.

(a) Participation of eligible employees or retired employees and retired school employees in any long-term care insurance plan made available by the public employees' benefits board is voluntary and shall not be subject to binding arbitration under chapter 41.56 RCW. Participation is subject to reasonable underwriting guidelines and eligibility rules established by the public employees' benefits board and the health care authority.

(b) The employee, retired employee, and retired school employee are solely responsible for the payment of the premium rates developed by the health care authority. The health care authority is authorized to charge a reasonable administrative fee in addition to the premium charged by the long-term care insurer, which shall include the health care authority's cost of administration, marketing, and consumer education materials prepared by the health care authority and the office of the insurance commissioner.

(c) To the extent administratively possible, the state shall establish an automatic payroll or pension deduction system for the payment of the long-term care insurance premiums.

(d) The public employees' benefits board and the health care authority shall establish a technical advisory committee to provide advice in the development of the benefit design and establishment of underwriting guidelines and eligibility rules. The committee shall also advise the board and authority on effective and cost-effective ways to market and distribute the long-term care product. The technical advisory committee shall be comprised, at a minimum, of representatives of the office of the insurance commissioner, providers of long-term care services, licensed insurance agents with expertise in long-term care insurance, employees, retired employees, retired school employees, and other interested parties determined to be appropriate by the board.

(e) The health care authority shall offer employees, retired employees, and retired school employees the option of purchasing long-term care insurance through licensed agents or brokers appointed by the long-term care insurer. The authority, in consultation with the public employees' benefits board, shall establish marketing procedures and may consider all premium components as a part of the contract negotiations with the long-term care insurer.

(f) In developing the long-term care insurance benefit designs, the public employees' benefits board shall include an

alternative plan of care benefit, including adult day services, as approved by the office of the insurance commissioner.

(g) The health care authority, with the cooperation of the office of the insurance commissioner, shall develop a consumer education program for the eligible employees, retired employees, and retired school employees designed to provide education on the potential need for long-term care, methods of financing long-term care, and the availability of long-term care insurance products including the products offered by the board.

(h) By December 1998, the health care authority, in consultation with the public employees' benefits board, shall submit a report to the appropriate committees of the legislature, including an analysis of the marketing and distribution of the long-term care insurance provided under this section. [2005 c 518 § 920; 2005 c 195 § 1; 2003 c 158 § 2; 2002 c 142 § 3; 1996 c 140 § 1; 1995 1st sp.s. c 6 § 5; 1994 c 153 § 5. Prior: 1993 c 492 § 218; 1993 c 386 § 9; 1988 c 107 § 8.]

**Reviser's note:** This section was amended by 2005 c 195 § 1 and by 2005 c 518 § 920, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

**Effective date—2005 c 195:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 195 § 4.]

**Effective date—1995 1st sp.s. c 6:** See note following RCW 28A.400.410.

**Intent—Effective dates—1994 c 153:** See notes following RCW 41.05.011.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

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

**Intent—1993 c 386:** See note following RCW 28A.400.391.

**Effective date—1993 c 386 §§ 1, 2, 4-6, 8-10, and 12-16:** See note following RCW 28A.400.391.

#### **41.05.068 Federal employer incentive program—**

**Authority to participate.** The authority may participate as an employer-sponsored program established in section 1860D-22 of the medicare prescription drug, improvement, and modernization act of 2003, P.L. 108-173 et seq., to receive federal employer subsidy funds for continuing to provide retired employee health coverage, including a pharmacy benefit. The administrator, in consultation with the office of financial management, shall evaluate participation in the employer incentive program, including but not limited to any necessary program changes to meet the eligibility requirements that employer-sponsored retiree health coverage provide prescription drug coverage at least equal to the actuarial value of standard prescription drug coverage under medicare part D. Any employer subsidy moneys received from participation in the federal employer incentive program shall be deposited in the health services account established in RCW 43.72.900. [2005 c 195 § 2.]

**Effective date—2005 c 195:** See note following RCW 41.05.065.

#### **41.05.075 Employee benefit plans—Contracts with insuring entities—Performance measures—Financial**

[2005 RCW Supp—page 356]

**incentives.** (1) The administrator shall provide benefit plans designed by the board through a contract or contracts with insuring entities, through self-funding, self-insurance, or other methods of providing insurance coverage authorized by RCW 41.05.140.

(2) The administrator shall establish a contract bidding process that:

(a) Encourages competition among insuring entities;

(b) Maintains an equitable relationship between premiums charged for similar benefits and between risk pools including premiums charged for retired state and school district employees under the separate risk pools established by RCW 41.05.022 and 41.05.080 such that insuring entities may not avoid risk when establishing the premium rates for retirees eligible for medicare;

(c) Is timely to the state budgetary process; and

(d) Sets conditions for awarding contracts to any insuring entity.

(3) The administrator shall establish a requirement for review of utilization and financial data from participating insuring entities on a quarterly basis.

(4) The administrator shall centralize the enrollment files for all employee and retired or disabled school employee health plans offered under chapter 41.05 RCW and develop enrollment demographics on a plan-specific basis.

(5) All claims data shall be the property of the state. The administrator may require of any insuring entity that submits a bid to contract for coverage all information deemed necessary including:

(a) Subscriber or member demographic and claims data necessary for risk assessment and adjustment calculations in order to fulfill the administrator's duties as set forth in this chapter; and

(b) Subscriber or member demographic and claims data necessary to implement performance measures or financial incentives related to performance under subsection (7) of this section.

(6) All contracts with insuring entities for the provision of health care benefits shall provide that the beneficiaries of such benefit plans may use on an equal participation basis the services of practitioners licensed pursuant to chapters 18.22, 18.25, 18.32, 18.53, 18.57, 18.71, 18.74, 18.83, and 18.79 RCW, as it applies to registered nurses and advanced registered nurse practitioners. However, nothing in this subsection may preclude the administrator from establishing appropriate utilization controls approved pursuant to RCW 41.05.065(2) (a), (b), and (d).

(7) The administrator shall, in collaboration with other state agencies that administer state purchased health care programs, private health care purchasers, health care facilities, providers, and carriers, use evidence-based medicine principles to develop common performance measures and implement financial incentives in contracts with insuring entities, health care facilities, and providers that:

(a) Reward improvements in health outcomes for individuals with chronic diseases, increased utilization of appropriate preventive health services, and reductions in medical errors; and

(b) Increase, through appropriate incentives to insuring entities, health care facilities, and providers, the adoption and use of information technology that contributes to improved



health outcomes, better coordination of care, and decreased medical errors. [2005 c 446 § 2; 2002 c 142 § 4. Prior: 1994 sp.s. c 9 § 724; 1994 c 309 § 3; 1994 c 153 § 6; 1993 c 386 § 10; 1988 c 107 § 9.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**Intent—Effective dates—1994 c 153:** See notes following RCW 41.05.011.

**Intent—1993 c 386:** See note following RCW 28A.400.391.

**Effective date—1993 c 386 §§ 1, 2, 4-6, 8-10, and 12-16:** See note following RCW 28A.400.391.

**41.05.085 Retired or disabled school employee health insurance subsidy.** (1) Beginning with the appropriations act for the 2005-2007 biennium, the legislature shall establish as part of both the state employees' and the school and educational service district employees' insurance benefit allocation the portion of the allocation to be used to provide a prescription drug subsidy to reduce the health care insurance premiums charged to retired or disabled school district and educational service district employees, or retired state employees, who are eligible for parts A and B of medicare. The legislature may also establish a separate health care subsidy to reduce insurance premiums charged to individuals who select a medicare supplemental insurance policy option established in RCW 41.05.195.

(2) The amount of any premium reduction shall be established by the board. The amount established shall not result in a premium reduction of more than fifty percent, except as provided in subsection (3) of this section. The board may also determine the amount of any subsidy to be available to spouses and dependents.

(3) The amount of the premium reduction in subsection (2) of this section may exceed fifty percent, if the administrator, in consultation with the office of financial management, determines that it is necessary in order to meet eligibility requirements to participate in the federal employer incentive program as provided in RCW 41.05.068. [2005 c 195 § 3; 1994 c 153 § 8.]

**Effective date—2005 c 195:** See note following RCW 41.05.065.

**Intent—Effective dates—1994 c 153:** See notes following RCW 41.05.011.

**41.05.120 Public employees' and retirees' insurance account.** (1) The public employees' and retirees' insurance account is hereby established in the custody of the state treasurer, to be used by the administrator for the deposit of contributions, the remittance paid by school districts and educational service districts under RCW 28A.400.410, reserves, dividends, and refunds, for payment of premiums for employee and retiree insurance benefit contracts and subsidy amounts provided under RCW 41.05.085, and transfers from the medical flexible spending account as authorized in RCW 41.05.123. Moneys from the account shall be disbursed by the state treasurer by warrants on vouchers duly authorized by the administrator. Moneys from the account may be transferred to the medical flexible spending account to provide reserves and start-up costs for the operation of the medical flexible spending account program.

(2) The state treasurer and the state investment board may invest moneys in the public employees' and retirees'

insurance account. All such investments shall be in accordance with RCW 43.84.080 or 43.84.150, whichever is applicable. The administrator shall determine whether the state treasurer or the state investment board or both shall invest moneys in the public employees' insurance account.

(3) During the 2005-07 fiscal biennium, the legislature may transfer from the public employees' and retirees' insurance account such amounts as reflect the excess fund balance of the fund. [2005 c 518 § 921; 2005 c 143 § 3; 1994 c 153 § 9; 1993 c 492 § 219; 1991 sp.s. c 13 § 100; 1988 c 107 § 10.]

**Reviser's note:** This section was amended by 2005 c 143 § 3 and by 2005 c 518 § 921, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

**Intent—Effective dates—1994 c 153:** See notes following RCW 41.05.011.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

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

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

**41.05.123 Medical flexible spending account.** (1) The medical flexible spending account is created in the custody of the state treasurer. All receipts from the following must be deposited in the account: (a) Revenues from employing agencies for costs associated with operating the program; and (b) unclaimed moneys at the end of the plan year after all timely submitted claims for that plan year have been processed. Expenditures from the account may be used only for administrative and other expenses related to operating the medical flexible spending account program. Only the administrator or the administrator's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Program claims reserves and money necessary for start-up costs transferred from the public employees' and retirees' insurance account established in RCW 41.05.120 may be deposited in the account. Moneys in excess of the amount necessary for administrative and operating expenses of the medical flexible spending account program may be transferred to the public employees' and retirees' insurance account.

(3) The authority may periodically bill employing agencies for costs associated with operating the medical flexible spending account program. [2005 c 143 § 2.]

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

**41.05.195 Medicare supplemental insurance policies.** Notwithstanding any other provisions of this chapter or rules or procedures adopted by the authority, the authority shall make available to retired or disabled employees who are enrolled in parts A and B of medicare one or more medicare supplemental insurance policies that conform to the requirements of chapter 48.66 RCW. The policies shall be chosen in consultation with the public employees' benefits board.

These policies shall be made available to retired or disabled state employees; retired or disabled school district employees; retired employees of county, municipal, or other political subdivisions eligible for coverage available under the authority; or surviving spouses of emergency service personnel killed in the line of duty. [2005 c 47 § 1; 1993 c 492 § 222.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

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

#### **41.05.197 Medicare supplemental insurance policies.**

The medicare supplemental insurance policies authorized under RCW 41.05.195 shall be made available to any resident of the state who:

(1) Is enrolled in parts A and B of medicare; and

(2) Is not eligible to purchase coverage as a retired or disabled employee under RCW 41.05.195. State residents purchasing a medicare supplemental insurance policy under this section shall be required to pay the full cost of any such policy. [2005 c 47 § 2; 1993 c 492 § 223.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

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

#### **41.05.205 Tricare supplemental insurance policy—**

**Authority to offer—Rules.** (1) Notwithstanding any other provisions of this chapter or rules or procedures adopted by the authority under this chapter, the authority may make available a tricare supplemental insurance policy, 32 C.F.R. Sec. 199.17 (2004), to employees who are eligible. This supplemental policy may be offered as one of the board's health coverage options. Employee selection of this supplemental policy is exclusive of selecting any other medical coverage offered through the board. If offered by the board, this supplemental policy shall be made available to employees, and retired or disabled employees, eligible for coverage available under the authority, but not eligible for medicare parts A and B.

(2) The administrator may adopt rules to carry out the purposes of this section. [2005 c 46 § 1.]

#### **41.05.540 Worksite health promotion program—**

**Report.** (1) The health care authority, in coordination with the department of personnel, the department of health, health plans participating in public employees' benefits board programs, and the University of Washington's center for health promotion, may create a worksite health promotion program to develop and implement initiatives designed to increase physical activity and promote improved self-care and engagement in health care decision-making among state employees.

(2) The health care authority shall report to the governor and the legislature by December 1, 2006, on progress in implementing, and evaluating the results of, the worksite health promotion program. [2005 c 360 § 8.]

**Findings—Intent—2005 c 360:** See note following RCW 36.70A.070.

#### **41.05.550 Prescription drug assistance foundation—Nonprofit and tax-exempt corporation—Liability.** (1)

[2005 RCW Supp—page 358]

The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Federal poverty level" means the official poverty level based on family size established and adjusted under section 673(2) of the omnibus budget reconciliation act of 1981 (P.L. 97-35; 42 U.S.C. Sec. 9902(2), as amended).

(b) "Foundation" means the prescription drug assistance foundation established in this section, a nonprofit corporation organized under the laws of this state to provide assistance in accessing prescription drugs to qualified uninsured individuals.

(c) "Health insurance coverage including prescription drugs" means prescription drug coverage under a private insurance plan, the medicaid program, the state children's health insurance program ("SCHIP"), the medicare program, the basic health plan, or any employer-sponsored health plan that includes a prescription drug benefit.

(d) "Qualified uninsured individual" means an uninsured person who is a resident of this state and has an income below three hundred percent of the federal poverty level.

(e) "Uninsured" means an individual who lacks health insurance coverage including prescription drugs.

(2)(a) The administrator shall establish the foundation as a nonprofit corporation, organized under the laws of this state. The foundation shall assist qualified uninsured individuals in obtaining prescription drugs at little or no cost.

(b) The foundation shall be administered in a manner that:

(i) Begins providing assistance to qualified uninsured individuals by January 1, 2006;

(ii) Defines the population that may receive assistance in accordance with this section; and

(iii) Complies with the eligibility requirements necessary to obtain and maintain tax-exempt status under federal law.

(c) The board of directors of the foundation consists of five members appointed by the governor to staggered terms of three years. The governor shall select as members of the board individuals who (i) will represent the interests of persons who lack prescription drug coverage; and (ii) have demonstrated expertise in business management and in the administration of a not-for-profit organization.

(d) The foundation shall apply for and comply with all federal requirements necessary to obtain and maintain tax-exempt status with respect to the federal tax obligations of the foundation's donors.

(e) The foundation is authorized, subject to the direction and ratification of the board, to receive, solicit, contract for, collect, and hold in trust for the purposes of this section, donations, gifts, grants, and bequests in the form of money paid or promised, services, materials, equipment, or other things tangible or intangible that may be useful for helping the foundation to achieve its purpose. The foundation may use all sources of public and private financing to support foundation activities. No general fund-state funds shall be used for the ongoing operation of the foundation.

(f) No liability on the part of, and no cause of action of any nature, shall arise against any member of the board of directors of the foundation or against an employee or agent of the foundation for any lawful action taken by them in the performance of their administrative powers and duties under this section. [2005 c 267 § 1.]

**41.05.600 Mental health services—Definition—Coverage required, when.** (1) For the purposes of this section, "mental health services" means medically necessary outpatient and inpatient services provided to treat mental disorders covered by the diagnostic categories listed in the most current version of the diagnostic and statistical manual of mental disorders, published by the American psychiatric association, on July 24, 2005, or such subsequent date as may be provided by the administrator by rule, consistent with the purposes of chapter 6, Laws of 2005, with the exception of the following categories, codes, and services: (a) Substance related disorders; (b) life transition problems, currently referred to as "V" codes, and diagnostic codes 302 through 302.9 as found in the diagnostic and statistical manual of mental disorders, 4th edition, published by the American psychiatric association; (c) skilled nursing facility services, home health care, residential treatment, and custodial care; and (d) court ordered treatment unless the authority's or contracted insuring entity's medical director determines the treatment to be medically necessary.

(2) All health benefit plans offered to public employees and their covered dependents under this chapter that provide coverage for medical and surgical services shall provide:

(a) For all health benefit plans established or renewed on or after January 1, 2006, coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(b) For all health benefit plans established or renewed on or after January 1, 2008, coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(c) For all health benefit plans established or renewed on or after July 1, 2010, coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a

lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services. If the health benefit plan imposes any deductible, mental health services shall be included with medical and surgical services for the purpose of meeting the deductible requirement. Treatment limitations or any other financial requirements on coverage for mental health services are only allowed if the same limitations or requirements are imposed on coverage for medical and surgical services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(3) In meeting the requirements of subsection (2)(a) and (b) of this section, health benefit plans may not reduce the number of mental health outpatient visits or mental health inpatient days below the level in effect on July 1, 2002.

(4) This section does not prohibit a requirement that mental health services be medically necessary as determined by the medical director or designee, if a comparable requirement is applicable to medical and surgical services.

(5) Nothing in this section shall be construed to prevent the management of mental health services.

(6) The administrator will consider care management techniques for mental health services, including but not limited to: (a) Authorized treatment plans; (b) preauthorization requirements based on the type of service; (c) concurrent and retrospective utilization review; (d) utilization management practices; (e) discharge coordination and planning; and (f) contracting with and using a network of participating providers. [2005 c 6 § 2.]

**Findings—Intent—2005 c 6:** "The legislature finds that the costs of leaving mental disorders untreated or undertreated are significant, and often include: Decreased job productivity, loss of employment, increased disability costs, deteriorating school performance, increased use of other health services, treatment delays leading to more costly treatments, suicide, family breakdown and impoverishment, and institutionalization, whether in hospitals, juvenile detention, jails, or prisons.

Treatable mental disorders are prevalent and often have a high impact on health and productive life. The legislature finds that the potential benefits of improved access to mental health services are significant. Additionally, the legislature declares that it is not cost-effective to treat persons with mental disorders differently than persons with medical and surgical disorders.

Therefore, the legislature intends to require that insurance coverage be at parity for mental health services, which means this coverage be delivered under the same terms and conditions as medical and surgical services." [2005 c 6 § 1.]

**Severability—2005 c 6:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 6 § 13.]

**41.05.601 Mental health services—Rules.** The administrator may adopt rules to implement RCW 41.05.600. [2005 c 6 § 12.]

**Findings—Intent—Severability—2005 c 6:** See notes following RCW 41.05.600.

**Chapter 41.06 RCW**  
**STATE CIVIL SERVICE LAW**

## Sections

- 41.06.095 Office of archaeology and historic preservation—Certain personnel exempted from chapter.
- 41.06.096 Life sciences discovery fund authority—Personnel exempted from chapter.
- 41.06.160 Classification and salary schedules to consider rates in other public and private employment—Wage and fringe benefits surveys—Limited public disclosure exemption. (*Effective July 1, 2006.*)
- 41.06.167 Compensation surveys required for officers and officer candidates of the Washington state patrol—Limited public disclosure exemption. (*Effective July 1, 2006.*)
- 41.06.450 Destruction or retention of information relating to employee misconduct. (*Effective July 1, 2006.*)
- 41.06.455 Destruction of employee records authorized if consistent with other laws. (*Effective July 1, 2006.*)

**41.06.095 Office of archaeology and historic preservation—Certain personnel exempted from chapter.** In addition to the exemptions under RCW 41.06.070, this chapter does not apply in the department of archaeology and historic preservation to the director, the director's personal secretary, the deputy director, all division directors and assistant directors, and one confidential secretary for each of these officers. [2005 c 333 § 9.]

**41.06.096 Life sciences discovery fund authority—Personnel exempted from chapter.** In addition to the exemptions set forth in RCW 41.06.070, this chapter does not apply to employees of the life sciences discovery fund authority under chapter 43.350 RCW. [2005 c 424 § 14.]

**Captions not law—Liberal construction—Severability—Effective dates—2005 c 424:** See RCW 43.350.900 through 43.350.903.

**41.06.160 Classification and salary schedules to consider rates in other public and private employment—Wage and fringe benefits surveys—Limited public disclosure exemption. (*Effective July 1, 2006.*)** In preparing classification and salary schedules as set forth in RCW 41.06.150 the department of personnel shall give full consideration to prevailing rates in other public employment and in private employment in this state. For this purpose the department shall undertake comprehensive salary and fringe benefit surveys.

Salary and fringe benefit survey information collected from private employers which identifies a specific employer with the salary and fringe benefit rates which that employer pays to its employees shall not be subject to public disclosure under chapter 42.56 RCW. [2005 c 274 § 278; 2002 c 354 § 211; 1993 c 281 § 29; 1985 c 94 § 2; 1980 c 11 § 1; 1979 c 151 § 58; 1977 ex.s. c 152 § 2; 1961 c 1 § 16 (Initiative Measure No. 207, approved November 8, 1960).]

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

**Short title—Headings, captions not law—Severability—2002 c 354:** See RCW 41.80.907 through 41.80.909.

**Effective date—1993 c 281:** See note following RCW 41.06.022.

**Severability—1977 ex.s. c 152:** See note following RCW 41.06.150.

**41.06.167 Compensation surveys required for officers and officer candidates of the Washington state patrol—Limited public disclosure exemption. (*Effective***

[2005 RCW Supp—page 360]

*July 1, 2006.*) The department of personnel shall undertake comprehensive compensation surveys for officers and entry-level officer candidates of the Washington state patrol, with such surveys to be conducted in the year prior to the convening of every other one hundred five day regular session of the state legislature. Salary and fringe benefit survey information collected from private employers which identifies a specific employer with the salary and fringe benefit rates which that employer pays to its employees shall not be subject to public disclosure under chapter 42.56 RCW. [2005 c 274 § 279; 2002 c 354 § 212; 1991 c 196 § 1; 1986 c 158 § 7; 1985 c 94 § 3; 1980 c 11 § 2; 1979 c 151 § 60; 1977 ex.s. c 152 § 5.]

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

**Short title—Headings, captions not law—Severability—2002 c 354:** See RCW 41.80.907 through 41.80.909.

**Severability—1977 ex.s. c 152:** See note following RCW 41.06.150.

**41.06.450 Destruction or retention of information relating to employee misconduct. (*Effective July 1, 2006.*)**

(1) The director shall adopt rules applicable to each agency to ensure that information relating to employee misconduct or alleged misconduct is destroyed or maintained as follows:

(a) All such information determined to be false and all such information in situations where the employee has been fully exonerated of wrongdoing, shall be promptly destroyed;

(b) All such information having no reasonable bearing on the employee's job performance or on the efficient and effective management of the agency, shall be promptly destroyed;

(c) All other information shall be retained only so long as it has a reasonable bearing on the employee's job performance or on the efficient and effective management of the agency.

(2) Notwithstanding subsection (1) of this section, an agency may retain information relating to employee misconduct or alleged misconduct if:

(a) The employee requests that the information be retained; or

(b) The information is related to pending legal action or legal action may be reasonably expected to result.

(3) In adopting rules under this section, the director shall consult with the public disclosure commission to ensure that the public policy of the state, as expressed in chapters 42.17 and 42.56 RCW, is adequately protected. [2005 c 274 § 280; 2002 c 354 § 221; 1993 c 281 § 37; 1982 c 208 § 10.]

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

**Short title—Headings, captions not law—Severability—Effective dates—2002 c 354:** See RCW 41.80.907 through 41.80.910.

**Effective date—1993 c 281:** See note following RCW 41.06.022.

**Legislative finding—Purpose—RCW 41.06.450:** "The legislature finds that, under some circumstances, maintaining information relating to state employee misconduct or alleged misconduct is unfair to employees and serves no useful function to the state. The purpose of RCW 41.06.450 is to direct the personnel board to adopt rules governing maintenance of employee records so that the records are maintained in a manner which is fair to employees, which ensures proper management of state governmental affairs, and which adequately protects the public interest." [1982 c 208 § 9.]

**Severability—1982 c 208:** See RCW 42.40.900.

*Application of public disclosure law to information relating to employee misconduct: RCW 42.56.110.*

*Employee inspection of personnel file: RCW 49.12.240 through 49.12.260.*

**41.06.455 Destruction of employee records authorized if consistent with other laws. (Effective July 1, 2006.)** RCW 41.06.450 does not prohibit an agency from destroying identifying information in records relating to employee misconduct or alleged misconduct if the agency deems the action is consistent with the policy expressed in RCW 41.06.450 and in chapter 42.56 RCW. [2005 c 274 § 281; 1982 c 208 § 11.]

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

**Severability—1982 c 208:** See RCW 42.40.900.

**Chapter 41.24 RCW**

**VOLUNTEER FIRE FIGHTERS' AND RESERVE OFFICERS' RELIEF AND PENSIONS**

(Formerly: Volunteer fire fighters' relief and pensions)

Sections

- 41.24.010 Definitions.
- 41.24.030 Volunteer fire fighters' and reserve officers' relief and pension principal fund created—Composition—Investment—Use—Treasurer's report.
- 41.24.215 Injured volunteer—Recovery from third party.

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

(1) "Municipal corporation" or "municipality" includes any county, city, town or combination thereof, fire protection district, local law enforcement agency, or any emergency medical service district or other special district, authorized by law to protect life or property within its boundaries through a fire department, emergency workers, or reserve officers.

(2) "Fire department" means any regularly organized fire department or emergency medical service district consisting wholly of volunteer fire fighters, or any part-paid and part-volunteer fire department duly organized and maintained by any municipality: PROVIDED, That any such municipality wherein a part-paid fire department is maintained may by appropriate legislation permit the full-paid members of its department to come under the provisions of chapter 41.16 RCW.

(3) "Fire fighter" includes any fire fighter or emergency worker who is a member of any fire department of any municipality but shall not include fire fighters who are eligible for participation in the Washington law enforcement officers' and fire fighters' retirement system or the Washington public employees' retirement system, with respect to periods of service rendered in such capacity.

(4) "Emergency worker" means any emergency medical service personnel, regulated by chapters 18.71 and 18.73 RCW, who is a member of an emergency medical service district but shall not include emergency medical service personnel who are eligible for participation in the Washington public employees' retirement system, with respect to periods of service rendered in such capacity.

(5) "Performance of duty" or "performance of service" shall be construed to mean and include any work in and about company quarters, any fire station, any law enforcement office or precinct, or any other place under the direction or

general orders of the chief or other officer having authority to order such member to perform such work; responding to, working at, or returning from an alarm of fire, emergency call, or law enforcement duties; drill or training; or any work performed of an emergency nature in accordance with the rules and regulations of the fire department or local law enforcement agency.

(6) "State board" means the state board for volunteer fire fighters and reserve officers.

(7) "Board of trustees" or "local board" means: (a) For matters affecting fire fighters, a fire fighter board of trustees created under RCW 41.24.060; (b) for matters affecting an emergency worker, an emergency medical service district board of trustees created under RCW 41.24.330; or (c) for matters affecting reserve officers, a reserve officer board of trustees created under RCW 41.24.460.

(8) "Appropriate legislation" means an ordinance when an ordinance is the means of legislating by any municipality, and resolution in all other cases.

(9) "Reserve officer" means the same as defined by the Washington state criminal justice training commission under chapter 43.101 RCW, but shall not include enforcement officers who are eligible for participation in the Washington law enforcement officers' and fire fighters' retirement system or the Washington public employees' retirement system, with respect to periods of service rendered in such capacity.

(10) "Participant" means: (a) For purposes of relief, any reserve officer who is or may become eligible for relief under this chapter or any fire fighter or emergency worker; and (b) for purposes of retirement pension, any fire fighter, emergency worker, or reserve officer who is or may become eligible to receive a benefit of any type under the retirement provisions of this chapter, or whose beneficiary may be eligible to receive any such benefit.

(11) "Relief" means all medical, death, and disability benefits available under this chapter that are made necessary from death, sickness, injury, or disability arising in the performance of duty, including benefits provided under RCW 41.24.110, 41.24.150, 41.24.160, 41.24.175, 41.24.220, and 41.24.230, but does not include retirement pensions provided under this chapter.

(12) "Retirement pension" means retirement payments for the performance of service, as provided under RCW 41.24.170, 41.24.172, 41.24.175, 41.24.180, and 41.24.185.

(13) "Principal fund" means the volunteer fire fighters' and reserve officers' relief and pension principal fund created under RCW 41.24.030.

(14) "Administrative fund" means the volunteer fire fighters' and reserve officers' administrative fund created under RCW 41.24.030. [2005 c 37 § 1; 1999 c 148 § 1; 1995 c 11 § 1; 1993 c 331 § 1; 1989 c 91 § 8; 1970 ex.s. c 6 § 18; 1955 c 263 § 1; 1945 c 261 § 1; Rem. Supp. 1945 § 9578-15.]

**Effective date—1989 c 91:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 91 § 27.]

**Construction—Saving—1955 c 263:** "Any provisions of chapter 41.24 RCW inconsistent with the provisions of this act are hereby repealed: PROVIDED, That such repeal shall not affect any act or proceeding had or pending, under such provision repealed, but the same shall be construed and prosecuted as though such provision had not been repealed." [1955 c 263 § 12.]

**Severability—1945 c 261:** "If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act, and the application of such provision to other persons or circumstances, shall not be affected thereby. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act and each section, subsection, clause and phrase thereof irrespective of the fact that any one or more of the other sections, subsections, sentences, clauses and phrases be declared unconstitutional." [1945 c 261 § 26.]

**Construction—Saving—1945 c 261:** "Chapter 121, Laws of 1935 (sections 9578-1 to 9578-11, inclusive, Remington's Revised Statutes, also Pierce's Perpetual Code 773-37 to -57), is hereby repealed: PROVIDED, That such repeal shall not be construed as affecting any act done or right acquired, or obligation incurred, or proceedings had or pending, under said act repealed, but the same shall be continued and prosecuted as though such act had not been repealed." [1945 c 261 § 27.]

*Fire protection district having full paid fire department: RCW 41.16.240.*

**41.24.030 Volunteer fire fighters' and reserve officers' relief and pension principal fund created—Composition—Investment—Use—Treasurer's report.** (1) The volunteer fire fighters' and reserve officers' relief and pension principal fund is created in the state treasury as a trust fund for the benefit of the participants covered by this chapter consisting of:

(a) All bequests, fees, gifts, emoluments, or donations given or paid to the fund.

(b) An annual fee for each member of its fire department to be paid by each municipal corporation for the purpose of affording relief provided in this chapter for fire fighters as follows:

(i) Thirty dollars for each volunteer or part-paid member of its fire department;

(ii) A sum equal to one and one-half of one percent of the annual salary attached to the rank of each full-paid member of its fire department, prorated for 1970 on the basis of services prior to March 1, 1970.

(c) An annual fee for each emergency worker of an emergency medical service district paid by the district that is sufficient to pay the full costs of covering the emergency worker under the relief provisions of this chapter, including operating expenses. The state board shall determine the amount of this fee based on the latest actuarial valuation of the system.

(d) Where a municipal corporation has elected to make relief provisions of this chapter available to its reserve officers, an annual fee for each reserve officer paid by the municipal corporation that is sufficient to pay the full costs of covering the reserve officer under the relief provisions of this chapter, including operating expenses. The state board shall determine the amount of this fee based on the latest actuarial valuation of the system.

(e) Where a municipal corporation has elected to make the retirement pension provisions of this chapter available to members of its fire department, an annual fee of sixty dollars for each of its fire fighters electing to enroll, thirty dollars of which shall be paid by the municipality and thirty dollars of which shall be paid by the fire fighter. However, nothing in this section prohibits any municipality from voluntarily paying the fire fighters' fee for this retirement pension coverage.

(f) Where an emergency medical service district has elected to make the retirement pension provisions of this chapter available to its emergency workers, for each emergency worker electing to enroll: (i) An annual fee of thirty

dollars shall be paid by the emergency worker; and (ii) an annual fee paid by the emergency medical service district that, together with the thirty-dollar fee per emergency worker, is sufficient to pay the full costs of covering the emergency worker under the retirement pension benefits provided under this chapter, including operating expenses. The state board shall determine the amount of this fee based on the latest actuarial valuation of the system. However, nothing in this section prohibits any emergency medical service district from voluntarily paying the emergency workers' fees for this retirement pension coverage.

(g) Where a municipal corporation has elected to make the retirement pension provisions of this chapter available to its reserve officers, for each reserve officer electing to enroll: (i) An annual fee of thirty dollars shall be paid by the reserve officer; and (ii) an annual fee paid by the municipal corporation that, together with the thirty-dollar fee per reserve officer, is sufficient to pay the full costs of covering the reserve officer under the retirement pension benefits provided under this chapter, including operating expenses. The state board shall determine the amount of this fee based on the latest actuarial valuation of the system. However, nothing in this section prohibits any municipal corporation from voluntarily paying the reserve officers' fees for this retirement pension coverage.

(h) Moneys transferred from the administrative fund, as provided under subsection (4) of this section, which may only be used to pay relief and retirement pensions for fire fighters.

(i) Earnings from the investment of moneys in the principal fund.

(2) The state investment board, upon request of the state treasurer shall have full power to invest, reinvest, manage, contract, sell, or exchange investments acquired from that portion of the amounts credited to the principal fund as is not, in the judgment of the state board, required to meet current withdrawals. Investments shall be made in the manner prescribed by RCW 43.84.150 and not otherwise.

All bonds, investments, or other obligations purchased by the state investment board shall be placed in the custody of the state treasurer, and he or she shall collect the principal thereof and interest thereon when due.

The state investment board may sell any of the bonds, investments, or obligations so acquired and the proceeds thereof shall be paid to the state treasurer.

(3) The interest, earnings, and proceeds from the sale and redemption of any investments held by the principal fund and invested by the state investment board shall be credited to and form a part of the principal fund, less the allocation to the state investment board expense account pursuant to RCW 43.33A.160.

Subject to restrictions contained in this chapter, all amounts credited to the principal fund shall be available for making the benefit payments required by this chapter.

The state treasurer shall make an annual report showing the condition of the fund.

(4) The volunteer fire fighters' and reserve officers' administrative fund is created in the state treasury. Moneys in the fund, including unanticipated revenues under RCW 43.79.270, may be spent only after appropriation, and may be used only for operating expenses of the volunteer fire fighters' and reserve officers' relief and pension principal fund, the

operating expenses of the volunteer fire fighters' and reserve officers' administrative fund, or for transfer from the administrative fund to the principal fund.

(a) Forty percent of all moneys received by the state from taxes on fire insurance premiums shall be paid into the state treasury and credited to the administrative fund.

(b) The state board shall compute a percentage of the amounts credited to the administrative fund to be paid into the principal fund.

(c) For the purpose of providing amounts to be used to defray the cost of administration of the principal and administrative funds, the state board shall ascertain at the beginning of each biennium and request from the legislature an appropriation from the administrative fund sufficient to cover estimated expenses for the biennium. [2005 c 37 § 2; 1999 c 148 § 3. Prior: 1995 c 45 § 1; 1995 c 11 § 3; 1992 c 97 § 1; 1991 sp.s. c 13 § 98; prior: 1989 c 194 § 1; 1989 c 91 § 1; 1986 c 296 § 4; 1982 1st ex.s. c 35 § 17; 1981 c 3 § 26; 1973 1st ex.s. c 170 § 1; 1970 ex.s. c 6 § 19; 1967 c 160 § 2; 1957 c 116 § 1; 1955 c 223 § 1; 1945 c 261 § 3; Rem. Supp. 1945 § 9578-17; prior: 1935 c 121 § 1; RRS § 9578-1.]

**Effective date—1992 c 97:** "This act shall take effect July 1, 1992." [1992 c 97 § 3.]

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

**Effective date—1989 c 194 §§ 1, 2, and 3:** "Sections 1, 2, and 3 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 194 § 4.]

**Effective date—1989 c 91:** See note following RCW 41.24.010.

**Severability—Effective date—1986 c 296:** See notes following RCW 48.14.020.

**Severability—Effective dates—1982 1st ex.s. c 35:** See notes following RCW 82.08.020.

**Effective dates—Severability—1981 c 3:** See notes following RCW 43.33A.010.

**Effective date—1973 1st ex.s. c 170:** "This 1973 amendatory act shall take effect on July 1, 1973." [1973 1st ex.s. c 170 § 5.]

*Insurance premium taxes: RCW 48.14.020.*

**41.24.215 Injured volunteer—Recovery from third party.** (1) If an injured volunteer seeks damages from a third party, the state board may also seek recovery of actual costs from the responsible third party. A volunteer seeking damages from a third party is required to notify the state board about the legal proceeding.

(2) The state board is responsible for its proportionate share of the costs and attorneys' fees of the legal proceedings.

(3) Any recovery is subject to a lien by the state board for its share under this section.

(4) This section does not restrict or prohibit the state board's right to seek recovery from a third party when a volunteer fire fighter is injured. [2005 c 37 § 3.]

## Chapter 41.26 RCW

### LAW ENFORCEMENT OFFICERS' AND FIRE FIGHTERS' RETIREMENT SYSTEM

#### Sections

41.26.030 Definitions. (*Expires July 1, 2013.*)  
41.26.110 City and county disability boards authorized—Composition—Terms—Reimbursement for travel expenses—Duties.

41.26.160 Death benefits—Duty connected.  
41.26.161 Death benefits—Nonduty connected.  
41.26.162 Ex spouse qualifying as surviving spouse.  
41.26.164 Optional reduced retirement allowance—Continues for spouse otherwise ineligible for survivor benefits.  
41.26.432 Additional service credit purchase—Rules. (*Effective July 1, 2006.*)  
41.26.470 Earned disability allowance—Cancellation of allowance—Reentry—Receipt of service credit while disabled—Conditions—Disposition upon death of recipient—Disabled in the line of duty.  
41.26.500 Suspension of retirement allowance upon reemployment—Reinstatement—Option to enter into membership. (*Expires July 1, 2006.*)  
41.26.500 Suspension of retirement allowance upon reemployment—Reinstatement—Option to enter into membership. (*Effective July 1, 2006.*)  
41.26.520 Service credit for paid leave of absence, officers of labor organizations, unpaid leave of absence, military service.  
41.26.547 Emergency medical technicians—Job relocation—Retirement options. (*Expires July 1, 2013.*)

**41.26.030 Definitions.** (*Expires July 1, 2013.*) As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Retirement system" means the "Washington law enforcement officers' and fire fighters' retirement system" provided herein.

(2)(a) "Employer" for plan 1 members, means the legislative authority of any city, town, county, or district or the elected officials of any municipal corporation that employs any law enforcement officer and/or fire fighter, any authorized association of such municipalities, and, except for the purposes of RCW 41.26.150, any labor guild, association, or organization, which represents the fire fighters or law enforcement officers of at least seven cities of over 20,000 population and the membership of each local lodge or division of which is composed of at least sixty percent law enforcement officers or fire fighters as defined in this chapter.

(b) "Employer" for plan 2 members, means the following entities to the extent that the entity employs any law enforcement officer and/or fire fighter:

(i) The legislative authority of any city, town, county, or district;

(ii) The elected officials of any municipal corporation;

(iii) The governing body of any other general authority law enforcement agency; or

(iv) A four-year institution of higher education having a fully operational fire department as of January 1, 1996.

(3) "Law enforcement officer" beginning January 1, 1994, means any person who is commissioned and employed by an employer on a full time, fully compensated basis to enforce the criminal laws of the state of Washington generally, with the following qualifications:

(a) No person who is serving in a position that is basically clerical or secretarial in nature, and who is not commissioned shall be considered a law enforcement officer;

(b) Only those deputy sheriffs, including those serving under a different title pursuant to county charter, who have successfully completed a civil service examination for deputy sheriff or the equivalent position, where a different title is used, and those persons serving in unclassified positions authorized by RCW 41.14.070 except a private secretary will be considered law enforcement officers;

(c) Only such full time commissioned law enforcement personnel as have been appointed to offices, positions, or ranks in the police department which have been specifically created or otherwise expressly provided for and designated by city charter provision or by ordinance enacted by the legislative body of the city shall be considered city police officers;

(d) The term "law enforcement officer" also includes the executive secretary of a labor guild, association or organization (which is an employer under RCW 41.26.030(2)) if that individual has five years previous membership in the retirement system established in chapter 41.20 RCW. The provisions of this subsection (3)(d) shall not apply to plan 2 members; and

(e) The term "law enforcement officer" also includes a person employed on or after January 1, 1993, as a public safety officer or director of public safety, so long as the job duties substantially involve only either police or fire duties, or both, and no other duties in a city or town with a population of less than ten thousand. The provisions of this subsection (3)(e) shall not apply to any public safety officer or director of public safety who is receiving a retirement allowance under this chapter as of May 12, 1993.

(4) "Fire fighter" means:

(a) Any person who is serving on a full time, fully compensated basis as a member of a fire department of an employer and who is serving in a position which requires passing a civil service examination for fire fighter, and who is actively employed as such;

(b) Anyone who is actively employed as a full time fire fighter where the fire department does not have a civil service examination;

(c) Supervisory fire fighter personnel;

(d) Any full time executive secretary of an association of fire protection districts authorized under RCW 52.12.031. The provisions of this subsection (4)(d) shall not apply to plan 2 members;

(e) The executive secretary of a labor guild, association or organization (which is an employer under RCW 41.26.030(2) as now or hereafter amended), if such individual has five years previous membership in a retirement system established in chapter 41.16 or 41.18 RCW. The provisions of this subsection (4)(e) shall not apply to plan 2 members;

(f) Any person who is serving on a full time, fully compensated basis for an employer, as a fire dispatcher, in a department in which, on March 1, 1970, a dispatcher was required to have passed a civil service examination for fire fighter;

(g) Any person who on March 1, 1970, was employed on a full time, fully compensated basis by an employer, and who on May 21, 1971, was making retirement contributions under the provisions of chapter 41.16 or 41.18 RCW; and

(h) Any person who is employed on a full-time, fully compensated basis by an employer as an emergency medical technician.

(5) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(6) "Surviving spouse" means the surviving widow or widower of a member. "Surviving spouse" shall not include

the divorced spouse of a member except as provided in RCW 41.26.162.

(7)(a) "Child" or "children" means an unmarried person who is under the age of eighteen or mentally or physically handicapped as determined by the department, except a handicapped person in the full time care of a state institution, who is:

(i) A natural born child;

(ii) A stepchild where that relationship was in existence prior to the date benefits are payable under this chapter;

(iii) A posthumous child;

(iv) A child legally adopted or made a legal ward of a member prior to the date benefits are payable under this chapter; or

(v) An illegitimate child legitimized prior to the date any benefits are payable under this chapter.

(b) A person shall also be deemed to be a child up to and including the age of twenty years and eleven months while attending any high school, college, or vocational or other educational institution accredited, licensed, or approved by the state, in which it is located, including the summer vacation months and all other normal and regular vacation periods at the particular educational institution after which the child returns to school.

(8) "Member" means any fire fighter, law enforcement officer, or other person as would apply under subsections (3) or (4) of this section whose membership is transferred to the Washington law enforcement officers' and fire fighters' retirement system on or after March 1, 1970, and every law enforcement officer and fire fighter who is employed in that capacity on or after such date.

(9) "Retirement fund" means the "Washington law enforcement officers' and fire fighters' retirement system fund" as provided for herein.

(10) "Employee" means any law enforcement officer or fire fighter as defined in subsections (3) and (4) of this section.

(11)(a) "Beneficiary" for plan 1 members, means any person in receipt of a retirement allowance, disability allowance, death benefit, or any other benefit described herein.

(b) "Beneficiary" for plan 2 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(12)(a) "Final average salary" for plan 1 members, means (i) for a member holding the same position or rank for a minimum of twelve months preceding the date of retirement, the basic salary attached to such same position or rank at time of retirement; (ii) for any other member, including a civil service member who has not served a minimum of twelve months in the same position or rank preceding the date of retirement, the average of the greatest basic salaries payable to such member during any consecutive twenty-four month period within such member's last ten years of service for which service credit is allowed, computed by dividing the total basic salaries payable to such member during the selected twenty-four month period by twenty-four; (iii) in the case of disability of any member, the basic salary payable to such member at the time of disability retirement; (iv) in the case of a member who hereafter vests pursuant to RCW



41.26.090, the basic salary payable to such member at the time of vesting.

(b) "Final average salary" for plan 2 members, means the monthly average of the member's basic salary for the highest consecutive sixty service credit months of service prior to such member's retirement, termination, or death. Periods constituting authorized unpaid leaves of absence may not be used in the calculation of final average salary.

(13)(a) "Basic salary" for plan 1 members, means the basic monthly rate of salary or wages, including longevity pay but not including overtime earnings or special salary or wages, upon which pension or retirement benefits will be computed and upon which employer contributions and salary deductions will be based.

(b) "Basic salary" for plan 2 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay. In any year in which a member serves in the legislature the member shall have the option of having such member's basic salary be the greater of:

(i) The basic salary the member would have received had such member not served in the legislature; or

(ii) Such member's actual basic salary received for non-legislative public employment and legislative service combined. Any additional contributions to the retirement system required because basic salary under (b)(i) of this subsection is greater than basic salary under (b)(ii) of this subsection shall be paid by the member for both member and employer contributions.

(14)(a) "Service" for plan 1 members, means all periods of employment for an employer as a fire fighter or law enforcement officer, for which compensation is paid, together with periods of suspension not exceeding thirty days in duration. For the purposes of this chapter service shall also include service in the armed forces of the United States as provided in RCW 41.26.190. Credit shall be allowed for all service credit months of service rendered by a member from and after the member's initial commencement of employment as a fire fighter or law enforcement officer, during which the member worked for seventy or more hours, or was on disability leave or disability retirement. Only service credit months of service shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter.

(i) For members retiring after May 21, 1971 who were employed under the coverage of a prior pension act before March 1, 1970, "service" shall also include (A) such military service not exceeding five years as was creditable to the member as of March 1, 1970, under the member's particular prior pension act, and (B) such other periods of service as were then creditable to a particular member under the provisions of RCW 41.18.165, 41.20.160 or 41.20.170. However, in no event shall credit be allowed for any service rendered prior to March 1, 1970, where the member at the time of rendition of such service was employed in a position covered by a prior pension act, unless such service, at the time credit is

claimed therefor, is also creditable under the provisions of such prior act.

(ii) A member who is employed by two employers at the same time shall only be credited with service to one such employer for any month during which the member rendered such dual service.

(b) "Service" for plan 2 members, means periods of employment by a member for one or more employers for which basic salary is earned for ninety or more hours per calendar month which shall constitute a service credit month. Periods of employment by a member for one or more employers for which basic salary is earned for at least seventy hours but less than ninety hours per calendar month shall constitute one-half service credit month. Periods of employment by a member for one or more employers for which basic salary is earned for less than seventy hours shall constitute a one-quarter service credit month.

Members of the retirement system who are elected or appointed to a state elective position may elect to continue to be members of this retirement system.

Service credit years of service shall be determined by dividing the total number of service credit months of service by twelve. Any fraction of a service credit year of service as so determined shall be taken into account in the computation of such retirement allowance or benefits.

If a member receives basic salary from two or more employers during any calendar month, the individual shall receive one service credit month's service credit during any calendar month in which multiple service for ninety or more hours is rendered; or one-half service credit month's service credit during any calendar month in which multiple service for at least seventy hours but less than ninety hours is rendered; or one-quarter service credit month during any calendar month in which multiple service for less than seventy hours is rendered.

(15) "Accumulated contributions" means the employee's contributions made by a member, including any amount paid under RCW 41.50.165(2), plus accrued interest credited thereon.

(16) "Actuarial reserve" means a method of financing a pension or retirement plan wherein reserves are accumulated as the liabilities for benefit payments are incurred in order that sufficient funds will be available on the date of retirement of each member to pay the member's future benefits during the period of retirement.

(17) "Actuarial valuation" means a mathematical determination of the financial condition of a retirement plan. It includes the computation of the present monetary value of benefits payable to present members, and the present monetary value of future employer and employee contributions, giving effect to mortality among active and retired members and also to the rates of disability, retirement, withdrawal from service, salary and interest earned on investments.

(18) "Disability board" for plan 1 members means either the county disability board or the city disability board established in RCW 41.26.110.

(19) "Disability leave" means the period of six months or any portion thereof during which a member is on leave at an allowance equal to the member's full salary prior to the commencement of disability retirement. The definition contained in this subsection shall apply only to plan 1 members.

(20) "Disability retirement" for plan 1 members, means the period following termination of a member's disability leave, during which the member is in receipt of a disability retirement allowance.

(21) "Position" means the employment held at any particular time, which may or may not be the same as civil service rank.

(22) "Medical services" for plan 1 members, shall include the following as minimum services to be provided. Reasonable charges for these services shall be paid in accordance with RCW 41.26.150.

(a) Hospital expenses: These are the charges made by a hospital, in its own behalf, for

(i) Board and room not to exceed semiprivate room rate unless private room is required by the attending physician due to the condition of the patient.

(ii) Necessary hospital services, other than board and room, furnished by the hospital.

(b) Other medical expenses: The following charges are considered "other medical expenses", provided that they have not been considered as "hospital expenses".

(i) The fees of the following:

(A) A physician or surgeon licensed under the provisions of chapter 18.71 RCW;

(B) An osteopathic physician and surgeon licensed under the provisions of chapter 18.57 RCW;

(C) A chiropractor licensed under the provisions of chapter 18.25 RCW.

(ii) The charges of a registered graduate nurse other than a nurse who ordinarily resides in the member's home, or is a member of the family of either the member or the member's spouse.

(iii) The charges for the following medical services and supplies:

(A) Drugs and medicines upon a physician's prescription;

(B) Diagnostic x-ray and laboratory examinations;

(C) X-ray, radium, and radioactive isotopes therapy;

(D) Anesthesia and oxygen;

(E) Rental of iron lung and other durable medical and surgical equipment;

(F) Artificial limbs and eyes, and casts, splints, and trusses;

(G) Professional ambulance service when used to transport the member to or from a hospital when injured by an accident or stricken by a disease;

(H) Dental charges incurred by a member who sustains an accidental injury to his or her teeth and who commences treatment by a legally licensed dentist within ninety days after the accident;

(I) Nursing home confinement or hospital extended care facility;

(J) Physical therapy by a registered physical therapist;

(K) Blood transfusions, including the cost of blood and blood plasma not replaced by voluntary donors;

(L) An optometrist licensed under the provisions of chapter 18.53 RCW.

(23) "Regular interest" means such rate as the director may determine.

(24) "Retiree" for persons who establish membership in the retirement system on or after October 1, 1977, means any

member in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by such member.

(25) "Director" means the director of the department.

(26) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(27) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(28) "Plan 1" means the law enforcement officers' and fire fighters' retirement system, plan 1 providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(29) "Plan 2" means the law enforcement officers' and fire fighters' retirement system, plan 2 providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

(30) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(31) "Service credit month" means a full service credit month or an accumulation of partial service credit months that are equal to one.

(32) "General authority law enforcement agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, but not including the Washington state patrol. Such an agency, department, or division is distinguished from a limited authority law enforcement agency having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas, including but not limited to, the state departments of natural resources and social and health services, the state gambling commission, the state lottery commission, the state parks and recreation commission, the state utilities and transportation commission, the state liquor control board, and the state department of corrections. [2005 c 459 § 1; 2003 c 388 § 2; 2002 c 128 § 3. Prior: 1996 c 178 § 11; 1996 c 38 § 2; prior: 1994 c 264 § 14; 1994 c 197 § 5; prior: 1993 c 502 § 1; 1993 c 322 § 1; 1991 sp.s. c 12 § 1; prior: (1991 sp.s. c 11 § 3 repealed by 1991 sp.s. c 12 § 3); 1991 c 365 § 35; 1991 c 343 § 14; 1991 c 35 § 13; 1987 c 418 § 1; 1985 c 13 § 5; 1984 c 230 § 83; 1981 c 256 § 4; 1979 ex.s. c 249 § 2; 1977 ex.s. c 294 § 17; 1974 ex.s. c 120 § 1; 1972 ex.s. c 131 § 1; 1971 ex.s. c 257 § 6; 1970 ex.s. c 6 § 1; 1969 ex.s. c 209 § 3.]

**Expiration date—2005 c 459:** "This act expires July 1, 2013." [2005 c 459 § 3.]

**Effective date—1996 c 178:** See note following RCW 18.35.110.

**Intent—Severability—Effective date—1994 c 197:** See notes following RCW 41.50.165.

**Effective date—1993 c 502:** "This act shall take effect January 1, 1994." [1993 c 502 § 6.]

**Application—1993 c 322 § 1:** "Section 1 of this act shall apply retroactively to January 1, 1993." [1993 c 322 § 2.]

**Effective date—1993 c 322:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 12, 1993]." [1993 c 322 § 3.]

**Severability—1991 c 365:** See note following RCW 41.50.500.

**Findings—Effective dates—1991 c 343:** See notes following RCW 41.50.005.

**Intent—1991 c 35:** See note following RCW 41.26.005.

**Purpose—Application—Retrospective application—1985 c 13:** See notes following RCW 41.04.445.

**Purpose—1981 c 256:** "It is the primary purpose of this act to assure that the provisions of RCW 41.04.250 and 41.04.260 and of any deferred compensation plan established thereunder, are in conformity with the requirements of 26 U.S.C. Sec. 457 and any other requirements of federal law relating to such a deferred compensation plan. This act shall be construed in such a manner as to accomplish this purpose." [1981 c 256 § 1.]

**Severability—1981 c 256:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 256 § 7.]

**Severability—1974 ex.s. c 120:** "If any provision of this 1974 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 120 § 15.]

**Severability—1972 ex.s. c 131:** "If any provision of this 1972 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1972 ex.s. c 131 § 12.]

**Purpose—1971 ex.s. c 257:** "It is the purpose of this act to provide minimum medical and health standards for membership coverage into the Washington law enforcement officers' and fire fighters' retirement system act, for the improvement of the public service, and to safeguard the integrity and actuarial soundness of their pension systems, and to improve their retirement and pension systems and related provisions." [1971 ex.s. c 257 § 1.]

**Severability—1971 ex.s. c 257:** "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 257 § 22.]

**41.26.110 City and county disability boards authorized—Composition—Terms—Reimbursement for travel expenses—Duties.** (1) All claims for disability shall be acted upon and either approved or disapproved by either type of disability board authorized to be created in this section.

(a) Each city having a population of twenty thousand or more shall establish a disability board having jurisdiction over all members employed by those cities and composed of the following five members: Two members of the city legislative body to be appointed by the mayor; one active or retired fire fighter employed by or retired from the city to be elected by the fire fighters employed by or retired from the city who are subject to the jurisdiction of the board; one active or retired law enforcement officer employed by or retired from the city to be elected by the law enforcement officers employed by or retired from the city who are subject to the jurisdiction of the board; and one member from the public at large who resides within the city to be appointed by the other four members designated in this subsection. Only those active or retired fire fighters and law enforcement officers who are subject to the jurisdiction of the board have the right to elect under this section. All fire fighters and law enforcement officers employed by or retired from the city are eligible for election. Each of the elected members shall serve a two year term. The members appointed pursuant to this subsection shall serve for two year terms: PROVIDED, That cities of the first class only, shall retain existing firemen's pension boards established pursuant to RCW 41.16.020 and existing boards of trustees of the relief and pension fund of

the police department as established pursuant to RCW 41.20.010 which such boards shall have authority to act upon and approve or disapprove claims for disability by fire fighters or law enforcement officers as provided under the Washington law enforcement officers' and fire fighters' retirement system act.

(b) Each county shall establish a disability board having jurisdiction over all members employed by or retired from an employer within the county and not employed by a city in which a disability board is established. The county disability board so created shall be composed of five members to be chosen as follows: One member of the legislative body of the county to be appointed by the county legislative body; one member of a city or town legislative body located within the county which does not contain a city disability board established pursuant to subsection (1)(a) of this section to be chosen by a majority of the mayors of such cities and towns within the county which does not contain a city disability board; one active fire fighter or retired fire fighter employed by or retired from an employer within the county to be elected by the fire fighters employed or retired from an employer within the county who are not employed by or retired from a city in which a disability board is established and who are subject to the jurisdiction of that board; one law enforcement officer or retired law enforcement officer employed by or retired from an employer within the county to be elected by the law enforcement officers employed in or retired from an employer within the county who are not employed by or retired from a city in which a disability board is established and who are subject to the jurisdiction of that board; and one member from the public at large who resides within the county but does not reside within a city in which a city disability board is established, to be appointed by the other four members designated in this subsection. However, in counties with a population less than sixty thousand, the member of the disability board appointed by a majority of the mayors of the cities and towns within the county that do not contain a city disability board must be a resident of one of the cities and towns but need not be a member of a city or town legislative body. Only those active or retired fire fighters and law enforcement officers who are subject to the jurisdiction of the board have the right to elect under this section. All fire fighters and law enforcement officers employed by or retired from an employer within the county who are not employed by or retired from a city in which a disability board is established are eligible for election. All members appointed or elected pursuant to this subsection shall serve for two year terms. If there are no fire fighters under the jurisdiction of the board eligible to vote, a second eligible employee representative shall be elected by the law enforcement officers eligible to vote. If there are no law enforcement officers under the jurisdiction of the board eligible to vote, a second eligible representative shall be elected by the fire fighters eligible to vote.

(2) The members of both the county and city disability boards shall not receive compensation for their service upon the boards but the members shall be reimbursed by their respective county or city for all expenses incidental to such service as to the amount authorized by law.

(3) The disability boards authorized for establishment by this section shall perform all functions, exercise all powers, and make all such determinations as specified in this chapter.

[2005 c 66 § 1; 2003 c 30 § 3; 2000 c 234 § 1; 1988 c 164 § 1; 1982 c 12 § 1; 1974 ex.s. c 120 § 9; 1970 ex.s. c 6 § 6; 1969 ex.s. c 219 § 3; 1969 ex.s. c 209 § 11.]

**Effective date—2005 c 66:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 15, 2005]." [2005 c 66 § 2.]

**Severability—1974 ex.s. c 120:** See note following RCW 41.26.030.

**41.26.160 Death benefits—Duty connected.** (1) In the event of the duty connected death of any member who is in active service, or who has vested under the provisions of RCW 41.26.090 with twenty or more service credit years of service, or who is on duty connected disability leave or retired for duty connected disability, the surviving spouse shall become entitled, subject to RCW 41.26.162, to receive a monthly allowance equal to fifty percent of the final average salary at the date of death if active, or the amount of retirement allowance the vested member would have received at age fifty, or the amount of the retirement allowance such retired member was receiving at the time of death if retired for duty connected disability. The amount of this allowance will be increased five percent of final average salary for each child as defined in RCW 41.26.030(7), subject to a maximum combined allowance of sixty percent of final average salary: PROVIDED, That if the child or children is or are in the care of a legal guardian, payment of the increase attributable to each child will be made to the child's legal guardian or, in the absence of a legal guardian and if the member has created a trust for the benefit of the child or children, payment of the increase attributable to each child will be made to the trust.

(2) If at the time of the duty connected death of a vested member with twenty or more service credit years of service as provided in subsection (1) of this section or a member retired for duty connected disability, the surviving spouse has not been lawfully married to such member for one year prior to retirement or separation from service if a vested member, the surviving spouse shall not be eligible to receive the benefits under this section: PROVIDED, That if a member dies as a result of a disability incurred in the line of duty, then if he or she was married at the time he or she was disabled, the surviving spouse shall be eligible to receive the benefits under this section.

(3) If there be no surviving spouse eligible to receive benefits at the time of such member's duty connected death, then the child or children of such member shall receive a monthly allowance equal to thirty percent of final average salary for one child and an additional ten percent for each additional child subject to a maximum combined payment, under this subsection, of sixty percent of final average salary. When there cease to be any eligible children as defined in RCW 41.26.030(7), there shall be paid to the legal heirs of the member the excess, if any, of accumulated contributions of the member at the time of death over all payments made to survivors on his or her behalf under this chapter: PROVIDED, That payments under this subsection to children shall be prorated equally among the children, if more than one. If the member has created a trust for the benefit of the child or children, the payment shall be made to the trust.

(4) In the event that there is no surviving spouse eligible to receive benefits under this section, and that there be no child or children eligible to receive benefits under this section, then the accumulated contributions shall be paid to the estate of the member.

(5) If a surviving spouse receiving benefits under this section remarries after June 13, 2002, the surviving spouse shall continue to receive the benefits under this section.

(6) If a surviving spouse receiving benefits under the provisions of this section thereafter dies and there are children as defined in RCW 41.26.030(7), payment to the spouse shall cease and the child or children shall receive the benefits as provided in subsection (3) of this section.

(7) The payment provided by this section shall become due the day following the date of death and payments shall be retroactive to that date. [2005 c 62 § 1; 2002 c 158 § 1; 1999 c 134 § 2; 1991 sp.s. c 11 § 5. Prior: 1991 c 343 § 17; 1991 c 35 § 23; 1986 c 176 § 7; 1977 ex.s. c 294 § 23; 1974 ex.s. c 120 § 5; 1972 ex.s. c 131 § 9; 1971 ex.s. c 257 § 11; 1970 ex.s. c 6 § 12; 1969 ex.s. c 209 § 17.]

**Purpose—1999 c 134:** "The purpose of sections 1 through 4 of this act is to clarify that the intent of the legislature in enacting RCW 41.26.160, insofar as that section provides benefits to members or surviving spouses for deaths incurred in the line of duty, was to provide a statute in the nature of a workers' compensation act that provides compensation to employees or surviving spouses for personal injuries or deaths incurred in the course of employment. Accordingly, this act amends and divides RCW 41.26.160 into two separate sections. Section 2 of this act clarifies and emphasizes the legislature's intent that the death benefits granted by RCW 41.26.160, as amended, are granted only to those members who die or become disabled by any injury or incapacity that is incurred in the line of duty. Section 3 of this act continues to provide death retirement benefits to members or surviving spouses for deaths not incurred in the line of duty." [1999 c 134 § 1.]

**Retroactive application—1999 c 134 § 2:** "The provisions of section 2 of this act apply retrospectively to all line of duty death retirement allowances granted under chapter 41.26 RCW prior to April 28, 1999." [1999 c 134 § 4.]

**Effective date—1999 c 134:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 28, 1999]." [1999 c 134 § 5.]

**Purpose—Effective dates—1991 sp.s. c 11:** See notes following RCW 41.26.090.

**Findings—Effective dates—1991 c 343:** See notes following RCW 41.50.005.

**Intent—1991 c 35:** See note following RCW 41.26.005.

**Severability—1974 ex.s. c 120:** See note following RCW 41.26.030.

**Severability—1972 ex.s. c 131:** See note following RCW 41.26.030.

**Purpose—Severability—1971 ex.s. c 257:** See notes following RCW 41.26.030.

**41.26.161 Death benefits—Nonduty connected.** (1) In the event of the nonduty connected death of any member who is in active service, or who has vested under the provisions of RCW 41.26.090 with twenty or more service credit years of service, or who is on disability leave or retired, whether for nonduty connected disability or service, the surviving spouse shall become entitled, subject to RCW 41.26.162, to receive a monthly allowance equal to fifty percent of the final average salary at the date of death if active, or the amount of retirement allowance the vested member would have received at age fifty, or the amount of the retirement allowance such retired member was receiving at the time of death if retired for service or nonduty connected disability. The

amount of this allowance will be increased five percent of final average salary for each child as defined in RCW 41.26.030(7), subject to a maximum combined allowance of sixty percent of final average salary: PROVIDED, That if the child or children is or are in the care of a legal guardian, payment of the increase attributable to each child will be made to the child's legal guardian or, in the absence of a legal guardian and if the member has created a trust for the benefit of the child or children, payment of the increase attributable to each child will be made to the trust.

(2) If at the time of the death of a vested member with twenty or more service credit years of service as provided in subsection (1) of this section or a member retired for service or disability, the surviving spouse has not been lawfully married to such member for one year prior to retirement or separation from service if a vested member, the surviving spouse shall not be eligible to receive the benefits under this section.

(3) If there be no surviving spouse eligible to receive benefits at the time of such member's death, then the child or children of such member shall receive a monthly allowance equal to thirty percent of final average salary for one child and an additional ten percent for each additional child subject to a maximum combined payment, under this subsection, of sixty percent of final average salary. When there cease to be any eligible children as defined in RCW 41.26.030(7), there shall be paid to the legal heirs of the member the excess, if any, of accumulated contributions of the member at the time of death over all payments made to survivors on his or her behalf under this chapter: PROVIDED, That payments under this subsection to children shall be prorated equally among the children, if more than one. If the member has created a trust for the benefit of the child or children, the payment shall be made to the trust.

(4) In the event that there is no surviving spouse eligible to receive benefits under this section, and that there be no child or children eligible to receive benefits under this section, then the accumulated contributions shall be paid to the estate of said member.

(5) If a surviving spouse receiving benefits under this section remarries after June 13, 2002, the surviving spouse shall continue to receive the benefits under this section.

(6) If a surviving spouse receiving benefits under the provisions of this section thereafter dies and there are children as defined in RCW 41.26.030(7), payment to the spouse shall cease and the child or children shall receive the benefits as provided in subsection (3) of this section.

(7) The payment provided by this section shall become due the day following the date of death and payments shall be retroactive to that date. [2005 c 62 § 2; 2002 c 158 § 2; 1999 c 134 § 3.]

**Purpose—Effective date—1999 c 134:** See notes following RCW 41.26.160.

#### **41.26.162 Ex spouse qualifying as surviving spouse.**

(1) An ex spouse of a law enforcement officers' and fire fighters' retirement system retiree shall qualify as surviving spouse under RCW 41.26.160 or 41.26.161 if the ex spouse has been provided benefits under any currently effective court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation.

Such an ex spouse shall continue to receive the court-awarded portion of the member's benefit after the member's death as if the member was still alive.

(2) An ex spouse whose benefit resumes as a result of chapter 62, Laws of 2005 shall receive an initial payment equivalent to that portion of the member's benefit received prior to its suspension. The benefit will not be adjusted under RCW 41.26.240 for the period the allowance was suspended.

(3) Chapter 62, Laws of 2005 shall not result in the payment of benefits for the period during which benefits were suspended.

(4) This section shall apply retroactively. [2005 c 62 § 3; 2002 c 158 § 3; 1991 sp.s. c 12 § 2.]

**41.26.164 Optional reduced retirement allowance—Continues for spouse otherwise ineligible for survivor benefits.** (1) No later than July 1, 2005, the department shall adopt rules to allow a member who meets the criteria set forth in subsection (2) of this section to choose an actuarially equivalent benefit that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of a spouse ineligible for survivor benefits under RCW 41.26.160 or 41.26.161.

(2) To choose an actuarially equivalent benefit according to subsection (1) of this section, a member shall:

(a) Have a portion of the retirement allowance payable to the retiree that is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670; and

(b) Choose an actuarially reduced benefit equivalent to that portion not subject to periodic payments under (a) of this subsection during a one-year period beginning one year after the date of marriage to the survivor benefit-ineligible spouse.

(3) A member who married a spouse ineligible for survivor benefits under RCW 41.26.160 or 41.26.161 prior to the effective date of the rules adopted under this section and satisfies subsection (2)(a) of this section has one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(4) No benefit provided to a child survivor beneficiary under RCW 41.26.160 or 41.26.161 is affected or reduced by the member's selection of the actuarially reduced spousal survivor benefit provided by this section.

(5)(a) Any member who chose to receive a reduced retirement allowance under subsection (1) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection if:

(i) The retiree's survivor spouse designated in subsection (1) of this section predeceases the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree from the beginning of the month following the date of the beneficiary's death shall be increased by the following:

(i) One hundred percent multiplied by the result of (b)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor. [2005 c 67 § 1; 2002 c 158 § 4.]

**Effective date—2005 c 67:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 15, 2005]." [2005 c 67 § 2.]

**41.26.432 Additional service credit purchase—Rules. (Effective July 1, 2006.)** (1) A member eligible to retire under RCW 41.26.430 may, at the time of filing a written application for retirement with the department, apply to the department to make a one-time purchase of up to five years of additional service credit.

(2) To purchase additional service credit under this section, a member shall pay the actuarial equivalent value of the resulting increase in the member's benefit.

(3) Subject to rules adopted by the department, a member purchasing additional service credit under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free roll-over treatment or other treatment under federal income tax law. [2005 c 21 § 1.]

**Effective date—2005 c 21:** "This act takes effect July 1, 2006." [2005 c 21 § 2.]

**41.26.470 Earned disability allowance—Cancellation of allowance—Reentry—Receipt of service credit while disabled—Conditions—Disposition upon death of recipient—Disabled in the line of duty.** (1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the director shall be eligible to receive an allowance under the provisions of RCW 41.26.410 through 41.26.550. Such member shall receive a monthly disability allowance computed as provided for in RCW 41.26.420 and shall have such allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age fifty-three, except under subsection (7) of this section.

(2) Any member who receives an allowance under the provisions of this section shall be subject to such comprehensive medical examinations as required by the department. If such medical examinations reveal that such a member has recovered from the incapacitating disability and the member is no longer entitled to benefits under Title 51 RCW, the retirement allowance shall be canceled and the member shall be restored to duty in the same civil service rank, if any, held by the member at the time of retirement or, if unable to perform the duties of the rank, then, at the member's request, in such other like or lesser rank as may be or become open and available, the duties of which the member is then able to perform. In no event shall a member previously drawing a disability allowance be returned or be restored to duty at a salary or rate of pay less than the current salary attached to the rank or position held by the member at the date of the retirement for disability. If the department determines that the member

is able to return to service, the member is entitled to notice and a hearing. Both the notice and the hearing shall comply with the requirements of chapter 34.05 RCW, the Administrative Procedure Act.

(3) Those members subject to this chapter who became disabled in the line of duty on or after July 23, 1989, and who receive benefits under RCW 41.04.500 through 41.04.530 or similar benefits under RCW 41.04.535 shall receive or continue to receive service credit subject to the following:

(a) No member may receive more than one month's service credit in a calendar month.

(b) No service credit under this section may be allowed after a member separates or is separated without leave of absence.

(c) Employer contributions shall be paid by the employer at the rate in effect for the period of the service credited.

(d) Employee contributions shall be collected by the employer and paid to the department at the rate in effect for the period of service credited.

(e) State contributions shall be as provided in RCW 41.45.060 and 41.45.067.

(f) Contributions shall be based on the regular compensation which the member would have received had the disability not occurred.

(g) The service and compensation credit under this section shall be granted for a period not to exceed six consecutive months.

(h) Should the legislature revoke the service credit authorized under this section or repeal this section, no affected employee is entitled to receive the credit as a matter of contractual right.

(4)(a) If the recipient of a monthly retirement allowance under this section dies before the total of the retirement allowance paid to the recipient equals the amount of the accumulated contributions at the date of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the recipient has nominated by written designation duly executed and filed with the director, or, if there is no such designated person or persons still living at the time of the recipient's death, then to the surviving spouse, or, if there is neither such designated person or persons still living at the time of his or her death nor a surviving spouse, then to his or her legal representative.

(b) If a recipient of a monthly retirement allowance under this section died before April 27, 1989, and before the total of the retirement allowance paid to the recipient equaled the amount of his or her accumulated contributions at the date of retirement, then the department shall pay the balance of the accumulated contributions to the member's surviving spouse or, if there is no surviving spouse, then in equal shares to the member's children. If there is no surviving spouse or children, the department shall retain the contributions.

(5) Should the disability retirement allowance of any disability beneficiary be canceled for any cause other than reentrance into service or retirement for service, he or she shall be paid the excess, if any, of the accumulated contributions at the time of retirement over all payments made on his or her behalf under this chapter.

(6) A member who becomes disabled in the line of duty, and who ceases to be an employee of an employer except by service or disability retirement, may request a refund of one

hundred fifty percent of the member's accumulated contributions. Any accumulated contributions attributable to restorations made under RCW 41.50.165(2) shall be refunded at one hundred percent. A person in receipt of this benefit is a retiree.

(7) A member who becomes disabled in the line of duty shall be entitled to receive a minimum retirement allowance equal to ten percent of such member's final average salary. The member shall additionally receive a retirement allowance equal to two percent of such member's average final salary for each year of service beyond five. [2005 c 451 § 1; 2004 c 4 § 1; 2001 c 261 § 2; 2000 c 247 § 1104; 1999 c 135 § 1; 1995 c 144 § 18; 1993 c 517 § 4; 1990 c 249 § 19. Prior: 1989 c 191 § 1; 1989 c 88 § 1; 1982 c 12 § 2; 1981 c 294 § 9; 1977 ex.s. c 294 § 8.]

**Effective date—2005 c 451:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 13, 2005]." [2005 c 451 § 2.]

**Application—2004 c 4 § 1:** "This act applies to all members, subject to section 1 of this act, who become or became disabled in the line of duty on or after January 1, 2001." [2004 c 4 § 2.]

**Effective date—2001 c 261 § 2:** "Section 2 of this act takes effect March 1, 2002." [2001 c 261 § 5.]

**Effective dates—Subchapter headings not law—2000 c 247:** See RCW 41.40.931 and 41.40.932.

**Application—1999 c 135 § 1:** "Section 1 of this act applies to any member who received a disability retirement allowance on or after February 1, 1990." [1999 c 135 § 2.]

**Purpose—1993 c 517:** See note following RCW 41.26.420.

**Findings—1990 c 249:** See note following RCW 2.10.146.

**Severability—1981 c 294:** See note following RCW 41.26.115.

**Legislative direction and placement—Section headings—1977 ex.s. c 294:** See notes following RCW 41.26.410.

*Disability leave supplement for law enforcement officers and fire fighters: RCW 41.04.500 through 41.04.550.*

**41.26.500 Suspension of retirement allowance upon reemployment—Reinstatement—Option to enter into membership. (Expires July 1, 2006.)** (1) Except under subsection (3) of this section, a retiree under the provisions of plan 2 shall not be eligible to receive such retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.40.010, 41.32.010, or 41.35.010, or as a law enforcement officer or fire fighter as defined in RCW 41.26.030. If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused his or her benefits to be suspended. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

(2) The department shall adopt rules implementing this section.

(3) A member or retiree who becomes employed in an eligible position as defined in RCW 41.40.010, 41.32.010, or 41.35.010 shall have the option to enter into membership in the corresponding retirement system for that position notwithstanding any provision of RCW 41.04.270. A retiree who elects to enter into plan membership shall have his or her benefits suspended as provided in subsection (1) of this section. A retiree who does not elect to enter into plan membership shall continue to receive his or her benefits without inter-

ruption. [2005 c 372 § 1; 1998 c 341 § 604; 1990 c 274 § 12; 1977 ex.s. c 294 § 11.]

**Expiration date—2005 c 372 § 1:** "Section 1 of this act expires July 1, 2006." [2005 c 372 § 3.]

**Effective date—1998 c 341:** See RCW 41.35.901.

**Findings—Construction—1990 c 274:** See notes following RCW 41.32.010.

**Application—Reservation—1990 c 274 §§ 11, 12, 14, and 15:** See note following RCW 41.40.690.

**Legislative direction and placement—Section headings—1977 ex.s. c 294:** See notes following RCW 41.26.410.

**41.26.500 Suspension of retirement allowance upon reemployment—Reinstatement—Option to enter into membership. (Effective July 1, 2006.)** (1) Except under subsection (3) of this section, a retiree under the provisions of plan 2 shall not be eligible to receive such retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.40.010, 41.32.010, 41.37.010, or 41.35.010, or as a law enforcement officer or fire fighter as defined in RCW 41.26.030. If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused his or her benefits to be suspended. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

(2) The department shall adopt rules implementing this section.

(3) A member or retiree who becomes employed in an eligible position as defined in RCW 41.40.010, 41.32.010, 41.35.010, or 41.37.010 shall have the option to enter into membership in the corresponding retirement system for that position notwithstanding any provision of RCW 41.04.270. A retiree who elects to enter into plan membership shall have his or her benefits suspended as provided in subsection (1) of this section. A retiree who does not elect to enter into plan membership shall continue to receive his or her benefits without interruption. [2005 c 372 § 2; 2004 c 242 § 54; 1998 c 341 § 604; 1990 c 274 § 12; 1977 ex.s. c 294 § 11.]

**Effective date—2005 c 372 § 2:** "Section 2 of this act takes effect July 1, 2006." [2005 c 372 § 5.]

**Effective date—2004 c 242:** See RCW 41.37.901.

**Effective date—1998 c 341:** See RCW 41.35.901.

**Findings—Construction—1990 c 274:** See notes following RCW 41.32.010.

**Application—Reservation—1990 c 274 §§ 11, 12, 14, and 15:** See note following RCW 41.40.690.

**Legislative direction and placement—Section headings—1977 ex.s. c 294:** See notes following RCW 41.26.410.

**41.26.520 Service credit for paid leave of absence, officers of labor organizations, unpaid leave of absence, military service.** (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under the provisions of RCW 41.26.410 through 41.26.550.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of

absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The basic salary reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (7) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if the member makes the employer, member, and state contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of service or prior to retirement whichever comes sooner.

(4) A law enforcement member may be authorized by an employer to work part time and to go on a part-time leave of absence. During a part-time leave of absence a member is prohibited from any other employment with their employer. A member is eligible to receive credit for any portion of service credit not earned during a month of part-time leave of absence if the member makes the employer, member, and state contributions, plus interest, as determined by the department for the period of the authorized leave within five years of resumption of full-time service or prior to retirement whichever comes sooner. Any service credit purchased for a part-time leave of absence is included in the two-year maximum provided in subsection (3) of this section.

(5) If a member fails to meet the time limitations of subsection (3) or (4) of this section, the member may receive a maximum of two years of service credit during a member's working career for those periods when a member is on unpaid leave of absence authorized by an employer. This may be done by paying the amount required under RCW 41.50.165(2) prior to retirement.

(6) For the purpose of subsection (3) or (4) of this section the contribution shall not include the contribution for the unfunded supplemental present value as required by RCW 41.45.060, 41.45.061, and 41.45.067. The contributions required shall be based on the average of the member's basic salary at both the time the authorized leave of absence was granted and the time the member resumed employment.

(7) A member who leaves the employ of an employer to enter the uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

(a) The member qualifies for service credit under this subsection if:

(i) Within ninety days of the member's honorable discharge from the uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services; and

(ii) The member makes the employee contributions required under RCW 41.45.060, 41.45.061, and 41.45.067 within five years of resumption of service or prior to retirement, whichever comes sooner; or

(iii) Prior to retirement and not within ninety days of the member's honorable discharge or five years of resumption of service the member pays the amount required under RCW 41.50.165(2).

(b) Upon receipt of member contributions under (a)(ii), (d)(iii), or (e)(iii) of this subsection, the department shall establish the member's service credit and shall bill the employer and the state for their respective contributions required under RCW 41.26.450 for the period of military service, plus interest as determined by the department.

(c) The contributions required under (a)(ii), (d)(iii), or (e)(iii) of this subsection shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(d) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under chapter 41.45 RCW within five years of the date of death or prior to the distribution of any benefit, whichever comes first.

(e) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first.

(8) A member receiving benefits under Title 51 RCW who is not receiving benefits under this chapter shall be deemed to be on unpaid, authorized leave of absence. [2005 c 64 § 9; 2002 c 28 § 1; 2000 c 247 § 1105; 1996 c 61 § 1; 1994 c 197 § 10; 1993 c 95 § 4; 1992 c 119 § 1; 1989 c 88 § 2; 1977 ex.s. c 294 § 13.]

**Effective dates—Subchapter headings not law—2000 c 247:** See RCW 41.40.931 and 41.40.932.



**Intent—Severability—Effective date—1994 c 197:** See notes following RCW 41.50.165.

**Retroactive application—Effective date—1993 c 95:** See notes following RCW 41.40.175.

**Retroactive application—1992 c 119:** "This act applies retroactively for retirement system service credit for military service which began on or after January 1, 1990." [1992 c 119 § 4.]

**Legislative direction and placement—Section headings—1977 ex.s. c 294:** See notes following RCW 41.26.410.

**41.26.547 Emergency medical technicians—Job relocation—Retirement options. (Expires July 1, 2013.)** (1) A member of plan 2 who was a member of the public employees' retirement system while employed providing emergency medical services for a city, town, county, or district and whose job was relocated from another department of a city, town, county, or district to a fire department, or a member of the public employees' retirement system who is eligible for membership in plan 2 under RCW 41.26.030(4)(h), has the following options:

(a) Remain a member of the public employees' retirement system; or

(b) Leave any service credit earned as a member of the public employees' retirement system in the public employees' retirement system, and have all future service earned in the law enforcement officers' and fire fighters' retirement system plan 2, becoming a dual member under the provisions of chapter 41.54 RCW; or

(c) Make an election no later than June 30, 2013, filed in writing with the department of retirement systems, to transfer service credit previously earned as an emergency medical technician for a city, town, county, or district in the public employees' retirement system plan 1 or plan 2 to the law enforcement officers' and fire fighters' retirement system plan 2 as defined in RCW 41.26.030. Service credit that a member elects to transfer from the public employees' retirement system to the law enforcement officers' and fire fighters' retirement system under this section shall be transferred no earlier than five years after the effective date the member elects to transfer, and only after the member earns five years of service credit as a fire fighter following the effective date the member elects to transfer.

(2) A member of plan 1 who was a member of the public employees' retirement system while employed providing emergency medical services for a city, town, county, or district and whose job was relocated from another department of a city, town, county, or district to a fire department has the following options:

(a) Remain a member of the public employees' retirement system; or

(b) Leave any service credit earned as a member of the public employees' retirement system in the public employees' retirement system, and have all future service earned in the law enforcement officers' and fire fighters' retirement system plan 1.

(3)(a) A member who elects to transfer service credit under subsection (1)(c) of this section shall make the payments required by this subsection prior to having service credit earned as an emergency medical technician for a city, town, county, or district under the public employees' retirement system plan 1 or plan 2 transferred to the law enforcement officers' and fire fighters' retirement system plan 2.

However, in no event shall service credit be transferred earlier than five years after the effective date the member elects to transfer, or prior to the member earning five years of service credit as a fire fighter following the effective date the member elects to transfer.

(b) A member who elects to transfer service credit under this subsection shall pay, for the applicable period of service, the difference between the contributions the employee paid to the public employees' retirement system plan 1 or plan 2 and the contributions that would have been paid by the employee had the employee been a member of the law enforcement officers' and fire fighters' retirement system plan 2, plus interest on this difference as determined by the director. This payment must be made no later than five years from the effective date of the election made under subsection (1)(c) of this section and must be made prior to retirement.

(c) For a period of service transferred by a member eligible for membership in plan 2 under RCW 41.26.030(4)(h), the employer shall pay an amount sufficient to ensure that the contribution level to the law enforcement officers' and fire fighters' retirement system will not increase due to this transfer. This payment must be made within five years of the completion of the employee payment in (b) of this subsection.

(d) No earlier than five years after the effective date the member elects to transfer service credit under this section and upon completion of the payment required in (b) of this subsection, the department shall transfer from the public employees' retirement system plan 1 or plan 2 to the law enforcement officers' and fire fighters' retirement system plan 2: (i) All of the employee's applicable accumulated contributions plus interest and an equal amount of employer contributions; and (ii) all applicable months of service, as defined in RCW 41.26.030(14)(b), credited to the employee under this chapter for service as an emergency services provider for a city, town, county, or district as though that service was rendered as a member of the law enforcement officers' and fire fighters' retirement system plan 2.

(e) Upon transfer of service credit, contributions, and interest under this subsection, the employee is permanently excluded from membership in the public employees' retirement system for all service transfers related to their time served as an emergency medical technician for a city, town, county, or district under the public employees' retirement system plan 1 or plan 2. [2005 c 459 § 2; 2003 c 293 § 1.]

**Expiration date—2005 c 459:** See note following RCW 41.26.030.

**Expiration date—2003 c 293:** "This act expires July 1, 2013." [2003 c 293 § 2.]

## Chapter 41.32 RCW

### TEACHERS' RETIREMENT

#### Sections

41.32.010	Definitions.
41.32.260	Credit for military service or as state legislator.
41.32.767	Additional service credit purchase—Rules. ( <i>Effective July 1, 2006.</i> )
41.32.768	Member with terminal illness—Removal from system.
41.32.810	Service credit for paid leave of absence, officers of labor organizations, unpaid leave of absence, military service.
41.32.860	Suspension of retirement allowance upon reemployment—Reinstatement.

- 41.32.865 Service credit for paid leave of absence, officers of labor organizations, unpaid leave of absence, military service.
- 41.32.877 Additional service credit purchase—Rules. (*Effective July 1, 2006.*)
- 41.32.878 Member with terminal illness—Removal from system.

**41.32.010 Definitions.** As used in this chapter, unless a different meaning is plainly required by the context:

(1)(a) "Accumulated contributions" for plan 1 members, means the sum of all regular annuity contributions and, except for the purpose of withdrawal at the time of retirement, any amount paid under RCW 41.50.165(2) with regular interest thereon.

(b) "Accumulated contributions" for plan 2 members, means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under RCW 41.50.165(2), together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality tables and regulations as shall be adopted by the director and regular interest.

(3) "Annuity" means the moneys payable per year during life by reason of accumulated contributions of a member.

(4) "Member reserve" means the fund in which all of the accumulated contributions of members are held.

(5)(a) "Beneficiary" for plan 1 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter.

(b) "Beneficiary" for plan 2 and plan 3 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(6) "Contract" means any agreement for service and compensation between a member and an employer.

(7) "Creditable service" means membership service plus prior service for which credit is allowable. This subsection shall apply only to plan 1 members.

(8) "Dependent" means receiving one-half or more of support from a member.

(9) "Disability allowance" means monthly payments during disability. This subsection shall apply only to plan 1 members.

(10)(a) "Earnable compensation" for plan 1 members, means:

(i) All salaries and wages paid by an employer to an employee member of the retirement system for personal services rendered during a fiscal year. In all cases where compensation includes maintenance the employer shall fix the value of that part of the compensation not paid in money.

(ii) For an employee member of the retirement system teaching in an extended school year program, two consecutive extended school years, as defined by the employer school district, may be used as the annual period for determining earnable compensation in lieu of the two fiscal years.

(iii) "Earnable compensation" for plan 1 members also includes the following actual or imputed payments, which are not paid for personal services:

(A) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wages which the individual would have earned during a payroll period shall be considered earnable compensation and the individual shall receive the equivalent service credit.

(B) If a leave of absence, without pay, is taken by a member for the purpose of serving as a member of the state legislature and such member has served in the legislature five or more years, the salary which would have been received for the position from which the leave of absence was taken shall be considered as compensation earnable if the employee's contribution thereon is paid by the employee. In addition, where a member has been a member of the state legislature for five or more years, earnable compensation for the member's two highest compensated consecutive years of service shall include a sum not to exceed thirty-six hundred dollars for each of such two consecutive years, regardless of whether or not legislative service was rendered during those two years.

(iv) For members employed less than full time under written contract with a school district, or community college district, in an instructional position, for which the member receives service credit of less than one year in all of the years used to determine the earnable compensation used for computing benefits due under RCW 41.32.497, 41.32.498, and 41.32.520, the member may elect to have earnable compensation defined as provided in RCW 41.32.345. For the purposes of this subsection, the term "instructional position" means a position in which more than seventy-five percent of the member's time is spent as a classroom instructor (including office hours), a librarian, a psychologist, a social worker, a nurse, a physical therapist, an occupational therapist, a speech language pathologist or audiologist, or a counselor. Earnable compensation shall be so defined only for the purpose of the calculation of retirement benefits and only as necessary to insure that members who receive fractional service credit under RCW 41.32.270 receive benefits proportional to those received by members who have received full-time service credit.

(v) "Earnable compensation" does not include:

(A) Remuneration for unused sick leave authorized under RCW 41.04.340, 28A.400.210, or 28A.310.490;

(B) Remuneration for unused annual leave in excess of thirty days as authorized by RCW 43.01.044 and 43.01.041.

(b) "Earnable compensation" for plan 2 and plan 3 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

"Earnable compensation" for plan 2 and plan 3 members also includes the following actual or imputed payments which, except in the case of (b)(ii)(B) of this subsection, are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wages which the individual would have earned

(ii) For an employee member of the retirement system teaching in an extended school year program, two consecutive extended school years, as defined by the employer school district, may be used as the annual period for determining earnable compensation in lieu of the two fiscal years.

(iii) "Earnable compensation" for plan 1 members also includes the following actual or imputed payments, which are not paid for personal services:

(A) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wages which the individual would have earned during a payroll period shall be considered earnable compensation and the individual shall receive the equivalent service credit.

(B) If a leave of absence, without pay, is taken by a member for the purpose of serving as a member of the state legislature and such member has served in the legislature five or more years, the salary which would have been received for the position from which the leave of absence was taken shall be considered as compensation earnable if the employee's contribution thereon is paid by the employee. In addition, where a member has been a member of the state legislature for five or more years, earnable compensation for the member's two highest compensated consecutive years of service shall include a sum not to exceed thirty-six hundred dollars for each of such two consecutive years, regardless of whether or not legislative service was rendered during those two years.

(iv) For members employed less than full time under written contract with a school district, or community college district, in an instructional position, for which the member receives service credit of less than one year in all of the years used to determine the earnable compensation used for computing benefits due under RCW 41.32.497, 41.32.498, and 41.32.520, the member may elect to have earnable compensation defined as provided in RCW 41.32.345. For the purposes of this subsection, the term "instructional position" means a position in which more than seventy-five percent of the member's time is spent as a classroom instructor (including office hours), a librarian, a psychologist, a social worker, a nurse, a physical therapist, an occupational therapist, a speech language pathologist or audiologist, or a counselor. Earnable compensation shall be so defined only for the purpose of the calculation of retirement benefits and only as necessary to insure that members who receive fractional service credit under RCW 41.32.270 receive benefits proportional to those received by members who have received full-time service credit.

(v) "Earnable compensation" does not include:

(A) Remuneration for unused sick leave authorized under RCW 41.04.340, 28A.400.210, or 28A.310.490;

(B) Remuneration for unused annual leave in excess of thirty days as authorized by RCW 43.01.044 and 43.01.041.

(b) "Earnable compensation" for plan 2 and plan 3 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

"Earnable compensation" for plan 2 and plan 3 members also includes the following actual or imputed payments which, except in the case of (b)(ii)(B) of this subsection, are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wages which the individual would have earned

during a payroll period shall be considered earnable compensation, to the extent provided above, and the individual shall receive the equivalent service credit.

(ii) In any year in which a member serves in the legislature the member shall have the option of having such member's earnable compensation be the greater of:

(A) The earnable compensation the member would have received had such member not served in the legislature; or

(B) Such member's actual earnable compensation received for teaching and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions.

(11) "Employer" means the state of Washington, the school district, or any agency of the state of Washington by which the member is paid.

(12) "Fiscal year" means a year which begins July 1st and ends June 30th of the following year.

(13) "Former state fund" means the state retirement fund in operation for teachers under chapter 187, Laws of 1923, as amended.

(14) "Local fund" means any of the local retirement funds for teachers operated in any school district in accordance with the provisions of chapter 163, Laws of 1917 as amended.

(15) "Member" means any teacher included in the membership of the retirement system who has not been removed from membership under RCW 41.32.878 or 41.32.768. Also, any other employee of the public schools who, on July 1, 1947, had not elected to be exempt from membership and who, prior to that date, had by an authorized payroll deduction, contributed to the member reserve.

(16) "Membership service" means service rendered subsequent to the first day of eligibility of a person to membership in the retirement system: PROVIDED, That where a member is employed by two or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service is rendered. The provisions of this subsection shall apply only to plan 1 members.

(17) "Pension" means the moneys payable per year during life from the pension reserve.

(18) "Pension reserve" is a fund in which shall be accumulated an actuarial reserve adequate to meet present and future pension liabilities of the system and from which all pension obligations are to be paid.

(19) "Prior service" means service rendered prior to the first date of eligibility to membership in the retirement system for which credit is allowable. The provisions of this subsection shall apply only to plan 1 members.

(20) "Prior service contributions" means contributions made by a member to secure credit for prior service. The provisions of this subsection shall apply only to plan 1 members.

(21) "Public school" means any institution or activity operated by the state of Washington or any instrumentality or political subdivision thereof employing teachers, except the University of Washington and Washington State University.

(22) "Regular contributions" means the amounts required to be deducted from the compensation of a member

and credited to the member's individual account in the member reserve. This subsection shall apply only to plan 1 members.

(23) "Regular interest" means such rate as the director may determine.

(24)(a) "Retirement allowance" for plan 1 members, means monthly payments based on the sum of annuity and pension, or any optional benefits payable in lieu thereof.

(b) "Retirement allowance" for plan 2 and plan 3 members, means monthly payments to a retiree or beneficiary as provided in this chapter.

(25) "Retirement system" means the Washington state teachers' retirement system.

(26)(a) "Service" for plan 1 members means the time during which a member has been employed by an employer for compensation.

(i) If a member is employed by two or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service is rendered.

(ii) As authorized by RCW 28A.400.300, up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(iii) As authorized in RCW 41.32.065, service earned in an out-of-state retirement system that covers teachers in public schools may be applied solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(b) "Service" for plan 2 and plan 3 members, means periods of employment by a member for one or more employers for which earnable compensation is earned subject to the following conditions:

(i) A member employed in an eligible position or as a substitute shall receive one service credit month for each month of September through August of the following year if he or she earns earnable compensation for eight hundred ten or more hours during that period and is employed during nine of those months, except that a member may not receive credit for any period prior to the member's employment in an eligible position except as provided in RCW 41.32.812 and 41.50.132;

(ii) If a member is employed either in an eligible position or as a substitute teacher for nine months of the twelve month period between September through August of the following year but earns earnable compensation for less than eight hundred ten hours but for at least six hundred thirty hours, he or she will receive one-half of a service credit month for each month of the twelve month period;

(iii) All other members in an eligible position or as a substitute teacher shall receive service credit as follows:

(A) A service credit month is earned in those calendar months where earnable compensation is earned for ninety or more hours;

(B) A half-service credit month is earned in those calendar months where earnable compensation is earned for at least seventy hours but less than ninety hours; and

(C) A quarter-service credit month is earned in those calendar months where earnable compensation is earned for less than seventy hours.

(iv) Any person who is a member of the teachers' retirement system and who is elected or appointed to a state elec-

tive position may continue to be a member of the retirement system and continue to receive a service credit month for each of the months in a state elective position by making the required member contributions.

(v) When an individual is employed by two or more employers the individual shall only receive one month's service credit during any calendar month in which multiple service for ninety or more hours is rendered.

(vi) As authorized by RCW 28A.400.300, up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.32.470. For purposes of plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than eleven days equals one-quarter service credit month;

(B) Eleven or more days but less than twenty-two days equals one-half service credit month;

(C) Twenty-two days equals one service credit month;

(D) More than twenty-two days but less than thirty-three days equals one and one-quarter service credit month;

(E) Thirty-three or more days but less than forty-five days equals one and one-half service credit month.

(vii) As authorized in RCW 41.32.065, service earned in an out-of-state retirement system that covers teachers in public schools may be applied solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(viii) The department shall adopt rules implementing this subsection.

(27) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(28) "Service credit month" means a full service credit month or an accumulation of partial service credit months that are equal to one.

(29) "Teacher" means any person qualified to teach who is engaged by a public school in an instructional, administrative, or supervisory capacity. The term includes state, educational service district, and school district superintendents and their assistants and all employees certificated by the superintendent of public instruction; and in addition thereto any full time school doctor who is employed by a public school and renders service of an instructional or educational nature.

(30) "Average final compensation" for plan 2 and plan 3 members, means the member's average earnable compensation of the highest consecutive sixty service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.32.810(2).

(31) "Retiree" means any person who has begun accruing a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member.

(32) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(33) "Director" means the director of the department.

(34) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(35) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(36) "Substitute teacher" means:

(a) A teacher who is hired by an employer to work as a temporary teacher, except for teachers who are annual contract employees of an employer and are guaranteed a minimum number of hours; or

(b) Teachers who either (i) work in ineligible positions for more than one employer or (ii) work in an ineligible position or positions together with an eligible position.

(37)(a) "Eligible position" for plan 2 members from June 7, 1990, through September 1, 1991, means a position which normally requires two or more uninterrupted months of creditable service during September through August of the following year.

(b) "Eligible position" for plan 2 and plan 3 on and after September 1, 1991, means a position that, as defined by the employer, normally requires five or more months of at least seventy hours of earnable compensation during September through August of the following year.

(c) For purposes of this chapter an employer shall not define "position" in such a manner that an employee's monthly work for that employer is divided into more than one position.

(d) The elected position of the superintendent of public instruction is an eligible position.

(38) "Plan 1" means the teachers' retirement system, plan 1 providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(39) "Plan 2" means the teachers' retirement system, plan 2 providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977, and prior to July 1, 1996.

(40) "Plan 3" means the teachers' retirement system, plan 3 providing the benefits and funding provisions covering persons who first become members of the system on and after July 1, 1996, or who transfer under RCW 41.32.817.

(41) "Index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items compiled by the bureau of labor statistics, United States department of labor.

(42) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(43) "Index B" means the index for the year prior to index A.

(44) "Index year" means the earliest calendar year in which the index is more than sixty percent of index A.

(45) "Adjustment ratio" means the value of index A divided by index B.

(46) "Annual increase" means, initially, fifty-nine cents per month per year of service which amount shall be increased each July 1st by three percent, rounded to the nearest cent.

(47) "Member account" or "member's account" for purposes of plan 3 means the sum of the contributions and earnings on behalf of the member in the defined contribution portion of plan 3.

(48) "Separation from service or employment" occurs when a person has terminated all employment with an employer.

(49) "Employed" or "employee" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. The department shall adopt rules and interpret this subsection consistent with common law. [2005 c 131 § 8; 2005 c 23 § 1; 2003 c 31 § 1; 1997 c 254 § 3; 1996 c 39 § 1. Prior: 1995 c 345 § 9; 1995 c 239 § 102; prior: 1994 c 298 § 3; 1994 c 247 § 2; 1994 c 197 § 12; 1993 c 95 § 7; prior: 1992 c 212 § 1; 1992 c 3 § 3; prior: 1991 c 343 § 3; 1991 c 35 § 31; 1990 c 274 § 2; 1987 c 265 § 1; 1985 c 13 § 6; prior: 1984 c 256 § 1; 1984 c 5 § 1; 1983 c 5 § 1; 1982 1st ex.s. c 52 § 6; 1981 c 256 § 5; 1979 ex.s. c 249 § 5; 1977 ex.s. c 293 § 18; 1975 1st ex.s. c 275 § 149; 1974 ex.s. c 199 § 1; 1969 ex.s. c 176 § 95; 1967 c 50 § 11; 1965 ex.s. c 81 § 1; 1963 ex.s. c 14 § 1; 1955 c 274 § 1; 1947 c 80 § 1; Rem. Supp. 1947 § 4995-20; prior: 1941 c 97 § 1; 1939 c 86 § 1; 1937 c 221 § 1; 1931 c 115 § 1; 1923 c 187 § 1; 1917 c 163 § 1; Rem. Supp. 1941 § 4995-1.]

**Reviser's note:** This section was amended by 2005 c 23 § 1 and by 2005 c 131 § 8, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2005 c 131:** See note following RCW 41.40.823.

**Intent—Construction—Application—1997 c 254:** See notes following RCW 41.26.490.

**Effective dates—1996 c 39:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1996, with the exception of section 23 of this act, which shall take effect immediately [March 13, 1996]." [1996 c 39 § 25.]

**Intent—Effective date—1995 c 345:** See notes following RCW 41.32.489.

**Intent—Purpose—1995 c 239:** See note following RCW 41.32.831.

**Effective date—Part and subchapter headings not law—1995 c 239:** See notes following RCW 41.32.005.

**Intent—1994 c 298:** See note following RCW 41.40.010.

**Effective date—1994 c 247:** See note following RCW 41.32.4991.

**Intent—Severability—Effective date—1994 c 197:** See notes following RCW 41.50.165.

**Retroactive application—Effective date—1993 c 95:** See notes following RCW 41.40.175.

**Findings—Effective dates—1991 c 343:** See notes following RCW 41.50.005.

**Intent—1991 c 35:** See note following RCW 41.26.005.

**Findings—1990 c 274:** "(1) The current system for calculating service credit for school district employees is difficult and costly to administer. By changing from the current hours per month calculation to an hours per year calculation, the accumulation of service credit by school district employees will be easier to understand and to administer.

(2) The current system for granting service credit for substitute teachers is difficult and costly to administer. By notifying substitute teachers of their eligibility for service credit and allowing the substitute teacher to apply for service credit, the accumulation of service credit by substitute teachers will be easier to understand and to administer.

(3) Currently, temporary employees in eligible positions in the public employees' retirement system are exempted from membership in the system for up to six months. If the position lasts for longer than six months the employee is made a member retroactively. This conditional exemption causes tracking problems for the department of retirement systems and places a heavy financial burden for back contributions on a temporary employee who crosses the six-month barrier. Under the provisions of this act all persons, other than retirees, who are hired in an eligible position will become members immediately, thereby alleviating the problems described in

this section.

(4) The legislature finds that retirees from the plan 2 systems of the law enforcement officers' and fire fighters' retirement system, the teachers' retirement system, and the public employees' retirement system, may not work for a nonfederal public employer without suffering a suspension of their retirement benefits. This fails to recognize the current and projected demographics indicating the decreasing work force and that the expertise possessed by retired workers can provide a substantial benefit to the state. At the same time, the legislature recognizes that a person who is working full time should have his or her pension delayed until he or she enters full or partial retirement. By allowing plan 2 retirees to work in ineligible positions, the competing concerns listed above are both properly addressed." [1990 c 274 § 1.]

**Intent—Reservation—1990 c 274 §§ 2, 4:** "(1) The 1990 amendments to RCW 41.32.010(27)(b) and 41.40.450 are intended by the legislature to effect administrative, rather than substantive, changes to the affected retirement plan. The legislature therefore reserves the right to revoke or amend the 1990 amendments to RCW 41.32.010(27)(b) and 41.40.450. No member is entitled to have his or her service credit calculated under the 1990 amendments to RCW 41.32.010(27)(b) and 41.40.450 as a matter of contractual right.

(2) The department's retroactive application of the changes made in RCW 41.32.010(27)(b) to all service rendered between October 1, 1977, and August 31, 1990, is consistent with the legislative intent of the 1990 changes to RCW 41.32.010(27)(b)." [1994 c 177 § 10; 1990 c 274 § 18.]

**Effective date—1990 c 274:** "Sections 1 through 8 of this act shall take effect September 1, 1990." [1990 c 274 § 21.]

**Construction—1990 c 274:** "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1990 c 274 § 17.]

**Purpose—Application—Retrospective application—1985 c 13:** See notes following RCW 41.04.445.

**Effective dates—1982 1st ex.s. c 52:** See note following RCW 2.10.180.

**Purpose—Severability—1981 c 256:** See notes following RCW 41.26.030.

**Effective date—Severability—1977 ex.s. c 293:** See notes following RCW 41.32.755.

**Emergency—1974 ex.s. c 199:** "This 1974 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately." [1974 ex.s. c 199 § 7.]

**Severability—1974 ex.s. c 199:** "If any provision of this 1974 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 199 § 8.]

**Construction—1974 ex.s. c 199:** "(1) Subsection (3) of section 4 of this 1974 amendatory act relating to elected and appointed officials shall be retroactive to January 1, 1973.

(2) Amendatory language contained in subsection (11) of section 1 relating to members as members of the legislature and in provisos (2) and (3) of section 2 of this 1974 amendatory act shall only apply to those members who are serving as a state senator, state representative or state superintendent of public instruction on or after the effective date of this 1974 amendatory act.

(3) Notwithstanding any other provision of this 1974 amendatory act, RCW 41.32.497 as last amended by section 2, chapter 189, Laws of 1973 1st ex. sess. shall be applicable to any member serving as a state senator, state representative or superintendent of public instruction on the effective date of this 1974 amendatory act." [1974 ex.s. c 199 § 5.]

**Reviser's note:** (1) "Subsection (3) of section 4 of this 1974 amendatory act" is codified as RCW 41.32.498(3).

(2) Sections 1 and 2 of 1974 ex.s. c 199 consist of amendments to RCW 41.32.010 and 41.32.260. For amendatory language, a portion of which was vetoed, see the 1973-1974 session laws.

(3) "this 1974 amendatory act" [1974 ex.s. c 199] is codified in RCW 41.32.010, 41.32.260, 41.32.497, 41.32.498, and 41.32.4945. The effective date of 1974 ex.s. c 199 is May 6, 1974.

**Effective date—1969 ex.s. c 176:** The effective date of the amendments to this section and RCW 41.32.420 is April 25, 1969.

**Effective date—1967 c 50:** "This 1967 amendatory act shall take effect on July 1, 1967." [1967 c 50 § 12.]

**Severability—1967 c 50:** "If any provision of this 1967 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this 1967 amendatory act, or the application of the provision to other persons or circumstances is not affected." [1967 c 50 § 13.]

**Severability—1965 ex.s. c 81:** "If any provision of this act is held to be invalid the remainder of this act shall not be affected." [1965 ex.s. c 81 § 9.]

**Effective date—1965 ex.s. c 81:** "The effective date of this act is July 1, 1965." [1965 ex.s. c 81 § 10.]

**Savings—1963 ex.s. c 14:** "The amendment of any section by this 1963 act shall not be construed as impairing any existing right acquired or any liability incurred by any member under the provisions of the section amended; nor shall it affect any vested right of any former member who reenters public school employment or becomes reinstated as a member subsequent to the effective date of such act." [1963 ex.s. c 14 § 23.]

**Severability—1963 ex.s. c 14:** "If any provision of this act is held to be invalid the remainder of the act shall not be affected." [1963 ex.s. c 14 § 24.]

**Effective date—1963 ex.s. c 14:** "The effective date of this act is July 1, 1964." [1963 ex.s. c 14 § 26.]

**41.32.260 Credit for military service or as state legislator.** Any member whose public school service is interrupted by active service to the United States as a member of its uniformed services, or to the state of Washington, as a member of the legislature, may upon becoming reemployed in the public schools, receive credit for that service upon presenting satisfactory proof, and contributing to the member reserve, either in a lump sum or installments, amounts determined by the director. Except that no military service credit in excess of five years shall be established or reestablished after July 1, 1961, unless the service was actually rendered during time of war. This section shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

(1) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(a) Provides to the director proof of the member's death while serving in the uniformed services;

(b) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(c) Pays the employee contributions required under chapter 41.45 RCW within five years of the date of death or prior to the distribution of any benefit, whichever comes first.

(2) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(a) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(b) The member provides to the director proof of honorable discharge from the uniformed services; and

(c) The member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first. [2005 c 64 § 6; 1992 c 212 § 8; 1991 c 35 § 40; 1974 ex.s. c 199 § 2; 1973 1st ex.s. c 189 § 1; 1971 ex.s. c 271 § 1; 1967 c 50 § 2; 1961 c 132 § 2; 1955 c 274 § 8; 1947 c 80 § 26; Rem. Supp. 1947 § 4995-45. Prior: 1941 c 97 § 4, part; 1939 c 86 § 4, part; 1937 c 221 § 1, part; Rem. Supp. 1941 § 4995-5, part.]

**Intent—1991 c 35:** See note following RCW 41.26.005.

**Emergency—Severability—1974 ex.s. c 199:** See notes following RCW 41.32.010.

**Construction—1974 ex.s. c 199:** See note following RCW 41.32.010.

**Severability—1973 1st ex.s. c 189:** See note following RCW 41.32.215.

**Parts of sections retroactive—1973 1st ex.s. c 189:** See note following RCW 41.32.498.

**Severability—1971 ex.s. c 271:** "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 271 § 17.]

**Effective date—Severability—1967 c 50:** See notes following RCW 41.32.010.

**Effective date—1961 c 132:** See note following RCW 41.32.240.

*Members' retirement contributions—Payment by employer:* RCW 41.04.445.

**41.32.767 Additional service credit purchase—Rules. (Effective July 1, 2006.)** (1) A member eligible to retire under RCW 41.32.765 (2) or (3) may, at the time of filing a written application for retirement with the department, apply to the department to make a one-time purchase of up to five years of additional service credit.

(2) To purchase additional service credit under this section, a member shall pay the actuarial equivalent value of the resulting increase in the member's benefit.

(3) Subject to rules adopted by the department, a member purchasing additional service credit under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(4) Additional service credit purchased under this section is not membership service, and may not be used to qualify a member for retirement under RCW 41.32.765. [2005 c 65 § 1.]

**Effective date—2005 c 65:** "This act takes effect July 1, 2006." [2005 c 65 § 3.]

**41.32.768 Member with terminal illness—Removal from system.** (1) Upon application of the member, a mem-

ber who is diagnosed with a terminal illness shall be removed from the system subject to the following conditions:

(a) That the medical adviser, after a medical examination of the member made by or under the direction of the medical adviser, has certified in writing that the member has a terminal illness with a life expectancy of five or fewer years; and

(b) That the director concurs in the recommendation of the medical adviser.

(2) Members removed from the system shall not make contributions and shall not accumulate additional service credit.

(3) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to this benefit not granted prior to that amendment or repeal. [2005 c 131 § 5.]

**Effective date—2005 c 131:** See note following RCW 41.40.823.

**41.32.810 Service credit for paid leave of absence, officers of labor organizations, unpaid leave of absence, military service.** (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under the provisions of RCW 41.32.755 through 41.32.825.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The earnable compensation reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (6) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if the member makes both the employer and member contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of service or prior to retirement whichever comes sooner.

(4) If a member fails to meet the time limitations of subsection (3) of this section, the member may receive a maximum of two years of service credit during a member's working career for those periods when a member is on unpaid leave of absence authorized by an employer. This may be done by paying the amount required under RCW 41.50.165(2) prior to retirement.

(5) For the purpose of subsection (3) of this section, the contribution shall not include the contribution for the unfunded supplemental present value as required by \*RCW 41.32.775. The contributions required shall be based on the average of the member's earnable compensation at both the

time the authorized leave of absence was granted and the time the member resumed employment.

(6) A member who leaves the employ of an employer to enter the uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

(a) The member qualifies for service credit under this subsection if:

(i) Within ninety days of the member's honorable discharge from the uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services; and

(ii) The member makes the employee contributions required under \*RCW 41.32.775 within five years of resumption of service or prior to retirement, whichever comes sooner; or

(iii) Prior to retirement and not within ninety days of the member's honorable discharge or five years of resumption of service the member pays the amount required under RCW 41.50.165(2).

(b) Upon receipt of member contributions under (a)(ii), (d)(iii), or (e)(iii) of this subsection, the department shall establish the member's service credit and shall bill the employer for its contribution required under \*RCW 41.32.775 for the period of military service, plus interest as determined by the department.

(c) The contributions required under (a)(ii), (d)(iii), or (e)(iii) of this subsection shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(d) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under chapter 41.45 RCW within five years of the date of death or prior to the distribution of any benefit, whichever comes first.

(e) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employ-

ment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first. [2005 c 64 § 7; 1996 c 61 § 2; 1994 c 197 § 20; 1993 c 95 § 6; 1992 c 119 § 2; 1977 ex.s. c 293 § 13.]

**\*Reviser's note:** RCW 41.32.775 was repealed by 1995 c 239 § 326, effective July 1, 1996.

**Intent—Severability—Effective date—1994 c 197:** See notes following RCW 41.50.165.

**Retroactive application—Effective date—1993 c 95:** See notes following RCW 41.40.175.

**Retroactive application—1992 c 119:** See note following RCW 41.26.520.

**Effective date—Severability—Legislative direction and placement—Section headings—1977 ex.s. c 293:** See notes following RCW 41.32.755.

**41.32.860 Suspension of retirement allowance upon reemployment—Reinstatement.** (1) Except under RCW 41.32.862, no retiree shall be eligible to receive such retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.40.010, 41.32.010, 41.35.010, or 41.37.010, or as a law enforcement officer or fire fighter as defined in RCW 41.26.030.

(2) If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused the suspension of benefits. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department. [2005 c 327 § 2; 2001 2nd sp.s. c 10 § 9; 1997 c 254 § 7; 1995 c 239 § 110.]

**Effective dates—2001 2nd sp.s. c 10:** See note following RCW 41.40.037.

**Intent—Construction—Application—1997 c 254:** See notes following RCW 41.26.490.

**Intent—Purpose—1995 c 239:** See note following RCW 41.32.831.

**Effective date—Part and subchapter headings not law—1995 c 239:** See notes following RCW 41.32.005.

*Benefits not contractual right until date specified: RCW 41.34.100.*

**41.32.865 Service credit for paid leave of absence, officers of labor organizations, unpaid leave of absence, military service.** (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The earnable compensation reported for a member who establishes service credit under this subsection may not be greater

than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (4) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if:

(a) The member makes the contribution on behalf of the employer, plus interest, as determined by the department; and

(b) The member makes the employee contribution, plus interest, as determined by the department, to the defined contribution portion.

The contributions required shall be based on the average of the member's earnable compensation at both the time the authorized leave of absence was granted and the time the member resumed employment.

(4) A member who leaves the employ of an employer to enter the uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service if within ninety days of the member's honorable discharge from the uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

The department shall establish the member's service credit and shall bill the employer for its contribution required under chapter 239, Laws of 1995 for the period of military service, plus interest as determined by the department. Service credit under this subsection may be obtained only if the member makes the employee contribution to the defined contribution portion as determined by the department.

The contributions required shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(a) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under this subsection within five years of the date of death or prior to the distribution of any benefit, whichever comes first.

(b) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is enti-



tled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under this subsection within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first. [2005 c 64 § 8; 1996 c 61 § 3; 1995 c 239 § 111.]

**Effective date—1996 c 61 § 3:** "Section 3 of this act shall take effect July 1, 1996." [1996 c 61 § 5.]

**Intent—Purpose—1995 c 239:** See note following RCW 41.32.831.

**Effective date—Part and subchapter headings not law—1995 c 239:** See notes following RCW 41.32.005.

*Benefits not contractual right until date specified: RCW 41.34.100.*

**41.32.877 Additional service credit purchase—Rules. (Effective July 1, 2006.)** (1) A member eligible to retire under RCW 41.32.875 (2) or (3) may, at the time of filing a written application for retirement with the department, apply to the department to make a one-time purchase of up to five years of additional service credit.

(2) To purchase additional service credit under this section, a member shall pay the actuarial equivalent value of the resulting increase in the member's benefit.

(3) Subject to rules adopted by the department, a member purchasing additional service credit under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(4) Additional service credit purchased under this section is not membership service, and may not be used to qualify for retirement under RCW 41.32.875. [2005 c 65 § 2.]

**Effective date—2005 c 65:** See note following RCW 41.32.767.

**41.32.878 Member with terminal illness—Removal from system.** (1) Upon application of the member, a member who is diagnosed with a terminal illness shall be removed from membership in the system subject to the following conditions:

(a) That the medical adviser, after a medical examination of the member made by or under the direction of the medical adviser, has certified in writing that the member has a terminal illness with a life expectancy of five or fewer years; and

(b) That the director concurs in the recommendation of the medical adviser.

(2) Members removed from the system shall not make contributions toward a defined contribution account as

defined in chapter 41.34 RCW and shall not accumulate additional service credit.

(3) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to this benefit not granted prior to that amendment or repeal. [2005 c 131 § 2.]

**Effective date—2005 c 131:** See note following RCW 41.40.823.

## Chapter 41.34 RCW

### PLAN 3 RETIREMENT SYSTEM CONTRIBUTIONS

(Formerly: Contributions under teachers' retirement system plan 3)

#### Sections

41.34.070 Distribution options.

**41.34.070 Distribution options.** (1) If the member retires, becomes disabled, or otherwise terminates employment, the balance in the member's account may be distributed in accordance with an option selected by the member either as a lump sum or pursuant to other options authorized by the board.

(2) If the member dies while in service, the balance of the member's account may be distributed in accordance with an option selected by the member either as a lump sum or pursuant to other options authorized by the board. The distribution is as follows:

(a) The distribution shall be made to such person or persons as the member shall have nominated by written designation duly executed and filed with the department;

(b) If there be no such designated person or persons still living at the time of the member's death, the balance of the member's account in the retirement system, less any amount identified as owing to an obligee upon withdrawal of such account balance pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse as if in fact such spouse had been nominated by written designation;

(c) If there is no surviving spouse, then to such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(d) If there is no such designated person or persons still living at the time of the member's death, then to the member's legal representatives.

(3) If a member has a terminal illness and terminates from employment, the member may choose to have the balance in the member's account distributed as a lump sum payment based on the most recent valuation in order to expedite the distribution. The department shall make this payment within ten working days after receipt of notice of termination of employment, documentation verifying the terminal illness, and an application for payment.

(4) The distribution under subsections (1), (2), or (3) of this section shall be less any amount identified as owing to an obligee upon withdrawal pursuant to a court order filed under RCW 41.50.670. [2005 c 327 § 3; 1998 c 117 § 1; 1995 c 239 § 207.]

**Effective date—1998 c 117:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 23, 1998]." [1998 c 117 § 2.]

**Intent—Purpose—1995 c 239:** See note following RCW 41.32.831.

**Effective date—Part and subchapter headings not law—1995 c 239:**  
See notes following RCW 41.32.005.

### Chapter 41.35 RCW

## WASHINGTON SCHOOL EMPLOYEES' RETIREMENT SYSTEM

### Sections

41.35.030	Membership.
41.35.050	Repealed.
41.35.423	Member with terminal illness—Removal from system.
41.35.470	Leaves of absence, military service.
41.35.650	Leaves of absence, military service.
41.35.683	Member with terminal illness—Removal from system.

**41.35.030 Membership.** Membership in the retirement system shall consist of all regularly compensated classified employees and appointive and elective officials of employers, as defined in this chapter, with the following exceptions:

(1) Persons in ineligible positions;

(2)(a) Persons holding elective offices or persons appointed directly by the governor: PROVIDED, That such persons shall have the option of applying for membership during such periods of employment: AND PROVIDED FURTHER, That any persons holding or who have held elective offices or persons appointed by the governor who are members in the retirement system and who have, prior to becoming such members, previously held an elective office, and did not at the start of such initial or successive terms of office exercise their option to become members, may apply for membership to be effective during such term or terms of office, and shall be allowed to establish the service credit applicable to such term or terms of office upon payment of the employee contributions therefor by the employee with interest as determined by the director and employer contributions therefor by the employer or employee with interest as determined by the director: AND PROVIDED FURTHER, That all contributions with interest submitted by the employee under this subsection shall be placed in the employee's individual account in the employee's savings fund and be treated as any other contribution made by the employee, with the exception that any contributions submitted by the employee in payment of the employer's obligation, together with the interest the director may apply to the employer's annuity for any purpose except withdrawal of contributions;

(b) A member holding elective office who has elected to apply for membership pursuant to (a) of this subsection and who later wishes to be eligible for a retirement allowance shall have the option of ending his or her membership in the retirement system. A member wishing to end his or her membership under this subsection must file on a form supplied by the department a statement indicating that the member agrees to irrevocably abandon any claim for service for future periods served as an elected official. A member who receives more than fifteen thousand dollars per year in compensation for his or her elective service, adjusted annually for inflation by the director, is not eligible for the option provided by this subsection (2)(b);

(3) Retirement system retirees: PROVIDED, That following reemployment in an eligible position, a retiree may elect to prospectively become a member of the retirement system if otherwise eligible;

(4) Persons enrolled in state-approved apprenticeship programs, authorized under chapter 49.04 RCW, and who are employed by employers to earn hours to complete such apprenticeship programs, if the employee is a member of a union-sponsored retirement plan and is making contributions to such a retirement plan or if the employee is a member of a Taft-Hartley retirement plan;

(5) Persons rendering professional services to an employer on a fee, retainer, or contract basis or when the income from these services is less than fifty percent of the gross income received from the person's practice of a profession;

(6) Substitute employees, except for the purposes of the purchase of service credit under RCW 41.35.033. Upon the return or termination of the absent employee a substitute employee is replacing, that substitute employee shall no longer be ineligible under this subsection;

(7) Employees who (a) are not citizens of the United States, (b) do not reside in the United States, and (c) perform duties outside of the United States;

(8) Employees who (a) are not citizens of the United States, (b) are not covered by chapter 41.48 RCW, (c) are not excluded from membership under this chapter or chapter 41.04 RCW, (d) are residents of this state, and (e) make an irrevocable election to be excluded from membership, in writing, which is submitted to the director within thirty days after employment in an eligible position;

(9) Employees who are citizens of the United States and who reside and perform duties for an employer outside of the United States: PROVIDED, That unless otherwise excluded under this chapter or chapter 41.04 RCW, the employee may apply for membership (a) within thirty days after employment in an eligible position and membership service credit shall be granted from the first day of membership service, and (b) after this thirty-day period, but membership service credit shall be granted only if payment is made for the non-credited membership service under RCW 41.50.165(2), otherwise service shall be from the date of application; and

(10) Employees who are removed from membership under RCW 41.35.683 or 41.35.423. [2005 c 131 § 9; 2003 c 157 § 2; 1998 c 341 § 4.]

**Effective date—2005 c 131:** See note following RCW 41.40.823.

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

**41.35.423 Member with terminal illness—Removal from system.** (1) Upon application of the member, a member who is diagnosed with a terminal illness shall be removed from the system subject to the following conditions:

(a) That the medical adviser, after a medical examination of the member made by or under the direction of the medical adviser, has certified in writing that the member has a terminal illness with a life expectancy of five or fewer years; and

(b) That the director concurs in the recommendation of the medical adviser.

(2) Members removed from the system shall not make contributions and shall not accumulate additional service credit.

(3) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to this benefit not granted prior to that amendment or repeal. [2005 c 131 § 6.]

**Effective date—2005 c 131:** See note following RCW 41.40.823.

**41.35.470 Leaves of absence, military service.** (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under the provisions of RCW 41.35.400 through 41.35.599.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The compensation earnable reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (4) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if:

(a) The member makes both the plan 2 employer and member contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of service or prior to retirement whichever comes sooner; or

(b) If not within five years of resumption of service but prior to retirement, pay the amount required under RCW 41.50.165(2).

The contributions required under (a) of this subsection shall be based on the average of the member's compensation earnable at both the time the authorized leave of absence was granted and the time the member resumed employment.

(4) A member who leaves the employ of an employer to enter the uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

(a) The member qualifies for service credit under this subsection if:

(i) Within ninety days of the member's honorable discharge from the uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services; and

(ii) The member makes the employee contributions required under RCW 41.35.430 within five years of resumption of service or prior to retirement, whichever comes sooner; or

(iii) Prior to retirement and not within ninety days of the member's honorable discharge or five years of resumption of service the member pays the amount required under RCW 41.50.165(2).

(b) Upon receipt of member contributions under (a)(ii), (d)(iii), or (e)(iii) of this subsection, the department shall establish the member's service credit and shall bill the employer for its contribution required under RCW 41.35.430 for the period of military service, plus interest as determined by the department.

(c) The contributions required under (a)(ii), (d)(iii), or (e)(iii) of this subsection shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(d) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under chapter 41.45 RCW within five years of the date of death or prior to the distribution of any benefit, whichever comes first.

(e) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first. [2005 c 64 § 4; 1998 c 341 § 108.]

**41.35.650 Leaves of absence, military service.** (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose

employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The earnable compensation reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (4) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if:

(a) The member makes the contribution on behalf of the employer, plus interest, as determined by the department; and

(b) The member makes the employee contribution, plus interest, as determined by the department, to the defined contribution portion.

The contributions required shall be based on the average of the member's earnable compensation at both the time the authorized leave of absence was granted and the time the member resumed employment.

(4) A member who leaves the employ of an employer to enter the uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service if within ninety days of the member's honorable discharge from the uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

The department shall establish the member's service credit and shall bill the employer for its contribution required under RCW 41.35.720 for the period of military service, plus interest as determined by the department. Service credit under this subsection may be obtained only if the member makes the employee contribution to the defined contribution portion as determined by the department.

The contributions required shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(a) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under this subsection within five years of the date of death or prior to the distribution of any benefit, whichever comes first.

(b) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under this subsection within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first. [2005 c 64 § 5; 1998 c 341 § 206.]

**41.35.683 Member with terminal illness—Removal from system.** (1) Upon application of the member, a member who is diagnosed with a terminal illness shall be removed from membership in the system subject to the following conditions:

(a) That the medical adviser, after a medical examination of the member made by or under the direction of the medical adviser, has certified in writing that the member has a terminal illness with a life expectancy of five or fewer years; and

(b) That the director concurs in the recommendation of the medical adviser.

(2) Members removed from the system shall not make contributions toward a defined contribution account as defined in chapter 41.34 RCW and shall not accumulate additional service credit.

(3) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to this benefit not granted prior to that amendment or repeal. [2005 c 131 § 3.]

**Effective date—2005 c 131:** See note following RCW 41.40.823.

## Chapter 41.37 RCW

### WASHINGTON PUBLIC SAFETY EMPLOYEES' RETIREMENT SYSTEM

#### Sections

41.37.010	Definitions. <i>(Effective July 1, 2006.)</i>
41.37.020	Membership. <i>(Effective July 1, 2006.)</i>
41.37.040	Repealed.
41.37.050	Reduction of retirement allowance upon reemployment— Reinstatement of membership. <i>(Effective July 1, 2006.)</i>
41.37.250	Death benefits. <i>(Effective July 1, 2006.)</i>
41.37.260	Leaves of absence, military service. <i>(Effective July 1, 2006.)</i>

**41.37.010 Definitions.** *(Effective July 1, 2006.)* The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Retirement system" means the Washington public safety employees' retirement system provided for in this chapter.

(2) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(3) "State treasurer" means the treasurer of the state of Washington.

(4) "Employer" means the Washington state department of corrections, the Washington state parks and recreation commission, the Washington state gambling commission, the Washington state patrol, the Washington state liquor control board, county corrections departments, city corrections departments not covered under chapter 41.28 RCW, or other employers employing statewide elective officials.

(5) "Member" means any employee employed by an employer on a full-time, fully compensated basis within the following job classes in effect as of January 1, 2004: City corrections officers, jailers, police support officers, custody officers, and bailiffs; county corrections officers, jailers, custody officers, and sheriffs corrections officers; county probation officers and probation counselors; state correctional officers, correctional sergeants, and community corrections officers; liquor enforcement officers; park rangers; commercial vehicle enforcement officers; and gambling special agents.

(6)(a) "Compensation earnable" for members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States internal revenue code, but shall exclude non-money maintenance compensation and lump sum or other payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

(b) "Compensation earnable" for members also includes the following actual or imputed payments, which are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement, which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable to the extent provided in this subsection, and the individual shall receive the equivalent service credit;

(ii) In any year in which a member serves in the legislature, the member shall have the option of having such member's compensation earnable be the greater of:

(A) The compensation earnable the member would have received had such member not served in the legislature; or

(B) Such member's actual compensation earnable received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions;

(iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(iv) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.37.070;

(v) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(vi) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise.

(7) "Service" means periods of employment by a member on or after July 1, 2006, for one or more employers for which compensation earnable is paid. Compensation earnable earned for ninety or more hours in any calendar month shall constitute one service credit month. Compensation earnable earned for at least seventy hours but less than ninety hours in any calendar month shall constitute one-half service credit month of service. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service. Time spent in standby status, whether compensated or not, is not service.

Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits.

(a) Service in any state elective position shall be deemed to be full-time service.

(b) A member shall receive a total of not more than twelve service credit months of service for such calendar year. If an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for ninety or more hours is rendered.

(8) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(9) "Service credit month" means a month or an accumulation of months of service credit which is equal to one.

(10) "Membership service" means all service rendered as a member.

(11) "Beneficiary" means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(12) "Regular interest" means such rate as the director may determine.

(13) "Accumulated contributions" means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under RCW 41.50.165(2), together with the regular interest thereon.

(14) "Average final compensation" means the member's average compensation earnable of the highest consecutive sixty months of service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.37.290.

(15) "Final compensation" means the annual rate of compensation earnable by a member at the time of termination of employment.

(16) "Annuity" means payments for life derived from accumulated contributions of a member. All annuities shall be paid in monthly installments.

(17) "Pension" means payments for life derived from contributions made by the employer. All pensions shall be paid in monthly installments.

(18) "Retirement allowance" means monthly payments to a retiree or beneficiary as provided in this chapter.

(19) "Employee" or "employed" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. The department shall adopt rules and interpret this subsection consistent with common law.

(20) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality and other tables as may be adopted by the director.

(21) "Retirement" means withdrawal from active service with a retirement allowance as provided by this chapter.

(22) "Eligible position" means any permanent, full-time, fully compensated position included in subsection (5) of this section.

(23) "Ineligible position" means any position which does not conform with the requirements set forth in subsection (22) of this section.

(24) "Leave of absence" means the period of time a member is authorized by the employer to be absent from service without being separated from membership.

(25) "Retiree" means any person who has begun accruing a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member.

(26) "Director" means the director of the department.

(27) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(28) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(29) "Plan" means the Washington public safety employees' retirement system plan 2.

(30) "Index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

(31) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(32) "Index B" means the index for the year prior to index A.

(33) "Adjustment ratio" means the value of index A divided by index B.

(34) "Separation from service" occurs when a person has terminated all employment with an employer. [2005 c 327 § 4; 2004 c 242 § 2.]

**Effective date—2005 c 327 §§ 4-7:** "Sections 4 through 7 of this act take effect July 1, 2006." [2005 c 327 § 12.]

**41.37.020 Membership. (Effective July 1, 2006.)**

Membership in the retirement system shall consist of all regularly compensated public safety employees who are mem-

bers as defined in RCW 41.37.010(5), with the following exceptions:

(1) Persons in ineligible positions;

(2)(a) Persons holding elective offices or persons appointed directly by the governor to statewide elective offices: PROVIDED, That such persons shall have the option of continuing membership during such periods of employment: AND PROVIDED FURTHER, That any persons holding or who have held elective offices or persons appointed by the governor who are members in the retirement system and who have, prior to becoming such members, previously held an elective office, and did not at the start of such initial or successive terms of office exercise their option to become members, may apply for membership to be effective during such term or terms of office, and shall be allowed to establish the service credit applicable to such term or terms of office upon payment of the employee contributions therefor by the employee with interest as determined by the director and employer contributions therefor by the employer or employee with interest as determined by the director: AND PROVIDED FURTHER, That all contributions with interest submitted by the employee under this subsection shall be placed in the employee's individual account in the employee's savings fund and be treated as any other contribution made by the employee, with the exception that any contributions submitted by the employee in payment of the employer's obligation, together with the interest the director may apply to the employer's contribution, shall not be considered part of the member's annuity for any purpose except withdrawal of contributions;

(b) A member holding elective office who has elected to apply for membership pursuant to (a) of this subsection and who later wishes to be eligible for a retirement allowance shall have the option of ending his or her membership in the retirement system. A member wishing to end his or her membership under this subsection must file on a form supplied by the department a statement indicating that the member agrees to irrevocably abandon any claim for service for future periods served as an elected official. A member who receives more than fifteen thousand dollars per year in compensation for his or her elective service, adjusted annually for inflation by the director, is not eligible for the option provided by this subsection (2)(b);

(3) Retirement system retirees: PROVIDED, That following reemployment in an eligible position, a retiree may elect to prospectively become a member of the retirement system if otherwise eligible;

(4) Persons enrolled in state-approved apprenticeship programs, authorized under chapter 49.04 RCW, and who are employed by employers to earn hours to complete such apprenticeship programs, if the employee is a member of a union-sponsored retirement plan and is making contributions to such a retirement plan or if the employee is a member of a Taft-Hartley retirement plan;

(5) Persons rendering professional services to an employer on a fee, retainer, or contract basis or when the income from these services is less than fifty percent of the gross income received from the person's practice of a profession; and

(6) Employees who (a) are not citizens of the United States, (b) are not covered by chapter 41.48 RCW, (c) are not

excluded from membership under this chapter or chapter 41.04 RCW, (d) are residents of this state, and (e) make an irrevocable election to be excluded from membership, in writing, which is submitted to the director within thirty days after employment in an eligible position. [2005 c 327 § 5; 2004 c 242 § 4.]

**Effective date—2005 c 327 §§ 4-7:** See note following RCW 41.37.010.

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

**41.37.050 Reduction of retirement allowance upon reemployment—Reinstatement of membership. (Effective July 1, 2006.)** (1)(a) If a retiree enters employment in an eligible position with an employer as defined in this chapter sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every eight hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) If a retiree enters employment in an eligible position with an employer as defined in chapter 41.32, 41.35, or 41.40 RCW sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every eight hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(c) The benefit reduction provided in (a) and (b) of this subsection will accrue for a maximum of one hundred sixty hours per month. Any benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2) A retiree who has satisfied the break in employment requirement of subsection (1) of this section may work up to eight hundred sixty-seven hours per calendar year in an eligible position as defined in RCW 41.32.010, 41.35.010, or 41.40.010, without suspension of his or her benefit.

(3) If the retiree opts to reestablish membership under this chapter, he or she terminates his or her retirement status and becomes a member. Retirement benefits shall not accrue during the period of membership and the individual shall make contributions and receive membership credit. Such a member shall have the right to again retire if eligible in accordance with this chapter. However, if the right to retire is exercised to become effective before the member has rendered two uninterrupted years of service, the retirement formula and survivor options the member had at the time of the member's previous retirement shall be reinstated.

(4) The department shall collect and provide the state actuary with information relevant to the use of this section for the select committee on pension policy. [2005 c 327 § 6; 2004 c 242 § 8.]

**Effective date—2005 c 327 §§ 4-7:** See note following RCW 41.37.010.

**41.37.250 Death benefits. (Effective July 1, 2006.)** (1) Except as provided in RCW 11.07.010, if a member or a vested member who has not completed at least ten years of

service dies, the amount of the accumulated contributions standing to that member's credit in the retirement system at the time of the member's death, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's estate, or the person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department. If there is no designated person or persons still living at the time of the member's death, the member's accumulated contributions standing to the member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse as if in fact that spouse had been nominated by written designation, or if there is no surviving spouse, then to the member's legal representatives.

(2) If a member who is eligible for retirement or a member who has completed at least ten years of service dies, the surviving spouse or eligible child or children shall elect to receive either:

(a) A retirement allowance computed as provided for in RCW 41.37.210, actuarially reduced by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 and actuarially adjusted to reflect a joint and one hundred percent survivor option under RCW 41.37.170 and, except under subsection (4) of this section, if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.37.210; if a surviving spouse who is receiving a retirement allowance dies leaving a child or children of the member under the age of majority, then the child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until the child or children reach the age of majority; if there is no surviving spouse eligible to receive an allowance at the time of the member's death, the member's child or children under the age of majority shall receive an allowance, share and share alike, calculated under this section making the assumption that the ages of the spouse and member were equal at the time of the member's death; or

(b) The member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670.

(3) If a member who is eligible for retirement or a member who has completed at least ten years of service dies and is not survived by a spouse or an eligible child, then the accumulated contributions standing to the member's credit, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid:

(a) To a person or persons, estate, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no designated person or persons still living at the time of the member's death, then to the member's legal representatives.

(4) A member who is killed in the course of employment, as determined by the director of the department of labor and

industries, is not subject to reduction under RCW 41.37.210. The member's retirement allowance is computed under RCW 41.37.190. [2005 c 327 § 7; 2004 c 242 § 31.]

**Effective date—2005 c 327 §§ 4-7:** See note following RCW 41.37.010.

**41.37.260 Leaves of absence, military service. (Effective July 1, 2006.)** (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under RCW 41.37.190 through 41.37.290.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The compensation earnable reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (4) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. This credit may be obtained only if:

(a) The member makes both the employer and member contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of service or prior to retirement whichever comes sooner; or

(b) If not within five years of resumption of service but prior to retirement, pay the amount required under RCW 41.50.165(2).

The contributions required under (a) of this subsection shall be based on the average of the member's compensation earnable at both the time the authorized leave of absence was granted and the time the member resumed employment.

(4) A member who leaves the employ of an employer to enter the uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

(a) The member qualifies for service credit under this subsection if:

(i) Within ninety days of the member's honorable discharge from the uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services; and

(ii) The member makes the employee contributions required under RCW 41.37.220 within five years of resumption of service or prior to retirement, whichever comes sooner; or

(iii) Prior to retirement and not within ninety days of the member's honorable discharge or five years of resumption of service the member pays the amount required under RCW 41.50.165(2).

(b) Upon receipt of member contributions under (a)(ii), (d)(iii), or (e)(iii) of this subsection, the department shall establish the member's service credit and shall bill the employer for its contribution required under RCW 41.37.220 for the period of military service, plus interest as determined by the department.

(c) The contributions required under (a)(ii), (d)(iii), or (e)(iii) of this subsection shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(d) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under chapter 41.45 RCW within five years of the date of death or prior to the distribution of any benefit, whichever comes first.

(e) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first. [2005 c 64 § 11; 2004 c 242 § 32.]

**Effective date—2005 c 64 § 11:** "Section 11 of this act takes effect July 1, 2006." [2005 c 64 § 12.]

## Chapter 41.40 RCW

### WASHINGTON PUBLIC EMPLOYEES' RETIREMENT SYSTEM

#### Sections

41.40.023 Membership.  
41.40.032 Repealed.



41.40.037	Service by retirees—Reduction of retirement allowance upon reemployment—Reestablishment of membership. ( <i>Effective July 1, 2006.</i> )
41.40.038	Duty disability retirement recipients—Continued service credit.
41.40.170	Credit for military service.
41.40.197	Retirement allowance—Annual increases—Eligibility.
41.40.633	Member with terminal illness—Removal from system.
41.40.710	Service credit for paid leave of absence, officers of labor organizations, unpaid leave of absence, military service.
41.40.805	Leaves of absence—Military service.
41.40.823	Member with terminal illness—Removal from system.
41.40.850	Suspension of retirement allowance upon reemployment—Exception—Reinstatement.

**41.40.023 Membership.** Membership in the retirement system shall consist of all regularly compensated employees and appointive and elective officials of employers, as defined in this chapter, with the following exceptions:

- (1) Persons in ineligible positions;
- (2) Employees of the legislature except the officers thereof elected by the members of the senate and the house and legislative committees, unless membership of such employees be authorized by the said committee;
- (3)(a) Persons holding elective offices or persons appointed directly by the governor: PROVIDED, That such persons shall have the option of applying for membership during such periods of employment: AND PROVIDED FURTHER, That any persons holding or who have held elective offices or persons appointed by the governor who are members in the retirement system and who have, prior to becoming such members, previously held an elective office, and did not at the start of such initial or successive terms of office exercise their option to become members, may apply for membership to be effective during such term or terms of office, and shall be allowed to establish the service credit applicable to such term or terms of office upon payment of the employee contributions therefor by the employee with interest as determined by the director and employer contributions therefor by the employer or employee with interest as determined by the director: AND PROVIDED FURTHER, That all contributions with interest submitted by the employee under this subsection shall be placed in the employee's individual account in the employee's savings fund and be treated as any other contribution made by the employee, with the exception that any contributions submitted by the employee in payment of the employer's obligation, together with the interest the director may apply to the employer's contribution, shall not be considered part of the member's annuity for any purpose except withdrawal of contributions;
- (b) A member holding elective office who has elected to apply for membership pursuant to (a) of this subsection and who later wishes to be eligible for a retirement allowance shall have the option of ending his or her membership in the retirement system. A member wishing to end his or her membership under this subsection must file, on a form supplied by the department, a statement indicating that the member agrees to irrevocably abandon any claim for service for future periods served as an elected official. A member who receives more than fifteen thousand dollars per year in compensation for his or her elective service, adjusted annually for inflation by the director, is not eligible for the option provided by this subsection (3)(b);

(4) Employees holding membership in, or receiving pension benefits under, any retirement plan operated wholly or in part by an agency of the state or political subdivision thereof, or who are by reason of their current employment contributing to or otherwise establishing the right to receive benefits from any such retirement plan except as follows:

(a) In any case where the retirement system has in existence an agreement with another retirement system in connection with exchange of service credit or an agreement whereby members can retain service credit in more than one system, such an employee shall be allowed membership rights should the agreement so provide;

(b) An employee shall be allowed membership if otherwise eligible while receiving survivor's benefits;

(c) An employee shall not either before or after June 7, 1984, be excluded from membership or denied service credit pursuant to this subsection solely on account of: (i) Membership in the plan created under chapter 2.14 RCW; or (ii) enrollment under the relief and compensation provisions or the pension provisions of the volunteer fire fighters' relief and pension fund under chapter 41.24 RCW;

(d) Except as provided in RCW 41.40.109, on or after July 25, 1999, an employee shall not be excluded from membership or denied service credit pursuant to this subsection solely on account of participation in a defined contribution pension plan qualified under section 401 of the internal revenue code;

(e) Employees who have been reported in the retirement system prior to July 25, 1999, and who participated during the same period of time in a defined contribution pension plan qualified under section 401 of the internal revenue code and operated wholly or in part by the employer, shall not be excluded from previous retirement system membership and service credit on account of such participation;

(5) Patient and inmate help in state charitable, penal, and correctional institutions;

(6) "Members" of a state veterans' home or state soldiers' home;

(7) Persons employed by an institution of higher learning or community college, primarily as an incident to and in furtherance of their education or training, or the education or training of a spouse;

(8) Employees of an institution of higher learning or community college during the period of service necessary to establish eligibility for membership in the retirement plans operated by such institutions;

(9) Persons rendering professional services to an employer on a fee, retainer, or contract basis or when the income from these services is less than fifty percent of the gross income received from the person's practice of a profession;

(10) Persons appointed after April 1, 1963, by the liquor control board as contract liquor store managers;

(11) Employees of a labor guild, association, or organization: PROVIDED, That elective officials and employees of a labor guild, association, or organization which qualifies as an employer within this chapter shall have the option of applying for membership;

(12) Retirement system retirees: PROVIDED, That following reemployment in an eligible position, a retiree may

elect to prospectively become a member of the retirement system if otherwise eligible;

(13) Persons employed by or appointed or elected as an official of a first class city that has its own retirement system: PROVIDED, That any member elected or appointed to an elective office on or after April 1, 1971, shall have the option of continuing as a member of this system in lieu of becoming a member of the city system. A member who elects to continue as a member of this system shall pay the appropriate member contributions and the city shall pay the employer contributions at the rates prescribed by this chapter. The city shall also transfer to this system all of such member's accumulated contributions together with such further amounts as necessary to equal all employee and employer contributions which would have been paid into this system on account of such service with the city and thereupon the member shall be granted credit for all such service. Any city that becomes an employer as defined in RCW 41.40.010(4) as the result of an individual's election under this subsection shall not be required to have all employees covered for retirement under the provisions of this chapter. Nothing in this subsection shall prohibit a city of the first class with its own retirement system from: (a) Transferring all of its current employees to the retirement system established under this chapter, or (b) allowing newly hired employees the option of continuing coverage under the retirement system established by this chapter.

Notwithstanding any other provision of this chapter, persons transferring from employment with a first class city of over four hundred thousand population that has its own retirement system to employment with the state department of agriculture may elect to remain within the retirement system of such city and the state shall pay the employer contributions for such persons at like rates as prescribed for employers of other members of such system;

(14) Employees who (a) are not citizens of the United States, (b) do not reside in the United States, and (c) perform duties outside of the United States;

(15) Employees who (a) are not citizens of the United States, (b) are not covered by chapter 41.48 RCW, (c) are not excluded from membership under this chapter or chapter 41.04 RCW, (d) are residents of this state, and (e) make an irrevocable election to be excluded from membership, in writing, which is submitted to the director within thirty days after employment in an eligible position;

(16) Employees who are citizens of the United States and who reside and perform duties for an employer outside of the United States: PROVIDED, That unless otherwise excluded under this chapter or chapter 41.04 RCW, the employee may apply for membership (a) within thirty days after employment in an eligible position and membership service credit shall be granted from the first day of membership service, and (b) after this thirty-day period, but membership service credit shall be granted only if payment is made for the non-credited membership service under RCW 41.50.165(2), otherwise service shall be from the date of application;

(17) The city manager or chief administrative officer of a city or town, other than a retiree, who serves at the pleasure of an appointing authority: PROVIDED, That such persons shall have the option of applying for membership within thirty days from date of their appointment to such positions.

Persons serving in such positions as of April 4, 1986, shall continue to be members in the retirement system unless they notify the director in writing prior to December 31, 1986, of their desire to withdraw from membership in the retirement system. A member who withdraws from membership in the system under this section shall receive a refund of the member's accumulated contributions.

Persons serving in such positions who have not opted for membership within the specified thirty days, may do so by paying the amount required under RCW 41.50.165(2) for the period from the date of their appointment to the date of acceptance into membership;

(18) Persons serving as: (a) The chief administrative officer of a public utility district as defined in RCW 54.16.100; (b) the chief administrative officer of a port district formed under chapter 53.04 RCW; or (c) the chief administrative officer of a county who serves at the pleasure of an appointing authority: PROVIDED, That such persons shall have the option of applying for membership within thirty days from the date of their appointment to such positions. Persons serving in such positions as of July 25, 1999, shall continue to be members in the retirement system unless they notify the director in writing prior to December 31, 1999, of their desire to withdraw from membership in the retirement system. A member who withdraws from membership in the system under this section shall receive a refund of the member's accumulated contributions upon termination of employment or as otherwise consistent with the plan's tax qualification status as defined in internal revenue code section 401.

Persons serving in such positions who have not opted for membership within the specified thirty days, may do so at a later date by paying the amount required under RCW 41.50.165(2) for the period from the date of their appointment to the date of acceptance into membership;

(19) Persons enrolled in state-approved apprenticeship programs, authorized under chapter 49.04 RCW, and who are employed by local governments to earn hours to complete such apprenticeship programs, if the employee is a member of a union-sponsored retirement plan and is making contributions to such a retirement plan or if the employee is a member of a Taft-Hartley retirement plan;

(20) Beginning on July 22, 2001, persons employed exclusively as trainers or trainees in resident apprentice training programs operated by housing authorities authorized under chapter 35.82 RCW, (a) if the trainer or trainee is a member of a union-sponsored retirement plan and is making contributions to such a retirement plan or (b) if the employee is a member of a Taft-Hartley retirement plan; and

(21) Employees who are removed from membership under RCW 41.40.823 or 41.40.633. [2005 c 151 § 12; 2005 c 131 § 7; 2001 c 37 § 1. Prior: 1999 c 286 § 2; 1999 c 244 § 1; 1997 c 254 § 11; prior: 1994 c 298 § 8; 1994 c 197 § 24; 1993 c 319 § 1; prior: 1990 c 274 § 10; 1990 c 192 § 4; 1988 c 109 § 25; 1987 c 379 § 1; 1986 c 317 § 5; 1984 c 184 § 13; 1984 c 121 § 1; 1982 1st ex.s. c 52 § 19; 1975 c 33 § 6; 1974 ex.s. c 195 § 2; 1973 1st ex.s. c 190 § 5; 1971 ex.s. c 271 § 4; 1969 c 128 § 5; 1967 c 127 § 3; 1965 c 155 § 2; 1963 c 225 § 2; 1963 c 210 § 1; 1957 c 231 § 2; 1955 c 277 § 2; 1953 c 200 § 5; 1951 c 50 § 2; 1949 c 240 § 7; 1947 c 274 § 13; Rem. Supp. 1949 § 11072-13. Formerly RCW 41.40.120.]

**Reviser's note:** This section was amended by 2005 c 131 § 7 and by 2005 c 151 § 12, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2005 c 131:** See note following RCW 41.40.823.

**Intent—1999 c 286:** "It is the intent of the legislature that retirement benefits represent a valuable element of the total compensation and benefits employees receive for their service. The value of these benefits is contained in the retirement income and cost-of-living adjustments provided to employees who remain in public service until retirement. For the majority of public employees, this requires membership in the public employees' retirement system.

The legislature recognizes, however, that certain occupations display a pattern of interstate mobility which requires retirement benefits which are highly portable. Incumbents in these occupations gain little value from membership in the public employees' retirement system. In order to remove any barrier to employing qualified personnel in positions with high mobility, membership in the retirement system should be optional in those occupations." [1999 c 286 § 1.]

**Intent—Construction—Application—1997 c 254:** See notes following RCW 41.26.490.

**Intent—1994 c 298:** See note following RCW 41.40.010.

**Intent—Severability—Effective date—1994 c 197:** See notes following RCW 41.50.165.

**Findings—Construction—1990 c 274:** See notes following RCW 41.32.010.

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

**Legislative findings—Intent—Severability—1986 c 317:** See notes following RCW 41.40.150.

**Severability—1984 c 184:** See note following RCW 41.50.150.

**Effective dates—1982 1st ex.s. c 52:** See note following RCW 2.10.180.

**Severability—1975 c 33:** See note following RCW 35.21.780.

**Severability—1974 ex.s. c 195:** "If any provision of this 1974 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 195 § 14.]

**Severability—1973 1st ex.s. c 190:** See note following RCW 41.40.010.

**Severability—1971 ex.s. c 271:** See note following RCW 41.32.260.

**Severability—1969 c 128:** See note following RCW 41.40.010.

*Pension benefits or annuity benefits for certain classifications of school district employees: RCW 28A.400.260.*

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

**41.40.037 Service by retirees—Reduction of retirement allowance upon reemployment—Reestablishment of membership. (Effective July 1, 2006.)** (1)(a) If a retiree enters employment with an employer sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every eight hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) The benefit reduction provided in (a) of this subsection will accrue for a maximum of one hundred sixty hours per month. Any benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2)(a) Except as provided in (b) of this subsection, a retiree from plan 1 who enters employment with an employer at least one calendar month after his or her accrual date may

continue to receive pension payments while engaged in such service for up to eight hundred sixty-seven hours of service in a calendar year without a reduction of pension.

(b) A retiree from plan 1 who enters employment with an employer at least three calendar months after his or her accrual date and:

(i) Is hired into a position for which the employer has documented a justifiable need to hire a retiree into the position;

(ii) Is hired through the established process for the position with the approval of: A school board for a school district; the chief executive officer of a state agency employer; the secretary of the senate for the senate; the chief clerk of the house of representatives for the house of representatives; the secretary of the senate and the chief clerk of the house of representatives jointly for the joint legislative audit and review committee, the joint committee on pension policy, the legislative evaluation and accountability program, the legislative systems committee, and the statute law committee; or according to rules adopted for the rehiring of retired plan 1 members for a local government employer;

(iii) The employer retains records of the procedures followed and decisions made in hiring the retiree, and provides those records in the event of an audit; and

(iv) The employee has not already rendered a cumulative total of more than one thousand nine hundred hours of service while in receipt of pension payments beyond an annual threshold of eight hundred sixty-seven hours;

shall cease to receive pension payments while engaged in that service after the retiree has rendered service for more than one thousand five hundred hours in a calendar year. The one thousand nine hundred hour cumulative total under this subsection applies prospectively to those retiring after July 27, 2003, and retroactively to those who retired prior to July 27, 2003, and shall be calculated from the date of retirement.

(c) When a plan 1 member renders service beyond eight hundred sixty-seven hours, the department shall collect from the employer the applicable employer retirement contributions for the entire duration of the member's employment during that calendar year.

(d) A retiree from plan 2 or plan 3 who has satisfied the break in employment requirement of subsection (1) of this section may work up to eight hundred sixty-seven hours in a calendar year in an eligible position, as defined in RCW 41.32.010, 41.35.010, 41.37.010, or 41.40.010, or as a fire fighter or law enforcement officer, as defined in RCW 41.26.030, without suspension of his or her benefit.

(3) If the retiree opts to reestablish membership under RCW 41.40.023(12), he or she terminates his or her retirement status and becomes a member. Retirement benefits shall not accrue during the period of membership and the individual shall make contributions and receive membership credit. Such a member shall have the right to again retire if eligible in accordance with RCW 41.40.180. However, if the right to retire is exercised to become effective before the member has rendered two uninterrupted years of service, the retirement formula and survivor options the member had at the time of the member's previous retirement shall be reinstated.

(4) The department shall collect and provide the state actuary with information relevant to the use of this section for the select committee on pension policy.

(5) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to be employed for more than five months in a calendar year without a reduction of his or her pension. [2005 c 319 § 103; 2004 c 242 § 63. Prior: 2003 c 412 § 5; 2003 c 295 § 7; 2001 2nd sp.s. c 10 § 4; (2001 2nd sp.s. c 10 § 12 repealed by 2002 c 26 § 9); 1997 c 254 § 14.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Effective date—2004 c 242:** See RCW 41.37.901.

**Effective dates—2001 2nd sp.s. c 10:** "Except for section 12 of this act which takes effect December 31, 2004, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 2nd sp.s. c 10 § 14.]

**Intent—Construction—Application—1997 c 254:** See notes following RCW 41.26.490.

**41.40.038 Duty disability retirement recipients—Continued service credit.** Those members subject to this chapter who became disabled in the line of duty on or after March 27, 1984, and who received or are receiving benefits under Title 51 RCW or a similar federal workers' compensation program shall receive or continue to receive service credit subject to the following:

(1) No member may receive more than one month's service credit in a calendar month.

(2) No service credit under this section may be allowed after a member separates or is separated without leave of absence.

(3) Employer contributions shall be paid by the employer at the rate in effect for the period of the service credited.

(4) Employee contributions shall be collected by the employer and paid to the department at the rate in effect for the period of service credited.

(5) Contributions shall be based on the regular compensation which the member would have received had the disability not occurred. If contribution payments are made retroactively, interest shall be charged at the rate set by the director on both employee and employer contributions. No service credit shall be granted until the employee contribution has been paid.

(6) The service and compensation credit shall not be granted for a period to exceed twenty-four consecutive months.

(7) Nothing in this section shall abridge service credit rights granted in RCW 41.40.220(2) and 41.40.320.

(8) Should the legislature revoke the service credit authorized under this section or repeal this section, no affected employee is entitled to receive the credit as a matter of contractual right. [2005 c 363 § 1; 1987 c 118 § 1; 1986 c 176 § 2. Formerly RCW 41.40.223.]

**41.40.170 Credit for military service.** (1) A member who has served or shall serve on active federal service in the military or naval forces of the United States and who left or shall leave an employer to enter such service shall be deemed to be on military leave of absence if he or she has resumed or

shall resume employment as an employee within one year from termination thereof.

(2) If he or she has applied or shall apply for reinstatement of employment, within one year from termination of the military service, and is refused employment for reasons beyond his or her control, he or she shall, upon resumption of service within ten years have such service credited to him or her.

(3) In any event, after completing twenty-five years of creditable service, any member may have service in the armed forces credited to him or her as a member whether or not he or she left the employ of an employer to enter the armed service: PROVIDED, That in no instance, described in this section, shall military service in excess of five years be credited: AND PROVIDED FURTHER, That in each instance the member must restore all withdrawn accumulated contributions, which restoration must be completed within five years of membership service following the first resumption of employment or complete twenty-five years of creditable service: AND PROVIDED FURTHER, That this section will not apply to any individual, not a veteran within the meaning of RCW 41.04.005.

(4)(a) A member, after completing twenty-five years of creditable service, who would have otherwise become eligible for a retirement benefit as defined under this chapter while serving honorably in the armed forces as referenced in RCW 41.04.005, shall, upon application to the department, be eligible to receive credit for this service without returning to covered employment.

(b) Service credit granted under (a) of this subsection applies only to veterans as defined in RCW 41.40.005.

(5) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(a) Provides to the director proof of the member's death while serving in the uniformed services; and

(b) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death.

(6) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(a) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services; and

(b) The member provides to the director proof of honorable discharge from the uniformed services. [2005 c 247 § 2; 2005 c 64 § 1; 2002 c 27 § 2; 1991 c 35 § 78; 1981 c 294 § 12; 1973 1st ex.s. c 190 § 14; 1972 ex.s. c 151 § 3; 1969 c 128 § 7; 1967 c 127 § 8; 1963 c 174 § 10; 1953 c 200 § 9; 1949 c 240 § 12; 1947 c 274 § 18; Rem. Supp. 1949 § 11072-18.]

**Reviser's note:** This section was amended by 2005 c 64 § 1 and by 2005 c 247 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—Effective date—2005 c 247:** See notes following RCW 41.04.005.

**Intent—1991 c 35:** See note following RCW 41.26.005.

**Severability—1981 c 294:** See note following RCW 41.26.115.

**Severability—1973 1st ex.s. c 190:** See note following RCW 41.40.010.

**Severability—1969 c 128:** See note following RCW 41.40.010.

**41.40.197 Retirement allowance—Annual increases—Eligibility.** (1) Beginning July 1, 1995, and annually thereafter, the retirement allowance of a person meeting the requirements of this section shall be increased by the annual increase amount.

(2) The following persons shall be eligible for the benefit provided in subsection (1) of this section:

(a) A beneficiary who has received a retirement allowance for at least one year and has attained at least age sixty-six by July 1st in the calendar year in which the annual increase is given; or

(b) A beneficiary whose retirement allowance is lower than the minimum benefit provided under RCW 41.40.1984.

(3) If otherwise eligible, those receiving an annual adjustment under RCW 41.40.188(1)(c) shall be eligible for the annual increase adjustment in addition to the benefit that would have been received absent this section.

(4) Those receiving a benefit under RCW 41.40.220(1), or a survivor of a disabled member under RCW 41.44.170(5) shall be eligible for the benefit provided by this section.

(5) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to receive this postretirement adjustment not granted prior to that time. [2005 c 327 § 8; 1995 c 345 § 5.]

**Intent—Effective date—1995 c 345:** See notes following RCW 41.32.489.

**41.40.633 Member with terminal illness—Removal from system.** (1) Upon application of the member, a member who is diagnosed with a terminal illness shall be removed from the system subject to the following conditions:

(a) That the medical adviser, after a medical examination of the member made by or under the direction of the medical adviser, has certified in writing that the member has a terminal illness with a life expectancy of five or fewer years; and

(b) That the director concurs in the recommendation of the medical adviser.

(2) Members removed from the system shall not make contributions and shall not accumulate additional service credit.

(3) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to this benefit not granted prior to that amendment or repeal. [2005 c 131 § 4.]

**Effective date—2005 c 131:** See note following RCW 41.40.823.

**41.40.710 Service credit for paid leave of absence, officers of labor organizations, unpaid leave of absence, military service.** (1) A member who is on a paid leave of

absence authorized by a member's employer shall continue to receive service credit as provided for under the provisions of RCW 41.40.610 through 41.40.740.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The compensation earnable reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (4) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if:

(a) The member makes both the plan 2 employer and member contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of service or prior to retirement whichever comes sooner; or

(b) If not within five years of resumption of service but prior to retirement, pay the amount required under RCW 41.50.165(2).

The contributions required under (a) of this subsection shall be based on the average of the member's compensation earnable at both the time the authorized leave of absence was granted and the time the member resumed employment.

(4) A member who leaves the employ of an employer to enter the uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

(a) The member qualifies for service credit under this subsection if:

(i) Within ninety days of the member's honorable discharge from the uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services; and

(ii) The member makes the employee contributions required under RCW 41.45.061 and 41.45.067 within five years of resumption of service or prior to retirement, whichever comes sooner; or

(iii) Prior to retirement and not within ninety days of the member's honorable discharge or five years of resumption of service the member pays the amount required under RCW 41.50.165(2).

(b) Upon receipt of member contributions under (a)(ii), (d)(iii), or (e)(iii) of this subsection, the department shall establish the member's service credit and shall bill the employer for its contribution required under RCW 41.45.060,

41.45.061, and 41.45.067 for the period of military service, plus interest as determined by the department.

(c) The contributions required under (a)(ii), (d)(iii), or (e)(iii) of this subsection shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(d) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under chapter 41.45 RCW within five years of the date of death or prior to the distribution of any benefit, whichever comes first.

(e) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first. [2005 c 64 § 2; 2000 c 247 § 1106; 1996 c 61 § 4; 1994 c 197 § 28; 1993 c 95 § 2; 1992 c 119 § 3; 1991 c 35 § 100; 1977 ex.s. c 295 § 12.]

**Intent—Severability—Effective date—1994 c 197:** See notes following RCW 41.50.165.

**Retroactive application—Effective date—1993 c 95:** See notes following RCW 41.40.175.

**Retroactive application—1992 c 119:** See note following RCW 41.26.520.

**Intent—1991 c 35:** See note following RCW 41.26.005.

**Legislative direction and placement—Section headings—1977 ex.s. c 295:** See notes following RCW 41.40.610.

**41.40.805 Leaves of absence—Military service.** (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the

compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The earnable compensation reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (4) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if:

(a) The member makes the contribution on behalf of the employer, plus interest, as determined by the department; and

(b) The member makes the employee contribution, plus interest, as determined by the department, to the defined contribution portion.

The contributions required shall be based on the average of the member's earnable compensation at both the time the authorized leave of absence was granted and the time the member resumed employment.

(4) A member who leaves the employ of an employer to enter the uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service if within ninety days of the member's honorable discharge from the uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

The department shall establish the member's service credit and shall bill the employer for its contribution required under RCW 41.45.060 and 41.45.067 for the period of military service, plus interest as determined by the department. Service credit under this subsection may be obtained only if the member makes the employee contribution to the defined contribution portion as determined by the department.

The contributions required shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(a) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under this subsection within five years of the date of death or prior to the distribution of any benefit, whichever comes first.

(b) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under this subsection within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first. [2005 c 64 § 3; 2000 c 247 § 306.]

**41.40.823 Member with terminal illness—Removal from system.** (1) Upon application of the member, a member who is diagnosed with a terminal illness shall be removed from membership in the system subject to the following conditions:

(a) That the medical adviser, after a medical examination of the member made by or under the direction of the medical adviser, has certified in writing that the member has a terminal illness with a life expectancy of five or fewer years; and

(b) That the director concurs in the recommendation of the medical adviser.

(2) Members removed from the system shall not make contributions toward a defined contribution account as defined in chapter 41.34 RCW and shall not accumulate additional service credit.

(3) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to this benefit not granted prior to that amendment or repeal. [2005 c 131 § 1.]

**Effective date—2005 c 131:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 21, 2005]." [2005 c 131 § 10.]

**41.40.850 Suspension of retirement allowance upon reemployment—Exception—Reinstatement.** (1) Except as provided in RCW 41.40.037, no retiree under the provisions of plan 3 shall be eligible to receive such retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.40.010, 41.32.010, 41.35.010, or 41.37.010, or as a law enforcement officer or fire fighter as defined in RCW 41.26.030, except that a retiree who ends his or her membership in the retirement system pursuant to RCW 41.40.023(3)(b) is not subject to this section if the retiree's only employment is as an elective official of a city or town.

(2) If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused his or her benefits to be suspended. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

(3) The department shall adopt rules implementing this section. [2005 c 327 § 9; 2000 c 247 § 315.]

## Chapter 41.45 RCW

### ACTUARIAL FUNDING OF STATE RETIREMENT SYSTEMS

#### Sections

41.45.010	Intent—Findings—Goals. ( <i>Expires July 1, 2006.</i> )
41.45.010	Intent—Findings—Goals. ( <i>Effective July 1, 2006.</i> )
41.45.054	Decodified.
41.45.060	Basic state and employer contribution rates—Role of council. ( <i>Expires July 1, 2006.</i> )
41.45.060	Basic state and employer contribution rates—Role of council. ( <i>Effective July 1, 2006.</i> )
41.45.062	Annual contribution rate increases—Employer, state, and plan 2 members.
41.45.070	Supplemental rate. ( <i>Effective until July 1, 2006.</i> )

**41.45.010 Intent—Findings—Goals. (*Expires July 1, 2006.*)** It is the intent of the legislature to provide a dependable and systematic process for funding the benefits provided to members and retirees of the public employees' retirement system, chapter 41.40 RCW; the teachers' retirement system, chapter 41.32 RCW; the law enforcement officers' and fire fighters' retirement systems, chapter 41.26 RCW; the school employees' retirement system, chapter 41.35 RCW; and the Washington state patrol retirement system, chapter 43.43 RCW.

The legislature finds that the funding status of the state retirement systems has improved dramatically since 1989. Because of the big reduction in unfunded pension liabilities, it is now prudent to adjust the long-term economic assumptions that are used in the actuarial studies conducted by the state actuary. The legislature finds that it is reasonable to increase the salary growth assumption in light of Initiative Measure No. 732, to increase the investment return assumption in light of the asset allocation policies and historical returns of the state investment board, and to reestablish June 30, 2024, as the target date to achieve full funding of all liabilities in the public employees' retirement system plan 1, the teachers' retirement system plan 1, and the law enforcement officers' and fire fighters' retirement system plan 1.

The funding process established by this chapter is intended to achieve the following goals:

(1) To continue to fully fund the public employees' retirement system plans 2 and 3, the teachers' retirement system plans 2 and 3, the school employees' retirement system plans 2 and 3, and the law enforcement officers' and fire fighters' retirement system plan 2 as provided by law;

(2) To fully amortize the total costs of the public employees' retirement system plan 1, the teachers' retirement system plan 1, and the law enforcement officers' and fire fighters' retirement system plan 1, not later than June 30, 2024;

(3) To establish long-term employer contribution rates which will remain a relatively predictable proportion of the future state budgets; and

(4) To fund, to the extent feasible, benefit increases for plan 1 members and all benefits for plan 2 and 3 members over the working lives of those members so that the cost of those benefits are paid by the taxpayers who receive the benefit of those members' service. [2005 c 370 § 3; 2002 c 26 § 3; 2001 2nd sp.s. c 11 § 2; (2001 2nd sp.s. c 11 § 1 expired March 1, 2002); 2000 c 247 § 501; 1998 c 341 § 401; 1995 c 239 § 305; 1989 c 273 § 1.]

**Effective date—2005 c 370 §§ 1, 3, and 6:** See note following RCW 41.45.060.

**Expiration date—2005 c 370 §§ 1 and 3:** See note following RCW 41.45.060.

**Expiration date—2001 2nd sp.s. c 11 §§ 1 and 7:** "Sections 1, 7, and \*18 of this act expire March 1, 2002." [2001 2nd sp.s. c 11 § 20.]

**\*Reviser's note:** Section 18 of this act was vetoed.

**Effective date—2001 2nd sp.s. c 11:** "Sections 2, 3, 4, 8, 13, 14, and 16 of this act take effect March 1, 2002." [2001 2nd sp.s. c 11 § 21.]

**Effective date—2001 2nd sp.s. c 11:** See note following RCW 41.45.030.

**Effective dates—Subchapter headings not law—2000 c 247:** See RCW 41.40.931 and 41.40.932.

**Effective date—1998 c 341:** See RCW 41.35.901.

**Intent—Purpose—1995 c 239:** See note following RCW 41.32.831.

**Effective date—Part and subchapter headings not law—1995 c 239:** See notes following RCW 41.32.005.

*Benefits not contractual right until date specified: RCW 41.34.100.*

**41.45.010 Intent—Findings—Goals. (Effective July 1, 2006.)** It is the intent of the legislature to provide a dependable and systematic process for funding the benefits provided to members and retirees of the public employees' retirement system, chapter 41.40 RCW; the teachers' retirement system, chapter 41.32 RCW; the law enforcement officers' and fire fighters' retirement systems, chapter 41.26 RCW; the school employees' retirement system, chapter 41.35 RCW; the public safety employees' retirement system, chapter 41.37 RCW; and the Washington state patrol retirement system, chapter 43.43 RCW.

The legislature finds that the funding status of the state retirement systems has improved dramatically since 1989. Because of the big reduction in unfunded pension liabilities, it is now prudent to adjust the long-term economic assumptions that are used in the actuarial studies conducted by the state actuary. The legislature finds that it is reasonable to increase the salary growth assumption in light of Initiative Measure No. 732, to increase the investment return assumption in light of the asset allocation policies and historical returns of the state investment board, and to reestablish June 30, 2024, as the target date to achieve full funding of all liabilities in the public employees' retirement system plan 1, the teachers' retirement system plan 1, and the law enforcement officers' and fire fighters' retirement system plan 1.

The funding process established by this chapter is intended to achieve the following goals:

(1) To fully fund the public employees' retirement system plans 2 and 3, the teachers' retirement system plans 2 and 3, the school employees' retirement system plans 2 and 3, the public safety employees' retirement system plan 2, and the

law enforcement officers' and fire fighters' retirement system plan 2 as provided by law;

(2) To fully amortize the total costs of the public employees' retirement system plan 1, the teachers' retirement system plan 1, and the law enforcement officers' and fire fighters' retirement system plan 1, not later than June 30, 2024;

(3) To establish long-term employer contribution rates which will remain a relatively predictable proportion of the future state budgets; and

(4) To fund, to the extent feasible, benefit increases for plan 1 members and all benefits for plan 2 and 3 members over the working lives of those members so that the cost of those benefits are paid by the taxpayers who receive the benefit of those members' service. [2005 c 370 § 4; 2004 c 242 § 36; 2002 c 26 § 3; 2001 2nd sp.s. c 11 § 2; (2001 2nd sp.s. c 11 § 1 expired March 1, 2002); 2000 c 247 § 501; 1998 c 341 § 401; 1995 c 239 § 305; 1989 c 273 § 1.]

**Effective date—2005 c 370 §§ 2 and 4:** See note following RCW 41.45.060.

**Effective date—2004 c 242:** See RCW 41.37.901.

**Expiration date—2001 2nd sp.s. c 11 §§ 1 and 7:** "Sections 1, 7, and \*18 of this act expire March 1, 2002." [2001 2nd sp.s. c 11 § 20.]

**\*Reviser's note:** Section 18 of this act was vetoed.

**Effective date—2001 2nd sp.s. c 11:** "Sections 2, 3, 4, 8, 13, 14, and 16 of this act take effect March 1, 2002." [2001 2nd sp.s. c 11 § 21.]

**Effective date—2001 2nd sp.s. c 11:** See note following RCW 41.45.030.

**Effective dates—Subchapter headings not law—2000 c 247:** See RCW 41.40.931 and 41.40.932.

**Effective date—1998 c 341:** See RCW 41.35.901.

**Intent—Purpose—1995 c 239:** See note following RCW 41.32.831.

**Effective date—Part and subchapter headings not law—1995 c 239:** See notes following RCW 41.32.005.

*Benefits not contractual right until date specified: RCW 41.34.100.*

**41.45.054 Decodified.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**41.45.060 Basic state and employer contribution rates—Role of council. (Expires July 1, 2006.)** (1) The state actuary shall provide actuarial valuation results based on the economic assumptions and asset value smoothing technique included in RCW 41.45.035 or adopted by the council under RCW 41.45.030 or 41.45.035.

(2) Not later than September 30, 2002, and every two years thereafter, consistent with the economic assumptions and asset value smoothing technique included in RCW 41.45.035 or adopted under RCW 41.45.030 or 41.45.035, the council shall adopt and may make changes to:

(a) A basic state contribution rate for the law enforcement officers' and fire fighters' retirement system plan 1;

(b) Basic employer contribution rates for the public employees' retirement system, the teachers' retirement system, and the Washington state patrol retirement system to be used in the ensuing biennial period; and

(c) A basic employer contribution rate for the school employees' retirement system for funding both that system and the public employees' retirement system plan 1.

The contribution rates adopted by the council shall be subject to revision by the legislature.



(3) The employer and state contribution rates adopted by the council shall be the level percentages of pay that are needed:

(a) To fully amortize the total costs of the public employees' retirement system plan 1, the teachers' retirement system plan 1, and the law enforcement officers' and fire fighters' retirement system plan 1 not later than June 30, 2024; and

(b) To also continue to fully fund the public employees' retirement system plans 2 and 3, the teachers' retirement system plans 2 and 3, and the school employees' retirement system plans 2 and 3 in accordance with RCW 41.45.061, 41.45.067, and this section.

(4) The aggregate actuarial cost method shall be used to calculate a combined plan 2 and 3 employer contribution rate and a Washington state patrol retirement system contribution rate.

(5) The council shall immediately notify the directors of the office of financial management and department of retirement systems of the state and employer contribution rates adopted. The rates shall be effective for the ensuing biennial period, subject to any legislative modifications.

(6) The director of the department of retirement systems shall collect the rates established in \*RCW 41.45.053 through June 30, 2003. Thereafter, the director shall collect those rates adopted by the council. The rates established in RCW 41.45.062, or by the council, shall be subject to revision by the council. [2005 c 370 § 1. Prior: 2003 c 294 § 10; 2003 c 92 § 3; 2002 c 26 § 2; prior: 2001 2nd sp.s. c 11 § 10; 2001 c 329 § 10; 2000 2nd sp.s. c 1 § 905; 2000 c 247 § 504; prior: 1998 c 341 § 404; 1998 c 340 § 11; 1998 c 283 § 6; 1995 c 239 § 309; 1993 c 519 § 19; 1992 c 239 § 2; 1990 c 18 § 1; 1989 c 273 § 6.]

**\*Reviser's note:** RCW 41.45.053 was repealed by 2002 c 7 § 2.

**Effective date—2005 c 370 §§ 1, 3, and 6:** "Sections 1, 3, and 6 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2005." [2005 c 370 § 7.]

**Expiration date—2005 c 370 §§ 1 and 3:** "Sections 1 and 3 of this act expire July 1, 2006." [2005 c 370 § 9.]

**Severability—Effective date—2003 c 92:** See RCW 41.26.905 and 41.26.906.

**Effective date—2001 2nd sp.s. c 11:** See note following RCW 41.45.030.

**Effective date—2001 c 329:** See note following RCW 43.43.120.

**Severability—Effective date—2000 2nd sp.s. c 1:** See notes following RCW 41.05.143.

**Effective dates—Subchapter headings not law—2000 c 247:** See RCW 41.40.931 and 41.40.932.

**Effective date—1998 c 341:** See note following RCW 41.34.060.

**Effective date—1998 c 340:** See note following RCW 41.31.010.

**Intent—Purpose—1995 c 239:** See note following RCW 41.32.831.

**Effective date—Part and subchapter headings not law—1995 c 239:** See notes following RCW 41.32.005.

**Part headings not law—Effective date—1993 c 519:** See notes following RCW 28A.400.212.

**Effective date—1992 c 239:** "This act shall take effect September 1, 1992." [1992 c 239 § 6.]

**Effective date—1990 c 18:** "This act shall take effect September 1, 1991." [1990 c 18 § 3.]

*Benefits not contractual right until date specified: RCW 41.34.100.*

**41.45.060 Basic state and employer contribution rates—Role of council. (Effective July 1, 2006.)** (1) The state actuary shall provide actuarial valuation results based on the economic assumptions and asset value smoothing technique included in RCW 41.45.035 or adopted by the council under RCW 41.45.030 or 41.45.035.

(2) Not later than September 30, 2002, and every two years thereafter, consistent with the economic assumptions and asset value smoothing technique included in RCW 41.45.035 or adopted under RCW 41.45.030 or 41.45.035, the council shall adopt and may make changes to:

(a) A basic state contribution rate for the law enforcement officers' and fire fighters' retirement system plan 1;

(b) Basic employer contribution rates for the public employees' retirement system, the teachers' retirement system, and the Washington state patrol retirement system to be used in the ensuing biennial period; and

(c) A basic employer contribution rate for the school employees' retirement system and the public safety employees' retirement system for funding both those systems and the public employees' retirement system plan 1.

The contribution rates adopted by the council shall be subject to revision by the legislature.

(3) The employer and state contribution rates adopted by the council shall be the level percentages of pay that are needed:

(a) To fully amortize the total costs of the public employees' retirement system plan 1, the teachers' retirement system plan 1, and the law enforcement officers' and fire fighters' retirement system plan 1 not later than June 30, 2024; and

(b) To fully fund the public employees' retirement system plans 2 and 3, the teachers' retirement system plans 2 and 3, the public safety employees' retirement system plan 2, and the school employees' retirement system plans 2 and 3 in accordance with RCW 41.45.061, 41.45.067, and this section.

(4) The aggregate actuarial cost method shall be used to calculate a combined plan 2 and 3 employer contribution rate and a Washington state patrol retirement system contribution rate.

(5) The council shall immediately notify the directors of the office of financial management and department of retirement systems of the state and employer contribution rates adopted. The rates shall be effective for the ensuing biennial period, subject to any legislative modifications.

(6) The director shall collect those rates adopted by the council. The rates established in RCW 41.45.062, or by the council, shall be subject to revision by the legislature. [2005 c 370 § 2; 2004 c 242 § 39. Prior: 2003 c 294 § 10; 2003 c 92 § 3; 2002 c 26 § 2; prior: 2001 2nd sp.s. c 11 § 10; 2001 c 329 § 10; 2000 2nd sp.s. c 1 § 905; 2000 c 247 § 504; prior: 1998 c 341 § 404; 1998 c 340 § 11; 1998 c 283 § 6; 1995 c 239 § 309; 1993 c 519 § 19; 1992 c 239 § 2; 1990 c 18 § 1; 1989 c 273 § 6.]

**Effective date—2005 c 370 §§ 2 and 4:** "Sections 2 and 4 of this act take effect July 1, 2006." [2005 c 370 § 8.]

**Effective date—2004 c 242:** See RCW 41.37.901.

**Severability—Effective date—2003 c 92:** See RCW 41.26.905 and 41.26.906.

**Effective date—2001 2nd sp.s. c 11:** See note following RCW 41.45.030.

**Effective date—2001 c 329:** See note following RCW 43.43.120.

**Severability—Effective date—2000 2nd sp.s. c 1:** See notes following RCW 41.05.143.

**Effective dates—Subchapter headings not law—2000 c 247:** See RCW 41.40.931 and 41.40.932.

**Effective date—1998 c 341:** See note following RCW 41.34.060.

**Effective date—1998 c 340:** See note following RCW 41.31.010.

**Intent—Purpose—1995 c 239:** See note following RCW 41.32.831.

**Effective date—Part and subchapter headings not law—1995 c 239:** See notes following RCW 41.32.005.

**Part headings not law—Effective date—1993 c 519:** See notes following RCW 28A.400.212.

**Effective date—1992 c 239:** "This act shall take effect September 1, 1992." [1992 c 239 § 6.]

**Effective date—1990 c 18:** "This act shall take effect September 1, 1991." [1990 c 18 § 3.]

*Benefits not contractual right until date specified: RCW 41.34.100.*

**41.45.062 Annual contribution rate increases—Employer, state, and plan 2 members.** The basic employer and state contribution rates and required plan 2 member contribution rates are changed to reflect the 2003 actuarial valuation and actuarial projections of the 2005 actuarial valuation, both of which incorporate the 2002 actuarial experience study conducted by the office of the state actuary for 1995-2000. This contribution rate schedule departs from the normal biennial process for setting contribution rates by requiring annual increases in rates during the 2005-2007 biennium, and by requiring annual rates to be adopted by the pension funding council for the 2007-2009 biennium. The rates are lower in the 2005-2007 biennium than required by the 2003 actuarial valuation and will be higher in the 2007-2009 biennium than required by the projected 2005 actuarial valuation.

Upon completion of the 2005 actuarial valuation, the pension funding council and the state actuary shall review the appropriateness of the contribution rates for 2007-2008 and 2008-2009 and by September 30, 2006, the pension funding council shall adopt contribution rates to complete the four-year phase-in schedule, adjusted for any material changes in benefits or actuarial assumptions, methods, or experience. This contribution rate schedule also requires a departure from the allocation formula for contributions in RCW 41.45.050, suspension of payments on the unfunded liability in the public employees' retirement system and the teachers' retirement system during the 2005-2007 biennium, and a delay in the recognition of the cost of future gain-sharing benefits until the 2007-2009 biennium.

(1) Beginning July 1, 2005, the following employer contribution rate shall be charged: 2.25 percent for the public employees' retirement system.

(2) Beginning September 1, 2005, the following employer contribution rates shall be charged:

(a) 2.75 percent for the school employees' retirement system; and

(b) 2.73 percent for the teachers' retirement system.

(3) Beginning July 1, 2005, the following member contribution rate shall be charged: 2.25 percent for the public employees' retirement system plan 2.

(4) Beginning September 1, 2005, the following member contribution rates shall be charged:

(a) 2.75 percent for the school employees' retirement system plan 2; and

(b) 2.48 percent for the teachers' retirement system plan 2.

(5) The contribution rates in subsections (1) through (4) of this section shall be collected through June 30, 2006, for the public employees' retirement system, and August 31, 2006, for the school employees' retirement system and the teachers' retirement system.

(6) Beginning July 1, 2006, the following employer contribution rate shall be charged: 3.50 percent for the public employees' retirement system.

(7) Beginning September 1, 2006, the following employer contribution rates shall be charged:

(a) 3.75 percent for the school employees' retirement system; and

(b) 3.25 percent for the teachers' retirement system.

(8) Beginning July 1, 2006, the following member contribution rate shall be charged: 3.50 percent for the public employees' retirement system plan 2.

(9) Beginning September 1, 2006, the following member contribution rates shall be charged:

(a) 3.75 percent for the school employees' retirement system plan 2; and

(b) 3.00 percent for the teachers' retirement system plan 2.

(10) During the 2005 interim, the select committee on pension policy shall study the options available to the legislature for addressing the liability associated with future gain-sharing benefits. These options may include, but shall not be limited to, repealing, delaying, or suspending the gain-sharing provisions in law; making gain-sharing discretionary; or replacing gain-sharing benefits with other benefits such as plan choice, employer defined contributions, retirement eligibility enhancements, and postretirement adjustments. The select committee on pension policy shall report the findings and recommendations of its study to the legislative fiscal committees by no later than December 15, 2005. [2005 c 370 § 6.]

**Effective date—2005 c 370 §§ 1, 3, and 6:** See note following RCW 41.45.060.

**41.45.070 Supplemental rate. (Effective until July 1, 2006.)** (1) In addition to the basic employer contribution rate established in RCW 41.45.060 or \*41.45.054, the department shall also charge employers of public employees' retirement system, teachers' retirement system, school employees' retirement system, or Washington state patrol retirement system members an additional supplemental rate to pay for the cost of additional benefits, if any, granted to members of those systems. Except as provided in subsections (6) and (7) of this section, the supplemental contribution rates required by this section shall be calculated by the state actuary and shall be charged regardless of language to the contrary contained in the statute which authorizes additional benefits.

(2) In addition to the basic member, employer, and state contribution rate established in RCW 41.45.0604 for the law enforcement officers' and fire fighters' retirement system plan 2, the department shall also establish supplemental rates to pay for the cost of additional benefits, if any, granted to members of the law enforcement officers' and fire fighters' retire-

ment system plan 2. Except as provided in subsection (6) of this section, these supplemental rates shall be calculated by the actuary retained by the law enforcement officers' and fire fighters' board and the state actuary through the process provided in RCW 41.26.720(1)(a) and the state treasurer shall transfer the additional required contributions regardless of language to the contrary contained in the statute which authorizes the additional benefits.

(3) The supplemental rate charged under this section to fund benefit increases provided to active members of the public employees' retirement system plan 1, the teachers' retirement system plan 1, and Washington state patrol retirement system, shall be calculated as the level percentage of all members' pay needed to fund the cost of the benefit not later than June 30, 2024.

(4) The supplemental rate charged under this section to fund benefit increases provided to active and retired members of the public employees' retirement system plan 2 and plan 3, the teachers' retirement system plan 2 and plan 3, or the school employees' retirement system plan 2 and plan 3 shall be calculated as the level percentage of all members' pay needed to fund the cost of the benefit, as calculated under RCW 41.45.060, 41.45.061, or 41.45.067.

(5) The supplemental rate charged under this section to fund postretirement adjustments which are provided on a nonautomatic basis to current retirees shall be calculated as the percentage of pay needed to fund the adjustments as they are paid to the retirees. The supplemental rate charged under this section to fund automatic postretirement adjustments for active or retired members of the public employees' retirement system plan 1 and the teachers' retirement system plan 1 shall be calculated as the level percentage of pay needed to fund the cost of the automatic adjustments not later than June 30, 2024.

(6) A supplemental rate shall not be charged to pay for the cost of additional benefits granted to members pursuant to chapter 340, Laws of 1998.

(7) A supplemental rate shall not be charged to pay for the cost of additional benefits granted to members pursuant to chapter 41.31A RCW; section 309, chapter 341, Laws of 1998; or section 701, chapter 341, Laws of 1998. [2005 c 327 § 10. Prior: (2003 1st sp.s. c 11 § 3 repealed by 2005 c 327 § 11); 2003 c 92 § 5; prior: 2001 2nd sp.s. c 11 § 16; 2001 2nd sp.s. c 11 § 15; 2000 c 247 § 505; 1998 c 340 § 10; 1995 c 239 § 310; 1990 c 18 § 2; 1989 1st ex.s. c 1 § 1; 1989 c 273 § 7.]

**\*Reviser's note:** RCW 41.45.054 was decodified by 2005 c 370 § 5, effective September 1, 2005.

**Expiration date—2005 c 327 § 10:** "Section 10 of this act expires July 1, 2006." [2005 c 327 § 13.]

**Effective date—2003 1st sp.s. c 11:** See note following RCW 41.45.035.

**Severability—Effective date—2003 c 92:** See RCW 41.26.905 and 41.26.906.

**Effective date—2001 2nd sp.s. c 11:** See note following RCW 41.45.010.

**Effective date—2001 2nd sp.s. c 11:** See note following RCW 41.45.030.

**Effective dates—Subchapter headings not law—2000 c 247:** See RCW 41.40.931 and 41.40.932.

**Effective date—1998 c 341:** See RCW 41.35.901.

**Effective date—1998 c 340:** See note following RCW 41.31.010.

**Intent—Purpose—1995 c 239:** See note following RCW 41.32.831.

**Effective date—Part and subchapter headings not law—1995 c 239:** See notes following RCW 41.32.005.

**Effective date—1990 c 18:** See note following RCW 41.45.060.

*Benefits not contractual right until date specified: RCW 41.34.100.*

## Chapter 41.50 RCW

### DEPARTMENT OF RETIREMENT SYSTEMS

#### Sections

41.50.067	Repealed.
41.50.088	Employee retirement benefits board—Duties.
41.50.110	Expenses of administration paid from department of retirement systems expense fund—Administrative expense fee. <i>(Effective until July 1, 2006.)</i>
41.50.110	Expenses of administration paid from department of retirement systems expense fund—Administrative expense fee. <i>(Effective July 1, 2006.)</i>

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

**41.50.088 Employee retirement benefits board—Duties.** (1) The board shall adopt rules as necessary and exercise the following powers and duties:

(a) The board shall recommend to the state investment board types of options for member self-directed investment in the teachers' retirement system plan 3, the school employees' retirement system plan 3, and the public employees' retirement system plan 3 as deemed by the board to be reflective of the members' preferences;

(b) By July 1, 2005, subject to favorable tax determination by the internal revenue service, the board shall make optional actuarially equivalent life annuity benefit payment schedules available to members and survivors that may be purchased from the combined plan 2 and plan 3 funds under RCW 41.50.075; and

(c) Determination of the basis for administrative charges to the self-directed investment fund to offset self-directed account expenses;

(2) The board shall recommend to the state investment board types of options for participant self-directed investment in the state deferred compensation plan, as deemed by the board to be reflective of the participants' preferences. [2005 c 327 § 14; 2000 c 247 § 602. Prior: 1998 c 341 § 507; 1998 c 116 § 10; 1995 c 239 § 302.]

**Effective dates—Subchapter headings not law—2000 c 247:** See RCW 41.40.931 and 41.40.932.

**Effective date—1998 c 341:** See note following RCW 41.34.060.

**Intent—Purpose—1995 c 239:** See note following RCW 41.32.831.

**Effective date—Part and subchapter headings not law—1995 c 239:** See notes following RCW 41.32.005.

*Benefits not contractual right until date specified: RCW 41.34.100.*

**41.50.110 Expenses of administration paid from department of retirement systems expense fund—Administrative expense fee. *(Effective until July 1, 2006.)*** (1) Except as provided by RCW 41.50.255 and subsection (6) of this section, all expenses of the administration of the department, the expenses of administration of the retirement systems, and the expenses of the administration of the office of

the state actuary created in chapters 2.10, 2.12, 41.26, 41.32, 41.40, 41.34, 41.35, 43.43, and 44.44 RCW shall be paid from the department of retirement systems expense fund.

(2) In order to reimburse the department of retirement systems expense fund on an equitable basis the department shall ascertain and report to each employer, as defined in RCW 41.26.030, 41.32.010, 41.35.010, or 41.40.010, the sum necessary to defray its proportional share of the entire expense of the administration of the retirement system that the employer participates in during the ensuing biennium or fiscal year whichever may be required. Such sum is to be computed in an amount directly proportional to the estimated entire expense of the administration as the ratio of monthly salaries of the employer's members bears to the total salaries of all members in the entire system. It shall then be the duty of all such employers to include in their budgets or otherwise provide the amounts so required.

(3) The department shall compute and bill each employer, as defined in RCW 41.26.030, 41.32.010, 41.35.010, or 41.40.010, at the end of each month for the amount due for that month to the department of retirement systems expense fund and the same shall be paid as are its other obligations. Such computation as to each employer shall be made on a percentage rate of salary established by the department. However, the department may at its discretion establish a system of billing based upon calendar year quarters in which event the said billing shall be at the end of each such quarter.

(4) The director may adjust the expense fund contribution rate for each system at any time when necessary to reflect unanticipated costs or savings in administering the department.

(5) An employer who fails to submit timely and accurate reports to the department may be assessed an additional fee related to the increased costs incurred by the department in processing the deficient reports. Fees paid under this subsection shall be deposited in the retirement system expense fund.

(a) Every six months the department shall determine the amount of an employer's fee by reviewing the timeliness and accuracy of the reports submitted by the employer in the preceding six months. If those reports were not both timely and accurate the department may prospectively assess an additional fee under this subsection.

(b) An additional fee assessed by the department under this subsection shall not exceed fifty percent of the standard fee.

(c) The department shall adopt rules implementing this section.

(6) Expenses other than those under RCW 41.34.060(3) shall be paid pursuant to subsection (1) of this section.

(7) During the 2005-2007 fiscal biennium, the legislature may transfer from the department of retirement systems' expense fund to the state general fund such amounts as reflect the excess fund balance of the fund. [2005 c 518 § 922; 2003 1st sp.s. c 25 § 914. Prior: 2003 c 295 § 3; 2003 c 294 § 11; 1998 c 341 § 508; 1996 c 39 § 17; 1995 c 239 § 313; 1990 c 8 § 3; 1979 ex.s. c 249 § 8.]

**Expiration date—2005 c 518 § 922:** "Section 922 (RCW 41.50.110) of this act expires July 1, 2006." [2005 c 518 § 1807.]

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Effective date—1998 c 341:** See RCW 41.35.901.

**Effective dates—1996 c 39:** See note following RCW 41.32.010.

**Intent—Purpose—1995 c 239:** See note following RCW 41.32.831.

**Effective date—Part and subchapter headings not law—1995 c 239:** See notes following RCW 41.32.005.

**Findings—1990 c 8:** See note following RCW 41.50.065.

*Benefits not contractual right until date specified: RCW 41.34.100.*

**41.50.110 Expenses of administration paid from department of retirement systems expense fund—Administrative expense fee. (Effective July 1, 2006.)** (1) Except as provided by RCW 41.50.255 and subsection (6) of this section, all expenses of the administration of the department, the expenses of administration of the retirement systems, and the expenses of the administration of the office of the state actuary created in chapters 2.10, 2.12, 41.26, 41.32, 41.40, 41.34, 41.35, 41.37, 43.43, and 44.44 RCW shall be paid from the department of retirement systems expense fund.

(2) In order to reimburse the department of retirement systems expense fund on an equitable basis the department shall ascertain and report to each employer, as defined in RCW 41.26.030, 41.32.010, 41.35.010, 41.37.010, or 41.40.010, the sum necessary to defray its proportional share of the entire expense of the administration of the retirement system that the employer participates in during the ensuing biennium or fiscal year whichever may be required. Such sum is to be computed in an amount directly proportional to the estimated entire expense of the administration as the ratio of monthly salaries of the employer's members bears to the total salaries of all members in the entire system. It shall then be the duty of all such employers to include in their budgets or otherwise provide the amounts so required.

(3) The department shall compute and bill each employer, as defined in RCW 41.26.030, 41.32.010, 41.35.010, 41.37.010, or 41.40.010, at the end of each month for the amount due for that month to the department of retirement systems expense fund and the same shall be paid as are its other obligations. Such computation as to each employer shall be made on a percentage rate of salary established by the department. However, the department may at its discretion establish a system of billing based upon calendar year quarters in which event the said billing shall be at the end of each such quarter.

(4) The director may adjust the expense fund contribution rate for each system at any time when necessary to reflect unanticipated costs or savings in administering the department.

(5) An employer who fails to submit timely and accurate reports to the department may be assessed an additional fee related to the increased costs incurred by the department in processing the deficient reports. Fees paid under this subsection shall be deposited in the retirement system expense fund.

(a) Every six months the department shall determine the amount of an employer's fee by reviewing the timeliness and accuracy of the reports submitted by the employer in the preceding six months. If those reports were not both timely and accurate the department may prospectively assess an additional fee under this subsection.

(b) An additional fee assessed by the department under this subsection shall not exceed fifty percent of the standard fee.

(c) The department shall adopt rules implementing this section.

(6) Expenses other than those under RCW 41.34.060(3) shall be paid pursuant to subsection (1) of this section.

(7) During the 2005-2007 fiscal biennium, the legislature may transfer from the department of retirement systems' expense fund to the state general fund such amounts as reflect the excess fund balance of the fund. [2005 c 518 § 923; 2004 c 242 § 46; 2003 1st sp.s. c 25 § 914. Prior: 2003 c 295 § 3; 2003 c 294 § 11; 1998 c 341 § 508; 1996 c 39 § 17; 1995 c 239 § 313; 1990 c 8 § 3; 1979 ex.s. c 249 § 8.]

**Effective date—2005 c 518 § 923:** "Section 923 (RCW 41.50.110) of this act takes effect July 1, 2006." [2005 c 518 § 1806.]

**Severability—2005 c 518:** See notes following RCW 28A.305.210.

**Effective date—2004 c 242:** See RCW 41.37.901.

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Effective date—1998 c 341:** See RCW 41.35.901.

**Effective dates—1996 c 39:** See note following RCW 41.32.010.

**Intent—Purpose—1995 c 239:** See note following RCW 41.32.831.

**Effective date—Part and subchapter headings not law—1995 c 239:** See notes following RCW 41.32.005.

**Findings—1990 c 8:** See note following RCW 41.50.065.

*Benefits not contractual right until date specified: RCW 41.34.100.*

## Chapter 41.56 RCW

### PUBLIC EMPLOYEES' COLLECTIVE BARGAINING

#### Sections

41.56.060	Determination of bargaining unit—Bargaining representative.
41.56.473	Uniformed personnel—Application of chapter to Washington state patrol—Bargaining subjects.
41.56.475	Uniformed personnel—Application of chapter to Washington state patrol—Mediation and arbitration.

**41.56.060 Determination of bargaining unit—Bargaining representative.** (1) The commission, after hearing upon reasonable notice, shall decide in each application for certification as an exclusive bargaining representative, the unit appropriate for the purpose of collective bargaining. In determining, modifying, or combining the bargaining unit, the commission shall consider the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees. The commission shall determine the bargaining representative by: (a) Examination of organization membership rolls; (b) comparison of signatures on organization bargaining authorization cards; or (c) conducting an election specifically therefor.

(2) For classified employees of school districts and educational service districts:

(a) Appropriate bargaining units existing on July 24, 2005, may not be divided into more than one unit without the agreement of the public employer and the certified bargaining representative of the unit; and

(b) In making bargaining unit determinations under this section, the commission must consider, in addition to the fac-

tors listed in subsection (1) of this section, the avoidance of excessive fragmentation. [2005 c 232 § 1; 1975 1st ex.s. c 296 § 17; 1967 ex.s. c 108 § 6.]

**Effective date—1975 1st ex.s. c 296:** See RCW 41.58.901.

**41.56.473 Uniformed personnel—Application of chapter to Washington state patrol—Bargaining subjects.** (1) In addition to the entities listed in RCW 41.56.020, this chapter applies to the state with respect to the officers of the Washington state patrol appointed under RCW 43.43.020, except that the state is prohibited from negotiating any matters relating to retirement benefits or health care benefits or other employee insurance benefits.

(2) For the purposes of negotiating wages, wage-related matters, and nonwage matters, the state shall be represented by the governor or the governor's designee who is appointed under chapter 41.80 RCW, and costs of the negotiations under this section shall be reimbursed as provided in RCW 41.80.140.

(3) The governor or the governor's designee shall consult with the chief of the Washington state patrol regarding collective bargaining.

(4) The negotiation of provisions pertaining to wages and wage-related matters in a collective bargaining agreement between the state and the Washington state patrol officers is subject to the following:

(a) The state's bargaining representative must periodically consult with a subcommittee of the joint committee on employment relations created in RCW 41.80.010(5) which shall consist of the four members appointed to the joint committee with leadership positions in the senate and the house of representatives, and the chairs and ranking minority members of the senate transportation committee and the house transportation committee, or their successor committees. The subcommittee must be consulted regarding the appropriations necessary to implement these provisions in a collective bargaining agreement and, on completion of negotiations, must be advised on the elements of these provisions.

(b) Provisions that are entered into before the legislature approves the funds necessary to implement the provisions must be conditioned upon the legislature's subsequent approval of the funds.

(5) The governor shall submit a request for funds necessary to implement the wage and wage-related matters in the collective bargaining agreement or for legislation necessary to implement the agreement. Requests for funds necessary to implement the provisions of bargaining agreements may not be submitted to the legislature by the governor unless such requests:

(a) Have been submitted to the director of financial management by October 1st before the legislative session at which the requests are to be considered; and

(b) Have been certified by the director of financial management as being feasible financially for the state or reflects the decision of an arbitration panel reached under RCW 41.56.475. [2005 c 438 § 1; 1999 c 217 § 3.]

**41.56.475 Uniformed personnel—Application of chapter to Washington state patrol—Mediation and arbitration.** In addition to the classes of employees listed in

RCW 41.56.030(7), the provisions of RCW 41.56.430 through 41.56.452 and 41.56.470, 41.56.480, and 41.56.490 also apply to Washington state patrol officers appointed under RCW 43.43.020 as provided in this section, subject to the following:

- (1) The mediator or arbitration panel may consider only matters that are subject to bargaining under RCW 41.56.473.
- (2) The decision of an arbitration panel is not binding on the legislature and, if the legislature does not approve the funds necessary to implement provisions pertaining to wages and wage-related matters of an arbitrated collective bargaining agreement, is not binding on the state or the Washington state patrol.
- (3) In making its determination, the arbitration panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, shall take into consideration the following factors:
  - (a) The constitutional and statutory authority of the employer;
  - (b) Stipulations of the parties;
  - (c) Comparison of the hours and conditions of employment of personnel involved in the proceedings with the hours and conditions of employment of like personnel of like employers of similar size on the west coast of the United States;
  - (d) Changes in any of the foregoing circumstances during the pendency of the proceedings; and
  - (e) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining under RCW 41.56.473. [2005 c 438 § 2; 1999 c 217 § 4; 1993 c 351 § 1; 1988 c 110 § 2; 1987 c 135 § 3.]

**Severability—1987 c 135:** See note following RCW 41.56.020.

**Title 42**

**PUBLIC OFFICERS AND AGENCIES**

**Chapters**

- 42.12 Vacancies.**
- 42.17 Disclosure—Campaign finances—Lobbying—Records.**
- 42.23 Code of ethics for municipal officers—Contract interests.**
- 42.30 Open public meetings act.**
- 42.48 Release of records for research.**
- 42.52 Ethics in public service.**
- 42.56 Public records.**

**Chapter 42.12 RCW  
VACANCIES**

**Sections**

42.12.040 Vacancy in partisan elective office—Successor elected—When. *(Effective if unconstitutionality of Initiative Measure No. 872 is reversed by pending appeal.)*

**42.12.040 Vacancy in partisan elective office—Successor elected—When. *(Effective if unconstitutionality of Initiative Measure No. 872 is reversed by pending appeal.)***

(1) If a vacancy occurs in any partisan elective office in the executive or legislative branches of state government or in any partisan county elective office before the sixth Tuesday prior to the next general election following the occurrence of the vacancy, a successor shall be elected to that office at that general election. Except during the last year of the term of office, if such a vacancy occurs on or after the sixth Tuesday prior to the general election, the election of the successor shall occur at the next succeeding general election. The elected successor shall hold office for the remainder of the unexpired term. This section shall not apply to any vacancy occurring in a charter county that has charter provisions inconsistent with this section.

(2) If a vacancy occurs in any legislative office or in any partisan county office after the general election in a year that the position appears on the ballot and before the start of the next term, the term of the successor who is of the same party as the incumbent may commence once he or she has qualified as defined in RCW 29A.04.133 and shall continue through the term for which he or she was elected. [2005 c 2 § 15 (Initiative Measure No. 872, approved November 2, 2004); 2003 c 238 § 4; 2002 c 108 § 2; 1981 c 180 § 1.]

**Reviser's note:** Initiative Measure No. 872 was declared unconstitutional in its entirety in *Washington State Republican Party, et al. v. Logan, et al.*, U.S.D.C. No. CV05-0927-TSZ (W.D. Wash. 2005). The decision was under appeal at the time this material was published.

**Short title—Intent—Contingent effective date—2005 c 2 (Initiative Measure No. 872):** See notes following RCW 29A.52.112.

**Contingent effective date—2003 c 238:** See note following RCW 36.16.110.

**Severability—1981 c 180:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1981 c 180 § 6.]

*County office, appointment of acting official:* RCW 36.16.115.

*Filing period, special:* RCW 29A.24.210.

**Chapter 42.17 RCW**

**DISCLOSURE—CAMPAIGN FINANCES—  
LOBBYING—RECORDS**

**Sections**

- 42.17.020 Definitions.
- 42.17.080 Reporting of contributions and expenditures—Inspection of accounts.
- 42.17.095 Disposal of surplus funds.
- 42.17.103 Special reports—Political advertising. *(Effective January 1, 2006.)*
- 42.17.110 Commercial advertisers—Public inspection of documents—Copies to commission. *(Effective January 1, 2006.)*
- 42.17.2401 "Executive state officer" defined.
- 42.17.245 Public accounts of governmental entities held by financial institutions—Statements and reports—Contents—Filing. *(Effective July 1, 2006.)*
- 42.17.250 Recodified as RCW 42.56.040. *(Effective July 1, 2006.)*
- 42.17.251 Recodified as RCW 42.56.030. *(Effective July 1, 2006.)*
- 42.17.253 Public records officers.
- 42.17.255 Recodified as RCW 42.56.050. *(Effective July 1, 2006.)*
- 42.17.258 Recodified as RCW 42.56.060. *(Effective July 1, 2006.)*
- 42.17.260 Recodified as RCW 42.56.070. *(Effective July 1, 2006.)*
- 42.17.270 Facilities for copying—Availability of public records. *(Effective until July 1, 2006.)*
- 42.17.270 Recodified as RCW 42.56.080. *(Effective July 1, 2006.)*
- 42.17.280 Recodified as RCW 42.56.090. *(Effective July 1, 2006.)*
- 42.17.290 Recodified as RCW 42.56.100. *(Effective July 1, 2006.)*
- 42.17.295 Recodified as RCW 42.56.110. *(Effective July 1, 2006.)*
- 42.17.300 Charges for copying. *(Effective until July 1, 2006.)*
- 42.17.300 Recodified as RCW 42.56.120. *(Effective July 1, 2006.)*
- 42.17.305 Recodified as RCW 42.56.130. *(Effective July 1, 2006.)*

- 42.17.310 Certain personal and other records exempt. *(Effective until January 1, 2006.)*
- 42.17.310 Certain personal and other records exempt. *(Effective January 1, 2006, until July 1, 2006.)*
- 42.17.310 Recodified as RCW 42.56.210. *(Effective July 1, 2006.)*
- 42.17.311 Recodified as RCW 42.56.510. *(Effective July 1, 2006.)*
- 42.17.312 through 42.17.31921 Repealed. *(Effective July 1, 2006.)*

## PERSONAL INFORMATION—NOTICE OF SECURITY BREACHES

- 42.17.31922 Personal information—Notice of security breaches.
- 42.17.31923 Certain information from dairies and feedlots limited—Rules.
- 42.17.320 Recodified as RCW 42.56.520. *(Effective July 1, 2006.)*
- 42.17.325 Recodified as RCW 42.56.530. *(Effective July 1, 2006.)*
- 42.17.330 Recodified as RCW 42.56.540. *(Effective July 1, 2006.)*
- 42.17.340 Judicial review of agency actions. *(Effective until July 1, 2006.)*
- 42.17.340 Recodified as RCW 42.56.550. *(Effective July 1, 2006.)*
- 42.17.341 Recodified as RCW 42.56.560. *(Effective July 1, 2006.)*
- 42.17.348 Explanatory pamphlet. *(Effective until July 1, 2006.)*
- 42.17.348 Recodified as RCW 42.56.570. *(Effective July 1, 2006.)*
- 42.17.505 Repealed. *(Effective January 1, 2006.)*
- 42.17.510 Identification of sponsor—Exemptions. *(Effective January 1, 2006.)*
- 42.17.530 False political advertising or electioneering communication. *(Effective January 1, 2006.)*

## REPORTING OF ELECTIONEERING COMMUNICATIONS

- 42.17.561 Findings. *(Effective January 1, 2006.)*
- 42.17.562 Intent. *(Effective January 1, 2006.)*
- 42.17.565 Report—Information required—Time—Method—By whom—Penalty. *(Effective January 1, 2006.)*
- 42.17.570 When a contribution. *(Effective January 1, 2006.)*
- 42.17.575 Recordkeeping. *(Effective January 1, 2006.)*
- 42.17.640 Limits specified—Exemptions. *(Effective January 1, 2006.)*
- 42.17.660 Attribution of contributions by controlled entities.
- 42.17.963 Part headings not law—2005 c 445.
- 42.17.964 Severability—2005 c 445.
- 42.17.965 Effective dates—2005 c 445.

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

(1) "Actual malice" means to act with knowledge of falsity or with reckless disregard as to truth or falsity.

(2) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

(3) "Authorized committee" means the political committee authorized by a candidate, or by the public official against whom recall charges have been filed, to accept contributions or make expenditures on behalf of the candidate or public official.

(4) "Ballot proposition" means any "measure" as defined by RCW 29A.04.091, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or other voting constituency from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency prior to its circulation for signatures.

(5) "Benefit" means a commercial, proprietary, financial, economic, or monetary advantage, or the avoidance of a commercial, proprietary, financial, economic, or monetary disadvantage.

(6) "Bona fide political party" means:

(a) An organization that has filed a valid certificate of nomination with the secretary of state under chapter 29A.20 RCW;

(b) The governing body of the state organization of a major political party, as defined in RCW 29A.04.086, that is the body authorized by the charter or bylaws of the party to exercise authority on behalf of the state party; or

(c) The county central committee or legislative district committee of a major political party. There may be only one legislative district committee for each party in each legislative district.

(7) "Depository" means a bank designated by a candidate or political committee pursuant to RCW 42.17.050.

(8) "Treasurer" and "deputy treasurer" mean the individuals appointed by a candidate or political committee, pursuant to RCW 42.17.050, to perform the duties specified in that section.

(9) "Candidate" means any individual who seeks nomination for election or election to public office. An individual seeks nomination or election when he or she first:

(a) Receives contributions or makes expenditures or reserves space or facilities with intent to promote his or her candidacy for office;

(b) Announces publicly or files for office;

(c) Purchases commercial advertising space or broadcast time to promote his or her candidacy; or

(d) Gives his or her consent to another person to take on behalf of the individual any of the actions in (a) or (c) of this subsection.

(10) "Caucus political committee" means a political committee organized and maintained by the members of a major political party in the state senate or state house of representatives.

(11) "Commercial advertiser" means any person who sells the service of communicating messages or producing printed material for broadcast or distribution to the general public or segments of the general public whether through the use of newspapers, magazines, television and radio stations, billboard companies, direct mail advertising companies, printing companies, or otherwise.

(12) "Commission" means the agency established under RCW 42.17.350.

(13) "Compensation" unless the context requires a narrower meaning, includes payment in any form for real or personal property or services of any kind: PROVIDED, That for the purpose of compliance with RCW 42.17.241, the term "compensation" shall not include per diem allowances or other payments made by a governmental entity to reimburse a public official for expenses incurred while the official is engaged in the official business of the governmental entity.

(14) "Continuing political committee" means a political committee that is an organization of continuing existence not established in anticipation of any particular election campaign.

(15)(a) "Contribution" includes:

(i) A loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between political committees, or anything of value, including personal and professional services for less than full consideration;

(ii) An expenditure made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a political committee, or their agents;

(iii) The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, or other form of political advertising or electioneering communication prepared by a candidate, a political committee, or its authorized agent;

(iv) Sums paid for tickets to fund-raising events such as dinners and parties, except for the actual cost of the consumables furnished at the event.

(b) "Contribution" does not include:

(i) Standard interest on money deposited in a political committee's account;

(ii) Ordinary home hospitality;

(iii) A contribution received by a candidate or political committee that is returned to the contributor within five business days of the date on which it is received by the candidate or political committee;

(iv) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is of primary interest to the general public, that is in a news medium controlled by a person whose business is that news medium, and that is not controlled by a candidate or a political committee;

(v) An internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;

(vi) The rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by the worker. "Volunteer services," for the purposes of this section, means services or labor for which the individual is not compensated by any person;

(vii) Messages in the form of reader boards, banners, or yard or window signs displayed on a person's own property or property occupied by a person. However, a facility used for such political advertising for which a rental charge is normally made must be reported as an in-kind contribution and counts towards any applicable contribution limit of the person providing the facility;

(viii) Legal or accounting services rendered to or on behalf of:

(A) A political party or caucus political committee if the person paying for the services is the regular employer of the person rendering such services; or

(B) A candidate or an authorized committee if the person paying for the services is the regular employer of the individual rendering the services and if the services are solely for the purpose of ensuring compliance with state election or public disclosure laws.

(c) Contributions other than money or its equivalent are deemed to have a monetary value equivalent to the fair market value of the contribution. Services or property or rights furnished at less than their fair market value for the purpose of assisting any candidate or political committee are deemed a contribution. Such a contribution must be reported as an in-

kind contribution at its fair market value and counts towards any applicable contribution limit of the provider.

(16) "Elected official" means any person elected at a general or special election to any public office, and any person appointed to fill a vacancy in any such office.

(17) "Election" includes any primary, general, or special election for public office and any election in which a ballot proposition is submitted to the voters: PROVIDED, That an election in which the qualifications for voting include other than those requirements set forth in Article VI, section 1 (Amendment 63) of the Constitution of the state of Washington shall not be considered an election for purposes of this chapter.

(18) "Election campaign" means any campaign in support of or in opposition to a candidate for election to public office and any campaign in support of, or in opposition to, a ballot proposition.

(19) "Election cycle" means the period beginning on the first day of December after the date of the last previous general election for the office that the candidate seeks and ending on November 30th after the next election for the office. In the case of a special election to fill a vacancy in an office, "election cycle" means the period beginning on the day the vacancy occurs and ending on November 30th after the special election.

(20) "Electioneering communication" means any broadcast, cable, or satellite television or radio transmission, United States postal service mailing, billboard, newspaper, or periodical that:

(a) Clearly identifies a candidate for a state, local, or judicial office either by specifically naming the candidate, or identifying the candidate without using the candidate's name;

(b) Is broadcast, transmitted, mailed, erected, distributed, or otherwise published within sixty days before any election for that office in the jurisdiction in which the candidate is seeking election; and

(c) Either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market value of five thousand dollars or more.

(21) "Electioneering communication" does not include:

(a) Usual and customary advertising of a business owned by a candidate, even if the candidate is mentioned in the advertising when the candidate has been regularly mentioned in that advertising appearing at least twelve months preceding his or her becoming a candidate;

(b) Advertising for candidate debates or forums when the advertising is paid for by or on behalf of the debate or forum sponsor, so long as two or more candidates for the same position have been invited to participate in the debate or forum;

(c) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is:

(i) Of primary interest to the general public;

(ii) In a news medium controlled by a person whose business is that news medium; and

(iii) Not a medium controlled by a candidate or a political committee;

(d) Slate cards and sample ballots;

(e) Advertising for books, films, dissertations, or similar works (i) written by a candidate when the candidate entered into a contract for such publications or media at least twelve



months before becoming a candidate, or (ii) written about a candidate;

(f) Public service announcements;

(g) A mailed internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;

(h) An expenditure by or contribution to the authorized committee of a candidate for state, local, or judicial office; or

(i) Any other communication exempted by the commission through rule consistent with the intent of this chapter.

(22) "Expenditure" includes a payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. The term "expenditure" also includes a promise to pay, a payment, or a transfer of anything of value in exchange for goods, services, property, facilities, or anything of value for the purpose of assisting, benefiting, or honoring any public official or candidate, or assisting in furthering or opposing any election campaign. For the purposes of this chapter, agreements to make expenditures, contracts, and promises to pay may be reported as estimated obligations until actual payment is made. The term "expenditure" shall not include the partial or complete repayment by a candidate or political committee of the principal of a loan, the receipt of which loan has been properly reported.

(23) "Final report" means the report described as a final report in RCW 42.17.080(2).

(24) "General election" for the purposes of RCW 42.17.640 means the election that results in the election of a person to a state office. It does not include a primary.

(25) "Gift," is as defined in RCW 42.52.010.

(26) "Immediate family" includes the spouse, dependent children, and other dependent relatives, if living in the household. For the purposes of RCW 42.17.640 through 42.17.790, "immediate family" means an individual's spouse, and child, stepchild, grandchild, parent, stepparent, grandparent, brother, half brother, sister, or half sister of the individual and the spouse of any such person and a child, stepchild, grandchild, parent, stepparent, grandparent, brother, half brother, sister, or half sister of the individual's spouse and the spouse of any such person.

(27) "Incumbent" means a person who is in present possession of an elected office.

(28) "Independent expenditure" means an expenditure that has each of the following elements:

(a) It is made in support of or in opposition to a candidate for office by a person who is not (i) a candidate for that office, (ii) an authorized committee of that candidate for that office, (iii) a person who has received the candidate's encouragement or approval to make the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office, or (iv) a person with whom the candidate has collaborated for the purpose of making the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;

(b) The expenditure pays in whole or in part for political advertising that either specifically names the candidate supported or opposed, or clearly and beyond any doubt identifies the candidate without using the candidate's name; and

(c) The expenditure, alone or in conjunction with another expenditure or other expenditures of the same person in support of or opposition to that candidate, has a value of \*five hundred dollars or more. A series of expenditures, each of which is under five hundred dollars, constitutes one independent expenditure if their cumulative value is five hundred dollars or more.

(29)(a) "Intermediary" means an individual who transmits a contribution to a candidate or committee from another person unless the contribution is from the individual's employer, immediate family as defined for purposes of RCW 42.17.640 through 42.17.790, or an association to which the individual belongs.

(b) A treasurer or a candidate is not an intermediary for purposes of the committee that the treasurer or candidate serves.

(c) A professional fund-raiser is not an intermediary if the fund-raiser is compensated for fund-raising services at the usual and customary rate.

(d) A volunteer hosting a fund-raising event at the individual's home is not an intermediary for purposes of that event.

(30) "Legislation" means bills, resolutions, motions, amendments, nominations, and other matters pending or proposed in either house of the state legislature, and includes any other matter that may be the subject of action by either house or any committee of the legislature and all bills and resolutions that, having passed both houses, are pending approval by the governor.

(31) "Lobby" and "lobbying" each mean attempting to influence the passage or defeat of any legislation by the legislature of the state of Washington, or the adoption or rejection of any rule, standard, rate, or other legislative enactment of any state agency under the state Administrative Procedure Act, chapter 34.05 RCW. Neither "lobby" nor "lobbying" includes an association's or other organization's act of communicating with the members of that association or organization.

(32) "Lobbyist" includes any person who lobbies either in his or her own or another's behalf.

(33) "Lobbyist's employer" means the person or persons by whom a lobbyist is employed and all persons by whom he or she is compensated for acting as a lobbyist.

(34) "Participate" means that, with respect to a particular election, an entity:

(a) Makes either a monetary or in-kind contribution to a candidate;

(b) Makes an independent expenditure or electioneering communication in support of or opposition to a candidate;

(c) Endorses a candidate prior to contributions being made by a subsidiary corporation or local unit with respect to that candidate or that candidate's opponent;

(d) Makes a recommendation regarding whether a candidate should be supported or opposed prior to a contribution being made by a subsidiary corporation or local unit with respect to that candidate or that candidate's opponent; or

(e) Directly or indirectly collaborates or consults with a subsidiary corporation or local unit on matters relating to the support of or opposition to a candidate, including, but not limited to, the amount of a contribution, when a contribution should be given, and what assistance, services or independent expenditures, or electioneering communications, if any, will be made or should be made in support of or opposition to a candidate.

(35) "Person" includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency however constituted, candidate, committee, political committee, political party, executive committee thereof, or any other organization or group of persons, however organized.

(36) "Person in interest" means the person who is the subject of a record or any representative designated by that person, except that if that person is under a legal disability, the term "person in interest" means and includes the parent or duly appointed legal representative.

(37) "Political advertising" includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.

(38) "Political committee" means any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.

(39) "Primary" for the purposes of RCW 42.17.640 means the procedure for nominating a candidate to state office under chapter 29A.52 RCW or any other primary for an election that uses, in large measure, the procedures established in chapter 29A.52 RCW.

(40) "Public office" means any federal, state, judicial, county, city, town, school district, port district, special district, or other state political subdivision elective office.

(41) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives.

(42) "Recall campaign" means the period of time beginning on the date of the filing of recall charges under RCW 29A.56.120 and ending thirty days after the recall election.

(43) "Sponsor of an electioneering communications, independent expenditures, or political advertising" means the person paying for the electioneering communication, independent expenditure, or political advertising. If a person acts as an agent for another or is reimbursed by another for the payment, the original source of the payment is the sponsor.

(44) "State legislative office" means the office of a member of the state house of representatives or the office of a member of the state senate.

(45) "State office" means state legislative office or the office of governor, lieutenant governor, secretary of state, attorney general, commissioner of public lands, insurance commissioner, superintendent of public instruction, state auditor, or state treasurer.

(46) "State official" means a person who holds a state office.

(47) "Surplus funds" mean, in the case of a political committee or candidate, the balance of contributions that remain in the possession or control of that committee or candidate subsequent to the election for which the contributions were received, and that are in excess of the amount necessary to pay remaining debts incurred by the committee or candidate prior to that election. In the case of a continuing political committee, "surplus funds" mean those contributions remaining in the possession or control of the committee that are in excess of the amount necessary to pay all remaining debts when it makes its final report under RCW 42.17.065.

(48) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

As used in this chapter, the singular shall take the plural and any gender, the other, as the context requires. [2005 c 445 § 6; 2002 c 75 § 1; 1995 c 397 § 1; 1992 c 139 § 1; 1991 sp.s. c 18 § 1; 1990 c 139 § 2. Prior: 1989 c 280 § 1; 1989 c 175 § 89; 1984 c 34 § 5; 1979 ex.s. c 50 § 1; 1977 ex.s. c 313 § 1; 1975 1st ex.s. c 294 § 2; 1973 c 1 § 2 (Initiative Measure No. 276, approved November 7, 1972).]

**\*Reviser's note:** The dollar amounts in this section have been adjusted for inflation by rule of the commission adopted under the authority of RCW 42.17.690. For current dollar amounts, see chapter 390-05 of the Washington Administrative Code (WAC).

**Legislative intent—1990 c 139:** "The provisions of this act which repeal the reporting requirements established by chapter 423, Laws of 1987 for registered lobbyists and employers of lobbyists are not intended to alter, expand, or restrict whatsoever the definition of "lobby" or "lobbying" contained in RCW 42.17.020 as it existed prior to the enactment of chapter 423, Laws of 1987." [1990 c 139 § 1.]

**Effective date—1989 c 280:** "This act shall take effect January 1, 1990." [1989 c 280 § 14.]

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

**Effective date—1977 ex.s. c 313:** "This 1977 amendatory act shall take effect on January 1, 1978." [1977 ex.s. c 313 § 9.]

**Severability—1977 ex.s. c 313:** "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 313 § 8.]

**42.17.080 Reporting of contributions and expenditures—Inspection of accounts.** (1) On the day the treasurer is designated, each candidate or political committee shall file with the commission and the county auditor or elections officer of the county in which the candidate resides, or in the

case of a political committee, the county in which the treasurer resides, in addition to any statement of organization required under RCW 42.17.040 or 42.17.050, a report of all contributions received and expenditures made prior to that date, if any.

(2) At the following intervals each treasurer shall file with the commission and the county auditor or elections officer of the county in which the candidate resides, or in the case of a political committee, the county in which the committee maintains its office or headquarters, and if there is no office or headquarters then in the county in which the treasurer resides, a report containing the information required by RCW 42.17.090:

(a) On the twenty-first day and the seventh day immediately preceding the date on which the election is held; and

(b) On the tenth day of the first month after the election: PROVIDED, That this report shall not be required following a primary election from:

(i) A candidate whose name will appear on the subsequent general election ballot; or

(ii) Any continuing political committee; and

(c) On the tenth day of each month in which no other reports are required to be filed under this section: PROVIDED, That such report shall only be filed if the committee has received a contribution or made an expenditure in the preceding calendar month and either the total contributions received or total expenditures made since the last such report exceed two hundred dollars.

When there is no outstanding debt or obligation, and the campaign fund is closed, and the campaign is concluded in all respects, and in the case of a political committee, the committee has ceased to function and has dissolved, the treasurer shall file a final report. Upon submitting a final report, the duties of the treasurer shall cease and there shall be no obligation to make any further reports.

The report filed twenty-one days before the election shall report all contributions received and expenditures made as of the end of the fifth business day before the date of the report. The report filed seven days before the election shall report all contributions received and expenditures made as of the end of the one business day before the date of the report. Reports filed on the tenth day of the month shall report all contributions received and expenditures made from the closing date of the last report filed through the last day of the month preceding the date of the current report.

(3) For the period beginning the first day of the fourth month preceding the date on which the special or general election is held and ending on the date of that election, each Monday the treasurer shall file with the commission and the appropriate county elections officer a report of each bank deposit made during the previous seven calendar days. The report shall contain the name of each person contributing the funds so deposited and the amount contributed by each person. However, contributions of no more than twenty-five dollars in the aggregate from any one person may be deposited without identifying the contributor. A copy of the report shall be retained by the treasurer for his or her records. In the event of deposits made by a deputy treasurer, the copy shall be forwarded to the treasurer for his or her records. Each report shall be certified as correct by the treasurer or deputy treasurer making the deposit.

(4) If a city requires that candidates or committees for city offices file reports with a city agency, the candidate or treasurer so filing need not also file the report with the county auditor or elections officer.

(5) The treasurer or candidate shall maintain books of account accurately reflecting all contributions and expenditures on a current basis within five business days of receipt or expenditure. During the eight days immediately preceding the date of the election the books of account shall be kept current within one business day. As specified in the committee's statement of organization filed under RCW 42.17.040, the books of account must be open for public inspection by appointment at the designated place for inspections between 8:00 a.m. and 8:00 p.m. on any day from the eighth day immediately before the election through the day immediately before the election, other than Saturday, Sunday, or a legal holiday. It is a violation of this chapter for a candidate or political committee to refuse to allow and keep an appointment for an inspection to be conducted during these authorized times and days. The appointment must be allowed at an authorized time and day for such inspections that is within twenty-four hours of the time and day that is requested for the inspection.

(6) The treasurer or candidate shall preserve books of account, bills, receipts, and all other financial records of the campaign or political committee for not less than five calendar years following the year during which the transaction occurred.

(7) All reports filed pursuant to subsection (1) or (2) of this section shall be certified as correct by the candidate and the treasurer.

(8) Copies of all reports filed pursuant to this section shall be readily available for public inspection for at least two consecutive hours Monday through Friday, excluding legal holidays, between 8:00 a.m. and 8:00 p.m., as specified in the committee's statement of organization filed pursuant to RCW 42.17.040, at the principal headquarters or, if there is no headquarters, at the address of the treasurer or such other place as may be authorized by the commission.

(9) After January 1, 2002, a report that is filed with the commission electronically need not also be filed with the county auditor or elections officer.

(10) The commission shall adopt administrative rules establishing requirements for filer participation in any system designed and implemented by the commission for the electronic filing of reports. [2005 c 184 § 1; 2002 c 75 § 2; 2000 c 237 § 2; 1999 c 401 § 13; 1995 c 397 § 2; 1989 c 280 § 8; 1986 c 28 § 1; 1982 c 147 § 6; 1975 1st ex.s. c 294 § 6; 1973 c 1 § 8 (Initiative Measure No. 276, approved November 7, 1972).]

**Effective date—1989 c 280:** See note following RCW 42.17.020.

**42.17.095 Disposal of surplus funds.** The surplus funds of a candidate, or of a political committee supporting or opposing a candidate, may only be disposed of in any one or more of the following ways:

(1) Return the surplus to a contributor in an amount not to exceed that contributor's original contribution;

(2) Transfer the surplus to the candidate's personal account as reimbursement for lost earnings incurred as a

result of that candidate's election campaign. Such lost earnings shall be verifiable as unpaid salary or, when the candidate is not salaried, as an amount not to exceed income received by the candidate for services rendered during an appropriate, corresponding time period. All lost earnings incurred shall be documented and a record thereof shall be maintained by the candidate or the candidate's political committee. The committee shall include a copy of such record when its expenditure for such reimbursement is reported pursuant to RCW 42.17.090;

(3) Transfer the surplus without limit to a political party or to a caucus political committee;

(4) Donate the surplus to a charitable organization registered in accordance with chapter 19.09 RCW;

(5) Transmit the surplus to the state treasurer for deposit in the general fund, the oral history, state library, and archives account under RCW 43.07.380, or the legislative international trade account under RCW 44.04.270, as specified by the candidate or political committee; or

(6) Hold the surplus in the campaign depository or depositories designated in accordance with RCW 42.17.050 for possible use in a future election campaign for the same office last sought by the candidate and report any such disposition in accordance with RCW 42.17.090: PROVIDED, That if the candidate subsequently announces or publicly files for office, information as appropriate is reported to the commission in accordance with RCW 42.17.040 through 42.17.090. If a subsequent office is not sought the surplus held shall be disposed of in accordance with the requirements of this section.

(7) Hold the surplus campaign funds in a separate account for nonreimbursed public office-related expenses or as provided in this section, and report any such disposition in accordance with RCW 42.17.090. The separate account required under this subsection shall not be used for deposits of campaign funds that are not surplus.

(8) No candidate or authorized committee may transfer funds to any other candidate or other political committee.

The disposal of surplus funds under this section shall not be considered a contribution for purposes of this chapter. [2005 c 467 § 1; 1995 c 397 § 31; 1993 c 2 § 20 (Initiative Measure No. 134, approved November 3, 1992); 1982 c 147 § 8; 1977 ex.s. c 336 § 3.]

**Effective date—2005 c 467:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 13, 2005]." [2005 c 467 § 2.]

**Severability—1977 ex.s. c 336:** See note following RCW 42.17.040.

**42.17.103 Special reports—Political advertising. (Effective January 1, 2006.)** (1) The sponsor of political advertising who, within twenty-one days of an election, publishes, mails, or otherwise presents to the public political advertising supporting or opposing a candidate or ballot proposition that qualifies as an independent expenditure with a fair market value of one thousand dollars or more shall deliver, either electronically or in written form, a special report to the commission within twenty-four hours of, or on the first working day after, the date the political advertising is first published, mailed, or otherwise presented to the public.

[2005 RCW Supp—page 408]

(2) If a sponsor is required to file a special report under this section, the sponsor shall also deliver to the commission within the delivery period established in subsection (1) of this section a special report for each subsequent independent expenditure of any size supporting or opposing the same candidate who was the subject of the previous independent expenditure, supporting or opposing that candidate's opponent, or supporting or opposing the same ballot proposition that was the subject of the previous independent expenditure.

(3) The special report must include at least:

(a) The name and address of the person making the expenditure;

(b) The name and address of the person to whom the expenditure was made;

(c) A detailed description of the expenditure;

(d) The date the expenditure was made and the date the political advertising was first published or otherwise presented to the public;

(e) The amount of the expenditure;

(f) The name of the candidate supported or opposed by the expenditure, the office being sought by the candidate, and whether the expenditure supports or opposes the candidate; or the name of the ballot proposition supported or opposed by the expenditure and whether the expenditure supports or opposes the ballot proposition; and

(g) Any other information the commission may require by rule.

(4) All persons required to report under RCW 42.17.065, 42.17.080, 42.17.090, 42.17.100, and 42.17.565 are subject to the requirements of this section. The commission may determine that reports filed pursuant to this section also satisfy the requirements of RCW 42.17.100.

(5) The sponsor of independent expenditures supporting a candidate or opposing that candidate's opponent required to report under this section shall file with each required report an affidavit or declaration of the person responsible for making the independent expenditure that the expenditure was not made in cooperation, consultation, or concert with, or at the request or suggestion of, the candidate, the candidate's authorized committee, or the candidate's agent, or with the encouragement or approval of the candidate, the candidate's authorized committee, or the candidate's agent. [2005 c 445 § 7; 2001 c 54 § 1.]

**Effective date—2001 c 54:** "This act takes effect January 1, 2002." [2001 c 54 § 4.]

**42.17.110 Commercial advertisers—Public inspection of documents—Copies to commission. (Effective January 1, 2006.)** (1) Each commercial advertiser who has accepted or provided political advertising or electioneering communications during the election campaign shall maintain open for public inspection during the campaign and for a period of no less than three years after the date of the applicable election, during normal business hours, documents and books of account which shall specify:

(a) The names and addresses of persons from whom it accepted political advertising or electioneering communications;

(b) The exact nature and extent of the services rendered; and

(c) The consideration and the manner of paying that consideration for such services.

(2) Each commercial advertiser which must comply with subsection (1) of this section shall deliver to the commission, upon its request, copies of such information as must be maintained open for public inspection pursuant to subsection (1) of this section. [2005 c 445 § 8; 1975-'76 2nd ex.s. c 112 § 5; 1973 c 1 § 11 (Initiative Measure No. 276, approved November 7, 1972).]

**42.17.2401 "Executive state officer" defined.** For the purposes of RCW 42.17.240, the term "executive state officer" includes:

(1) The chief administrative law judge, the director of agriculture, the administrator of the Washington basic health plan, the director of the department of services for the blind, the director of the state system of community and technical colleges, the director of community, trade, and economic development, the secretary of corrections, the director of ecology, the commissioner of employment security, the chair of the energy facility site evaluation council, the secretary of the state finance committee, the director of financial management, the director of fish and wildlife, the executive secretary of the forest practices appeals board, the director of the gambling commission, the director of general administration, the secretary of health, the administrator of the Washington state health care authority, the executive secretary of the health care facilities authority, the executive secretary of the higher education facilities authority, the executive secretary of the horse racing commission, the executive secretary of the human rights commission, the executive secretary of the indeterminate sentence review board, the director of the department of information services, the director of the interagency committee for outdoor recreation, the executive director of the state investment board, the director of labor and industries, the director of licensing, the director of the lottery commission, the director of the office of minority and women's business enterprises, the director of parks and recreation, the director of personnel, the executive director of the public disclosure commission, the director of retirement systems, the director of revenue, the secretary of social and health services, the chief of the Washington state patrol, the executive secretary of the board of tax appeals, the secretary of transportation, the secretary of the utilities and transportation commission, the director of veterans affairs, the president of each of the regional and state universities and the president of The Evergreen State College, each district and each campus president of each state community college;

(2) Each professional staff member of the office of the governor;

(3) Each professional staff member of the legislature; and

(4) Central Washington University board of trustees, board of trustees of each community college, each member of the state board for community and technical colleges, state convention and trade center board of directors, committee for deferred compensation, Eastern Washington University board of trustees, Washington economic development finance authority, The Evergreen State College board of trustees, executive ethics board, forest practices appeals board, forest practices board, gambling commission, life sci-

ences discovery fund authority board of trustees, Washington health care facilities authority, each member of the Washington health services commission, higher education coordinating board, higher education facilities authority, horse racing commission, state housing finance commission, human rights commission, indeterminate sentence review board, board of industrial insurance appeals, information services board, interagency committee for outdoor recreation, state investment board, commission on judicial conduct, legislative ethics board, liquor control board, lottery commission, marine oversight board, Pacific Northwest electric power and conservation planning council, parks and recreation commission, \*personnel appeals board, board of pilotage commissioners, pollution control hearings board, public disclosure commission, public pension commission, shorelines hearing board, public employees' benefits board, salmon recovery funding board, board of tax appeals, transportation commission, University of Washington board of regents, utilities and transportation commission, Washington state maritime commission, Washington personnel resources board, Washington public power supply system executive board, Washington State University board of regents, Western Washington University board of trustees, and fish and wildlife commission. [2005 c 424 § 17. Prior: 2001 c 36 § 1; 2001 c 9 § 1; 1996 c 186 § 504; prior: 1995 c 399 § 60; 1995 c 397 § 10; prior: 1993 sp.s. c 2 § 18; 1993 c 492 § 488; 1993 c 281 § 43; 1991 c 200 § 404; 1991 c 3 § 293; prior: 1989 1st ex.s. c 9 § 812; 1989 c 279 § 22; 1989 c 158 § 2; 1988 c 36 § 13; 1987 c 504 § 14; 1985 c 6 § 8; 1984 c 34 § 2.]

**\*Reviser's note:** The personnel appeals board was created by RCW 41.64.010, which was repealed by 2002 c 354 § 404, effective July 1, 2006.

**Captions not law—Liberal construction—Severability—Effective dates—2005 c 424:** See RCW 43.350.900 through 43.350.903.

**Findings—Intent—Part headings not law—Effective date—1996 c 186:** See notes following RCW 43.330.904.

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

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

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

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

**Effective date—1993 c 281:** See note following RCW 41.06.022.

**Effective dates—Severability—1991 c 200:** See RCW 90.56.901 and 90.56.904.

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

**Severability—1989 c 279:** See RCW 43.163.901.

**Alphabetization—1989 c 158 § 2:** "When section 2 of this act is codified, the code reviser shall arrange the names of the agencies in each subsection in alphabetical order." [1989 c 158 § 3.] The names of the agencies in the above section have been arranged according to the first distinctive word of each agency's name.

**Severability—Effective date—1987 c 504:** See RCW 43.105.901 and 43.105.902.

**42.17.245 Public accounts of governmental entities held by financial institutions—Statements and reports—Contents—Filing. (Effective July 1, 2006.)** After January 1st and before April 15th of each calendar year, the state treasurer, each county, public utility district, and port district treasurer, and each treasurer of an incorporated city or town

whose population exceeds one thousand shall file with the commission:

(1) A statement under oath that no public funds under that treasurer's control were invested in any institution where the treasurer or, in the case of a county, a member of the county finance committee, held during the reporting period an office, directorship, partnership interest, or ownership interest; or

(2) A report disclosing for the previous calendar year: (a) The name and address of each financial institution in which the treasurer or, in the case of a county, a member of the county finance committee, held during the reporting period an office, directorship, partnership interest, or ownership interest which holds or has held during the reporting period public accounts of the governmental entity for which the treasurer is responsible; (b) the aggregate sum of time and demand deposits held in each such financial institution on December 31; and (c) the highest balance held at any time during such reporting period: PROVIDED, That the state treasurer shall disclose the highest balance information only upon request under chapter 42.56 RCW. The statement or report required by this section shall be filed either with the statement required under RCW 42.17.240 or separately. [2005 c 274 § 282; 1983 c 213 § 1; 1981 c 102 § 1; 1975-'76 2nd ex.s. c 112 § 10.]

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

**42.17.250 Recodified as RCW 42.56.040. (Effective July 1, 2006.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**42.17.251 Recodified as RCW 42.56.030. (Effective July 1, 2006.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**42.17.253 Public records officers.** (1) Each state and local agency shall appoint and publicly identify a public records officer whose responsibility is to serve as a point of contact for members of the public in requesting disclosure of public records and to oversee the agency's compliance with the public records disclosure requirements of this chapter. A state or local agency's public records officer may appoint an employee or official of another agency as its public records officer.

(2) For state agencies, the name and contact information of the agency's public records officer to whom members of the public may direct requests for disclosure of public records and who will oversee the agency's compliance with the public records disclosure requirements of this chapter shall be published in the state register at the time of designation and annually every year thereafter.

(3) For local agencies, the name and contact information of the agency's public records officer to whom members of the public may direct requests for disclosure of public records and who will oversee the agency's compliance within the public records disclosure requirements of this chapter shall be made in a way reasonably calculated to provide notice to the public, including posting at the local agency's place of

business, posting on its internet site, or including in its publications. [2005 c 483 § 3.]

**42.17.255 Recodified as RCW 42.56.050. (Effective July 1, 2006.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**42.17.258 Recodified as RCW 42.56.060. (Effective July 1, 2006.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**42.17.260 Recodified as RCW 42.56.070. (Effective July 1, 2006.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**42.17.270 Facilities for copying—Availability of public records. (Effective until July 1, 2006.)** Public records shall be available for inspection and copying, and agencies shall, upon request for identifiable public records, make them promptly available to any person including, if applicable, on a partial or installment basis as records that are part of a larger set of requested records are assembled or made ready for inspection or disclosure. Agencies shall not deny a request for identifiable public records solely on the basis that the request is overbroad. Agencies shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate RCW 42.17.260(9) or other statute which exempts or prohibits disclosure of specific information or records to certain persons. Agency facilities shall be made available to any person for the copying of public records except when and to the extent that this would unreasonably disrupt the operations of the agency. Agencies shall honor requests received by mail for identifiable public records unless exempted by provisions of this chapter. [2005 c 483 § 1; 1987 c 403 § 4; 1975 1st ex.s. c 294 § 15; 1973 c 1 § 27 (Initiative Measure No. 276, approved November 7, 1972).]

**Intent—Severability—1987 c 403:** See notes following RCW 42.17.255.

**42.17.270 Recodified as RCW 42.56.080. (Effective July 1, 2006.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**42.17.280 Recodified as RCW 42.56.090. (Effective July 1, 2006.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**42.17.290 Recodified as RCW 42.56.100. (Effective July 1, 2006.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**42.17.295 Recodified as RCW 42.56.110. (Effective July 1, 2006.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**42.17.300 Charges for copying. (Effective until July 1, 2006.)** No fee shall be charged for the inspection of public records. No fee shall be charged for locating public docu-

ments and making them available for copying. A reasonable charge may be imposed for providing copies of public records and for the use by any person of agency equipment or equipment of the office of the secretary of the senate or the office of the chief clerk of the house of representatives to copy public records, which charges shall not exceed the amount necessary to reimburse the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives for its actual costs directly incident to such copying. Agency charges for photocopies shall be imposed in accordance with the actual per page cost or other costs established and published by the agency. In no event may an agency charge a per page cost greater than the actual per page cost as established and published by the agency. To the extent the agency has not determined the actual per page cost for photocopies of public records, the agency may not charge in excess of fifteen cents per page. An agency may require a deposit in an amount not to exceed ten percent of the estimated cost of providing copies for a request. If an agency makes a request available on a partial or installment basis, the agency may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed, the agency is not obligated to fulfill the balance of the request. [2005 c 483 § 2. Prior: 1995 c 397 § 14; 1995 c 341 § 2; 1973 c 1 § 30 (Initiative Measure No. 276, approved November 7, 1972).]

**42.17.300 Recodified as RCW 42.56.120. (Effective July 1, 2006.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**42.17.305 Recodified as RCW 42.56.130. (Effective July 1, 2006.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**42.17.310 Certain personal and other records exempt. (Effective until January 1, 2006.)** (1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would

endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

(f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

(m) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (i) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (ii) highway construction or improvement as required by RCW 47.28.070.

(n) Railroad company contracts filed prior to July 28, 1991, with the utilities and transportation commission under \*RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to export projects pursuant to RCW 43.23.035.

(p) Financial disclosures filed by private vocational schools under chapters 28B.85 and 28C.10 RCW.

(q) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095.

(r) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.163,

43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency.

(s) Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department.

(t) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

(u) The residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, Social Security numbers, and emergency contact information of employees or volunteers of a public agency, and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, Social Security numbers, and emergency contact information of dependents of employees or volunteers of a public agency, which are held by any public agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency. For purposes of this subsection, "employees" includes independent provider home care workers as defined in RCW 74.39A.240.

(v) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, for the establishment, enforcement, or modification of a support order.

(w)(i) The federal social security number of individuals governed under chapter 18.130 RCW maintained in the files of the department of health, except this exemption does not apply to requests made directly to the department from federal, state, and local agencies of government, and national and state licensing, credentialing, investigatory, disciplinary, and examination organizations; (ii) the current residential address and current residential telephone number of a health care provider governed under chapter 18.130 RCW maintained in the files of the department, if the provider requests that this information be withheld from public inspection and copying, and provides to the department an accurate alternate or business address and business telephone number. On or after January 1, 1995, the current residential address and residential telephone number of a health care provider governed under RCW 18.130.040 maintained in the files of the department shall automatically be withheld from public inspection and copying unless the provider specifically requests the information be released, and except as provided for under \*\*RCW 42.17.260(9).

(x) Information obtained by the board of pharmacy as provided in RCW 69.45.090.

(y) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420.

(z) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW.

(aa) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information.

(bb) Financial and valuable trade information under RCW 51.36.120.

(cc) Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123.020 or 70.123.075 or a rape crisis center as defined in RCW 70.125.030.

(dd) Information that identifies a person who, while an agency employee: (i) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (ii) requests his or her identity or any identifying information not be disclosed.

(ee) Investigative records compiled by an employing agency conducting a current investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment.

(ff) Business related information protected from public inspection and copying under RCW 15.86.110.

(gg) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW.

(hh) Information and documents created specifically for, and collected and maintained by, a quality improvement committee pursuant to RCW 43.70.510 or 70.41.200, by a peer review committee under RCW 4.24.250, or by a quality assurance committee pursuant to RCW 74.42.640 or 18.20.390, regardless of which agency is in possession of the information and documents.

(ii) Personal information in files maintained in a data base created under \*\*\*RCW 43.07.360.

(jj) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010.

(kk) Names of individuals residing in emergency or transitional housing that are furnished to the department of revenue or a county assessor in order to substantiate a claim for property tax exemption under RCW 84.36.043.

(ll) The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program or service. However, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides.

(mm) The personally identifying information of current or former participants or applicants in a paratransit or other



transit service operated for the benefit of persons with disabilities or elderly persons.

(nn) The personally identifying information of persons who acquire and use transit passes and other fare payment media including, but not limited to, stored value smart cards and magnetic strip cards, except that an agency may disclose this information to a person, employer, educational institution, or other entity that is responsible, in whole or in part, for payment of the cost of acquiring or using a transit pass or other fare payment media, or to the news media when reporting on public transportation or public safety. This information may also be disclosed at the agency's discretion to governmental agencies or groups concerned with public transportation or public safety.

(oo) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310. If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this section as exempt from disclosure. If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality.

(pp) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110.

(qq) Financial and commercial information supplied by or on behalf of a person, firm, corporation, or entity under chapter 28B.95 RCW relating to the purchase or sale of tuition units and contracts for the purchase of multiple tuition units.

(rr) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b).

(ss) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law.

(tt) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), liquor license, gambling license, or lottery retail license.

(uu) Records maintained by the employment security department and subject to chapter 50.13 RCW if provided to another individual or organization for operational, research, or evaluation purposes.

(vv) Individually identifiable information received by the work force training and education coordinating board for research or evaluation purposes.

(ww) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the state or the United States and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:

(i) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; and

(ii) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism.

(xx) Commercial fishing catch data from logbooks required to be provided to the department of fish and wildlife under RCW 77.12.047, when the data identifies specific catch location, timing, or methodology and the release of which would result in unfair competitive disadvantage to the commercial fisher providing the catch data. However, this information may be released to government agencies concerned with the management of fish and wildlife resources.

(yy) Sensitive wildlife data obtained by the department of fish and wildlife. However, sensitive wildlife data may be released to government agencies concerned with the management of fish and wildlife resources. Sensitive wildlife data includes:

(i) The nesting sites or specific locations of endangered species designated under RCW 77.12.020, or threatened or sensitive species classified by rule of the department of fish and wildlife;

(ii) Radio frequencies used in, or locational data generated by, telemetry studies; or

(iii) Other location data that could compromise the viability of a specific fish or wildlife population, and where at least one of the following criteria are met:

(A) The species has a known commercial or black market value;

(B) There is a history of malicious take of that species; or

(C) There is a known demand to visit, take, or disturb, and the species behavior or ecology renders it especially vulnerable or the species has an extremely limited distribution and concentration.

(zz) The personally identifying information of persons who acquire recreational licenses under RCW 77.32.010 or commercial licenses under chapter 77.65 or 77.70 RCW, except name, address of contact used by the department, and type of license, endorsement, or tag. However, the department of fish and wildlife may disclose personally identifying information to:

(i) Government agencies concerned with the management of fish and wildlife resources;

(ii) The department of social and health services, child support division, and to the department of licensing in order to implement RCW 77.32.014 and 46.20.291; and

(iii) Law enforcement agencies for the purpose of fire-arm possession enforcement under RCW 9.41.040.

(aaa)(i) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have not been commingled with other recorded documents. These records will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding that veteran's general power of attorney, or to anyone else designated in writing by that veteran to receive the records.

(ii) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have been commingled with other records, if the veteran has recorded a "request for exemption from public disclosure of discharge papers" with the county auditor. If such a request has been recorded, these records may be released only to the veteran filing the papers, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(iii) Discharge papers of a veteran filed at the office of the county auditor after June 30, 2002, are not public records, but will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(iv) For the purposes of this subsection (1)(aaa), next of kin of deceased veterans have the same rights to full access to the record. Next of kin are the veteran's widow or widower who has not remarried, son, daughter, father, mother, brother, and sister.

(bbb) Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans at a city, county, or state adult or juvenile correctional facility, the public disclosure of which would have a substantial likelihood of threatening the security of a city, county, or state adult or juvenile correctional facility or any individual's safety.

(ccc) Information compiled by school districts or schools in the development of their comprehensive safe school plans pursuant to RCW 28A.320.125, to the extent that they identify specific vulnerabilities of school districts and each individual school.

(ddd) Information regarding the infrastructure and security of computer and telecommunications networks, consisting of security passwords, security access codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities.

(eee) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review

committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW.

(fff) Proprietary data, trade secrets, or other information that relates to: (i) A vendor's unique methods of conducting business; (ii) data unique to the product or services of the vendor; or (iii) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011.

(ggg) The personally identifying information of persons who acquire and use transponders or other technology to facilitate payment of tolls. This information may be disclosed in aggregate form as long as the data does not contain any personally identifying information. For these purposes aggregate data may include the census tract of the account holder as long as any individual personally identifying information is not released. Personally identifying information may be released to law enforcement agencies only for toll enforcement purposes. Personally identifying information may be released to law enforcement agencies for other purposes only if the request is accompanied by a court order.

(hhh) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under chapter 43.350 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information.

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld. [2005 c 424 § 16; 2005 c 349 § 1; 2005 c 312 § 6; 2005 c 284 § 1; 2005 c 33 § 4. Prior: (2005 c 424 § 15 expired June 30, 2005); (2005 c 312 § 5 expired June 30, 2005); (2003 1st sp.s. c 26 § 926 expired June 30, 2005); 2003 c 277 § 3; 2003 c 124 § 1; prior: 2002 c 335 § 1; 2002 c 224 § 2; 2002 c 205 § 4; 2002 c 172 § 1; prior: 2001 c 278 § 1; 2001 c 98 § 2; 2001 c 70 § 1; prior: 2000 c 134 § 3; 2000 c 56 § 1; 2000 c 6 § 5; prior: 1999 c 326 § 3; 1999 c 290 § 1; 1999 c 215 § 1; 1998 c 69 § 1; prior: 1997 c 310 § 2; 1997 c 274 § 8; 1997 c 250 § 7; 1997 c 239 §

4; 1997 c 220 § 120 (Referendum Bill No. 48, approved June 17, 1997); 1997 c 58 § 900; prior: 1996 c 305 § 2; 1996 c 253 § 302; 1996 c 191 § 88; 1996 c 80 § 1; 1995 c 267 § 6; prior: 1994 c 233 § 2; 1994 c 182 § 1; prior: 1993 c 360 § 2; 1993 c 320 § 9; 1993 c 280 § 35; prior: 1992 c 139 § 5; 1992 c 71 § 12; 1991 c 301 § 13; 1991 c 87 § 13; 1991 c 23 § 10; 1991 c 1 § 1; 1990 2nd ex.s. c 1 § 1103; 1990 c 256 § 1; prior: 1989 1st ex.s. c 9 § 407; 1989 c 352 § 7; 1989 c 279 § 23; 1989 c 238 § 1; 1989 c 205 § 20; 1989 c 189 § 3; 1989 c 11 § 12; prior: 1987 c 411 § 10; 1987 c 404 § 1; 1987 c 370 § 16; 1987 c 337 § 1; 1987 c 107 § 2; prior: 1986 c 299 § 25; 1986 c 276 § 7; 1985 c 414 § 8; 1984 c 143 § 21; 1983 c 133 § 10; 1982 c 64 § 1; 1977 ex.s. c 314 § 13; 1975-'76 2nd ex.s. c 82 § 5; 1975 1st ex.s. c 294 § 17; 1973 c 1 § 31 (Initiative Measure No. 276, approved November 7, 1972).]

**Reviser's note:** \*(1) RCW 81.34.070 was repealed by 1991 c 49 § 1.

\*\*\*(2) RCW 42.17.260 was recodified as RCW 42.56.070 pursuant to 2005 c 274 § 103, effective July 1, 2006.

\*\*\*\*(3) RCW 43.07.360 expired December 31, 2000, pursuant to 1996 c 253 § 502.

(4) This section was amended by 2005 c 33 § 4, 2005 c 284 § 1, 2005 c 312 § 6, 2005 c 349 § 1, and by 2005 c 424 § 16, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Expiration date—2005 c 424 § 15:** "Section 15 of this act expires June 30, 2005." [2005 c 424 § 23.]

**Captions not law—Liberal construction—Severability—Effective dates—2005 c 424:** See RCW 43.350.900 through 43.350.903.

**Effective date—2005 c 349:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 2005]." [2005 c 349 § 2.]

**Effective date—2005 c 312 § 5:** "Section 5 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 2005]." [2005 c 312 § 12.]

**Effective dates—2005 c 312 §§ 6 and 8:** "(1) Section 6 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2005.

(2) Section 8 of this act takes effect July 1, 2006." [2005 c 312 § 11.]

**Expiration dates—2005 c 312 §§ 5 and 7:** "(1) Section 5 of this act expires June 30, 2005.

(2) Section 7 of this act expires July 1, 2006." [2005 c 312 § 10.]

**Intent—Captions—2005 c 312:** See notes following RCW 47.56.401.

**Findings—2005 c 33:** See note following RCW 18.20.390.

**Expiration date—Severability—Effective dates—2003 1st sp.s. c 26:** See notes following RCW 43.135.045.

**Working group on veterans' records:** "The protection from identity theft for veterans who choose to file their discharge papers with the county auditor is a matter of gravest concern. At the same time, the integrity of the public record of each county is a matter of utmost importance to the economic life of this state and to the right of each citizen to be secure in his or her ownership of real property and other rights and obligations of our citizens that rely upon the public record for their proof. Likewise the integrity of the public record is essential for the establishment of ancestral ties that may be of interest to this and future generations. While the public record as now kept by the county auditors is sufficient by itself for the accomplishment of these and many other public and private purposes, the proposed use of the public record for purposes that in their nature and intent are not public, so as to keep the veterans' discharge papers from disclosure to those of ill intent, causes concern among many segments of the population of this state.

In order to voice these concerns effectively and thoroughly, a working group may be convened by the joint committee on veterans' and military affairs to develop a means to preserve the integrity of the public record while protecting those veterans from identity theft." [2002 c 224 § 1.]

**Effective date—2002 c 224 § 1:** "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support

of the state government and its existing public institutions, and takes effect immediately [March 28, 2002]." [2002 c 224 § 4.]

**Findings—Severability—Effective dates—2002 c 205 §§ 2, 3, and 4:** See notes following RCW 28A.320.125.

**Finding—2001 c 98:** "The legislature finds that public health and safety is promoted when the public has knowledge that enables them to make informed choices about their health and safety. Therefore, the legislature declares, as a matter of public policy, that the public has a right to information necessary to protect members of the public from harm caused by alleged hazards or threats to the public.

The legislature also recognizes that the public disclosure of those portions of records containing specific and unique vulnerability assessments or specific and unique response plans, either of which is intended to prevent or mitigate criminal terrorist acts as defined in RCW 70.74.285, could have a substantial likelihood of threatening public safety. Therefore, the legislature declares, as a matter of public policy, that such specific and unique information should be protected from unnecessary disclosure." [2001 c 98 § 1.]

**Findings—Conflict with federal requirements—Severability—2000 c 134:** See notes following RCW 50.13.060.

**Effective date—1998 c 69:** See note following RCW 28B.95.025.

**Effective date—1997 c 274:** See note following RCW 41.05.021.

**Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220:** See RCW 36.102.800 through 36.102.803.

**Part headings not law—Severability—1997 c 220:** See RCW 36.102.900 and 36.102.901.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Severability—1996 c 305:** See note following RCW 28B.85.020.

**Findings—Purpose—Severability—Part headings not law—1996 c 253:** See notes following RCW 28B.109.010.

**Captions not law—Severability—Effective dates—1995 c 267:** See notes following RCW 43.70.052.

**Effective date—1994 c 233:** See note following RCW 70.123.075.

**Effective date—1994 c 182:** "This act shall take effect July 1, 1994." [1994 c 182 § 2.]

**Effective date—1993 c 360:** See note following RCW 18.130.085.

**Effective date—Severability—1993 c 280:** See RCW 43.330.902 and 43.330.903.

**Finding—1991 c 301:** See note following RCW 10.99.020.

**Effective date—1991 c 87:** See note following RCW 18.64.350.

**Effective dates—1990 2nd ex.s. c 1:** See note following RCW 84.52.010.

**Severability—1990 2nd ex.s. c 1:** See note following RCW 82.14.300.

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

**Severability—1989 c 279:** See RCW 43.163.901.

**Severability—1989 c 11:** See note following RCW 9A.56.220.

**Severability—1987 c 411:** See RCW 69.45.900.

**Severability—Effective date—1986 c 299:** See RCW 28C.10.900 and 28C.10.902.

**Severability—1986 c 276:** See RCW 53.31.901.

*Basic health plan records:* RCW 70.47.150.

*Exemptions from public inspection*

*accounting records of special inquiry judge:* RCW 10.29.090.

*bill drafting service of code reviser's office:* RCW 1.08.027, 44.68.060.

*certificate submitted by physically or mentally disabled person seeking a driver's license:* RCW 46.20.041.

*commercial fertilizers, sales reports:* RCW 15.54.362.

*criminal records:* Chapter 10.97 RCW.

*employer information:* RCW 50.13.060.

*family and children's ombudsman:* RCW 43.06A.050.

*joint legislative service center, information:* RCW 44.68.060.

*medical quality assurance commission, reports required to be filed with:*  
*RCW 18.71.0195.*  
*organized crime*  
*advisory board files:* RCW 10.29.030.  
*investigative information:* RCW 43.43.856.  
*public transportation information:* RCW 47.04.230.  
*salary and fringe benefit survey information:* RCW 41.06.160.

**42.17.310 Certain personal and other records exempt. (Effective January 1, 2006, until July 1, 2006.)** (1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

(f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available

to another party under the rules of pretrial discovery for causes pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

(m) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (i) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (ii) highway construction or improvement as required by RCW 47.28.070.

(n) Railroad company contracts filed prior to July 28, 1991, with the utilities and transportation commission under \*RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to export projects pursuant to RCW 43.23.035.

(p) Financial disclosures filed by private vocational schools under chapters 28B.85 and 28C.10 RCW.

(q) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095.

(r) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency.

(s) Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department.

(t) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

(u) The residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, Social Security numbers, and emergency contact information of employees or volunteers of a public agency, and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, Social Security numbers, and emergency contact information of dependents of employees or volunteers of a public agency, which are held by any public agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency. For purposes of this subsection, "employees" includes independent provider home care workers as defined in RCW 74.39A.240.

(v) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, for the establishment, enforcement, or modification of a support order.

(w)(i) The federal social security number of individuals governed under chapter 18.130 RCW maintained in the files of the department of health, except this exemption does not apply to requests made directly to the department from federal, state, and local agencies of government, and national and state licensing, credentialing, investigatory, disciplinary, and examination organizations; (ii) the current residential address and current residential telephone number of a health care provider governed under chapter 18.130 RCW maintained in the files of the department, if the provider requests that this information be withheld from public inspection and copying, and provides to the department an accurate alternate or business address and business telephone number. On or after January 1, 1995, the current residential address and residential telephone number of a health care provider governed under RCW 18.130.040 maintained in the files of the department shall automatically be withheld from public inspection and copying unless the provider specifically requests the information be released, and except as provided for under \*\*RCW 42.17.260(9).

(x) Information obtained by the board of pharmacy as provided in RCW 69.45.090.

(y) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420.

(z) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW.

(aa) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information.

(bb) Financial and valuable trade information under RCW 51.36.120.

(cc) Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123.020 or 70.123.075 or a rape crisis center as defined in RCW 70.125.030.

(dd) Information that identifies a person who, while an agency employee: (i) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (ii) requests his or her identity or any identifying information not be disclosed.

(ee) Investigative records compiled by an employing agency conducting a current investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment.

(ff) Business related information protected from public inspection and copying under RCW 15.86.110.

(gg) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW.

(hh) Information and documents created specifically for, and collected and maintained by, a quality improvement committee pursuant to RCW 43.70.510 or 70.41.200, by a peer review committee under RCW 4.24.250, or by a quality assurance committee pursuant to RCW 74.42.640 or 18.20.390, regardless of which agency is in possession of the information and documents.

(ii) Personal information in files maintained in a data base created under \*\*\*RCW 43.07.360.

(jj) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010.

(kk) Names of individuals residing in emergency or transitional housing that are furnished to the department of revenue or a county assessor in order to substantiate a claim for property tax exemption under RCW 84.36.043.

(ll) The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program or service. However, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides.

(mm) The personally identifying information of current or former participants or applicants in a paratransit or other transit service operated for the benefit of persons with disabilities or elderly persons.

(nn) The personally identifying information of persons who acquire and use transit passes and other fare payment media including, but not limited to, stored value smart cards and magnetic strip cards, except that an agency may disclose this information to a person, employer, educational institution, or other entity that is responsible, in whole or in part, for payment of the cost of acquiring or using a transit pass or other fare payment media, or to the news media when reporting on public transportation or public safety. This information may also be disclosed at the agency's discretion to governmental agencies or groups concerned with public transportation or public safety.

(oo) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310. If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this section as exempt from disclosure. If the requester initiates an action to compel disclosure under this chapter, the

submitting entity must be joined as a party to demonstrate the continuing need for confidentiality.

(pp) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110.

(qq) Financial and commercial information supplied by or on behalf of a person, firm, corporation, or entity under chapter 28B.95 RCW relating to the purchase or sale of tuition units and contracts for the purchase of multiple tuition units.

(rr) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b).

(ss) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law.

(tt) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), liquor license, gambling license, or lottery retail license.

(uu) Records maintained by the employment security department and subject to chapter 50.13 RCW if provided to another individual or organization for operational, research, or evaluation purposes.

(vv) Individually identifiable information received by the work force training and education coordinating board for research or evaluation purposes.

(ww) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the state or the United States and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:

(i) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; and

(ii) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism.

(xx) Commercial fishing catch data from logbooks required to be provided to the department of fish and wildlife under RCW 77.12.047, when the data identifies specific catch location, timing, or methodology and the release of which would result in unfair competitive disadvantage to the commercial fisher providing the catch data. However, this information may be released to government agencies concerned with the management of fish and wildlife resources.

(yy) Sensitive wildlife data obtained by the department of fish and wildlife. However, sensitive wildlife data may be released to government agencies concerned with the management of fish and wildlife resources. Sensitive wildlife data includes:

(i) The nesting sites or specific locations of endangered species designated under RCW 77.12.020, or threatened or sensitive species classified by rule of the department of fish and wildlife;

(ii) Radio frequencies used in, or locational data generated by, telemetry studies; or

(iii) Other location data that could compromise the viability of a specific fish or wildlife population, and where at least one of the following criteria are met:

(A) The species has a known commercial or black market value;

(B) There is a history of malicious take of that species; or

(C) There is a known demand to visit, take, or disturb, and the species behavior or ecology renders it especially vulnerable or the species has an extremely limited distribution and concentration.

(zz) The personally identifying information of persons who acquire recreational licenses under RCW 77.32.010 or commercial licenses under chapter 77.65 or 77.70 RCW, except name, address of contact used by the department, and type of license, endorsement, or tag. However, the department of fish and wildlife may disclose personally identifying information to:

(i) Government agencies concerned with the management of fish and wildlife resources;

(ii) The department of social and health services, child support division, and to the department of licensing in order to implement RCW 77.32.014 and 46.20.291; and

(iii) Law enforcement agencies for the purpose of firearm possession enforcement under RCW 9.41.040.

(aaa)(i) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have not been commingled with other recorded documents. These records will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding that veteran's general power of attorney, or to anyone else designated in writing by that veteran to receive the records.

(ii) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have been commingled with other records, if the veteran has recorded a "request for exemption from public disclosure of discharge papers" with the county auditor. If such a request has been recorded, these records may be released only to the veteran filing the papers, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(iii) Discharge papers of a veteran filed at the office of the county auditor after June 30, 2002, are not public records, but will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general

power of attorney, or anyone else designated in writing by the veteran to receive the records.

(iv) For the purposes of this subsection (1)(aaa), next of kin of deceased veterans have the same rights to full access to the record. Next of kin are the veteran's widow or widower who has not remarried, son, daughter, father, mother, brother, and sister.

(bbb) Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans at a city, county, or state adult or juvenile correctional facility, the public disclosure of which would have a substantial likelihood of threatening the security of a city, county, or state adult or juvenile correctional facility or any individual's safety.

(ccc) Information compiled by school districts or schools in the development of their comprehensive safe school plans pursuant to RCW 28A.320.125, to the extent that they identify specific vulnerabilities of school districts and each individual school.

(ddd) Information regarding the infrastructure and security of computer and telecommunications networks, consisting of security passwords, security access codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities.

(eee) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW.

(fff) Proprietary data, trade secrets, or other information that relates to: (i) A vendor's unique methods of conducting business; (ii) data unique to the product or services of the vendor; or (iii) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011.

(ggg) The personally identifying information of persons who acquire and use transponders or other technology to facilitate payment of tolls. This information may be disclosed in aggregate form as long as the data does not contain any personally identifying information. For these purposes aggregate data may include the census tract of the account holder as long as any individual personally identifying information is not released. Personally identifying information may be released to law enforcement agencies only for toll enforcement purposes. Personally identifying information may be released to law enforcement agencies for other purposes only if the request is accompanied by a court order.

(hhh) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under chapter 43.350 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information.

(iii) Records of mediation communications that are privileged under chapter 7.07 RCW.

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld. [2005 c 424 § 16; 2005 c 349 § 1; 2005 c 312 § 6; 2005 c 284 § 1; 2005 c 172 § 13; 2005 c 33 § 4. Prior: (2005 c 424 § 15 expired June 30, 2005); (2005 c 312 § 5 expired June 30, 2005); (2003 1st sp.s. c 26 § 926 expired June 30, 2005); 2003 c 277 § 3; 2003 c 124 § 1; prior: 2002 c 335 § 1; 2002 c 224 § 2; 2002 c 205 § 4; 2002 c 172 § 1; prior: 2001 c 278 § 1; 2001 c 98 § 2; 2001 c 70 § 1; prior: 2000 c 134 § 3; 2000 c 56 § 1; 2000 c 6 § 5; prior: 1999 c 326 § 3; 1999 c 290 § 1; 1999 c 215 § 1; 1998 c 69 § 1; prior: 1997 c 310 § 2; 1997 c 274 § 8; 1997 c 250 § 7; 1997 c 239 § 4; 1997 c 220 § 120 (Referendum Bill No. 48, approved June 17, 1997); 1997 c 58 § 900; prior: 1996 c 305 § 2; 1996 c 253 § 302; 1996 c 191 § 88; 1996 c 80 § 1; 1995 c 267 § 6; prior: 1994 c 233 § 2; 1994 c 182 § 1; prior: 1993 c 360 § 2; 1993 c 320 § 9; 1993 c 280 § 35; prior: 1992 c 139 § 5; 1992 c 71 § 12; 1991 c 301 § 13; 1991 c 87 § 13; 1991 c 23 § 10; 1991 c 1 § 1; 1990 2nd ex.s. c 1 § 1103; 1990 c 256 § 1; prior: 1989 1st ex.s. c 9 § 407; 1989 c 352 § 7; 1989 c 279 § 23; 1989 c 238 § 1; 1989 c 205 § 20; 1989 c 189 § 3; 1989 c 11 § 12; prior: 1987 c 411 § 10; 1987 c 404 § 1; 1987 c 370 § 16; 1987 c 337 § 1; 1987 c 107 § 2; prior: 1986 c 299 § 25; 1986 c 276 § 7; 1985 c 414 § 8; 1984 c 143 § 21; 1983 c 133 § 10; 1982 c 64 § 1; 1977 ex.s. c 314 § 13; 1975-'76 2nd ex.s. c 82 § 5; 1975 1st ex.s. c 294 § 17; 1973 c 1 § 31 (Initiative Measure No. 276, approved November 7, 1972).]

**Reviser's note:** \*(1) RCW 81.34.070 was repealed by 1991 c 49 § 1.

\*\* (2) RCW 42.17.260 was recodified as RCW 42.56.070 pursuant to 2005 c 274 § 103, effective July 1, 2006.

\*\*\* (3) RCW 43.07.360 expired December 31, 2000, pursuant to 1996 c 253 § 502.

(4) This section was amended by 2005 c 33 § 4, 2005 c 172 § 13, 2005 c 284 § 1, 2005 c 312 § 6, 2005 c 349 § 1, and by 2005 c 424 § 16, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Expiration date—2005 c 424 § 15:** "Section 15 of this act expires June 30, 2005." [2005 c 424 § 23.]

**Captions not law—Liberal construction—Severability—Effective dates—2005 c 424:** See RCW 43.350.900 through 43.350.903.

**Effective date—2005 c 349:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 2005]." [2005 c 349 § 2.]

**Effective date—2005 c 312 § 5:** "Section 5 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 2005]." [2005 c 312 § 12.]

**Effective dates—2005 c 312 §§ 6 and 8:** "(1) Section 6 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2005.

(2) Section 8 of this act takes effect July 1, 2006." [2005 c 312 § 11.]

**Expiration dates—2005 c 312 §§ 5 and 7:** "(1) Section 5 of this act expires June 30, 2005.

(2) Section 7 of this act expires July 1, 2006." [2005 c 312 § 10.]

**Intent—Captions—2005 c 312:** See notes following RCW 47.56.401.

**Short title—Captions not law—Severability—Effective date—2005 c 172:** See RCW 7.07.900 through 7.07.902 and 7.07.904.

**Findings—2005 c 33:** See note following RCW 18.20.390.

**Expiration date—Severability—Effective dates—2003 1st sp.s. c 26:** See notes following RCW 43.135.045.

**Working group on veterans' records:** "The protection from identity theft for veterans who choose to file their discharge papers with the county auditor is a matter of gravest concern. At the same time, the integrity of the public record of each county is a matter of utmost importance to the economic life of this state and to the right of each citizen to be secure in his or her ownership of real property and other rights and obligations of our citizens that rely upon the public record for their proof. Likewise the integrity of the public record is essential for the establishment of ancestral ties that may be of interest to this and future generations. While the public record as now kept by the county auditors is sufficient by itself for the accomplishment of these and many other public and private purposes, the proposed use of the public record for purposes that in their nature and intent are not public, so as to keep the veterans' discharge papers from disclosure to those of ill intent, causes concern among many segments of the population of this state.

In order to voice these concerns effectively and thoroughly, a working group may be convened by the joint committee on veterans' and military affairs to develop a means to preserve the integrity of the public record while protecting those veterans from identity theft." [2002 c 224 § 1.]

**Effective date—2002 c 224 § 1:** "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 28, 2002]." [2002 c 224 § 4.]

**Findings—Severability—Effective dates—2002 c 205 §§ 2, 3, and 4:** See notes following RCW 28A.320.125.

**Finding—2001 c 98:** "The legislature finds that public health and safety is promoted when the public has knowledge that enables them to make informed choices about their health and safety. Therefore, the legislature declares, as a matter of public policy, that the public has a right to information necessary to protect members of the public from harm caused by alleged hazards or threats to the public.

The legislature also recognizes that the public disclosure of those portions of records containing specific and unique vulnerability assessments or specific and unique response plans, either of which is intended to prevent or mitigate criminal terrorist acts as defined in RCW 70.74.285, could have a substantial likelihood of threatening public safety. Therefore, the legislature declares, as a matter of public policy, that such specific and unique information should be protected from unnecessary disclosure." [2001 c 98 § 1.]

**Findings—Conflict with federal requirements—Severability—2000 c 134:** See notes following RCW 50.13.060.

**Effective date—1998 c 69:** See note following RCW 28B.95.025.

**Effective date—1997 c 274:** See note following RCW 41.05.021.

**Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220:** See RCW 36.102.800 through 36.102.803.

**Part headings not law—Severability—1997 c 220:** See RCW 36.102.900 and 36.102.901.

[2005 RCW Supp—page 420]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Severability—1996 c 305:** See note following RCW 28B.85.020.

**Findings—Purpose—Severability—Part headings not law—1996 c 253:** See notes following RCW 28B.109.010.

**Captions not law—Severability—Effective dates—1995 c 267:** See notes following RCW 43.70.052.

**Effective date—1994 c 233:** See note following RCW 70.123.075.

**Effective date—1994 c 182:** "This act shall take effect July 1, 1994." [1994 c 182 § 2.]

**Effective date—1993 c 360:** See note following RCW 18.130.085.

**Effective date—Severability—1993 c 280:** See RCW 43.330.902 and 43.330.903.

**Finding—1991 c 301:** See note following RCW 10.99.020.

**Effective date—1991 c 87:** See note following RCW 18.64.350.

**Effective dates—1990 2nd ex.s. c 1:** See note following RCW 84.52.010.

**Severability—1990 2nd ex.s. c 1:** See note following RCW 82.14.300.

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

**Severability—1989 c 279:** See RCW 43.163.901.

**Severability—1989 c 11:** See note following RCW 9A.56.220.

**Severability—1987 c 411:** See RCW 69.45.900.

**Severability—Effective date—1986 c 299:** See RCW 28C.10.900 and 28C.10.902.

**Severability—1986 c 276:** See RCW 53.31.901.

*Basic health plan records:* RCW 70.47.150.

*Exemptions from public inspection*

*accounting records of special inquiry judge:* RCW 10.29.090.

*bill drafting service of code reviser's office:* RCW 1.08.027, 44.68.060.

*certificate submitted by physically or mentally disabled person seeking a driver's license:* RCW 46.20.041.

*commercial fertilizers, sales reports:* RCW 15.54.362.

*criminal records:* Chapter 10.97 RCW.

*employer information:* RCW 50.13.060.

*family and children's ombudsman:* RCW 43.06A.050.

*joint legislative service center, information:* RCW 44.68.060.

*medical quality assurance commission, reports required to be filed with:* RCW 18.71.0195.

*organized crime*

*advisory board files:* RCW 10.29.030.

*investigative information:* RCW 43.43.856.

*public transportation information:* RCW 47.04.230.

*salary and fringe benefit survey information:* RCW 41.06.160.

**42.17.310 Recodified as RCW 42.56.210. (Effective July 1, 2006.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**42.17.311 Recodified as RCW 42.56.510. (Effective July 1, 2006.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**42.17.312 through 42.17.31921 Repealed. (Effective July 1, 2006.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

#### PERSONAL INFORMATION—NOTICE OF SECURITY BREACHES

**42.17.31922 Personal information—Notice of security breaches.** (1)(a) Any agency that owns or licenses com-



puterized data that includes personal information shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of this state whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (3) of this section, or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(b) For purposes of this section, "agency" means the same as in RCW 42.17.020.

(2) Any agency that maintains computerized data that includes personal information that the agency does not own shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

(3) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.

(4) For purposes of this section, "breach of the security of the system" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the agency. Good faith acquisition of personal information by an employee or agent of the agency for the purposes of the agency is not a breach of the security of the system when the personal information is not used or subject to further unauthorized disclosure.

(5) For purposes of this section, "personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

(a) Social security number;

(b) Driver's license number or Washington identification card number; or

(c) Account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(6) For purposes of this section, "personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(7) For purposes of this section and except under subsection (8) of this section, notice may be provided by one of the following methods:

(a) Written notice;

(b) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in 15 U.S.C. Sec. 7001; or

(c) Substitute notice, if the agency demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars, or that the affected class of subject persons to be notified exceeds five hundred thousand, or the agency

does not have sufficient contact information. Substitute notice shall consist of all of the following:

(i) E-mail notice when the agency has an e-mail address for the subject persons;

(ii) Conspicuous posting of the notice on the agency's web site page, if the agency maintains one; and

(iii) Notification to major statewide media.

(8) An agency that maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with the timing requirements of this section is in compliance with the notification requirements of this section if it notifies subject persons in accordance with its policies in the event of a breach of security of the system.

(9) Any waiver of the provisions of this section is contrary to public policy, and is void and unenforceable.

(10)(a) Any customer injured by a violation of this section may institute a civil action to recover damages.

(b) Any business that violates, proposes to violate, or has violated this section may be enjoined.

(c) The rights and remedies available under this section are cumulative to each other and to any other rights and remedies available under law.

(d) An agency shall not be required to disclose a technical breach of the security system that does not seem reasonably likely to subject customers to a risk of criminal activity. [2005 c 368 § 1.]

*Similar provision: RCW 19.255.010.*

**42.17.31923 Certain information from dairies and feedlots limited—Rules.** The following information in plans, records, and reports obtained by state and local agencies from dairies, animal feeding operations, and concentrated animal feeding operations, not required to apply for a national pollutant discharge elimination system permit is disclosable only in ranges that provide meaningful information to the public while ensuring confidentiality of business information regarding: (1) Number of animals; (2) volume of livestock nutrients generated; (3) number of acres covered by the plan or used for land application of livestock nutrients; (4) livestock nutrients transferred to other persons; and (5) crop yields. The department of agriculture shall adopt rules to implement this section in consultation with affected state and local agencies. [2005 c 510 § 5.]

**42.17.320 Recodified as RCW 42.56.520. (Effective July 1, 2006.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**42.17.325 Recodified as RCW 42.56.530. (Effective July 1, 2006.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**42.17.330 Recodified as RCW 42.56.540. (Effective July 1, 2006.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**42.17.340 Judicial review of agency actions. (Effective until July 1, 2006.)** (1) Upon the motion of any person having been denied an opportunity to inspect or copy a public

record by an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records. The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records.

(2) Upon the motion of any person who believes that an agency has not made a reasonable estimate of the time that the agency requires to respond to a public record request, the superior court in the county in which a record is maintained may require the responsible agency to show that the estimate it provided is reasonable. The burden of proof shall be on the agency to show that the estimate it provided is reasonable.

(3) Judicial review of all agency actions taken or challenged under \*RCW 42.17.250 through 42.17.320 shall be de novo. Courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. Courts may examine any record in camera in any proceeding brought under this section. The court may conduct a hearing based solely on affidavits.

(4) Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to award such person an amount not less than five dollars and not to exceed one hundred dollars for each day that he or she was denied the right to inspect or copy said public record.

(5) For actions under this section against counties, the venue provisions of RCW 36.01.050 apply.

(6) Actions under this section must be filed within one year of the agency's claim of exemption or the last production of a record on a partial or installment basis. [2005 c 483 § 5; 1992 c 139 § 8; 1987 c 403 § 5; 1975 1st ex.s. c 294 § 20; 1973 c 1 § 34 (Initiative Measure No. 276, approved November 7, 1972).]

**\*Reviser's note:** RCW 42.17.250 through 42.17.320 were recodified as RCW 42.56.030 through 42.56.520 pursuant to 2005 c 274 § 103, effective July 1, 2006.

**Intent—Severability—1987 c 403:** See notes following RCW 42.17.255.

**42.17.340 Recodified as RCW 42.56.550. (Effective July 1, 2006.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**42.17.341 Recodified as RCW 42.56.560. (Effective July 1, 2006.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**42.17.348 Explanatory pamphlet. (Effective until July 1, 2006.)** (1) The attorney general's office shall publish, and update when appropriate, a pamphlet, written in plain language, explaining the provisions of the public records subdivision of this chapter.

[2005 RCW Supp—page 422]

(2) The attorney general, by February 1, 2006, shall adopt by rule an advisory model rule for state and local agencies, as defined in RCW 42.17.020, addressing the following subjects:

- (a) Providing fullest assistance to requestors;
- (b) Fulfilling large requests in the most efficient manner;
- (c) Fulfilling requests for electronic records; and
- (d) Any other issues pertaining to public disclosure as determined by the attorney general.

(3) The attorney general, in his or her discretion, may from time to time revise the model rule. [2005 c 483 § 4; 1992 c 139 § 9.]

**42.17.348 Recodified as RCW 42.56.570. (Effective July 1, 2006.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**42.17.505 Repealed. (Effective January 1, 2006.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**42.17.510 Identification of sponsor—Exemptions. (Effective January 1, 2006.)** (1) All written political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name and address. All radio and television political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name. The use of an assumed name for the sponsor of electioneering communications, independent expenditures, or political advertising shall be unlawful. For partisan office, if a candidate has expressed a party or independent preference on the declaration of candidacy, that party or independent designation shall be clearly identified in electioneering communications, independent expenditures, or political advertising.

(2) In addition to the materials required by subsection (1) of this section, except as specifically addressed in subsections (4) and (5) of this section, all political advertising undertaken as an independent expenditure by a person or entity other than a party organization, and all electioneering communications, must include the following statement as part of the communication "NOTICE TO VOTERS (Required by law): This advertisement is not authorized or approved by any candidate. It is paid for by (name, address, city, state)." If the advertisement undertaken as an independent expenditure or electioneering communication is undertaken by a nonindividual other than a party organization, then the following notation must also be included: "Top Five Contributors," followed by a listing of the names of the five persons or entities making the largest contributions in excess of seven hundred dollars reportable under this chapter during the twelve-month period before the date of the advertisement or communication.

(3) The statements and listings of contributors required by subsections (1) and (2) of this section shall:

- (a) Appear on the first page or fold of the written advertisement or communication in at least ten-point type, or in type at least ten percent of the largest size type used in a written advertisement or communication directed at more than one voter, such as a billboard or poster, whichever is larger;

(b) Not be subject to the half-tone or screening process; and

(c) Be set apart from any other printed matter.

(4) In an independent expenditure or electioneering communication transmitted via television or other medium that includes a visual image, the following statement must either be clearly spoken, or appear in print and be visible for at least four seconds, appear in letters greater than four percent of the visual screen height, and have a reasonable color contrast with the background: "No candidate authorized this ad. Paid for by (name, city, state)." If the advertisement or communication is undertaken by a nonindividual other than a party organization, then the following notation must also be included: "Top Five Contributors" followed by a listing of the names of the five persons or entities making the largest contributions in excess of seven hundred dollars reportable under this chapter during the twelve-month period before the date of the advertisement. Abbreviations may be used to describe contributing entities if the full name of the entity has been clearly spoken previously during the broadcast advertisement.

(5) The following statement shall be clearly spoken in an independent expenditure or electioneering communication transmitted by a method that does not include a visual image: "No candidate authorized this ad. Paid for by (name, city, state)." If the independent expenditure or electioneering communication is undertaken by a nonindividual other than a party organization, then the following statement must also be included: "Top Five Contributors" followed by a listing of the names of the five persons or entities making the largest contributions in excess of seven hundred dollars reportable under this chapter during the twelve-month period before the date of the advertisement. Abbreviations may be used to describe contributing entities if the full name of the entity has been clearly spoken previously during the broadcast advertisement.

(6) Political yard signs are exempt from the requirement of subsections (1) and (2) of this section that the name and address of the sponsor of political advertising be listed on the advertising. In addition, the public disclosure commission shall, by rule, exempt from the identification requirements of subsections (1) and (2) of this section forms of political advertising such as campaign buttons, balloons, pens, pencils, sky-writing, inscriptions, and other forms of advertising where identification is impractical.

(7) For the purposes of this section, "yard sign" means any outdoor sign with dimensions no greater than eight feet by four feet. [2005 c 445 § 9; 1995 c 397 § 19; 1993 c 2 § 22 (Initiative Measure No. 134, approved November 3, 1992); 1984 c 216 § 1.]

*Advertising rates for political candidates: RCW 65.16.095.*

**42.17.530 False political advertising or electioneering communication. (Effective January 1, 2006.)** (1) It is a violation of this chapter for a person to sponsor with actual malice:

(a) Political advertising or an electioneering communication that contains a false statement of material fact about a candidate for public office. However, this subsection (1)(a)

does not apply to statements made by a candidate or the candidate's agent about the candidate himself or herself;

(b) Political advertising or an electioneering communication that falsely represents that a candidate is the incumbent for the office sought when in fact the candidate is not the incumbent;

(c) Political advertising or an electioneering communication that makes either directly or indirectly, a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement.

(2) Any violation of this section shall be proven by clear and convincing evidence. [2005 c 445 § 10; 1999 c 304 § 2; 1988 c 199 § 2; 1984 c 216 § 3.]

**Finding—Intent—1999 c 304:** "(1) The Washington supreme court in a case involving a ballot measure, *State v. 119 Vote No! Committee*, 135 Wn.2d 618 (1998), found the statute that prohibits persons from sponsoring, with actual malice, political advertising containing false statements of material fact to be invalid under the First Amendment to the United States Constitution.

(2) The legislature finds that a review of the opinions indicates that a majority of the supreme court may find valid a statute that limited such a prohibition on sponsoring with actual malice false statements of material fact in a political campaign to statements about a candidate in an election for public office.

(3) It is the intent of the legislature to amend the current law to provide protection for candidates for public office against false statements of material fact sponsored with actual malice." [1999 c 304 § 1.]

#### REPORTING OF ELECTIONEERING COMMUNICATIONS

**42.17.561 Findings. (Effective January 1, 2006.)** The legislature finds that:

(1) Timely disclosure to voters of the identity and sources of funding for electioneering communications is vitally important to the integrity of state, local, and judicial elections.

(2) Electioneering communications that identify political candidates for state, local, or judicial office and that are distributed sixty days before an election for those offices are intended to influence voters and the outcome of those elections.

(3) The state has a compelling interest in providing voters information about electioneering communications in political campaigns concerning candidates for state, local, or judicial office so that voters can be fully informed as to the: (a) Source of support or opposition to those candidates; and (b) identity of persons attempting to influence the outcome of state, local, and judicial candidate elections.

(4) Nondisclosure of financial information about advertising that masquerades as relating only to issues and not to candidate campaigns fosters corruption or the appearance of corruption. These consequences can be substantially avoided by full disclosure of the identity and funding of those persons paying for such advertising.

(5) The United States supreme court held in *McCormell et al. v. Federal Elections Commission*, 540 U.S. 93, 124 S.Ct. 619, 157 L.Ed.2d 491 (2003) that speakers seeking to influence elections do not possess an inviolable free speech right to engage in electioneering communications regarding elections, including when issue advocacy is the functional equivalent of express advocacy. Therefore, such election

campaign communications can be regulated and the source of funding disclosed.

(6) The state also has a sufficiently compelling interest in preventing corruption in political campaigns to justify and restore contribution limits and restrictions on the use of soft money in RCW 42.17.640. Those interests include restoring restrictions on the use of such funds for electioneering communications, as well as the laws preventing circumvention of those limits and restrictions. [2005 c 445 § 1.]

**42.17.562 Intent. (Effective January 1, 2006.)** Based upon the findings in RCW 42.17.561, chapter 445, Laws of 2005 is narrowly tailored to accomplish the following and is intended to:

(1) Improve the disclosure to voters of information concerning persons and entities seeking to influence state, local, and judicial campaigns through reasonable and effective mechanisms, including improving disclosure of the source, identity, and funding of electioneering communications concerning state, local, and judicial candidate campaigns;

(2) Regulate electioneering communications that mention state, local, and judicial candidates and that are broadcast, mailed, erected, distributed, or otherwise published right before the election so that the public knows who is paying for such communications;

(3) Reenact and amend the contribution limits in RCW 42.17.640 (6) and (14) and the restrictions on the use of soft money, including as applied to electioneering communications, as those limits and restrictions were in effect following the passage of chapter 2, Laws of 1993 (Initiative No. 134) and before the state supreme court decision in *Washington State Republican Party v. Washington State Public Disclosure Commission*, 141 Wn.2d 245, 4 P.3d 808 (2000). The commission is authorized to fully restore the implementation of the limits and restrictions of RCW 42.17.640 (6) and (14) in light of *McConnell et al. v. Federal Elections Commission*, 540 U.S. 93, 124 S.Ct. 619, 157 L.Ed.2d 491 (2003). The United States supreme court upheld the disclosure and regulation of electioneering communications in political campaigns, including but not limited to issue advocacy that is the functional equivalent of express advocacy;

(4) Authorize the commission to adopt rules to implement chapter 445, Laws of 2005. [2005 c 445 § 2.]

**42.17.565 Report—Information required—Time—Method—By whom—Penalty. (Effective January 1, 2006.)** (1) A payment for or promise to pay for any electioneering communication shall be reported to the commission by the sponsor on forms the commission shall develop by rule to include, at a minimum, the following information:

(a) Name and address of the sponsor;

(b) Source of funds for the communication, including:

(i) General treasury funds. The name and address of businesses, unions, groups, associations, or other organizations using general treasury funds for the communication, however, if a business, union, group, association, or other organization undertakes a special solicitation of its members or other persons for an electioneering communication, or it otherwise receives funds for an electioneering communica-

tion, that entity shall report pursuant to (b)(ii) of this subsection;

(ii) Special solicitations and other funds. The name, address, and, for individuals, occupation and employer, of a person whose funds were used to pay for the electioneering communication, along with the amount, if such funds from the person have exceeded two hundred fifty dollars in the aggregate for the electioneering communication; and

(iii) Any other source information required or exempted by the commission by rule;

(c) Name and address of the person to whom an electioneering communication related expenditure was made;

(d) A detailed description of each expenditure of more than one hundred dollars;

(e) The date the expenditure was made and the date the electioneering communication was first broadcast, transmitted, mailed, erected, distributed, or otherwise published;

(f) The amount of the expenditure;

(g) The name of each candidate clearly identified in the electioneering communication, the office being sought by each candidate, and the amount of the expenditure attributable to each candidate; and

(h) Any other information the commission may require or exempt by rule.

(2) Electioneering communications shall be reported as follows: The sponsor of an electioneering communication shall report to the commission within twenty-four hours of, or on the first working day after, the date the electioneering communication is broadcast, transmitted, mailed, erected, distributed, or otherwise published.

(3) Electioneering communications shall be reported electronically by the sponsor using software provided or approved by the commission. The commission may make exceptions on a case-by-case basis for a sponsor who lacks the technological ability to file reports using the electronic means provided or approved by the commission.

(4) All persons required to report under RCW 42.17.065, 42.17.080, 42.17.090, and 42.17.100 are subject to the requirements of this section, although the commission may determine by rule that persons filing according to those sections may be exempt from reporting some of the information otherwise required by this section. The commission may determine that reports filed pursuant to this section also satisfy the requirements of RCW 42.17.100 and 42.17.103.

(5) Failure of any sponsor to report electronically under this section shall be a violation of this chapter. [2005 c 445 § 3.]

**42.17.570 When a contribution. (Effective January 1, 2006.)** (1) An electioneering communication made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents is a contribution to the candidate.

(2) An electioneering communication made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a political committee or its agents is a contribution to the political committee.

(3) If an electioneering communication is not a contribution pursuant to subsection (1) or (2) of this section, the sponsor shall file an affidavit or declaration so stating at the time

the sponsor is required to report the electioneering communication expense under RCW 42.17.565. [2005 c 445 § 4.]

**42.17.575 Recordkeeping. (Effective January 1, 2006.)** (1) The sponsor of an electioneering communication shall preserve all financial records relating to the communication, including books of account, bills, receipts, contributor information, and ledgers, for not less than five calendar years following the year in which the communication was broadcast, transmitted, mailed, erected, or otherwise published.

(2) All reports filed under RCW 42.17.565 shall be certified as correct by the sponsor. If the sponsor is an individual using his or her own funds to pay for the communication, the certification shall be signed by the individual. If the sponsor is a political committee, the certification shall be signed by the committee treasurer. If the sponsor is another entity, the certification shall be signed by the individual responsible for authorizing the expenditure on the entity's behalf. [2005 c 445 § 5.]

**42.17.640 Limits specified—Exemptions. (Effective January 1, 2006.)** (1) No person, other than a bona fide political party or a caucus political committee, may make contributions to a candidate for a state legislative office that in the aggregate exceed seven hundred dollars or to a candidate for a state office other than a state legislative office that in the aggregate exceed one thousand four hundred dollars for each election in which the candidate is on the ballot or appears as a write-in candidate. Contributions made with respect to a primary may not be made after the date of the primary. However, contributions to a candidate or a candidate's authorized committee may be made with respect to a primary until thirty days after the primary, subject to the following limitations: (a) The candidate lost the primary; (b) the candidate's authorized committee has insufficient funds to pay debts outstanding as of the date of the primary; and (c) the contributions may only be raised and spent to satisfy the outstanding debt. Contributions made with respect to a general election may not be made after the final day of the applicable election cycle.

(2) No person, other than a bona fide political party or a caucus political committee, may make contributions to a state official against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the recall of the state official, during a recall campaign that in the aggregate exceed seven hundred dollars if for a state legislative office or one thousand four hundred dollars if for a state office other than a state legislative office.

(3)(a) Notwithstanding subsection (1) of this section, no bona fide political party or caucus political committee may make contributions to a candidate during an election cycle that in the aggregate exceed (i) seventy cents multiplied by the number of eligible registered voters in the jurisdiction from which the candidate is elected if the contributor is a caucus political committee or the governing body of a state organization, or (ii) thirty-five cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected if the contributor is a county central committee or a legislative district committee.

(b) No candidate may accept contributions from a county central committee or a legislative district committee during an election cycle that when combined with contributions from other county central committees or legislative district committees would in the aggregate exceed thirty-five cents times the number of registered voters in the jurisdiction from which the candidate is elected.

(4)(a) Notwithstanding subsection (2) of this section, no bona fide political party or caucus political committee may make contributions to a state official against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the state official, during a recall campaign that in the aggregate exceed (i) seventy cents multiplied by the number of eligible registered voters in the jurisdiction entitled to recall the state official if the contributor is a caucus political committee or the governing body of a state organization, or (ii) thirty-five cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected if the contributor is a county central committee or a legislative district committee.

(b) No state official against whom recall charges have been filed, no authorized committee of the official, and no political committee having the expectation of making expenditures in support of the recall of a state official may accept contributions from a county central committee or a legislative district committee during an election cycle that when combined with contributions from other county central committees or legislative district committees would in the aggregate exceed thirty-five cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected.

(5) For purposes of determining contribution limits under subsections (3) and (4) of this section, the number of eligible registered voters in a jurisdiction is the number at the time of the most recent general election in the jurisdiction.

(6) Notwithstanding subsections (1) through (4) of this section, no person other than an individual, bona fide political party, or caucus political committee may make contributions reportable under this chapter to a caucus political committee that in the aggregate exceed seven hundred dollars in a calendar year or to a bona fide political party that in the aggregate exceed three thousand five hundred dollars in a calendar year. This subsection does not apply to loans made in the ordinary course of business.

(7) For the purposes of RCW 42.17.640 through 42.17.790, a contribution to the authorized political committee of a candidate, or of a state official against whom recall charges have been filed, is considered to be a contribution to the candidate or state official.

(8) A contribution received within the twelve-month period after a recall election concerning a state office is considered to be a contribution during that recall campaign if the contribution is used to pay a debt or obligation incurred to influence the outcome of that recall campaign.

(9) The contributions allowed by subsection (2) of this section are in addition to those allowed by subsection (1) of this section, and the contributions allowed by subsection (4) of this section are in addition to those allowed by subsection (3) of this section.

(10) RCW 42.17.640 through 42.17.790 apply to a special election conducted to fill a vacancy in a state office. However, the contributions made to a candidate or received by a candidate for a primary or special election conducted to fill such a vacancy shall not be counted toward any of the limitations that apply to the candidate or to contributions made to the candidate for any other primary or election.

(11) Notwithstanding the other subsections of this section, no corporation or business entity not doing business in Washington state, no labor union with fewer than ten members who reside in Washington state, and no political committee that has not received contributions of ten dollars or more from at least ten persons registered to vote in Washington state during the preceding one hundred eighty days may make contributions reportable under this chapter to a candidate, to a state official against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the recall of the official. This subsection does not apply to loans made in the ordinary course of business.

(12) Notwithstanding the other subsections of this section, no county central committee or legislative district committee may make contributions reportable under this chapter to a candidate, state official against whom recall charges have been filed, or political committee having the expectation of making expenditures in support of the recall of a state official if the county central committee or legislative district committee is outside of the jurisdiction entitled to elect the candidate or recall the state official.

(13) No person may accept contributions that exceed the contribution limitations provided in this section.

(14) The following contributions are exempt from the contribution limits of this section:

(a) An expenditure or contribution earmarked for voter registration, for absentee ballot information, for precinct caucuses, for get-out-the-vote campaigns, for precinct judges or inspectors, for sample ballots, or for ballot counting, all without promotion of or political advertising for individual candidates; or

(b) An expenditure by a political committee for its own internal organization or fund raising without direct association with individual candidates. [2005 c 445 § 11. Prior: 2001 c 208 § 1; 1995 c 397 § 20; 1993 c 2 § 4 (Initiative Measure No. 134, approved November 3, 1992).]

**42.17.660 Attribution of contributions by controlled entities.** For purposes of this chapter:

(1) A contribution by a political committee with funds that have all been contributed by one person who exercises exclusive control over the distribution of the funds of the political committee is a contribution by the controlling person.

(2) Two or more entities are treated as a single entity if one of the two or more entities is a subsidiary, branch, or department of a corporation that is participating in an election campaign or making contributions, or a local unit or branch of a trade association, labor union, or collective bargaining association that is participating in an election campaign or making contributions. All contributions made by a person or political committee whose contribution or expenditure activity is financed, maintained, or controlled by a trade associa-

tion, labor union, collective bargaining organization, or the local unit of a trade association, labor union, or collective bargaining organization are considered made by the trade association, labor union, collective bargaining organization, or local unit of a trade association, labor union, or collective bargaining organization.

(3) The commission shall adopt rules to carry out this section and is not subject to the time restrictions of RCW 42.17.370(1). [2005 c 445 § 12; 1993 c 2 § 6 (Initiative Measure No. 134, approved November 3, 1992).]

**42.17.963 Part headings not law—2005 c 445.** Part headings used in this act are not any part of the law. [2005 c 445 § 14.]

**42.17.964 Severability—2005 c 445.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2005 c 445 § 16.]

**42.17.965 Effective dates—2005 c 445.** Sections 6 and 12 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2005. The remainder of this act takes effect January 1, 2006. [2005 c 445 § 17.]

## Chapter 42.23 RCW

### CODE OF ETHICS FOR MUNICIPAL OFFICERS— CONTRACT INTERESTS

#### Sections

42.23.030 Interest in contracts prohibited—Exceptions.

**42.23.030 Interest in contracts prohibited—Exceptions.** No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein. This section shall not apply in the following cases:

(1) The furnishing of electrical, water or other utility services by a municipality engaged in the business of furnishing such services, at the same rates and on the same terms as are available to the public generally;

(2) The designation of public depositaries for municipal funds;

(3) The publication of legal notices required by law to be published by any municipality, upon competitive bidding or at rates not higher than prescribed by law for members of the general public;

(4) The designation of a school director as clerk or as both clerk and purchasing agent of a school district;

(5) The employment of any person by a municipality for unskilled day labor at wages not exceeding two hundred dollars in any calendar month. The exception provided in this subsection does not apply to a county with a population of

one hundred twenty-five thousand or more, a city with a population of more than one thousand five hundred, an irrigation district encompassing more than fifty thousand acres, or a first class school district;

(6)(a) The letting of any other contract in which the total amount received under the contract or contracts by the municipal officer or the municipal officer's business does not exceed one thousand five hundred dollars in any calendar month.

(b) However, in the case of a particular officer of a second class city or town, or a noncharter optional code city, or a member of any county fair board in a county which has not established a county purchasing department pursuant to RCW 36.32.240, the total amount of such contract or contracts authorized in this subsection (6) may exceed one thousand five hundred dollars in any calendar month but shall not exceed eighteen thousand dollars in any calendar year.

(c)(i) In the case of a particular officer of a rural public hospital district, as defined in RCW 70.44.460, the total amount of such contract or contracts authorized in this subsection (6) may exceed one thousand five hundred dollars in any calendar month, but shall not exceed twenty-four thousand dollars in any calendar year.

(ii) At the beginning of each calendar year, beginning with the 2006 calendar year, the legislative authority of the rural public hospital district shall increase the calendar year limitation described in this subsection (6)(c) by an amount equal to the dollar amount for the previous calendar year multiplied by the change in the consumer price index as of the close of the twelve-month period ending December 31st of that previous calendar year. If the new dollar amount established under this subsection is not a multiple of ten dollars, the increase shall be rounded to the next lowest multiple of ten dollars. As used in this subsection, "consumer price index" means the consumer price index compiled by the bureau of labor statistics, United States department of labor for the state of Washington. If the bureau of labor statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used.

(d) The exceptions provided in this subsection (6) do not apply to a sale or lease by the municipality as the seller or lessor. The exceptions provided in this subsection (6) also do not apply to the letting of any contract by a county with a population of one hundred twenty-five thousand or more, a city with a population of ten thousand or more, or an irrigation district encompassing more than fifty thousand acres.

(e) The municipality shall maintain a list of all contracts that are awarded under this subsection (6). The list must be made available for public inspection and copying;

(7) The leasing by a port district as lessor of port district property to a municipal officer or to a contracting party in which a municipal officer may be beneficially interested, in addition to all other legal requirements, a board of three disinterested appraisers and the superior court in the county where the property is situated finds that all terms and conditions of such lease are fair to the port district and are in the public interest. The appraisers must be appointed from members of the American Institute of Real Estate Appraisers by the presiding judge of the superior court;

(8) The letting of any employment contract for the driving of a school bus in a second class school district if the terms of such contract are commensurate with the pay plan or collective bargaining agreement operating in the district;

(9) The letting of any employment contract to the spouse of an officer of a school district, when such contract is solely for employment as a substitute teacher for the school district. This exception applies only if the terms of the contract are commensurate with the pay plan or collective bargaining agreement applicable to all district employees and the board of directors has found, consistent with the written policy under RCW 28A.330.240, that there is a shortage of substitute teachers in the school district;

(10) The letting of any employment contract to the spouse of an officer of a school district if the spouse was under contract as a certificated or classified employee with the school district before the date in which the officer assumes office and the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the district. However, in a second class school district that has less than two hundred full-time equivalent students enrolled at the start of the school year as defined in RCW 28A.150.040, the spouse is not required to be under contract as a certificated or classified employee before the date on which the officer assumes office;

(11) The authorization, approval, or ratification of any employment contract with the spouse of a public hospital district commissioner if: (a) The spouse was employed by the public hospital district before the date the commissioner was initially elected; (b) the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the district for similar employees; (c) the interest of the commissioner is disclosed to the board of commissioners and noted in the official minutes or similar records of the public hospital district prior to the letting or continuation of the contract; and (d) and the commissioner does not vote on the authorization, approval, or ratification of the contract or any conditions in the contract.

A municipal officer may not vote in the authorization, approval, or ratification of a contract in which he or she is beneficially interested even though one of the exemptions allowing the awarding of such a contract applies. The interest of the municipal officer must be disclosed to the governing body of the municipality and noted in the official minutes or similar records of the municipality before the formation of the contract. [2005 c 114 § 1; 1999 c 261 § 2; 1997 c 98 § 1; 1996 c 246 § 1. Prior: 1994 c 81 § 77; 1994 c 20 § 1; 1993 c 308 § 1; 1991 c 363 § 120; 1990 c 33 § 573; 1989 c 263 § 1; 1983 1st ex.s. c 44 § 1; prior: 1980 c 39 § 1; 1979 ex.s. c 4 § 1; 1971 ex.s. c 242 § 1; 1961 c 268 § 4.]

**Findings—Intent—1999 c 261:** "The legislature finds that:

(1) The current statutes pertaining to municipal officers' beneficial interest in contracts are quite confusing and have resulted in some inadvertent violations of the law.

(2) The dollar thresholds for many of the exemptions have not been changed in over thirty-five years, and the restrictions apply to the total amount of the contract instead of the portion of the contract that pertains to the business operated by the municipal officer.

(3) The confusion existing over these current statutes discourages some municipalities from accessing some efficiencies available to them.

Therefore, it is the intent of the legislature to clarify the statutes pertaining to municipal officers and contracts and to enact reasonable protections against inappropriate conflicts of interest." [1999 c 261 § 1.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Purpose—Statutory references—Severability—1990 c 33:** See RCW 28A.900.100 through 28A.900.102.

**Severability—1989 c 263:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 263 § 3.]

**Severability—1980 c 39:** "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 39 § 3.]

## Chapter 42.30 RCW

### OPEN PUBLIC MEETINGS ACT

#### Sections

42.30.080	Special meetings.
42.30.110	Executive sessions.

**42.30.080 Special meetings.** A special meeting may be called at any time by the presiding officer of the governing body of a public agency or by a majority of the members of the governing body by delivering written notice personally, by mail, by fax, or by electronic mail to each member of the governing body; and to each local newspaper of general circulation and to each local radio or television station which has on file with the governing body a written request to be notified of such special meeting or of all special meetings. Such notice must be delivered personally, by mail, by fax, or by electronic mail at least twenty-four hours before the time of such meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted. Final disposition shall not be taken on any other matter at such meetings by the governing body. Such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the governing body a written waiver of notice. Such waiver may be given by telegram, by fax, or electronic mail. Such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. The notices provided in this section may be dispensed with in the event a special meeting is called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, when time requirements of such notice would make notice impractical and increase the likelihood of such injury or damage. [2005 c 273 § 1; 1971 ex.s. c 250 § 8.]

**42.30.110 Executive sessions.** (1) Nothing contained in this chapter may be construed to prevent a governing body from holding an executive session during a regular or special meeting:

- (a) To consider matters affecting national security;
- (b) To consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price;
- (c) To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of

decreased price. However, final action selling or leasing public property shall be taken in a meeting open to the public;

(d) To review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs;

(e) To consider, in the case of an export trading company, financial and commercial information supplied by private persons to the export trading company;

(f) To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge;

(g) To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee. However, subject to RCW 42.30.140(4), discussion by a governing body of salaries, wages, and other conditions of employment to be generally applied within the agency shall occur in a meeting open to the public, and when a governing body elects to take final action hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, that action shall be taken in a meeting open to the public;

(h) To evaluate the qualifications of a candidate for appointment to elective office. However, any interview of such candidate and final action appointing a candidate to elective office shall be in a meeting open to the public;

(i) To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.

This subsection (1)(i) does not permit a governing body to hold an executive session solely because an attorney representing the agency is present. For purposes of this subsection (1)(i), "potential litigation" means matters protected by RPC 1.6 or RCW 5.60.060(2)(a) concerning:

(A) Litigation that has been specifically threatened to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party;

(B) Litigation that the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity; or

(C) Litigation or legal risks of a proposed action or current practice that the agency has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency;

(j) To consider, in the case of the state library commission or its advisory bodies, western library network prices, products, equipment, and services, when such discussion would be likely to adversely affect the network's ability to conduct business in a competitive economic climate. However, final action on these matters shall be taken in a meeting open to the public;

(k) To consider, in the case of the state investment board, financial and commercial information when the information relates to the investment of public trust or retirement funds and when public knowledge regarding the discussion would



result in loss to such funds or in private loss to the providers of this information;

(l) To consider proprietary or confidential nonpublished information related to the development, acquisition, or implementation of state purchased health care services as provided in RCW 41.05.026;

(m) To consider in the case of the life sciences discovery fund authority, the substance of grant applications and grant awards when public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information.

(2) Before convening in executive session, the presiding officer of a governing body shall publicly announce the purpose for excluding the public from the meeting place, and the time when the executive session will be concluded. The executive session may be extended to a stated later time by announcement of the presiding officer. [2005 c 424 § 13; 2003 c 277 § 1; 2001 c 216 § 1; 1989 c 238 § 2; 1987 c 389 § 3; 1986 c 276 § 8; 1985 c 366 § 2; 1983 c 155 § 3; 1979 c 42 § 1; 1973 c 66 § 2; 1971 ex.s. c 250 § 11.]

**Captions not law—Liberal construction—Severability—Effective dates—2005 c 424:** See RCW 43.350.900 through 43.350.903.

**Severability—Effective date—1987 c 389:** See notes following RCW 41.06.070.

**Severability—1986 c 276:** See RCW 53.31.901.

## Chapter 42.48 RCW

### RELEASE OF RECORDS FOR RESEARCH

#### Sections

42.48.030 Charge for costs of assistance. (*Effective July 1, 2006.*)

**42.48.030 Charge for costs of assistance. (*Effective July 1, 2006.*)** In addition to the copying charges provided in RCW 42.56.120, a state agency may impose a reasonable charge for costs incurred in providing assistance in the following research activities involving personal records:

(1) Manual or computer screening of personal records for scientific sampling purposes according to specifications provided by the research professional;

(2) Manual or computer extraction of information from a universe or sample of personal records according to specifications provided by the research professional;

(3) Statistical manipulation or analysis of personal record information, whether manually or by computer, according to specifications provided by the research professional.

The charges imposed by the agency may not exceed the amount necessary to reimburse the agency for its actual costs in providing requested research assistance. [2005 c 274 § 291; 1985 c 334 § 3.]

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

## Chapter 42.52 RCW

### ETHICS IN PUBLIC SERVICE

#### Sections

42.52.010 Definitions.

42.52.030 Financial interests in transactions.

42.52.050 Confidential information—Improperly concealed records. (*Effective July 1, 2006.*)

42.52.200 Agency rules.

42.52.220 Universities—Administrative processes.

42.52.360 Authority of executive ethics board.

42.52.425 Dismissal of complaint.

42.52.450 Complaint against legislator or statewide elected official.

42.52.810 Solicitation for the legislative international trade account—Report. (*Effective July 1, 2006.*)

**42.52.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency" means any state board, commission, bureau, committee, department, institution, division, or tribunal in the legislative, executive, or judicial branch of state government. "Agency" includes all elective offices, the state legislature, those institutions of higher education created and supported by the state government, and those courts that are parts of state government.

(2) "Head of agency" means the chief executive officer of an agency. In the case of an agency headed by a commission, board, committee, or other body consisting of more than one natural person, agency head means the person or board authorized to appoint agency employees and regulate their conduct.

(3) "Assist" means to act, or offer or agree to act, in such a way as to help, aid, advise, furnish information to, or otherwise provide assistance to another person, believing that the action is of help, aid, advice, or assistance to the person and with intent so to assist such person.

(4) "Beneficial interest" has the meaning ascribed to it under the Washington case law. However, an ownership interest in a mutual fund or similar investment pooling fund in which the owner has no management powers does not constitute a beneficial interest in the entities in which the fund or pool invests.

(5) "Compensation" means anything of economic value, however designated, that is paid, loaned, granted, or transferred, or to be paid, loaned, granted, or transferred for, or in consideration of, personal services to any person.

(6) "Confidential information" means (a) specific information, rather than generalized knowledge, that is not available to the general public on request or (b) information made confidential by law.

(7) "Contract" or "grant" means an agreement between two or more persons that creates an obligation to do or not to do a particular thing. "Contract" or "grant" includes, but is not limited to, an employment contract, a lease, a license, a purchase agreement, or a sales agreement.

(8) "Ethics boards" means the commission on judicial conduct, the legislative ethics board, and the executive ethics board.

(9) "Family" has the same meaning as "immediate family" in RCW 42.17.020.

(10) "Gift" means anything of economic value for which no consideration is given. "Gift" does not include:

(a) Items from family members or friends where it is clear beyond a reasonable doubt that the gift was not made as part of any design to gain or maintain influence in the agency of which the recipient is an officer or employee;

(b) Items related to the outside business of the recipient that are customary and not related to the recipient's performance of official duties;

(c) Items exchanged among officials and employees or a social event hosted or sponsored by a state officer or state employee for coworkers;

(d) Payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity. As used in this subsection, "reasonable expenses" are limited to travel, lodging, and subsistence expenses incurred the day before through the day after the event;

(e) Items a state officer or state employee is authorized by law to accept;

(f) Payment of enrollment and course fees and reasonable travel expenses attributable to attending seminars and educational programs sponsored by a bona fide governmental or nonprofit professional, educational, trade, or charitable association or institution. As used in this subsection, "reasonable expenses" are limited to travel, lodging, and subsistence expenses incurred the day before through the day after the event;

(g) Items returned by the recipient to the donor within thirty days of receipt or donated to a charitable organization within thirty days of receipt;

(h) Campaign contributions reported under chapter 42.17 RCW;

(i) Discounts available to an individual as a member of an employee group, occupation, or similar broad-based group; and

(j) Awards, prizes, scholarships, or other items provided in recognition of academic or scientific achievement.

(11) "Honorarium" means money or thing of value offered to a state officer or state employee for a speech, appearance, article, or similar item or activity in connection with the state officer's or state employee's official role.

(12) "Official duty" means those duties within the specific scope of employment of the state officer or state employee as defined by the officer's or employee's agency or by statute or the state Constitution.

(13) "Participate" means to participate in state action or a proceeding personally and substantially as a state officer or state employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation, or otherwise but does not include preparation, consideration, or enactment of legislation or the performance of legislative duties.

(14) "Person" means any individual, partnership, association, corporation, firm, institution, or other entity, whether or not operated for profit.

(15) "Regulatory agency" means any state board, commission, department, or officer, except those in the legislative or judicial branches, authorized by law to conduct adjudicative proceedings, issue permits or licenses, or to control or affect interests of identified persons.

(16) "Responsibility" in connection with a transaction involving the state, means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or through subordinates, effectively to approve,

disapprove, or otherwise direct state action in respect of such transaction.

(17) "State action" means any action on the part of an agency, including, but not limited to:

(a) A decision, determination, finding, ruling, or order; and

(b) A grant, payment, award, license, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

(18) "State officer" means every person holding a position of public trust in or under an executive, legislative, or judicial office of the state. "State officer" includes judges of the superior court, judges of the court of appeals, justices of the supreme court, members of the legislature together with the secretary of the senate and the chief clerk of the house of representatives, holders of elective offices in the executive branch of state government, chief executive officers of state agencies, members of boards, commissions, or committees with authority over one or more state agencies or institutions, and employees of the state who are engaged in supervisory, policy-making, or policy-enforcing work. For the purposes of this chapter, "state officer" also includes any person exercising or undertaking to exercise the powers or functions of a state officer.

(19) "State employee" means an individual who is employed by an agency in any branch of state government. For purposes of this chapter, employees of the superior courts are not state officers or state employees.

(20) "University" includes "state universities" and "regional universities" as defined in RCW 28B.10.016 and also includes any research or technology institute affiliated with a university, including without limitation, the Spokane Intercollegiate Research and Technology Institute and the Washington Technology Center.

(21) "University research employee" means a state officer or state employee employed by a university, but only to the extent the state officer or state employee is engaged in research, technology transfer, approved consulting activities related to research and technology transfer, or other incidental activities.

(22) "Thing of economic value," in addition to its ordinary meaning, includes:

(a) A loan, property interest, interest in a contract or other chose in action, and employment or another arrangement involving a right to compensation;

(b) An option, irrespective of the conditions to the exercise of the option; and

(c) A promise or undertaking for the present or future delivery or procurement.

(23)(a) "Transaction involving the state" means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that the state officer, state employee, or former state officer or state employee in question believes, or has reason to believe:

(i) Is, or will be, the subject of state action; or

(ii) Is one to which the state is or will be a party; or

(iii) Is one in which the state has a direct and substantial proprietary interest.

(b) "Transaction involving the state" does not include the following: Preparation, consideration, or enactment of legis-

lation, including appropriation of moneys in a budget, or the performance of legislative duties by an officer or employee; or a claim, case, lawsuit, or similar matter if the officer or employee did not participate in the underlying transaction involving the state that is the basis for the claim, case, or lawsuit. [2005 c 106 § 1; 1998 c 7 § 1; 1996 c 213 § 1; 1994 c 154 § 101.]

**42.52.030 Financial interests in transactions.** (1) No state officer or state employee, except as provided in subsection (2) of this section, may be beneficially interested, directly or indirectly, in a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the officer or employee, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in the contract, sale, lease, purchase, or grant.

(2) No state officer or state employee may participate in a transaction involving the state in his or her official capacity with a person of which the officer or employee is an officer, agent, employee, or member, or in which the officer or employee owns a beneficial interest, except that an officer or employee of an institution of higher education or the Spokane intercollegiate research and technology institute may serve as an officer, agent, employee, or member, or on the board of directors, board of trustees, advisory board, or committee or review panel for any nonprofit institute, foundation, or fundraising entity; and may serve as a member of an advisory board, committee, or review panel for a governmental or other nonprofit entity. [2005 c 106 § 2; 1996 c 213 § 3; 1994 c 154 § 103.]

**42.52.050 Confidential information—Improperly concealed records. (Effective July 1, 2006.)** (1) No state officer or state employee may accept employment or engage in any business or professional activity that the officer or employee might reasonably expect would require or induce him or her to make an unauthorized disclosure of confidential information acquired by the official or employee by reason of the official's or employee's official position.

(2) No state officer or state employee may make a disclosure of confidential information gained by reason of the officer's or employee's official position or otherwise use the information for his or her personal gain or benefit or the gain or benefit of another, unless the disclosure has been authorized by statute or by the terms of a contract involving (a) the state officer's or state employee's agency and (b) the person or persons who have authority to waive the confidentiality of the information.

(3) No state officer or state employee may disclose confidential information to any person not entitled or authorized to receive the information.

(4) No state officer or state employee may intentionally conceal a record if the officer or employee knew the record was required to be released under chapter 42.56 RCW, was under a personal obligation to release the record, and failed to do so. This subsection does not apply where the decision to withhold the record was made in good faith. [2005 c 274 § 292; 1996 c 213 § 4; 1994 c 154 § 105.]

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

**42.52.200 Agency rules.** (1) Each agency may adopt rules consistent with law, for use within the agency to protect against violations of this chapter.

(2) Each agency proposing to adopt rules under this section shall forward the rules to the appropriate ethics board before they may take effect. The board may submit comments to the agency regarding the proposed rules.

(3) This section applies to universities only to the extent their activities are not subject to RCW 42.52.220. [2005 c 106 § 3; 1994 c 154 § 120.]

**42.52.220 Universities—Administrative processes.**

(1) Consistent with the state policy to encourage basic and applied scientific research by the state's research universities as stated in RCW 28B.140.005, each university may develop, adopt, and implement one or more written administrative processes that shall, upon approval by the governor, apply in place of the obligations imposed on universities and university research employees under RCW 42.52.030, 42.52.040, 42.52.080, 42.52.110, 42.52.120, 42.52.130, 42.52.140, 42.52.150, and 42.52.160. The universities shall coordinate on the development of administrative processes to ensure the processes are comparable. A university research employee in compliance with the processes authorized in this section shall be deemed to be in compliance with RCW 42.52.030, 42.52.040, 42.52.080, 42.52.110, 42.52.120, 42.52.130, 42.52.140, 42.52.150, and 42.52.160.

(2) The executive ethics board shall enforce activity subject to the written approval processes under this section, as provided in RCW 42.52.360. [2005 c 106 § 4.]

**42.52.360 Authority of executive ethics board.** (1)

The executive ethics board shall enforce this chapter and rules adopted under it with respect to statewide elected officers and all other officers and employees in the executive branch, boards and commissions, and institutions of higher education.

(2) The executive ethics board shall enforce this chapter with regard to the activities of university research employees as provided in this subsection.

(a) With respect to compliance with RCW 42.52.030, 42.52.110, 42.52.130, 42.52.140, and 42.52.150, the administrative process shall be consistent with and adhere to no less than the current standards in regulations of the United States public health service and the office of the secretary of the department of health and human services in Title 42 C.F.R. Part 50, Subpart F relating to promotion of objectivity in research.

(b) With respect to compliance with RCW 42.52.040, 42.52.080, and 42.52.120, the administrative process shall include a comprehensive system for the disclosure, review, and approval of outside work activities by university research employees while assuring that such employees are fulfilling their employment obligations to the university.

(c) With respect to compliance with RCW 42.52.160, the administrative process shall include a reasonable determination by the university of acceptable private uses having de minimis costs to the university and a method for establishing fair and reasonable reimbursement charges for private uses the costs of which are in excess of de minimis.

(3) The executive ethics board shall:

- (a) Develop educational materials and training;
  - (b) Adopt rules and policies governing the conduct of business by the board, and adopt rules defining working hours for purposes of RCW 42.52.180 and where otherwise authorized under chapter 154, Laws of 1994;
  - (c) Issue advisory opinions;
  - (d) Investigate, hear, and determine complaints by any person or on its own motion;
  - (e) Impose sanctions including reprimands and monetary penalties;
  - (f) Recommend to the appropriate authorities suspension, removal from position, prosecution, or other appropriate remedy; and
  - (g) Establish criteria regarding the levels of civil penalties appropriate for violations of this chapter and rules adopted under it.
- (4) The board may:
- (a) Issue subpoenas for the attendance and testimony of witnesses and the production of documentary evidence relating to any matter under examination by the board or involved in any hearing;
  - (b) Administer oaths and affirmations;
  - (c) Examine witnesses; and
  - (d) Receive evidence.
- (5) Except as provided in RCW 42.52.220, the executive ethics board may review and approve agency policies as provided for in this chapter.
- (6) This section does not apply to state officers and state employees of the judicial branch. [2005 c 106 § 5; 1994 c 154 § 206.]

**42.52.425 Dismissal of complaint.** (1) Based on the investigation conducted under RCW 42.52.420 or 42.52.450, and subject to rules issued by each board, the board or the staff of the appropriate ethics board may issue an order of dismissal based on any of the following findings:

- (a) Any violation that may have occurred is not within the jurisdiction of the board;
  - (b) The complaint is obviously unfounded or frivolous;
- or

(c) Any violation that may have occurred does not constitute a material violation because it was inadvertent and minor, or has been cured, and, after consideration of all of the circumstances, further proceedings would not serve the purposes of this chapter.

(2) Written notice of the determination under subsection (1) of this section shall be provided to the complainant, respondent, and the board. The written notice to the complainant shall include a statement of the complainant's right to appeal to the board under subsection (3) of this section if the dismissal order was issued by staff.

(3) In the event that a complaint is dismissed by staff under this section, the complainant may request that the board review the action. Following review, the board shall:

- (a) Affirm the staff dismissal;
- (b) Direct the staff to conduct further investigation; or
- (c) Issue a determination that there is reasonable cause to believe that a violation has been or is being committed.

(4) The board's decision under subsection (3) of this section shall be reduced to writing and provided to the complainant and the respondent. [2005 c 116 § 1; 2000 c 211 § 2.]

**42.52.450 Complaint against legislator or statewide elected official.** (1) If a complaint alleges a violation of RCW 42.52.180 by a legislator or statewide elected official other than the attorney general, the attorney general shall, if requested by the appropriate ethics board, conduct the investigation under RCW 42.52.420 and recommend action.

(2) If a complaint alleges a violation of RCW 42.52.180 by the attorney general, the state auditor shall conduct the investigation under RCW 42.52.420 and recommend action to the appropriate ethics board. [2005 c 116 § 2; 1994 c 154 § 215.]

**42.52.810 Solicitation for the legislative international trade account—Report.** (*Effective July 1, 2006.*) (1) When soliciting charitable gifts, grants, or donations solely for the legislative international trade account created in RCW 44.04.270, the president of the senate is presumed not to be in violation of the solicitation and receipt of gift provisions in RCW 42.52.140.

(2) When soliciting charitable gifts, grants, or donations solely for the legislative international trade account created in RCW 44.04.270, state officers and state employees are presumed not to be in violation of the solicitation and receipt of gift provisions in RCW 42.52.140.

(3) An annual report of the legislative international trade account activities, including a list of receipts and expenditures, shall be published by the president of the senate and submitted to the house of representatives and the senate and be a public record for the purposes of RCW 42.56.070. [2005 c 274 § 293; 2003 c 265 § 2.]

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

## Chapter 42.56 RCW PUBLIC RECORDS

### Sections

42.56.001	Finding, purpose. ( <i>Effective July 1, 2006.</i> )
42.56.010	Definitions. ( <i>Effective July 1, 2006.</i> )
42.56.020	Short title. ( <i>Effective July 1, 2006.</i> )
42.56.030	Construction. ( <i>Effective July 1, 2006.</i> )
42.56.040	Duty to publish procedures. ( <i>Effective July 1, 2006.</i> )
42.56.050	Invasion of privacy, when. ( <i>Effective July 1, 2006.</i> )
42.56.060	Disclaimer of public liability. ( <i>Effective July 1, 2006.</i> )
42.56.070	Documents and indexes to be made public. ( <i>Effective July 1, 2006.</i> )
42.56.080	Facilities for copying—Availability of public records. ( <i>Effective July 1, 2006.</i> )
42.56.090	Times for inspection and copying. ( <i>Effective July 1, 2006.</i> )
42.56.100	Protection of public records—Public access. ( <i>Effective July 1, 2006.</i> )
42.56.110	Destruction of information relating to employee misconduct. ( <i>Effective July 1, 2006.</i> )
42.56.120	Charges for copying. ( <i>Effective July 1, 2006.</i> )
42.56.130	Other provisions not superseded. ( <i>Effective July 1, 2006.</i> )
42.56.210	Certain personal and other records exempt. ( <i>Effective July 1, 2006.</i> )
42.56.230	Personal information. ( <i>Effective July 1, 2006.</i> )
42.56.240	Investigative, law enforcement, and crime victims. ( <i>Effective July 1, 2006.</i> )
42.56.250	Employment and licensing. ( <i>Effective July 1, 2006.</i> )
42.56.260	Real estate appraisals. ( <i>Effective July 1, 2006.</i> )
42.56.270	Financial, commercial, and proprietary information. ( <i>Effective July 1, 2006.</i> )
42.56.280	Preliminary drafts, notes, recommendations, intra-agency memorandums. ( <i>Effective July 1, 2006.</i> )
42.56.290	Agency party to controversy. ( <i>Effective July 1, 2006.</i> )
42.56.300	Archaeological sites. ( <i>Effective July 1, 2006.</i> )
42.56.310	Library records. ( <i>Effective July 1, 2006.</i> )

42.56.320	Educational information. <i>(Effective July 1, 2006.)</i>
42.56.330	Public utilities and transportation. <i>(Effective July 1, 2006.)</i>
42.56.340	Timeshare, condominium, etc. owner lists. <i>(Effective July 1, 2006.)</i>
42.56.350	Health professionals. <i>(Effective July 1, 2006.)</i>
42.56.360	Health care. <i>(Effective July 1, 2006.)</i>
42.56.370	Domestic violence program, rape crisis center clients. <i>(Effective July 1, 2006.)</i>
42.56.380	Agriculture and livestock. <i>(Effective July 1, 2006.)</i>
42.56.390	Emergency or transitional housing. <i>(Effective July 1, 2006.)</i>
42.56.400	Insurance and financial institutions. <i>(Effective July 1, 2006.)</i>
42.56.410	Employment security department records, certain purposes. <i>(Effective July 1, 2006.)</i>
42.56.420	Security. <i>(Effective July 1, 2006.)</i>
42.56.430	Fish and wildlife. <i>(Effective July 1, 2006.)</i>
42.56.440	Veterans' discharge papers—Exceptions. <i>(Effective July 1, 2006.)</i>
42.56.450	Check cashers and sellers licensing applications. <i>(Effective July 1, 2006.)</i>
42.56.460	Fireworks. <i>(Effective July 1, 2006.)</i>
42.56.470	Correctional industries workers. <i>(Effective July 1, 2006.)</i>
42.56.480	Inactive programs. <i>(Effective July 1, 2006.)</i>
42.56.510	Duty to disclose or withhold information—Otherwise provided. <i>(Effective July 1, 2006.)</i>
42.56.520	Prompt responses required. <i>(Effective July 1, 2006.)</i>
42.56.530	Review of agency denial. <i>(Effective July 1, 2006.)</i>
42.56.540	Court protection of public records. <i>(Effective July 1, 2006.)</i>
42.56.550	Judicial review of agency actions. <i>(Effective July 1, 2006.)</i>
42.56.560	Application of RCW 42.56.550. <i>(Effective July 1, 2006.)</i>
42.56.570	Explanatory pamphlet. <i>(Effective July 1, 2006.)</i>
42.56.900	Purpose—2005 c 274 §§ 402-429. <i>(Effective July 1, 2006.)</i>
42.56.901	Part headings not law—2005 c 274. <i>(Effective July 1, 2006.)</i>
42.56.902	Effective date—2005 c 274.

#### **42.56.001 Finding, purpose. *(Effective July 1, 2006.)***

The legislature finds that chapter 42.17 RCW contains laws relating to several discrete subjects. Therefore, the purpose of chapter 274, Laws of 2005 is to recodify some of those laws and create a new chapter in the Revised Code of Washington that contains laws pertaining to public records. [2005 c 274 § 1.]

**42.56.010 Definitions. *(Effective July 1, 2006.)*** The definitions in RCW 42.17.020 apply throughout this chapter. [2005 c 274 § 101.]

**42.56.020 Short title. *(Effective July 1, 2006.)*** This chapter may be known and cited as the public records act. [2005 c 274 § 102.]

**42.56.030 Construction. *(Effective July 1, 2006.)*** The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy. [2005 c 274 § 283; 1992 c 139 § 2. Formerly RCW 42.17.251.]

**42.56.040 Duty to publish procedures. *(Effective July 1, 2006.)*** (1) Each state agency shall separately state and currently publish in the Washington Administrative Code and each local agency shall prominently display and make available for inspection and copying at the central office of such local agency, for guidance of the public:

(a) Descriptions of its central and field organization and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain copies of agency decisions;

(b) Statements of the general course and method by which its operations are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure;

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(e) Each amendment or revision to, or repeal of any of the foregoing.

(2) Except to the extent that he has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published or displayed and not so published or displayed. [1973 c 1 § 25 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.250.]

**42.56.050 Invasion of privacy, when. *(Effective July 1, 2006.)*** A person's "right to privacy," "right of privacy," "privacy," or "personal privacy," as these terms are used in this chapter, is invaded or violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public. The provisions of this chapter dealing with the right to privacy in certain public records do not create any right of privacy beyond those rights that are specified in this chapter as express exemptions from the public's right to inspect, examine, or copy public records. [1987 c 403 § 2. Formerly RCW 42.17.255.]

**Intent—1987 c 403:** "The legislature intends to restore the law relating to the release of public records largely to that which existed prior to the Washington Supreme Court decision in *In Re Rosier*," 105 Wn.2d 606 (1986). The intent of this legislation is to make clear that: (1) Absent statutory provisions to the contrary, agencies possessing records should in responding to requests for disclosure not make any distinctions in releasing or not releasing records based upon the identity of the person or agency which requested the records, and (2) agencies having public records should rely only upon statutory exemptions or prohibitions for refusal to provide public records. Further, to avoid unnecessary confusion, "privacy" as used in RCW 42.17.255 is intended to have the same meaning as the definition given that word by the Supreme Court in *Hearst v. Hoppe*," 90 Wn.2d 123, 135 (1978)." [1987 c 403 § 1.]

**Severability—1987 c 403:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 403 § 7.]

**42.56.060 Disclaimer of public liability. *(Effective July 1, 2006.)*** No public agency, public official, public employee, or custodian shall be liable, nor shall a cause of action exist, for any loss or damage based upon the release of a public record if the public agency, public official, public employee, or custodian acted in good faith in attempting to comply with the provisions of this chapter. [1992 c 139 § 11. Formerly RCW 42.17.258]

**42.56.070 Documents and indexes to be made public.** (*Effective July 1, 2006.*) (1) Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of subsection (6) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by this chapter, an agency shall delete identifying details in a manner consistent with this chapter when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.

(2) For informational purposes, each agency shall publish and maintain a current list containing every law, other than those listed in this chapter, that the agency believes exempts or prohibits disclosure of specific information or records of the agency. An agency's failure to list an exemption shall not affect the efficacy of any exemption.

(3) Each local agency shall maintain and make available for public inspection and copying a current index providing identifying information as to the following records issued, adopted, or promulgated after January 1, 1973:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the agency;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

(4) A local agency need not maintain such an index, if to do so would be unduly burdensome, but it shall in that event:

(a) Issue and publish a formal order specifying the reasons why and the extent to which compliance would unduly burden or interfere with agency operations; and

(b) Make available for public inspection and copying all indexes maintained for agency use.

(5) Each state agency shall, by rule, establish and implement a system of indexing for the identification and location of the following records:

(a) All records issued before July 1, 1990, for which the agency has maintained an index;

(b) Final orders entered after June 30, 1990, that are issued in adjudicative proceedings as defined in RCW 34.05.010 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(c) Declaratory orders entered after June 30, 1990, that are issued pursuant to RCW 34.05.240 and that contain an

analysis or decision of substantial importance to the agency in carrying out its duties;

(d) Interpretive statements as defined in RCW 34.05.010 that were entered after June 30, 1990; and

(e) Policy statements as defined in RCW 34.05.010 that were entered after June 30, 1990.

Rules establishing systems of indexing shall include, but not be limited to, requirements for the form and content of the index, its location and availability to the public, and the schedule for revising or updating the index. State agencies that have maintained indexes for records issued before July 1, 1990, shall continue to make such indexes available for public inspection and copying. Information in such indexes may be incorporated into indexes prepared pursuant to this subsection. State agencies may satisfy the requirements of this subsection by making available to the public indexes prepared by other parties but actually used by the agency in its operations. State agencies shall make indexes available for public inspection and copying. State agencies may charge a fee to cover the actual costs of providing individual mailed copies of indexes.

(6) A public record may be relied on, used, or cited as precedent by an agency against a party other than an agency and it may be invoked by the agency for any other purpose only if:

(a) It has been indexed in an index available to the public; or

(b) Parties affected have timely notice (actual or constructive) of the terms thereof.

(7) Each agency shall establish, maintain, and make available for public inspection and copying a statement of the actual per page cost or other costs, if any, that it charges for providing photocopies of public records and a statement of the factors and manner used to determine the actual per page cost or other costs, if any.

(a) In determining the actual per page cost for providing photocopies of public records, an agency may include all costs directly incident to copying such public records including the actual cost of the paper and the per page cost for use of agency copying equipment. In determining other actual costs for providing photocopies of public records, an agency may include all costs directly incident to shipping such public records, including the cost of postage or delivery charges and the cost of any container or envelope used.

(b) In determining the actual per page cost or other costs for providing copies of public records, an agency may not include staff salaries, benefits, or other general administrative or overhead charges, unless those costs are directly related to the actual cost of copying the public records. Staff time to copy and mail the requested public records may be included in an agency's costs.

(8) An agency need not calculate the actual per page cost or other costs it charges for providing photocopies of public records if to do so would be unduly burdensome, but in that event: The agency may not charge in excess of fifteen cents per page for photocopies of public records or for the use of agency equipment to photocopy public records and the actual postage or delivery charge and the cost of any container or envelope used to mail the public records to the requestor.

(9) This chapter shall not be construed as giving authority to any agency, the office of the secretary of the senate, or

the office of the chief clerk of the house of representatives to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall not do so unless specifically authorized or directed by law: PROVIDED, HOWEVER, That lists of applicants for professional licenses and of professional licensees shall be made available to those professional associations or educational organizations recognized by their professional licensing or examination board, upon payment of a reasonable charge therefor: PROVIDED FURTHER, That such recognition may be refused only for a good cause pursuant to a hearing under the provisions of chapter 34.05 RCW, the Administrative Procedure Act. [2005 c 274 § 284; 1997 c 409 § 601. Prior: 1995 c 397 § 11; 1995 c 341 § 1; 1992 c 139 § 3; 1989 c 175 § 36; 1987 c 403 § 3; 1975 1st ex.s. c 294 § 14; 1973 c 1 § 26 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.260.]

**Part headings—Severability—1997 c 409:** See notes following RCW 43.22.051.

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

**Intent—Severability—1987 c 403:** See notes following RCW 42.17.255.

*Exemption for registered trade names: RCW 19.80.065.*

**42.56.080 Facilities for copying—Availability of public records. (Effective July 1, 2006.)** Public records shall be available for inspection and copying, and agencies shall, upon request for identifiable public records, make them promptly available to any person including, if applicable, on a partial or installment basis as records that are part of a larger set of requested records are assembled or made ready for inspection or disclosure. Agencies shall not deny a request for identifiable public records solely on the basis that the request is overbroad. Agencies shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate RCW 42.56.070(9) or other statute which exempts or prohibits disclosure of specific information or records to certain persons. Agency facilities shall be made available to any person for the copying of public records except when and to the extent that this would unreasonably disrupt the operations of the agency. Agencies shall honor requests received by mail for identifiable public records unless exempted by provisions of this chapter. [2005 c 483 § 1; 2005 c 274 § 285; 1987 c 403 § 4; 1975 1st ex.s. c 294 § 15; 1973 c 1 § 27 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.270.]

**Reviser's note:** This section was amended by 2005 c 274 § 285 and by 2005 c 483 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Intent—Severability—1987 c 403:** See notes following RCW 42.17.255.

**42.56.090 Times for inspection and copying. (Effective July 1, 2006.)** Public records shall be available for inspection and copying during the customary office hours of the agency, the office of the secretary of the senate, and the

office of the chief clerk of the house of representatives: PROVIDED, That if the entity does not have customary office hours of at least thirty hours per week, the public records shall be available from nine o'clock a.m. to noon and from one o'clock p.m. to four o'clock p.m. Monday through Friday, excluding legal holidays, unless the person making the request and the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives or its representative agree on a different time. [1995 c 397 § 12; 1973 c 1 § 28 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.280.]

**42.56.100 Protection of public records—Public access. (Effective July 1, 2006.)** Agencies shall adopt and enforce reasonable rules and regulations, and the office of the secretary of the senate and the office of the chief clerk of the house of representatives shall adopt reasonable procedures allowing for the time, resource, and personnel constraints associated with legislative sessions, consonant with the intent of this chapter to provide full public access to public records, to protect public records from damage or disorganization, and to prevent excessive interference with other essential functions of the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives. Such rules and regulations shall provide for the fullest assistance to inquirers and the most timely possible action on requests for information. Nothing in this section shall relieve agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives from honoring requests received by mail for copies of identifiable public records.

If a public record request is made at a time when such record exists but is scheduled for destruction in the near future, the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives shall retain possession of the record, and may not destroy or erase the record until the request is resolved. [1995 c 397 § 13; 1992 c 139 § 4; 1975 1st ex.s. c 294 § 16; 1973 c 1 § 29 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.290.]

**42.56.110 Destruction of information relating to employee misconduct. (Effective July 1, 2006.)** Nothing in this chapter prevents an agency from destroying information relating to employee misconduct or alleged misconduct, in accordance with RCW 41.06.450, to the extent necessary to ensure fairness to the employee. [1982 c 208 § 13. Formerly RCW 42.17.295.]

**Severability—1982 c 208:** See RCW 42.40.900.

**42.56.120 Charges for copying. (Effective July 1, 2006.)** No fee shall be charged for the inspection of public records. No fee shall be charged for locating public documents and making them available for copying. A reasonable charge may be imposed for providing copies of public records and for the use by any person of agency equipment or equipment of the office of the secretary of the senate or the office of the chief clerk of the house of representatives to copy public records, which charges shall not exceed the amount necessary to reimburse the agency, the office of the

secretary of the senate, or the office of the chief clerk of the house of representatives for its actual costs directly incident to such copying. Agency charges for photocopies shall be imposed in accordance with the actual per page cost or other costs established and published by the agency. In no event may an agency charge a per page cost greater than the actual per page cost as established and published by the agency. To the extent the agency has not determined the actual per page cost for photocopies of public records, the agency may not charge in excess of fifteen cents per page. An agency may require a deposit in an amount not to exceed ten percent of the estimated cost of providing copies for a request. If an agency makes a request available on a partial or installment basis, the agency may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed, the agency is not obligated to fulfill the balance of the request. [2005 c 483 § 2. Prior: 1995 c 397 § 14; 1995 c 341 § 2; 1973 c 1 § 30 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.300.]

**42.56.130 Other provisions not superseded. (Effective July 1, 2006.)** The provisions of RCW 42.56.070(7) and (8) and 42.56.120 that establish or allow agencies to establish the costs charged for photocopies of public records do not supersede other statutory provisions, other than in this chapter, authorizing or governing fees for copying public records. [2005 c 274 § 286; 1995 c 341 § 3. Formerly RCW 42.17.305.]

**42.56.210 Certain personal and other records exempt. (Effective July 1, 2006.)** (1) Except for information described in RCW 42.56.230(3)(a) and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this chapter are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(2) Inspection or copying of any specific records exempt under the provisions of this chapter may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(3) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld. [2005 c 274 § 402. Prior: (2003 1st sp.s. c 26 § 926 expired June 30, 2005); 2003 c 277 § 3; 2003 c 124 § 1; prior: 2002 c 335 § 1; 2002 c 224 § 2; 2002 c 205 § 4; 2002 c 172 § 1; prior: 2001 c 278 § 1; 2001 c 98 § 2; 2001 c 70 § 1; prior: 2000 c 134 § 3; 2000 c 56 § 1; 2000 c 6 § 5; prior: 1999 c 326 § 3; 1999 c 290 § 1; 1999 c 215 § 1; 1998 c 69 § 1; prior: 1997 c 310 § 2; 1997 c 274 § 8; 1997 c 250 § 7; 1997 c 239 § 4; 1997 c 220 § 120 (Referendum Bill No. 48, approved June 17, 1997); 1997 c 58 §

[2005 RCW Supp—page 436]

900; prior: 1996 c 305 § 2; 1996 c 253 § 302; 1996 c 191 § 88; 1996 c 80 § 1; 1995 c 267 § 6; prior: 1994 c 233 § 2; 1994 c 182 § 1; prior: 1993 c 360 § 2; 1993 c 320 § 9; 1993 c 280 § 35; prior: 1992 c 139 § 5; 1992 c 71 § 12; 1991 c 301 § 13; 1991 c 87 § 13; 1991 c 23 § 10; 1991 c 1 § 1; 1990 2nd ex.s. c 1 § 1103; 1990 c 256 § 1; prior: 1989 1st ex.s. c 9 § 407; 1989 c 352 § 7; 1989 c 279 § 23; 1989 c 238 § 1; 1989 c 205 § 20; 1989 c 189 § 3; 1989 c 11 § 12; prior: 1987 c 411 § 10; 1987 c 404 § 1; 1987 c 370 § 16; 1987 c 337 § 1; 1987 c 107 § 2; prior: 1986 c 299 § 25; 1986 c 276 § 7; 1985 c 414 § 8; 1984 c 143 § 21; 1983 c 133 § 10; 1982 c 64 § 1; 1977 ex.s. c 314 § 13; 1975-'76 2nd ex.s. c 82 § 5; 1975 1st ex.s. c 294 § 17; 1973 c 1 § 31 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.310.]

**Expiration date—Severability—Effective dates—2003 1st sp.s. c 26:** See notes following RCW 43.135.045.

**Working group on veterans' records:** "The protection from identity theft for veterans who choose to file their discharge papers with the county auditor is a matter of gravest concern. At the same time, the integrity of the public record of each county is a matter of utmost importance to the economic life of this state and to the right of each citizen to be secure in his or her ownership of real property and other rights and obligations of our citizens that rely upon the public record for their proof. Likewise the integrity of the public record is essential for the establishment of ancestral ties that may be of interest to this and future generations. While the public record as now kept by the county auditors is sufficient by itself for the accomplishment of these and many other public and private purposes, the proposed use of the public record for purposes that in their nature and intent are not public, so as to keep the veterans' discharge papers from disclosure to those of ill intent, causes concern among many segments of the population of this state.

In order to voice these concerns effectively and thoroughly, a working group may be convened by the joint committee on veterans' and military affairs to develop a means to preserve the integrity of the public record while protecting those veterans from identity theft." [2002 c 224 § 1.]

**Effective date—2002 c 224 § 1:** "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 28, 2002]." [2002 c 224 § 4.]

**Findings—Severability—Effective dates—2002 c 205 §§ 2, 3, and 4:** See notes following RCW 28A.320.125.

**Finding—2001 c 98:** "The legislature finds that public health and safety is promoted when the public has knowledge that enables them to make informed choices about their health and safety. Therefore, the legislature declares, as a matter of public policy, that the public has a right to information necessary to protect members of the public from harm caused by alleged hazards or threats to the public.

The legislature also recognizes that the public disclosure of those portions of records containing specific and unique vulnerability assessments or specific and unique response plans, either of which is intended to prevent or mitigate criminal terrorist acts as defined in RCW 70.74.285, could have a substantial likelihood of threatening public safety. Therefore, the legislature declares, as a matter of public policy, that such specific and unique information should be protected from unnecessary disclosure." [2001 c 98 § 1.]

**Findings—Conflict with federal requirements—Severability—2000 c 134:** See notes following RCW 50.13.060.

**Effective date—1998 c 69:** See note following RCW 28B.95.025.

**Effective date—1997 c 274:** See note following RCW 41.05.021.

**Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220:** See RCW 36.102.800 through 36.102.803.

**Part headings not law—Severability—1997 c 220:** See RCW 36.102.900 and 36.102.901.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Severability—1996 c 305:** See note following RCW 28B.85.020.



**Findings—Purpose—Severability—Part headings not law—1996 c 253:** See notes following RCW 28B.109.010.

**Captions not law—Severability—Effective dates—1995 c 267:** See notes following RCW 43.70.052.

**Effective date—1994 c 233:** See note following RCW 70.123.075.

**Effective date—1994 c 182:** "This act shall take effect July 1, 1994." [1994 c 182 § 2.]

**Effective date—1993 c 360:** See note following RCW 18.130.085.

**Effective date—Severability—1993 c 280:** See RCW 43.330.902 and 43.330.903.

**Finding—1991 c 301:** See note following RCW 10.99.020.

**Effective date—1991 c 87:** See note following RCW 18.64.350.

**Effective dates—1990 2nd ex.s. c 1:** See note following RCW 84.52.010.

**Severability—1990 2nd ex.s. c 1:** See note following RCW 82.14.300.

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

**Severability—1989 c 279:** See RCW 43.163.901.

**Severability—1989 c 11:** See note following RCW 9A.56.220.

**Severability—1987 c 411:** See RCW 69.45.900.

**Severability—Effective date—1986 c 299:** See RCW 28C.10.900 and 28C.10.902.

**Severability—1986 c 276:** See RCW 53.31.901.

*Basic health plan records:* RCW 70.47.150.

*Exemptions from public inspection*

*accounting records of special inquiry judge:* RCW 10.29.090.

*bill drafting service of code reviser's office:* RCW 1.08.027, 44.68.060.

*certificate submitted by physically or mentally disabled person seeking a driver's license:* RCW 46.20.041.

*commercial fertilizers, sales reports:* RCW 15.54.362.

*criminal records:* Chapter 10.97 RCW.

*employer information:* RCW 50.13.060.

*family and children's ombudsman:* RCW 43.06A.050.

*joint legislative service center, information:* RCW 44.68.060.

*medical quality assurance commission, reports required to be filed with:* RCW 18.71.0195.

*organized crime*

*advisory board files:* RCW 10.29.030.

*investigative information:* RCW 43.43.856.

*public transportation information:* RCW 47.04.230.

*salary and fringe benefit survey information:* RCW 41.06.160.

**42.56.230 Personal information. (Effective July 1, 2006.)** The following personal information is exempt from public inspection and copying under this chapter:

(1) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients;

(2) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy;

(3) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (a) be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (b) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer; and

(4) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law. [2005 c 274 § 403.]

**42.56.240 Investigative, law enforcement, and crime victims. (Effective July 1, 2006.)** The following investiga-

tive, law enforcement, and crime victim information is exempt from public inspection and copying under this chapter:

(1) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy;

(2) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim, or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath;

(3) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b);

(4) License applications under RCW 9.41.070; copies of license applications or information on the applications may be released to law enforcement or corrections agencies; and

(5) Information revealing the identity of child victims of sexual assault who are under age eighteen. Identifying information means the child victim's name, address, location, photograph, and in cases in which the child victim is a relative or stepchild of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator. [2005 c 274 § 404.]

**42.56.250 Employment and licensing. (Effective July 1, 2006.)** The following employment and licensing information is exempt from public inspection and copying under this chapter:

(1) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination;

(2) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant;

(3) The residential addresses or residential telephone numbers of employees or volunteers of a public agency that are held by any public agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency;

(4) Information that identifies a person who, while an agency employee: (a) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (b) requests his or her identity or any identifying information not be disclosed;

(5) Investigative records compiled by an employing agency conducting a current investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment; and

(6) Except as provided in RCW 47.64.220, salary and employee benefit information collected under RCW 47.64.220(1) and described in RCW 47.64.220(2). [2005 c 274 § 405.]

**42.56.260 Real estate appraisals. (Effective July 1, 2006.)** Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, are exempt from disclosure under this chapter. In no event may disclosure be denied for more than three years after the appraisal. [2005 c 274 § 406.]

**42.56.270 Financial, commercial, and proprietary information. (Effective July 1, 2006.)** The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

(2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070;

(3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;

(4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency;

(5) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW;

(6) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information;

(7) Financial and valuable trade information under RCW 51.36.120;

(8) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW;

(9) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010;

(10) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a liquor license, gambling license, or lottery retail license;

(11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011; and

(12)(a) When supplied to and in the records of the department of community, trade, and economic development:

(i) Financial and proprietary information collected from any person and provided to the department of community, trade, and economic development pursuant to RCW 43.330.050(8) and 43.330.080(4); and

(ii) Financial or proprietary information collected from any person and provided to the department of community, trade, and economic development or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business;

(b) When developed by the department of community, trade, and economic development based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;

(c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;

(d) If there is no written contact for a period of sixty days to the department of community, trade, and economic development from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter. [2005 c 274 § 407.]

**42.56.280 Preliminary drafts, notes, recommendations, intra-agency memorandums. (Effective July 1, 2006.)** Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended are exempt under this chapter, except that a specific record is not exempt when publicly cited by an agency in connection with any agency action. [2005 c 274 § 408.]

**42.56.290 Agency party to controversy. (Effective July 1, 2006.)** Records that are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery

for causes pending in the superior courts are exempt from disclosure under this chapter. [2005 c 274 § 409.]

**42.56.300 Archaeological sites. (Effective July 1, 2006.)** Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or deprecation of such sites are exempt from disclosure under this chapter. [2005 c 274 § 410.]

**42.56.310 Library records. (Effective July 1, 2006.)** Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, that discloses or could be used to disclose the identity of a library user is exempt from disclosure under this chapter. [2005 c 274 § 411.]

**42.56.320 Educational information. (Effective July 1, 2006.)** The following educational information is exempt from disclosure under this chapter:

(1) Financial disclosures filed by private vocational schools under chapters 28B.85 and 28C.10 RCW;

(2) Financial and commercial information supplied by or on behalf of a person, firm, corporation, or entity under chapter 28B.95 RCW relating to the purchase or sale of tuition units and contracts for the purchase of multiple tuition units;

(3) Individually identifiable information received by the work force training and education coordinating board for research or evaluation purposes; and

(4) Except for public records as defined in \*RCW 40.14.040, any records or documents obtained by a state college, university, library, or archive through or concerning any gift, grant, conveyance, bequest, or devise, the terms of which restrict or regulate public access to those records or documents. [2005 c 274 § 412.]

\*Reviser's note: A definition of "public records" is found in RCW 40.14.010.

**42.56.330 Public utilities and transportation. (Effective July 1, 2006.)** The following information relating to public utilities and transportation is exempt from disclosure under this chapter:

(1) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095;

(2) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, for the establishment, enforcement, or modification of a support order;

(3) The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program or service; however, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides;

(4) The personally identifying information of current or former participants or applicants in a paratransit or other transit service operated for the benefit of persons with disabilities or elderly persons;

(5) The personally identifying information of persons who acquire and use transit passes and other fare payment media including, but not limited to, stored value smart cards and magnetic strip cards, except that an agency may disclose this information to a person, employer, educational institution, or other entity that is responsible, in whole or in part, for payment of the cost of acquiring or using a transit pass or other fare payment media, or to the news media when reporting on public transportation or public safety. This information may also be disclosed at the agency's discretion to governmental agencies or groups concerned with public transportation or public safety;

(6) Records of any person that belong to a public utility district or a municipally owned electrical utility, unless the law enforcement authority provides the public utility district or municipally owned electrical utility with a written statement in which the authority states that it suspects that the particular person to whom the records pertain has committed a crime and the authority has a reasonable belief that the records could determine or help determine whether the suspicion might be true. Information obtained in violation of this subsection is inadmissible in any criminal proceeding; and

(7) Any information obtained by governmental agencies that is collected by the use of a motor carrier intelligent transportation system or any comparable information equipment attached to a truck, tractor, or trailer; however, the information may be given to other governmental agencies or the owners of the truck, tractor, or trailer from which the information is obtained. As used in this subsection, "motor carrier" has the same definition as provided in RCW 81.80.010. [2005 c 274 § 413.]

**42.56.340 Timeshare, condominium, etc. owner lists. (Effective July 1, 2006.)** Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department are exempt from disclosure under this chapter. [2005 c 274 § 414.]

**42.56.350 Health professionals. (Effective July 1, 2006.)** (1) The federal Social Security number of individuals governed under chapter 18.130 RCW maintained in the files of the department of health is exempt from disclosure under this chapter. The exemption in this section does not apply to requests made directly to the department from federal, state, and local agencies of government, and national and state licensing, credentialing, investigatory, disciplinary, and examination organizations.

(2) The current residential address and current residential telephone number of a health care provider governed under chapter 18.130 RCW maintained in the files of the department are exempt from disclosure under this chapter, if the provider requests that this information be withheld from public inspection and copying, and provides to the depart-

ment of health an accurate alternate or business address and business telephone number. The current residential address and residential telephone number of a health care provider governed under RCW 18.130.040 maintained in the files of the department of health shall automatically be withheld from public inspection and copying unless the provider specifically requests the information be released, and except as provided for under RCW 42.56.070(9). [2005 c 274 § 415.]

**42.56.360 Health care. (Effective July 1, 2006.)** (1) The following health care information is exempt from disclosure under this chapter:

(a) Information obtained by the board of pharmacy as provided in RCW 69.45.090;

(b) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420;

(c) Information and documents created specifically for, and collected and maintained by a quality improvement committee under RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW 4.24.250, regardless of which agency is in possession of the information and documents;

(d)(i) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310;

(ii) If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this subsection (1)(d) as exempt from disclosure;

(iii) If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality;

(e) Records of the entity obtained in an action under RCW 18.71.300 through 18.71.340;

(f) Except for published statistical compilations and reports relating to the infant mortality review studies that do not identify individual cases and sources of information, any records or documents obtained, prepared, or maintained by the local health department for the purposes of an infant mortality review conducted by the department of health under RCW 70.05.170; and

(g) Complaints filed under chapter 18.130 RCW after July 27, 1997, to the extent provided in RCW 18.130.095(1).

(2) Chapter 70.02 RCW applies to public inspection and copying of health care information of patients. [2005 c 274 § 416.]

*Basic health plan—Confidentiality: RCW 70.47.150.*

**42.56.370 Domestic violence program, rape crisis center clients. (Effective July 1, 2006.)** Client records maintained by an agency that is a domestic violence program

[2005 RCW Supp—page 440]

as defined in RCW 70.123.020 or 70.123.075 or a rape crisis center as defined in RCW 70.125.030 are exempt from disclosure under this chapter. [2005 c 274 § 417.]

**42.56.380 Agriculture and livestock. (Effective July 1, 2006.)** The following information relating to agriculture and livestock is exempt from disclosure under this chapter:

(1) Business-related information under RCW 15.86.110;

(2) Information provided under RCW 15.54.362;

(3) Production or sales records required to determine assessment levels and actual assessment payments to commodity boards and commissions formed under chapters 15.24, 15.26, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.100, and 16.67 RCW or required by the department of agriculture to administer these chapters or the department's programs;

(4) Consignment information contained on phytosanitary certificates issued by the department of agriculture under chapters 15.13, 15.49, and 15.17 RCW or federal phytosanitary certificates issued under 7 C.F.R. 353 through cooperative agreements with the animal and plant health inspection service, United States department of agriculture, or on applications for phytosanitary certification required by the department of agriculture;

(5) Financial and commercial information and records supplied by persons (a) to the department of agriculture for the purpose of conducting a referendum for the potential establishment of a commodity board or commission; or (b) to the department of agriculture or commodity boards or commissions formed under chapter 15.24, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.100, or 16.67 RCW with respect to domestic or export marketing activities or individual producer's production information;

(6) Except under RCW 15.19.080, information obtained regarding the purchases, sales, or production of an individual American ginseng grower or dealer;

(7) Information that can be identified to a particular business and that is collected under section 3(1), chapter 235, Laws of 2002; and

(8) Financial statements provided under RCW 16.65.030(1)(d). [2005 c 274 § 418.]

**42.56.390 Emergency or transitional housing. (Effective July 1, 2006.)** Names of individuals residing in emergency or transitional housing that are furnished to the department of revenue or a county assessor in order to substantiate a claim for property tax exemption under RCW 84.36.043 are exempt from disclosure under this chapter. [2005 c 274 § 419.]

**42.56.400 Insurance and financial institutions. (Effective July 1, 2006.)** The following information relating to insurance and financial institutions is exempt from disclosure under this chapter:

(1) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110;

(2) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to

another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW;

(3) The names and individual identification data of all viators regulated by the insurance commissioner under chapter 48.102 RCW;

(4) Information provided under RCW 48.30A.045 through 48.30A.060;

(5) Information provided under RCW 48.05.510 through 48.05.535, 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600 through 48.46.625;

(6) Information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business;

(7) Examination reports and information obtained by the department of financial institutions from banks under RCW 30.04.075, from savings banks under RCW 32.04.220, from savings and loan associations under RCW 33.04.110, from credit unions under RCW 31.12.565, from check cashers and sellers under RCW 31.45.030(3), and from securities brokers and investment advisers under RCW 21.20.100, all of which is confidential and privileged information;

(8) Information provided to the insurance commissioner under RCW 48.110.040(3);

(9) Documents, materials, or information obtained by the insurance commissioner under RCW 48.02.065, all of which are confidential and privileged; and

(10) Confidential proprietary and trade secret information provided to the commissioner under RCW 48.31C.020 through 48.31C.050 and 48.31C.070. [2005 c 274 § 420.]

**42.56.410 Employment security department records, certain purposes.** (*Effective July 1, 2006.*) Records maintained by the employment security department and subject to chapter 50.13 RCW if provided to another individual or organization for operational, research, or evaluation purposes are exempt from disclosure under this chapter. [2005 c 274 § 421.]

**42.56.420 Security.** (*Effective July 1, 2006.*) The following information relating to security is exempt from disclosure under this chapter:

(1) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the state or the United States and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:

(a) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; and

(b) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings pro-

vided to state or local government officials related to domestic preparedness for acts of terrorism;

(2) Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans at a city, county, or state adult or juvenile correctional facility, the public disclosure of which would have a substantial likelihood of threatening the security of a city, county, or state adult or juvenile correctional facility or any individual's safety;

(3) Information compiled by school districts or schools in the development of their comprehensive safe school plans under RCW 28A.320.125, to the extent that they identify specific vulnerabilities of school districts and each individual school;

(4) Information regarding the infrastructure and security of computer and telecommunications networks, consisting of security passwords, security access codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities; and

(5) The security section of transportation system safety and security program plans required under RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180. [2005 c 274 § 422.]

**42.56.430 Fish and wildlife.** (*Effective July 1, 2006.*)

The following information relating to fish and wildlife is exempt from disclosure under this chapter:

(1) Commercial fishing catch data from logbooks required to be provided to the department of fish and wildlife under RCW 77.12.047, when the data identifies specific catch location, timing, or methodology and the release of which would result in unfair competitive disadvantage to the commercial fisher providing the catch data, however, this information may be released to government agencies concerned with the management of fish and wildlife resources;

(2) Sensitive wildlife data obtained by the department of fish and wildlife, however, sensitive wildlife data may be released to government agencies concerned with the management of fish and wildlife resources. As used in this subsection, sensitive wildlife data includes:

(a) The nesting sites or specific locations of endangered species designated under RCW 77.12.020, or threatened or sensitive species classified by rule of the department of fish and wildlife;

(b) Radio frequencies used in, or locational data generated by, telemetry studies; or

(c) Other location data that could compromise the viability of a specific fish or wildlife population, and where at least one of the following criteria are met:

(i) The species has a known commercial or black market value;

(ii) There is a history of malicious take of that species; or

(iii) There is a known demand to visit, take, or disturb, and the species behavior or ecology renders it especially vulnerable or the species has an extremely limited distribution and concentration; and

(3) The personally identifying information of persons who acquire recreational licenses under RCW 77.32.010 or commercial licenses under chapter 77.65 or 77.70 RCW,

except name, address of contact used by the department, and type of license, endorsement, or tag; however, the department of fish and wildlife may disclose personally identifying information to:

(a) Government agencies concerned with the management of fish and wildlife resources;

(b) The department of social and health services, child support division, and to the department of licensing in order to implement RCW 77.32.014 and 46.20.291; and

(c) Law enforcement agencies for the purpose of firearm possession enforcement under RCW 9.41.040. [2005 c 274 § 423.]

**42.56.440 Veterans' discharge papers—Exceptions.** (*Effective July 1, 2006.*) (1) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have not been commingled with other recorded documents are exempt from disclosure under this chapter. These records will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding that veteran's general power of attorney, or to anyone else designated in writing by that veteran to receive the records.

(2) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have been commingled with other records are exempt from disclosure under this chapter, if the veteran has recorded a "request for exemption from public disclosure of discharge papers" with the county auditor. If such a request has been recorded, these records may be released only to the veteran filing the papers, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(3) Discharge papers of a veteran filed at the office of the county auditor after June 30, 2002, are not public records, but will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(4) For the purposes of this section, next of kin of deceased veterans have the same rights to full access to the record. Next of kin are the veteran's widow or widower who has not remarried, son, daughter, father, mother, brother, and sister. [2005 c 274 § 424.]

**42.56.450 Check cashers and sellers licensing applications.** (*Effective July 1, 2006.*) Information in an application for licensing or a small loan endorsement under chapter 31.45 RCW regarding the personal residential address, telephone number of the applicant, or financial statement is exempt from disclosure under this chapter. [2005 c 274 § 425.]

**42.56.460 Fireworks.** (*Effective July 1, 2006.*) All records obtained and all reports produced as required by state

fireworks law, chapter 70.77 RCW, are exempt from disclosure under this chapter. [2005 c 274 § 426.]

**42.56.470 Correctional industries workers.** (*Effective July 1, 2006.*) All records, documents, data, and other materials obtained under the requirements of RCW 72.09.115 from an existing correctional industries class I work program participant or an applicant for a proposed new or expanded class I correctional industries work program are exempt from public disclosure under this chapter. [2005 c 274 § 427.]

**42.56.480 Inactive programs.** (*Effective July 1, 2006.*) Information relating to the following programs and reports, which have no ongoing activity, is exempt from disclosure under this chapter:

(1) Railroad company contracts filed prior to July 28, 1991, with the utilities and transportation commission under \*RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter;

(2) Personal information in files maintained in a data base created under \*\*RCW 43.07.360; and

(3) Data collected by the department of social and health services for the reports required by section 8, chapter 231, Laws of 2003, except as compiled in the aggregate and reported to the senate and house of representatives. [2005 c 274 § 428.]

**Reviser's note:** \*(1) RCW 81.34.070 was repealed by 1991 c 49 § 1.

\*\*\*(2) RCW 43.07.360 expired December 31, 2000, pursuant to 1996 c 253 § 502.

**42.56.510 Duty to disclose or withhold information—Otherwise provided.** (*Effective July 1, 2006.*) Nothing in RCW 42.56.250 and 42.56.330 shall affect a positive duty of an agency to disclose or a positive duty to withhold information which duty to disclose or withhold is contained in any other law. [2005 c 274 § 287; 1991 c 23 § 11; 1990 c 256 § 2; 1987 c 404 § 3. Formerly RCW 42.17.311.]

**42.56.520 Prompt responses required.** (*Effective July 1, 2006.*) Responses to requests for public records shall be made promptly by agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives. Within five business days of receiving a public record request, an agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives must respond by either (1) providing the record; (2) acknowledging that the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives has received the request and providing a reasonable estimate of the time the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives will require to respond to the request; or (3) denying the public record request. Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, an agency,

the office of the secretary of the senate, or the office of the chief clerk of the house of representatives may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives need not respond to it. Denials of requests must be accompanied by a written statement of the specific reasons therefor. Agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall establish mechanisms for the most prompt possible review of decisions denying inspection, and such review shall be deemed completed at the end of the second business day following the denial of inspection and shall constitute final agency action or final action by the office of the secretary of the senate or the office of the chief clerk of the house of representatives for the purposes of judicial review. [1995 c 397 § 15; 1992 c 139 § 6; 1975 1st ex.s. c 294 § 18; 1973 c 1 § 32 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.320.]

**42.56.530 Review of agency denial.** (*Effective July 1, 2006.*) Whenever a state agency concludes that a public record is exempt from disclosure and denies a person opportunity to inspect or copy a public record for that reason, the person may request the attorney general to review the matter. The attorney general shall provide the person with his or her written opinion on whether the record is exempt.

Nothing in this section shall be deemed to establish an attorney-client relationship between the attorney general and a person making a request under this section. [1992 c 139 § 10. Formerly RCW 42.17.325.]

**42.56.540 Court protection of public records.** (*Effective July 1, 2006.*) The examination of any specific public record may be enjoined if, upon motion and affidavit by an agency or its representative or a person who is named in the record or to whom the record specifically pertains, the superior court for the county in which the movant resides or in which the record is maintained, finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions. An agency has the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested. However, this option does not exist where the agency is required by law to provide such notice. [1992 c 139 § 7; 1975 1st ex.s. c 294 § 19; 1973 c 1 § 33 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.330.]

**42.56.550 Judicial review of agency actions.** (*Effective July 1, 2006.*) (1) Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records. The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is in accordance with a statute

that exempts or prohibits disclosure in whole or in part of specific information or records.

(2) Upon the motion of any person who believes that an agency has not made a reasonable estimate of the time that the agency requires to respond to a public record request, the superior court in the county in which a record is maintained may require the responsible agency to show that the estimate it provided is reasonable. The burden of proof shall be on the agency to show that the estimate it provided is reasonable.

(3) Judicial review of all agency actions taken or challenged under RCW 42.56.030 through 42.56.520 shall be de novo. Courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. Courts may examine any record in camera in any proceeding brought under this section. The court may conduct a hearing based solely on affidavits.

(4) Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to award such person an amount not less than five dollars and not to exceed one hundred dollars for each day that he or she was denied the right to inspect or copy said public record.

(5) For actions under this section against counties, the venue provisions of RCW 36.01.050 apply.

(6) Actions under this section must be filed within one year of the agency's claim of exemption or the last production of a record on a partial or installment basis. [2005 c 483 § 5; 2005 c 274 § 288; 1992 c 139 § 8; 1987 c 403 § 5; 1975 1st ex.s. c 294 § 20; 1973 c 1 § 34 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.340.]

**Reviser's note:** This section was amended by 2005 c 274 § 288 and by 2005 c 483 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Intent—Severability—1987 c 403:** See notes following RCW 42.17.255.

**42.56.560 Application of RCW 42.56.550.** (*Effective July 1, 2006.*) The procedures in RCW 42.56.550 govern denials of an opportunity to inspect or copy a public record by the office of the secretary of the senate or the office of the chief clerk of the house of representatives. [2005 c 274 § 289; 1995 c 397 § 16. Formerly RCW 42.17.341.]

**42.56.570 Explanatory pamphlet.** (*Effective July 1, 2006.*) (1) The attorney general's office shall publish, and update when appropriate, a pamphlet, written in plain language, explaining this chapter.

(2) The attorney general, by February 1, 2006, shall adopt by rule an advisory model rule for state and local agencies, as defined in RCW 42.17.020, addressing the following subjects:

- (a) Providing fullest assistance to requestors;
- (b) Fulfilling large requests in the most efficient manner;
- (c) Fulfilling requests for electronic records; and

(d) Any other issues pertaining to public disclosure as determined by the attorney general.

(3) The attorney general, in his or her discretion, may from time to time revise the model rule. [2005 c 483 § 4; 2005 c 274 § 290; 1992 c 139 § 9. Formerly RCW 42.17.348.]

**Reviser's note:** This section was amended by 2005 c 274 § 290 and by 2005 c 483 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**42.56.900 Purpose—2005 c 274 §§ 402-429. (Effective July 1, 2006.)** The purpose of sections 402 through 429 of this act is to reorganize the public inspection and copying exemptions in RCW 42.17.310 through 42.17.31921 by creating smaller, discrete code sections organized by subject matter. The legislature does not intend that this act effectuate any substantive change to any public inspection and copying exemption in the Revised Code of Washington. [2005 c 274 § 401.]

**42.56.901 Part headings not law—2005 c 274. (Effective July 1, 2006.)** Part headings used in this act are not any part of the law. [2005 c 274 § 501.]

**42.56.902 Effective date—2005 c 274.** This act takes effect July 1, 2006. [2005 c 274 § 502.]

## Title 43

### STATE GOVERNMENT—EXECUTIVE

#### Chapters

43.01	State officers—General provisions.
43.03	Salaries and expenses.
43.06	Governor.
43.06A	Office of the family and children's ombudsman.
43.07	Secretary of state.
43.08	State treasurer.
43.09	State auditor.
43.10	Attorney general.
43.17	Administrative departments and agencies—General provisions.
43.19	Department of general administration.
43.20A	Department of social and health services.
43.20B	Revenue recovery for department of social and health services.
43.21A	Department of ecology.
43.21B	Environmental hearings office—Pollution control hearings board.
43.21J	Environmental and forest restoration projects.
43.21L	Economic development projects—Appeals and reviews of permit decisions.
43.22	Department of labor and industries.
43.23	Department of agriculture.
43.24	Department of licensing.
43.30	Department of natural resources.
43.31	Department of community, trade, and economic development.
43.33A	State investment board.
43.43	Washington state patrol.
43.52	Operating agencies.
43.59	Traffic safety commission.

43.60A	Department of veterans affairs.
43.63A	Department of community, trade, and economic development.
43.70	Department of health.
43.72	Health system reform—Health services commission.
43.79	State funds.
43.79A	Treasurer's trust fund.
43.84	Investments and interfund loans.
43.86A	Surplus funds—Investment program.
43.88	State budgeting, accounting, and reporting system.
43.99K	Financing for appropriations—1995-1997 biennium.
43.99S	Financing for appropriations—2005-2007 biennium.
43.101	Criminal justice training commission—Education and training standards boards.
43.103	Washington state forensic investigations council.
43.105	Department of information services.
43.121	Council for the prevention of child abuse and neglect.
43.131	Washington sunset act of 1977.
43.135	State expenditures limitations.
43.155	Public works projects.
43.160	Economic development—Public facilities loans and grants.
43.163	Economic development finance authority.
43.165	Community revitalization team—Assistance to distressed areas.
43.168	Washington state development loan fund committee.
43.170	Small business innovators' opportunity program.
43.172	Minority and women-owned businesses—Small business bonding assistance program.
43.180	Housing finance commission.
43.185	Housing assistance program.
43.185A	Affordable housing program.
43.185B	Washington housing policy act.
43.185C	Homeless housing and assistance.
43.320	Department of financial institutions.
43.330	Department of community, trade, and economic development.
43.334	Department of archaeology and historic preservation.
43.342	Association of Washington generals.
43.350	Life sciences research.
43.360	Washington main street program.

#### Chapter 43.01 RCW

### STATE OFFICERS—GENERAL PROVISIONS

#### Sections

43.01.090	Departments to share occupancy costs—Capital projects surcharge.
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**43.01.090 Departments to share occupancy costs—Capital projects surcharge.** The director of general administration may assess a charge or rent against each state board, commission, agency, office, department, activity, or other occupant or user for payment of a proportionate share of costs for occupancy of buildings, structures, or facilities including



but not limited to all costs of acquiring, constructing, operating, and maintaining such buildings, structures, or facilities and the repair, remodeling, or furnishing thereof and for the rendering of any service or the furnishing or providing of any supplies, equipment, historic furnishings, or materials.

The director of general administration may recover the full costs including appropriate overhead charges of the foregoing by periodic billings as determined by the director including but not limited to transfers upon accounts and advancements into the general administration services account. Charges related to the rendering of real estate services under RCW 43.82.010 and to the operation and maintenance of public and historic facilities at the state capitol, as defined in RCW 79.24.710, shall be allocated separately from other charges assessed under this section. Rates shall be established by the director of general administration after consultation with the director of financial management. The director of general administration may allot, provide, or furnish any of such facilities, structures, services, equipment, supplies, or materials to any other public service type occupant or user at such rates or charges as are equitable and reasonably reflect the actual costs of the services provided: PROVIDED, HOWEVER, That the legislature, its duly constituted committees, interim committees and other committees shall be exempted from the provisions of this section.

Upon receipt of such bill, each entity, occupant, or user shall cause a warrant or check in the amount thereof to be drawn in favor of the department of general administration which shall be deposited in the state treasury to the credit of the general administration services account unless the director of financial management has authorized another method for payment of costs.

Beginning July 1, 1995, the director of general administration shall assess a capital projects surcharge upon each agency or other user occupying a facility owned and managed by the department of general administration in Thurston county, excluding state capitol public and historic facilities, as defined in RCW 79.24.710. The capital projects surcharge does not apply to agencies or users that agree to pay all future repairs, improvements, and renovations to the buildings they occupy and a proportional share, as determined by the office of financial management, of all other campus repairs, installations, improvements, and renovations that provide a benefit to the buildings they occupy or that have an agreement with the department of general administration that contains a charge for a similar purpose, including but not limited to RCW 43.01.091, in an amount greater than the capital projects surcharge. Beginning July 1, 2002, the capital projects surcharge does not apply to department of services for the blind vendors who operate cafeteria services in facilities owned and managed by the department of general administration; the department shall consider this space to be a common area for purposes of allocating the capital projects surcharge to other building tenants beginning July 1, 2003. The director, after consultation with the director of financial management, shall adopt differential capital project surcharge rates to reflect the differences in facility type and quality. The initial payment structure for this surcharge shall be one dollar per square foot per year. The surcharge shall increase over time to an amount that when combined with the facilities and service charge equals the market rate for similar

types of lease space in the area or equals five dollars per square foot per year, whichever is less. The capital projects surcharge shall be in addition to other charges assessed under this section. Proceeds from the capital projects surcharge shall be deposited into the Thurston county capital facilities account created in RCW 43.19.501. [2005 c 330 § 5; 2002 c 162 § 1; 1998 c 105 § 5; 1994 c 219 § 16; 1991 sp.s. c 31 § 10; 1979 c 151 § 81; 1973 1st ex.s. c 82 § 1; 1971 ex.s. c 159 § 1; 1965 c 8 § 43.01.090. Prior: (i) 1951 c 131 § 1; 1941 c 228 § 1; Rem. Supp. 1941 § 10964-30. (ii) 1951 c 131 § 1; 1941 c 228 § 2; Rem. Supp. 1941 § 10964-31.]

**Effective date—1998 c 105:** See note following RCW 43.19.025.

**Findings—Purpose—1994 c 219:** "The legislature finds that there is inequitable distribution among state programs of capital costs associated with maintaining and rehabilitating state facilities. The legislature finds that there are insufficient available resources to support even minor capital improvements other than debt financing. The legislature further finds that little attention is focused on efficient facility management because in many cases capital costs are not factored into the ongoing process of allocating state resources. The purpose of sections 16 through 18, chapter 219, Laws of 1994 is to create a mechanism to distribute capital costs among the agencies and programs occupying facilities owned and managed by the department of general administration in Thurston county that will foster increased accountability for facility decisions and more efficient use of the facilities." [1994 c 219 § 15.]

**Finding—1994 c 219:** See note following RCW 43.88.030.

**Severability—1991 sp.s. c 31:** See RCW 43.991.900.

**Effective date—1973 1st ex.s. c 82:** "This 1973 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1973." [1973 1st ex.s. c 82 § 2.]

*Agricultural commodity commissions exempt:* RCW 15.04.200.

*General administration services account:* RCW 43.19.500.

*Housing for state offices, departments, and institutions:* Chapter 43.82 RCW.

## Chapter 43.03 RCW SALARIES AND EXPENSES

### Sections

43.03.011	Salaries of state elected officials of the executive branch.
43.03.012	Salaries of judges.
43.03.013	Salaries of members of the legislature.

**43.03.011 Salaries of state elected officials of the executive branch.** Pursuant to Article XXVIII, section 1 of the state Constitution and RCW 43.03.010 and 43.03.310, the annual salaries of the state elected officials of the executive branch shall be as follows:

(1) Effective September 1, 2004:	
(a) Governor	\$ 145,132
(b) Lieutenant governor	\$ 75,865
(c) Secretary of state	\$ 101,702
(d) Treasurer	\$ 101,702
(e) Auditor	\$ 101,702
(f) Attorney general	\$ 131,938
(g) Superintendent of public instruction	\$ 103,785
(h) Commissioner of public lands	\$ 103,785
(i) Insurance commissioner	\$ 101,702
(2) Effective September 1, 2005:	
(a) Governor	\$ 148,035
(b) Lieutenant governor	\$ 77,382
(c) Secretary of state	\$ 103,736

(d) Treasurer . . . . .	\$ 103,736
(e) Auditor . . . . .	\$ 103,736
(f) Attorney general . . . . .	\$ 134,577
(g) Superintendent of public instruction . . . . .	\$ 105,861
(h) Commissioner of public lands . . . . .	\$ 105,861
(i) Insurance commissioner . . . . .	\$ 103,736

(3) Effective September 1, 2006:

(a) Governor . . . . .	\$ 150,995
(b) Lieutenant governor . . . . .	\$ 78,930
(c) Secretary of state . . . . .	\$ 105,811
(d) Treasurer . . . . .	\$ 105,811
(e) Auditor . . . . .	\$ 105,811
(f) Attorney general . . . . .	\$ 137,268
(g) Superintendent of public instruction . . . . .	\$ 107,978
(h) Commissioner of public lands . . . . .	\$ 107,978
(i) Insurance commissioner . . . . .	\$ 105,811

(4) The lieutenant governor shall receive the fixed

amount of his salary plus 1/260th of the difference between his salary and that of the governor for each day that the lieutenant governor is called upon to perform the duties of the governor by reason of the absence from the state, removal, resignation, death, or disability of the governor. [2005 c 519 § 1; 2003 1st sp.s. c 1 § 1; 2001 1st sp.s. c 3 § 1; 1999 sp.s. c 3 § 1; 1997 c 458 § 1; 1995 2nd sp.s. c 1 § 1; 1993 sp.s. c 26 § 1; 1991 sp.s. c 1 § 1; 1989 2nd ex.s. c 4 § 1; 1987 1st ex.s. c 1 § 1, part.]

**43.03.012 Salaries of judges.** Pursuant to Article XXVIII, section 1 of the state Constitution and RCW 2.04.092, 2.06.062, 2.08.092, 3.58.010, and 43.03.310, the annual salaries of the judges of the state shall be as follows:

(1) Effective September 1, 2004:

(a) Justices of the supreme court . . . . .	\$ 137,276
(b) Judges of the court of appeals . . . . .	\$ 130,678
(c) Judges of the superior court . . . . .	\$ 124,411
(d) Full-time judges of the district court . . . . .	\$ 118,458

(2) Effective September 1, 2005:

(a) Justices of the supreme court . . . . .	\$ 141,394
(b) Judges of the court of appeals . . . . .	\$ 134,598
(c) Judges of the superior court . . . . .	\$ 128,143
(d) Full-time judges of the district court . . . . .	\$ 122,012

(3) Effective September 1, 2006:

(a) Justices of the supreme court . . . . .	\$ 145,636
(b) Judges of the court of appeals . . . . .	\$ 138,636
(c) Judges of the superior court . . . . .	\$ 131,988
(d) Full-time judges of the district court . . . . .	\$ 125,672

(4) The salary for a part-time district court judge shall be the proportion of full-time work for which the position is authorized, multiplied by the salary for a full-time district court judge. [2005 c 519 § 2; 2003 1st sp.s. c 1 § 2; 2001 1st sp.s. c 3 § 2; 1999 sp.s. c 3 § 2; 1997 c 458 § 2; 1995 2nd sp.s. c 1 § 2; 1993 sp.s. c 26 § 2; 1991 sp.s. c 1 § 2; 1989 2nd ex.s. c 4 § 2; 1987 1st ex.s. c 1 § 1, part.]

**43.03.013 Salaries of members of the legislature.** Pursuant to Article XXVIII, section 1 of the state Constitution and RCW 43.03.010 and 43.03.310, the annual salary of members of the legislature shall be:

(1) Effective September 1, 2004:

(a) Legislators . . . . .	\$ 34,227
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(b) Speaker of the house . . . . .	\$ 42,227
(c) Senate majority leader . . . . .	\$ 42,227
(d) House minority leader . . . . .	\$ 38,227
(e) Senate minority leader . . . . .	\$ 38,227

(2) Effective September 1, 2005:

(a) Legislators . . . . .	\$ 35,254
(b) Speaker of the house . . . . .	\$ 43,254
(c) Senate majority leader . . . . .	\$ 43,254
(d) House minority leader . . . . .	\$ 39,254
(e) Senate minority leader . . . . .	\$ 39,254

(3) Effective September 1, 2006:

(a) Legislators . . . . .	\$ 36,311
(b) Speaker of the house . . . . .	\$ 44,311
(c) Senate majority leader . . . . .	\$ 44,311
(d) House minority leader . . . . .	\$ 40,311
(e) Senate minority leader . . . . .	\$ 40,311

[2005 c 519 § 3; 2003 1st sp.s. c 1 § 3; 2001 1st sp.s. c 3 § 3; 1999 sp.s. c 3 § 3; 1997 c 458 § 3; 1995 2nd sp.s. c 1 § 3; 1993 sp.s. c 26 § 3; 1991 sp.s. c 1 § 3; 1989 2nd ex.s. c 4 § 3; 1987 1st ex.s. c 1 § 1, part.]

**Chapter 43.06 RCW  
GOVERNOR**

Sections

- 43.06.460 Cigarette tax contracts—Eligible tribes—Tax rate.
- 43.06.465 Cigarette tax agreement with Puyallup Tribe of Indians.

*Oil spill advisory council: RCW 90.56.120.*

**43.06.460 Cigarette tax contracts—Eligible tribes—**

**Tax rate.** (1) The governor is authorized to enter into cigarette tax contracts with the Squaxin Island Tribe, the Nisqually Tribe, Tulalip Tribes, the Muckleshoot Indian Tribe, the Quinault Nation, the Jamestown S'Klallam Indian Tribe, the Port Gamble S'Klallam Tribe, the Stillaguamish Tribe, the Sauk-Suiattle Tribe, the Skokomish Indian Tribe, the Yakama Nation, the Suquamish Tribe, the Nooksack Indian Tribe, the Lummi Nation, the Chehalis Confederated Tribes, the Upper Skagit Tribe, the Snoqualmie Tribe, the Swinomish Tribe, the Samish Indian Nation, the Quileute Tribe, the Kalispel Tribe, the Confederated Tribes of the Colville Reservation, the Cowlitz Indian Tribe, the Lower Elwha Klallam Tribe, and the Makah Tribe. Each contract adopted under this section shall provide that the tribal cigarette tax rate be one hundred percent of the state cigarette and state and local sales and use taxes within three years of enacting the tribal tax and shall be set no lower than eighty percent of the state cigarette and state and local sales and use taxes during the three-year phase-in period. The three-year phase-in period shall be shortened by three months each quarter the number of cartons of nontribal manufactured cigarettes is at least ten percent or more than the quarterly average number of cartons of nontribal manufactured cigarettes from the six-month period preceding the imposition of the tribal tax under the contract. Sales at a retailer operation not in existence as of the date a tribal tax under this section is imposed are subject to the full rate of the tribal tax under the contract. The tribal cigarette tax is in lieu of the state cigarette and state and local sales and use taxes, as provided in RCW 43.06.455(3).

(2) A cigarette tax contract under this section is subject to RCW 43.06.455. [2005 c 208 § 1; 2003 c 236 § 1; 2002 c 87 § 1; 2001 2nd sp.s. c 21 § 1; 2001 c 235 § 3.]

**43.06.465 Cigarette tax agreement with Puyallup Tribe of Indians.** (1) The governor may enter into a cigarette tax agreement with the Puyallup Tribe of Indians concerning the sale of cigarettes, subject to the limitations in this section. The legislature intends to address the uniqueness of the Puyallup Indian reservation and its selling environment through pricing and compliance strategies, rather than through the imposition of equivalent taxes. It is the legislature's intent (a) that an increase in prices through a flat tax will reduce much of the competitive advantage that has historically existed due to the discrepancy in the difference between state and tribal taxes, and (b) that the tribal retailers can remain in business under the changed circumstances. The governor may delegate the authority to negotiate a cigarette tax agreement with the Puyallup Tribe to the department of revenue. The department of revenue shall consult with the liquor control board during the negotiations.

(2) Any agreement must require the tribe to impose a tax of eleven dollars and seventy-five cents on each carton of cigarettes, with ten packs a carton and twenty cigarettes per pack being the industry standard. This tax shall be prorated for cartons and packs that are nonstandard. This tribal tax is in lieu of the combined state and local sales and use taxes, and state cigarette taxes, and as such these state taxes are not imposed during the term of the agreement on any transaction governed by the agreement. The tribal tax shall increase or decrease by the same dollar amount as any increase or decrease in the state cigarette tax.

(3) The agreement must include a provision requiring the tribe to transmit thirty percent of the tribal tax revenue on all cigarette sales to the state. The funds shall be transmitted to the state treasurer on a quarterly basis for deposit by the state treasurer into the general fund. The remaining tribal tax revenue must be used for essential government services, as that term is defined in RCW 43.06.455.

(4) The agreement is limited to retail sales in which Indian retailers make delivery and physical transfer of possession of the cigarettes from the seller to the buyer within Indian country, and are not in regard to transactions by non-Indian retailers. In addition, agreements shall provide that retailers shall not sell or give, or permit to be sold or given, cigarettes to any person under the age of eighteen years.

(5)(a) The agreement must include a provision to price and sell the cigarettes so that the retail selling price is not less than the price paid by the retailer for the cigarettes.

(b) The tribal tax is in addition to the retail selling price.

(c) The agreement must include a provision to assure the price paid to the retailer includes the tribal tax, as evidenced by the tribe's cigarette stamp.

(d) If the tribe is acting as a wholesaler to tribal retailers, the retail selling price must not be less than the price the tribe paid for such cigarettes plus the tribal tax, as evidenced by the tribe's cigarette stamp.

(6)(a) The agreement must include provisions regarding enforcement and compliance by the tribe in regard to enrolled tribal members who sell cigarettes and shall describe the indi-

vidual and joint responsibilities of the tribe, the department of revenue, and the liquor control board.

(b) The agreement must include provisions for tax administration and compliance, such as transport and notice requirements, inspection procedures, stamping requirements, recordkeeping, and audit requirements.

(c) The agreement must include provisions for sharing of information among the tribe, the department of revenue, and the liquor control board.

(7) The agreement must provide that all cigarettes possessed or sold by a tribal retailer shall bear a tribal cigarette stamp obtained by wholesalers from a bank or other suitable stamp vendor and applied to the cigarettes. Tribal stamps must have serial numbers or some other discrete identification so that each stamp can be traced to its source.

(8) The agreement must provide that retailers shall purchase cigarettes only from wholesalers or manufacturers licensed to do business in the state of Washington.

(9) The agreement must be for a renewable period of no more than eight years.

(10) The agreement must include provisions to resolve disputes using a nonjudicial process, such as mediation, and shall include a dispute resolution protocol. The protocol shall include a procedure for notifying the other party that a violation has occurred, a procedure for establishing whether a violation has in fact occurred, an opportunity to correct such violation, and a provision providing for termination of the agreement should the violation fail to be resolved through this process, such termination subject to mediation should the terms of the agreement so allow. An agreement must provide for termination of the agreement if resolution of a dispute does not occur within twenty-four months from the time notification of a violation has occurred. Intervening violations do not extend this time period.

(11) The agreement may not include any provisions that impact the state's share of the master settlement agreement, and as such this agreement does not authorize negotiation regarding a redistribution of the state's proceeds under the master settlement agreement.

(12) Information received by the state or open to state review under the terms of an agreement is subject to RCW 82.32.330.

(13) It is the intent of the legislature that the liquor control board and the department of revenue continue the division of duties and shared authority under chapter 82.24 RCW.

(14) For purposes of this section:

(a) "Indian country" has the same meaning as in chapter 82.24 RCW.

(b) "Indian retailer" or "retailer" means (i) a retailer wholly owned and operated by an Indian tribe or (ii) a business wholly owned and operated by an enrolled tribal member and licensed by the tribe.

(c) "Indian tribe" or "tribe" means the Puyallup Tribe of Indians, which is a federally recognized Indian tribe located within the geographical boundaries of the state of Washington. [2005 c 11 § 2.]

**Findings—Intent—2005 c 11:** "In 2001, the legislature enacted Engrossed Substitute Senate Bill No. 5372, which authorized the governor to enter into cigarette contracts with fourteen Indian tribes. In subsequent sessions, the legislature increased to twenty-one the number of tribes with

whom the governor may negotiate under the terms of RCW 43.06.460. The legislature finds that this effort has been effective, as measured by the success of the existing agreements.

The legislature further finds the agreements resolved decades of conflict between the state and tribes over the sale of contraband cigarettes to non-Indians; benefited the tribes through tribal tax revenues; benefited the state because cigarettes are stamped and taxed; enhanced public health because access to low-priced cigarettes is reduced; improved law and order; and reduced the competitive advantage gained through the sale of tax-free cigarettes.

The 2001 legislation and its later amendments did not encompass the Puyallup Tribe of Indians within its scope due to the very different nature of the cigarette trade on the Puyallup Indian reservation. The legislature therefore intends to address the special circumstances on the Puyallup Indian reservation by recognizing the substantial distinctions and enacting legislation authorizing a cigarette tax agreement with the tribe that differs from the contracts entered into under RCW 43.06.460. Section 2 of this act provides the governor authority to enter into an agreement and sets forth the general framework for the agreement." [2005 c 11 § 1.]

**Explanatory statement—Effective date—2005 c 11:** "(1) On January 5, 2005, it was announced that a cigarette tax agreement had been reached between the state of Washington and the Puyallup Indian Tribe. Before being signed by the governor, the legislature must provide authorization to the governor to sign such an agreement. Because the state and the Puyallup Indian Tribe have reached an agreement in principle, time for implementation is of the essence.

(2) This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 5, 2005]." [2005 c 11 § 6.]

### Chapter 43.06A RCW

#### OFFICE OF THE FAMILY AND CHILDREN'S OMBUDSMAN

##### Sections

43.06A.050 Confidentiality. (*Effective July 1, 2006.*)

#### 43.06A.050 Confidentiality. (*Effective July 1, 2006.*)

The ombudsman shall treat all matters under investigation, including the identities of service recipients, complainants, and individuals from whom information is acquired, as confidential, except as far as disclosures may be necessary to enable the ombudsman to perform the duties of the office and to support any recommendations resulting from an investigation. Upon receipt of information that by law is confidential or privileged, the ombudsman shall maintain the confidentiality of such information and shall not further disclose or disseminate the information except as provided by applicable state or federal law. Investigative records of the office of the ombudsman are confidential and are exempt from public disclosure under chapter 42.56 RCW. [2005 c 274 § 294; 1996 c 131 § 6.]

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

### Chapter 43.07 RCW

#### SECRETARY OF STATE

##### Sections

43.07.130 Secretary of state's revolving fund—Publication fees authorized, disposition.  
43.07.390 Real estate excise tax enforcement—Disclosure of transfer of controlling interest, real property.

**43.07.130 Secretary of state's revolving fund—Publication fees authorized, disposition.** There is created within

[2005 RCW Supp—page 448]

the state treasury a revolving fund, to be known as the "secretary of state's revolving fund," which shall be used by the office of the secretary of state to defray the costs of printing, reprinting, or distributing printed matter authorized by law to be issued by the office of the secretary of state, and any other cost of carrying out the functions of the secretary of state under Title 23B RCW, or chapters 18.100, 23.86, 23.90, 24.03, 24.06, 24.12, 24.20, 24.24, 24.28, 24.36, 25.15, or 25.10 RCW.

The secretary of state is hereby authorized to charge a fee for such publications in an amount which will compensate for the costs of printing, reprinting, and distributing such printed matter. Fees recovered by the secretary of state under RCW 43.07.120(2), 23B.01.220 (1)(e), (6) and (7), 23B.18.050, 24.03.410, 24.06.455, or 46.64.040, and such other moneys as are expressly designated for deposit in the secretary of state's revolving fund shall be placed in the secretary of state's revolving fund.

During the 2005-2007 fiscal biennium, the legislature may transfer from the secretary of state's revolving fund to the state general fund such amounts as reflect the excess fund balance of the fund. [2005 c 518 § 924; 1994 c 211 § 1311; 1991 c 72 § 54; 1989 c 307 § 40; 1982 c 35 § 188; 1973 1st ex.s. c 85 § 1; 1971 ex.s. c 122 § 1.]

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

**Effective date—Severability—1994 c 211:** See RCW 25.15.900 and 25.15.902.

**Legislative finding—1989 c 307:** See note following RCW 23.86.007.

**Application—1989 c 307:** See RCW 23.86.900.

**Intent—Severability—Effective dates—Application—1982 c 35:** See notes following RCW 43.07.160.

#### 43.07.390 Real estate excise tax enforcement—Disclosure of transfer of controlling interest, real property.

(1) The secretary of state shall adopt rules requiring any entity that is required to file an annual report with the secretary of state, including entities under Titles 23, 23B, 24, and 25 RCW, to disclose any transfer in the controlling interest of the entity and any interest in real property.

(2) This information shall be made available to the department of revenue upon request for the purposes of tracking the transfer of the controlling interest in real property and to determine when the real estate excise tax is applicable in such cases.

(3) For the purposes of this section, "controlling interest" has the same meaning as provided in RCW 82.45.033. [2005 c 326 § 2.]

### Chapter 43.08 RCW

#### STATE TREASURER

##### Sections

43.08.190 State treasurer's service fund—Creation—Purpose.  
43.08.250 Public safety and education account—Use.  
43.08.260 Recodified as RCW 2.53.030.  
43.08.270 Repealed.  
43.08.290 City-county assistance account—Use and distribution of funds.

**43.08.190 State treasurer's service fund—Creation—Purpose.** There is hereby created a fund within the

state treasury to be known as the "state treasurer's service fund." Such fund shall be used solely for the payment of costs and expenses incurred in the operation and administration of the state treasurer's office.

Moneys shall be allocated monthly and placed in the state treasurer's service fund equivalent to a maximum of one percent of the trust and treasury average daily cash balances from the earnings generated under the authority of RCW 43.79A.040 and 43.84.080 other than earnings generated from investment of balances in funds and accounts specified in RCW 43.79A.040 or 43.84.092(4)(b). The allocation shall precede the distribution of the remaining earnings as prescribed under RCW 43.79A.040 and 43.84.092. The state treasurer shall establish a uniform allocation rate based on the appropriations for the treasurer's office.

During the 2005-2007 fiscal biennium, the legislature may transfer from the state treasurer's service fund to the state general fund such amounts as reflect the excess fund balance of the fund. [2005 c 518 § 925; 2003 1st sp.s. c 25 § 916; 1991 sp.s. c 13 § 83; 1985 c 405 § 506; 1973 c 27 § 2.]

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

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

**Severability—1985 c 405:** See note following RCW 9.46.100.

#### **43.08.250 Public safety and education account—Use.**

(1) The money received by the state treasurer from fees, fines, forfeitures, penalties, reimbursements or assessments by any court organized under Title 3 or 35 RCW, or chapter 2.08 RCW, shall be deposited in the public safety and education account which is hereby created in the state treasury. The legislature shall appropriate the funds in the account to promote traffic safety education, highway safety, criminal justice training, crime victims' compensation, judicial education, the judicial information system, civil representation of indigent persons under RCW 2.53.030, winter recreation parking, drug court operations, and state game programs. During the fiscal biennium ending June 30, 2007, the legislature may appropriate moneys from the public safety and education account for purposes of appellate indigent defense and other operations of the office of public defense, the criminal litigation unit of the attorney general's office, the treatment alternatives to street crimes program, crime victims advocacy programs, justice information network telecommunication planning, treatment for supplemental security income clients, sexual assault treatment, operations of the administrative office of the courts, security in the common schools, alternative school start-up grants, programs for disruptive students, criminal justice data collection, Washington state patrol criminal justice activities, drug court operations, unified family courts, local court backlog assistance, financial assistance to local jurisdictions for extraordinary costs incurred in the adjudication of criminal cases, domestic violence treatment and related services, the department of corrections' costs in implementing chapter 196, Laws of 1999, reimbursement of local governments for costs associated with implementing criminal and civil justice legislation, the replacement of the department of corrections' offender-based tracking system,

secure and semi-secure crisis residential centers, HOPE beds, the family policy council and community public health and safety networks, the street youth program, public notification about registered sex offenders, and narcotics or methamphetamine-related enforcement, education, training, and drug and alcohol treatment services.

(2)(a) The equal justice subaccount is created as a subaccount of the public safety and education account. The money received by the state treasurer from the increase in fees imposed by sections 9, 10, 12, 13, 14, 17, and 19, chapter 457, Laws of 2005 shall be deposited in the equal justice subaccount and shall be appropriated only for:

(i) Criminal indigent defense assistance and enhancement at the trial court level, including a criminal indigent defense pilot program;

(ii) Representation of parents in dependency and termination proceedings;

(iii) Civil legal representation of indigent persons; and

(iv) Contribution to district court judges' salaries and to eligible elected municipal court judges' salaries.

(b) For the 2005-07 fiscal biennium, an amount equal to twenty-five percent of revenues to the equal justice subaccount, less one million dollars, shall be appropriated from the equal justice subaccount to the administrator for the courts for purposes of (a)(iv) of this subsection. For the 2007-09 fiscal biennium and subsequent fiscal biennia, an amount equal to fifty percent of revenues to the equal justice subaccount shall be appropriated from the equal justice subaccount to the administrator for the courts for the purposes of (a)(iv) of this subsection. [2005 c 518 § 926; 2005 c 457 § 8; 2005 c 282 § 44; 2003 1st sp.s. c 25 § 918. Prior: 2001 2nd sp.s. c 7 § 914; 2001 c 289 § 4; 2000 2nd sp.s. c 1 § 911; 1999 c 309 § 915; 1997 c 149 § 910; 1996 c 283 § 901; 1995 2nd sp.s. c 18 § 912; 1993 sp.s. c 24 § 917; 1992 c 54 § 3; prior: 1991 sp.s. c 16 § 919; 1991 sp.s. c 13 § 25; 1985 c 57 § 27; 1984 c 258 § 338.]

**Reviser's note:** This section was amended by 2005 c 282 § 44, 2005 c 457 § 8, and by 2005 c 518 § 926, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

**Intent—2005 c 457:** "The legislature recognizes the state's obligation to provide adequate representation to criminal indigent defendants and to parents in dependency and termination cases. The legislature also recognizes that trial courts are critical to maintaining the rule of law in a free society and that they are essential to the protection of the rights and enforcement of obligations for all. Therefore, the legislature intends to create a dedicated revenue source for the purposes of meeting the state's commitment to improving trial courts in the state, providing adequate representation to criminal indigent defendants, providing for civil legal services for indigent persons, and ensuring equal justice for all citizens of the state." [2005 c 457 § 1.]

**Findings—Effective date—2005 c 105:** See RCW 2.53.005 and 2.53.900.

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Severability—Effective date—2001 2nd sp.s. c 7:** See notes following RCW 43.320.110.

**Severability—Effective date—2000 2nd sp.s. c 1:** See notes following RCW 41.05.143.

**Severability—Effective date—1999 c 309:** See notes following RCW 41.06.152.

**Severability—1997 c 149:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 149 § 917.]

**Effective date—1997 c 149:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 149 § 918.]

**Severability—1996 c 283:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 283 § 904.]

**Effective date—1996 c 283:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 30, 1996]." [1996 c 283 § 905.]

**Severability—Effective date—1995 2nd sp.s. c 18:** See notes following RCW 19.118.110.

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

**Effective date—1992 c 54:** See note following RCW 36.18.020.

**Severability—Effective date—1991 sp.s. c 16:** See notes following RCW 9.46.100.

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

**Effective date—1985 c 57:** See note following RCW 18.04.105.

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

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

*Public safety and education assessment: RCW 3.62.090.*

**43.08.260 Recodified as RCW 2.53.030.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

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

**43.08.290 City-county assistance account—Use and distribution of funds.** (1) The city-county assistance account is created in the state treasury. All receipts from real estate excise tax disbursements provided under RCW 82.45.060 shall be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the purposes provided in this section.

(2) Funds deposited in the city-county assistance account shall be distributed equally to the cities and counties.

(3)(a) Funds distributed to counties shall, to the extent possible, increase the revenues received under RCW 82.14.030(1) by each county to the greater of two hundred fifty thousand dollars or:

(i) For a county with an unincorporated population of one hundred thousand or less, seventy percent of the statewide weighted average per capita level of sales and use tax revenues collected under RCW 82.14.030(1) for the unincorporated areas of all counties imposing the sales and use tax authorized under RCW 82.14.030(1) in the previous calendar year; and

(ii) For a county with an unincorporated population of more than one hundred thousand, sixty-five percent of the statewide weighted average per capita level of sales and use tax revenues collected under RCW 82.14.030(1) for the unincorporated areas of all counties imposing the sales and use tax authorized under RCW 82.14.030(1) in the previous calendar year.

incorporated areas of all counties imposing the sales and use tax authorized under RCW 82.14.030(1) in the previous calendar year.

(b) For each county with an unincorporated population of fifteen thousand or less, the county shall receive the greater of the amount in (a) of this subsection or the amount received in local government assistance provided by section 716, chapter 276, Laws of 2004.

(c) For each county with an unincorporated population of more than fifteen thousand and less than twenty-two thousand, the county shall receive in calendar year 2006 and 2007 the greater of the amount provided in (a) of this subsection or the amount received in local government assistance provided by section 716, chapter 276, Laws of 2004.

(d) To the extent that revenues are insufficient to fund the distributions under this subsection, the distributions of all counties as otherwise determined under this subsection shall be ratably reduced.

(e) To the extent that revenues exceed the amounts needed to fund the distributions under this subsection, the excess funds shall be divided ratably based upon unincorporated population among those counties receiving funds under this subsection and imposing the tax collected under RCW 82.14.030(2) at the maximum rate.

(4)(a) For each city with a population of five thousand or less with a per capita assessed property value less than twice the statewide average per capita assessed property value for all cities for the calendar year previous to the certification under subsection (6) of this section, the city shall receive the greater of the following three amounts:

(i) An amount necessary to increase the revenues collected under RCW 82.14.030(1) up to fifty-five percent of the statewide weighted average per capita level of sales and use tax revenues collected under RCW 82.14.030(1) for all cities imposing the sales and use tax authorized under RCW 82.14.030(1) in the previous calendar year.

(ii) The amount received in local government assistance provided for fiscal year 2005 by section 721, chapter 25, Laws of 2003 1st sp. sess.

(iii) For a city with a per capita assessed property value less than fifty-five percent of the statewide average per capita assessed property value for all cities, an amount determined by subtracting the city's per capita assessed property value from fifty-five percent of the statewide average per capita assessed property value, dividing that amount by one thousand, and multiplying the result by the city's population.

(b) For each city with a population of more than five thousand with a per capita assessed property value less than the statewide average per capita assessed property value for all cities for the calendar year previous to the certification under subsection (6) of this section, the city shall receive the greater of the following three amounts:

(i) An amount necessary to increase the revenues collected under RCW 82.14.030(1) up to fifty percent of the statewide weighted average per capita level of sales and use tax revenues collected under RCW 82.14.030(1) for all cities imposing the sales and use tax authorized under RCW 82.14.030(1) in the previous calendar year.

(ii) For calendar year 2006 and 2007, the amount received in local government assistance provided for fiscal

year 2005 by section 721, chapter 25, Laws of 2003 1st sess.

(iii) For a city with a per capita assessed property value less than fifty-five percent of the statewide average per capita assessed property value for all cities, an amount determined by subtracting the city's per capita assessed property value from fifty-five percent of the statewide average per capita assessed property value, dividing that amount by one thousand, and multiplying the result by the city's population.

(c) No city may receive an amount greater than one hundred thousand dollars a year under (a) or (b) of this subsection.

(d) To the extent that revenues are insufficient to fund the distributions under this subsection, the distributions of all cities as otherwise determined under this subsection shall be ratably reduced.

(e) To the extent that revenues exceed the amounts needed to fund the distributions under this subsection, the excess funds shall be divided ratably based upon population among those cities receiving funds under this subsection and imposing the tax collected under RCW 82.14.030(2) at the maximum rate.

(f) This subsection only applies to cities incorporated prior to August 1, 2005.

(5) The two hundred fifty thousand dollar amount in subsection (3) of this section and the one hundred thousand dollar amount in subsection (4) of this section shall be increased each year beginning in calendar year 2006 by inflation as defined in RCW 84.55.005, as determined by the department of revenue.

(6) Distributions under subsections (3) and (4) of this section shall be made quarterly beginning on October 1, 2005, based on population as last determined by the office of financial management. The department of revenue shall certify the amounts to be distributed under this section to the state treasurer. The certification shall be made by October 1, 2005, for the October 1, 2005, distribution and the January 1, 2006, distribution, based on calendar year 2004 collections. The certification shall be made by March 1, 2006, for distributions beginning April 1, 2006, and by March 1st of every year thereafter. The March 1st certification shall be used for distributions occurring on April 1st, July 1st, and October 1st of the year of certification and on January 1st of the year following certification.

(7) All distributions to local governments from the city-county assistance account constitute increases in state distributions of revenue to political subdivisions for purposes of state reimbursement for the costs of new programs and increases in service levels under RCW 43.135.060, including any claims or litigation pending against the state on or after January 1, 2005. [2005 c 450 § 2.]

**Effective date—2005 c 450:** See note following RCW 82.45.060.

## Chapter 43.09 RCW STATE AUDITOR

### Sections

43.09.310	Audit of statewide combined financial statements—Post-audits of state agencies—Periodic audits—Reports—Filing.
43.09.430	Performance audits—Definitions.
43.09.435	Performance audits—Citizen advisory board.

43.09.440	Performance audits—Collaboration with joint legislative audit and review committee—Criteria—Statewide performance review—Contracting out—Release of audit reports.
43.09.445	Performance audits—Local jurisdictions.
43.09.450	Performance audits—Audit of performance audit program.
43.09.455	Performance audits—Follow-up and corrective action—Progress reports.
43.09.460	Performance audits—Appropriation—Budget request.

**43.09.310 Audit of statewide combined financial statements—Post-audits of state agencies—Periodic audits—Reports—Filing.** (1) Except as provided in subsection (2) of this section, the state auditor shall annually audit the statewide combined financial statements prepared by the office of financial management and make post-audits of state agencies. Post-audits of state agencies shall be made at such periodic intervals as is determined by the state auditor. Audits of combined financial statements shall include determinations as to the validity and accuracy of accounting methods, procedures and standards utilized in their preparation, as well as the accuracy of the financial statements themselves. A report shall be made of each such audit and post-audit upon completion thereof, and one copy shall be transmitted to the governor, one to the director of financial management, one to the state agency audited, one to the joint legislative audit and review committee, one each to the standing committees on ways and means of the house and senate, one to the chief clerk of the house, one to the secretary of the senate, and at least one shall be kept on file in the office of the state auditor. A copy of any report containing findings of noncompliance with state law shall be transmitted to the attorney general.

(2) Audits of the department of labor and industries must be coordinated with the audits required under RCW 51.44.115 to avoid duplication of audits. [2005 c 387 § 2; 1996 c 288 § 35; 1995 c 301 § 22; 1981 c 217 § 1; 1979 c 151 § 92; 1975-'76 2nd ex.s. c 17 § 1. Prior: 1975 1st ex.s. c 293 § 1; 1975 1st ex.s. c 193 § 1; 1971 ex.s. c 170 § 2; 1965 c 8 § 43.09.310; prior: 1947 c 114 § 1; 1941 c 196 § 3; Rem. Supp. 1947 § 11018-3.]

**Severability—Effective date—1975 1st ex.s. c 293:** See RCW 43.88.902 and 43.88.910.

**Severability—1971 ex.s. c 170:** See note following RCW 43.09.050.  
*Reports of post-audits:* RCW 43.88.160.

**43.09.430 Performance audits—Definitions.** For purposes of RCW 43.09.435 through 43.09.460:

(1) "Board" means the citizen advisory board created in RCW 43.09.435.

(2) "Draft work plan" means the work plan for conducting performance audits of state agencies proposed by the board and state auditor after the statewide performance review.

(3) "Final performance audit report" means a written document jointly released by the citizen advisory board and the state auditor that includes the findings and comments from the preliminary performance audit report.

(4) "Final work plan" means the work plan for conducting performance audits of state agencies adopted by the board and state auditor.

(5) "Performance audit" means an objective and systematic assessment of a state agency or any of its programs, functions, or activities by an independent evaluator in order to help public officials improve efficiency, effectiveness, and

accountability. Performance audits include economy and efficiency audits and program audits.

(6) "Preliminary performance audit report" means a written document prepared after the completion of a performance audit to be submitted for comment before the final performance audit report. The preliminary performance audit report must contain the audit findings and any proposed recommendations to improve the efficiency, effectiveness, or accountability of the state agency being audited.

(7) "State agency" or "agency" means a state agency, department, office, officer, board, commission, bureau, division, institution, or institution of higher education. "State agency" includes all offices of executive branch state government elected officials. [2005 c 385 § 2.]

**Findings—2005 c 385:** "The legislature finds that:

(1) Citizens demand and deserve accountability of public programs. Public programs must continuously improve in quality, efficiency, and effectiveness in order to increase public trust;

(2) Washington state government and other entities that receive tax dollars must continuously improve the way they operate and deliver services so citizens receive maximum value for their tax dollars;

(3) An independent citizen advisory board is necessary to ensure that government services, customer satisfaction, program efficiency, and management systems are world class in performance;

(4) Fair, independent, professional performance audits of state agencies are essential to improving the efficiency and effectiveness of government; and

(5) The performance audit activities of the joint legislative audit and review committee should be supplemented by making fuller use of the state auditor's resources and capabilities." [2005 c 385 § 1.]

**43.09.435 Performance audits—Citizen advisory board.** (1) The citizen advisory board is created to improve efficiency, effectiveness, and accountability in state government.

(2) The board shall consist of ten members as follows:

(a) One member shall be the state auditor, who shall be a nonvoting member;

(b) One member shall be the legislative auditor, who shall be a nonvoting member;

(c) One member shall be the director of the office of financial management, who shall be a nonvoting member;

(d) Four of the members shall be selected by the governor as follows: Each major caucus of the house of representatives and the senate shall submit a list of three names. The lists may not include the names of members of the legislature or employees of the state. The governor shall select a person from each list provided by each caucus; and

(e) The governor shall select three citizen members who are not state employees.

(3) The board shall elect a chair. The legislative auditor, the state auditor, and the director of the office of financial management may not serve as chair.

(4) Appointees shall be individuals who have a basic understanding of state government operations with knowledge and expertise in performance management, quality management, strategic planning, performance assessments, or closely related fields.

(5) Members selected under subsection (2)(d) and (e) of this section shall serve for terms of four years, with the terms expiring on June 30th on the fourth year of the term. However, in the case of the initial members, two members shall serve four-year terms, two members shall serve three-year

[2005 RCW Supp—page 452]

terms, and one member shall serve a two-year term, with each of the terms expiring on June 30th of the applicable year. Appointees may be reappointed to serve more than one term.

(6) The office of the state auditor shall provide clerical, technical, and management personnel to the board to serve as the board's staff.

(7) The board shall meet at least once a quarter and may hold additional meetings at the call of the chair or by a majority vote of the members of the board.

(8) The members of the board shall be compensated in accordance with RCW 43.03.220 and reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. [2005 c 385 § 3.]

**Findings—2005 c 385:** See note following RCW 43.09.430.

**43.09.440 Performance audits—Collaboration with joint legislative audit and review committee—Criteria—Statewide performance review—Contracting out—Release of audit reports.** (1) The board and the state auditor shall collaborate with the joint legislative audit and review committee regarding performance audits of state government.

(a) The board shall establish criteria for performance audits consistent with the criteria and standards followed by the joint legislative audit and review committee. This criteria shall include, at a minimum, the auditing standards of the United States government accountability office, as well as legislative mandates and performance objectives established by state agencies and the legislature. Mandates include, but are not limited to, agency strategies, timelines, program objectives, and mission and goals as required in RCW 43.88.090.

(b) Using the criteria developed in (a) of this subsection, the state auditor shall contract for a statewide performance review to be completed as expeditiously as possible as a preliminary to a draft work plan for conducting performance audits. The board and the state auditor shall develop a schedule and common methodology for conducting these reviews. The purpose of these performance reviews is to identify those agencies, programs, functions, or activities most likely to benefit from performance audits and to identify likely areas warranting early review, taking into account prior performance audits, if any, and prior fiscal audits.

(c) The board and the state auditor shall develop the draft work plan for performance audits based on input from citizens, state employees, including front-line employees, state managers, chairs and ranking members of appropriate legislative committees, the joint legislative audit and review committee, public officials, and others. The draft work plan may include a list of agencies, programs, or systems to be audited on a timeline decided by the board and the state auditor based on a number of factors including risk, importance, and citizen concerns. When putting together the draft work plan, there should be consideration of all audits and reports already required. On average, audits shall be designed to be completed as expeditiously as possible.

(d) Before adopting the final work plan, the board shall consult with the legislative auditor and other appropriate oversight and audit entities to coordinate work plans and avoid duplication of effort in their planned performance



audits of state government agencies. The board shall defer to the joint legislative audit and review committee work plan if a similar audit is included on both work plans for auditing.

(e) The state auditor shall contract out for performance audits. In conducting the audits, agency front-line employees and internal auditors should be involved.

(f) All audits must include consideration of reports prepared by other government oversight entities.

(g) The audits may include:

(i) Identification of programs and services that can be eliminated, reduced, consolidated, or enhanced;

(ii) Identification of funding sources to the state agency, to programs, and to services that can be eliminated, reduced, consolidated, or enhanced;

(iii) Analysis of gaps and overlaps in programs and services and recommendations for improving, dropping, blending, or separating functions to correct gaps or overlaps;

(iv) Analysis and recommendations for pooling information technology systems used within the state agency, and evaluation of information processing and telecommunications policy, organization, and management;

(v) Analysis of the roles and functions of the state agency, its programs, and its services and their compliance with statutory authority and recommendations for eliminating or changing those roles and functions and ensuring compliance with statutory authority;

(vi) Recommendations for eliminating or changing statutes, rules, and policy directives as may be necessary to ensure that the agency carry out reasonably and properly those functions vested in the agency by statute;

(vii) Verification of the reliability and validity of agency performance data, self-assessments, and performance measurement systems as required under RCW 43.88.090;

(viii) Identification of potential cost savings in the state agency, its programs, and its services;

(ix) Identification and recognition of best practices;

(x) Evaluation of planning, budgeting, and program evaluation policies and practices;

(xi) Evaluation of personnel systems operation and management;

(xii) Evaluation of state purchasing operations and management policies and practices; and

(xiii) Evaluation of organizational structure and staffing levels, particularly in terms of the ratio of managers and supervisors to nonmanagement personnel.

(h) The state auditor must solicit comments on preliminary performance audit reports from the audited state agency, the office of the governor, the office of financial management, the board, the chairs and ranking members of appropriate legislative committees, and the joint legislative audit and review committee for comment. Comments must be received within thirty days after receipt of the preliminary performance audit report unless a different time period is approved by the state auditor. All comments shall be incorporated into the final performance audit report. The final performance audit report shall include the objectives, scope, and methodology; the audit results, including findings and recommendations; conclusions; and identification of best practices.

(i) The board and the state auditor shall jointly release final performance audit reports to the governor, the citizens of Washington, the joint legislative audit and review commit-

tee, and the appropriate standing legislative committees. Final performance audit reports shall be posted on the internet.

(j) For institutions of higher education, performance audits shall not duplicate, and where applicable, shall make maximum use of existing audit records, accreditation reviews, and performance measures required by the office of financial management, the higher education coordinating board, and nationally or regionally recognized accreditation organizations including accreditation of hospitals licensed under chapter 70.41 RCW and ambulatory care facilities.

(2) The citizen board created under RCW 44.75.030 shall be responsible for performance audits for transportation related agencies as defined under RCW 44.75.020. [2005 c 385 § 5.]

**Findings—2005 c 385:** See note following RCW 43.09.430.

#### **43.09.445 Performance audits—Local jurisdictions.**

If the legislative authority of a local jurisdiction requests a performance audit of programs under its jurisdiction, the state auditor has the discretion to conduct such a review under separate contract and funded by local funds. [2005 c 385 § 6.]

**Findings—2005 c 385:** See note following RCW 43.09.430.

**43.09.450 Performance audits—Audit of performance audit program.** By June 30, 2007, and each four years thereafter, the joint legislative audit and review committee shall contract with a private entity for a performance audit of the performance audit program established in RCW 43.09.440 and the board's responsibilities under the performance audit program. [2005 c 385 § 8.]

**Findings—2005 c 385:** See note following RCW 43.09.430.

**43.09.455 Performance audits—Follow-up and corrective action—Progress reports.** The audited agency is responsible for follow-up and corrective action on all performance audit findings and recommendations. The audited agency's plan for addressing each audit finding and recommendation shall be included in the final audit report. The plan shall provide the name of the contact person responsible for each action, the action planned, and the anticipated completion date. If the audited agency does not agree with the audit findings and recommendations or believes action is not required, then the action plan shall include an explanation and specific reasons.

For agencies under the authority of the governor, the governor may require periodic progress reports from the audited agency until all resolution has occurred.

For agencies under the authority of an elected official other than the governor, the appropriate elected official may require periodic reports of the action taken by the audited agency until all resolution has occurred.

The board may request status reports on specific audits or findings. [2005 c 385 § 9.]

**Findings—2005 c 385:** See note following RCW 43.09.430.

**43.09.460 Performance audits—Appropriation—Budget request.** (1) Each biennium the legislature shall appropriate such sums as may be necessary, not to exceed an amount equal to two one-hundredths of one percent of the

total general fund state appropriation in that biennium's omnibus operating appropriations act for purposes of the performance review, performance audits, and activities of the board authorized by this chapter.

(2) The board and the state auditor shall submit recommended budgets for their responsibilities under RCW 43.09.430 through 43.09.455 to the auditor, who shall then prepare a consolidated budget request, in the form of request legislation, to assist in determining the funding under subsection (1) of this section. [2005 c 385 § 11.]

**Findings—2005 c 385:** See note following RCW 43.09.430.

### Chapter 43.10 RCW ATTORNEY GENERAL

#### Sections

43.10.101	Report to transportation entities—Tort claims.
43.10.180	Legal services revolving fund—Allocation of costs to funds and agencies—Accounting—Billing.

**43.10.101 Report to transportation entities—Tort claims.** The attorney general shall prepare annually a report to the transportation committees of the legislature, the transportation commission, and the transportation performance audit board comprising a comprehensive summary of all cases involving tort claims against the department of transportation involving highways which were concluded and closed in the previous calendar year. The report shall include for each case closed:

- (1) A summary of the factual background of the case;
- (2) Identification of the attorneys representing the state and the opposing parties;
- (3) A synopsis of the legal theories asserted and the defenses presented;
- (4) Whether the case was tried, settled, or dismissed, and in whose favor;
- (5) The approximate number of attorney hours expended by the state on the case, together with the corresponding dollar amount billed therefore; and
- (6) Such other matters relating to the case as the attorney general deems relevant or appropriate, especially including any comments or recommendations for changes in statute law or agency practice that might effectively reduce the exposure of the state to such tort claims. [2005 c 319 § 104; 1995 2nd sp.s. c 14 § 527.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Effective dates—1995 2nd sp.s. c 14:** See note following RCW 43.105.017.

**Severability—1995 2nd sp.s. c 14:** See note following RCW 43.105.017.

**43.10.180 Legal services revolving fund—Allocation of costs to funds and agencies—Accounting—Billing.** (1) The attorney general shall keep such records as are necessary to facilitate proper allocation of costs to funds and agencies served and the director of financial management shall prescribe appropriate accounting procedures to accurately allocate costs to funds and agencies served. Billings shall be adjusted in line with actual costs incurred at intervals not to exceed six months.

[2005 RCW Supp—page 454]

(2) During the 2005-2007 fiscal biennium, all expenses for administration of the office of the attorney general shall be allocated to and paid from the legal services revolving fund in accordance with accounting procedures prescribed by the director of financial management. [2005 c 518 § 927; 2003 1st sp.s. c 25 § 917; 1979 c 151 § 95; 1974 ex.s. c 146 § 3; 1971 ex.s. c 71 § 4.]

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Effective date—1974 ex.s. c 146:** See note following RCW 43.10.150.

### Chapter 43.17 RCW

#### ADMINISTRATIVE DEPARTMENTS AND AGENCIES—GENERAL PROVISIONS

#### Sections

43.17.010	Departments created.
43.17.020	Chief executive officers—Appointment.
43.17.200	Allocation of moneys for acquisition of works of art—Expenditure by arts commission—Conditions.
43.17.210	Purchase of works of art—Procedure.
43.17.380	Quality management, accountability, and performance system—Definitions.
43.17.385	Quality management, accountability, and performance system.
43.17.390	Quality management, accountability, and performance system—Independent assessment.

**43.17.010 Departments created.** There shall be departments of the state government which shall be known as (1) the department of social and health services, (2) the department of ecology, (3) the department of labor and industries, (4) the department of agriculture, (5) the department of fish and wildlife, (6) the department of transportation, (7) the department of licensing, (8) the department of general administration, (9) the department of community, trade, and economic development, (10) the department of veterans affairs, (11) the department of revenue, (12) the department of retirement systems, (13) the department of corrections, (14) the department of health, (15) the department of financial institutions, and (16) the department of archaeology and historic preservation, which shall be charged with the execution, enforcement, and administration of such laws, and invested with such powers and required to perform such duties, as the legislature may provide. [2005 c 333 § 10. Prior: 1993 sp.s. c 2 § 16; 1993 c 472 § 17; 1993 c 280 § 18; 1989 1st ex.s. c 9 § 810; 1987 c 506 § 2; 1985 c 466 § 47; 1984 c 125 § 12; 1981 c 136 § 61; 1979 c 10 § 1; prior: 1977 ex.s. c 334 § 5; 1977 ex.s. c 151 § 20; 1977 c 7 § 1; prior: 1975-'76 2nd ex.s. c 115 § 19; 1975-'76 2nd ex.s. c 105 § 24; 1971 c 11 § 1; prior: 1970 ex.s. c 62 § 28; 1970 ex.s. c 18 § 50; 1969 c 32 § 1; prior: 1967 ex.s. c 26 § 12; 1967 c 242 § 12; 1965 c 156 § 20; 1965 c 8 § 43.17.010; prior: 1957 c 215 § 19; 1955 c 285 § 2; 1953 c 174 § 1; prior: (i) 1937 c 111 § 1, part; RRS § 10760-2, part. (ii) 1935 c 176 § 1; 1933 c 3 § 1; 1929 c 115 § 1; 1921 c 7 § 2; RRS § 10760. (iii) 1945 c 267 § 1, part; Rem. Supp. 1945 § 10459-1, part. (iv) 1947 c 114 § 5; Rem. Supp. 1947 § 10786-10c.]

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

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

**Effective date—Implementation—1993 c 472:** See RCW 43.320.900 and 43.320.901.

**Effective date—Severability—1993 c 280:** See RCW 43.330.902 and 43.330.903.

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

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

**Effective date—Severability—1985 c 466:** See notes following RCW 43.31.005.

**Severability—Headings—Effective date—1984 c 125:** See RCW 43.63A.901 through 43.63A.903.

**Effective date—1981 c 136:** See RCW 72.09.900.

**Effective date—1977 ex.s. c 334:** See note following RCW 46.01.011.

**Federal requirements—Severability—1977 ex.s. c 151:** See RCW 47.98.070 and 47.98.080.

**Severability—1975-'76 2nd ex.s. c 105:** See note following RCW 41.04.270.

**Effective date—Severability—1970 ex.s. c 18:** See notes following RCW 43.20A.010.

*Department of*

*agriculture: Chapter 43.23 RCW.*

*community, trade, and economic development: Chapter 43.330 RCW.*

*corrections: Chapter 72.09 RCW.*

*ecology: Chapter 43.21A RCW.*

*employment security: Chapter 50.08 RCW.*

*financial institutions: Chapter 43.320 RCW.*

*fish and wildlife: Chapters 43.300 and 77.04 RCW.*

*general administration: Chapter 43.19 RCW.*

*health: Chapter 43.70 RCW.*

*information services: Chapter 43.105 RCW.*

*labor and industries: Chapter 43.22 RCW.*

*licensing: Chapters 43.24, 46.01 RCW.*

*natural resources: Chapter 43.30 RCW.*

*personnel: Chapter 41.06 RCW.*

*retirement systems: Chapter 41.50 RCW.*

*revenue: Chapter 82.01 RCW.*

*services for the blind: Chapter 74.18 RCW.*

*social and health services: Chapter 43.20A RCW.*

*transportation: Chapter 47.01 RCW.*

*veterans affairs: Chapter 43.60A RCW.*

### 43.17.020 Chief executive officers—Appointment.

There shall be a chief executive officer of each department to be known as: (1) The secretary of social and health services, (2) the director of ecology, (3) the director of labor and industries, (4) the director of agriculture, (5) the director of fish and wildlife, (6) the secretary of transportation, (7) the director of licensing, (8) the director of general administration, (9) the director of community, trade, and economic development, (10) the director of veterans affairs, (11) the director of revenue, (12) the director of retirement systems, (13) the secretary of corrections, (14) the secretary of health, (15) the director of financial institutions, and (16) the director of the department of archaeology and historic preservation.

Such officers, except the director of fish and wildlife, shall be appointed by the governor, with the consent of the senate, and hold office at the pleasure of the governor. The director of fish and wildlife shall be appointed by the fish and wildlife commission as prescribed by RCW 77.04.055. [2005 c 333 § 11; 2005 c 319 § 2; 1995 1st sp.s. c 2 § 2 (Referendum Bill No. 45, approved November 7, 1995). Prior: 1993 sp.s. c 2 § 17; 1993 c 472 § 18; 1993 c 280 § 19; 1989 1st ex.s. c 9 § 811; 1987 c 506 § 3; 1985 c 466 § 48; 1984 c 125 § 13; 1981 c 136 § 62; 1979 c 10 § 2; prior: 1977 ex.s. c 334 § 6; 1977 ex.s. c 151 § 21; 1977 c 7 § 2; prior: 1975-'76

2nd ex.s. c 115 § 20; 1975-'76 2nd ex.s. c 105 § 25; 1971 c 11 § 2; prior: 1970 ex.s. c 62 § 29; 1970 ex.s. c 18 § 51; 1969 c 32 § 2; prior: 1967 ex.s. c 26 § 13; 1967 c 242 § 13; 1965 c 156 § 21; 1965 c 8 § 43.17.020; prior: 1957 c 215 § 20; 1955 c 285 § 3; 1953 c 174 § 2; prior: (i) 1935 c 176 § 2; 1933 c 3 § 2; 1929 c 115 § 2; 1921 c 7 § 3; RRS § 10761. (ii) 1937 c 111 § 1, part; RRS § 10760. (iii) 1945 c 267 § 1, part; Rem. Supp. 1945 § 10459-1, part.]

**Reviser's note:** This section was amended by 2005 c 319 § 2 and by 2005 c 333 § 11, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Intent—2005 c 319:** "The legislature finds that it is in the interest of the state to restructure the roles and responsibilities of the state's transportation agencies in order to improve efficiency and accountability. The legislature also finds that continued citizen oversight of the state's transportation system remains an important priority. To achieve these purposes, the legislature intends to provide direct accountability of the department of transportation to the governor, in his or her role as chief executive officer of state government, by making the secretary of transportation a cabinet-level official. Additionally, it is essential to clearly delineate between the separate and distinct roles and responsibilities of the executive and legislative branches of government. The role of executive is to oversee the implementation of transportation programs, while the legislature reserves to itself the role of policymaking. Finally, consolidating public outreach and auditing of the state's transportation agencies under a single citizen-governed entity, the transportation commission, will provide the public with information about the performance of the transportation system and an avenue for direct participation in its oversight." [2005 c 319 § 1.]

**Part headings—2005 c 319:** "Part headings used in this act are no part of the law." [2005 c 319 § 142.]

**Effective dates—2005 c 319:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005, except for section 103 of this act which takes effect July 1, 2006." [2005 c 319 § 145.]

**Effective date—1995 1st sp.s. c 2:** "Sections 2 through 43 of this act shall take effect July 1, 1996." [1995 1st sp.s. c 2 § 45.]

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

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

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

**Effective date—Implementation—1993 c 472:** See RCW 43.320.900 and 43.320.901.

**Effective date—Severability—1993 c 280:** See RCW 43.330.902 and 43.330.903.

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

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

**Effective date—Severability—1985 c 466:** See notes following RCW 43.31.125.

**Severability—Headings—Effective date—1984 c 125:** See RCW 43.63A.901 through 43.63A.903.

**Effective date—1981 c 136:** See RCW 72.09.900.

**Effective date—1977 ex.s. c 334:** See note following RCW 46.01.011.

**Federal requirements—Severability—1977 ex.s. c 151:** See RCW 47.98.070 and 47.98.080.

**Severability—1975-'76 2nd ex.s. c 105:** See note following RCW 41.04.270.

**Effective date—Severability—1970 ex.s. c 18:** See notes following RCW 43.20A.010.

### 43.17.200 Allocation of moneys for acquisition of works of art—Expenditure by arts commission—Condi-

**tions.** All state agencies including all state departments, boards, councils, commissions, and quasi public corporations shall allocate, as a nondeductible item, out of any moneys appropriated for the original construction of any public building, an amount of one-half of one percent of the appropriation to be expended by the Washington state arts commission for the acquisition of works of art. The works of art may be placed on public lands, integral to or attached to a public building or structure, detached within or outside a public building or structure, part of a portable exhibition or collection, part of a temporary exhibition, or loaned or exhibited in other public facilities. In addition to the cost of the works of art, the one-half of one percent of the appropriation as provided herein shall be used to provide for the administration of the visual arts program, including conservation of the state art collection, by the Washington state arts commission and all costs for installation of the works of art. For the purpose of this section building shall not include highway construction sheds, warehouses or other buildings of a temporary nature. [2005 c 36 § 4; 1983 c 204 § 4; 1974 ex.s. c 176 § 2.]

**Severability—1983 c 204:** See note following RCW 43.46.090.

*Acquisition of works of art for public buildings and lands—Visual arts program established:* RCW 43.46.090.

*Purchase of works of art interagency reimbursement for expenditure by visual arts program:* RCW 43.17.205.

*procedure:* RCW 43.19.455.

*State art collection:* RCW 43.46.095.

**43.17.210 Purchase of works of art—Procedure.** The Washington state arts commission shall determine the amount to be made available for the purchase of art in consultation with the agency, except where another person or agency is specified under RCW 43.19.455, 28A.335.210, or 28B.10.025, and payments therefor shall be made in accordance with law. The designation of projects and sites, selection, contracting, purchase, commissioning, reviewing of design, execution and placement, acceptance, maintenance, and sale, exchange, or disposition of works of art shall be the responsibility of the Washington state arts commission in consultation with the directors of the state agencies. [2005 c 36 § 5; 1990 c 33 § 575; 1983 c 204 § 5.]

**Purpose—Statutory references—Severability—1990 c 33:** See RCW 28A.900.100 through 28A.900.102.

**Severability—1983 c 204:** See note following RCW 43.46.090.

**43.17.380 Quality management, accountability, and performance system—Definitions.** As used in RCW 43.17.385 and 43.17.390:

(1) "State agency" or "agency" means a state agency, department, office, officer, board, commission, bureau, division, institution, or institution of higher education, and all offices of executive branch state government-elected officials, except agricultural commissions under Title 15 RCW.

(2) "Quality management, accountability, and performance system" means a nationally recognized integrated, interdisciplinary system of measures, tools, and reports used to improve the performance of a work unit or organization. [2005 c 384 § 2.]

**Findings—2005 c 384:** "The legislature finds that:

(1) Citizens demand and deserve accountability of public programs and

activities. Public programs must continuously improve accountability and performance reporting in order to increase public trust.

(2) Washington state government agencies must continuously improve their management and performance so citizens receive maximum value for their tax dollars.

(3) The application of best practices in performance management has improved results and accountability in many Washington state agencies and other jurisdictions.

(4) All Washington state agencies must develop a performance-based culture that can better demonstrate accountability and achievement." [2005 c 384 § 1.]

**43.17.385 Quality management, accountability, and performance system.** (1) Each state agency shall, within available funds, develop and implement a quality management, accountability, and performance system to improve the public services it provides.

(2) Each agency shall ensure that managers and staff at all levels, including those who directly deliver services, are engaged in the system and shall provide managers and staff with the training necessary for successful implementation.

(3) Each agency shall, within available funds, ensure that its quality management, accountability, and performance system:

(a) Uses strategic business planning to establish goals, objectives, and activities consistent with the priorities of government, as provided in statute;

(b) Engages stakeholders and customers in establishing service requirements and improving service delivery systems;

(c) Includes clear, relevant, and easy-to-understand measures for each activity;

(d) Gathers, monitors, and analyzes activity data;

(e) Uses the data to evaluate the effectiveness of programs to manage process performance, improve efficiency, and reduce costs;

(f) Establishes performance goals and expectations for employees that reflect the organization's objectives; and provides for regular assessments of employee performance;

(g) Uses activity measures to report progress toward agency objectives to the agency director at least quarterly;

(h) Where performance is not meeting intended objectives, holds regular problem-solving sessions to develop and implement a plan for addressing gaps; and

(i) Allocates resources based on strategies to improve performance.

(4) Each agency shall conduct a yearly assessment of its quality management, accountability, and performance system.

(5) State agencies whose chief executives are appointed by the governor shall report to the governor on agency performance at least quarterly. The reports shall be included on the agencies', the governor's, and the office of financial management's web sites.

(6) The governor shall report annually to citizens on the performance of state agency programs. The governor's report shall include:

(a) Progress made toward the priorities of government as a result of agency activities; and

(b) Improvements in agency quality management systems, fiscal efficiency, process efficiency, asset management, personnel management, statutory and regulatory compliance, and management of technology systems.

(7) Each state agency shall integrate efforts made under this section with other management, accountability, and performance systems undertaken under executive order or other authority. [2005 c 384 § 3.]

**Findings—2005 c 384:** See note following RCW 43.17.380.

**43.17.390 Quality management, accountability, and performance system—Independent assessment.** Starting no later than 2008, and at least once every three years thereafter, each agency shall apply to the Washington state quality award, or similar organization, for an independent assessment of its quality management, accountability, and performance system. The assessment shall evaluate the effectiveness of all elements of its management, accountability, and performance system, including: Leadership, strategic planning, customer focus, analysis and information, employee performance management, and process improvement. The purpose of the assessment is to recognize best practice and identify improvement opportunities. [2005 c 384 § 4.]

**Findings—2005 c 384:** See note following RCW 43.17.380.

## Chapter 43.19 RCW

### DEPARTMENT OF GENERAL ADMINISTRATION

#### Sections

43.19.035	Commemorative works account.
43.19.1911	Competitive bids—Notice of modification or cancellation—Cancellation requirements—Lowest responsible bidder—Preferential purchase—Life cycle costing.
43.19.455	Purchase of works of art—Procedure.
43.19.500	General administration services account—Use.
43.19.520	Purchase of products and services from entities serving or providing opportunities for disadvantaged or disabled persons—Intent.
43.19.530	Purchases from entities serving or providing opportunities for disadvantaged or disabled persons—Authorized—Fair market price.
43.19.531	Purchases from entities serving or providing opportunities for disadvantaged or disabled persons—Vendors in good standing—Notice to purchasing agents—Notice to vendors—Reports. ( <i>Expires December 31, 2009.</i> )
43.19.533	Purchases from entities serving or providing opportunities for disadvantaged or disabled persons—Existing contracts not impaired—Solicitation of vendors in good standing.
43.19.565	Motor vehicle transportation service—Powers and duties.
43.19.605	Repealed.
43.19.615	Motor vehicle transportation service—Deposits—Disbursements.
43.19.691	Municipalities—Energy audits and efficiency.
43.19.695	Bonds to finance conservation measures.

**43.19.035 Commemorative works account.** (1) The commemorative works account is created in the custody of the state treasurer and shall be used by the department of general administration for the ongoing care, maintenance, and repair of commemorative works on the state capitol grounds. Only the director or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not necessary for expenditures.

(2) For purposes of this section, "state capitol grounds" means buildings and land owned by the state and otherwise designated as state capitol grounds, including the west capitol campus, the east capitol campus, the north capitol campus, the Tumwater campus, the Lacey campus, Sylvester Park, Centennial Park, the Old Capitol Building, and Capitol Lake. [2005 c 16 § 1.]

**43.19.1911 Competitive bids—Notice of modification or cancellation—Cancellation requirements—Lowest responsible bidder—Preferential purchase—Life cycle costing.** (1) Preservation of the integrity of the competitive bid system dictates that after competitive bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid pursuant to subsections (7) and (9) of this section, unless there is a compelling reason to reject all bids and cancel the solicitation.

(2) Every effort shall be made to anticipate changes in a requirement before the date of opening and to provide reasonable notice to all prospective bidders of any resulting modification or cancellation. If, in the opinion of the purchasing agency, division, or department head, it is not possible to provide reasonable notice, the published date for receipt of bids may be postponed and all known bidders notified. This will permit bidders to change their bids and prevent unnecessary exposure of bid prices. In addition, every effort shall be made to include realistic, achievable requirements in a solicitation.

(3) After the opening of bids, a solicitation may not be canceled and resolicited solely because of an increase in requirements for the items being acquired. Award may be made on the initial solicitation and an increase in requirements may be treated as a new acquisition.

(4) A solicitation may be canceled and all bids rejected before award but after bid opening only when, consistent with subsection (1) of this section, the purchasing agency, division, or department head determines in writing that:

(a) Unavailable, inadequate, ambiguous specifications, terms, conditions, or requirements were cited in the solicitation;

(b) Specifications, terms, conditions, or requirements have been revised;

(c) The supplies or services being contracted for are no longer required;

(d) The solicitation did not provide for consideration of all factors of cost to the agency;

(e) Bids received indicate that the needs of the agency can be satisfied by a less expensive article differing from that for which the bids were invited;

(f) All otherwise acceptable bids received are at unreasonable prices or only one bid is received and the agency cannot determine the reasonableness of the bid price;

(g) No responsive bid has been received from a responsible bidder; or

(h) The bid process was not fair or equitable.

(5) The agency, division, or department head may not delegate his or her authority under this section.

(6) After the opening of bids, an agency may not reject all bids and enter into direct negotiations to complete the planned acquisition. However, the agency can enter into negotiations exclusively with the lowest responsible bidder in order to determine if the lowest responsible bid may be improved. Until December 31, 2009, for purchases requiring a formal bid process the agency shall also enter into negotiations with and may consider for award the lowest responsible bidder that is a vendor in good standing, as defined in RCW 43.19.525. An agency shall not use this negotiation opportunity to permit a bidder to change a nonresponsive bid into a responsive bid.

(7) In determining the lowest responsible bidder, the agency shall consider any preferences provided by law to Washington products and vendors and to RCW 43.19.704, and further, may take into consideration the quality of the articles proposed to be supplied, their conformity with specifications, the purposes for which required, and the times of delivery.

(8) Each bid with the name of the bidder shall be entered of record and each record, with the successful bid indicated, shall, after letting of the contract, be open to public inspection.

(9) In determining "lowest responsible bidder", in addition to price, the following elements shall be given consideration:

(a) The ability, capacity, and skill of the bidder to perform the contract or provide the service required;

(b) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;

(c) Whether the bidder can perform the contract within the time specified;

(d) The quality of performance of previous contracts or services;

(e) The previous and existing compliance by the bidder with laws relating to the contract or services;

(f) Such other information as may be secured having a bearing on the decision to award the contract: PROVIDED, That in considering bids for purchase, manufacture, or lease, and in determining the "lowest responsible bidder," whenever there is reason to believe that applying the "life cycle costing" technique to bid evaluation would result in lowest total cost to the state, first consideration shall be given by state purchasing activities to the bid with the lowest life cycle cost which complies with specifications. "Life cycle cost" means the total cost of an item to the state over its estimated useful life, including costs of selection, acquisition, operation, maintenance, and where applicable, disposal, as far as these costs can reasonably be determined, minus the salvage value at the end of its estimated useful life. The "estimated useful life" of an item means the estimated time from the date of acquisition to the date of replacement or disposal, determined in any reasonable manner. Nothing in this section shall prohibit any state agency, department, board, commission, committee, or other state-level entity from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused. [2005 c 204 § 5; 2003 c 136 § 6; 1996 c 69 § 2; 1989 c 431 § 60; 1983 c 183 § 4; 1980 c 172 § 8; 1965 c 8 § 43.19.1911. Prior: 1959 c 178 § 6.]

**Intent—1996 c 69:** "It is the intent of the legislature to preserve the integrity of the competitive bidding system for state contracts. This dictates that, after competitive bids have been opened, the agency must award the contract to the responsible bidder who submitted the lowest responsive bid and that only in limited compelling circumstances may the agency reject all bids and cancel the solicitation. Further, after opening the competitive bids, the agency may not reject all bids and enter into direct negotiations with the bidders to complete the acquisition." [1996 c 69 § 1.]

**Severability—1989 c 431:** See RCW 70.95.901.

*Energy conservation—Legislative finding—Declaration—Purpose:* RCW 43.19.668 and 43.19.669.

**43.19.455 Purchase of works of art—Procedure.** Except as provided under RCW 43.17.210, the Washington

[2005 RCW Supp—page 458]

state arts commission shall determine the amount to be made available for the purchase of art under RCW 43.17.200 in consultation with the director of general administration, and payments therefor shall be made in accordance with law. The designation of projects and sites, selection, contracting, purchase, commissioning, reviewing of design, execution and placement, acceptance, maintenance, and sale, exchange, or disposition of works of art shall be the responsibility of the Washington state arts commission in consultation with the director of general administration. [2005 c 36 § 6; 1990 c 33 § 576; 1983 c 204 § 6; 1974 ex.s. c 176 § 3.]

**Purpose—Statutory references—Severability—1990 c 33:** See RCW 28A.900.100 through 28A.900.102.

**Severability—1983 c 204:** See note following RCW 43.46.090.

*Acquisition of works of art for public buildings and lands—Visual arts program established:* RCW 43.46.090.

*Allocation of moneys for acquisition of works of art—Expenditure by arts commission—Conditions:* RCW 43.17.200.

*State art collection:* RCW 43.46.095.

**43.19.500 General administration services account—Use.** The general administration services account shall be used by the department of general administration for the payment of certain costs, expenses, and charges, as specified in this section, incurred by it in the operation and administration of the department in the rendering of services, the furnishing or supplying of equipment, supplies and materials, and for providing or allocating facilities, including the operation, maintenance, rehabilitation, or furnishings thereof to other agencies, offices, departments, activities, and other entities enumerated in RCW 43.01.090 and including the rendering of services in acquiring real estate under RCW 43.82.010 and the operation and maintenance of public and historic facilities at the state capitol, as defined in RCW 79.24.710. The department shall treat the rendering of services in acquiring real estate and the operation and maintenance of state capitol public and historic facilities as separate operating entities within the account for financial accounting and control.

The schedule of services, facilities, equipment, supplies, materials, maintenance, rehabilitation, furnishings, operations, and administration to be so financed and recovered shall be determined jointly by the director of general administration and the director of financial management, in equitable amounts which, together with any other income or appropriation, will provide the department of general administration with funds to meet its anticipated expenditures during any allotment period.

The director of general administration may adopt rules governing the provisions of RCW 43.01.090 and this section and the relationships and procedures between the department of general administration and such other entities. [2005 c 330 § 6; 1998 c 105 § 9; 1994 c 219 § 17; 1982 c 41 § 2; 1979 c 151 § 101; 1971 ex.s. c 159 § 2.]

**Effective date—1998 c 105:** See note following RCW 43.19.025.

**Findings—Purpose—1994 c 219:** See note following RCW 43.01.090.

**Finding—1994 c 219:** See note following RCW 43.88.030.

**Effective dates—1982 c 41:** See note following RCW 43.82.010.

*Agricultural commodity commissions exempt:* RCW 15.04.200.

*General administration services account—Approval of certain changes required:* RCW 43.88.350.

**43.19.520 Purchase of products and services from entities serving or providing opportunities for disadvantaged or disabled persons—Intent.** It is the intent of the legislature to encourage state agencies and departments to purchase products and/or services manufactured or provided by:

(1) Community rehabilitation programs of the department of social and health services which operate facilities serving disadvantaged persons and persons with disabilities and have achieved or consistently make progress towards the goal of enhancing opportunities for disadvantaged persons and persons with disabilities to maximize their opportunities for employment and career advancement, and increase the number employed and their wages; and

(2) Until December 31, 2009, businesses owned and operated by persons with disabilities that have achieved or consistently make progress towards the goal of enhancing opportunities for disadvantaged persons and persons with disabilities to maximize their opportunities for employment and career advancement, and increase the number employed and their wages. [2005 c 204 § 1; 2003 c 136 § 1; 1974 ex.s. c 40 § 1.]

**43.19.530 Purchases from entities serving or providing opportunities for disadvantaged or disabled persons—Authorized—Fair market price.** The state agencies and departments are hereby authorized to purchase products and/or services manufactured or provided by:

(1) Community rehabilitation programs of the department of social and health services; and

(2) Until December 31, 2009, businesses owned and operated by persons with disabilities.

Such purchases shall be at the fair market price of such products and services as determined by the division of purchasing of the department of general administration. To determine the fair market price the division shall use the last comparable bid on the products and/or services or in the alternative the last price paid for the products and/or services. The increased cost of labor, materials, and other documented costs since the last comparable bid or the last price paid are additional cost factors which shall be considered in determining fair market price. Upon the establishment of the fair market price as provided for in this section the division is hereby empowered to negotiate directly for the purchase of products or services with officials in charge of the community rehabilitation programs of the department of social and health services and, until December 31, 2007, businesses owned and operated by persons with disabilities. [2005 c 204 § 2; 2003 c 136 § 3; 1977 ex.s. c 10 § 2; 1974 ex.s. c 40 § 3.]

**43.19.531 Purchases from entities serving or providing opportunities for disadvantaged or disabled persons—Vendors in good standing—Notice to purchasing agents—Notice to vendors—Reports. (Expires December 31, 2009.)** (1) The department of general administration shall identify in the department's vendor registry all vendors in good standing, as defined in RCW 43.19.525.

(2) The department of general administration shall annually, but no less often than once every fifteen months:

(a) Request that vendors in good standing update their information in the department's vendor registry including but

not limited to the Washington state commodity codes for products and services that the vendors propose to offer to state agencies during at least the subsequent fifteen-month period;

(b) Disseminate the information obtained in response to the request made pursuant to (a) of this subsection to at least one purchasing official in each state agency; and

(c) Notify each vendor in good standing of all contracts for the purchase of goods and services by state agencies with respect to which the department of general administration anticipates either renewing or requesting bids or proposals within at least twelve months of the date of the notice.

(3) The department of general administration and the governor's committee on disability issues and employment shall jointly prepare and, on or before December 31, 2008, issue a report to the governor and the legislature. The report shall describe the activities authorized or required by chapter 136, Laws of 2003, and their effect on enhancing opportunities for disadvantaged persons and persons with disabilities to maximize their opportunities for employment and career advancement, and increase the number employed and their wages.

(4) This section expires December 31, 2009. [2005 c 204 § 3; 2003 c 136 § 4.]

**43.19.533 Purchases from entities serving or providing opportunities for disadvantaged or disabled persons—Existing contracts not impaired—Solicitation of vendors in good standing.** (1) Nothing in chapter 136, Laws of 2003 requires any state agency to take any action that interferes with or impairs an existing contract between any state agency and any other party, including but not limited to any other state agency.

(2) Until December 31, 2009, except as provided under RCW 43.19.1906(2) for purchases up to three thousand dollars, RCW 43.19.534, and subsection (1) of this section, a state agency shall not purchase any product or service identified in the notice most recently disseminated by the department of general administration, as provided under RCW 43.19.531(2)(b), from other than a vendor in good standing until the state agency has included in the solicitation process at least one vendor in good standing supplying the goods or service needed by the agency, unless no vendor in good standing supplying the goods or service needed by the agency is available. [2005 c 204 § 4; 2003 c 136 § 5.]

**43.19.565 Motor vehicle transportation service—Powers and duties.** The department of general administration shall establish a motor vehicle transportation service which is hereby empowered to:

(1) Provide suitable motor vehicle transportation services to any state agency on either a temporary or permanent basis upon requisition from a state agency and upon such demonstration of need as the department may require;

(2) Provide motor pools for the use of state agencies located in the Olympia area and such additional motor pools at other locations in the state as may be necessary to provide economic, efficient, and effective motor vehicle transportation services to state agencies. Such additional motor pools may be under either the direct control of the department or

under the supervision of another state agency by agreement with the department;

(3) Establish an equitable schedule of rental and mileage charges to agencies for motor vehicle transportation services furnished which shall be designed to provide funds to cover replacement of vehicles, the purchase of additional vehicles, and to recover the actual total costs of motor pool operations including but not limited to vehicle operation expense, depreciation expense, overhead, and nonrecoverable collision or other damage to vehicles; and

(4) Establish guidelines, procedures, and standards for fleet operations that other state agencies and institutions of higher education may adopt. The guidelines, procedures, and standards shall be consistent with and carry out the objectives of any general policies adopted by the office of financial management under RCW 43.41.130. [2005 c 214 § 1; 1998 c 111 § 3; 1975 1st ex.s. c 167 § 3.]

**Severability—1975 1st ex.s. c 167:** See note following RCW 43.19.010.

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

**43.19.615 Motor vehicle transportation service—Deposits—Disbursements.** The director of general administration shall deposit in the general administration services account all receipts, including the initial transfer of automobile pool capital from the highway equipment fund and any other funds transferred, rentals or other fees and charges for transportation services furnished, proceeds from the sale of surplus or replaced property under the control of the supervisor of motor transport and other income, and from which shall be paid operating costs, including salaries and wages, administrative expense, overhead, the cost of replacement vehicles, additional passenger vehicles, and any other expenses. [2005 c 214 § 2; 1998 c 105 § 13; 1975 1st ex.s. c 167 § 13.]

**Effective date—1998 c 105:** See note following RCW 43.19.025.

**Severability—1975 1st ex.s. c 167:** See note following RCW 43.19.010.

**43.19.691 Municipalities—Energy audits and efficiency.** (1) Municipalities may conduct energy audits and implement cost-effective energy conservation measures among multiple government entities.

(2) All municipalities shall report to the department if they implemented or did not implement, during the previous biennium, cost-effective energy conservation measures aggregated among multiple government entities. The reports must be submitted to the department by September 1, 2007, and by September 1, 2009. In collecting the reports, the department shall cooperate with the appropriate associations that represent municipalities.

(3) The department shall prepare a report summarizing the reports submitted by municipalities under subsection (2) of this section and shall report to the committee by December 31, 2007, and by December 31, 2009.

(4) For the purposes of this section, the following definitions apply:

(a) "Committee" means the joint committee on energy supply and energy conservation in chapter 44.39 RCW.

[2005 RCW Supp—page 460]

(b) "Cost-effective energy conservation measures" has the meaning provided in RCW 43.19.670.

(c) "Department" means the department of general administration.

(d) "Energy audit" has the meaning provided in RCW 43.19.670.

(e) "Municipality" has the meaning provided in RCW 39.04.010. [2005 c 299 § 5.]

**Intent—2005 c 299:** See note following RCW 44.39.010.

**43.19.695 Bonds to finance conservation measures.** Financing to implement conservation measures, including fees charged by the department, may be carried out with bonds issued by the Washington economic development finance authority under chapter 43.163 RCW. [2005 c 299 § 6.]

**Intent—2005 c 299:** See note following RCW 44.39.010.

## Chapter 43.20A RCW DEPARTMENT OF SOCIAL AND HEALTH SERVICES

### Sections

- 43.20A.433 Mental health and chemical dependency treatment providers and programs—Vendor rate increases.  
43.20A.890 Problem and pathological gambling treatment program.  
43.20A.892 Problem gambling account.

**43.20A.433 Mental health and chemical dependency treatment providers and programs—Vendor rate increases.** Beginning July 1, 2007, the secretary shall require, in the contracts the department negotiates pursuant to chapters 71.24 and 70.96A RCW, that any vendor rate increases provided for mental health and chemical dependency treatment providers or programs who are parties to the contract or subcontractors of any party to the contract shall be prioritized to those providers and programs that maximize the use of evidence-based and research-based practices, as those terms are defined in \*section 603 of this act, unless otherwise designated by the legislature. [2005 c 504 § 802.]

**\*Reviser's note:** Section 603 of this act was vetoed by the governor.

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

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

**43.20A.890 Problem and pathological gambling treatment program.** (1) A program for (a) the prevention and treatment of problem and pathological gambling; and (b) the training of professionals in the identification and treatment of problem and pathological gambling is established within the department of social and health services, to be administered by a qualified person who has training and experience in problem gambling or the organization and administration of treatment services for persons suffering from problem gambling. The department may contract for any services provided under the program. The department shall track program participation and client outcomes.

(2) To receive treatment under subsection (1) of this section, a person must:



(a) Need treatment for problem or pathological gambling, or because of the problem or pathological gambling of a family member, but be unable to afford treatment; and

(b) Be targeted by the department of social and health services as being most amenable to treatment.

(3) Treatment under this section is available only to the extent of the funds appropriated or otherwise made available to the department of social and health services for this purpose. The department may solicit and accept for use any gift of money or property made by will or otherwise, and any grant of money, services, or property from the federal government, any tribal government, the state, or any political subdivision thereof or any private source, and do all things necessary to cooperate with the federal government or any of its agencies or any tribal government in making an application for any grant.

(4) The department of social and health services shall establish an advisory committee to assist it in designing, managing, and evaluating the effectiveness of the program established in this section. The advisory committee shall give due consideration in the design and management of the program that persons who hold licenses or contracts issued by the gambling commission, horse racing commission, and lottery commission are not excluded from, or discouraged from, applying to participate in the program. The committee shall include, at a minimum, persons knowledgeable in the field of problem and pathological gambling and persons representing tribal gambling, privately owned nontribal gambling, and the state lottery.

(5) For purposes of this section, "pathological gambling" is a mental disorder characterized by loss of control over gambling, progression in preoccupation with gambling and in obtaining money to gamble, and continuation of gambling despite adverse consequences. "Problem gambling" is an earlier stage of pathological gambling which compromises, disrupts, or damages family or personal relationships or vocational pursuits. [2005 c 369 § 2; 2002 c 349 § 4. Formerly RCW 67.70.350.]

**Findings—Intent—2005 c 369:** "(1) The legislature finds that:

(a) The costs to society of problem and pathological gambling include family disintegration, criminal activity, and financial insolvencies;

(b) Problem and pathological gamblers suffer a higher incidence of addictive disorders such as alcohol and substance abuse;

(c) Residents of Washington have the opportunity to participate in a variety of legal gambling activities operated by the state, by federally recognized tribes, and by private businesses and nonprofit organizations; and

(d) A 1999 study found that five percent of adult Washington residents and eight percent of adolescents could be classified as problem gamblers during their lifetimes, and that more than one percent of adults have been afflicted with pathological gambling.

(2) The legislature intends to provide long-term, dedicated funding for public awareness and education regarding problem and pathological gambling, training in its identification and treatment, and treatment services for problem and pathological gamblers and, as clinically appropriate, members of their families." [2005 c 369 § 1.]

**Severability—2005 c 369:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 369 § 10.]

**Effective date—2005 c 369:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 369 § 11.]

**43.20A.892 Problem gambling account.** The problem gambling account is created in the state treasury. Money in the account may be spent only after appropriation. Expenditures from the account may be used only for the purposes of the program established under RCW 43.20A.890. [2005 c 369 § 3.]

**Findings—Intent—Severability—Effective date—2005 c 369:** See notes following RCW 43.20A.890.

## Chapter 43.20B RCW

### REVENUE RECOVERY FOR DEPARTMENT OF SOCIAL AND HEALTH SERVICES

#### Sections

43.20B.030	Overpayments and debts due the department—Time limit—Write-offs and compromises.
43.20B.080	Recovery for paid medical assistance—Rules—Disclosure of estate recovery costs, terms, and conditions.
43.20B.750	Recipients holding title to real property or purchasing under land sales contracts—Recording request for notice or termination or request for notice of transfer or encumbrance of property—Notice and hearing—Rules.

**43.20B.030 Overpayments and debts due the department—Time limit—Write-offs and compromises.** (1) Except as otherwise provided by law, including subsection (2) of this section, there will be no collection of overpayments and other debts due the department after the expiration of six years from the date of notice of such overpayment or other debt unless the department has commenced recovery action in a court of law or unless an administrative remedy authorized by statute is in place. However, any amount due in a case thus extended shall cease to be a debt due the department at the expiration of ten years from the date of the notice of the overpayment or other debt unless a court-ordered remedy would be in effect for a longer period.

(2) There will be no collection of debts due the department after the expiration of twenty years from the date a lien is recorded pursuant to RCW 43.20B.080.

(3) The department, at any time, may accept offers of compromise of disputed claims or may grant partial or total write-off of any debt due the department if it is no longer cost-effective to pursue. The department shall adopt rules establishing the considerations to be made in the granting or denial of a partial or total write-off of debts. [2005 c 292 § 5; 2003 c 207 § 1; 1997 c 130 § 5; 1989 c 78 § 4; 1987 c 283 § 6; 1979 c 141 § 308; 1965 ex.s. c 91 § 2. Formerly RCW 74.04.306.]

**Severability—Savings—1987 c 283:** See notes following RCW 43.20A.020.

**43.20B.080 Recovery for paid medical assistance—Rules—Disclosure of estate recovery costs, terms, and conditions.** (1) The department shall file liens, seek adjustment, or otherwise effect recovery for medical assistance correctly paid on behalf of an individual consistent with 42 U.S.C. Sec. 1396p. The department shall adopt a rule providing for prior notice and hearing rights to the record title holder or purchaser under a land sale contract.

(2) Liens may be adjusted by foreclosure in accordance with chapter 61.12 RCW.

(3) In the case of an individual who was fifty-five years of age or older when the individual received medical assis-

tance, the department shall seek adjustment or recovery from the individual's estate, and from nonprobate assets of the individual as defined by RCW 11.02.005, but only for medical assistance consisting of nursing facility services, home and community-based services, other services that the department determines to be appropriate, and related hospital and prescription drug services. Recovery from the individual's estate, including foreclosure of liens imposed under this section, shall be undertaken as soon as practicable, consistent with 42 U.S.C. Sec. 1396p.

(4) The department shall apply the medical assistance estate recovery law as it existed on the date that benefits were received when calculating an estate's liability to reimburse the department for those benefits.

(5)(a) The department shall establish procedures consistent with standards established by the federal department of health and human services and pursuant to 42 U.S.C. Sec. 1396p to waive recovery when such recovery would work an undue hardship.

(b) Recovery of medical assistance from a recipient's estate shall not include property made exempt from claims by federal law or treaty, including exemption for tribal artifacts that may be held by individual Native Americans.

(6) A lien authorized under this section relates back to attach to any real property that the decedent had an ownership interest in immediately before death and is effective as of that date or date of recording, whichever is earlier.

(7) The department may enforce a lien authorized under this section against a decedent's life estate or joint tenancy interest in real property held by the decedent immediately prior to his or her death. Such a lien enforced under this subsection shall not end and shall continue as provided in this subsection until the department's lien has been satisfied.

(a) The value of the life estate subject to the lien shall be the value of the decedent's interest in the property subject to the life estate immediately prior to the decedent's death.

(b) The value of the joint tenancy interest subject to the lien shall be the value of the decedent's fractional interest the recipient would have owned in the jointly held interest in the property had the recipient and the surviving joint tenants held title to the property as tenants in common on the date of the recipient's death.

(c) The department may not enforce the lien provided by this subsection against a bona fide purchaser or encumbrancer that obtains an interest in the property after the death of the recipient and before the department records either its lien or the request for notice of transfer or encumbrance as provided by RCW 43.20B.750.

(d) The department may not enforce a lien provided by this subsection against any property right that vested prior to July 1, 2005.

(8)(a) Subject to the requirements of 42 U.S.C. Sec. 1396p(a) and the conditions of this subsection (8), the department is authorized to file a lien against the property of an individual prior to his or her death, and to seek adjustment and recovery from the individual's estate or sale of the property subject to the lien, if:

(i) The individual is an inpatient in a nursing facility, intermediate care facility for individuals with mental retardation, or other medical institution; and

(ii) The department has determined after notice and opportunity for a hearing that the individual cannot reasonably be expected to be discharged from the medical institution and to return home.

(b) If the individual is discharged from the medical facility and returns home, the department shall dissolve the lien.

(9) The department is authorized to adopt rules to effect recovery under this section. The department may adopt by rule later enactments of the federal laws referenced in this section.

(10) It is the responsibility of the department to fully disclose in advance verbally and in writing, in easy to understand language, the terms and conditions of estate recovery to all persons offered long-term care services subject to recovery of payments.

(11) In disclosing estate recovery costs to potential clients, and to family members at the consent of the client, the department shall provide a written description of the community service options. [2005 c 292 § 6; 1999 c 354 § 2; 1997 c 392 § 302; 1995 1st sp.s. c 18 § 67; 1994 c 21 § 3.]

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**Conflict with federal requirements—1994 c 21:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1994 c 21 § 5.]

**Effective date—1994 c 21:** "This act shall take effect July 1, 1994." [1994 c 21 § 6.]

*Legislative confirmation of effect of 1994 c 21: RCW 43.20B.090.*

**43.20B.750 Recipients holding title to real property or purchasing under land sales contracts—Recording request for notice or termination or request for notice of transfer or encumbrance of property—Notice and hearing—Rules.** (1) When an individual receives medical assistance subject to recovery under this chapter and the individual is the holder of record title to real property or the purchaser under a land sale contract, the department of social and health services may present to the county auditor for recording in the deed and mortgage records of a county a request for notice of transfer or encumbrance of the real property. The department shall adopt a rule providing prior notice and hearing rights to the record title holder or purchaser under a land sale contract.

(2) The department shall present to the county auditor for recording a termination of request for notice of transfer or encumbrance when, in the judgment of the department, it is no longer necessary or appropriate for the department to monitor transfers or encumbrances related to the real property.

(3) The department shall adopt by rule a form for the request for notice of transfer or encumbrance and the termination of request for notice of transfer or encumbrance that, at a minimum:

(a) Contains the name of the public assistance recipient and a departmental case identifier or other appropriate information that links the individual who is the holder of record title to real property or the purchaser under a land sale contract to the individual's public assistance records;

(b) Contains the legal description of the real property;

(c) Contains a mailing address for the department to receive the notice of transfer or encumbrance; and

(d) Complies with the requirements for recording in RCW 36.18.010 for those forms intended to be recorded.

(4) The department shall pay the recording fee required by the county clerk under RCW 36.18.010.

(5) The request for notice of transfer or encumbrance described in this section does not affect title to real property and is not a lien on, encumbrance of, or other interest in the real property. [2005 c 292 § 1.]

### Chapter 43.21A RCW

#### DEPARTMENT OF ECOLOGY

##### Sections

- 43.21A.667 Freshwater aquatic algae control account—Freshwater aquatic algae control program—Reports to the legislature.  
43.21A.670 Repealed.

**43.21A.667 Freshwater aquatic algae control account—Freshwater aquatic algae control program—Reports to the legislature.** (1) The freshwater aquatic algae control account is created in the state treasury. Moneys directed to the account from RCW 88.02.050 must be deposited in the account. Expenditures from the account may only be used as provided in this section. Moneys in the account may be spent only after appropriation.

(2) Funds in the freshwater aquatic algae control account may be appropriated to the department to develop a freshwater aquatic algae control program. Funds must be expended as follows:

(a) As grants to cities, counties, tribes, special purpose districts, and state agencies to manage excessive freshwater algae, with priority for the treatment of lakes in which harmful algal blooms have occurred within the past three years; and

(b) To provide technical assistance to applicants and the public about aquatic algae control.

(3) The department shall submit a biennial report to the appropriate legislative committees describing the actions taken to implement this section along with suggestions on how to better fulfill the intent of chapter 464, Laws of 2005. The first report is due December 1, 2007. [2005 c 464 § 4.]

**Findings—Intent—2005 c 464:** See note following RCW 88.02.050.

**43.21A.670 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

### Chapter 43.21B RCW

#### ENVIRONMENTAL HEARINGS OFFICE— POLLUTION CONTROL HEARINGS BOARD

##### Sections

- 43.21B.305 Appeals involving penalties of fifteen thousand dollars or less.

**43.21B.305 Appeals involving penalties of fifteen thousand dollars or less.** In an appeal that involves a penalty of fifteen thousand dollars or less, the appeal may be heard by one member of the board, whose decision shall be the final decision of the board. The board shall define by rule alternative procedures to expedite appeals involving penalties of fifteen thousand dollars or less. These alternatives may include: Mediation, upon agreement of all parties; submission of testimony by affidavit; or other forms that may lead to less formal and faster resolution of appeals. [2005 c 34 § 2; 1994 c 253 § 5.]

### Chapter 43.21J RCW

#### ENVIRONMENTAL AND FOREST RESTORATION PROJECTS

##### Sections

- 43.21J.010 Intent—Purpose—Definitions.

**43.21J.010 Intent—Purpose—Definitions.** (1) It is the intent of this chapter to provide financial resources to make substantial progress toward: (a) Implementing the Puget Sound water quality management plan and other watershed-based management strategies and plans; (b) ameliorating degradation to watersheds; and (c) keeping and creating stable, environmentally sound, good wage employment in Washington state. The legislature intends that employment under this chapter is not to result in the displacement or partial displacement, whether by the reduction of hours of non-overtime work, wages, or other employment benefits, of currently employed workers, including but not limited to state civil service employees, or of currently or normally contracted services.

(2) It is the purpose of this chapter to:

(a) Implement clean water, forest, and habitat restoration projects that will produce measurable improvements in water and habitat quality, that rate highly when existing environmental ranking systems are applied, and that provide economic stability.

(b) Facilitate the coordination and consistency of federal, state, tribal, local, and private water and habitat protection and enhancement programs in the state's watersheds.

(c) Fund necessary projects for which a public planning process has been completed.

(d) Provide immediate funding to create jobs and training for environmental restoration and enhancement jobs for unemployed workers and displaced workers in impact areas, especially rural natural resources-dependent communities.

(3) For purposes of this chapter "impact areas" means: (a) Distressed counties as defined in \*RCW 43.168.020; and (b) areas that the task force determines are likely to experience dislocations in the near future from downturns in natural resource-based industries.

(4) For purposes of this chapter, "high-risk youth" means youth eligible for Washington conservation corps programs under chapter 43.220 RCW or Washington service corps programs under chapter 50.65 RCW.

(5) For purposes of this chapter, "dislocated forest products worker" has the meaning set forth in \*\*RCW 50.70.010.

(6) For purposes of this chapter, "task force" means the environmental enhancement and job creation task force created under RCW 43.21J.030. [2005 c 136 § 1; 1995 c 226 § 26; 1993 c 516 § 2.]

**Reviser's note:** \*(1) RCW 43.168.020 defines "distressed area."

\*\* (2) RCW 50.70.010 was repealed by 1995 c 226 § 35, effective June 30, 2001.

**Savings—Effective date—2005 c 136:** See notes following RCW 43.168.020.

**Severability—Conflict with federal requirements—Effective date—1995 c 226:** See notes following RCW 43.160.020.

## Chapter 43.21L RCW

### ECONOMIC DEVELOPMENT PROJECTS— APPEALS AND REVIEWS OF PERMIT DECISIONS

#### Sections

43.21L.120 Board review of permit decisions—Correction of errors and omissions—Pretrial discovery—Requests for records under chapter 42.17 RCW. (*Effective July 1, 2006.*)

**43.21L.120 Board review of permit decisions—Correction of errors and omissions—Pretrial discovery—Requests for records under chapter 42.17 RCW. (*Effective July 1, 2006.*)** (1) For all permit decisions being reviewed that were made by quasi-judicial bodies or permit agency officers who made factual determinations in support of the decisions, after the conduct of proceedings in which the parties had an opportunity consistent with due process to make records on the factual issues, board review of factual issues and the conclusions drawn from the factual issues shall be confined to the records created by the quasi-judicial bodies or permit agency officers, except as provided in subsections (2) through (4) of this section.

(2) For decisions described in subsection (1) of this section, the records may be supplemented by additional evidence only if the additional evidence relates to:

(a) Grounds for disqualification of a member of the body or of the officer that made the permit decision, when such grounds were unknown by the petitioner at the time the record was created;

(b) Matters that were improperly excluded from the record after being offered by a party to a permit decision proceeding; or

(c) Matters that were outside the jurisdiction of the body or officer that made the permit decision.

(3) For permit decisions other than those described in subsection (1) of this section, the board review of the permit decision shall be de novo on issues presented as error in the petition.

(4) The board may require or permit corrections of ministerial errors or inadvertent omissions in the preparation of the record.

(5)(a) The parties may not conduct pretrial discovery except with the prior permission of the board, which may be sought by motion, subject to any applicable rules adopted by the board, at any time after service of the petition. The board shall not grant permission unless the party requesting it makes a prima facie showing of need. The board shall strictly limit discovery to what is necessary for equitable and timely review of the issues.

[2005 RCW Supp—page 464]

(b) If the board allows the record to be supplemented, or in any de novo proceeding under subsection (3) of this section, the board shall require the parties to disclose before the hearing or trial on the merits the identity of witnesses and the specific evidence they intend to offer.

(c) If any party, or anyone acting on behalf of any party, requests records under chapter 42.56 RCW relating to the matters at issue, a copy of the request shall simultaneously be given to all other parties, and the board shall take such request into account in fashioning an equitable discovery order under this section. [2005 c 274 § 295; 2003 c 393 § 13.]

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

## Chapter 43.22 RCW

### DEPARTMENT OF LABOR AND INDUSTRIES

#### Sections

43.22.340 Manufactured homes, mobile homes, recreational vehicles—Safety rules—Compliance—Penalty.  
43.22.432 Manufactured home construction and safety standards and regulations—Rules.  
43.22.434 Inspections and investigations necessary to adopt or enforce rules—Director's duties—Fees. (*Effective July 1, 2006.*)

#### **43.22.340 Manufactured homes, mobile homes, recreational vehicles—Safety rules—Compliance—Penalty.**

(1) The director shall adopt specific rules for conversion vending units and medical units. The rules for conversion vending units and medical units shall be established to protect the occupants from fire; to address other life safety issues; and to ensure that the design and construction are capable of supporting any concentrated load of five hundred pounds or more. Also, the director shall adopt specific rules concerning safety standards as necessary to implement subsection (3) of this section by January 1, 2006.

(2) The director of labor and industries shall adopt rules governing safety of body and frame design, and the installation of plumbing, heating, and electrical equipment in mobile homes, commercial coaches, recreational vehicles, and/or park trailers: PROVIDED, That the director shall not prescribe or enforce rules governing the body and frame design of recreational vehicles and park trailers until after the American National Standards Institute shall have published standards and specifications upon this subject. The rules shall be reasonably consistent with recognized and accepted principles of safety for body and frame design and plumbing, heating, and electrical installations, in order to protect the health and safety of the people of this state from dangers inherent in the use of substandard and unsafe body and frame design, construction, plumbing, heating, electrical, and other equipment and shall correlate with and, so far as practicable, conform to the then current standards and specifications of the American National Standards Institute standards A119.1 for mobile homes and commercial coaches, A119.2 for recreational vehicles, and A119.5 for park trailers.

(3) Except as provided in RCW 43.22.436, it shall be unlawful for any person to lease, sell or offer for sale, within this state, any mobile homes, commercial coaches, conversion vending units, medical units, recreational vehicles, and/or park trailers manufactured after January 1, 1968, containing plumbing, heating, electrical, or other equipment, and

after July 1, 1970, body and frame design or construction, unless such equipment, design, or construction meets the requirements of the rules provided for in this section.

(4) Any person violating this section is guilty of a misdemeanor. Each day upon which a violation occurs shall constitute a separate violation. [2005 c 399 § 2; 2003 c 53 § 228; 2002 c 268 § 6; 1999 c 22 § 2; 1995 c 280 § 2; 1970 ex.s. c 27 § 1; 1969 ex.s. c 229 § 1; 1967 c 157 § 1.]

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

**Purpose—Finding—Effective dates—2002 c 268:** See notes following RCW 43.22.434.

**43.22.432 Manufactured home construction and safety standards and regulations—Rules.** (1) The department may adopt all standards and regulations adopted by the secretary under the national manufactured home construction and safety standards act of 1974 (800 Stat. 700; 42 U.S.C. Secs. 5401-5426) for manufactured home construction and safety standards. If any deletions or amendments to the federal standards or regulations are thereafter made and notice thereof is given to the department, the standards or regulations shall be considered automatically adopted by the state under this chapter after the expiration of thirty days from publication in the federal register of a final order describing the deletions or amendments unless within that thirty day period the department objects to the deletion or amendment. In case of objection, the department shall proceed under the rule making procedure of chapter 34.05 RCW.

(2) The department shall adopt rules with respect to manufactured homes that require the prior written approval of the department before changes or alterations may be made to a manufactured home that differ from the construction standards provided for in this section.

(3) For purposes of implementing this section, by January 1, 2006, the department shall adopt requirements for manufactured homes built before June 15, 1976.

(4) Except as provided in RCW 43.22.436, it is unlawful for any person to lease, sell, or offer for sale, within this state, a manufactured home unless the home meets the requirements of the rules provided for in this section. [2005 c 399 § 3; 2002 c 268 § 7; 2001 c 335 § 4; 1977 ex.s. c 21 § 2.]

**Purpose—Finding—Effective dates—2002 c 268:** See notes following RCW 43.22.434.

**Application—2001 c 335:** See note following RCW 43.22.335.

**Construction—1977 ex.s. c 21:** See note following RCW 43.22.431.

**43.22.434 Inspections and investigations necessary to adopt or enforce rules—Director's duties—Fees. (Effective July 1, 2006.)** (1) The director or the director's authorized representative may conduct such inspections, investigations, and audits as may be necessary to adopt or enforce manufactured and mobile home, commercial coach, conversion vending units, medical units, recreational vehicle, park trailer, factory built housing, and factory built commercial structure rules adopted under the authority of this chapter or to carry out the director's duties under this chapter.

(2) For purposes of enforcement of this chapter, persons duly designated by the director upon presenting appropriate credentials to the owner, operator, or agent in charge may:

(a) At reasonable times and without advance notice enter any factory, warehouse, or establishment in which manufactured and mobile homes, commercial coaches, conversion vending units, medical units, recreational vehicles, park trailers, factory built housing, and factory built commercial structures are manufactured, stored, or held for sale;

(b) At reasonable times, within reasonable limits, and in a reasonable manner inspect any factory, warehouse, or establishment as required to comply with the standards adopted by the secretary of housing and urban development under the national manufactured home construction and safety standards act of 1974. Each inspection shall be commenced and completed with reasonable promptness; and

(c) As requested by an owner of a conversion vending unit or medical unit, inspect an alteration.

(3) For purposes of determining compliance with this chapter's permitting requirements for alterations of mobile and manufactured homes, the department may audit the records of a contractor as defined in chapter 18.27 RCW or RCW 18.106.020(1) or an electrical contractor as defined in RCW 19.28.006 when the department has reason to believe that a violation of the permitting requirements has occurred. The department shall adopt rules implementing the auditing procedures. Information obtained from a contractor through an audit authorized by this subsection is confidential and not open to public inspection under chapter 42.56 RCW.

(4)(a) The department shall set a schedule of fees by rule which will cover the costs incurred by the department in the administration of RCW 43.22.335 through 43.22.490. The department may waive mobile/manufactured home alteration permit fees for indigent permit applicants.

(b)(i) Until April 1, 2009, subject to (a) of this subsection, the department may adopt by rule a temporary statewide fee schedule that decreases fees for mobile/manufactured home alteration permits and increases fees for factory-built housing and commercial structures plan review and inspection services.

(ii) Effective April 1, 2009, the department must adopt a new fee schedule that is the same as the fee schedule that was in effect immediately prior to the temporary fee schedule authorized in (b)(i) of this subsection. However, the new fee schedule must be adjusted by the fiscal growth factors not applied during the period that the temporary fee schedule was in effect. [2005 c 274 § 296; 2004 c 137 § 1; 2003 c 67 § 1. Prior: 2002 c 268 § 3; 2002 c 268 § 2; 2001 c 335 § 5; 1999 c 22 § 10; 1995 c 280 § 5; 1977 ex.s. c 21 § 5.]

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

**Effective date—2004 c 137:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect March 31, 2004." [2004 c 137 § 2.]

**Purpose—Finding—2002 c 268:** "The purpose of this act is to implement the recommendations of the joint legislative task force created by chapter 335, Laws of 2001. The legislature recognizes the need to improve communications among mobile/manufactured homeowners, regulatory agencies, and other interested parties, to streamline the complex regulatory environment and inflexible enforcement system, and to promote problem-solving at an early stage. To assist in achieving these goals, the legislature:

(1) Encourages the relevant agencies to conduct a pilot project that tests an interagency coordinated system for processing permits for alterations or repairs of mobile and manufactured homes; and

(2) Recognizes the task force's work in reviewing agency rules related

to alteration permit requirements and supports the task force's recommendations to the agency regarding those rules. The legislature finds that assisting consumers to understand when an alteration of a mobile or manufactured home is subject to a permit, and when it is not, will improve compliance with the agency rules and further the code's safety goals." [2002 c 268 § 1.]

**Effective date—2002 c 268:** "Sections 1, 2, and 4 through 9 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 29, 2002]." [2003 c 67 § 2; 2002 c 268 § 10.]

**Application—2001 c 335:** See note following RCW 43.22.335.

**Construction—1977 ex.s. c 21:** See note following RCW 43.22.431.

### Chapter 43.23 RCW

#### DEPARTMENT OF AGRICULTURE

##### Sections

43.23.240 Repealed.

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

### Chapter 43.24 RCW

#### DEPARTMENT OF LICENSING

##### Sections

43.24.150 Business and professions account.

**43.24.150 Business and professions account.** (1) The business and professions account is created in the state treasury. All receipts from business or professional licenses, registrations, certifications, renewals, examinations, or civil penalties assessed and collected by the department from the following chapters must be deposited into the account:

- (a) Chapter 18.11 RCW, auctioneers;
- (b) Chapter 18.16 RCW, cosmetologists, barbers, and manicurists;
- (c) Chapter 18.96 RCW, landscape architects;
- (d) Chapter 18.145 RCW, court reporters;
- (e) Chapter 18.165 RCW, private investigators;
- (f) Chapter 18.170 RCW, security guards;
- (g) Chapter 18.185 RCW, bail bond agents;
- (h) Chapter 19.16 RCW, collection agencies;
- (i) Chapter 19.31 RCW, employment agencies;
- (j) Chapter 19.105 RCW, camping resorts;
- (k) Chapter 19.138 RCW, sellers of travel;
- (l) Chapter 42.44 RCW, notaries public; and
- (m) Chapter 64.36 RCW, timeshares.

Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for expenses incurred in carrying out these business and professions licensing activities of the department. Any residue in the account shall be accumulated and shall not revert to the general fund at the end of the biennium.

(2) The director shall biennially prepare a budget request based on the anticipated costs of administering the business and professions licensing activities listed in subsection (1) of this section, which shall include the estimated income from these business and professions fees. [2005 c 25 § 1.]

**Effective date—2005 c 25:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

[2005 RCW Supp—page 466]

ernment and its existing public institutions, and takes effect July 1, 2005." [2005 c 25 § 5.]

### Chapter 43.30 RCW

#### DEPARTMENT OF NATURAL RESOURCES

##### Sections

43.30.305 Natural resources equipment fund—Authorized—Purposes—Expenditure.  
 43.30.470 Repealed.  
 43.30.540 Acting as harbor line commission.

**43.30.305 Natural resources equipment fund—Authorized—Purposes—Expenditure.** A revolving fund in the custody of the state treasurer, to be known as the natural resources equipment fund, is hereby created to be expended by the department without appropriation solely for the purchase of equipment, machinery, and supplies for the use of the department and for the payment of the costs of repair and maintenance of such equipment, machinery, and supplies. During the 2005-2007 fiscal biennium the legislature may transfer such amounts as represent the excess balance of the fund to the state general fund. [2005 c 518 § 928; 2003 c 334 § 120; 1965 c 8 § 43.30.280. Prior: 1963 c 141 § 1. Formerly RCW 43.30.280.]

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

**Intent—2003 c 334:** See note following RCW 79.02.010.

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

**43.30.540 Acting as harbor line commission.** The board acting as the harbor line commission shall keep a full and complete record of its proceedings relating to the establishment of harbor lines and the determination of harbor areas. The board shall have the power from time to time to make and enforce rules for the carrying out of the provisions of chapters 79.105 through 79.140 RCW relating to its duties not inconsistent with law. [2005 c 155 § 103; 1982 1st ex.s. c 21 § 14. Formerly RCW 79.90.080.]

**Intent—Severability—Part/subchapter headings not law—2005 c 155:** See RCW 79.105.001, 79.105.903, and 79.105.904.

### Chapter 43.31 RCW

#### DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT

(Formerly: Department of trade and economic development)

##### Sections

43.31.057 Repealed.  
 43.31.093 Repealed.  
 43.31.145 Repealed.  
 43.31.390 Repealed.  
 43.31.403 Repealed.  
 43.31.406 Repealed.  
 43.31.409 Repealed.  
 43.31.411 Repealed.  
 43.31.414 Repealed.  
 43.31.417 Repealed.  
 43.31.450 SEED act—Findings—Purpose.  
 43.31.455 SEED act—Definitions.  
 43.31.460 SEED act—Individual development account program—Rules.  
 43.31.465 SEED act—Foster youth individual development account program.  
 43.31.470 SEED act—Individual development account program account.

43.31.475	SEED act—Additional funds and purposes.
43.31.480	SEED act—Report to the legislature.
43.31.485	SEED act—Short title—2005 c 402.
43.31.522	Marketplace program—Definitions.
43.31.526	Repealed.

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

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

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

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

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

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

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

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

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

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

**43.31.450 SEED act—Findings—Purpose.** The legislature finds that economic well-being encompasses not only income, spending, and consumption, but also savings, investment, and asset-building. The building of assets, in particular, can improve individuals' economic independence and stability. The legislature further finds that it is appropriate for the state to institute an asset-based strategy to assist low-income families. It is the purpose of chapter 402, Laws of 2005 to promote job training, home ownership, and business development among low-income individuals and to provide assistance in meeting the financial goals of low-income individuals. [2005 c 402 § 2.]

**43.31.455 SEED act—Definitions.** The definitions in this section apply throughout RCW 43.31.450 through 43.31.475 unless the context clearly requires otherwise.

(1) "Department" means the department of community, trade, and economic development.

(2) "Director" means the director of the department of community, trade, and economic development.

(3) "Foster youth" means a person who is fifteen years of age or older who is a dependent of the department of social and health services; or a person who is at least fifteen years of age, but not more than twenty-three years of age, who was a dependent of the department of social and health services for

at least twenty-four months after attaining thirteen years of age.

(4) "Individual development account" or "account" means an account established by contract between a low-income individual and a sponsoring organization for the benefit of the low-income individual and funded through periodic contributions by the low-income individual which are matched with contributions by or through the sponsoring organization.

(5) "Low-income individual" means a person whose household income is equal to or less than either:

(a) Eighty percent of the median family income, adjusted for household size, for the county or metropolitan statistical area where the person resides; or

(b) Two hundred percent of the federal poverty guidelines updated periodically in the federal register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2).

(6) "Program" means the individual development account program established pursuant to RCW 43.31.450 through 43.31.475.

(7) "Sponsoring organization" means: (a) A nonprofit, fund-raising organization that is exempt from taxation under section 501(c)(3) of the internal revenue code as amended and in effect on January 1, 2005; (b) a housing authority established under RCW 35.82.030; or (c) a federally recognized Indian tribe. [2005 c 402 § 3.]

**43.31.460 SEED act—Individual development account program—Rules.** An individual development account program is hereby established within the department for the purpose of facilitating the creation by sponsoring organizations of individual development accounts for low-income individuals.

(1) The department shall select sponsoring organizations to establish and monitor individual development accounts using the following criteria:

(a) The ability of the sponsoring organization to implement and administer an individual development account program, including the ability to verify a low-income individual's eligibility, certify that matching deposits are used only for approved purposes, and exercise general fiscal accountability;

(b) The capacity of the sponsoring organization to provide or raise funds to match the contributions made by low-income individuals to their individual development accounts;

(c) The capacity of the sponsoring organization to provide or arrange for the provision of financial counseling and other related services to low-income individuals;

(d) The links the sponsoring organization has to other activities and programs related to the purpose of chapter 402, Laws of 2005; and

(e) Such other criteria as the department determines are consistent with the purpose of chapter 402, Laws of 2005 and ease of administration.

(2) An individual development account may be established by or on behalf of an eligible low-income individual to enable the individual to accumulate funds for the following purposes:

(a) The acquisition of postsecondary education or job training;

(b) The purchase of a primary residence, including any usual or reasonable settlement, financing, or other closing costs;

(c) The capitalization of a small business. Account moneys may be used for capital, land, plant, equipment, and inventory expenses or for working capital pursuant to a business plan. The business plan must have been developed with a business counselor, trainer, or financial institution approved by the sponsoring organization. The business plan shall include a description of the services or goods to be sold, a marketing strategy, and projected financial statements;

(d) The purchase of a computer, an automobile, or home improvements; or

(e) The purchase of assistive technologies that will allow a person with a disability to participate in work-related activities.

(3) An eligible low-income individual participating in the program must contribute to an individual development account. The contributions may be derived from earned income or other income, as provided by the department. Other income shall include child support payments, supplemental security income, and disability benefits.

(4) A sponsoring organization may authorize a low-income individual for whom an individual development account has been established to withdraw all or part of the individual's deposits for the following emergencies:

(a) Necessary medical expenses;

(b) To avoid eviction of the individual from the individual's residence;

(c) Necessary living expenses following loss of employment; or

(d) Such other circumstances as the sponsoring organization determines merit emergency withdrawal.

The low-income individual making an emergency withdrawal shall reimburse the account for the amount withdrawn within twelve months of the date of withdrawal or the individual development account shall be closed.

(5) Funds held in an individual development account established under RCW 43.31.450 through 43.31.475 shall not be used in the determination of eligibility for, or the amount of, assistance in any state or federal means-tested program.

(6) The department shall adopt rules as necessary to implement chapter 402, Laws of 2005, including rules regulating the use of individual development accounts by eligible low-income individuals. The department's rules shall require that funds held in an individual development account are to be withdrawn only for the purposes specified in subsection (2) of this section or withdrawn as permitted for emergencies under subsection (4) of this section.

(7) Nothing in this section shall be construed to create an entitlement to matching moneys. [2005 c 402 § 4.]

**43.31.465 SEED act—Foster youth individual development account program.** (1) A foster youth individual development account program is hereby established within the individual development account program established pursuant to RCW 43.31.460 for the purpose of facilitating the creation by sponsoring organizations of individual development accounts for foster youth.

(2) The department shall select sponsoring organizations to establish and monitor individual development accounts for foster youth from those entities with whom the department of social and health services contracts for independent living services for youth who are or have been dependents of the department of social and health services.

(3) An individual development account may be established by or on behalf of a foster youth to enable the individual to accumulate funds for the following purposes:

(a) The acquisition of postsecondary education or job training;

(b) Housing needs, including rent, security deposit, and utilities costs;

(c) The purchase of a computer if necessary for postsecondary education or job training;

(d) The purchase of a car if necessary for employment; and

(e) Payment of health insurance premiums.

(4) A foster youth participating in the program must contribute to an individual development account. The contributions may be derived from earned income or other income, as provided by the department. Other income shall include financial incentives for educational achievement provided by entities contracted with the department of social and health services for independent living services for youth who are or have been dependents of the department of social and health services. [2005 c 402 § 5.]

**43.31.470 SEED act—Individual development account program account.** (1) An account is created in the custody of the state treasurer to be known as the individual development account program account. The account shall consist of all moneys appropriated to the account by the legislature and any other federal, state, or private funds, appropriated or nonappropriated, as the department receives for the purpose of matching low-income individuals' contributions to their individual development accounts. Expenditures from the account may be used only for the following:

(a) Grants to sponsoring organizations selected by the department to participate in the individual development account program to assist sponsoring organizations in providing or arranging for the provision of financial counseling and other related services to low-income individuals participating in the program and for program administration purposes;

(b) A match to be determined by the department of up to four dollars for every dollar deposited by an individual into the individual's individual development account, except that the maximum amount provided as a match for each individual development account shall be four thousand dollars; and

(c) The department's administrative expenses in carrying out the purposes of chapter 402, Laws of 2005.

(2) Only the director or the director's designee may authorize expenditures from the account.

(3) The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2005 c 402 § 6.]

**43.31.475 SEED act—Additional funds and purposes.** Sponsoring organizations may seek additional funds to increase the match rate and the maximum annual match



amount established pursuant to RCW 43.31.465. Such funds may also be used for purposes in addition to those provided in RCW 43.31.460(2). [2005 c 402 § 7.]

**43.31.480 SEED act—Report to the legislature.** The department shall annually report to the legislature and the governor on the individual development account program established pursuant to RCW 43.31.450 through 43.31.475. [2005 c 402 § 9.]

**43.31.485 SEED act—Short title—2005 c 402.** This act shall be known as the saving, earning, and enabling dreams (SEED) act. [2005 c 402 § 1.]

**43.31.522 Marketplace program—Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 43.31.524:

(1) "Department" means the department of community, trade, and economic development.

(2) "Director" means the director of community, trade, and economic development.

(3) "Local nonprofit organization" means a local nonprofit organization organized to provide economic development or community development services, including but not limited to associate development organizations, economic development councils, and community development corporations. [2005 c 136 § 17; 1993 c 280 § 46; 1990 c 57 § 2; 1989 c 417 § 2.]

**Savings—Effective date—2005 c 136:** See notes following RCW 43.168.020.

**Effective date—Severability—1993 c 280:** See RCW 43.330.902 and 43.330.903.

**Finding—1990 c 57; 1989 c 417:** "The legislature finds and declares that substantial benefits in increased employment and business activity can be obtained by assisting businesses in identifying opportunities to purchase the goods and services they need from Washington state suppliers rather than from out-of-state suppliers and in identifying new markets for Washington state firms to provide goods and services. The replacement of out-of-state imports with services and manufactured goods produced in-state can be an important source of economic growth in a local community especially in rural areas. Businesses in the state are often unaware that goods and services they purchase from out-of-state suppliers are available from in-state firms with substantial advantages in responsiveness, service, and price. Increasing the economic partnerships between businesses in Washington state can build bridges between urban and rural communities and can result in the identification of additional opportunities for successful economic development initiatives. Providing additional information to businesses regarding in-state sources of goods and services can be a particularly valuable component of revitalization strategies in economically distressed areas. The legislature finds and declares that it is the policy of the state to strengthen the economies of local communities by increasing the economic partnerships between in-state businesses and creating programs to assist businesses in identifying in-state sources of goods and services, and in addition to identify new markets for Washington firms to provide goods and services." [1990 c 57 § 1; 1989 c 417 § 1.]

**Severability—1989 c 417:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 417 § 15.]

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

## Chapter 43.33A RCW STATE INVESTMENT BOARD

### Sections

43.33A.025 Criminal history record checks for board staff finalist candidates. (*Effective July 1, 2006.*)

**43.33A.025 Criminal history record checks for board staff finalist candidates. (*Effective July 1, 2006.*)** (1) Notwithstanding any provision of RCW 43.43.700 through 43.43.815, the state investment board shall require a criminal history record check for conviction records through the Washington state patrol criminal identification system, and through the federal bureau of investigation, for the purpose of conducting preemployment evaluations of each finalist candidate for a board staff position exempt from the provisions of chapter 41.06 RCW, or for any other position in which the employee will have authority for or access to: (a) Funds under the jurisdiction or responsibility of the investment board; or (b) data or security systems of the investment board or designs for such systems. The record check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card, which shall be forwarded by the state patrol to the federal bureau of investigation.

(2) Information received by the investment board pursuant to this section shall be made available by the investment board only to board employees involved in the selection, hiring, background investigation, or job assignment of the person who is the subject of the record check, or to that subject person, and it shall be used only for the purposes of making, supporting, or defending decisions regarding the appointment or hiring of persons for these positions, or securing any necessary bonds or other requirements for such employment. Otherwise, the reports, and information contained therein, shall remain confidential and shall not be subject to the disclosure requirements of chapter 42.56 RCW.

(3) Fees charged by the Washington state patrol, or the federal bureau of investigation, for conducting these investigations and providing these reports shall be paid by the investment board. [2005 c 274 § 297; 2000 c 188 § 1; 1999 c 226 § 1.]

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

## Chapter 43.43 RCW WASHINGTON STATE PATROL

### Sections

43.43.020 Appointment of personnel.  
43.43.111 Patrol officer vehicle accidents.  
43.43.112 Private law enforcement off-duty employment—Guidelines.  
43.43.260 Benefits—Military service credit.  
43.43.400 Aquatic invasive species enforcement account—Aquatic invasive species enforcement program—Reports to the legislature.  
43.43.570 Automatic fingerprint identification system—Conditions for local establishment or operation—Rules.  
43.43.830 Background checks—Access to children or vulnerable persons—Definitions.  
43.43.832 Background checks—Disclosure of information—Sharing of criminal background information by health care facilities.  
43.43.8321 Background checks—Dissemination of conviction record information.  
43.43.834 Background checks by business, organization, or insurance company—Limitations—Civil liability.  
43.43.835 Repealed.

- 43.43.836 Disclosure to individual of own record—Fee.
- 43.43.838 Record checks—Transcript of conviction record—Fees—Immunity—Rules.
- 43.43.840 Notification to licensing agency of employment termination for certain crimes against persons.
- 43.43.845 Crimes against children—Sexual offenses under chapter 9A.44 RCW—Notification of conviction or guilty plea of school employee.
- 43.43.856 Divulging investigative information prohibited—Confidentiality—Security of records and files. *(Effective July 1, 2006.)*
- 43.43.932 State fire protection policy board—Created—Members.
- 43.43.944 Fire service training account.

**43.43.020 Appointment of personnel.** The governor, with the advice and consent of the senate, shall appoint the chief of the Washington state patrol, determine his compensation, and may remove him at will.

The chief shall appoint a sufficient number of competent persons to act as Washington state patrol officers, may remove them for cause, as provided in this chapter, and shall make promotional appointments, determine their compensation, and define their rank and duties, as hereinafter provided. Before a person may be appointed to act as a Washington state patrol officer, the person shall meet the minimum standards for employment with the Washington state patrol, including successful completion of a psychological examination and polygraph examination or similar assessment procedure administered by the chief or his or her designee in accordance with the requirements of RCW 43.101.095(2).

The chief may appoint employees of the Washington state patrol to serve as special deputies, with such restricted police authority as the chief shall designate as being necessary and consistent with their assignment to duty. Such appointment and conferral of authority shall not qualify said employees for membership in the Washington state patrol retirement system, nor shall it grant tenure of office as a regular officer of the Washington state patrol.

The chief may personally appoint, with the consent of the state treasurer, employees of the office of the state treasurer who are qualified under the standards of the criminal justice training commission, or who have comparable training and experience, to serve as special deputies. The law enforcement powers of any special deputies appointed in the office of the state treasurer shall be designated by the chief and shall be restricted to those powers necessary to provide for statewide security of the holdings or property of or under the custody of the office of the state treasurer. These appointments may be revoked by the chief at any time and shall be revoked upon the written request of the state treasurer or by operation of law upon termination of the special deputy's employment with the office of the state treasurer or thirty days after the chief who made the appointment leaves office. The chief shall be civilly immune for the acts of such special deputies. Such appointment and conferral of authority shall not qualify such employees for membership in the Washington state patrol retirement system, nor shall it grant tenure of office as a regular officer of the Washington state patrol. [2005 c 434 § 4; 1983 c 144 § 1; 1981 c 338 § 4; 1973 1st ex.s. c 80 § 1; 1965 c 8 § 43.43.020. Prior: 1949 c 192 § 1; 1933 c 25 § 3; Rem. Supp. 1949 § 6362-61.]

*Civil service exemptions: RCW 41.06.070.*

**43.43.111 Patrol officer vehicle accidents.** To ensure transparency, integrity, and credibility during Washington

state patrol vehicle accident investigations, the agency will continue to review and reform the agency policies and procedures regarding Washington state patrol officers that are involved in vehicle accidents. The agency shall develop agency policies and include as part of the terms of their collective bargaining agreements a progressive corrective process addressing Washington state patrol officer vehicle accidents that may include retraining in vehicle handling, wage or benefit reductions, and termination of employment. The agency shall develop a process for tracking accidents and an accident review process. Annually, a collision data report must be produced designating each accident during the year as minor or severe and any resulting disciplinary actions and be available for review by the legislature. The agency shall implement communication procedures for the victims involved in the accidents from the time the accident occurs until the investigative process has been concluded. The policies must also provide for outside supervision of accident investigations by a qualified independent agency under certain circumstances.

Before the legislative committee assembly in September 2005, the Washington state patrol shall have an outside entity that has a reputation for and has proven experience in law enforcement management and reviewing law enforcement and criminal justice policies and procedures review the agency's proposed law enforcement vehicle accident policies and procedures where a law enforcement officer is involved. The agency will present the proposed policies and procedures to the legislature and finalize the policies and procedures based on input from the legislature. The Washington state patrol shall report to the house and senate transportation committees by November 30, 2005, on the updated policies, processes, and procedures. Once the policies and procedures are completed, other law enforcement agencies may adopt the policies and procedures for their agencies. [2005 c 27 § 2.]

**Intent—2005 c 27:** "It is the intent of the legislature that accidents involving Washington state patrol officers follow a process that provides a high degree of integrity and credibility both within the investigation of the accident and the perception of the investigation from persons outside the investigation. It is the intent of the legislature to have a communication process in place for the Washington state patrol to communicate accident information to the persons and their families who are involved in the vehicle accidents. It is the intent of the legislature to have early detections in place to reduce future vehicle accidents." [2005 c 27 § 1.]

**Short title—2005 c 27:** "This act may be known and cited as the "Brock Loshbaugh Act."" [2005 c 27 § 3.]

**Effective date—2005 c 27:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 13, 2005]." [2005 c 27 § 4.]

**43.43.112 Private law enforcement off-duty employment—Guidelines.** Washington state patrol officers may engage in private law enforcement off-duty employment, in uniform or in plainclothes for private benefit, subject to guidelines adopted by the chief of the Washington state patrol. These guidelines must ensure that the integrity and professionalism of the Washington state patrol is preserved. Use of Washington state patrol officer's uniforms shall be considered de minimis use of state property. [2005 c 124 § 1; 1997 c 375 § 1.]

**43.43.260 Benefits—Military service credit.** Upon retirement from service as provided in RCW 43.43.250, a member shall be granted a retirement allowance which shall consist of:

(1) A prior service allowance which shall be equal to two percent of the member's average final salary multiplied by the number of years of prior service rendered by the member.

(2) A current service allowance which shall be equal to two percent of the member's average final salary multiplied by the number of years of service rendered while a member of the retirement system.

(3)(a) Any member commissioned prior to January 1, 2003, with twenty-five years service in the Washington state patrol may have the member's service in the uniformed services credited as a member whether or not the individual left the employ of the Washington state patrol to enter such uniformed services: PROVIDED, That in no instance shall military service in excess of five years be credited: AND PROVIDED FURTHER, That in each instance, a member must restore all withdrawn accumulated contributions, which restoration must be completed on the date of the member's retirement, or as provided under RCW 43.43.130, whichever occurs first: AND PROVIDED FURTHER, That this section shall not apply to any individual, not a veteran within the meaning of RCW 41.06.150.

(b) A member who leaves the Washington state patrol to enter the uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

(i) The member qualifies for service credit under this subsection if:

(A) Within ninety days of the member's honorable discharge from the uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services; and

(B) The member makes the employee contributions required under RCW 41.45.0631 and 41.45.067 within five years of resumption of service or prior to retirement, whichever comes sooner; or

(C) Prior to retirement and not within ninety days of the member's honorable discharge or five years of resumption of service the member pays the amount required under RCW 41.50.165(2).

(ii) Upon receipt of member contributions under (b)(i)(B), (b)(iv)(C), and (b)(v)(C) of this subsection, the department shall establish the member's service credit and shall bill the employer for its contribution required under RCW 41.45.060 for the period of military service, plus interest as determined by the department.

(iii) The contributions required under (b)(i)(B), (b)(iv)(C), and (b)(v)(C) of this subsection shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(iv) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the

uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(A) Provides to the director proof of the member's death while serving in the uniformed services;

(B) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(C) If the member was commissioned on or after January 1, 2003, pays the employee contributions required under chapter 41.45 RCW within five years of the date of death or prior to the distribution of any benefit, whichever comes first.

(v) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(A) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(B) The member provides to the director proof of honorable discharge from the uniformed services; and

(C) If the member was commissioned on or after January 1, 2003, the member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first.

(4) In no event shall the total retirement benefits from subsections (1), (2), and (3) of this section, of any member exceed seventy-five percent of the member's average final salary.

(5) Beginning July 1, 2001, and every year thereafter, the department shall determine the following information for each retired member or beneficiary whose retirement allowance has been in effect for at least one year:

(a) The original dollar amount of the retirement allowance;

(b) The index for the calendar year prior to the effective date of the retirement allowance, to be known as "index A";

(c) The index for the calendar year prior to the date of determination, to be known as "index B"; and

(d) The ratio obtained when index B is divided by index A.

The value of the ratio obtained shall be the annual adjustment to the original retirement allowance and shall be applied beginning with the July payment. In no event, however, shall the annual adjustment:

(i) Produce a retirement allowance which is lower than the original retirement allowance;

(ii) Exceed three percent in the initial annual adjustment; or

(iii) Differ from the previous year's annual adjustment by more than three percent.

For the purposes of this section, "index" means, for any calendar year, that year's average consumer price index for

the Seattle-Tacoma-Bremerton Washington area for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

The provisions of this section shall apply to all members presently retired and to all members who shall retire in the future. [2005 c 64 § 10; 2002 c 27 § 3; 2001 c 329 § 4; 1994 c 197 § 34; 1982 1st ex.s. c 52 § 27; 1973 1st ex.s. c 180 § 3; 1971 ex.s. c 278 § 1; 1969 c 12 § 4; 1965 c 8 § 43.43.260. Prior: 1963 c 175 § 2; 1957 c 162 § 4; 1955 c 244 § 2; 1951 c 140 § 5; 1947 c 250 § 15; Rem. Supp. 1947 § 6362-95.]

**Effective date—2001 c 329:** See note following RCW 43.43.120.

**Intent—Severability—Effective date—1994 c 197:** See notes following RCW 41.50.165.

**Effective dates—1982 1st ex.s. c 52:** See note following RCW 2.10.180.

**Effective date—1971 ex.s. c 278:** "This 1971 amendatory act shall have an effective date of July 1, 1971." [1971 ex.s. c 278 § 2.]

**Construction—1969 c 12:** See note following RCW 43.43.120.

**43.43.400 Aquatic invasive species enforcement account—Aquatic invasive species enforcement program—Reports to the legislature.** (1) The aquatic invasive species enforcement account is created in the state treasury. Moneys directed to the account from RCW 88.02.050 must be deposited in the account. Expenditures from the account may only be used as provided in this section. Moneys in the account may be spent only after appropriation.

(2) Funds in the aquatic invasive species enforcement account may be appropriated to the Washington state patrol to develop an aquatic invasive species enforcement program for recreational watercraft. Funds must be expended as follows:

(a) To inspect recreational watercraft that are required to stop at port of entry weigh stations managed by the Washington state patrol. The watercraft must be inspected for the presence of zebra mussels and other aquatic invasive species; and

(b) To establish random check stations, in conjunction with the department of fish and wildlife, to inspect watercraft in areas of high boating activity.

(3) The Washington state patrol shall submit a biennial report to the appropriate legislative committees describing the actions taken to implement this section along with suggestions on how to better fulfill the intent of chapter 464, Laws of 2005. The first report is due December 1, 2007. [2005 c 464 § 5.]

**Findings—Intent—2005 c 464:** See note following RCW 88.02.050.

**43.43.570 Automatic fingerprint identification system—Conditions for local establishment or operation—Rules.** (1) No local law enforcement agency may establish or operate an automatic fingerprint identification system unless both the hardware and software of the local system use an interface compatible with the state system under RCW 43.43.560. The local law enforcement agency shall be able to transmit a tenprint record to the state system through any available protocol which meets accepted industry standards, and the state system must be able to accept tenprint records which comply with those requirements. When industry transmission protocols change, the Washington state patrol shall incorporate these new standards as funding and reasonable

system engineering practices permit. The tenprint transmission from any local law enforcement agency must be in accordance with the current version of the state electronic fingerprint transmission specification.

(2) No later than January 1, 2007, the Washington state patrol's automatic fingerprint identification system shall be capable of instantly accepting electronic latent search records from any Washington state local law enforcement agency. \*If specific funding for the purposes of this subsection is not provided by June 30, 2006, in the omnibus appropriations act, or if funding is not obtained from another source by June 30, 2006, this subsection is null and void.

(3) A local law enforcement agency operating an automatic fingerprint identification system shall transmit data on fingerprint entries to the Washington state patrol electronically. This requirement shall be in addition to those under RCW 10.98.050 and 43.43.740.

(4) Any personnel functions necessary to prepare fingerprints for searches under this section shall be the responsibility of the submitting agency.

(5) The Washington state patrol shall adopt rules to implement this section. [2005 c 373 § 2; 1987 c 450 § 1.]

\***Reviser's note:** Specific funding was not provided in chapter 518, Laws of 2005 (omnibus appropriations act).

**43.43.830 Background checks—Access to children or vulnerable persons—Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 43.43.830 through 43.43.845.

(1) "Applicant" means:

(a) Any prospective employee who will or may have unsupervised access to children under sixteen years of age or developmentally disabled persons or vulnerable adults during the course of his or her employment or involvement with the business or organization;

(b) Any prospective volunteer who will have regularly scheduled unsupervised access to children under sixteen years of age, developmentally disabled persons, or vulnerable adults during the course of his or her employment or involvement with the business or organization under circumstances where such access will or may involve groups of (i) five or fewer children under twelve years of age, (ii) three or fewer children between twelve and sixteen years of age, (iii) developmentally disabled persons, or (iv) vulnerable adults;

(c) Any prospective adoptive parent, as defined in RCW 26.33.020; or

(d) Any prospective custodian in a nonparental custody proceeding under chapter 26.10 RCW.

(2) "Business or organization" means a business or organization licensed in this state, any agency of the state, or other governmental entity, that educates, trains, treats, supervises, houses, or provides recreation to developmentally disabled persons, vulnerable adults, or children under sixteen years of age, including but not limited to public housing authorities, school districts, and educational service districts.

(3) "Civil adjudication proceeding" is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, or exploitation or financial exploitation of a child or vulnerable adult under chapter 13.34, 26.44, or 74.34 RCW, or rules adopted under chapters

18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative orders that become final due to the failure of the alleged perpetrator to timely exercise a right afforded to him or her to administratively challenge findings made by the department of social and health services or the department of health under chapter 13.34, 26.44, or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW.

(4) "Conviction record" means "conviction record" information as defined in RCW 10.97.030 and 10.97.050 relating to a crime committed by either an adult or a juvenile. It does not include a conviction for an offense that has been the subject of an expungement, pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, or a conviction that has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. It does include convictions for offenses for which the defendant received a deferred or suspended sentence, unless the record has been expunged according to law.

(5) "Crime against children or other persons" means a conviction of any of the following offenses: Aggravated murder; first or second degree murder; first or second degree kidnaping; first, second, or third degree assault; first, second, or third degree assault of a child; first, second, or third degree rape; first, second, or third degree rape of a child; first or second degree robbery; first degree arson; first degree burglary; first or second degree manslaughter; first or second degree extortion; indecent liberties; incest; vehicular homicide; first degree promoting prostitution; communication with a minor; unlawful imprisonment; simple assault; sexual exploitation of minors; first or second degree criminal mistreatment; endangerment with a controlled substance; child abuse or neglect as defined in RCW 26.44.020; first or second degree custodial interference; first or second degree custodial sexual misconduct; malicious harassment; first, second, or third degree child molestation; first or second degree sexual misconduct with a minor; patronizing a juvenile prostitute; child abandonment; promoting pornography; selling or distributing erotic material to a minor; custodial assault; violation of child abuse restraining order; child buying or selling; prostitution; felony indecent exposure; criminal abandonment; or any of these crimes as they may be renamed in the future.

(6) "Crimes relating to drugs" means a conviction of a crime to manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance.

(7) "Crimes relating to financial exploitation" means a conviction for first, second, or third degree extortion; first, second, or third degree theft; first or second degree robbery; forgery; or any of these crimes as they may be renamed in the future.

(8) "Unsupervised" means not in the presence of:

(a) Another employee or volunteer from the same business or organization as the applicant; or

(b) Any relative or guardian of any of the children or developmentally disabled persons or vulnerable adults to which the applicant has access during the course of his or her employment or involvement with the business or organization.

(9) "Vulnerable adult" means "vulnerable adult" as defined in chapter 74.34 RCW, except that for the purposes

of requesting and receiving background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

(10) "Financial exploitation" means "financial exploitation" as defined in RCW 74.34.020.

(11) "Agency" means any person, firm, partnership, association, corporation, or facility which receives, provides services to, houses or otherwise cares for vulnerable adults. [2005 c 421 § 1; 2003 c 105 § 5; 2002 c 229 § 3; 1999 c 45 § 5; 1998 c 10 § 1; 1996 c 178 § 12; 1995 c 250 § 1; 1994 c 108 § 1; 1992 c 145 § 16. Prior: 1990 c 146 § 8; 1990 c 3 § 1101; prior: 1989 c 334 § 1; 1989 c 90 § 1; 1987 c 486 § 1.]

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

**Effective date—1996 c 178:** See note following RCW 18.35.110.

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

*At-risk children volunteer program:* RCW 43.150.080.

*Developmentally disabled persons:* RCW 41.06.475.

*State hospitals:* RCW 72.23.035.

**43.43.832 Background checks—Disclosure of information—Sharing of criminal background information by health care facilities.** (1) The legislature finds that businesses and organizations providing services to children, developmentally disabled persons, and vulnerable adults need adequate information to determine which employees or licensees to hire or engage. The legislature further finds that many developmentally disabled individuals and vulnerable adults desire to hire their own employees directly and also need adequate information to determine which employees or licensees to hire or engage. Therefore, the Washington state patrol identification and criminal history section shall disclose, upon the request of a business or organization as defined in RCW 43.43.830, a developmentally disabled person, or a vulnerable adult as defined in RCW 43.43.830 or his or her guardian, an applicant's record for convictions as defined in chapter 10.97 RCW.

(2) The legislature also finds that the state board of education may request of the Washington state patrol criminal identification system information regarding a certificate applicant's record for convictions under subsection (1) of this section.

(3) The legislature also finds that law enforcement agencies, the office of the attorney general, prosecuting authorities, and the department of social and health services may request this same information to aid in the investigation and prosecution of child, developmentally disabled person, and vulnerable adult abuse cases and to protect children and adults from further incidents of abuse.

(4) The legislature further finds that the secretary of the department of social and health services must establish rules and set standards to require specific action when considering the information listed in subsection (1) of this section, and when considering additional information including but not limited to civil adjudication proceedings as defined in RCW 43.43.830 and any out-of-state equivalent, in the following circumstances:

(a) When considering persons for state employment in positions directly responsible for the supervision, care, or

treatment of children, vulnerable adults, or individuals with mental illness or developmental disabilities;

(b) When considering persons for state positions involving unsupervised access to vulnerable adults to conduct comprehensive assessments, financial eligibility determinations, licensing and certification activities, investigations, surveys, or case management; or for state positions otherwise required by federal law to meet employment standards;

(c) When licensing agencies or facilities with individuals in positions directly responsible for the care, supervision, or treatment of children, developmentally disabled persons, or vulnerable adults, including but not limited to agencies or facilities licensed under chapter 74.15 or 18.51 RCW;

(d) When contracting with individuals or businesses or organizations for the care, supervision, case management, or treatment of children, developmentally disabled persons, or vulnerable adults, including but not limited to services contracted for under chapter 18.20, \*18.48, 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW;

(e) When individual providers are paid by the state or providers are paid by home care agencies to provide in-home services involving unsupervised access to persons with physical, mental, or developmental disabilities or mental illness, or to vulnerable adults as defined in chapter 74.34 RCW, including but not limited to services provided under chapter 74.39 or 74.39A RCW.

(5) Whenever a state conviction record check is required by state law, persons may be employed or engaged as volunteers or independent contractors on a conditional basis pending completion of the state background investigation. Whenever a national criminal record check through the federal bureau of investigation is required by state law, a person may be employed or engaged as a volunteer or independent contractor on a conditional basis pending completion of the national check. The Washington personnel resources board shall adopt rules to accomplish the purposes of this subsection as it applies to state employees.

(6)(a) For purposes of facilitating timely access to criminal background information and to reasonably minimize the number of requests made under this section, recognizing that certain health care providers change employment frequently, health care facilities may, upon request from another health care facility, share copies of completed criminal background inquiry information.

(b) Completed criminal background inquiry information may be shared by a willing health care facility only if the following conditions are satisfied: The licensed health care facility sharing the criminal background inquiry information is reasonably known to be the person's most recent employer, no more than twelve months has elapsed from the date the person was last employed at a licensed health care facility to the date of their current employment application, and the criminal background information is no more than two years old.

(c) If criminal background inquiry information is shared, the health care facility employing the subject of the inquiry must require the applicant to sign a disclosure statement indicating that there has been no conviction or finding as described in RCW 43.43.842 since the completion date of the most recent criminal background inquiry.

(d) Any health care facility that knows or has reason to believe that an applicant has or may have a disqualifying conviction or finding as described in RCW 43.43.842, subsequent to the completion date of their most recent criminal background inquiry, shall be prohibited from relying on the applicant's previous employer's criminal background inquiry information. A new criminal background inquiry shall be requested pursuant to RCW 43.43.830 through 43.43.842.

(e) Health care facilities that share criminal background inquiry information shall be immune from any claim of defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of this information in accordance with this subsection.

(f) Health care facilities shall transmit and receive the criminal background inquiry information in a manner that reasonably protects the subject's rights to privacy and confidentiality.

(g) For the purposes of this subsection, "health care facility" means a nursing home licensed under chapter 18.51 RCW, a boarding home licensed under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW.

(7) If a federal bureau of investigation check is required in addition to the state background check by the department of social and health services, an applicant who is not disqualified based on the results of the state background check shall be eligible for a one hundred twenty day provisional approval to hire, pending the outcome of the federal bureau of investigation check. The department may extend the provisional approval until receipt of the federal bureau of investigation check. If the federal bureau of investigation check disqualifies an applicant, the department shall notify the requestor that the provisional approval to hire is withdrawn and the applicant may be terminated. [2005 c 421 § 2; 2000 c 87 § 1; 1997 c 392 § 524; 1995 c 250 § 2; 1993 c 281 § 51; 1990 c 3 § 1102. Prior: 1989 c 334 § 2; 1989 c 90 § 2; 1987 c 486 § 2.]

\*Reviser's note: Chapter 18.48 RCW was repealed in its entirety by 2002 c 223 § 2.

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**Effective date—1993 c 281:** See note following RCW 41.06.022.

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

**43.43.8321 Background checks—Dissemination of conviction record information.** When the Washington state patrol disseminates conviction record information in response to a request under RCW 43.43.832, it shall clearly state that: (1) The conviction record data does not include information on civil adjudications, administrative findings, or disciplinary board final decisions and that all such information must be obtained from the courts and licensing agencies; (2) the conviction record that is being disseminated includes information for which a person is currently being processed by the criminal justice system relating to only crimes against a person as defined in RCW 9.94A.411 and that it does not include any other current or pending charge information for which a person could be in the current process of being processed by the criminal justice system; and (3) an arrest is not a conviction or a finding of guilt. [2005 c 421 § 10.]

**43.43.834 Background checks by business, organization, or insurance company—Limitations—Civil liability.**

(1) A business or organization shall not make an inquiry to the Washington state patrol under RCW 43.43.832 or an equivalent inquiry to a federal law enforcement agency unless the business or organization has notified the applicant who may be offered a position as an employee or volunteer, that an inquiry may be made.

(2) A business or organization shall require each applicant to disclose to the business or organization whether the applicant:

- (a) Has been convicted of a crime;
- (b) Has had findings made against him or her in any civil adjudicative proceeding as defined in RCW 43.43.830; or
- (c) Has both a conviction under (a) of this subsection and findings made against him or her under (b) of this subsection.

(3) The business or organization shall pay such reasonable fee for the records check as the state patrol may require under RCW 43.43.838.

(4) The business or organization shall notify the applicant of the state patrol's response within ten days after receipt by the business or organization. The employer shall provide a copy of the response to the applicant and shall notify the applicant of such availability.

(5) The business or organization shall use this record only in making the initial employment or engagement decision. Further dissemination or use of the record is prohibited, except as provided in RCW 28A.320.155. A business or organization violating this subsection is subject to a civil action for damages.

(6) An insurance company shall not require a business or organization to request background information on any employee before issuing a policy of insurance.

(7) The business and organization shall be immune from civil liability for failure to request background information on an applicant unless the failure to do so constitutes gross negligence. [2005 c 421 § 3; 1999 c 21 § 2; 1998 c 10 § 3; 1990 c 3 § 1103. Prior: 1989 c 334 § 3; 1989 c 90 § 3; 1987 c 486 § 3.]

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

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

**43.43.836 Disclosure to individual of own record—Fee.** An individual may contact the state patrol to ascertain whether an individual has a conviction record. The state patrol shall disclose such information, subject to the fee established under RCW 43.43.838. [2005 c 421 § 4; 1987 c 486 § 4.]

**43.43.838 Record checks—Transcript of conviction record—Fees—Immunity—Rules.** (1) After January 1, 1988, and notwithstanding any provision of RCW 43.43.700 through 43.43.810 to the contrary, the state patrol shall furnish a transcript of the conviction record pertaining to any person for whom the state patrol or the federal bureau of investigation has a record upon the written request of:

- (a) The subject of the inquiry;

(b) Any business or organization for the purpose of conducting evaluations under RCW 43.43.832;

(c) The department of social and health services;

(d) Any law enforcement agency, prosecuting authority, or the office of the attorney general; or

(e) The department of social and health services for the purpose of meeting responsibilities set forth in chapter 74.15, 18.51, 18.20, or 72.23 RCW, or any later-enacted statute which purpose is to regulate or license a facility which handles vulnerable adults. However, access to conviction records pursuant to this subsection (1)(e) does not limit or restrict the ability of the department to obtain additional information regarding conviction records and pending charges as set forth in RCW 74.15.030(2)(b).

(2) The state patrol shall by rule establish fees for disseminating records under this section to recipients identified in subsection (1)(a) and (b) of this section. The state patrol shall also by rule establish fees for disseminating records in the custody of the national crime information center. The revenue from the fees shall cover, as nearly as practicable, the direct and indirect costs to the state patrol of disseminating the records. No fee shall be charged to a nonprofit organization for the records check. In the case of record checks using fingerprints requested by school districts and educational service districts, the state patrol shall charge only for the incremental costs associated with checking fingerprints in addition to name and date of birth. Record checks requested by school districts and educational service districts using only name and date of birth shall continue to be provided free of charge.

(3) No employee of the state, employee of a business or organization, or the business or organization is liable for defamation, invasion of privacy, negligence, or any other claim in connection with any lawful dissemination of information under RCW 43.43.830 through 43.43.840 or 43.43.760.

(4) Before July 26, 1987, the state patrol shall adopt rules and forms to implement this section and to provide for security and privacy of information disseminated under this section, giving first priority to the criminal justice requirements of this chapter. The rules may include requirements for users, audits of users, and other procedures to prevent use of civil adjudication record information or criminal history record information inconsistent with this chapter.

(5) Nothing in RCW 43.43.830 through 43.43.840 shall authorize an employer to make an inquiry not specifically authorized by this chapter, or be construed to affect the policy of the state declared in chapter 9.96A RCW. [2005 c 421 § 5; 1995 c 29 § 1; 1992 c 159 § 7; 1990 c 3 § 1104. Prior: 1989 c 334 § 4; 1989 c 90 § 4; 1987 c 486 § 5.]

**Findings—1992 c 159:** See note following RCW 28A.400.303.

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

**43.43.840 Notification to licensing agency of employment termination for certain crimes against persons.** When a business or an organization terminates, fires, dismisses, fails to renew the contract, or permits the resignation of an employee because of crimes against children or other persons or because of crimes relating to the financial exploitation of a vulnerable adult, and if that employee is employed in a position requiring a certificate or license issued by a licensing agency such as the state board of education, the

business or organization shall notify the licensing agency of such termination of employment. [2005 c 421 § 6; 1997 c 386 § 40. Prior: 1989 c 334 § 5; 1989 c 90 § 5; 1987 c 486 § 6.]

**43.43.845 Crimes against children—Sexual offenses under chapter 9A.44 RCW—Notification of conviction or guilty plea of school employee.** (1) Upon a guilty plea or conviction of a person of any felony crime involving the physical neglect of a child under chapter 9A.42 RCW, the physical injury or death of a child under chapter 9A.32 or 9A.36 RCW (except motor vehicle violations under chapter 46.61 RCW), sexual exploitation of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44 RCW, promoting prostitution of a minor under chapter 9A.88 RCW, or the sale or purchase of a minor child under RCW 9A.64.030, the prosecuting attorney shall notify the state patrol of such guilty pleas or convictions.

(2) When the state patrol receives information that a person has pled guilty to or been convicted of one of the felony crimes under subsection (1) of this section, the state patrol shall transmit that information to the superintendent of public instruction. It shall be the duty of the superintendent of public instruction to identify whether the person holds a certificate or permit issued under chapters 28A.405 and 28A.410 RCW or is employed by a school district, and provide this information to the state board of education and the school district employing the individual who pled guilty or was convicted of the crimes identified in subsection (1) of this section. [2005 c 421 § 7; 2005 c 237 § 1; 1990 c 33 § 577; 1989 c 320 § 6.]

**Reviser's note:** This section was amended by 2005 c 237 § 1 and by 2005 c 421 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Purpose—Statutory references—Severability—1990 c 33:** See RCW 28A.900.100 through 28A.900.102.

**Severability—1989 c 320:** See note following RCW 28A.410.090.

**43.43.856 Divulging investigative information prohibited—Confidentiality—Security of records and files. (Effective July 1, 2006.)** (1)(a) On and after April 26, 1973, it shall be unlawful for any person to divulge specific investigative information pertaining to activities related to organized crime which he or she has obtained by reason of public employment with the state of Washington or its political subdivisions unless such person is authorized or required to do so by operation of state or federal law.

(b) Any person violating (a) of this subsection is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(2) Except as provided in RCW 43.43.854, or pursuant to the rules of the supreme court of Washington, all of the information and data collected and processed by the organized crime intelligence unit shall be confidential and not subject to examination or publication pursuant to chapter 42.56 RCW.

(3) The chief of the Washington state patrol shall prescribe such standards and procedures relating to the security of the records and files of the organized crime intelligence unit, as he or she deems to be in the public interest with the

advice of the governor and the board. [2005 c 274 § 298; 2003 c 53 § 230; 1973 1st ex.s. c 202 § 4.]

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

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

**43.43.932 State fire protection policy board—Created—Members.** There is created the state fire protection policy board consisting of nine members appointed by the governor:

- (1) One representative of fire chiefs;
- (2) One insurance industry representative;
- (3) One representative of cities and towns;
- (4) One representative of counties;
- (5) One full-time, paid, career fire fighter;
- (6) One volunteer fire fighter;
- (7) One representative of fire commissioners;
- (8) One representative of fire control programs of the department of natural resources; and
- (9) One representative of the state association of fire marshals.

In making the appointments required under subsections (1) through (9) of this section, the governor shall (a) seek the advice of and consult with organizations involved in fire protection; and (b) ensure that racial minorities, women, and persons with disabilities are represented.

The terms of the appointed members of the board shall be three years and until a successor is appointed and qualified. However, initial board members shall be appointed as follows: Three members to terms of one year, three members to terms of two years, and three members to terms of three years. In the case of a vacancy of a member appointed under subsections (1) through (9) of this section, the governor shall appoint a new representative to fill the unexpired term of the member whose office has become vacant. A vacancy shall occur whenever an appointed member ceases to be employed in the occupation the member was appointed to represent.

The appointed members of the board shall be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060.

The board shall select its own chairperson and shall meet at the request of the governor or the chairperson and at least four times per year. [2005 c 35 § 1; 1995 c 369 § 15; 1986 c 266 § 55. Formerly RCW 43.63A.310.]

**Application—Effective date—1995 c 369:** See notes following RCW 43.43.930.

**Severability—1986 c 266:** See note following RCW 38.52.005.

**43.43.944 Fire service training account.** (1) The fire service training account is hereby established in the state treasury. The fund shall consist of:

- (a) All fees received by the Washington state patrol for fire service training;
- (b) All grants and bequests accepted by the Washington state patrol under RCW 43.43.940; and
- (c) Twenty percent of all moneys received by the state on fire insurance premiums.

(2) Moneys in the account may be appropriated only for fire service training. During the 2005-2007 fiscal biennium, the legislature may appropriate funds from this account for school fire prevention activities within the Washington state



patrol. [2005 c 518 § 929; 2003 1st sp.s. c 25 § 919; 1999 c 117 § 2; 1995 c 369 § 21; 1986 c 266 § 61. Formerly RCW 43.63A.370.]

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Application—Effective date—1995 c 369:** See notes following RCW 43.43.930.

**Severability—1986 c 266:** See note following RCW 38.52.005.

## Chapter 43.52 RCW OPERATING AGENCIES

### Sections

- 43.52.460 Operating agency to pay in lieu of taxes. (*Effective July 1, 2006.*)  
 43.52.570 Purchase of materials by telephone or written quotation authorized—Procedure. (*Effective July 1, 2006.*)  
 43.52.612 Contract bid form. (*Effective July 1, 2006.*)

**43.52.460 Operating agency to pay in lieu of taxes. (*Effective July 1, 2006.*)** Any joint operating agency formed under this chapter shall pay in lieu of taxes payments in the same amounts as paid by public utility districts. Such payments shall be distributed in accordance with the provisions applicable to public utility districts. [2005 c 443 § 3; 1971 ex.s. c 75 § 1; 1965 c 8 § 43.52.460. Prior: 1957 c 295 § 10.]

**Finding—Intent—Effective date—2005 c 443:** See notes following RCW 82.08.0255.

**43.52.570 Purchase of materials by telephone or written quotation authorized—Procedure. (*Effective July 1, 2006.*)** For the awarding of a contract to purchase any item or items of materials, equipment, or supplies in an amount exceeding five thousand dollars but less than seventy-five thousand dollars, exclusive of sales tax, the managing director or a designee may, in lieu of sealed bids, secure telephone and/or written quotations from at least five vendors, where practical, and award contracts for purchase of materials, equipment, or supplies to the lowest responsible bidder. The agency shall establish a procurement roster, which shall consist of suppliers and manufacturers who may supply materials or equipment to the operating agency, and shall provide for solicitations which will equitably distribute opportunity for bids among suppliers and manufacturers on the roster. Immediately after the award is made, the bid quotations obtained shall be recorded and shall be posted or otherwise made available for public inspection and copying pursuant to chapter 42.56 RCW at the office of the operating agency or any other officially designated location. Waiver of the deposit or bid bond required for sealed bids may be authorized by the operating agency in securing the bid quotations. [2005 c 274 § 299; 1987 c 376 § 3.]

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

**43.52.612 Contract bid form. (*Effective July 1, 2006.*)** A joint operating agency shall require that bids upon any construction or improvement of any nuclear generating project and associated facilities shall be made upon the contract bid form supplied by the operating agency, and in no other man-

ner. The operating agency may, before furnishing any person, firm, or corporation desiring to bid upon any work with a contract bid form, require from the person, firm, or corporation, answers to questions contained in a standard form of questionnaire and financial statement, including a complete statement of the financial ability and experience of the person, firm, or corporation in performing work. The questionnaire shall be sworn to before a notary public or other person authorized to take acknowledgement of deeds and shall be submitted once a year or at such other times as the operating agency may require. Whenever the operating agency is not satisfied with the sufficiency of the answers contained in the questionnaire and financial statement or whenever the operating agency determines that the person, firm, or corporation does not meet all of the requirements set forth in this section, it may refuse to furnish the person, firm, or corporation with a contract bid form and any bid of the person, firm, or corporation must be disregarded. The operating agency shall require that a person, firm, or corporation have all of the following requirements in order to obtain a contract form:

(1) Adequate financial resources, the ability to secure these resources, or the capability to secure a one hundred percent payment and performance bond;

(2) The necessary experience, organization, and technical qualifications to perform the proposed contract;

(3) The ability to comply with the required performance schedule taking into consideration all of its existing business commitments;

(4) A satisfactory record of performance, integrity, judgment, and skills; and

(5) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

The refusal shall be conclusive unless appealed to the superior court of the county where the operating agency is situated or Thurston county within fifteen days, which appeal shall be heard summarily within ten days after the appeal is made and on five days' notice thereof to the operating agency.

The prevailing party in such litigation shall be awarded its attorney fees and costs.

The operating agency shall not be required to make available for public inspection or copying under chapter 42.56 RCW financial information provided under this section. [2005 c 274 § 300; 1982 1st ex.s. c 44 § 5.]

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

**Severability—1982 1st ex.s. c 44:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 1st ex.s. c 44 § 10.]

## Chapter 43.59 RCW TRAFFIC SAFETY COMMISSION

### Sections

- 43.59.150 Bicycle and pedestrian safety—Committee. (*Effective June 30, 2007.*)

**43.59.150 Bicycle and pedestrian safety—Committee. (*Effective June 30, 2007.*)** The Washington state traffic safety commission shall establish a program for improving bicycle and pedestrian safety, and shall cooperate with the

stakeholders and independent representatives to form an advisory committee to develop programs and create public private partnerships which promote bicycle and pedestrian safety. [2005 c 426 § 6. Prior: 1999 c 372 § 9; 1999 c 351 § 1; 1998 c 165 § 3.]

**Effective date—2005 c 426 § 6:** "Section 6 of this act takes effect June 30, 2007." [2005 c 426 § 7.]

**Short title—1998 c 165:** See note following RCW 43.59.010.

### Chapter 43.60A RCW

#### DEPARTMENT OF VETERANS AFFAIRS

##### Sections

- 43.60A.140 Veterans stewardship account.  
43.60A.150 Veterans conservation corps—Report to the legislature.

**43.60A.140 Veterans stewardship account.** (1) The veterans stewardship account is created in the custody of the state treasurer. Disbursements of funds must be on the authorization of the director or the director's designee, and only for the purposes stated in subsection (4) of this section. In order to maintain an effective expenditure and revenue control, funds are subject in all respects to chapter 43.88 RCW, but no appropriation is required to permit expenditure of the funds.

(2) The department may request and accept nondedicated contributions, grants, or gifts in cash or otherwise, including funds generated by the issuance of the armed forces license plate collection under chapter 46.16 RCW.

(3) All receipts, except as provided in RCW 46.16.313(20) (a) and (b), from the sale of armed forces license plates must be deposited into the veterans stewardship account.

(4) All moneys deposited into the veterans stewardship account must be used by the department for activities that benefit veterans, including but not limited to, providing programs and services for homeless veterans; establishing memorials honoring veterans; and maintaining a future state veterans' cemetery. Funds from the account may not be used to supplant existing funds received by the department. [2005 c 216 § 4.]

**43.60A.150 Veterans conservation corps—Report to the legislature.** The department shall create a list of veterans with posttraumatic stress disorder and related conditions who are interested in working on projects that restore Washington's natural habitat. The list shall be referred to as the veterans conservation corps. The department shall promote the opportunity to volunteer for the veterans conservation corps through its local counselors and representative. Only veterans who grant their approval may be included on the list. The department shall consult with the salmon recovery board, the interagency committee for outdoor recreation, the department of natural resources, the department of fish and wildlife, and the state parks and recreation commission to determine the most effective ways to market the veterans conservation corps to agencies and local sponsors of habitat restoration projects.

The department shall submit a report to the appropriate committees of the legislature by December 1, 2009, on the use of veterans conservation corps members by state agencies

and local sponsors of habitat restoration projects. [2005 c 257 § 2.]

**Findings—Purpose—2005 c 257:** "The legislature finds that many Washington citizens are veterans of armed forces conflicts that have important skills that may be employed in projects that help to protect and restore Washington's rivers, streams, lakes, marine waters, and open lands. The legislature further finds that such work has demonstrated benefits for many veterans who are coping with posttraumatic stress disorder or have other mental health or substance abuse disorders related to their service in the armed forces. Therefore, it is the purpose of this chapter to create a program that provides state funding assistance for projects that restore Washington's waters, forests, and habitat through the primary participation of such veterans." [2005 c 257 § 1.]

### Chapter 43.63A RCW

#### DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT

(Formerly: Department of community development)

##### Sections

- 43.63A.125 Nonresidential social services facilities—Assistance to nonprofit organizations—Competitive process—Recommendations to legislature for funding.  
43.63A.135 Nonresidential youth services facilities—Competitive process—Recommendations to legislature for funding.  
43.63A.230 Employee ownership and self-management—Technical assistance and educational programs.  
43.63A.240 Repealed.  
43.63A.245 Repealed.  
43.63A.247 Repealed.  
43.63A.249 Repealed.  
43.63A.265 Repealed.  
43.63A.270 Repealed.  
43.63A.690 Minority and women-owned business enterprises—Linked deposit program.  
43.63A.715 Repealed.  
43.63A.750 Performing arts, art museums, cultural facilities—Competitive grant program for nonprofit organizations.

**43.63A.125 Nonresidential social services facilities—Assistance to nonprofit organizations—Competitive process—Recommendations to legislature for funding.** (1)

The department shall establish a competitive process to solicit proposals for and prioritize projects that assist nonprofit organizations in acquiring, constructing, or rehabilitating facilities used for the delivery of nonresidential social services.

(2) The department shall establish a competitive process to prioritize applications for the assistance as follows:

(a) The department shall conduct a statewide solicitation of project applications from local governments, nonprofit organizations, and other entities, as determined by the department. The department shall evaluate and rank applications in consultation with a citizen advisory committee using objective criteria. At a minimum, applicants must demonstrate that the requested assistance will increase the efficiency or quality of the social services it provides to citizens. The evaluation and ranking process shall also include an examination of existing assets that applicants may apply to projects. Grant assistance under this section shall not exceed twenty-five percent of the total cost of the project. The nonstate portion of the total project cost may include cash, the value of real property when acquired solely for the purpose of the project, and in-kind contributions.

(b) The department shall submit a prioritized list of recommended projects to the governor and the legislature in the department's biennial capital budget request beginning with

the 2001-2003 biennium and thereafter. For the 1999-2001 biennium, the department shall conduct a solicitation and ranking process, as described in (a) of this subsection, for projects to be funded by appropriations provided for this program in the 1999-2001 capital budget. The list shall include a description of each project, the amount of recommended state funding, and documentation of nonstate funds to be used for the project. The total amount of recommended state funding for projects on a biennial project list shall not exceed four million dollars. The department may provide an additional prioritized alternate project list which shall not exceed two million dollars. Except for the 1999-2001 biennium, the department shall not sign contracts or otherwise financially obligate funds under this section until the legislature has approved a specific list of projects.

(c) In contracts for grants authorized under this section the department shall include provisions which require that capital improvements shall be held by the grantee for a specified period of time appropriate to the amount of the grant and that facilities shall be used for the express purpose of the grant. If the grantee is found to be out of compliance with provisions of the contract, the grantee shall repay to the state general fund the principal amount of the grant plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the date of authorization of the grant. [2005 c 160 § 1; 1999 c 295 § 3; 1997 c 374 § 2.]

**Findings—1997 c 374:** "The legislature finds that nonprofit organizations provide a variety of social services that serve the needs of the citizens of Washington, including many services implemented under contract with state agencies. The legislature also finds that the efficiency and quality of these services may be enhanced by the provision of safe, reliable, and sound facilities, and that, in certain cases, it may be appropriate for the state to assist in the development of these facilities." [1997 c 374 § 1.]

**43.63A.135 Nonresidential youth services facilities—Competitive process—Recommendations to legislature for funding.** (1) The department of community, trade, and economic development must establish a competitive process to solicit proposals for and prioritize projects whose primary objective is to assist nonprofit youth organizations in acquiring, constructing, or rehabilitating facilities used for the delivery of nonresidential services, excluding outdoor athletic fields.

(2) The department of community, trade, and economic development must establish a competitive process to prioritize applications for the assistance as follows:

(a) The department of community, trade, and economic development must conduct a statewide solicitation of project applications from local governments, nonprofit organizations, and other entities, as determined by the department of community, trade, and economic development. The department of community, trade, and economic development must evaluate and rank applications in consultation with a citizen advisory committee using objective criteria. Projects must have a major recreational component, and must have either an educational or social service component. At a minimum, applicants must demonstrate that the requested assistance will increase the efficiency or quality of the services it provides to youth. The evaluation and ranking process must also include an examination of existing assets that applicants may apply to projects. Grant assistance under this section may not

exceed twenty-five percent of the total cost of the project. The nonstate portion of the total project cost may include cash, the value of real property when acquired solely for the purpose of the project, and in-kind contributions.

(b) The department of community, trade, and economic development must submit a prioritized list of recommended projects to the governor and the legislature in the department of community, trade, and economic development's biennial capital budget request beginning with the 2005-2007 biennium and thereafter. The list must include a description of each project, the amount of recommended state funding, and documentation of nonstate funds to be used for the project. The total amount of recommended state funding for projects on a biennial project list must not exceed two million dollars. The department of community, trade, and economic development may provide an additional prioritized alternate project list that must not exceed one million dollars. The department of community, trade, and economic development may not sign contracts or otherwise financially obligate funds under this section until the legislature has approved a specific list of projects.

(c) In contracts for grants authorized under this section the department of community, trade, and economic development must include provisions that require that capital improvements be held by the grantee for a specified period of time appropriate to the amount of the grant and that facilities be used for the express purpose of the grant. If the grantee is found to be out of compliance with provisions of the contract, the grantee must repay to the state general fund the principal amount of the grant plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the date of authorization of the grant. [2005 c 160 § 4; 2003 1st sp.s. c 7 § 2.]

**Findings—2003 1st sp.s. c 7:** "The legislature finds that nonprofit youth organizations provide a variety of services for the youth of Washington state, including many services that enable young people, especially those facing challenging and disadvantaged circumstances, to realize their full potential as productive, responsible, and caring citizens. The legislature also finds that the efficiency and quality of these services may be enhanced by the provision of safe, reliable, and sound facilities, and that, in certain cases, it may be appropriate for the state to assist in the development of these facilities." [2003 1st sp.s. c 7 § 1.]

**43.63A.230 Employee ownership and self-management—Technical assistance and educational programs.** The department of community, trade, and economic development shall provide technical assistance to cooperatives authorized under chapter 23.78 RCW and conduct educational programs on employee ownership and self-management. The department shall include information on the option of employee ownership wherever appropriate in its various programs. [2005 c 136 § 2; 1993 c 280 § 63; 1988 c 186 § 17; 1987 c 457 § 15.]

**Savings—Effective date—2005 c 136:** See notes following RCW 43.168.020.

**Effective date—Severability—1993 c 280:** See RCW 43.330.902 and 43.330.903.

**Effective date—1988 c 186 § 17:** "Section 17 of this act shall take effect June 30, 1993." [1988 c 186 § 18.]

**Severability—1987 c 457:** See RCW 23.78.902.

**43.63A.240 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**43.63A.245 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**43.63A.247 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**43.63A.249 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**43.63A.265 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**43.63A.270 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**43.63A.690 Minority and women-owned business enterprises—Linked deposit program.** (1) The department shall provide technical assistance and loan packaging services that enable minority and women-owned business enterprises to obtain financing under the linked deposit program created under RCW 43.86A.060.

(2) The department, in consultation with the office of minority and women's business enterprises, shall develop indicators to measure the performance of the linked deposit program in the areas of job creation or retention and providing access to capital to minority or women's business enterprises. [2005 c 302 § 6; 2002 c 305 § 3; 1993 c 512 § 31.]

**Intent—2005 c 302:** See note following RCW 43.86A.030.

**Finding—Intent—1993 c 512:** See note following RCW 43.86A.060.

**Short title—Part headings and section captions—Severability—Effective date—1993 c 512:** See RCW 43.172.900 through 43.172.903.

**43.63A.715 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**43.63A.750 Performing arts, art museums, cultural facilities—Competitive grant program for nonprofit organizations.** (1) A competitive grant program to assist nonprofit organizations in acquiring, constructing, or rehabilitating performing arts, art museums, and cultural facilities is created.

(2)(a) The department shall submit a list of recommended performing arts, art museum projects, and cultural organization projects eligible for funding to the governor and the legislature in the department's biennial capital budget request beginning with the 2001-2003 biennium and thereafter. The list, in priority order, shall include a description of each project, the amount of recommended state funding, and documentation of nonstate funds to be used for the project. The total amount of recommended state funding for projects on a biennial project list shall not exceed four million dollars. The department may provide an additional prioritized alternate project list which shall not exceed two million dollars.

(b) The department shall establish a competitive process to prioritize applications for state assistance as follows:

(i) The department shall conduct a statewide solicitation of project applications from nonprofit organizations, local

governments, and other entities, as determined by the department. The department shall evaluate and rank applications in consultation with a citizen advisory committee, including a representative from the state arts commission, using objective criteria. The evaluation and ranking process shall also consider local community support for projects and an examination of existing assets that applicants may apply to projects.

(ii) The department may establish the amount of state grant assistance for individual project applications but the amount shall not exceed twenty percent of the estimated total capital cost or actual cost of a project, whichever is less. The remaining portions of the project capital cost shall be a match from nonstate sources. The nonstate match may include cash, the value of real property when acquired solely for the purpose of the project, and in-kind contributions. The department is authorized to set matching requirements for individual projects. State assistance may be used to fund separate definable phases of a project if the project demonstrates adequate progress and has secured the necessary match funding.

(iii) The department shall not sign contracts or otherwise financially obligate funds under this section until the legislature has approved a specific list of projects. In contracts for grants authorized under this section, the department shall include provisions requiring that capital improvements be held by the grantee for a specified period of time appropriate to the amount of the grant and that facilities be used for the express purpose of the grant. If the grantee is found to be out of compliance with provisions of the contract, the grantee shall repay to the state general fund the principal amount of the grant plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the date of authorization of the grant. [2005 c 160 § 2; 1999 c 295 § 1.]

## Chapter 43.70 RCW

### DEPARTMENT OF HEALTH

#### Sections

43.70.005	Intent.
43.70.040	Secretary's powers—Rule-making authority—Report to the legislature.
43.70.050	Collection, use, and accessibility of health-related data. ( <i>Effective July 1, 2006.</i> )
43.70.110	License fees—Exemption—Waiver.
43.70.235	Health care disputes—Certifying independent review organizations—Application—Restrictions—Maximum fee schedule for conducting reviews—Rules.
43.70.250	License fees for professions, occupations, and businesses.
43.70.450	Repealed.
43.70.460	Retired primary and specialty care provider liability malpractice insurance—Program authorized.
43.70.470	Retired health care provider liability malpractice insurance—Conditions.
43.70.510	Health care services coordinated quality improvement program—Rules. ( <i>Effective until July 1, 2006.</i> )
43.70.510	Health care services coordinated quality improvement program—Rules. ( <i>Effective July 1, 2006.</i> )
43.70.540	Data collection—Legislative finding and intent.
43.70.690	State asthma plan.

**43.70.005 Intent.** The legislature finds and declares that it is of importance to the people of Washington state to live in a healthy environment and to expect a minimum standard of quality in health care. The legislature further finds that the social and economic vitality of the state depends on a healthy and productive population. The legislature further

declares where it is a duty of the state to assure a healthy environment and minimum standards of quality in health care facilities and among health care professionals, the ultimate responsibility for a healthy society lies with the citizens themselves.

For these reasons, the legislature recognizes the need for a strong, clear focus on health issues in state government and among state health agencies to give expression to the needs of individual citizens and local communities as they seek to preserve the public health. It is the intent of the legislature to form such focus by creating a single department in state government with the primary responsibilities for the preservation of public health, monitoring health care costs, the maintenance of minimal standards for quality in health care delivery, and the general oversight and planning for all the state's activities as they relate to the health of its citizenry.

Further, it is the intent of the legislature to improve illness and injury prevention and health promotion, and restore the confidence of the citizenry in the efficient and accountable expenditure of public funds on health activities that further the mission of the agency via grants and contracts, and to ensure that this new health agency delivers quality health services in an efficient, effective, and economical manner that is faithful and responsive to policies established by the legislature. [2005 c 32 § 1; 1989 1st ex.s. c 9 § 101.]

**43.70.040 Secretary's powers—Rule-making authority—Report to the legislature.** In addition to any other powers granted the secretary, the secretary may:

(1) Adopt, in accordance with chapter 34.05 RCW, rules necessary to carry out the provisions of chapter 9, Laws of 1989 1st ex. sess.: PROVIDED, That for rules adopted after July 23, 1995, the secretary may not rely solely on a section of law stating a statute's intent or purpose, on the enabling provisions of the statute establishing the agency, or on any combination of such provisions, for statutory authority to adopt any rule;

(2) Appoint such advisory committees as may be necessary to carry out the provisions of chapter 9, Laws of 1989 1st ex. sess. Members of such advisory committees are authorized to receive travel expenses in accordance with RCW 43.03.050 and 43.03.060. The secretary and the board of health shall review each advisory committee within their jurisdiction and each statutory advisory committee on a biennial basis to determine if such advisory committee is needed;

(3) Undertake studies, research, and analysis necessary to carry out the provisions of chapter 9, Laws of 1989 1st ex. sess. in accordance with RCW 43.70.050;

(4) Delegate powers, duties, and functions of the department to employees of the department as the secretary deems necessary to carry out the provisions of chapter 9, Laws of 1989 1st ex. sess.;

(5) Enter into contracts and enter into and distribute grants on behalf of the department to carry out the purposes of chapter 9, Laws of 1989 1st ex. sess. The department must report to the legislature a summary of the grants distributed under this authority, for each year of the first biennium after the department receives authority to distribute grants under this section, and make it electronically available;

(6) Act for the state in the initiation of, or the participation in, any intergovernmental program to the purposes of chapter 9, Laws of 1989 1st ex. sess.; or

(7) Solicit and accept gifts, grants, bequests, devises, or other funds from public and private sources. [2005 c 32 § 2; 2001 c 80 § 2; 1995 c 403 § 105; 1989 1st ex.s. c 9 § 106.]

**Findings—Intent—2001 c 80:** "(1) The legislature finds that developing, creating, and maintaining partnerships between the public and private sectors can enhance and augment current public health services. The legislature further finds that the department of health should have the ability to establish such partnerships, and seek out and accept gifts, grants, and other funding to advance worthy public health goals and programs.

(2) It is the intent of the legislature that gifts and other funds received by the department of health under the authority granted by RCW 43.70.040 may be used to expand or enhance program operations so long as program standards established by the department are maintained, but may not supplant or replace funds for federal, state, county, or city-supported programs." [2001 c 80 § 1.]

**Findings—Short title—Intent—1995 c 403:** See note following RCW 34.05.328.

**Part headings not law—Severability—1995 c 403:** See RCW 43.05.903 and 43.05.904.

**43.70.050 Collection, use, and accessibility of health-related data. (Effective July 1, 2006.)** (1) The legislature intends that the department and board promote and assess the quality, cost, and accessibility of health care throughout the state as their roles are specified in chapter 9, Laws of 1989 1st ex. sess. in accordance with the provisions of this chapter. In furtherance of this goal, the secretary shall create an ongoing program of data collection, storage, assessability, and review. The legislature does not intend that the department conduct or contract for the conduct of basic research activity. The secretary may request appropriations for studies according to this section from the legislature, the federal government, or private sources.

(2) All state agencies which collect or have access to population-based, health-related data are directed to allow the secretary access to such data. This includes, but is not limited to, data on needed health services, facilities, and personnel; future health issues; emerging bioethical issues; health promotion; recommendations from state and national organizations and associations; and programmatic and statutory changes needed to address emerging health needs. Private entities, such as insurance companies, health maintenance organizations, and private purchasers are also encouraged to give the secretary access to such data in their possession. The secretary's access to and use of all data shall be in accordance with state and federal confidentiality laws and ethical guidelines. Such data in any form where the patient or provider of health care can be identified shall not be disclosed, subject to disclosure according to chapter 42.56 RCW, discoverable or admissible in judicial or administrative proceedings. Such data can be used in proceedings in which the use of the data is clearly relevant and necessary and both the department and the patient or provider are parties.

(3) The department shall serve as the clearinghouse for information concerning innovations in the delivery of health care services, the enhancement of competition in the health care marketplace, and federal and state information affecting health care costs.

(4) The secretary shall review any data collected, pursuant to this chapter, to:

(a) Identify high-priority health issues that require study or evaluation. Such issues may include, but are not limited to:

- (i) Identification of variations of health practice which indicate a lack of consensus of appropriateness;
- (ii) Evaluation of outcomes of health care interventions to assess their benefit to the people of the state;
- (iii) Evaluation of specific population groups to identify needed changes in health practices and services;
- (iv) Evaluation of the risks and benefits of various incentives aimed at individuals and providers for both preventing illnesses and improving health services;
- (v) Identification and evaluation of bioethical issues affecting the people of the state; and
- (vi) Other such objectives as may be appropriate;

(b) Further identify a list of high-priority health study issues for consideration by the board, within their authority, for inclusion in the state health report required by RCW 43.20.050. The list shall specify the objectives of each study, a study timeline, the specific improvements in the health status of the citizens expected as a result of the study, and the estimated cost of the study; and

(c) Provide background for the state health report required by RCW 43.20.050.

(5) Any data, research, or findings may also be made available to the general public, including health professions, health associations, the governor, professional boards and regulatory agencies and any person or group who has allowed the secretary access to data.

(6) The secretary may charge a fee to persons requesting copies of any data, research, or findings. The fee shall be no more than necessary to cover the cost to the department of providing the copy. [2005 c 274 § 301; 1989 1st ex.s. c 9 § 107.]

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

**43.70.110 License fees—Exemption—Waiver.** (1) The secretary shall charge fees to the licensee for obtaining a license. After June 30, 1995, municipal corporations providing emergency medical care and transportation services pursuant to chapter 18.73 RCW shall be exempt from such fees, provided that such other emergency services shall only be charged for their pro rata share of the cost of licensure and inspection, if appropriate. The secretary may waive the fees when, in the discretion of the secretary, the fees would not be in the best interest of public health and safety, or when the fees would be to the financial disadvantage of the state.

(2) Except as provided in RCW 18.79.202, until June 30, 2013, fees charged shall be based on, but shall not exceed, the cost to the department for the licensure of the activity or class of activities and may include costs of necessary inspection.

(3) Department of health advisory committees may review fees established by the secretary for licenses and comment upon the appropriateness of the level of such fees. [2005 c 268 § 2; 1993 sp.s. c 24 § 918; 1989 1st ex.s. c 9 § 263.]

**Finding—2005 c 268:** See note following RCW 18.79.202.

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

[2005 RCW Supp—page 482]

**43.70.235 Health care disputes—Certifying independent review organizations—Application—Restrictions—Maximum fee schedule for conducting reviews—Rules.**

(1) The department shall adopt rules providing a procedure and criteria for certifying one or more organizations to perform independent review of health care disputes described in RCW 48.43.535.

(2) The rules must require that the organization ensure:

(a) The confidentiality of medical records transmitted to an independent review organization for use in independent reviews;

(b) That each health care provider, physician, or contract specialist making review determinations for an independent review organization is qualified. Physicians, other health care providers, and, if applicable, contract specialists must be appropriately licensed, certified, or registered as required in Washington state or in at least one state with standards substantially comparable to Washington state. Reviewers may be drawn from nationally recognized centers of excellence, academic institutions, and recognized leading practice sites. Expert medical reviewers should have substantial, recent clinical experience dealing with the same or similar health conditions. The organization must have demonstrated expertise and a history of reviewing health care in terms of medical necessity, appropriateness, and the application of other health plan coverage provisions;

(c) That any physician, health care provider, or contract specialist making a review determination in a specific review is free of any actual or potential conflict of interest or bias. Neither the expert reviewer, nor the independent review organization, nor any officer, director, or management employee of the independent review organization may have any material professional, familial, or financial affiliation with any of the following: The health carrier; professional associations of carriers and providers; the provider; the provider's medical or practice group; the health facility at which the service would be provided; the developer or manufacturer of a drug or device under review; or the enrollee;

(d) The fairness of the procedures used by the independent review organization in making the determinations;

(e) That each independent review organization make its determination:

(i) Not later than the earlier of:

(A) The fifteenth day after the date the independent review organization receives the information necessary to make the determination; or

(B) The twentieth day after the date the independent review organization receives the request that the determination be made. In exceptional circumstances, when the independent review organization has not obtained information necessary to make a determination, a determination may be made by the twenty-fifth day after the date the organization received the request for the determination; and

(ii) In cases of a condition that could seriously jeopardize the enrollee's health or ability to regain maximum function, not later than the earlier of:

(A) Seventy-two hours after the date the independent review organization receives the information necessary to make the determination; or

(B) The eighth day after the date the independent review organization receives the request that the determination be made;

(f) That timely notice is provided to enrollees of the results of the independent review, including the clinical basis for the determination;

(g) That the independent review organization has a quality assurance mechanism in place that ensures the timeliness and quality of review and communication of determinations to enrollees and carriers, and the qualifications, impartiality, and freedom from conflict of interest of the organization, its staff, and expert reviewers; and

(h) That the independent review organization meets any other reasonable requirements of the department directly related to the functions the organization is to perform under this section and RCW 48.43.535, and related to assessing fees to carriers in a manner consistent with the maximum fee schedule developed under this section.

(3) To be certified as an independent review organization under this chapter, an organization must submit to the department an application in the form required by the department. The application must include:

(a) For an applicant that is publicly held, the name of each stockholder or owner of more than five percent of any stock or options;

(b) The name of any holder of bonds or notes of the applicant that exceed one hundred thousand dollars;

(c) The name and type of business of each corporation or other organization that the applicant controls or is affiliated with and the nature and extent of the affiliation or control;

(d) The name and a biographical sketch of each director, officer, and executive of the applicant and any entity listed under (c) of this subsection and a description of any relationship the named individual has with:

(i) A carrier;

(ii) A utilization review agent;

(iii) A nonprofit or for-profit health corporation;

(iv) A health care provider;

(v) A drug or device manufacturer; or

(d)(i) through (v) of this subsection;

(e) The percentage of the applicant's revenues that are anticipated to be derived from reviews conducted under RCW 48.43.535;

(f) A description of the areas of expertise of the health care professionals and contract specialists making review determinations for the applicant; and

(g) The procedures to be used by the independent review organization in making review determinations regarding reviews conducted under RCW 48.43.535.

(4) If at any time there is a material change in the information included in the application under subsection (3) of this section, the independent review organization shall submit updated information to the department.

(5) An independent review organization may not be a subsidiary of, or in any way owned or controlled by, a carrier or a trade or professional association of health care providers or carriers.

(6) An independent review organization, and individuals acting on its behalf, are immune from suit in a civil action when performing functions under chapter 5, Laws of 2000.

However, this immunity does not apply to an act or omission made in bad faith or that involves gross negligence.

(7) Independent review organizations must be free from interference by state government in its functioning except as provided in subsection (8) of this section.

(8) The rules adopted under this section shall include provisions for terminating the certification of an independent review organization for failure to comply with the requirements for certification. The department may review the operation and performance of an independent review organization in response to complaints or other concerns about compliance. No later than January 1, 2006, the department shall develop a reasonable maximum fee schedule that independent review organizations shall use to assess carriers for conducting reviews authorized under RCW 48.43.535.

(9) In adopting rules for this section, the department shall take into consideration standards for independent review organizations adopted by national accreditation organizations. The department may accept national accreditation or certification by another state as evidence that an organization satisfies some or all of the requirements for certification by the department as an independent review organization. [2005 c 54 § 1; 2000 c 5 § 12.]

**Intent—Purpose—2000 c 5:** See RCW 48.43.005.

**Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5:** See notes following RCW 48.43.500.

**43.70.250 License fees for professions, occupations, and businesses.** It shall be the policy of the state of Washington that the cost of each professional, occupational, or business licensing program be fully borne by the members of that profession, occupation, or business. The secretary shall from time to time establish the amount of all application fees, license fees, registration fees, examination fees, permit fees, renewal fees, and any other fee associated with licensing or regulation of professions, occupations, or businesses administered by the department. In fixing said fees, the secretary shall set the fees for each program at a sufficient level to defray the costs of administering that program, except as provided in RCW 18.79.202 until June 30, 2013. All such fees shall be fixed by rule adopted by the secretary in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW. [2005 c 268 § 3; 1996 c 191 § 1; 1989 1st ex.s. c 9 § 319.]

**Finding—2005 c 268:** See note following RCW 18.79.202.

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

**43.70.460 Retired primary and specialty care provider liability malpractice insurance—Program authorized.** (1) The department may establish a program to purchase and maintain liability malpractice insurance for retired primary and specialty care providers who provide health care services to low-income patients. The following conditions apply to the program:

(a) Health care services shall be provided at clinics serving low-income patients that are public or private tax-exempt corporations or other established practice settings as defined by the department;

(b) Health care services provided at the clinics shall be offered to low-income patients based on their ability to pay;

(c) Retired health care providers providing health care services shall not receive compensation for their services; and

(d) The department shall contract only with a liability insurer authorized to offer liability malpractice insurance in the state.

(e) Specialists in this program will be limited to those whose malpractice insurance premiums are comparable to primary care providers.

(2) This section and RCW 43.70.470 shall not be interpreted to require a liability insurer to provide coverage to a health care provider should the insurer determine that coverage should not be offered to a health care provider because of past claims experience or for other appropriate reasons.

(3) The state and its employees who operate the program shall be immune from any civil or criminal action involving claims against clinics or health care providers that provided health care services under this section and RCW 43.70.470. This protection of immunity shall not extend to any clinic or health care provider participating in the program.

(4) The department may monitor the claims experience of retired health care providers covered by liability insurers contracting with the department.

(5) The department may provide liability insurance under chapter 113, Laws of 1992 only to the extent funds are provided for this purpose by the legislature. If there are insufficient funds to support all applications for liability insurance coverage, priority shall be given to those retired health care providers working at clinics operated by public or private tax-exempt corporations rather than clinics operated by for-profit corporations. [2005 c 156 § 1; 2004 c 184 § 1; 1993 c 492 § 276; 1992 c 113 § 2.]

**Finding—1993 c 492:** See note following RCW 28B.115.080.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

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

**Legislative declaration—1992 c 113:** "There are a number of retired physicians who wish to provide, or are providing, health care services to low-income patients without compensation. However, the cost of obtaining malpractice insurance is a burden that is deterring them from donating their time and services in treating the health problems of the poor. The necessity of maintaining malpractice insurance for those in practice is a significant reality in today's litigious society.

A program to alleviate the onerous costs of malpractice insurance for retired physicians providing uncompensated health care services to low-income patients will encourage philanthropy and augment state resources in providing for the health care needs of those who have no access to basic health care services.

An estimated sixteen percent of the nonelderly population do not have health insurance and lack access to even basic health care services. This is especially problematic for low-income persons who are young and who are either unemployed or have entry-level jobs without health care benefits. The majority of the uninsured, however, are working adults, and some twenty-nine percent are children.

The legislature declares that this act will increase the availability of primary care to low-income persons and is in the interest of the public health and safety." [1992 c 113 § 1.]

**43.70.470 Retired health care provider liability malpractice insurance—Conditions.** The department may establish by rule the conditions of participation in the liability insurance program by retired health care providers at clinics

utilizing retired health care providers for the purposes of this section and RCW 43.70.460. These conditions shall include, but not be limited to, the following:

(1) The participating health care provider associated with the clinic shall hold a valid license to practice as a physician under chapter 18.71 or 18.57 RCW, a naturopath under chapter 18.36A RCW, a physician assistant under chapter 18.71A or 18.57A RCW, an advanced registered nurse practitioner under chapter 18.79 RCW, a dentist under chapter 18.32 RCW, or other health professionals as may be deemed in short supply by the department. All health care providers must be in conformity with current requirements for licensure, including continuing education requirements;

(2) Health care shall be limited to noninvasive procedures and shall not include obstetrical care. Noninvasive procedures include injections, suturing of minor lacerations, and incisions of boils or superficial abscesses. Primary dental care shall be limited to diagnosis, oral hygiene, restoration, and extractions and shall not include orthodontia, or other specialized care and treatment;

(3) The provision of liability insurance coverage shall not extend to acts outside the scope of rendering health care services pursuant to this section and RCW 43.70.460;

(4) The participating health care provider shall limit the provision of health care services to primarily low-income persons provided that clinics may, but are not required to, provide means tests for eligibility as a condition for obtaining health care services;

(5) The participating health care provider shall not accept compensation for providing health care services from patients served pursuant to this section and RCW 43.70.460, nor from clinics serving these patients. "Compensation" shall mean any remuneration of value to the participating health care provider for services provided by the health care provider, but shall not be construed to include any nominal copayments charged by the clinic, nor reimbursement of related expenses of a participating health care provider authorized by the clinic in advance of being incurred; and

(6) The use of mediation or arbitration for resolving questions of potential liability may be used, however any mediation or arbitration agreement format shall be expressed in terms clear enough for a person with a sixth grade level of education to understand, and on a form no longer than one page in length. [2005 c 156 § 2; 2004 c 184 § 2; 1993 c 492 § 277; 1992 c 113 § 3.]

**Finding—1993 c 492:** See note following RCW 28B.115.080.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

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

**Legislative declaration—1992 c 113:** See note following RCW 43.70.460.

**43.70.510 Health care services coordinated quality improvement program—Rules.** (*Effective until July 1, 2006.*) (1)(a) Health care institutions and medical facilities, other than hospitals, that are licensed by the department, professional societies or organizations, health care service contractors, health maintenance organizations, health carriers approved pursuant to chapter 48.43 RCW, and any other person or entity providing health care coverage under chapter



48.42 RCW that is subject to the jurisdiction and regulation of any state agency or any subdivision thereof may maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice as set forth in RCW 70.41.200.

(b) All such programs shall comply with the requirements of RCW 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h) as modified to reflect the structural organization of the institution, facility, professional societies or organizations, health care service contractors, health maintenance organizations, health carriers, or any other person or entity providing health care coverage under chapter 48.42 RCW that is subject to the jurisdiction and regulation of any state agency or any subdivision thereof, unless an alternative quality improvement program substantially equivalent to RCW 70.41.200(1)(a) is developed. All such programs, whether complying with the requirement set forth in RCW 70.41.200(1)(a) or in the form of an alternative program, must be approved by the department before the discovery limitations provided in subsections (3) and (4) of this section and the exemption under \*RCW 42.17.310(1)(hh) and subsection (5) of this section shall apply. In reviewing plans submitted by licensed entities that are associated with physicians' offices, the department shall ensure that the exemption under \*RCW 42.17.310(1)(hh) and the discovery limitations of this section are applied only to information and documents related specifically to quality improvement activities undertaken by the licensed entity.

(2) Health care provider groups of five or more providers may maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice as set forth in RCW 70.41.200. All such programs shall comply with the requirements of RCW 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h) as modified to reflect the structural organization of the health care provider group. All such programs must be approved by the department before the discovery limitations provided in subsections (3) and (4) of this section and the exemption under \*RCW 42.17.310(1)(hh) and subsection (5) of this section shall apply.

(3) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee shall not be subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or boards under subsection (6) of this section is not subject to an action for civil damages or other relief as a result of the activity or its consequences. For the purposes of this section, sharing information is presumed to be in substantial good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(4) Information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee are not

subject to review or disclosure, except as provided in this section, or discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts that form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action challenging the termination of a contract by a state agency with any entity maintaining a coordinated quality improvement program under this section if the termination was on the basis of quality of care concerns, introduction into evidence of information created, collected, or maintained by the quality improvement committees of the subject entity, which may be under terms of a protective order as specified by the court; (e) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any and the reasons for the restrictions; or (f) in any civil action, discovery and introduction into evidence of the patient's medical records required by rule of the department of health to be made regarding the care and treatment received.

(5) Information and documents created specifically for, and collected and maintained by, a quality improvement committee are exempt from disclosure under chapter 42.17 RCW.

(6) A coordinated quality improvement program may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee or a peer review committee under RCW 4.24.250 with one or more other coordinated quality improvement programs maintained in accordance with this section or with RCW 70.41.200, a quality assurance committee maintained in accordance with RCW 18.20.390 or 74.42.640, or a peer review committee under RCW 4.24.250, for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under RCW 4.24.250 and any information and

documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (4) of this section and RCW 4.24.250.

(7) The department of health shall adopt rules as are necessary to implement this section. [2005 c 291 § 2; 2005 c 33 § 6; 2004 c 145 § 2; 1995 c 267 § 7; 1993 c 492 § 417.]

**Reviser's note:** \*(1) RCW 42.17.310 was recodified as RCW 42.56.210 pursuant to 2005 c 274 § 103, effective July 1, 2006.

(2) This section was amended by 2005 c 33 § 6 and by 2005 c 291 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—2005 c 33:** See note following RCW 18.20.390.

**Captions not law—Severability—Effective dates—1995 c 267:** See notes following RCW 43.70.052.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

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

**43.70.510 Health care services coordinated quality improvement program—Rules. (Effective July 1, 2006.)**

(1)(a) Health care institutions and medical facilities, other than hospitals, that are licensed by the department, professional societies or organizations, health care service contractors, health maintenance organizations, health carriers approved pursuant to chapter 48.43 RCW, and any other person or entity providing health care coverage under chapter 48.42 RCW that is subject to the jurisdiction and regulation of any state agency or any subdivision thereof may maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice as set forth in RCW 70.41.200.

(b) All such programs shall comply with the requirements of RCW 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h) as modified to reflect the structural organization of the institution, facility, professional societies or organizations, health care service contractors, health maintenance organizations, health carriers, or any other person or entity providing health care coverage under chapter 48.42 RCW that is subject to the jurisdiction and regulation of any state agency or any subdivision thereof, unless an alternative quality improvement program substantially equivalent to RCW 70.41.200(1)(a) is developed. All such programs, whether complying with the requirement set forth in RCW 70.41.200(1)(a) or in the form of an alternative program, must be approved by the department before the discovery limitations provided in subsections (3) and (4) of this section and the exemption under RCW 42.56.360(1)(c) and subsection (5) of this section shall apply. In reviewing plans submitted by licensed entities that are associated with physicians' offices, the department shall ensure that the exemption under RCW 42.56.360(1)(c) and the discovery limitations of this section are applied only to information and documents related specifically to quality improvement activities undertaken by the licensed entity.

(2) Health care provider groups of five or more providers may maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice as set forth in RCW 70.41.200. All such

programs shall comply with the requirements of RCW 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h) as modified to reflect the structural organization of the health care provider group. All such programs must be approved by the department before the discovery limitations provided in subsections (3) and (4) of this section and the exemption under RCW 42.56.360(1)(c) and subsection (5) of this section shall apply.

(3) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee shall not be subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or boards under subsection (6) of this section is not subject to an action for civil damages or other relief as a result of the activity or its consequences. For the purposes of this section, sharing information is presumed to be in substantial good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(4) Information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee are not subject to review or disclosure, except as provided in this section, or discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts that form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action challenging the termination of a contract by a state agency with any entity maintaining a coordinated quality improvement program under this section if the termination was on the basis of quality of care concerns, introduction into evidence of information created, collected, or maintained by the quality improvement committees of the subject entity, which may be under terms of a protective order as specified by the court; (e) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any and the reasons for the restrictions; or (f) in any civil action, discovery and introduction into evidence of the patient's medical records required by rule of the depart-

ment of health to be made regarding the care and treatment received.

(5) Information and documents created specifically for, and collected and maintained by, a quality improvement committee are exempt from disclosure under chapter 42.56 RCW.

(6) A coordinated quality improvement program may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee or a peer review committee under RCW 4.24.250 with one or more other coordinated quality improvement programs maintained in accordance with this section or with RCW 70.41.200, a quality assurance committee maintained in accordance with RCW 18.20.390 or 74.42.640, or a peer review committee under RCW 4.24.250, for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under RCW 4.24.250 and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (4) of this section and RCW 4.24.250.

(7) The department of health shall adopt rules as are necessary to implement this section. [2005 c 291 § 2; 2005 c 274 § 302; 2005 c 33 § 6; 2004 c 145 § 2; 1995 c 267 § 7; 1993 c 492 § 417.]

**Reviser's note:** This section was amended by 2005 c 33 § 6, 2005 c 274 § 302, and by 2005 c 291 § 2, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

**Findings—2005 c 33:** See note following RCW 18.20.390.

**Captions not law—Severability—Effective dates—1995 c 267:** See notes following RCW 43.70.052.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

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

**43.70.540 Data collection—Legislative finding and intent.** The legislature recognizes that the state patrol, the administrative office of the courts, the sheriffs' and police chiefs' association, the department of social and health services, the department of community, trade, and economic development, the sentencing guidelines commission, the department of corrections, and the superintendent of public instruction each have comprehensive data and analysis capabilities that have contributed greatly to our current understanding of crime and violence, and their causes.

The legislature finds, however, that a single health-oriented agency must be designated to provide consistent guide-

lines to all these groups regarding the way in which their data systems collect this important data. It is not the intent of the legislature by RCW 43.70.545 to transfer data collection requirements from existing agencies or to require the addition of major new data systems. It is rather the intent to make only the minimum required changes in existing data systems to increase compatibility and comparability, reduce duplication, and to increase the usefulness of data collected by these agencies in developing more accurate descriptions of violence. [2005 c 282 § 45; 1995 c 399 § 76; 1994 sp.s. c 7 § 201.]

**Legislative finding and intent—1994 sp.s. c 7:** "The legislature finds that the increasing violence in our society causes great concern for the immediate health and safety of our citizens and our social institutions. Youth violence is increasing at an alarming rate and young people between the ages of fifteen and twenty-four are at the highest risk of being perpetrators and victims of violence. Additionally, random violence, including homicide and the use of firearms, has dramatically increased over the last decade.

The legislature finds that violence is abhorrent to the aims of a free society and that it cannot be tolerated. State efforts at reducing violence must include changes in criminal penalties, reducing the unlawful use of and access to firearms, increasing educational efforts to encourage nonviolent means for resolving conflicts, and allowing communities to design their prevention efforts.

The legislature finds that the problem of violence can be addressed with many of the same approaches that public health programs have used to control other problems such as infectious disease, tobacco use, and traffic fatalities.

Addressing the problem of violence requires the concerted effort of all communities and all parts of state and local governments. It is the immediate purpose of chapter 7, Laws of 1994 sp. sess. to: (1) Prevent acts of violence by encouraging change in social norms and individual behaviors that have been shown to increase the risk of violence; (2) reduce the rate of at-risk children and youth, as defined in \*RCW 70.190.010; (3) increase the severity and certainty of punishment for youth and adults who commit violent acts; (4) reduce the severity of harm to individuals when violence occurs; (5) empower communities to focus their concerns and allow them to control the funds dedicated to empirically supported preventive efforts in their region; and (6) reduce the fiscal and social impact of violence on our society." [1994 sp.s. c 7 § 101.]

**\*Reviser's note:** The governor vetoed 1994 sp.s. c 7 § 302, which amended RCW 70.190.010 to define "at-risk children and youth." RCW 70.190.010 was subsequently amended by 1996 c 132 § 2, which now includes a definition for "at-risk children."

**Severability—1994 sp.s. c 7:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1994 sp.s. c 7 § 913.]

**Effective dates—Contingent expiration date—1994 sp.s. c 7:** "(1) Sections 201 through 204, 302, 323, 411, 412, 417, and 418 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 6, 1994].

(2) Sections 904 through 908 of this act shall take effect July 1, 1995.

(3) Notwithstanding other provisions of this section, if sections 901 through 909 of this act are referred to the voters at the next succeeding general election and sections 901 through 909 of this act are rejected by the voters, then the amendments by sections 510 through 512, 519, 521, 525, and 527 of this act shall expire on July 1, 1995." [1994 sp.s. c 7 § 915 (Referendum Bill No. 43, subsection (3) approved November 8, 1994).]

**\*Reviser's note:** Sections 901 through 909, chapter 7, Laws of 1994 sp. sess. were approved and ratified by the voters on November 8, 1994, in Referendum Bill No. 43. Therefore, the amendments to sections 510 through 512, 519, 521, 525, and 527, chapter 7, Laws of 1994 sp. sess. do not expire on July 1, 1995.

**43.70.690 State asthma plan.** (1) The department, in collaboration with its public and private partners, shall design a state asthma plan, based on clinically sound criteria including nationally recognized guidelines such as those established by the national asthma education prevention partner-

ship expert panel report guidelines for the diagnosis and management of asthma.

(2) The plan shall include recommendations in the following areas:

(a) Evidence-based processes for the prevention and management of asthma;

(b) Data systems that support asthma prevalence reporting, including population disparities and practice variation in the treatment of asthma;

(c) Quality improvement strategies addressing the successful diagnosis and management of the disease; and

(d) Cost estimates and sources of funding for plan implementation.

(3) The department shall submit the completed state plan to the governor and the legislature by December 1, 2005. After the initial state plan is submitted, the department shall provide progress reports to the governor and the legislature on a biennial basis beginning December 1, 2007.

(4) The department shall implement the state plan recommendations made under subsection (2) of this section only to the extent that federal, state, or private funds, including grants, are available for that purpose. [2005 c 462 § 4.]

**Findings—2005 c 462:** See note following RCW 28A.210.370.

### Chapter 43.72 RCW

## HEALTH SYSTEM REFORM—HEALTH SERVICES COMMISSION

### Sections

43.72.900 Health services account.

**43.72.900 Health services account.** (1) The health services account is created in the state treasury. Moneys in the account may be spent only after appropriation. Subject to the transfers described in subsection (3) of this section, moneys in the account may be expended only for maintaining and expanding health services access for low-income residents, maintaining and expanding the public health system, maintaining and improving the capacity of the health care system, containing health care costs, and the regulation, planning, and administering of the health care system.

(2) Funds deposited into the health services account under RCW 82.24.028 and \*82.26.028 shall be used solely as follows:

(a) Five million dollars for the state fiscal year beginning July 1, 2002, and five million dollars for the state fiscal year beginning July 1, 2003, shall be appropriated by the legislature for programs that effectively improve the health of low-income persons, including efforts to reduce diseases and illnesses that harm low-income persons. The department of health shall submit a report to the legislature on March 1, 2002, evaluating the cost-effectiveness of programs that improve the health of low-income persons and address diseases and illnesses that disproportionately affect low-income persons, and making recommendations to the legislature on which of these programs could most effectively utilize the funds appropriated under this subsection.

(b) Ten percent of the funds deposited into the health services account under RCW 82.24.028 and \*82.26.028 remaining after the appropriation under (a) of this subsection shall

be transferred no less frequently than annually by the treasurer to the tobacco prevention and control account established by RCW 43.79.480. The funds transferred shall be used exclusively for implementation of the Washington state tobacco prevention and control plan and shall be used only to supplement, and not supplant, funds in the tobacco prevention and control account as of January 1, 2001, however, these funds may be used to replace funds appropriated by the legislature for further implementation of the Washington state tobacco prevention and control plan for the biennium beginning July 1, 2001. For each state fiscal year beginning on and after July 1, 2002, the legislature shall appropriate no less than twenty-six million two hundred forty thousand dollars from the tobacco prevention and control account for implementation of the Washington state tobacco prevention and control plan.

(c) Because of its demonstrated effectiveness in improving the health of low-income persons and addressing illnesses and diseases that harm low-income persons, the remainder of the funds deposited into the health services account under RCW 82.24.028 and \*82.26.028 shall be appropriated solely for Washington basic health plan enrollment as provided in chapter 70.47 RCW. Funds appropriated under this subsection may be used to support outreach and enrollment activities only to the extent necessary to achieve the enrollment goals described in this section.

(3) Prior to expenditure for the purposes described in subsection (2) of this section, funds deposited into the health services account under RCW 82.24.028 and \*82.26.028 shall first be transferred to the following accounts to ensure the continued availability of previously dedicated revenues for certain existing programs:

(a) To the violence reduction and drug enforcement account under RCW 69.50.520, two million two hundred forty-nine thousand five hundred dollars for the state fiscal year beginning July 1, 2001, four million two hundred forty-eight thousand dollars for the state fiscal year beginning July 1, 2002, seven million seven hundred eighty-nine thousand dollars for the biennium beginning July 1, 2003, six million nine hundred thirty-two thousand dollars for the biennium beginning July 1, 2005, and six million nine hundred thirty-two thousand dollars for each biennium thereafter, as required by RCW 82.24.020(2);

(b) To the health services account under this section, nine million seventy-seven thousand dollars for the state fiscal year beginning July 1, 2001, seventeen million one hundred eighty-eight thousand dollars for the state fiscal year beginning July 1, 2002, thirty-one million seven hundred fifty-five thousand dollars for the biennium beginning July 1, 2003, twenty-eight million six hundred twenty-two thousand dollars for the biennium beginning July 1, 2005, and twenty-eight million six hundred twenty-two thousand dollars for each biennium thereafter, as required by RCW 82.24.020(3); and

(c) To the water quality account under RCW 70.146.030, two million two hundred three thousand five hundred dollars for the state fiscal year beginning July 1, 2001, four million two hundred forty-four thousand dollars for the state fiscal year beginning July 1, 2002, eight million one hundred eighty-two thousand dollars for the biennium beginning July 1, 2003, seven million eight hundred eighty-five thousand

dollars for the biennium beginning July 1, 2005, and seven million eight hundred eighty-five thousand dollars for each biennium thereafter, as required by RCW 82.24.027(2)(a).

During the 2005-2007 fiscal biennium, the legislature may transfer from the health services account such amounts as reflect the excess fund balance of the account to the state general fund. [2005 c 518 § 930; 2003 c 259 § 1; 2002 c 371 § 909; 2002 c 2 § 2 (Initiative Measure No. 773, approved November 6, 2001); 1993 c 492 § 469.]

**\*Reviser's note:** RCW 82.26.028 was repealed by 2005 c 180 § 23, effective July 1, 2005.

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

**Retroactive application—2003 c 259:** "This act is intended to apply retroactively to January 1, 2002." [2003 c 259 § 2.]

**Effective date—2003 c 259:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 12, 2003]." [2003 c 259 § 3.]

**Severability—Effective date—2002 c 371:** See notes following RCW 9.46.100.

**Intent—2002 c 2 (Initiative Measure No. 773):** See RCW 70.47.002.

## Chapter 43.79 RCW STATE FUNDS

### Sections

43.79.270	Unanticipated receipts—Duty of department heads.
43.79.280	Unanticipated receipts—Duty of governor on approval.
43.79.445	Death investigations account—Disbursal.
43.79.480	Tobacco settlement account—Transfers to life sciences discovery fund—Tobacco prevention and control account.

**43.79.270 Unanticipated receipts—Duty of department heads.** (1) Whenever any money, from the federal government, or from other sources, which was not anticipated in the budget approved by the legislature has actually been received and is designated to be spent for a specific purpose, the head of any department, agency, board, or commission through which such expenditure shall be made is to submit to the governor a statement which may be in the form of a request for an allotment amendment setting forth the facts constituting the need for such expenditure and the estimated amount to be expended: PROVIDED, That no expenditure shall be made in excess of the actual amount received, and no money shall be expended for any purpose except the specific purpose for which it was received. A copy of any proposal submitted to the governor to expend money from an appropriated fund or account in excess of appropriations provided by law which is based on the receipt of unanticipated revenues shall be submitted to the joint legislative audit and review committee and also to the standing committees on ways and means of the house and senate if the legislature is in session at the same time as it is transmitted to the governor.

(2) Notwithstanding subsection (1) of this section, whenever money from any source that was not anticipated in the transportation budget approved by the legislature has actually been received and is designated to be spent for a specific purpose, the head of a department, agency, board, or commission through which the expenditure must be made shall submit to the governor a statement, which may be in the form of a request for an allotment amendment, setting forth the facts

constituting the need for the expenditure and the estimated amount to be expended. However, no expenditure may be made in excess of the actual amount received, and no money may be expended for any purpose except the specific purpose for which it was received. A copy of any proposal submitted to the governor to expend money from an appropriated transportation fund or account in excess of appropriations provided by law that is based on the receipt of unanticipated revenues must be submitted, at a minimum, to the standing committees on transportation of the house and senate at the same time as it is transmitted to the governor. [2005 c 319 § 105; 1998 c 177 § 1; 1996 c 288 § 37; 1973 c 144 § 2; 1965 c 8 § 43.79.270. Prior: 1945 c 243 § 4; Rem. Supp. 1945 § 5517-13.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**43.79.280 Unanticipated receipts—Duty of governor on approval.** (1) If the governor approves such estimate in whole or part, he shall endorse on each copy of the statement his approval, together with a statement of the amount approved in the form of an allotment amendment, and transmit one copy to the head of the department, agency, board, or commission authorizing the expenditure. An identical copy of the governor's statement of approval and a statement of the amount approved for expenditure shall be transmitted simultaneously to the joint legislative audit and review committee and also to the standing committee on ways and means of the house and senate of all executive approvals of proposals to expend money in excess of appropriations provided by law.

(2) If the governor approves an estimate with transportation funding implications, in whole or part, he shall endorse on each copy of the statement his approval, together with a statement of the amount approved in the form of an allotment amendment, and transmit one copy to the head of the department, agency, board, or commission authorizing the expenditure. An identical copy of the governor's statement of approval of a proposal to expend transportation money in excess of appropriations provided by law and a statement of the amount approved for expenditure must be transmitted simultaneously to the standing committees on transportation of the house and senate. [2005 c 319 § 106; 1998 c 177 § 2; 1996 c 288 § 38; 1973 c 144 § 3; 1965 c 8 § 43.79.280. Prior: 1945 c 243 § 5; Rem. Supp. 1945 § 5517-14.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**43.79.445 Death investigations account—Disbursal.** There is established an account in the state treasury referred to as the "death investigations account" which shall exist for the purpose of receiving, holding, investing, and disbursing funds appropriated or provided in RCW 70.58.107 and any moneys appropriated or otherwise provided thereafter.

Moneys in the death investigations account shall be disbursed by the state treasurer once every year on December 31 and at any other time determined by the treasurer. The treasurer shall make disbursements to: The state toxicology laboratory, counties for the cost of autopsies, the state patrol for providing partial funding for the state dental identification system, the criminal justice training commission for training county coroners, medical examiners and their staff, and the

state forensic investigations council. Funds from the death investigations account may be appropriated during the 1997-99 biennium for the purposes of statewide child mortality reviews administered by the department of health. [2005 c 166 § 3; 1997 c 454 § 901; 1995 c 398 § 9; 1991 sp.s. c 13 § 21; 1991 c 176 § 4; 1986 c 31 § 2; 1985 c 57 § 41; 1983 1st ex.s. c 16 § 18.]

**Severability—1997 c 454:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 454 § 1801.]

**Effective date—1997 c 454:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 20, 1997]." [1997 c 454 § 1802.]

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

**Effective date—1986 c 31:** See note following RCW 28B.20.426.

**Effective date—1985 c 57:** See note following RCW 18.04.105.

**Severability—Effective date—1983 1st ex.s. c 16:** See RCW 43.103.900 and 43.103.901.

**43.79.480 Tobacco settlement account—Transfers to life sciences discovery fund—Tobacco prevention and control account.** (1) Moneys received by the state of Washington in accordance with the settlement of the state's legal action against tobacco product manufacturers, exclusive of costs and attorneys' fees, shall be deposited in the tobacco settlement account created in this section except as these moneys are sold or assigned under chapter 43.340 RCW.

(2) The tobacco settlement account is created in the state treasury. Moneys in the tobacco settlement account may only be transferred to the health services account for the purposes set forth in RCW 43.72.900, and to the tobacco prevention and control account for purposes set forth in this section. The legislature shall transfer amounts received as strategic contribution payments as defined in RCW 43.350.010 to the life sciences discovery fund created in RCW 43.350.070.

(3) The tobacco prevention and control account is created in the state treasury. The source of revenue for this account is moneys transferred to the account from the tobacco settlement account, investment earnings, donations to the account, and other revenues as directed by law. Expenditures from the account are subject to appropriation. [2005 c 424 § 12; 2002 c 365 § 15; 1999 c 309 § 927.]

**Captions not law—Liberal construction—Severability—Effective dates—2005 c 424:** See RCW 43.350.900 through 43.350.903.

**Captions not law—Severability—Effective date—2002 c 365:** See RCW 43.340.900 through 43.340.902.

**Effective dates—1999 c 309 §§ 927-929, 931, and 1101-1902:** "(1) Sections 927, 928, 931, and 1101 through 1902 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [May 14, 1999].

(2) Section 929 of this act takes effect September 1, 2000." [1999 c 309 § 2002.]

**Severability—1999 c 309:** See note following RCW 41.06.152.

[2005 RCW Supp—page 490]

## Chapter 43.79A RCW

### TREASURER'S TRUST FUND

#### Sections

43.79A.040 Management—Income—Investment income account—Distribution.

**43.79A.040 Management—Income—Investment income account—Distribution.** (1) Money in the treasurer's trust fund may be deposited, invested, and reinvested by the state treasurer in accordance with RCW 43.84.080 in the same manner and to the same extent as if the money were in the state treasury.

(2) All income received from investment of the treasurer's trust fund shall be set aside in an account in the treasury trust fund to be known as the investment income account.

(3) The investment income account may be utilized for the payment of purchased banking services on behalf of treasurer's trust funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasurer or affected state agencies. The investment income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4)(a) Monthly, the state treasurer shall distribute the earnings credited to the investment income account to the state general fund except under (b) and (c) of this subsection.

(b) The following accounts and funds shall receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The Washington promise scholarship account, the college savings program account, the Washington advanced college tuition payment program account, the agricultural local fund, the American Indian scholarship endowment fund, the foster care scholarship endowment fund, the foster care endowed scholarship trust fund, the students with dependents grant account, the basic health plan self-insurance reserve account, the contract harvesting revolving account, the Washington state combined fund drive account, the commemorative works account, the Washington international exchange scholarship endowment fund, the developmental disabilities endowment trust fund, the energy account, the fair fund, the fruit and vegetable inspection account, the future teachers conditional scholarship account, the game farm alternative account, the grain inspection revolving fund, the juvenile accountability incentive account, the law enforcement officers' and fire fighters' plan 2 expense fund, the local tourism promotion account, the produce railcar pool account, the rural rehabilitation account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund, the sulfur dioxide abatement account, the children's trust fund, the Washington horse racing commission Washington bred owners' bonus fund account, the Washington horse racing commission class C purse fund account, the individual development account program account, the Washington horse racing commission operating account (earnings from the Washington horse racing commission operating account must be credited to the Washington horse racing commission class C purse fund account), and the life sciences

discovery fund. However, the earnings to be distributed shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(c) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advanced right of way revolving fund, the advanced environmental mitigation revolving account, the city and county advance right-of-way revolving fund, the federal narcotics asset forfeitures account, the high occupancy vehicle account, the local rail service assistance account, and the miscellaneous transportation programs account.

(5) In conformance with Article II, section 37 of the state Constitution, no trust accounts or funds shall be allocated earnings without the specific affirmative directive of this section. [2005 c 424 § 18; 2005 c 402 § 8; 2005 c 215 § 10; 2005 c 16 § 2. Prior: 2004 c 246 § 8; 2004 c 58 § 10; prior: 2003 c 403 § 9; 2003 c 313 § 10; 2003 c 191 § 7; 2003 c 148 § 15; 2003 c 92 § 8; 2003 c 19 § 12; prior: 2002 c 322 § 5; 2002 c 204 § 7; 2002 c 61 § 6; prior: 2001 c 201 § 4; 2001 c 184 § 4; 2000 c 79 § 45; prior: 1999 c 384 § 8; 1999 c 182 § 2; 1998 c 268 § 1; prior: 1997 c 368 § 8; 1997 c 289 § 13; 1997 c 220 § 221 (Referendum Bill No. 48, approved June 17, 1997); 1997 c 140 § 6; 1997 c 94 § 3; 1996 c 253 § 409; prior: 1995 c 394 § 2; 1995 c 365 § 1; prior: 1993 sp.s. c 8 § 2; 1993 c 500 § 5; 1991 sp.s. c 13 § 82; 1973 1st ex.s. c 15 § 4.]

**Reviser's note:** This section was amended by 2005 c 16 § 2, 2005 c 215 § 10, 2005 c 402 § 8, and by 2005 c 424 § 18, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Captions not law—Liberal construction—Severability—Effective dates—2005 c 424:** See RCW 43.350.900 through 43.350.903.

**SEED act—Findings—Purpose—Short title—2005 c 402:** See RCW 43.31.450 and 43.31.485.

**Effective date—2004 c 246:** See note following RCW 67.16.270.

**Intent—2003 c 403:** See RCW 70.210.010.

**Findings—Severability—2003 c 313:** See notes following RCW 79.15.500.

**Severability—Effective date—2003 c 92:** See RCW 41.26.905 and 41.26.906.

**Finding—Intent—Short title—Captions not law—2003 c 19:** See RCW 28B.133.005, 28B.133.900, and 28B.133.901.

**Effective date—2002 c 322:** See note following RCW 15.17.240.

**Effective date—2002 c 204:** See RCW 28B.119.900.

**Effective date—Severability—2000 c 79:** See notes following RCW 48.04.010.

**Intent—Captions not law—1999 c 384:** See notes following RCW 43.330.200.

**Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368:** See notes following RCW 82.08.810.

**Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220:** See RCW 36.102.800 through 36.102.803.

**Part headings not law—Severability—1997 c 220:** See RCW 36.102.900 and 36.102.901.

**Intent—1997 c 140:** See note following RCW 47.12.330.

**Effective date—1997 c 94:** See note following RCW 47.04.210.

**Findings—Purpose—Severability—Part headings not law—1996 c 253:** See notes following RCW 28B.109.010.

**Effective date—1995 c 394:** See note following RCW 43.84.092.

**Effective date—1995 c 365:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and shall take effect June 1, 1995." [1995 c 365 § 2.]

**Effective date—Application—1993 sp.s. c 8:** See note following RCW 43.84.092.

**Finding—Severability—Effective date—1993 c 500:** See notes following RCW 43.41.180.

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

## Chapter 43.84 RCW

### INVESTMENTS AND INTERFUND LOANS

#### Sections

- 43.84.092 Deposit of surplus balance investment earnings—Treasury income account—Accounts and funds credited. (*Expires July 1, 2006.*)
- 43.84.092 Deposit of surplus balance investment earnings—Treasury income account—Accounts and funds credited. (*Effective July 1, 2006.*)

**43.84.092 Deposit of surplus balance investment earnings—Treasury income account—Accounts and funds credited. (*Expires July 1, 2006.*)** (1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The capitol building construction account, the Cedar River channel construction and operation account, the Central Washington Uni-



versity capital projects account, the charitable, educational, penal and reformatory institutions account, the common school construction fund, the county criminal justice assistance account, the county sales and use tax equalization account, the data processing building construction account, the deferred compensation administrative account, the deferred compensation principal account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the education construction fund, the education legacy trust account, the election account, the emergency reserve fund, The Evergreen State College capital projects account, the federal forest revolving account, the freight mobility investment account, the health services account, the public health services account, the health system capacity account, the personal health services account, the state higher education construction account, the higher education construction account, the highway infrastructure account, the high-occupancy toll lanes operations account, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the medical aid account, the mobile home park relocation fund, the multimodal transportation account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the oyster reserve land account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the Puyallup tribal settlement account, the real estate appraiser commission account, the regional transportation investment district account, the resource management cost account, the rural Washington loan fund, the site closure account, the small city pavement and sidewalk account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the transportation infrastructure account, the transportation partnership account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer fire fighters' and reserve officers' relief and pension principal fund, the volunteer fire fighters' and reserve officers' administrative fund, the Washington fruit express account, the Washington judicial retirement system account, the Washington law enforcement officers' and fire fighters' system plan 1 retirement account, the Washington law enforcement officers' and fire fighters' system plan 2 retirement account, the Washington school employees' retirement system com-

bined plan 2 and 3 account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts. All earnings to be distributed under this subsection (4)(a) shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(b) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the county arterial preservation account, the department of licensing services account, the essential rail assistance account, the ferry bond retirement fund, the grade crossing protective fund, the high capacity transportation account, the highway bond retirement fund, the highway safety account, the motor vehicle fund, the motorcycle safety education account, the pilotage account, the public transportation systems account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the recreational vehicle account, the rural arterial trust account, the safety and education account, the special category C account, the state patrol highway account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, and the urban arterial trust account.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section. [2005 c 514 § 1105; 2005 c 353 § 3; 2005 c 339 § 22; 2005 c 314 § 109; 2005 c 312 § 7; 2005 c 94 § 1; 2005 c 83 § 4. Prior: (2005 c 353 § 2 expired July 1, 2005); 2003 c 361 § 602; 2003 c 324 § 1; 2003 c 150 § 2; 2003 c 48 § 2; prior: 2002 c 242 § 2; 2002 c 114 § 24; 2002 c 56 § 402; prior: 2001 2nd sp.s. c 14 § 608; (2001 2nd sp.s. c 14 § 607 expired March 1, 2002); 2001 c 273 § 6; (2001 c 273 § 5 expired March 1, 2002); 2001 c 141 § 3; (2001 c 141 § 2 expired March 1, 2002); 2001 c 80 § 5; (2001 c 80 § 4 expired March 1, 2002); 2000 2nd sp.s. c 4 § 6; prior: 2000 2nd sp.s. c 4 § 5; (2000 2nd sp.s. c 4 §§ 3, 4 expired September 1, 2000); 2000 c 247 § 702; 2000 c 79 § 39; (2000 c 79 §§ 37, 38 expired September 1, 2000); prior: 1999 c 380 § 9; 1999 c 380 § 8; 1999 c 309 § 929; (1999 c 309 § 928 expired September 1, 2000); 1999 c 268 § 5; (1999 c 268 § 4 expired September 1, 2000); 1999 c 94 § 4; (1999 c 94 §§ 2, 3 expired September 1, 2000); 1998 c 341 § 708; 1997 c 218 § 5; 1996 c 262 § 4; prior: 1995 c 394 § 1; 1995 c 122 § 12; prior: 1994 c 2 § 6 (Initiative Measure No. 601, approved November 2, 1993); 1993 sp.s. c 25 § 511; 1993 sp.s. c 8 § 1; 1993 c 500 § 6; 1993 c 492 § 473; 1993 c 445 § 4; 1993 c 329 § 2; 1993 c 4 § 9; 1992 c 235 § 4; 1991 sp.s. c 13 § 57; 1990 2nd ex.s. c 1 § 204; 1989 c 419 § 12; 1985 c 57 § 51.]



**Reviser's note:** This section was amended by 2005 c 94 § 1, 2005 c 312 § 7, 2005 c 314 § 109, 2005 c 339 § 22, 2005 c 353 § 3, and by 2005 c 514 § 1105, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Expiration date—2005 c 514 § 1105:** "Section 1105 of this act expires July 1, 2006." [2005 c 514 § 1314.]

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Expiration dates—2005 c 353 §§ 2 and 3:** "(1) Section 2 of this act expires July 1, 2005.

(2) Section 3 of this act expires July 1, 2006." [2005 c 353 § 8.]

**Effective dates—2005 c 353:** See note following RCW 71A.20.170.

**Expiration date—2005 c 339 § 22:** "Section 22 of this act expires July 1, 2006." [2005 c 339 § 24.]

**Effective dates—2005 c 339:** See notes following RCW 18.140.005.

**Expiration date—2005 c 314 § 109:** "Section 109 of this act expires July 1, 2006." [2005 c 314 § 406.]

**Part headings not law—2005 c 314:** See note following RCW 46.17.010.

**Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401:** See note following RCW 46.68.290.

**Expiration dates—2005 c 312 §§ 5 and 7:** See note following RCW 42.17.310.

**Intent—Captions—2005 c 312:** See notes following RCW 47.56.401.

**Effective dates—2005 c 94:** "(1) Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005.

(2) Section 2 of this act takes effect July 1, 2006." [2005 c 94 § 3.]

**Expiration date—2005 c 94 § 1:** "Section 1 of this act expires July 1, 2006." [2005 c 94 § 4.]

**Expiration date—2005 c 83 § 4:** "Section 4 of this act expires July 1, 2006." [2005 c 83 § 7.]

**Findings—Effective dates—2005 c 83:** See notes following RCW 47.26.340.

**Findings—Part headings not law—Severability—2003 c 361:** See notes following RCW 82.36.025.

**Effective dates—2003 c 361:** See note following RCW 82.08.020.

**Effective date—2003 c 150 §§ 2 and 3:** "Sections 2 and 3 of this act take effect July 1, 2005." [2003 c 150 § 4.]

**Findings—Intent—2003 c 150; 2002 c 242:** See note following RCW 43.160.085.

**Effective date—2003 c 48:** See note following RCW 29A.04.440.

**Finding—Intent—2002 c 114:** See RCW 47.46.011.

**Captions not law—2002 c 114:** See note following RCW 47.46.011.

**Captions and subheadings not law—Severability—2002 c 56:** See RCW 36.120.900 and 36.120.901.

**Effective date—2001 2nd sp.s. c 14 § 608:** "Section 608 of this act takes effect March 1, 2002." [2001 2nd sp.s. c 14 § 611.]

**Expiration date—2001 2nd sp.s. c 14 § 607:** "Section 607 of this act expires March 1, 2002." [2001 2nd sp.s. c 14 § 610.]

**Severability—Effective date—2001 2nd sp.s. c 14:** See notes following RCW 47.04.210.

**Effective date—2001 c 273 § 6:** "Section 6 of this act takes effect March 1, 2002." [2001 c 273 § 8.]

**Expiration date—2001 c 273 § 5:** "Section 5 of this act expires March 1, 2002." [2001 c 273 § 7.]

**Effective date—2001 c 141 § 3:** "Section 3 of this act takes effect March 1, 2002." [2001 c 141 § 6.]

**Expiration date—2001 c 141 § 2:** "Section 2 of this act expires March 1, 2002." [2001 c 141 § 5.]

**Purpose—2001 c 141:** "This act is needed to comply with federal law, which is the source of funds in the drinking water assistance account, used to

fund the Washington state drinking water loan program as part of the federal safe drinking water act." [2001 c 141 § 1.]

**Effective date—2001 c 80 § 5:** "Section 5 of this act takes effect March 1, 2002." [2001 c 80 § 7.]

**Expiration date—2001 c 80 § 4:** "Section 4 of this act expires March 1, 2002." [2001 c 80 § 6.]

**Findings—Intent—2001 c 80:** See note following RCW 43.70.040.

**Expiration date—2000 2nd sp.s. c 4 §§ 3 and 4:** "Sections 3 and 4 of this act expire September 1, 2000." [2000 2nd sp.s. c 4 § 37.]

**Effective date—2000 2nd sp.s. c 4 §§ 1-3 and 20:** See note following RCW 82.08.020.

**Effective dates—2000 2nd sp.s. c 4 §§ 4-10:** See note following RCW 43.89.010.

**Effective dates—Subchapter headings not law—2000 c 247:** See RCW 41.40.931 and 41.40.932.

**Expiration date—2000 c 79 §§ 37 and 38:** "Sections 37 and 38 of this act expire September 1, 2000." [2000 c 79 § 49.]

**Effective dates—2000 c 79 §§ 26, 38, and 39:** See note following RCW 48.43.041.

**Severability—2000 c 79:** See note following RCW 48.04.010.

**Severability—Effective date—1999 c 380:** See RCW 43.99P.900 and 43.99P.901.

**Expiration date—1999 c 309 § 928:** "Section 928 of this act expires September 1, 2000." [1999 c 309 § 930.]

**Effective dates—1999 c 309 §§ 927-929, 931, and 1101-1902:** See note following RCW 43.79.480.

**Severability—1999 c 309:** See note following RCW 41.06.152.

**Effective date—1999 c 268 § 5:** "Section 5 of this act takes effect September 1, 2000." [1999 c 268 § 7.]

**Expiration date—1999 c 268 § 4:** "Section 4 of this act expires September 1, 2000." [1999 c 268 § 6.]

**Expiration date—1999 c 94 §§ 2 and 3:** "Sections 2 and 3 of this act expire September 1, 2000." [1999 c 94 § 36.]

**Legislative finding—1999 c 94:** "The legislature finds that a periodic review of the accounts and their uses is necessary. While creating new accounts may facilitate the implementation of legislative intent, the creation of too many accounts limits the effectiveness of performance-based budgeting. Too many accounts also limit the flexibility of the legislature to address emerging and changing issues in addition to creating administrative burdens for the responsible agencies. Accounts created for specific purposes may no longer be valid or needed. Accordingly, this act eliminates accounts that are not in use or are unneeded and consolidates accounts that are similar in nature." [1999 c 94 § 1.]

**Effective dates—1999 c 94:** "(1) Sections 1, 2, 5 through 24, 29 through 31, and 33 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 1999.

(2) Section 4 of this act takes effect September 1, 2000.

(3) Sections 32 and 37 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect June 30, 1999.

(4) Sections 3, 25 through 28, and 34 of this act take effect July 1, 2000." [1999 c 94 § 35.]

**Effective date—1998 c 341:** See RCW 41.35.901.

**Findings—Effective date—1997 c 218:** See notes following RCW 70.119.030.

**Transportation infrastructure account—Highway infrastructure account—Finding—Intent—Purpose—1996 c 262:** See RCW 82.44.195.

**Effective date—1996 c 262:** See note following RCW 82.44.190.

**Effective date—1995 c 394:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 1, 1995." [1995 c 394 § 3.]

**Declaration—Intent—Purpose—1995 c 122:** See RCW 59.21.006.

**Severability—Effective date—1995 c 122:** See RCW 59.21.904 and 59.21.905.

**Severability—Effective dates—1994 c 2 (Initiative Measure No. 601):** See RCW 43.135.903 and 43.135.904.

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Findings—Intent—1993 sp.s. c 25:** See note following RCW 82.45.010.

**Effective date—Application—1993 sp.s. c 8:** "This act shall take effect July 1, 1993, but shall not be effective for earnings on balances prior to July 1, 1993." [1993 sp.s. c 8 § 3.]

**Finding—Severability—Effective date—1993 c 500:** See notes following RCW 43.41.180.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

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

**Effective date—1993 c 329:** See note following RCW 90.50A.020.

**Legislative declaration—Effective date—1993 c 4:** See notes following RCW 47.56.770.

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

**Applicability—1990 2nd ex.s. c 1:** See note following RCW 82.14.050.

**Severability—1990 2nd ex.s. c 1:** See note following RCW 82.14.300.

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

**Effective date—1985 c 57:** See note following RCW 18.04.105.

**43.84.092 Deposit of surplus balance investment earnings—Treasury income account—Accounts and funds credited. (Effective July 1, 2006.)** (1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state trea-

surer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the common school construction fund, the county criminal justice assistance account, the county sales and use tax equalization account, the data processing building construction account, the deferred compensation administrative account, the deferred compensation principal account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the education construction fund, the education legacy trust account, the election account, the emergency reserve fund, The Evergreen State College capital projects account, the federal forest revolving account, the freight mobility investment account, the health services account, the public health services account, the health system capacity account, the personal health services account, the state higher education construction account, the higher education construction account, the highway infrastructure account, the high-occupancy toll lanes operations account, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the medical aid account, the mobile home park relocation fund, the multimodal transportation account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the oyster reserve land account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public works assistance account, the Puyallup tribal settlement account, the real estate appraiser commission account, the regional transportation investment district account, the resource management cost account, the rural Washington loan fund, the site closure account, the small city pavement and sidewalk account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the transportation infrastructure account, the transportation partnership account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer fire fighters' and

reserve officers' relief and pension principal fund, the volunteer fire fighters' and reserve officers' administrative fund, the Washington fruit express account, the Washington judicial retirement system account, the Washington law enforcement officers' and fire fighters' system plan 1 retirement account, the Washington law enforcement officers' and fire fighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts. All earnings to be distributed under this subsection (4)(a) shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(b) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the county arterial preservation account, the department of licensing services account, the essential rail assistance account, the ferry bond retirement fund, the grade crossing protective fund, the high capacity transportation account, the highway bond retirement fund, the highway safety account, the motor vehicle fund, the motorcycle safety education account, the pilotage account, the public transportation systems account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the recreational vehicle account, the rural arterial trust account, the safety and education account, the special category C account, the state patrol highway account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, and the urban arterial trust account.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section. [2005 c 514 § 1106; 2005 c 353 § 4; 2005 c 339 § 23; 2005 c 314 § 110; 2005 c 312 § 8; 2005 c 94 § 2; 2005 c 83 § 5. Prior: (2005 c 353 § 2 expired July 1, 2005); 2004 c 242 § 60; prior: 2003 c 361 § 602; 2003 c 324 § 1; 2003 c 150 § 2; 2003 c 48 § 2; prior: 2002 c 242 § 2; 2002 c 114 § 24; 2002 c 56 § 402; prior: 2001 2nd sp.s. c 14 § 608; (2001 2nd sp.s. c 14 § 607 expired March 1, 2002); 2001 c 273 § 6; (2001 c 273 § 5 expired March 1, 2002); 2001 c 141 § 3; (2001 c 141 § 2 expired March 1, 2002); 2001 c 80 § 5; (2001 c 80 § 4 expired March 1, 2002); 2000 2nd sp.s. c 4 § 6; prior: 2000 2nd sp.s. c 4 § 5; (2000 2nd sp.s. c 4 § 3, 4 expired September 1, 2000); 2000 c 247 § 702; 2000 c 79 § 39; (2000 c 79 §§ 37, 38 expired September 1, 2000); prior: 1999 c 380 § 9; 1999 c 380 § 8; 1999 c 309 § 929; (1999 c 309 § 928 expired September 1, 2000); 1999 c 268 § 5; (1999 c 268 § 4 expired September 1, 2000); 1999 c 94 § 4; (1999 c 94 §§ 2, 3 expired

September 1, 2000); 1998 c 341 § 708; 1997 c 218 § 5; 1996 c 262 § 4; prior: 1995 c 394 § 1; 1995 c 122 § 12; prior: 1994 c 2 § 6 (Initiative Measure No. 601, approved November 2, 1993); 1993 sp.s. c 25 § 511; 1993 sp.s. c 8 § 1; 1993 c 500 § 6; 1993 c 492 § 473; 1993 c 445 § 4; 1993 c 329 § 2; 1993 c 4 § 9; 1992 c 235 § 4; 1991 sp.s. c 13 § 57; 1990 2nd ex.s. c 1 § 204; 1989 c 419 § 12; 1985 c 57 § 51.]

**Reviser's note:** This section was amended by 2005 c 94 § 2, 2005 c 312 § 8, 2005 c 314 § 110, 2005 c 339 § 23, 2005 c 353 § 4, and by 2005 c 514 § 1106, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2005 c 514 § 1106:** "Section 1106 of this act takes effect July 1, 2006." [2005 c 514 § 1313.]

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Effective dates—2005 c 353:** See note following RCW 71A.20.170.

**Effective date—2005 c 339 § 23:** "Section 23 of this act takes effect July 1, 2006." [2005 c 339 § 25.]

**Effective dates—2005 c 314 §§ 110 and 201-206:** See note following RCW 46.17.010.

**Part headings not law—2005 c 314:** See note following RCW 46.17.010.

**Effective dates—2005 c 312 §§ 6 and 8:** See note following RCW 42.17.310.

**Intent—Captions—2005 c 312:** See notes following RCW 47.56.401.

**Effective dates—2005 c 94:** "(1) Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005.

(2) Section 2 of this act takes effect July 1, 2006." [2005 c 94 § 3.]

**Findings—Effective dates—2005 c 83:** See notes following RCW 47.26.340.

**Effective date—2004 c 242:** See RCW 41.37.901.

**Findings—Part headings not law—Severability—2003 c 361:** See notes following RCW 82.36.025.

**Effective dates—2003 c 361:** See note following RCW 82.08.020.

**Effective date—2003 c 150 §§ 2 and 3:** "Sections 2 and 3 of this act take effect July 1, 2005." [2003 c 150 § 4.]

**Findings—Intent—2003 c 150; 2002 c 242:** See note following RCW 43.160.085.

**Effective date—2003 c 48:** See note following RCW 29A.04.440.

**Finding—Intent—2002 c 114:** See RCW 47.46.011.

**Captions not law—2002 c 114:** See note following RCW 47.46.011.

**Captions and subheadings not law—Severability—2002 c 56:** See RCW 36.120.900 and 36.120.901.

**Effective date—2001 2nd sp.s. c 14 § 608:** "Section 608 of this act takes effect March 1, 2002." [2001 2nd sp.s. c 14 § 611.]

**Expiration date—2001 2nd sp.s. c 14 § 607:** "Section 607 of this act expires March 1, 2002." [2001 2nd sp.s. c 14 § 610.]

**Severability—Effective date—2001 2nd sp.s. c 14:** See notes following RCW 47.04.210.

**Effective date—2001 c 273 § 6:** "Section 6 of this act takes effect March 1, 2002." [2001 c 273 § 8.]

**Expiration date—2001 c 273 § 5:** "Section 5 of this act expires March 1, 2002." [2001 c 273 § 7.]

**Effective date—2001 c 141 § 3:** "Section 3 of this act takes effect March 1, 2002." [2001 c 141 § 6.]

**Expiration date—2001 c 141 § 2:** "Section 2 of this act expires March 1, 2002." [2001 c 141 § 5.]

**Purpose—2001 c 141:** "This act is needed to comply with federal law, which is the source of funds in the drinking water assistance account, used to fund the Washington state drinking water loan program as part of the federal safe drinking water act." [2001 c 141 § 1.]

**Effective date—2001 c 80 § 5:** "Section 5 of this act takes effect March 1, 2002." [2001 c 80 § 7.]

**Expiration date—2001 c 80 § 4:** "Section 4 of this act expires March 1, 2002." [2001 c 80 § 6.]

**Findings—Intent—2001 c 80:** See note following RCW 43.70.040.

**Expiration date—2000 2nd sp.s. c 4 §§ 3 and 4:** "Sections 3 and 4 of this act expire September 1, 2000." [2000 2nd sp.s. c 4 § 37.]

**Effective date—2000 2nd sp.s. c 4 §§ 1-3 and 20:** See note following RCW 82.08.020.

**Effective dates—2000 2nd sp.s. c 4 §§ 4-10:** See note following RCW 43.89.010.

**Effective dates—Subchapter headings not law—2000 c 247:** See RCW 41.40.931 and 41.40.932.

**Expiration date—2000 c 79 §§ 37 and 38:** "Sections 37 and 38 of this act expire September 1, 2000." [2000 c 79 § 49.]

**Effective dates—2000 c 79 §§ 26, 38, and 39:** See note following RCW 48.43.041.

**Severability—2000 c 79:** See note following RCW 48.04.010.

**Severability—Effective date—1999 c 380:** See RCW 43.99P.900 and 43.99P.901.

**Expiration date—1999 c 309 § 928:** "Section 928 of this act expires September 1, 2000." [1999 c 309 § 930.]

**Effective dates—1999 c 309 §§ 927-929, 931, and 1101-1902:** See note following RCW 43.79.480.

**Severability—1999 c 309:** See note following RCW 41.06.152.

**Effective date—1999 c 268 § 5:** "Section 5 of this act takes effect September 1, 2000." [1999 c 268 § 7.]

**Expiration date—1999 c 268 § 4:** "Section 4 of this act expires September 1, 2000." [1999 c 268 § 6.]

**Expiration date—1999 c 94 §§ 2 and 3:** "Sections 2 and 3 of this act expire September 1, 2000." [1999 c 94 § 36.]

**Legislative finding—1999 c 94:** "The legislature finds that a periodic review of the accounts and their uses is necessary. While creating new accounts may facilitate the implementation of legislative intent, the creation of too many accounts limits the effectiveness of performance-based budgeting. Too many accounts also limit the flexibility of the legislature to address emerging and changing issues in addition to creating administrative burdens for the responsible agencies. Accounts created for specific purposes may no longer be valid or needed. Accordingly, this act eliminates accounts that are not in use or are unneeded and consolidates accounts that are similar in nature." [1999 c 94 § 1.]

**Effective dates—1999 c 94:** "(1) Sections 1, 2, 5 through 24, 29 through 31, and 33 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 1999.

(2) Section 4 of this act takes effect September 1, 2000.

(3) Sections 32 and 37 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect June 30, 1999.

(4) Sections 3, 25 through 28, and 34 of this act take effect July 1, 2000." [1999 c 94 § 35.]

**Effective date—1998 c 341:** See RCW 41.35.901.

**Findings—Effective date—1997 c 218:** See notes following RCW 70.119.030.

**Transportation infrastructure account—Highway infrastructure account—Finding—Intent—Purpose—1996 c 262:** See RCW 82.44.195.

**Effective date—1996 c 262:** See note following RCW 82.44.190.

**Effective date—1995 c 394:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 1, 1995." [1995 c 394 § 3.]

**Declaration—Intent—Purpose—1995 c 122:** See RCW 59.21.006.

**Severability—Effective date—1995 c 122:** See RCW 59.21.904 and 59.21.905.

**Severability—Effective dates—1994 c 2 (Initiative Measure No. 601):** See RCW 43.135.903 and 43.135.904.

[2005 RCW Supp—page 496]

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Findings—Intent—1993 sp.s. c 25:** See note following RCW 82.45.010.

**Effective date—Application—1993 sp.s. c 8:** "This act shall take effect July 1, 1993, but shall not be effective for earnings on balances prior to July 1, 1993." [1993 sp.s. c 8 § 3.]

**Finding—Severability—Effective date—1993 c 500:** See notes following RCW 43.41.180.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

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

**Effective date—1993 c 329:** See note following RCW 90.50A.020.

**Legislative declaration—Effective date—1993 c 4:** See notes following RCW 47.56.770.

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

**Applicability—1990 2nd ex.s. c 1:** See note following RCW 82.14.050.

**Severability—1990 2nd ex.s. c 1:** See note following RCW 82.14.300.

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

**Effective date—1985 c 57:** See note following RCW 18.04.105.

## Chapter 43.86A RCW

### SURPLUS FUNDS—INVESTMENT PROGRAM

#### Sections

- 43.86A.030 Time certificate of deposit investment program—Funds available for—Allocation.
- 43.86A.060 Linked deposit program—Minority and women's business enterprises.
- 43.86A.080 Linked deposit program—Minority and women's business enterprises—Public depositories' participation.

**43.86A.030 Time certificate of deposit investment program—Funds available for—Allocation.** (1) Funds held in public depositories not as demand deposits as provided in RCW 43.86A.020 and 43.86A.030, shall be available for a time certificate of deposit investment program according to the following formula: The state treasurer shall apportion to all participating depositories an amount equal to five percent of the three year average mean of general state revenues as certified in accordance with Article VIII, section 1(b) of the state Constitution, or fifty percent of the total surplus treasury investment availability, whichever is less. Within thirty days after certification, those funds determined to be available according to this formula for the time certificate of deposit investment program shall be deposited in qualified public depositories. These deposits shall be allocated among the participating depositories on a basis to be determined by the state treasurer.

(2) The state treasurer may use up to one hundred million dollars per year of all funds available under this section for the purposes of RCW 43.86A.060. The amounts made available to these public depositories shall be equal to the amounts of outstanding loans made under RCW 43.86A.060.

(3) The formula so devised shall be a matter of public record giving consideration to, but not limited to deposits, assets, loans, capital structure, investments or some combination of these factors. However, if in the judgment of the state treasurer the amount of allocation for certificates of deposit

as determined by this section will impair the cash flow needs of the state treasury, the state treasurer may adjust the amount of the allocation accordingly. [2005 c 302 § 2; 1993 c 512 § 33; 1982 c 74 § 1; 1973 c 123 § 3.]

**Intent—2005 c 302:** "The legislature intends that funds provided under the linked deposit program shall be used to create jobs and economic opportunity as well as to remedy the problem of a lack of access to capital by minority and women's business enterprises." [2005 c 302 § 1.]

**Short title—Part headings and section captions—Severability—Effective date—1993 c 512:** See RCW 43.172.900 through 43.172.903.

**43.86A.060 Linked deposit program—Minority and women's business enterprises.** (1) The state treasurer shall establish a linked deposit program for investment of deposits in qualified public depositories. As a condition of participating in the program, qualified public depositories must make qualifying loans as provided in this section. The state treasurer may purchase a certificate of deposit that is equal to the amount of the qualifying loan made by the qualified public depository or may purchase a certificate of deposit that is equal to the aggregate amount of two or more qualifying loans made by one or more qualified public depositories.

(2) Qualifying loans made under this section are those:

(a) Having terms that do not exceed ten years;

(b) Where an individual loan does not exceed one million dollars;

(c) That are made to a minority or women's business enterprise that has received state certification under chapter 39.19 RCW;

(d) Where the interest rate on the loan to the minority or women's business enterprise does not exceed an interest rate that is two hundred basis points below the interest rate the qualified public depository would charge for a loan for a similar purpose and a similar term, except that, if the preference given by the state treasurer to the qualified public depository under subsection (3) of this section is less than two hundred basis points, the qualified public depository may reduce the preference given on the loan by an amount that corresponds to the reduction in preference below two hundred basis points given to the qualified public depository; and

(e) Where the points or fees charged at loan closing do not exceed one percent of the loan amount.

(3) In setting interest rates of time certificate of deposits, the state treasurer shall offer rates so that a two hundred basis point preference will be given to the qualified public depository, except that the treasurer shall lower the amount of the preference to ensure that the effective interest rate on the time certificate of deposit is not less than two percent.

(4) Upon notification by the state treasurer that a minority or women's business enterprise is no longer certified under chapter 39.19 RCW, the qualified public depository shall reduce the amount of qualifying loans by the outstanding balance of the loan made under this section to the minority or women's business enterprise. [2005 c 302 § 3; 2002 c 305 § 1; 1993 c 512 § 30.]

**Intent—2005 c 302:** See note following RCW 43.86A.030.

**Finding—Intent—1993 c 512:** "The legislature finds that minority and women's business enterprises have been historically excluded from access to capital in the marketplace. The lack of capital has been a major barrier to the development and expansion of business by various minority groups and women. There has been a significant amount of attention on the capital needs of minority and women's business enterprises. It is the intent of the

legislature to remedy the problem of a lack of access to capital by minority and women's business enterprises, and other small businesses by authorizing the state treasurer to operate a program that links state deposits to business loans by financial institutions to minority and women's business enterprises." [1993 c 512 § 29.]

**Short title—Part headings and section captions—Severability—Effective date—1993 c 512:** See RCW 43.172.900 through 43.172.903.

**43.86A.080 Linked deposit program—Minority and women's business enterprises—Public depositories' participation.** Public depositories participating in the linked deposit program are encouraged to increase the funds available to certified minority and women's business enterprises by taking full advantage of the linked deposit program loans to qualify for the community reinvestment act community programs under federal law (12 U.S.C. Sec. 2901 et seq.). [2005 c 302 § 4.]

**Intent—2005 c 302:** See note following RCW 43.86A.030.

## Chapter 43.88 RCW

### STATE BUDGETING, ACCOUNTING, AND REPORTING SYSTEM

(Formerly: Budget and accounting)

#### Sections

43.88.005	Finding—Intent.
43.88.020	Definitions.
43.88.030	Instructions for submitting budget requests—Content of the budget document or documents—Separate budget document or schedules—Format changes.
43.88.032	Maintenance costs, operating budget—Debt-financed pass-through money, budget document. ( <i>Expires June 30, 2007.</i> )
43.88.090	Development of budget—Detailed estimates—Mission statement, measurable goals, quality and productivity objectives—Integration of strategic plans and performance assessment procedures—Reviews by office of financial management—Governor-elect input.
43.88.125	Study of transportation-related funds or accounts—Coordination of activities.
43.88.162	State auditor's powers and duties—Performance audits.
43.88.230	Legislative agencies and committees deemed part of legislative branch.

**43.88.005 Finding—Intent.** The legislature finds that agency missions, goals, and objectives should focus on statewide results. It is the intent of the legislature to focus the biennial budget on how state agencies produce real results that reflect the goals of statutory programs. Specifically, budget managers and the legislature must have the data to move toward better statewide results that produce the intended public benefit. This data must be supplied in an impartial, quantifiable form, and demonstrate progress toward statewide results. With a renewed focus on achieving true results, state agencies, the office of financial management, and the legislature will be able to prioritize state resources. [2005 c 386 § 1.]

**43.88.020 Definitions.** (1) "Budget" means a proposed plan of expenditures for a given period or purpose and the proposed means for financing these expenditures.

(2) "Budget document" means a formal statement, either written or provided on any electronic media or both, offered by the governor to the legislature, as provided in RCW 43.88.030.

(3) "Director of financial management" means the official appointed by the governor to serve at the governor's plea-

sure and to whom the governor may delegate necessary authority to carry out the governor's duties as provided in this chapter. The director of financial management shall be head of the office of financial management which shall be in the office of the governor.

(4) "Agency" means and includes every state office, officer, each institution, whether educational, correctional, or other, and every department, division, board, and commission, except as otherwise provided in this chapter.

(5) "Public funds", for purposes of this chapter, means all moneys, including cash, checks, bills, notes, drafts, stocks, and bonds, whether held in trust, for operating purposes, or for capital purposes, and collected or disbursed under law, whether or not such funds are otherwise subject to legislative appropriation, including funds maintained outside the state treasury.

(6) "Regulations" means the policies, standards, and requirements, stated in writing, designed to carry out the purposes of this chapter, as issued by the governor or the governor's designated agent, and which shall have the force and effect of law.

(7) "Ensuuing biennium" means the fiscal biennium beginning on July 1st of the same year in which a regular session of the legislature is held during an odd-numbered year pursuant to Article II, section 12 of the Constitution and which biennium next succeeds the current biennium.

(8) "Dedicated fund" means a fund in the state treasury, or a separate account or fund in the general fund in the state treasury, that by law is dedicated, appropriated, or set aside for a limited object or purpose; but "dedicated fund" does not include a revolving fund or a trust fund.

(9) "Revolving fund" means a fund in the state treasury, established by law, from which is paid the cost of goods or services furnished to or by a state agency, and which is replenished through charges made for such goods or services or through transfers from other accounts or funds.

(10) "Trust fund" means a fund in the state treasury in which designated persons or classes of persons have a vested beneficial interest or equitable ownership, or which was created or established by a gift, grant, contribution, devise, or bequest that limits the use of the fund to designated objects or purposes.

(11) "Administrative expenses" means expenditures for: (a) Salaries, wages, and related costs of personnel and (b) operations and maintenance including but not limited to costs of supplies, materials, services, and equipment.

(12) "Fiscal year" means the year beginning July 1st and ending the following June 30th.

(13) "Lapse" means the termination of authority to expend an appropriation.

(14) "Legislative fiscal committees" means the joint legislative audit and review committee, the legislative evaluation and accountability program committee, and the ways and means and transportation committees of the senate and house of representatives.

(15) "Fiscal period" means the period for which an appropriation is made as specified within the act making the appropriation.

(16) "Primary budget driver" means the primary determinant of a budget level, other than a price variable, which causes or is associated with the major expenditure of an

agency or budget unit within an agency, such as a caseload, enrollment, workload, or population statistic.

(17) "State tax revenue limit" means the limitation created by chapter 43.135 RCW.

(18) "General state revenues" means the revenues defined by Article VIII, section 1(c) of the state Constitution.

(19) "Annual growth rate in real personal income" means the estimated percentage growth in personal income for the state during the current fiscal year, expressed in constant value dollars, as published by the office of financial management or its successor agency.

(20) "Estimated revenues" means estimates of revenue in the most recent official economic and revenue forecast prepared under RCW 82.33.020, and prepared by the office of financial management for those funds, accounts, and sources for which the office of the economic and revenue forecast council does not prepare an official forecast, that are prepared by the office of financial management in consultation with the transportation revenue forecast council.

(21) "Estimated receipts" means the estimated receipt of cash in the most recent official economic and revenue forecast prepared under RCW 82.33.020, and prepared by the office of financial management for those funds, accounts, and sources for which the office of the economic and revenue forecast council does not prepare an official forecast.

(22) "State budgeting, accounting, and reporting system" means a system that gathers, maintains, and communicates fiscal information. The system links fiscal information beginning with development of agency budget requests through adoption of legislative appropriations to tracking actual receipts and expenditures against approved plans.

(23) "Allotment of appropriation" means the agency's statement of proposed expenditures, the director of financial management's review of that statement, and the placement of the approved statement into the state budgeting, accounting, and reporting system.

(24) "Statement of proposed expenditures" means a plan prepared by each agency that breaks each appropriation out into monthly detail representing the best estimate of how the appropriation will be expended.

(25) "Undesignated fund balance (or deficit)" means unreserved and undesignated current assets or other resources available for expenditure over and above any current liabilities which are expected to be incurred by the close of the fiscal period.

(26) "Internal audit" means an independent appraisal activity within an agency for the review of operations as a service to management, including a systematic examination of accounting and fiscal controls to assure that human and material resources are guarded against waste, loss, or misuse; and that reliable data are gathered, maintained, and fairly disclosed in a written report of the audit findings.

(27) "Performance verification" means an analysis that (a) verifies the accuracy of data used by state agencies in quantifying intended results and measuring performance toward those results, and (b) verifies whether or not the reported results were achieved.

(28) "Performance audit" has the same meaning as it is defined in RCW 44.28.005. [2005 c 319 § 107; 2000 2nd sp.s. c 4 § 11; 1996 c 288 § 23; 1995 c 155 § 1; 1994 c 184 § 9; 1993 c 406 § 2; 1991 c 358 § 6; 1990 c 229 § 4; 1987 c 502

§ 1; 1986 c 215 § 2; 1984 c 138 § 6; 1982 1st ex.s. c 36 § 1. Prior: 1981 c 280 § 6; 1981 c 270 § 2; 1980 c 87 § 25; 1979 c 151 § 135; 1975-'76 2nd ex.s. c 83 § 4; 1973 1st ex.s. c 100 § 2; 1969 ex.s. c 239 § 9; 1965 c 8 § 43.88.020; prior: 1959 c 328 § 2.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Short title—1993 c 406:** "This act may be known and cited as the performance-based government act of 1993." [1993 c 406 § 7.]

**Effective date—1991 c 358:** See note following RCW 43.88.030.

**Effective date—1990 c 229:** See note following RCW 41.06.087.

**Effective date—1981 c 280:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981." [1981 c 280 § 10.]

**Severability—1981 c 280:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 280 § 9.]

**Effective date—Severability—1981 c 270:** See notes following RCW 43.88.010.

*Office of financial management: Chapter 43.41 RCW.*

**43.88.030 Instructions for submitting budget requests—Content of the budget document or documents—Separate budget document or schedules—Format changes.** (1) The director of financial management shall provide all agencies with a complete set of instructions for submitting biennial budget requests to the director at least three months before agency budget documents are due into the office of financial management. The budget document or documents shall consist of the governor's budget message which shall be explanatory of the budget and shall contain an outline of the proposed financial policies of the state for the ensuing fiscal period, as well as an outline of the proposed six-year financial policies where applicable, and shall describe in connection therewith the important features of the budget. The biennial budget document or documents shall also describe performance indicators that demonstrate measurable progress towards priority results. The message shall set forth the reasons for salient changes from the previous fiscal period in expenditure and revenue items and shall explain any major changes in financial policy. Attached to the budget message shall be such supporting schedules, exhibits and other explanatory material in respect to both current operations and capital improvements as the governor shall deem to be useful to the legislature. The budget document or documents shall set forth a proposal for expenditures in the ensuing fiscal period, or six-year period where applicable, based upon the estimated revenues and caseloads as approved by the economic and revenue forecast council and caseload forecast council or upon the estimated revenues and caseloads of the office of financial management for those funds, accounts, sources, and programs for which the forecast councils do not prepare an official forecast. Revenues shall be estimated for such fiscal period from the source and at the rates existing by law at the time of submission of the budget document, including the supplemental budgets submitted in the even-numbered years of a biennium. However, the estimated revenues and caseloads for use in the governor's budget document may be adjusted to reflect budgetary revenue transfers and revenue and caseload estimates dependent upon budgetary

assumptions of enrollments, workloads, and caseloads. All adjustments to the approved estimated revenues and caseloads must be set forth in the budget document. The governor may additionally submit, as an appendix to each supplemental, biennial, or six-year agency budget or to the budget document or documents, a proposal for expenditures in the ensuing fiscal period from revenue sources derived from proposed changes in existing statutes.

Supplemental and biennial documents shall reflect a six-year expenditure plan consistent with estimated revenues from existing sources. Any additional revenue resulting from proposed changes to existing statutes shall be separately identified within the document as well as related expenditures for the six-year period.

The budget document or documents shall also contain:

(a) Revenues classified by fund and source for the immediately past fiscal period, those received or anticipated for the current fiscal period, and those anticipated for the ensuing biennium;

(b) The undesignated fund balance or deficit, by fund;

(c) Such additional information dealing with expenditures, revenues, workload, performance, and personnel as the legislature may direct by law or concurrent resolution;

(d) Such additional information dealing with revenues and expenditures as the governor shall deem pertinent and useful to the legislature;

(e) Tabulations showing expenditures classified by fund, function, and agency;

(f) The expenditures that include nonbudgeted, nonappropriated accounts outside the state treasury;

(g) Identification of all proposed direct expenditures to implement the Puget Sound water quality plan under chapter 90.71 RCW, shown by agency and in total; and

(h) Tabulations showing each postretirement adjustment by retirement system established after fiscal year 1991, to include, but not be limited to, estimated total payments made to the end of the previous biennial period, estimated payments for the present biennium, and estimated payments for the ensuing biennium.

(2) The budget document or documents shall include detailed estimates of all anticipated revenues applicable to proposed operating or capital expenditures and shall also include all proposed operating or capital expenditures. The total of beginning undesignated fund balance and estimated revenues less working capital and other reserves shall equal or exceed the total of proposed applicable expenditures. The budget document or documents shall further include:

(a) Interest, amortization and redemption charges on the state debt;

(b) Payments of all reliefs, judgments, and claims;

(c) Other statutory expenditures;

(d) Expenditures incident to the operation for each agency;

(e) Revenues derived from agency operations;

(f) Expenditures and revenues shall be given in comparative form showing those incurred or received for the immediately past fiscal period and those anticipated for the current biennium and next ensuing biennium;

(g) A showing and explanation of amounts of general fund and other funds obligations for debt service and any

transfers of moneys that otherwise would have been available for appropriation;

(h) Common school expenditures on a fiscal-year basis;

(i) A showing, by agency, of the value and purpose of financing contracts for the lease/purchase or acquisition of personal or real property for the current and ensuing fiscal periods; and

(j) A showing and explanation of anticipated amounts of general fund and other funds required to amortize the unfunded actuarial accrued liability of the retirement system specified under chapter 41.45 RCW, and the contributions to meet such amortization, stated in total dollars and as a level percentage of total compensation.

(3) The governor's operating budget document or documents shall reflect the statewide priorities as required by RCW 43.88.090.

(4) The governor's operating budget document or documents shall identify activities that are not addressing the statewide priorities.

(5) A separate capital budget document or schedule shall be submitted that will contain the following:

(a) A statement setting forth a long-range facilities plan for the state that identifies and includes the highest priority needs within affordable spending levels;

(b) A capital program consisting of proposed capital projects for the next biennium and the two biennia succeeding the next biennium consistent with the long-range facilities plan. Inasmuch as is practical, and recognizing emergent needs, the capital program shall reflect the priorities, projects, and spending levels proposed in previously submitted capital budget documents in order to provide a reliable long-range planning tool for the legislature and state agencies;

(c) A capital plan consisting of proposed capital spending for at least four biennia succeeding the next biennium;

(d) A strategic plan for reducing backlogs of maintenance and repair projects. The plan shall include a prioritized list of specific facility deficiencies and capital projects to address the deficiencies for each agency, cost estimates for each project, a schedule for completing projects over a reasonable period of time, and identification of normal maintenance activities to reduce future backlogs;

(e) A statement of the reason or purpose for a project;

(f) Verification that a project is consistent with the provisions set forth in chapter 36.70A RCW;

(g) A statement about the proposed site, size, and estimated life of the project, if applicable;

(h) Estimated total project cost;

(i) For major projects valued over five million dollars, estimated costs for the following project components: Acquisition, consultant services, construction, equipment, project management, and other costs included as part of the project. Project component costs shall be displayed in a standard format defined by the office of financial management to allow comparisons between projects;

(j) Estimated total project cost for each phase of the project as defined by the office of financial management;

(k) Estimated ensuing biennium costs;

(l) Estimated costs beyond the ensuing biennium;

(m) Estimated construction start and completion dates;

(n) Source and type of funds proposed;

(o) Estimated ongoing operating budget costs or savings resulting from the project, including staffing and maintenance costs;

(p) For any capital appropriation requested for a state agency for the acquisition of land or the capital improvement of land in which the primary purpose of the acquisition or improvement is recreation or wildlife habitat conservation, the capital budget document, or an omnibus list of recreation and habitat acquisitions provided with the governor's budget document, shall identify the projected costs of operation and maintenance for at least the two biennia succeeding the next biennium. Omnibus lists of habitat and recreation land acquisitions shall include individual project cost estimates for operation and maintenance as well as a total for all state projects included in the list. The document shall identify the source of funds from which the operation and maintenance costs are proposed to be funded;

(q) Such other information bearing upon capital projects as the governor deems to be useful;

(r) Standard terms, including a standard and uniform definition of normal maintenance, for all capital projects;

(s) Such other information as the legislature may direct by law or concurrent resolution.

For purposes of this subsection (5), the term "capital project" shall be defined subsequent to the analysis, findings, and recommendations of a joint committee comprised of representatives from the house capital appropriations committee, senate ways and means committee, legislative evaluation and accountability program committee, and office of financial management.

(6) No change affecting the comparability of agency or program information relating to expenditures, revenues, workload, performance and personnel shall be made in the format of any budget document or report presented to the legislature under this section or RCW 43.88.160(1) relative to the format of the budget document or report which was presented to the previous regular session of the legislature during an odd-numbered year without prior legislative concurrence. Prior legislative concurrence shall consist of (a) a favorable majority vote on the proposal by the standing committees on ways and means of both houses if the legislature is in session or (b) a favorable majority vote on the proposal by members of the legislative evaluation and accountability program committee if the legislature is not in session. [2005 c 386 § 3; 2005 c 319 § 108; 2004 c 276 § 908; 2002 c 371 § 911; 2000 2nd sp.s. c 4 § 12; 1998 c 346 § 910. Prior: 1997 c 168 § 5; 1997 c 96 § 4; prior: 1994 c 247 § 7; 1994 c 219 § 2; prior: 1991 c 358 § 1; 1991 c 284 § 1; 1990 c 115 § 1; prior: 1989 c 311 § 3; 1989 c 11 § 18; 1987 c 502 § 2; prior: 1986 c 215 § 3; 1986 c 112 § 1; 1984 c 138 § 7; 1981 c 270 § 3; 1980 c 87 § 26; 1977 ex.s. c 247 § 1; 1973 1st ex.s. c 100 § 3; 1965 c 8 § 43.88.030; prior: 1959 c 328 § 3.]

**Reviser's note:** This section was amended by 2005 c 319 § 108 and by 2005 c 386 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Severability—Effective date—2004 c 276:** See notes following RCW 43.330.167.

**Severability—Effective date—2002 c 371:** See notes following RCW 9.46.100.



**Construction—Severability—Effective date—1998 c 346:** See notes following RCW 50.24.014.

**Effective date—1997 c 168:** See RCW 43.88C.900.

**Findings—Purpose—1997 c 96:** See note following RCW 43.82.150.

**Effective date—1994 c 247:** See note following RCW 41.32.4991.

**Finding—1994 c 219:** "The legislature finds that the acquisition, construction, and management of state-owned and leased facilities has a profound and long-range effect upon the delivery and cost of state programs, and that there is an increasing need for better facility planning and management to improve the effectiveness and efficiency of state facilities." [1994 c 219 § 1.]

**Effective date—1991 c 358:** "This act shall take effect April 1, 1992." [1991 c 358 § 8.]

**Severability—1989 c 11:** See note following RCW 9A.56.220.

**43.88.032 Maintenance costs, operating budget—Debt-financed pass-through money, budget document. (Expires June 30, 2007.)** (1) Normal maintenance costs, except for funds appropriated for facility preservation of state institutions of higher education, shall be programmed in the operating budget rather than in the capital budget.

(2) All debt-financed pass-through money to local governments shall be programmed and separately identified in the budget document. [2005 c 488 § 921; (2003 1st sp.s. c 26 § 921 expired June 30, 2005); 1997 c 96 § 5; 1994 c 219 § 4; 1989 c 311 § 1.]

**Expiration date—2005 c 488 §§ 920 and 921:** See note following RCW 43.135.045.

**Part headings not law—Severability—Effective dates—2005 c 488:** See notes following RCW 28B.50.360.

**Expiration date—Severability—Effective dates—2003 1st sp.s. c 26:** See notes following RCW 43.135.045.

**Findings—Purpose—1997 c 96:** See note following RCW 43.82.150.

**Finding—1994 c 219:** See note following RCW 43.88.030.

**43.88.090 Development of budget—Detailed estimates—Mission statement, measurable goals, quality and productivity objectives—Integration of strategic plans and performance assessment procedures—Reviews by office of financial management—Governor-elect input.**

(1) For purposes of developing budget proposals to the legislature, the governor shall have the power, and it shall be the governor's duty, to require from proper agency officials such detailed estimates and other information in such form and at such times as the governor shall direct. The governor shall communicate statewide priorities to agencies for use in developing biennial budget recommendations for their agency and shall seek public involvement and input on these priorities. The estimates for the legislature and the judiciary shall be transmitted to the governor and shall be included in the budget without revision. The estimates for state pension contributions shall be based on the rates provided in chapter 41.45 RCW. Copies of all such estimates shall be transmitted to the standing committees on ways and means of the house and senate at the same time as they are filed with the governor and the office of financial management.

The estimates shall include statements or tables which indicate, by agency, the state funds which are required for the receipt of federal matching revenues. The estimates shall be revised as necessary to reflect legislative enactments and adopted appropriations and shall be included with the initial biennial allotment submitted under RCW 43.88.110. The

estimates must reflect that the agency considered any alternatives to reduce costs or improve service delivery identified in the findings of a performance audit of the agency by the joint legislative audit and review committee. Nothing in this subsection requires performance audit findings to be published as part of the budget.

(2) Each state agency shall define its mission and establish measurable goals for achieving desirable results for those who receive its services and the taxpayers who pay for those services. Each agency shall also develop clear strategies and timelines to achieve its goals. This section does not require an agency to develop a new mission or goals in place of identifiable missions or goals that meet the intent of this section. The mission and goals of each agency must conform to statutory direction and limitations.

(3) For the purpose of assessing activity performance, each state agency shall establish quality and productivity objectives for each major activity in its budget. The objectives must be consistent with the missions and goals developed under this section. The objectives must be expressed to the extent practicable in outcome-based, objective, and measurable form unless an exception to adopt a different standard is granted by the office of financial management and approved by the legislative committee on performance review. Objectives must specifically address the statutory purpose or intent of the program or activity and focus on data that measure whether the agency is achieving or making progress toward the purpose of the activity and toward statewide priorities. The office of financial management shall provide necessary professional and technical assistance to assist state agencies in the development of strategic plans that include the mission of the agency and its programs, measurable goals, strategies, and performance measurement systems.

(4) Each state agency shall adopt procedures for and perform continuous self-assessment of each activity, using the mission, goals, objectives, and measurements required under subsections (2) and (3) of this section. The assessment of the activity must also include an evaluation of major information technology systems or projects that may assist the agency in achieving or making progress toward the activity purpose and statewide priorities. The evaluation of proposed major information technology systems or projects shall be in accordance with the standards and policies established by the information services board. Agencies' progress toward the mission, goals, objectives, and measurements required by subsections (2) and (3) of this section is subject to review as set forth in this subsection.

(a) The office of financial management shall regularly conduct reviews of selected activities to analyze whether the objectives and measurements submitted by agencies demonstrate progress toward statewide results.

(b) The office of financial management shall consult with the higher education coordinating board and the state board for community and technical colleges in those reviews that involve institutions of higher education.

(c) The goal is for all major activities to receive at least one review each year.

(d) The office of financial management shall consult with the information services board when conducting reviews of major information technology systems in use by state

agencies. The goal is that reviews of these information technology systems occur periodically.

(5) It is the policy of the legislature that each agency's budget recommendations must be directly linked to the agency's stated mission and program, quality, and productivity goals and objectives. Consistent with this policy, agency budget proposals must include integration of performance measures that allow objective determination of an activity's success in achieving its goals. When a review under subsection (4) of this section or other analysis determines that the agency's objectives demonstrate that the agency is making insufficient progress toward the goals of any particular program or is otherwise underachieving or inefficient, the agency's budget request shall contain proposals to remedy or improve the selected programs. The office of financial management shall develop a plan to merge the budget development process with agency performance assessment procedures. The plan must include a schedule to integrate agency strategic plans and performance measures into agency budget requests and the governor's budget proposal over three fiscal biennia. The plan must identify those agencies that will implement the revised budget process in the 1997-1999 biennium, the 1999-2001 biennium, and the 2001-2003 biennium. In consultation with the legislative fiscal committees, the office of financial management shall recommend statutory and procedural modifications to the state's budget, accounting, and reporting systems to facilitate the performance assessment procedures and the merger of those procedures with the state budget process. The plan and recommended statutory and procedural modifications must be submitted to the legislative fiscal committees by September 30, 1996.

(6) In reviewing agency budget requests in order to prepare the governor's biennial budget request, the office of financial management shall consider the extent to which the agency's activities demonstrate progress toward the statewide budgeting priorities, along with any specific review conducted under subsection (4) of this section.

(7) In the year of the gubernatorial election, the governor shall invite the governor-elect or the governor-elect's designee to attend all hearings provided in RCW 43.88.100; and the governor shall furnish the governor-elect or the governor-elect's designee with such information as will enable the governor-elect or the governor-elect's designee to gain an understanding of the state's budget requirements. The governor-elect or the governor-elect's designee may ask such questions during the hearings and require such information as the governor-elect or the governor-elect's designee deems necessary and may make recommendations in connection with any item of the budget which, with the governor-elect's reasons therefor, shall be presented to the legislature in writing with the budget document. Copies of all such estimates and other required information shall also be submitted to the standing committees on ways and means of the house and senate. [2005 c 386 § 2; 1997 c 372 § 1; 1996 c 317 § 10; 1994 c 184 § 10; 1993 c 406 § 3; 1989 c 273 § 26; 1987 c 505 § 35; 1984 c 247 § 3; 1981 c 270 § 4; 1979 c 151 § 137; 1975 1st ex.s. c 293 § 5; 1973 1st ex.s. c 100 § 6; 1965 c 8 § 43.88.090. Prior: 1959 c 328 § 9.]

**Short title—1993 c 406:** See note following RCW 43.88.020.

**Severability—1989 c 273:** See RCW 41.45.900.

**Effective date—Severability—1981 c 270:** See notes following RCW 43.88.010.

**43.88.125 Study of transportation-related funds or accounts—Coordination of activities.** The standing committees on transportation of the house and senate shall, in coordination with the joint legislative audit and review committee, the legislative evaluation and accountability program committee, and the ways and means committees of the senate and house of representatives, ascertain, study, and analyze all available facts and matters relating or pertaining to sources of revenue, appropriations, expenditures, and financial condition of the motor vehicle fund and accounts thereof, the highway safety fund, and all other funds or accounts related to transportation programs of the state.

The joint legislative audit and review committee, the legislative evaluation and accountability program committee, and the ways and means committees of the senate and house of representatives shall coordinate their activities with the transportation committees of the legislature in carrying out the committees' powers and duties under chapter 43.88 RCW in matters relating to the transportation programs of the state. [2005 c 319 § 114; 1996 c 288 § 49; 1981 c 270 § 15; 1977 ex.s. c 235 § 6; 1975 1st ex.s. c 293 § 19; 1971 ex.s. c 195 § 2. Formerly RCW 44.40.025.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Effective date—Severability—1981 c 270:** See notes following RCW 43.88.010.

**Severability—Effective date—1975 1st ex.s. c 293:** See RCW 43.88.902 and 43.88.910.

**Severability—1971 ex.s. c 195:** See note following RCW 44.40.010.

**43.88.162 State auditor's powers and duties—Performance audits.** In addition to the authority given the state auditor in RCW 43.88.160(6), the state auditor is authorized to contract for and oversee performance audits pursuant to RCW 43.09.440. [2005 c 385 § 7.]

**Findings—2005 c 385:** See note following RCW 43.09.430.

**43.88.230 Legislative agencies and committees deemed part of legislative branch.** For the purposes of this chapter, the statute law committee, the joint legislative audit and review committee, the joint transportation committee, the legislative evaluation and accountability program committee, the office of state actuary, and all legislative standing committees of both houses shall be deemed a part of the legislative branch of state government. [2005 c 319 § 109; 1996 c 288 § 40; 1981 c 270 § 12; 1975 1st ex.s. c 293 § 11; 1965 c 8 § 43.88.230. Prior: 1959 c 328 § 23.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Effective date—Severability—1981 c 270:** See notes following RCW 43.88.010.

Chapter 43.99K RCW

FINANCING FOR APPROPRIATIONS—  
1995-1997 BIENNIUM

Sections

43.99K.030 Retirement of bonds—Reimbursement of general fund—  
Pledge and promise—Remedies.

**43.99K.030 Retirement of bonds—Reimbursement of general fund—Pledge and promise—Remedies.** (1)(a) The debt-limit general fund bond retirement account shall be used for the payment of the principal of and interest on the bonds authorized in RCW 43.99K.020 (1), (2), and (3).

(b) The debt-limit reimbursable bond retirement account shall be used for the payment of the principal of and interest on the bonds authorized in RCW 43.99K.020(4).

(c) The nondebt-limit reimbursable bond retirement account shall be used for the payment of the principal of and interest on the bonds authorized in RCW 43.99K.020(5).

(2) The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet the bond retirement and interest requirements. On each date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the debt-limit general fund bond retirement account, debt-limit reimbursable bond retirement account, nondebt-limit reimbursable bond retirement account, as necessary, an amount equal to the amount certified by the state finance committee to be due on the payment date.

(3) On each date on which any interest or principal and interest payment is due on bonds issued for the purposes of RCW 43.99K.020(4), the state treasurer shall transfer from the public safety and education account to the general fund of the state treasury the amount computed in subsection (2) of this section for the bonds issued for the purposes of RCW 43.99K.020(4).

(4) On each date on which any interest or principal and interest payment is due on bonds issued for the purposes of RCW 43.99K.020(5), the board of regents of the University of Washington shall cause to be paid out of University of Washington nonappropriated local funds to the state treasurer for deposit into the general fund of the state treasury the amount computed in subsection (2) of this section for bonds issued for the purposes of RCW 43.99K.020(5).

(5) Bonds issued under this section and RCW 43.99K.010 and 43.99K.020 shall state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay the principal and interest as the same shall become due.

(6) The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section. [2005 c 487 § 8; 1997 c 456 § 23; 1995 2nd sp.s. c 17 § 3.]

**Severability—Effective date—2005 c 487:** See RCW 43.99S.900 and 43.99S.901.

**Severability—1997 c 456:** See RCW 43.99L.900.

**Effective date—1997 c 456 §§ 9-43:** See RCW 43.99M.901.

Chapter 43.99S RCW

FINANCING FOR APPROPRIATIONS—  
2005-2007 BIENNIUM

Sections

43.99S.010 General obligation bonds for capital and operating appropriations acts.  
43.99S.020 Conditions and limitations.  
43.99S.030 Retirement of bonds—Reimbursement of general fund from debt-limit general fund bond retirement account.  
43.99S.040 Pledge and promise—Remedies.  
43.99S.050 Payment of principal and interest—Additional means for raising money authorized.  
43.99S.900 Severability—2005 c 487.  
43.99S.901 Effective date—2005 c 487.

**43.99S.010 General obligation bonds for capital and operating appropriations acts.** For the purpose of providing funds to finance the projects described and authorized by the legislature in the capital and operating appropriation acts for the 2003-2005 and 2005-2007 fiscal bienniums, and all costs incidental thereto, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of one billion four hundred thirty-four million dollars, or as much thereof as may be required, to finance these projects and all costs incidental thereto. Bonds authorized in this section may be sold at such price as the state finance committee shall determine. No bonds authorized in this section may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds. [2005 c 487 § 1.]

**43.99S.020 Conditions and limitations.** The proceeds from the sale of the bonds authorized in RCW 43.99S.010 shall be deposited in the state building construction account created by RCW 43.83.020. The proceeds shall be transferred as follows:

(1) One billion two hundred thirty-four million dollars to remain in the state building construction account created by RCW 43.83.020;

(2) Twenty-five million dollars to the outdoor recreation account created by RCW 79A.25.060;

(3) Twenty-five million dollars to the habitat conservation account created by RCW 79A.15.020;

(4) One hundred eight million two hundred thousand dollars to the state taxable building construction account. All receipts from taxable bond issues are to be deposited into the account. If the state finance committee deems it necessary to issue more than the amount specified in this subsection (4) as taxable bonds in order to comply with federal internal revenue service rules and regulations pertaining to the use of non-taxable bond proceeds, the proceeds of such additional taxable bonds shall be transferred to the state taxable building construction account in lieu of any transfer otherwise provided by this section. The state treasurer shall submit written notice to the director of financial management if it is determined that any such additional transfer to the state taxable building construction account is necessary. Moneys in the account may be spent only after appropriation.

These proceeds shall be used exclusively for the purposes specified in this section and for the payment of

expenses incurred in the issuance and sale of the bonds issued for the purposes of this section, and shall be administered by the office of financial management subject to legislative appropriation. [2005 c 487 § 2.]

**43.99S.030 Retirement of bonds—Reimbursement of general fund from debt-limit general fund bond retirement account.** (1) The debt-limit general fund bond retirement account shall be used for the payment of the principal of and interest on the bonds authorized in RCW 43.99S.020 (1), (2), (3), and (4).

(2) The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet the bond retirement and interest requirements on the bonds authorized in RCW 43.99S.020 (1), (2), (3), and (4).

(3) On each date on which any interest or principal and interest payment is due on bonds issued for the purposes of RCW 43.99S.020 (1), (2), (3), and (4) the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the debt-limit general fund bond retirement account an amount equal to the amount certified by the state finance committee to be due on the payment date. [2005 c 487 § 3.]

**43.99S.040 Pledge and promise—Remedies.** (1) Bonds issued under RCW 43.99S.010 through 43.99S.030 shall state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay the principal and interest as the same shall become due.

(2) The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section. [2005 c 487 § 4.]

**43.99S.050 Payment of principal and interest—Additional means for raising money authorized.** The legislature may provide additional means for raising moneys for the payment of the principal of and interest on the bonds authorized in RCW 43.99S.010, and RCW 43.99S.020 and 43.99S.030 shall not be deemed to provide an exclusive method for the payment. [2005 c 487 § 5.]

**43.99S.900 Severability—2005 c 487.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2005 c 487 § 11.]

**43.99S.901 Effective date—2005 c 487.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 16, 2005]. [2005 c 487 § 12.]

## Chapter 43.101 RCW

### CRIMINAL JUSTICE TRAINING COMMISSION—EDUCATION AND TRAINING STANDARDS BOARDS

#### Sections

43.101.080	Commission powers and duties—Rules and regulations.
43.101.095	Peace officer certification.
43.101.105	Denial or revocation of peace officer certification.
43.101.280	Ethnic and cultural diversity—Development of curriculum for understanding—Training.

**43.101.080 Commission powers and duties—Rules and regulations.** The commission shall have all of the following powers:

(1) To meet at such times and places as it may deem proper;

(2) To adopt any rules and regulations as it may deem necessary;

(3) To contract for services as it deems necessary in order to carry out its duties and responsibilities;

(4) To cooperate with and secure the cooperation of any department, agency, or instrumentality in state, county, and city government, and other commissions affected by or concerned with the business of the commission;

(5) To do any and all things necessary or convenient to enable it fully and adequately to perform its duties and to exercise the power granted to it;

(6) To select and employ an executive director, and to empower him to perform such duties and responsibilities as it may deem necessary;

(7) To assume legal, fiscal, and program responsibility for all training conducted by the commission;

(8) To establish, by rule and regulation, standards for the training of criminal justice personnel where such standards are not prescribed by statute;

(9) To own, establish, and operate, or to contract with other qualified institutions or organizations for the operation of, training and education programs for criminal justice personnel and to purchase, lease, or otherwise acquire, subject to the approval of the department of general administration, a training facility or facilities necessary to the conducting of such programs;

(10) To establish, by rule and regulation, minimum curriculum standards for all training programs conducted for employed criminal justice personnel;

(11) To review and approve or reject standards for instructors of training programs for criminal justice personnel, and to employ personnel on a temporary basis as instructors without any loss of employee benefits to those instructors;

(12) To direct the development of alternative, innovate, and interdisciplinary training techniques;

(13) To review and approve or reject training programs conducted for criminal justice personnel and rules establishing and prescribing minimum training and education standards recommended by the training standards and education boards;

(14) To allocate financial resources among training and education programs conducted by the commission;

(15) To allocate training facility space among training and education programs conducted by the commission;

(16) To issue diplomas certifying satisfactory completion of any training or education program conducted or approved by the commission to any person so completing such a program;

(17) To provide for the employment of such personnel as may be practical to serve as temporary replacements for any person engaged in a basic training program as defined by the commission;

(18) To establish rules and regulations recommended by the training standards and education boards prescribing minimum standards relating to physical, mental and moral fitness which shall govern the recruitment of criminal justice personnel where such standards are not prescribed by statute or constitutional provision;

(19) To require that each applicant that has been offered a conditional offer of employment as a fully commissioned peace officer or a fully commissioned reserve officer take and successfully pass a psychological examination and a polygraph test or similar assessment procedure as administered by county, city, or state law enforcement agencies as a condition of employment as a peace officer. The psychological examination and the polygraph examination shall be administered in accordance with the requirements of RCW 43.101.095(2). The employing county, city, or state law enforcement agency may require that each peace officer or reserve officer who is required to take a psychological examination and a polygraph or similar test pay a portion of the testing fee based on the actual cost of the test or four hundred dollars, whichever is less. County, city, and state law enforcement agencies may establish a payment plan if they determine that the peace officer or reserve officer does not readily have the means to pay for his or her portion of the testing fee.

All rules and regulations adopted by the commission shall be adopted and administered pursuant to the administrative procedure act, chapter 34.05 RCW, and the open public meetings act, chapter 42.30 RCW. [2005 c 434 § 1; 2001 c 166 § 1; 1982 c 124 § 1; 1975-'76 2nd ex.s. c 17 § 3. Prior: 1975 1st ex.s. c 103 § 1; 1975 1st ex.s. c 82 § 1; 1974 ex.s. c 94 § 8.]

**43.101.095 Peace officer certification.** (1) As a condition of continuing employment as peace officers, all Washington peace officers: (a) Shall timely obtain certification as peace officers, or timely obtain certification or exemption therefrom, by meeting all requirements of RCW 43.101.200, as that section is administered under the rules of the commission, as well by meeting any additional requirements under this chapter; and (b) shall maintain the basic certification as peace officers under this chapter.

(2)(a) As a condition of continuing employment for any applicant that has been offered a conditional offer of employment as a fully commissioned peace officer or a reserve officer after July 24, 2005, including any person whose certification has lapsed as a result of a break of more than twenty-four consecutive months in the officer's service as a fully commissioned peace officer or reserve officer, the applicant shall successfully pass a psychological examination and a polygraph or similar test as administered by the county, city, or state law enforcement agency that complies with the following requirements:

(i) The psychological examination shall be administered by a psychiatrist licensed in the state of Washington pursuant to chapter 18.71 RCW or a psychologist licensed in the state of Washington pursuant to chapter 18.83 RCW. The examination shall consist of, at a minimum, a standardized clinical test that is widely used as an objective clinical screening tool for personality and psychosocial disorders. The test that is used and the conditions under which the test is administered, scored, and interpreted must comply with accepted psychological standards. Additional tests may be administered at the option of the employing law enforcement agency.

(ii) The polygraph examination or similar assessment shall be administered by an experienced polygrapher who is a graduate of a polygraph school accredited by the American polygraph association.

(b) The employing county, city, or state law enforcement agency may require that each peace officer or reserve officer who is required to take a psychological examination and a polygraph or similar test pay a portion of the testing fee based on the actual cost of the test or four hundred dollars, whichever is less. County, city, and state law enforcement agencies may establish a payment plan if they determine that the peace officer or reserve officer does not readily have the means to pay for his or her portion of the testing fee.

(3) The commission shall certify peace officers who have satisfied, or have been exempted by statute or by rule from, the basic training requirements of RCW 43.101.200 on or before January 1, 2002. Thereafter, the commission may revoke certification pursuant to this chapter.

(4) The commission shall allow a peace officer to retain status as a certified peace officer as long as the officer: (a) Timely meets the basic law enforcement training requirements, or is exempted therefrom, in whole or in part, under RCW 43.101.200 or under rule of the commission; (b) meets or is exempted from any other requirements under this chapter as administered under the rules adopted by the commission; (c) is not denied certification by the commission under this chapter; and (d) has not had certification revoked by the commission.

(5) As a prerequisite to certification, as well as a prerequisite to pursuit of a hearing under RCW 43.101.155, a peace officer must, on a form devised or adopted by the commission, authorize the release to the commission of his or her personnel files, termination papers, criminal investigation files, or other files, papers, or information that are directly related to a certification matter or decertification matter before the commission. [2005 c 434 § 2; 2001 c 167 § 2.]

**43.101.105 Denial or revocation of peace officer certification.** (1) Upon request by a peace officer's employer or on its own initiative, the commission may deny or revoke certification of any peace officer, after written notice and hearing, if a hearing is timely requested by the peace officer under RCW 43.101.155, based upon a finding of one or more of the following conditions:

(a) The peace officer has failed to timely meet all requirements for obtaining a certificate of basic law enforcement training, a certificate of basic law enforcement training equivalency, or a certificate of exemption from the training;

(b) The peace officer has knowingly falsified or omitted material information on an application for training or certification to the commission;

(c) The peace officer has been convicted at any time of a felony offense under the laws of this state or has been convicted of a federal or out-of-state offense comparable to a felony under the laws of this state; except that if a certified peace officer was convicted of a felony before being employed as a peace officer, and the circumstances of the prior felony conviction were fully disclosed to his or her employer before being hired, the commission may revoke certification only with the agreement of the employing law enforcement agency;

(d) The peace officer has been discharged for disqualifying misconduct, the discharge is final, and some or all of the acts or omissions forming the basis for the discharge proceedings occurred on or after January 1, 2002;

(e) The peace officer's certificate was previously issued by administrative error on the part of the commission; or

(f) The peace officer has interfered with an investigation or action for denial or revocation of certificate by: (i) Knowingly making a materially false statement to the commission; or (ii) in any matter under investigation by or otherwise before the commission, tampering with evidence or tampering with or intimidating any witness.

(2) After July 24, 2005, the commission shall deny certification to any applicant that has lost his or her certification as a result of a break in service of more than twenty-four consecutive months if that applicant failed to successfully pass the psychological examination and the polygraph test or similar assessment procedure required in RCW 43.101.095(2), as administered by county, city, or state law enforcement agencies. [2005 c 434 § 3; 2001 c 167 § 3.]

**43.101.280 Ethnic and cultural diversity—Development of curriculum for understanding—Training.** The criminal justice training commission shall develop, in consultation with the administrative office of the courts and the commissions established under chapters 43.113, 43.115, and 43.117 RCW, a curriculum for a general understanding of ethnic and cultural diversity and its implications for working with youth of color and their families. The curriculum shall be developed by October 1, 1993. The commission shall ensure that ethnic and diversity training becomes an integral part of the training of law enforcement personnel so as to incorporate cultural sensitivity and awareness into the daily activities of law enforcement personnel. [2005 c 282 § 46; 1993 c 415 § 4.]

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

*Ethnic and cultural diversity—Development of curriculum for understanding: RCW 2.56.030.*

### Chapter 43.103 RCW

#### WASHINGTON STATE FORENSIC INVESTIGATIONS COUNCIL

##### Sections

43.103.030 Council created—Powers and duties.

[2005 RCW Supp—page 506]

### 43.103.030 Council created—Powers and duties.

There is created the Washington state forensic investigations council. The council shall oversee the bureau of forensic laboratory services and, in consultation with the chief of the Washington state patrol or the chief's designee, control the operation and establish policies of the bureau of forensic laboratory services. The council may also study and recommend cost-efficient improvements to the death investigation system in Washington and report its findings to the legislature.

The forensic investigations council shall be responsible for the oversight of any state forensic pathology program authorized by the legislature.

The forensic investigations council shall be actively involved in the preparation of the bureau of forensic laboratory services budget and shall approve the bureau of forensic laboratory services budget prior to its formal submission to the office of financial management pursuant to RCW 43.88.030. [2005 c 166 § 2; 1999 c 40 § 4; 1995 c 398 § 4; 1991 c 176 § 2; 1983 1st ex.s. c 16 § 3.]

**Effective date—1999 c 40:** See note following RCW 43.103.010.

### Chapter 43.105 RCW

#### DEPARTMENT OF INFORMATION SERVICES

(Formerly: Data processing and communications systems)

##### Sections

- 43.105.160 Strategic information technology plan—Biennial state performance report on information technology.
- 43.105.190 Major information technology projects standards and policies—Project evaluation and reporting.

**43.105.160 Strategic information technology plan—Biennial state performance report on information technology.** (1) The department shall prepare a state strategic information technology plan which shall establish a statewide mission, goals, and objectives for the use of information technology, including goals for electronic access to government records, information, and services. The plan shall be developed in accordance with the standards and policies established by the board and shall be submitted to the board for review, modification as necessary, and approval. The department shall seek the advice of the board in the development of this plan.

The plan approved under this section shall be updated as necessary and submitted to the governor and the chairs and ranking minority members of the appropriations committees of the senate and the house of representatives.

(2) The department shall prepare a biennial state performance report on information technology based on agency performance reports required under RCW 43.105.170 and other information deemed appropriate by the department. The report shall include, but not be limited to:

(a) An analysis, based upon agency portfolios, of the state's information technology infrastructure, including its value, condition, and capacity;

(b) An evaluation of performance relating to information technology;

(c) An assessment of progress made toward implementing the state strategic information technology plan, including progress toward electronic access to public information and

enabling citizens to have two-way access to public records, information, and services;

(d) An analysis of the success or failure, feasibility, progress, costs, and timeliness of implementation of major information technology projects under RCW 43.105.190;

(e) Identification of benefits, cost avoidance, and cost savings generated by major information technology projects developed under RCW 43.105.190; and

(f) An inventory of state information services, equipment, and proprietary software.

Copies of the report shall be distributed biennially to the governor and the chairs and ranking minority members of the appropriations committees of the senate and the house of representatives. [2005 c 319 § 110; 1999 c 80 § 9; 1998 c 177 § 3; 1996 c 171 § 9; 1992 c 20 § 1.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Captions not law—Effective dates—1996 c 171:** See notes following RCW 43.105.250.

**Severability—1992 c 20:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1992 c 20 § 14.]

**Captions not law—1992 c 20:** "Captions used in this act do not constitute any part of the law." [1992 c 20 § 16.]

**43.105.190 Major information technology projects standards and policies—Project evaluation and reporting.** (1) The department, with the approval of the board, shall establish standards and policies governing the planning, implementation, and evaluation of major information technology projects, including those proposed by the superintendent of public instruction, in conjunction with educational service districts, or statewide or regional providers of K-12 education information technology services. The standards and policies shall:

(a) Establish criteria to identify projects which are subject to this section. Such criteria shall include, but not be limited to, significant anticipated cost, complexity, or statewide significance of the project; and

(b) Establish a model process and procedures which agencies shall follow in developing and implementing projects within their information technology portfolios. Agencies may propose, for approval by the department, a process and procedures unique to the agency. The department may accept or require modification of such agency proposals or the department may reject such agency proposals and require use of the model process and procedures established under this subsection. Any process and procedures developed under this subsection shall require (i) distinct and identifiable phases upon which funding may be based, (ii) user validation of products through system demonstrations and testing of prototypes and deliverables, and (iii) other elements identified by the board.

The director may terminate a major project if the director determines that the project is not meeting or is not expected to meet anticipated performance standards.

(2) The office of financial management shall establish policies and standards consistent with portfolio-based information technology management to govern the funding of

projects developed under this section. The policies and standards shall provide for:

(a) Funding of a project under terms and conditions mutually agreed to by the director, the director of financial management, and the head of the agency proposing the project. However, the office of financial management may require incremental funding of a project on a phase-by-phase basis whereby funds for a given phase of a project may be released only when the office of financial management determines, with the advice of the department, that the previous phase is satisfactorily completed;

(b) Acceptance testing of products to assure that products perform satisfactorily before they are accepted and final payment is made; and

(c) Other elements deemed necessary by the office of financial management.

(3) The department shall evaluate projects based on the demonstrated business needs and benefits; cost; technology scope and feasibility; impact on the agency's information technology portfolio and on the statewide infrastructure; and final project implementation plan based upon available funding.

Copies of project evaluations conducted under this subsection shall be submitted to the office of financial management and the chairs, ranking minority members, and staff coordinators of the appropriations committees of the senate and house of representatives.

If there are projects that receive funding from a transportation fund or account, copies of those projects' evaluations conducted under this subsection must be submitted to the chairs and ranking minority members of the transportation committees of the senate and the house of representatives. [2005 c 319 § 111; 1999 c 80 § 12; 1998 c 177 § 4; 1996 c 137 § 15; 1992 c 20 § 4.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Effective date—Application—1996 c 137:** See notes following RCW 43.105.830.

**Severability—Captions not law—1992 c 20:** See notes following RCW 43.105.160.

## Chapter 43.121 RCW

### COUNCIL FOR THE PREVENTION OF CHILD ABUSE AND NEGLECT

#### Sections

- 43.121.100 Contributions, grants, gifts—Depository for and disbursement and expenditure control of moneys received—Children's trust fund.
- 43.121.160 Postpartum depression—Public information and communication outreach campaign.

**43.121.100 Contributions, grants, gifts—Depository for and disbursement and expenditure control of moneys received—Children's trust fund.** The council may accept contributions, grants, or gifts in cash or otherwise, including funds generated by the sale of "heirloom" birth certificates under chapter 70.58 RCW from persons, associations, or corporations and funds generated through the issuance of the "Keep Kids Safe" license plate under chapter 46.16 RCW. All moneys received by the council or any employee thereof from contributions, grants, or gifts and not through appropri-

ation by the legislature shall be deposited in a depository approved by the state treasurer to be known as the children's trust fund. Disbursements of such funds shall be on the authorization of the council or a duly authorized representative thereof and only for the purposes stated in RCW 43.121.050. In order to maintain an effective expenditure and revenue control, such funds shall be subject in all respects to chapter 43.88 RCW, but no appropriation shall be required to permit expenditure of such funds. [2005 c 53 § 4; 1987 c 351 § 5; 1984 c 261 § 3; 1982 c 4 § 10.]

**Legislative findings—1987 c 351:** See note following RCW 70.58.085.

**Severability—1984 c 261:** See note following RCW 43.121.020.

**43.121.160 Postpartum depression—Public information and communication outreach campaign.** The council shall conduct a proactive, public information and communication outreach campaign concerning the significance, signs, and treatment of postpartum depression.

The public information campaign may, within available funds, include production and distribution of a brochure and communication by electronic media, telephone hotlines, and existing parenting education events funded by the council. [2005 c 347 § 2.]

**Finding—2005 c 347:** "The legislature finds that postpartum depression is a serious condition that affects women of all ages, economic status, and racial and ethnic backgrounds. Postpartum depression includes a range of physical and emotional changes that many mothers can have following the birth of a child, which can be treated with medication and counseling. If untreated, however, postpartum depression can lead to further depression, self-destructive behavior, or even suicide, as well as child abuse, neglect, or death of the infant or other siblings." [2005 c 347 § 1.]

### Chapter 43.131 RCW

#### WASHINGTON SUNSET ACT OF 1977

##### Sections

- 43.131.381 Repealed.  
43.131.382 Repealed.

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

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

### Chapter 43.135 RCW

#### STATE EXPENDITURES LIMITATIONS

(Formerly: Tax revenue limitations)

##### Sections

- 43.135.010 Findings—Intent. (*Effective July 1, 2007.*)  
43.135.025 General fund expenditure limit—Computation—Annual limit adjustment—Definitions—Emergency exception—State treasurer duty, penalty—State expenditure limit committee. (*Effective July 1, 2007.*)  
43.135.035 Tax legislation—Conditions and restrictions—Ballot title—Declarations of emergency—Taxes on intangible property—Expenditure limit to reflect program cost shifting or fund transfer. (*Effective until July 1, 2007.*)  
43.135.035 Tax legislation—Conditions and restrictions—Ballot title—Declarations of emergency—Taxes on intangible property—Expenditure limit to reflect program cost shifting or fund transfer. (*Effective July 1, 2007.*)

- 43.135.045 Emergency reserve fund—Excess balance to education construction fund—Appropriation conditions—Transfer of earnings to multimodal transportation account. (*Expires June 30, 2007.*)  
43.135.045 Emergency reserve fund—Excess balance to education construction fund—Appropriation conditions—Transfer of earnings to multimodal transportation account (*as amended by 2005 c 518.*)  
43.135.045 Emergency reserve fund—Excess balance to education construction fund—Appropriation conditions—Transfer of earnings to multimodal transportation account. (*Effective July 1, 2007.*)

**43.135.010 Findings—Intent. (*Effective July 1, 2007.*)** The people of the state of Washington hereby find and declare:

(1) The continuing increases in our state tax burden and the corresponding growth of state government is contrary to the interest of the people of the state of Washington.

(2) It is necessary to limit the rate of growth of state government while assuring adequate funding of essential services, including basic education as defined by the legislature.

(3) The current budgetary system in the state of Washington lacks stability. The system encourages crisis budgeting and results in cutbacks during lean years and overspending during surplus years.

(4) It is therefore the intent of this chapter to:

(a) Establish a limit on state expenditures that will assure that the growth rate of state expenditures does not exceed the growth rate in Washington personal income;

(b) Assure that local governments are provided funds adequate to render those services deemed essential by their citizens;

(c) Assure that the state does not impose responsibility on local governments for new programs or increased levels of service under existing programs unless the costs thereof are paid by the state;

(d) Provide for adjustment of the limit when costs of a program are transferred between the state and another political entity;

(e) Establish a procedure for exceeding this limit in emergency situations;

(f) Provide for voter approval of tax increases; and

(g) Avoid overfunding and underfunding state programs by providing stability, consistency, and long-range planning. [2005 c 72 § 3; 1994 c 2 § 1 (Initiative Measure No. 601, approved November 2, 1993); 1980 c 1 § 1 (Initiative Measure No. 62, approved November 6, 1979).]

**Findings—2005 c 72:** "The legislature finds that the citizens of the state benefit from a state expenditure limit that ensures that the state budget operates with stability and predictability, while encouraging the establishment of budget priorities and a periodic review of state programs and the delivery of state services. A state expenditure limit can prevent budgeting crises that can occur because of increased spending levels during periods of revenue surplus followed by drastic reductions in state services in lean years. The citizens of the state are best served by an expenditure limit that keeps pace with the growth in the state's economy yet ensures budget discipline and taxpayer protection. For these reasons, the legislature finds that modifications to the state expenditure limit, after ten years of experience following the initial implementation of Initiative Measure No. 601, will recognize the economic productivity of the state's economy and better balance the needs of the citizens for essential government services with the obligation of the legislature for strict spending accountability and protection of its taxpayers." [2005 c 72 § 1.]

**Effective dates—2005 c 72:** "(1) Sections 1 and 2 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take



effect immediately [April 18, 2005].

(2) Sections 3 through 6 of this act take effect July 1, 2007." [2005 c 72 § 7.]

**43.135.025 General fund expenditure limit—Computation—Annual limit adjustment—Definitions—Emergency exception—State treasurer duty, penalty—State expenditure limit committee.** (*Effective July 1, 2007.*) (1) The state shall not expend from the general fund and related funds during any fiscal year state moneys in excess of the state expenditure limit established under this chapter.

(2) Except pursuant to a declaration of emergency under RCW 43.135.035 or pursuant to an appropriation under RCW 43.135.045(4)(b), the state treasurer shall not issue or redeem any check, warrant, or voucher that will result in a state general fund or related fund expenditure for any fiscal year in excess of the state expenditure limit established under this chapter. A violation of this subsection constitutes a violation of RCW 43.88.290 and shall subject the state treasurer to the penalties provided in RCW 43.88.300.

(3) The state expenditure limit for any fiscal year shall be the previous fiscal year's state expenditure limit increased by a percentage rate that equals the fiscal growth factor.

(4) For purposes of computing the state expenditure limit for the fiscal year beginning July 1, 2007, the phrase "the previous fiscal year's state expenditure limit" means the total state expenditures from the state general fund and related funds, not including federal funds, for the fiscal year beginning July 1, 2006, plus the fiscal growth factor.

(5) A state expenditure limit committee is established for the purpose of determining and adjusting the state expenditure limit as provided in this chapter. The members of the state expenditure limit committee are the director of financial management, the attorney general or the attorney general's designee, and the chairs and ranking minority members of the senate committee on ways and means and the house of representatives committee on appropriations. All actions of the state expenditure limit committee taken pursuant to this chapter require an affirmative vote of at least four members.

(6) Each November, the state expenditure limit committee shall adjust the expenditure limit for the preceding fiscal year based on actual expenditures and known changes in the fiscal growth factor and then project an expenditure limit for the next two fiscal years. If, by November 30th, the state expenditure limit committee has not adopted the expenditure limit adjustment and projected expenditure limit as provided in subsection (5) of this section, the attorney general or his or her designee shall adjust or project the expenditure limit, as necessary.

(7) "Fiscal growth factor" means the average growth in state personal income for the prior ten fiscal years.

(8) "General fund" means the state general fund.

(9) "Related fund" means the health services account, violence reduction and drug enforcement account, public safety and education account, water quality account, or student achievement fund. [2005 c 72 § 4; 2000 2nd sp.s. c 2 § 1; 1994 c 2 § 2 (Initiative Measure No. 601, approved November 2, 1993).]

**Findings—Effective dates—2005 c 72:** See notes following RCW 43.135.010.

**Effective date—2000 2nd sp.s. c 2:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2000." [2000 2nd sp.s. c 2 § 4.]

**43.135.035 Tax legislation—Conditions and restrictions—Ballot title—Declarations of emergency—Taxes on intangible property—Expenditure limit to reflect program cost shifting or fund transfer.** (*Effective until July 1, 2007.*) (1) After July 1, 1995, any action or combination of actions by the legislature that raises state revenue or requires revenue-neutral tax shifts may be taken only if approved by a two-thirds vote of each house, and then only if state expenditures in any fiscal year, including the new revenue, will not exceed the state expenditure limits established under this chapter. However, for legislation enacted between \*the effective date of this 2005 act and June 30, 2007, any action or combination of actions by the legislature that raises state revenue or requires revenue-neutral tax shifts may be taken with the approval of a majority of members elected to each house, so long as state expenditures in any fiscal year, including the new revenue, will not exceed the state expenditure limits established under this chapter.

(2)(a) If the legislative action under subsection (1) of this section will result in expenditures in excess of the state expenditure limit, then the action of the legislature shall not take effect until approved by a vote of the people at a November general election. The state expenditure limit committee shall adjust the state expenditure limit by the amount of additional revenue approved by the voters under this section. This adjustment shall not exceed the amount of revenue generated by the legislative action during the first full fiscal year in which it is in effect. The state expenditure limit shall be adjusted downward upon expiration or repeal of the legislative action.

(b) The ballot title for any vote of the people required under this section shall be substantially as follows:

"Shall taxes be imposed on . . . . . in order to allow a spending increase above last year's authorized spending adjusted for inflation and population increases?"

(3)(a) The state expenditure limit may be exceeded upon declaration of an emergency for a period not to exceed twenty-four months by a law approved by a two-thirds vote of each house of the legislature and signed by the governor. The law shall set forth the nature of the emergency, which is limited to natural disasters that require immediate government action to alleviate human suffering and provide humanitarian assistance. The state expenditure limit may be exceeded for no more than twenty-four months following the declaration of the emergency and only for the purposes contained in the emergency declaration.

(b) Additional taxes required for an emergency under this section may be imposed only until thirty days following the next general election, unless an extension is approved at that general election. The additional taxes shall expire upon expiration of the declaration of emergency. The legislature shall not impose additional taxes for emergency purposes under this subsection unless funds in the education construction fund have been exhausted.

(c) The state or any political subdivision of the state shall not impose any tax on intangible property listed in RCW 84.36.070 as that statute exists on January 1, 1993.

(4) If the cost of any state program or function is shifted from the state general fund on or after January 1, 1993, to another source of funding, or if moneys are transferred from the state general fund to another fund or account, the state expenditure limit committee, acting pursuant to RCW 43.135.025(5), shall lower the state expenditure limit to reflect the shift. For the purposes of this section, a transfer of money from the state general fund to another fund or account includes any state legislative action taken that has the effect of reducing revenues from a particular source, where such revenues would otherwise be deposited into the state general fund, while increasing the revenues from that particular source to another state or local government account. This subsection does not apply to the dedication or use of lottery revenues under RCW 67.70.240(3) or property taxes under RCW 84.52.068, in support of education or education expenditures.

(5) If the cost of any state program or function is shifted to the state general fund on or after January 1, 2000, from another source of funding, or if moneys are transferred to the state general fund from another fund or account, the state expenditure limit committee, acting pursuant to RCW 43.135.025(5), shall increase the state expenditure limit to reflect the shift. [2005 c 72 § 2. Prior: 2001 c 3 § 8 (Initiative Measure No. 728, approved November 7, 2000); 2000 2nd sp.s. c 2 § 2; (2002 c 33 § 1 expired June 30, 2003); 1994 c 2 § 4 (Initiative Measure No. 601, approved November 2, 1993).]

\*Reviser's note: "This 2005 act" has two effective dates. See note following RCW 43.135.010.

**Findings—Effective dates—2005 c 72:** See notes following RCW 43.135.010.

**Short title—Purpose—Intent—Construction—Severability—Effective dates—2001 c 3 (Initiative Measure No. 728):** See notes following RCW 28A.505.210.

**Effective date—2000 2nd sp.s. c 2:** See note following RCW 43.135.025.

**43.135.035 Tax legislation—Conditions and restrictions—Ballot title—Declarations of emergency—Taxes on intangible property—Expenditure limit to reflect program cost shifting or fund transfer. (Effective July 1, 2007.)** (1) After July 1, 1995, any action or combination of actions by the legislature that raises state revenue or requires revenue-neutral tax shifts may be taken only if approved by a two-thirds vote of each house, and then only if state expenditures in any fiscal year, including the new revenue, will not exceed the state expenditure limits established under this chapter.

(2)(a) If the legislative action under subsection (1) of this section will result in expenditures in excess of the state expenditure limit, then the action of the legislature shall not take effect until approved by a vote of the people at a November general election. The state expenditure limit committee shall adjust the state expenditure limit by the amount of additional revenue approved by the voters under this section. This adjustment shall not exceed the amount of revenue generated by the legislative action during the first full fiscal year

in which it is in effect. The state expenditure limit shall be adjusted downward upon expiration or repeal of the legislative action.

(b) The ballot title for any vote of the people required under this section shall be substantially as follows:

"Shall taxes be imposed on . . . . . in order to allow a spending increase above last year's authorized spending adjusted for personal income growth?"

(3)(a) The state expenditure limit may be exceeded upon declaration of an emergency for a period not to exceed twenty-four months by a law approved by a two-thirds vote of each house of the legislature and signed by the governor. The law shall set forth the nature of the emergency, which is limited to natural disasters that require immediate government action to alleviate human suffering and provide humanitarian assistance. The state expenditure limit may be exceeded for no more than twenty-four months following the declaration of the emergency and only for the purposes contained in the emergency declaration.

(b) Additional taxes required for an emergency under this section may be imposed only until thirty days following the next general election, unless an extension is approved at that general election. The additional taxes shall expire upon expiration of the declaration of emergency. The legislature shall not impose additional taxes for emergency purposes under this subsection unless funds in the education construction fund have been exhausted.

(c) The state or any political subdivision of the state shall not impose any tax on intangible property listed in RCW 84.36.070 as that statute exists on January 1, 1993.

(4) If the cost of any state program or function is shifted from the state general fund or a related fund to another source of funding, or if moneys are transferred from the state general fund or a related fund to another fund or account, the state expenditure limit committee, acting pursuant to RCW 43.135.025(5), shall lower the state expenditure limit to reflect the shift. For the purposes of this section, a transfer of money from the state general fund or a related fund to another fund or account includes any state legislative action taken that has the effect of reducing revenues from a particular source, where such revenues would otherwise be deposited into the state general fund or a related fund, while increasing the revenues from that particular source to another state or local government account. This subsection does not apply to the dedication or use of lottery revenues under RCW 67.70.240(3) or property taxes under RCW 84.52.068, in support of education or education expenditures.

(5) If the cost of any state program or function and the ongoing revenue necessary to fund the program or function are shifted to the state general fund or a related fund on or after January 1, 2007, the state expenditure limit committee, acting pursuant to RCW 43.135.025(5), shall increase the state expenditure limit to reflect the shift. [2005 c 72 § 5; 2005 c 72 § 2. Prior: 2001 c 3 § 8 (Initiative Measure No. 728, approved November 7, 2000); 2000 2nd sp.s. c 2 § 2; (2002 c 33 § 1 expired June 30, 2003); 1994 c 2 § 4 (Initiative Measure No. 601, approved November 2, 1993).]

**Findings—Effective dates—2005 c 72:** See notes following RCW 43.135.010.

**Short title—Purpose—Intent—Construction—Severability—Effective dates—2001 c 3 (Initiative Measure No. 728):** See notes following RCW 28A.505.210.

**Effective date—2000 2nd sp.s. c 2:** See note following RCW 43.135.025.

**43.135.045 Emergency reserve fund—Excess balance to education construction fund—Appropriation conditions—Transfer of earnings to multimodal transportation account. (Expires June 30, 2007.)** (1) The emergency reserve fund is established in the state treasury. During each fiscal year, the state treasurer shall deposit in the emergency reserve fund all general fund—state revenues in excess of the state expenditure limit for that fiscal year. Deposits shall be made at the end of each fiscal quarter based on projections of state revenues and the state expenditure limit. The treasurer shall make transfers between these accounts as necessary to reconcile actual annual revenues and the expenditure limit for fiscal year 2000 and thereafter.

(2) The legislature may appropriate moneys from the emergency reserve fund only with approval of at least two-thirds of the members of each house of the legislature, and then only if the appropriation does not cause total expenditures to exceed the state expenditure limit under this chapter.

(3) The emergency reserve fund balance shall not exceed five percent of annual general fund—state revenues as projected by the official state revenue forecast. Any balance in excess of five percent shall be transferred on a quarterly basis by the state treasurer as follows: Seventy-five percent to the student achievement fund hereby created in the state treasury and twenty-five percent to the general fund balance. The treasurer shall make transfers between these accounts as necessary to reconcile actual annual revenues for fiscal year 2000 and thereafter. When per-student state funding for the maintenance and operation of K-12 education meets a level of no less than ninety percent of the national average of total funding from all sources per student as determined by the most recent published data from the national center for education statistics of the United States department of education, as calculated by the office of financial management, further deposits to the student achievement fund shall be required only to the extent necessary to maintain the ninety-percent level. Remaining funds are part of the general fund balance and these funds are subject to the expenditure limits of this chapter.

(4) The education construction fund is hereby created in the state treasury.

(a) Funds may be appropriated from the education construction fund exclusively for common school construction or higher education construction. During the fiscal years beginning July 1, 2005, and ending June 30, 2007, funds may also be used for higher education facilities preservation and maintenance.

(b) Funds may be appropriated for any other purpose only if approved by a two-thirds vote of each house of the legislature and if approved by a vote of the people at the next general election. An appropriation approved by the people under this subsection shall result in an adjustment to the state expenditure limit only for the fiscal period for which the appropriation is made and shall not affect any subsequent fiscal period.

(5) Funds from the student achievement fund shall be appropriated to the superintendent of public instruction strictly for distribution to school districts to meet the provisions set out in the student achievement act. Allocations shall be made on an equal per full-time equivalent student basis to each school district. [2005 c 488 § 920; 2005 c 314 § 401; 2003 1st sp.s. c 25 § 920. Prior: (2003 1st sp.s. c 26 § 919 expired June 30, 2005); (2003 1st sp.s. c 26 § 918 expired June 30, 2005); (2002 c 33 § 2 expired June 30, 2003); prior: 2001 c 3 § 9 (Initiative Measure No. 728, approved November 7, 2000); 2000 2nd sp.s. c 5 § 1; 2000 2nd sp.s. c 2 § 3; 1994 c 2 § 3 (Initiative Measure No. 601, approved November 2, 1993).]

**Reviser's note:** This section was amended by 2005 c 314 § 401 and by 2005 c 488 § 920, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Expiration date—2005 c 488 §§ 920 and 921:** "Sections 920 and 921 of this act expire June 30, 2007." [2005 c 488 § 955.]

**Part headings not law—Severability—Effective dates—2005 c 488:** See notes following RCW 28B.50.360.

**Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401:** See note following RCW 46.68.290.

**Part headings not law—2005 c 314:** See note following RCW 46.17.010.

**Expiration date—2003 1st sp.s. c 26:** "Sections 918 through 921, 926, and 929 of this act expire June 30, 2005." [2003 1st sp.s. c 26 § 927.]

**Severability—2003 1st sp.s. c 26:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 1st sp.s. c 26 § 930.]

**Effective dates—2003 1st sp.s. c 26:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 26, 2003], except for section 919 of this act which takes effect June 30, 2003." [2003 1st sp.s. c 26 § 931.]

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Expiration date—2002 c 33:** "This act expires June 30, 2003." [2002 c 33 § 3.]

**Effective date—2002 c 33:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 13, 2002]." [2002 c 33 § 4.]

**Short title—Purpose—Intent—Construction—Severability—Effective dates—2001 c 3 (Initiative Measure No. 728):** See notes following RCW 28A.505.210.

**Effective date—2000 2nd sp.s. c 2:** See note following RCW 43.135.025.

**43.135.045 Emergency reserve fund—Excess balance to education construction fund—Appropriation conditions—Transfer of earnings to multimodal transportation account (as amended by 2005 c 518).** (1) The emergency reserve fund is established in the state treasury. During each fiscal year, the state treasurer shall deposit in the emergency reserve fund all general fund—state revenues in excess of the state expenditure limit for that fiscal year. Deposits shall be made at the end of each fiscal quarter based on projections of state revenues and the state expenditure limit. The treasurer shall make transfers between these accounts as necessary to reconcile actual annual revenues and the expenditure limit for fiscal year 2000 and thereafter.

(2) The legislature may appropriate moneys from the emergency reserve fund only with approval of at least two-thirds of the members of each house of the legislature, and then only if the appropriation does not cause total expenditures to exceed the state expenditure limit under this chapter.

(3) The emergency reserve fund balance shall not exceed five percent of annual general fund—state revenues as projected by the official state revenue forecast. Any balance in excess of five percent shall be transferred on a quarterly basis by the state treasurer as follows: Seventy-five percent to the student achievement fund hereby created in the state treasury and twenty-five percent to the general fund balance. The treasurer shall make transfers between these accounts as necessary to reconcile actual annual revenues for fiscal year 2000 and thereafter. When per-student state funding for the maintenance and operation of K-12 education meets a level of no less than ninety percent of the national average of total funding from all sources per student as determined by the most recent published data from the national center for education statistics of the United States department of education, as calculated by the office of financial management, further deposits to the student achievement fund shall be required only to the extent necessary to maintain the ninety-percent level. Remaining funds are part of the general fund balance and these funds are subject to the expenditure limits of this chapter.

(4) The education construction fund is hereby created in the state treasury.

(a) Funds may be appropriated from the education construction fund exclusively for common school construction or higher education construction.

(b) Funds may be appropriated for any other purpose only if approved by a two-thirds vote of each house of the legislature and if approved by a vote of the people at the next general election. An appropriation approved by the people under this subsection shall result in an adjustment to the state expenditure limit only for the fiscal period for which the appropriation is made and shall not affect any subsequent fiscal period.

(5) Funds from the student achievement fund shall be appropriated to the superintendent of public instruction strictly for distribution to school districts to meet the provisions set out in the student achievement act. Allocations shall be made on an equal per full-time equivalent student basis to each school district.

(6) Earnings of the emergency reserve fund under RCW 43.84.092(4)(a) shall be transferred quarterly to the multimodal transportation account, except for those earnings that are in excess of thirty-five million dollars each fiscal year. Within thirty days following any fiscal year in

which earnings transferred to the multimodal transportation account under this subsection did not total thirty-five million dollars, the state treasurer shall transfer from the emergency reserve fund an amount necessary to bring the total deposited in the multimodal transportation account under this subsection to thirty-five million dollars. The revenues to the multimodal transportation account reflected in this subsection provide ongoing support for the transportation programs of the state. However, it is the intent of the legislature that any new long-term financial support that may be subsequently provided for transportation programs will be used to replace and supplant the revenues reflected in this subsection, thereby allowing those revenues to be returned to the purposes to which they were previously dedicated. No transfers from the emergency reserve fund to the multimodal fund shall be made during the ((2003-05)) 2005-2007 fiscal biennium. [2005 c 518 § 931. Prior: (2003 1st sp.s. c 26 § 919 expired June 30, 2005); 2003 1st sp.s. c 25 § 920; prior: (2003 1st sp.s. c 26 § 918 expired June 30, 2005); (2002 c 33 § 2 expired June 30, 2003); prior: 2001 c 3 § 9 (Initiative Measure No. 728, approved November 7, 2000); 2000 2nd sp.s. c 5 § 1; 2000 2nd sp.s. c 2 § 3; 1994 c 2 § 3 (Initiative Measure No. 601, approved November 2, 1993).]

**Reviser's note:** RCW 43.135.045 was amended four times during the 2005 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

**Effective date—2005 c 518 § 931:** "Section 931 (RCW 43.135.045) of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2005." [2005 c 518 § 1808.]

**Severability—2005 c 518:** See notes following RCW 28A.305.210.

**Expiration date—2003 1st sp.s. c 26:** "Sections 918 through 921, 926, and 929 of this act expire June 30, 2005." [2003 1st sp.s. c 26 § 927.]

**Severability—2003 1st sp.s. c 26:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 1st sp.s. c 26 § 930.]

**Effective dates—2003 1st sp.s. c 26:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 26, 2003], except for section 919 of this act which takes effect June 30, 2003." [2003 1st sp.s. c 26 § 931.]

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Expiration date—2002 c 33:** "This act expires June 30, 2003." [2002 c 33 § 3.]

**Effective date—2002 c 33:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 13, 2002]." [2002 c 33 § 4.]

**Short title—Purpose—Intent—Construction—Severability—Effective dates—2001 c 3 (Initiative Measure No. 728):** See notes following RCW 28A.505.210.

**Effective date—2000 2nd sp.s. c 2:** See note following RCW 43.135.025.

**43.135.045 Emergency reserve fund—Excess balance to education construction fund—Appropriation conditions—Transfer of earnings to multimodal transportation account. (Effective July 1, 2007.)** (1) The emergency reserve fund is established in the state treasury. During each fiscal year, the state treasurer shall transfer an amount from the state general fund to the emergency reserve fund. The amount transferred shall equal the amount by which total state revenue for the general fund and related funds exceeds the state expenditure limit, multiplied by the percentage that general fund expenditures are of total expenditures from the general fund and related funds. Transfers shall be made at the end of each fiscal quarter based on projections of state revenues, expenditures, and the state expenditure limit. The treasurer shall make transfers between these accounts as necessary to reconcile actual annual revenues and the expenditure limit for fiscal year 2000 and thereafter.

(2) The legislature may appropriate moneys from the emergency reserve fund only with approval of at least two-thirds of the members of each house of the legislature, and then only if the appropriation does not cause total expenditures to exceed the state expenditure limit under this chapter.

(3) The emergency reserve fund balance shall not exceed five percent of annual general fund—state revenues as projected by the official state rev-

enue forecast. Any balance in excess of five percent shall be transferred on a quarterly basis by the state treasurer as follows: Seventy-five percent to the student achievement fund hereby created in the state treasury and twenty-five percent to the general fund balance. The treasurer shall make transfers between these accounts as necessary to reconcile actual annual revenues for fiscal year 2000 and thereafter. When per-student state funding for the maintenance and operation of K-12 education meets a level of no less than ninety percent of the national average of total funding from all sources per student as determined by the most recent published data from the national center for education statistics of the United States department of education, as calculated by the office of financial management, further deposits to the student achievement fund shall be required only to the extent necessary to maintain the ninety-percent level. Remaining funds are part of the general fund balance and these funds are subject to the expenditure limits of this chapter.

(4) The education construction fund is hereby created in the state treasury.

(a) Funds may be appropriated from the education construction fund exclusively for common school construction or higher education construction.

(b) Funds may be appropriated for any other purpose only if approved by a two-thirds vote of each house of the legislature and if approved by a vote of the people at the next general election. An appropriation approved by the people under this subsection shall result in an adjustment to the state expenditure limit only for the fiscal period for which the appropriation is made and shall not affect any subsequent fiscal period.

(5) Funds from the student achievement fund shall be appropriated to the superintendent of public instruction strictly for distribution to school districts to meet the provisions set out in the student achievement act. Allocations shall be made on an equal per full-time equivalent student basis to each school district. [2005 c 314 § 401; 2005 c 72 § 6. Prior: (2003 1st sp.s. c 26 § 919 expired June 30, 2005); 2003 1st sp.s. c 25 § 920; prior: (2003 1st sp.s. c 26 § 918 expired June 30, 2005); (2002 c 33 § 2 expired June 30, 2003); prior: 2001 c 3 § 9 (Initiative Measure No. 728, approved November 7, 2000); 2000 2nd sp.s. c 5 § 1; 2000 2nd sp.s. c 2 § 3; 1994 c 2 § 3 (Initiative Measure No. 601, approved November 2, 1993).]

**Reviser's note:** This section was amended by 2005 c 72 § 6 and by 2005 c 314 § 401, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401:** See note following RCW 46.68.290.

**Part headings not law—2005 c 314:** See note following RCW 46.17.010.

**Findings—Effective dates—2005 c 72:** See notes following RCW 43.135.010.

**Expiration date—2003 1st sp.s. c 26:** "Sections 918 through 921, 926, and 929 of this act expire June 30, 2005." [2003 1st sp.s. c 26 § 927.]

**Severability—2003 1st sp.s. c 26:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 1st sp.s. c 26 § 930.]

**Effective dates—2003 1st sp.s. c 26:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 26, 2003], except for section 919 of this act which takes effect June 30, 2003." [2003 1st sp.s. c 26 § 931.]

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Expiration date—2002 c 33:** "This act expires June 30, 2003." [2002 c 33 § 3.]

**Effective date—2002 c 33:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 13, 2002]." [2002 c 33 § 4.]

**Short title—Purpose—Intent—Construction—Severability—Effective dates—2001 c 3 (Initiative Measure No. 728):** See notes following RCW 28A.505.210.

**Effective date—2000 2nd sp.s. c 2:** See note following RCW 43.135.025.

**Chapter 43.155 RCW**  
**PUBLIC WORKS PROJECTS**

## Sections

- 43.155.050 Public works assistance account. (*Expires June 30, 2011.*)  
43.155.050 Public works assistance account. (*Effective June 30, 2011.*)

**43.155.050 Public works assistance account. (*Expires June 30, 2011.*)** (1) The public works assistance account is hereby established in the state treasury. Money may be placed in the public works assistance account from the proceeds of bonds when authorized by the legislature or from any other lawful source. Money in the public works assistance account shall be used to make loans and to give financial guarantees to local governments for public works projects. Moneys in the account may also be appropriated to provide for state match requirements under federal law for projects and activities conducted and financed by the board under the drinking water assistance account. Not more than fifteen percent of the biennial capital budget appropriation to the public works board from this account may be expended or obligated for preconstruction loans, emergency loans, or loans for capital facility planning under this chapter; of this amount, not more than ten percent of the biennial capital budget appropriation may be expended for emergency loans and not more than one percent of the biennial capital budget appropriation may be expended for capital facility planning loans. For the 2005-2007 biennium, moneys in the account may be used for grants for projects identified in section 138, chapter 488, Laws of 2005.

(2) The job development fund is hereby established in the state treasury. Up to fifty million dollars each biennium from the public works assistance account may be transferred into the job development fund. Money in the job development fund may be used solely for job development fund program grants, administrative expenses related to the administration of the job development fund program created in RCW 43.160.230, and for the report prepared by the joint legislative audit and review committee pursuant to RCW 44.28.801(2). Moneys in the job development fund may be spent only after appropriation. The board shall prepare a prioritized list of proposed projects of up to fifty million dollars as part of the department's 2007-09 biennial budget request. The board may provide an additional alternate job development fund project list of up to ten million dollars. The legislature may remove projects from the list recommended by the board. The legislature may not change the prioritization of projects recommended for funding by the board, but may add projects from the alternate list in order of priority, as long as the total funding does not exceed fifty million dollars. [2005 c 488 § 925; 2005 c 425 § 4; 2001 c 131 § 2. Prior: 1995 2nd sp.s. c 18 § 918; 1995 c 376 § 11; 1993 sp.s. c 24 § 921; 1985 c 471 § 8.]

**Reviser's note:** This section was amended by 2005 c 425 § 4 and by 2005 c 488 § 925, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Part headings not law—Severability—Effective dates—2005 c 488:** See notes following RCW 28B.50.360.

**Finding—Expiration date—Severability—2005 c 425:** See notes following RCW 43.160.230.

**Severability—Effective date—1995 2nd sp.s. c 18:** See notes following RCW 19.118.110.

**Findings—1995 c 376:** See note following RCW 70.116.060.

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

**Severability—Effective date—1985 c 471:** See notes following RCW 82.04.260.

**43.155.050 Public works assistance account. (*Effective June 30, 2011.*)** The public works assistance account is hereby established in the state treasury. Money may be placed in the public works assistance account from the proceeds of bonds when authorized by the legislature or from any other lawful source. Money in the public works assistance account shall be used to make loans and to give financial guarantees to local governments for public works projects. Moneys in the account may also be appropriated to provide for state match requirements under federal law for projects and activities conducted and financed by the board under the drinking water assistance account. Not more than fifteen percent of the biennial capital budget appropriation to the public works board from this account may be expended or obligated for preconstruction loans, emergency loans, or loans for capital facility planning under this chapter; of this amount, not more than ten percent of the biennial capital budget appropriation may be expended for emergency loans and not more than one percent of the biennial capital budget appropriation may be expended for capital facility planning loans. For the 2005-2007 biennium, moneys in the account may be used for grants for projects identified in section 138, chapter 488, Laws of 2005. [2005 c 488 § 925; 2001 c 131 § 2. Prior: 1995 2nd sp.s. c 18 § 918; 1995 c 376 § 11; 1993 sp.s. c 24 § 921; 1985 c 471 § 8.]

**Part headings not law—Severability—Effective dates—2005 c 488:** See notes following RCW 28B.50.360.

**Severability—Effective date—1995 2nd sp.s. c 18:** See notes following RCW 19.118.110.

**Findings—1995 c 376:** See note following RCW 70.116.060.

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

**Severability—Effective date—1985 c 471:** See notes following RCW 82.04.260.

**Chapter 43.160 RCW**  
**ECONOMIC DEVELOPMENT—PUBLIC FACILITIES LOANS AND GRANTS**

## Sections

- 43.160.115 Repealed.  
43.160.180 Repealed.  
43.160.230 Job development fund program. (*Expires June 30, 2011.*)  
43.160.240 Job development fund program—Maximum grants. (*Expires June 30, 2011.*)

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

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

**43.160.230 Job development fund program. (*Expires June 30, 2011.*)** (1) The job development fund program is

created to provide grants for public infrastructure projects that will stimulate job creation or assist in job retention. The program is to be administered by the board. The board shall establish a competitive process to request and prioritize proposals and make grant awards.

(2) For the purposes of chapter 425, Laws of 2005, "public infrastructure projects" has the same meaning as "public facilities" as defined in RCW 43.160.020(11).

(3) The board shall conduct a statewide request for project applications. The board shall apply the following criteria for evaluation and ranking of applications:

(a) The relative benefits provided to the community by the jobs the project would create, including, but not limited to: (i) The total number of jobs; (ii) the total number of full-time, family wage jobs; (iii) the unemployment rate in the area; and (iv) the increase in employment in comparison to total community population;

(b) The present level of economic activity in the community and the existing local financial capacity to increase economic activity in the community;

(c) The rate of return of the state's investment, that includes the expected increase in state and local tax revenues associated with the project;

(d) The lack of another timely source of funding available to finance the project which would likely prevent the proposed community or economic development, absent the financing available under chapter 425, Laws of 2005;

(e) The ability of the project to improve the viability of existing business entities in the project area;

(f) Whether or not the project is a partnership of multiple jurisdictions;

(g) Demonstration that the requested assistance will directly stimulate community and economic development by facilitating the creation of new jobs or the retention of existing jobs; and

(h) The availability of existing assets that applicants may apply to projects.

(4) Job development fund program grants may only be awarded to those applicants that have entered into or expect to enter into a contract with a private developer relating to private investment that will result in the creation or retention of jobs upon completion of the project. Job development fund program grants shall not be provided for any project where:

(a) The funds will not be used within the jurisdiction or jurisdictions of the applicants; or

(b) Evidence exists that the project would result in a development or expansion that would displace existing jobs in any other community in the state.

(5) The board shall, with the joint legislative audit and review committee, develop performance criteria for each grant and evaluation criteria to be used to evaluate both how well successful applicants met the community and economic development objectives stated in their applications, and how well the job development fund program performed in creating and retaining jobs. [2005 c 425 § 2.]

**Finding—2005 c 425:** "The legislature has and continues to recognize the vital importance of economic development to the health and prosperity of Washington state as indicated in RCW 43.160.010, 43.155.070(4)(g), 43.163.005, and 43.168.010. The legislature finds that current economic development programs and funding, which are primarily low-interest loan programs, can be enhanced by creating a grant program to assist with public

infrastructure projects that directly stimulate community and economic development by supporting the creation of new jobs or the retention of existing jobs." [2005 c 425 § 1.]

**Expiration date—2005 c 425:** "This act expires June 30, 2011." [2005 c 425 § 6.]

**Severability—2005 c 425:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 425 § 7.]

**43.160.240 Job development fund program—Maximum grants. (Expires June 30, 2011.)** The maximum grant from the job development fund for any one project is ten million dollars. Grant assistance from the job development fund may not exceed thirty-three percent of the total cost of the project. The nonstate portion of the total project cost may include cash, the value of real property when acquired solely for the purpose of the project, and in-kind contributions. [2005 c 425 § 3.]

**Finding—Expiration date—Severability—2005 c 425:** See notes following RCW 43.160.230.

## Chapter 43.163 RCW ECONOMIC DEVELOPMENT FINANCE AUTHORITY

### Sections

43.163.130 Nonrecourse revenue bonds—Issuance.

43.163.210 Nonrecourse revenue bond financing—Economic development activities—New products.

### **43.163.130 Nonrecourse revenue bonds—Issuance.**

(1) The authority may issue its nonrecourse revenue bonds in order to obtain the funds to carry out the programs authorized in this chapter. The bonds shall be special obligations of the authority, payable solely out of the special fund or funds established by the authority for their repayment.

(2) Any bonds issued under this chapter may be secured by a financing document between the authority and the purchasers or owners of such bonds or between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state.

(a) The financing document may pledge or assign, in whole or in part, the revenues and funds held or to be received by the authority, any present or future contract or other rights to receive the same, and the proceeds thereof.

(b) The financing document may contain such provisions for protecting and enforcing the rights, security, and remedies of bondowners as may be reasonable and proper, including, without limiting the generality of the foregoing, provisions defining defaults and providing for remedies in the event of default which may include the acceleration of maturities, restrictions on the individual rights of action by bondowners, and covenants setting forth duties of and limitations on the authority in conduct of its programs and the management of its property.

(c) In addition to other security provided in this chapter or otherwise by law, bonds issued by the authority may be secured, in whole or in part, by financial guaranties, by insurance or by letters of credit issued to the authority or a trustee or any other person, by any bank, trust company, insurance or

surety company or other financial institution, within or without the state. The authority may pledge or assign, in whole or in part, the revenues and funds held or to be received by the authority, any present or future contract or other rights to receive the same, and the proceeds thereof, as security for such guaranties or insurance or for the reimbursement by the authority to any issuer of such letter of credit of any payments made under such letter of credit.

(3) Without limiting the powers of the authority contained in this chapter, in connection with each issue of its obligation bonds, the authority shall create and establish one or more special funds, including, but not limited to debt service and sinking funds, reserve funds, project funds, and such other special funds as the authority deems necessary, useful, or convenient.

(4) Any security interest created against the unexpended bond proceeds and against the special funds created by the authority shall be immediately valid and binding against the money and any securities in which the money may be invested without authority or trustee possession. The security interest shall be prior to any party having any competing claim against the moneys or securities, without filing or recording under Article 9A of the Uniform Commercial Code, Title 62A RCW, and regardless of whether the party has notice of the security interest.

(5) The bonds may be issued as serial bonds, term bonds or any other type of bond instrument consistent with the provisions of this chapter. The bonds shall bear such date or dates; mature at such time or times; bear interest at such rate or rates, either fixed or variable; be payable at such time or times; be in such denominations; be in such form; bear such privileges of transferability, exchangeability, and interchangeability; be subject to such terms of redemption; and be sold at public or private sale, in such manner, at such time or times, and at such price or prices as the authority shall determine. The bonds shall be executed by the manual or facsimile signatures of the authority's chair and either its secretary or executive director, and may be authenticated by the trustee (if the authority determines to use a trustee) or any registrar which may be designated for the bonds by the authority.

(6) Bonds may be issued by the authority to refund other outstanding authority bonds, at or prior to maturity of, and to pay any redemption premium on, the outstanding bonds. Bonds issued for refunding purposes may be combined with bonds issued for the financing or refinancing of new projects. Pending the application of the proceeds of the refunding bonds to the redemption of the bonds to be redeemed, the authority may enter into an agreement or agreements with a corporate trustee regarding the interim investment of the proceeds and the application of the proceeds and the earnings on the proceeds to the payment of the principal of and interest on, and the redemption of, the bonds to be redeemed.

(7) The bonds of the authority may be negotiable instruments under Title 62A RCW.

(8) Neither the members of the authority, nor its employees or agents, nor any person executing the bonds shall be personally liable on the bonds or be subject to any personal liability or accountability by reason of the issuance of the bonds.

(9) The authority may purchase its bonds with any of its funds available for the purchase. The authority may hold,

pledge, cancel or resell the bonds subject to and in accordance with agreements with bondowners.

(10) The authority shall not exceed one billion dollars in total outstanding debt at any time.

(11) The state finance committee shall be notified in advance of the issuance of bonds by the authority in order to promote the orderly offering of obligations in the financial markets. [2005 c 137 § 1. Prior: 2001 c 304 § 2; 2001 c 32 § 2; 1998 c 48 § 1; 1994 c 238 § 5; 1989 c 279 § 14.]

**Effective date—2001 c 304:** See note following RCW 43.163.090.

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**Severability—Effective date—1994 c 238:** See notes following RCW 43.163.010.

**43.163.210 Nonrecourse revenue bond financing—Economic development activities—New products.** For the purpose of facilitating economic development in the state of Washington and encouraging the employment of Washington workers at meaningful wages:

(1) The authority may develop and conduct a program or programs to provide nonrecourse revenue bond financing for the project costs for economic development activities.

(2) The authority may develop and conduct a program that will stimulate and encourage the development of new products within Washington state by the infusion of financial aid for invention and innovation in situations in which the financial aid would not otherwise be reasonably available from commercial sources. The authority is authorized to provide nonrecourse revenue bond financing for this program.

(a) For the purposes of this program, the authority shall have the following powers and duties:

(i) To enter into financing agreements with eligible persons doing business in Washington state, upon terms and on conditions consistent with the purposes of this chapter, for the advancement of financial and other assistance to the persons for the development of specific products, procedures, and techniques, to be developed and produced in this state, and to condition the agreements upon contractual assurances that the benefits of increasing or maintaining employment and tax revenues shall remain in this state and accrue to it;

(ii) Own, possess, and take license in patents, copyrights, and proprietary processes and negotiate and enter into contracts and establish charges for the use of the patents, copyrights, and proprietary processes when the patents and licenses for products result from assistance provided by the authority;

(iii) Negotiate royalty payments to the authority on patents and licenses for products arising as a result of assistance provided by the authority;

(iv) Negotiate and enter into other types of contracts with eligible persons that assure that public benefits will result from the provision of services by the authority; provided that the contracts are consistent with the state Constitution;

(v) Encourage and provide technical assistance to eligible persons in the process of developing new products;

(vi) Refer eligible persons to researchers or laboratories for the purpose of testing and evaluating new products, processes, or innovations; and

(vii) To the extent permitted under its contract with eligible persons, to consent to a termination, modification, forgiveness, or other change of a term of a contractual right,

payment, royalty, contract, or agreement of any kind to which the authority is a party.

(b) Eligible persons seeking financial and other assistance under this program shall forward an application, together with an application fee prescribed by rule, to the authority. An investigation and report concerning the advisability of approving an application for assistance shall be completed by the staff of the authority. The investigation and report may include, but is not limited to, facts about the company under consideration as its history, wage standards, job opportunities, stability of employment, past and present financial condition and structure, pro forma income statements, present and future markets and prospects, integrity of management as well as the feasibility of the proposed product and invention to be granted financial aid, including the state of development of the product as well as the likelihood of its commercial feasibility. After receipt and consideration of the report set out in this subsection and after other action as is deemed appropriate, the application shall be approved or denied by the authority. The applicant shall be promptly notified of action by the authority. In making the decision as to approval or denial of an application, priority shall be given to those persons operating or planning to operate businesses of special importance to Washington's economy, including, but not limited to: (i) Existing resource-based industries of agriculture, forestry, and fisheries; (ii) existing advanced technology industries of electronics, computer and instrument manufacturing, computer software, and information and design; and (iii) emerging industries such as environmental technology, biotechnology, biomedical sciences, materials sciences, and optics.

(3) The authority may also develop and implement, if authorized by the legislature, such other economic development financing programs adopted in future general plans of economic development finance objectives developed under RCW 43.163.090. [2005 c 137 § 2; 2001 c 304 § 3; 1998 c 48 § 2; 1997 c 257 § 2; 1996 c 310 § 1; 1994 c 238 § 4.]

**Effective date—2001 c 304:** See note following RCW 43.163.090.

**Effective date—1996 c 310 § 1:** "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 30, 1996]." [1996 c 310 § 3.]

**Severability—Effective date—1994 c 238:** See notes following RCW 43.163.010.

### Chapter 43.165 RCW

#### COMMUNITY REVITALIZATION TEAM— ASSISTANCE TO DISTRESSED AREAS

Sections

43.165.010 Repealed.

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

### Chapter 43.168 RCW

#### WASHINGTON STATE DEVELOPMENT LOAN FUND COMMITTEE

Sections

43.168.020 Definitions.

43.168.031	Repealed.
43.168.040	Approval of applications for federal community development block grant funds for projects.
43.168.050	Application approval—Conditions and limitations.
43.168.060	Local development organizations—Duties of department—Rules.
43.168.070	Processing of applications—Contents of applications.
43.168.090	Use of federal community development block grant funds.
43.168.100	Entitlement community grants—Conditions.
43.168.130	Development of performance standards.
43.168.150	Minority and women-owned businesses—Application process—Joint loan guarantee program.

**43.168.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of community, trade, and economic development.

(2) "Director" means the director of community, trade, and economic development.

(3) "Distressed area" means: (a) A rural county; (b) a county which has an unemployment rate which is twenty percent above the state average for the immediately previous three years; (c) a county that has a median household income that is less than seventy-five percent of the state median household income for the previous three years; (d) a metropolitan statistical area, as defined by the office of federal statistical policy and standards, United States department of commerce, in which the average level of unemployment for the calendar year immediately preceding the year in which an application is filed under this chapter exceeds the average state unemployment for such calendar year by twenty percent; or (e) an area within a county, which area: (i) Is composed of contiguous census tracts; (ii) has a minimum population of five thousand persons; (iii) has at least seventy percent of its families and unrelated individuals with incomes below eighty percent of the county's median income for families and unrelated individuals; and (iv) has an unemployment rate which is at least forty percent higher than the county's unemployment rate. For purposes of this definition, "families and unrelated individuals" has the same meaning that is ascribed to that term by the federal department of housing and urban development in its regulations authorizing action grants for economic development and neighborhood revitalization projects.

(4) "Fund" means the rural Washington loan fund.

(5) "Local development organization" means a nonprofit organization which is organized to operate within an area, demonstrates a commitment to a long-standing effort for an economic development program, and makes a demonstrable effort to assist in the employment of unemployed or underemployed residents in an area.

(6) "Project" means the establishment of a new or expanded business in an area which when completed will provide employment opportunities. "Project" also means the retention of an existing business in an area which when completed will provide employment opportunities.

(7) "Rural county" means a county with a population density of fewer than one hundred persons per square mile as determined by the office of financial management. [2005 c 136 § 3; 1999 c 164 § 502; 1996 c 290 § 3; 1995 c 226 § 27; 1993 c 280 § 56; 1991 c 314 § 19; 1988 c 42 § 18; 1987 c 461 § 2; 1985 c 164 § 2.]



**Savings—2005 c 136:** "This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections." [2005 c 136 § 19.]

**Effective date—2005 c 136:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 136 § 20.]

**Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164:** See notes following RCW 43.160.010.

**Severability—Conflict with federal requirements—Effective date—1995 c 226:** See notes following RCW 43.160.020.

**Effective date—Severability—1993 c 280:** See RCW 43.330.902 and 43.330.903.

**Findings—1991 c 314:** See note following RCW 43.160.020.

**Severability—1988 c 42:** See note following RCW 4.24.480.

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

**43.168.040 Approval of applications for federal community development block grant funds for projects.** Subject to the restrictions contained in this chapter, the director is authorized to approve applications of local governments for federal community development block grant funds which the local governments would use to make loans to finance business projects within their jurisdictions. Applications approved by the director under this chapter shall conform to applicable federal requirements. [2005 c 136 § 4; 1987 c 461 § 3; 1985 c 164 § 4.]

**Savings—Effective date—2005 c 136:** See notes following RCW 43.168.020.

**43.168.050 Application approval—Conditions and limitations.** (1) The director may only approve an application providing a loan for a project which the director finds:

(a) Will result in the creation of employment opportunities, the maintenance of threatened employment, or development or expansion of business ownership by minorities and women;

(b) Will conform to federal rules and regulations governing the spending of federal community development block grant funds;

(c) Will be of public benefit and for a public purpose, and that the benefits, including increased or maintained employment, improved standard of living, the employment of disadvantaged workers, and development or expansion of business ownership by minorities and women, will primarily accrue to residents of the area;

(d) Will probably be successful;

(e) Would probably not be completed without the loan because other capital or financing at feasible terms is unavailable or the return on investment is inadequate.

(2) The director shall, subject to federal block grant criteria, give higher priority to economic development projects that contain provisions for child care.

(3) The director may not approve an application if it fails to provide for adequate reporting or disclosure of financial data to the director. The director may require an annual or other periodic audit of the project books.

(4) The director may require that the project be managed in whole or in part by a local development organization and may prescribe a management fee to be paid to such organization by the recipient of the loan or grant.

(5) The director may approve an application which results in a loan or grant of up to one million dollars.

(6) The director shall fix the terms and rates pertaining to fund loans.

(7) Should there be more demand for loans than funds available for lending, the director shall provide loans for those projects which will lead to the greatest amount of employment or benefit to a community. In determining the "greatest amount of employment or benefit" the director shall also consider the employment which would be saved by its loan and the benefit relative to the community, not just the total number of new jobs or jobs saved.

(8) To the extent permitted under federal law the director shall require applicants to provide for the transfer of all payments of principal and interest on loans to the fund created under this chapter. Under circumstances where the federal law does not permit the director to require such transfer, the director shall give priority to applications where the applicants on their own volition make commitments to provide for the transfer.

(9) The director shall not approve any application to finance or help finance a shopping mall.

(10) For loans not made to minority and women-owned businesses, the director shall make at least eighty percent of the appropriated funds available to projects located in distressed areas, and may make up to twenty percent available to projects located in areas not designated as distressed. For loans not made to minority and women-owned businesses, the director shall not make funds available to projects located in areas not designated as distressed if the fund's net worth is less than seven million one hundred thousand dollars.

(11) If an objection is raised to a project on the basis of unfair business competition, the director shall evaluate the potential impact of a project on similar businesses located in the local market area. A grant may be denied by the director if a project is not likely to result in a net increase in employment within a local market area.

(12) For loans to minority and women-owned businesses who do not meet the credit criteria, the director may consider nontraditional credit standards to offset past discrimination that has precluded full participation of minority or women-owned businesses in the economy. For applicants with high potential who do not meet the credit criteria, the director shall consider developing alternative borrowing methods. For applicants denied loans due to credit problems, the department shall provide financial counseling within available resources and provide referrals to credit rehabilitation services. In circumstances of competing applications, priority shall be given to members of eligible groups which previously have been least served by this fund. [2005 c 136 § 5; 1993 c 512 § 12; 1990 1st ex.s. c 17 § 74; 1989 c 430 § 9; 1987 c 461 § 4; 1986 c 204 § 2; 1985 c 164 § 5.]

**Savings—Effective date—2005 c 136:** See notes following RCW 43.168.020.

**Short title—Part headings and section captions—Severability—Effective date—1993 c 512:** See RCW 43.172.900 through 43.172.903.

**Intent—1990 1st ex.s. c 17:** See note following RCW 43.210.010.

**Severability—Part, section headings not law—1990 1st ex.s. c 17:** See RCW 36.70A.900 and 36.70A.901.

**Legislative findings—Severability—1989 c 430:** See notes following RCW 43.31.502.

**43.168.060 Local development organizations—Duties of department—Rules.** The department is encouraged to work with local development organizations to promote applications for loans by the fund. The department shall also provide assistance to local development organizations and local governments to identify viable projects for consideration. The department shall adopt such rules and regulations as are appropriate for implementation of this chapter. [2005 c 136 § 6; 1985 c 164 § 6.]

**Savings—Effective date—2005 c 136:** See notes following RCW 43.168.020.

**43.168.070 Processing of applications—Contents of applications.** The director may receive and approve applications on a monthly basis but shall receive and approve applications on at least a quarterly basis for each fiscal year. The director shall make every effort to simplify the loan process for applicants. Department staff shall process and assist in the preparation of applications. Each application shall show in detail the nature of the project, the types and numbers of jobs to be created, wages to be paid to new employees, and methods to hire unemployed persons from the area. Each application shall contain a credit analysis of the business to receive the loan. The director may respond on short notice to applications of a serious or immediate nature. [2005 c 136 § 7; 1993 c 512 § 14; 1987 c 461 § 5; 1985 c 164 § 7.]

**Savings—Effective date—2005 c 136:** See notes following RCW 43.168.020.

**Short title—Part headings and section captions—Severability—Effective date—1993 c 512:** See RCW 43.172.900 through 43.172.903.

**43.168.090 Use of federal community development block grant funds.** The department shall use for the fund an amount of federal community development block grant funds equal to the amount of state funds transferred or appropriated to the department for purposes of supplementing the department's block grant funds. [2005 c 136 § 8; 1985 c 164 § 9.]

**Savings—Effective date—2005 c 136:** See notes following RCW 43.168.020.

**43.168.100 Entitlement community grants—Conditions.** The director may make grants of state funds to local governments which qualify as "entitlement communities" under the federal law authorizing community development block grants. These grants may only be made on the condition that the entitlement community provide the director with assurances that it will: (1) Spend the grant moneys for purposes and in a manner which satisfies state constitutional requirements; (2) spend the grant moneys for purposes and in a manner which would satisfy federal requirements; and (3) spend at least the same amount of the grant for loans to businesses from the federal funds received by the entitlement community. [2005 c 136 § 9; 1993 c 512 § 15; 1986 c 204 § 1; 1985 c 164 § 10.]

**Savings—Effective date—2005 c 136:** See notes following RCW 43.168.020.

[2005 RCW Supp—page 518]

**Short title—Part headings and section captions—Severability—Effective date—1993 c 512:** See RCW 43.172.900 through 43.172.903.

**43.168.130 Development of performance standards.** The director shall develop performance standards for judging the effectiveness of the program. Such standards shall include, to the extent possible, examining the effectiveness of grants in regard to:

- (1) Job creation for individuals of low and moderate income;
- (2) Retention of existing employment;
- (3) The creation of new employment opportunities;
- (4) The diversification of the economic base of local communities;
- (5) The establishment of employee cooperatives;
- (6) The provision of assistance in cases of employee buy-outs of firms to prevent the loss of existing employment;
- (7) The degree of risk assumed by the fund, with emphasis on loans which did not receive financing from commercial lenders, but which are considered financially sound. [2005 c 136 § 10; 1998 c 245 § 52; 1987 c 461 § 7.]

**Savings—Effective date—2005 c 136:** See notes following RCW 43.168.020.

**43.168.150 Minority and women-owned businesses—Application process—Joint loan guarantee program.** Subject to the restrictions contained in this chapter, the director is authorized to approve applications of minority and women-owned businesses for loans or loan guarantees from the fund. Applications approved by the director under this chapter shall conform to applicable federal requirements. The director shall prioritize available funds for loan guarantees rather than loans when possible. The director may enter into agreements with other public or private lending institutions to develop a joint loan guarantee program for minority and women-owned businesses. If such a program is developed, the director may provide funds, in conjunction with the other organizations, to operate the program. This section does not preclude the director from making individual loan guarantees.

To the maximum extent practicable, the funds available under this section shall be made available on an equal basis to minority and women-owned businesses. The director shall submit to the appropriate committees of the senate and house of representatives quarterly reports that detail the number of loans approved and the characteristics of the recipients by ethnic and gender groups. [2005 c 136 § 11; 1993 c 512 § 13.]

**Savings—Effective date—2005 c 136:** See notes following RCW 43.168.020.

**Short title—Part headings and section captions—Severability—Effective date—1993 c 512:** See RCW 43.172.900 through 43.172.903.

## Chapter 43.170 RCW

### SMALL BUSINESS INNOVATORS' OPPORTUNITY PROGRAM

Sections

43.170.010 through 43.170.070 Repealed.

**43.170.010 through 43.170.070 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Chapter 43.172 RCW**

**MINORITY AND WOMEN-OWNED BUSINESSES—SMALL BUSINESS BONDING ASSISTANCE PROGRAM**

Sections

- 43.172.005 through 43.172.120 Repealed.
- 43.172.900 through 43.172.903 Repealed.

**43.172.005 through 43.172.120 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**43.172.900 through 43.172.903 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Chapter 43.180 RCW**

**HOUSING FINANCE COMMISSION**

Sections

- 43.180.290 Beginning farmer financing program.

**43.180.290 Beginning farmer financing program.** (1) The commission may develop and implement a program to provide financing for beginning farmers. In developing the program, the commission shall establish eligibility criteria for financing that will enable it to choose applicants who are likely to repay loans made or acquired by the commission and funded from the proceeds of commission bonds.

(2) The commission may:

(a) Issue revenue bonds as defined in RCW 43.180.020(1) for the purpose of financing loans to beginning farmers in accordance with RCW 43.180.150;

(b) Do all things necessary to provide for the exemption of interest on its bonds from federal income taxation; and

(c) Participate fully in federal and other governmental programs and take such actions as are necessary and consistent with this chapter to secure to itself and the people of the state the benefits of those programs for beginning farmers. [2005 c 120 § 2.]

**Findings—Purpose—2005 c 120:** "The legislature finds that there are a significant number of people from both urban and rural areas of the state with the training, expertise, and interest in initiating a livelihood in farming but who lack the financial resources to get started. The legislature also finds that the average age of existing farmers is increasing, the number of full-time commercial farms is decreasing, and an increasing concern that there will be insufficient young people who have both the capability and interest to fulfill the needs for the next generation.

The legislature finds that there are a significant number of new small farms in the state and a significant enrollment in agricultural courses offered by public community colleges and universities and the beginning farmer program offered by Washington State University cooperative extension.

The purpose of this act is to establish a program to test the feasibility, interest, and results of a beginning farmer loan program." [2005 c 120 § 1.]

**Chapter 43.185 RCW**

**HOUSING ASSISTANCE PROGRAM**

Sections

- 43.185.050 Use of moneys for loans and grant projects to provide housing—Eligible activities (*as amended by 2005 c 219*).
- 43.185.050 Use of moneys for loans and grant projects to provide housing—Eligible activities (*as amended by 2005 c 518*).
- 43.185.070 Notice of grant and loan application period—Priorities—Criteria for evaluation (*as amended by 2005 c 219*).
- 43.185.070 Notice of grant and loan application period—Priorities—Criteria for evaluation (*as amended by 2005 c 518*).

**43.185.050 Use of moneys for loans and grant projects to provide housing—Eligible activities (*as amended by 2005 c 219*).** (1) The department shall use moneys from the housing trust fund and other legislative appropriations to finance in whole or in part any loans or grant projects that will provide housing for persons and families with special housing needs and with incomes at or below fifty percent of the median family income for the county or standard metropolitan statistical area where the project is located. At least thirty percent of these moneys used in any given funding cycle shall be for the benefit of projects located in rural areas of the state as defined by the department. If the department determines that it has not received an adequate number of suitable applications for rural projects during any given funding cycle, the department may allocate unused moneys for projects in nonrural areas of the state.

(2) Activities eligible for assistance from the housing trust fund and other legislative appropriations include, but are not limited to:

(a) New construction, rehabilitation, or acquisition of low and very low-income housing units;

(b) Rent subsidies;

(c) Matching funds for social services directly related to providing housing for special-need tenants in assisted projects;

(d) Technical assistance, design and finance services and consultation, and administrative costs for eligible nonprofit community or neighborhood-based organizations;

(e) Administrative costs for housing assistance groups or organizations when such grant or loan will substantially increase the recipient's access to housing funds other than those available under this chapter;

(f) Shelters and related services for the homeless, including emergency shelters and overnight youth shelters;

(g) Mortgage subsidies, including temporary rental and mortgage payment subsidies to prevent homelessness;

(h) Mortgage insurance guarantee or payments for eligible projects;

(i) Down payment or closing cost assistance for eligible first-time home buyers;

(j) Acquisition of housing units for the purpose of preservation as low-income or very low-income housing; and

(k) Projects making housing more accessible to families with members who have disabilities.

(3) Legislative appropriations from capital bond proceeds may be used only for the costs of projects authorized under subsection (2)(a), (i), and (j) of this section, and not for the administrative costs of the department.

(4) Moneys from repayment of loans from appropriations from capital bond proceeds may be used for all activities necessary for the proper functioning of the housing assistance program except for activities authorized under subsection (2)(b) and (c) of this section.

(5) Administrative costs of the department shall not exceed ~~((four))~~ five percent of the annual funds available for the housing assistance program. [2005 c 219 § 1; 2002 c 294 § 6; 1994 c 160 § 1; 1991 c 356 § 4; 1986 c 298 § 6.]

**43.185.050 Use of moneys for loans and grant projects to provide housing—Eligible activities (*as amended by 2005 c 518*).** (1) The department shall use moneys from the housing trust fund and other legislative appropriations to finance in whole or in part any loans or grant projects that will provide housing for persons and families with special housing needs and with incomes at or below fifty percent of the median family income for the county or standard metropolitan statistical area where the project is located. At least thirty percent of these moneys used in any given funding cycle shall be for the benefit of projects located in rural areas of the state as defined by the department. If the department determines that it has not received an adequate number of suitable applications for rural projects during any given funding cycle, the department may allocate unused moneys for projects in nonrural areas of the state.

(2) Activities eligible for assistance from the housing trust fund and other legislative appropriations include, but are not limited to:

- (a) New construction, rehabilitation, or acquisition of low and very low-income housing units;
- (b) Rent subsidies;
- (c) Matching funds for social services directly related to providing housing for special-need tenants in assisted projects;
- (d) Technical assistance, design and finance services and consultation, and administrative costs for eligible nonprofit community or neighborhood-based organizations;
- (e) Administrative costs for housing assistance groups or organizations when such grant or loan will substantially increase the recipient's access to housing funds other than those available under this chapter;
- (f) Shelters and related services for the homeless, including emergency shelters and overnight youth shelters;
- (g) Mortgage subsidies, including temporary rental and mortgage payment subsidies to prevent homelessness;
- (h) Mortgage insurance guarantee or payments for eligible projects;
- (i) Down payment or closing cost assistance for eligible first-time home buyers;
- (j) Acquisition of housing units for the purpose of preservation as low-income or very low-income housing; and
- (k) Projects making housing more accessible to families with members who have disabilities.

(3) Legislative appropriations from capital bond proceeds may be used only for the costs of projects authorized under subsection (2)(a), (i), and (j) of this section, and not for the administrative costs of the department.

(4) Moneys from repayment of loans from appropriations from capital bond proceeds may be used for all activities necessary for the proper functioning of the housing assistance program except for activities authorized under subsection (2)(b) and (c) of this section.

(5) Administrative costs of the department shall not exceed four percent of the annual funds available for the housing assistance program, except in fiscal year 2005 when administrative costs shall not exceed five percent. [2005 c 518 § 1801; 2002 c 294 § 6; 1994 c 160 § 1; 1991 c 356 § 4; 1986 c 298 § 6.]

**Reviser's note:** 43.185.050 was amended twice during the 2005 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

**Findings—2002 c 294:** See note following RCW 36.22.178.

**43.185.070 Notice of grant and loan application period—Priorities—Criteria for evaluation (as amended by 2005 c 219).** (1) During each calendar year in which funds from the housing trust fund or other legislative appropriations are available for use by the department for the housing assistance program, the department shall announce to all known interested parties, and through major media throughout the state, a grant and loan application period of at least ninety days' duration. This announcement shall be made as often as the director deems appropriate for proper utilization of resources. The department shall then promptly grant as many applications as will utilize available funds less appropriate administrative costs of the department. Administrative costs paid out of the housing trust fund may not exceed ~~(four)~~ five percent of annual revenues available for distribution to housing trust fund projects. In awarding funds under this chapter, the department shall provide for a geographic distribution on a statewide basis.

(2) The department shall give first priority to applications for projects and activities which utilize existing privately owned housing stock including privately owned housing stock purchased by nonprofit public development authorities and public housing authorities as created in chapter 35.82 RCW. As used in this subsection, privately owned housing stock includes housing that is acquired by a federal agency through a default on the mortgage by the private owner. Such projects and activities shall be evaluated under subsection (3) of this section. Second priority shall be given to activities and projects which utilize existing publicly owned housing stock. All projects and activities shall be evaluated by some or all of the criteria under subsection (3) of this section, and similar projects and activities shall be evaluated under the same criteria.

(3) The department shall give preference for applications based on some or all of the criteria under this subsection, and similar projects and activities shall be evaluated under the same criteria:

- (a) The degree of leveraging of other funds that will occur;

- (b) The degree of commitment from programs to provide necessary habilitation and support services for projects focusing on special needs populations;

- (c) Recipient contributions to total project costs, including allied contributions from other sources such as professional, craft and trade services, and lender interest rate subsidies;

- (d) Local government project contributions in the form of infrastructure improvements, and others;

- (e) Projects that encourage ownership, management, and other project-related responsibility opportunities;

- (f) Projects that demonstrate a strong probability of serving the original target group or income level for a period of at least twenty-five years;

- (g) The applicant has the demonstrated ability, stability and resources to implement the project;

- (h) Projects which demonstrate serving the greatest need;

- (i) Projects that provide housing for persons and families with the lowest incomes;

- (j) Projects serving special needs populations which are under statutory mandate to develop community housing;

- (k) Project location and access to employment centers in the region or area;

- (l) Projects that provide employment and training opportunities for disadvantaged youth under a youthbuild or youthbuild-type program as defined in RCW 50.72.020; and

- (m) Project location and access to available public transportation services.

(4) The department shall only approve applications for projects for mentally ill persons that are consistent with a regional support network six-year capital and operating plan. [2005 c 219 § 2; 1994 sp.s. c 3 § 9. Prior: 1991 c 356 § 5; 1991 c 295 § 2; 1988 c 286 § 1; 1986 c 298 § 8.]

**43.185.070 Notice of grant and loan application period—Priorities—Criteria for evaluation (as amended by 2005 c 518).** (1) During each calendar year in which funds from the housing trust fund or other legislative appropriations are available for use by the department for the housing assistance program, the department shall announce to all known interested parties, and through major media throughout the state, a grant and loan application period of at least ninety days' duration. This announcement shall be made as often as the director deems appropriate for proper utilization of resources. The department shall then promptly grant as many applications as will utilize available funds less appropriate administrative costs of the department. Administrative costs paid out of the housing trust fund may not exceed four percent of annual revenues available for distribution to housing trust fund projects, except in fiscal year 2005 when administrative costs shall not exceed five percent. In awarding funds under this chapter, the department shall provide for a geographic distribution on a statewide basis.

(2) The department shall give first priority to applications for projects and activities which utilize existing privately owned housing stock including privately owned housing stock purchased by nonprofit public development authorities and public housing authorities as created in chapter 35.82 RCW. As used in this subsection, privately owned housing stock includes housing that is acquired by a federal agency through a default on the mortgage by the private owner. Such projects and activities shall be evaluated under subsection (3) of this section. Second priority shall be given to activities and projects which utilize existing publicly owned housing stock. All projects and activities shall be evaluated by some or all of the criteria under subsection (3) of this section, and similar projects and activities shall be evaluated under the same criteria.

(3) The department shall give preference for applications based on some or all of the criteria under this subsection, and similar projects and activities shall be evaluated under the same criteria:

- (a) The degree of leveraging of other funds that will occur;

- (b) The degree of commitment from programs to provide necessary habilitation and support services for projects focusing on special needs populations;

- (c) Recipient contributions to total project costs, including allied contributions from other sources such as professional, craft and trade services, and lender interest rate subsidies;

- (d) Local government project contributions in the form of infrastructure improvements, and others;

- (e) Projects that encourage ownership, management, and other project-related responsibility opportunities;

- (f) Projects that demonstrate a strong probability of serving the original target group or income level for a period of at least twenty-five years;

- (g) The applicant has the demonstrated ability, stability and resources to implement the project;
  - (h) Projects which demonstrate serving the greatest need;
  - (i) Projects that provide housing for persons and families with the lowest incomes;
  - (j) Projects serving special needs populations which are under statutory mandate to develop community housing;
  - (k) Project location and access to employment centers in the region or area;
  - (l) Projects that provide employment and training opportunities for disadvantaged youth under a youthbuild or youthbuild-type program as defined in RCW 50.72.020; and
  - (m) Project location and access to available public transportation services.
- (4) The department shall only approve applications for projects for mentally ill persons that are consistent with a regional support network six-year capital and operating plan. [2005 c 518 § 1802; 1994 sp.s. c 3 § 9. Prior: 1991 c 356 § 5; 1991 c 295 § 2; 1988 c 286 § 1; 1986 c 298 § 8.]

**Reviser's note:** RCW 43.185.070 was amended twice during the 2005 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

### Chapter 43.185A RCW

#### AFFORDABLE HOUSING PROGRAM

##### Sections

- 43.185A.030 Activities eligible for assistance (*as amended by 2005 c 219*).
- 43.185A.030 Activities eligible for assistance (*as amended by 2005 c 518*).

**43.185A.030 Activities eligible for assistance (*as amended by 2005 c 219*).** (1) Using moneys specifically appropriated for such purpose, the department shall finance in whole or in part projects that will provide housing for low-income households.

- (2) Activities eligible for assistance include, but are not limited to:
  - (a) New construction, rehabilitation, or acquisition of housing for low-income households;
  - (b) Rent subsidies in new construction or rehabilitated multifamily units;
  - (c) Down payment or closing costs assistance for first-time home buyers;
  - (d) Mortgage subsidies for new construction or rehabilitation of eligible multifamily units; and
  - (e) Mortgage insurance guarantee or payments for eligible projects.

(3) Legislative appropriations from capital bond proceeds may be used only for the costs of projects authorized under subsection (2) (a), (c), (d), and (e) of this section, and not for the administrative costs of the department.

(4) Moneys from repayment of loans from appropriations from capital bond proceeds may be used for all activities necessary for the proper functioning of the affordable housing program except for activities authorized under subsection (2)(b) of this section.

(5) Administrative costs of the department shall not exceed ~~(four)~~ five percent of the annual funds available for the affordable housing program. [2005 c 219 § 3; 1994 c 160 § 3; 1991 c 356 § 12.]

**43.185A.030 Activities eligible for assistance (*as amended by 2005 c 518*).** (1) Using moneys specifically appropriated for such purpose, the department shall finance in whole or in part projects that will provide housing for low-income households.

- (2) Activities eligible for assistance include, but are not limited to:
  - (a) New construction, rehabilitation, or acquisition of housing for low-income households;
  - (b) Rent subsidies in new construction or rehabilitated multifamily units;
  - (c) Down payment or closing costs assistance for first-time home buyers;
  - (d) Mortgage subsidies for new construction or rehabilitation of eligible multifamily units; and
  - (e) Mortgage insurance guarantee or payments for eligible projects.

(3) Legislative appropriations from capital bond proceeds may be used only for the costs of projects authorized under subsection (2) (a), (c), (d), and (e) of this section, and not for the administrative costs of the department.

(4) Moneys from repayment of loans from appropriations from capital bond proceeds may be used for all activities necessary for the proper functioning of the affordable housing program except for activities authorized under subsection (2)(b) of this section.

(5) Administrative costs of the department shall not exceed four percent of the annual funds available for the affordable housing program, except in fiscal year 2005 when administrative costs shall not exceed five percent. [2005 c 518 § 1803; 1994 c 160 § 3; 1991 c 356 § 12.]

**Reviser's note:** RCW 43.185A.030 was amended twice during the 2005 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

### Chapter 43.185B RCW

#### WASHINGTON HOUSING POLICY ACT

##### Sections

- 43.185B.005 Finding.
- 43.185B.009 Objectives.

**43.185B.005 Finding.** (1) The legislature finds that:

- (a) Housing is of vital statewide importance to the health, safety, and welfare of the residents of the state;
- (b) Reducing homelessness and moving individuals and families toward stable, affordable housing is of vital statewide importance;
- (c) Safe, affordable housing is an essential factor in stabilizing communities;
- (d) Residents must have a choice of housing opportunities within the community where they choose to live;
- (e) Housing markets are linked to a healthy economy and can contribute to the state's economy;
- (f) Land supply is a major contributor to the cost of housing;
- (g) Housing must be an integral component of any comprehensive community and economic development strategy;
- (h) State and local government must continue working cooperatively toward the enhancement of increased housing units by reviewing, updating, and removing conflicting regulatory language;
- (i) State and local government should work together in developing creative ways to reduce the shortage of housing;
- (j) The lack of a coordinated state housing policy inhibits the effective delivery of housing for some of the state's most vulnerable citizens and those with limited incomes; and
- (k) It is in the public interest to adopt a statement of housing policy objectives.

(2) The legislature declares that the purposes of the Washington housing policy act are to:

- (a) Provide policy direction to the public and private sectors in their attempt to meet the shelter needs of Washington residents;
- (b) Reevaluate housing and housing-related programs and policies in order to ensure proper coordination of those programs and policies to meet the housing needs of Washington residents;

(c) Improve the delivery of state services and assistance to very low-income and low-income households and special needs populations;

(d) Strengthen partnerships among all levels of government, and the public and private sectors, including for-profit and nonprofit organizations, in the production and operation of housing to targeted populations including low-income and moderate-income households;

(e) Increase the supply of housing for persons with special needs;

(f) Encourage collaborative planning with social service providers;

(g) Encourage financial institutions to increase residential mortgage lending; and

(h) Coordinate housing into comprehensive community and economic development strategies at the state and local level. [2005 c 484 § 22; 1993 c 478 § 1.]

**Findings—Conflict with federal requirements—Effective date—2005 c 484:** See RCW 43.185C.005, 43.185C.901, and 43.185C.902.

*Persons with handicaps:* RCW 35.63.220, 35A.63.240, 36.70.990, 36.70A.410.

**43.185B.009 Objectives.** The objectives of the Washington housing policy act shall be to attain the state's goal of a decent home in a healthy, safe environment for every resident of the state by strengthening public and private institutions that are able to:

(1) Develop an adequate and affordable supply of housing for all economic segments of the population, including the destitute;

(2) Identify and reduce the causal factors preventing the state from reaching its goal;

(3) Assist very low-income and special needs households who cannot obtain affordable, safe, and adequate housing in the private market;

(4) Encourage and maintain home ownership opportunities;

(5) Reduce life-cycle housing costs while preserving public health and safety;

(6) Preserve the supply of existing affordable housing;

(7) Provide housing for special needs populations;

(8) Ensure fair and equal access to the housing market;

(9) Increase the availability of mortgage credit at low interest rates; and

(10) Coordinate and be consistent with the goals, objectives, and required housing element of the comprehensive plan in the state's growth management act in RCW 36.70A.070. [2005 c 484 § 23; 1993 c 478 § 3.]

**Findings—Conflict with federal requirements—Effective date—2005 c 484:** See RCW 43.185C.005, 43.185C.901, and 43.185C.902.

## Chapter 43.185C RCW

### HOMELESS HOUSING AND ASSISTANCE

#### Sections

43.185C.005	Findings.
43.185C.010	Definitions.
43.185C.020	Homeless housing program.
43.185C.030	Washington homeless census or count—Confidentiality—Online information and referral system—Organizational quality management system.

43.185C.040 Homeless housing strategic plan—Program outcomes and performance measures and goals—Statewide data gathering instrument—Annual report.

43.185C.050 Local homeless housing plans.

43.185C.060 Homeless housing account.

43.185C.070 Grant applications.

43.185C.080 Homeless housing grants—Participation.

43.185C.090 Allocation of grant moneys—Issuance of criteria or guidelines.

43.185C.100 Technical assistance.

43.185C.110 Progress reports—Uniform process.

43.185C.120 Rules.

43.185C.130 Protection of state's interest in grant program projects.

43.185C.140 Public assistance eligibility—Payments exempt.

43.185C.150 Expenditures within authorized funds—Existing expenditures not reduced or supplanted.

43.185C.160 County homeless housing task forces—Homeless housing plans—Reports by counties.

43.185C.900 Short title.

43.185C.901 Conflict with federal requirements—2005 c 484.

43.185C.902 Effective date—2005 c 484.

**43.185C.005 Findings.** Despite laudable efforts by all levels of government, private individuals, nonprofit organizations, and charitable foundations to end homelessness, the number of homeless persons in Washington is unacceptably high. The state's homeless population, furthermore, includes a large number of families with children, youth, and employed persons. The legislature finds that the fiscal and societal costs of homelessness are high for both the public and private sectors, and that ending homelessness should be a goal for state and local government.

The legislature finds that there are many causes of homelessness, including a shortage of affordable housing; a shortage of family-wage jobs which undermines housing affordability; a lack of an accessible and affordable health care system available to all who suffer from physical and mental illnesses and chemical and alcohol dependency; domestic violence; and a lack of education and job skills necessary to acquire adequate wage jobs in the economy of the twenty-first century.

The support and commitment of all sectors of the statewide community is critical to the chances of success in ending homelessness in Washington. While the provision of housing and housing-related services to the homeless should be administered at the local level to best address specific community needs, the legislature also recognizes the need for the state to play a primary coordinating, supporting, and monitoring role. There must be a clear assignment of responsibilities and a clear statement of achievable and quantifiable goals. Systematic statewide data collection on homelessness in Washington must be a critical component of such a program enabling the state to work with local governments to count homeless persons and assist them in finding housing.

The systematic collection and rigorous evaluation of homeless data, a search for and implementation through adequate resource allocation of best practices, and the systematic measurement of progress toward interim goals and the ultimate goal of ending homelessness are all necessary components of a statewide effort to end homelessness in Washington by July 1, 2015. [2005 c 484 § 1.]

**43.185C.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of community, trade, and economic development.

(2) "Director" means the director of the department of community, trade, and economic development.

(3) "Homeless person" means an individual living outside or in a building not meant for human habitation or which they have no legal right to occupy, in an emergency shelter, or in a temporary housing program which may include a transitional and supportive housing program if habitation time limits exist. This definition includes substance abusers, mentally ill people, and sex offenders who are homeless.

(4) "Washington homeless census" means an annual statewide census conducted as a collaborative effort by towns, cities, counties, community-based organizations, and state agencies, with the technical support and coordination of the department, to count and collect data on all homeless individuals in Washington.

(5) "Homeless housing account" means the state treasury account receiving the state's portion of income from revenue from the sources established by RCW 36.22.179.

(6) "Homeless housing grant program" means the vehicle by which competitive grants are awarded by the department, utilizing moneys from the homeless housing account, to local governments for programs directly related to housing homeless individuals and families, addressing the root causes of homelessness, preventing homelessness, collecting data on homeless individuals, and other efforts directly related to housing homeless persons.

(7) "Local government" means a county government in the state of Washington or a city government, if the legislative authority of the city affirmatively elects to accept the responsibility for housing homeless persons within its borders.

(8) "Housing continuum" means the progression of individuals along a housing-focused continuum with homelessness at one end and homeownership at the other.

(9) "Local homeless housing task force" means a voluntary local committee created to advise a local government on the creation of a local homeless housing plan and participate in a local homeless housing program. It must include a representative of the county, a representative of the largest city located within the county, at least one homeless or formerly homeless person, such other members as may be required to maintain eligibility for federal funding related to housing programs and services and if feasible, a representative of a private nonprofit organization with experience in low-income housing.

(10) "Long-term private or public housing" means subsidized and unsubsidized rental or owner-occupied housing in which there is no established time limit for habitation of less than two years.

(11) "\*Interagency council on homelessness" means a committee appointed by the governor and consisting of, at least, the director of the department; the secretary of the department of corrections; the secretary of the department of social and health services; the director of the department of veterans affairs; and the secretary of the department of health.

(12) "Performance measurement" means the process of comparing specific measures of success against ultimate and interim goals.

(13) "Community action agency" means a nonprofit private or public organization established under the economic opportunity act of 1964.

(14) "Housing authority" means any of the public corporations created by chapter 35.82 RCW.

(15) "Homeless housing program" means the program authorized under this chapter as administered by the department at the state level and by the local government or its designated subcontractor at the local level.

(16) "Homeless housing plan" means the ten-year plan developed by the county or other local government to address housing for homeless persons.

(17) "Homeless housing strategic plan" means the ten-year plan developed by the department, in consultation with the \*interagency council on homelessness and the affordable housing advisory board. [2005 c 484 § 3.]

\*Reviser's note: 2005 c 484 § 4, which established the interagency council on homelessness, was vetoed.

**43.185C.020 Homeless housing program.** There is created within the department the homeless housing program to develop and coordinate a statewide strategic plan aimed at housing homeless persons. The program shall be developed and administered by the department with advice and input from the affordable housing advisory board established in RCW 43.185B.020. [2005 c 484 § 5.]

**43.185C.030 Washington homeless census or count—Confidentiality—Online information and referral system—Organizational quality management system.** The department shall annually conduct a Washington homeless census or count consistent with the requirements of RCW 43.63A.655. The census shall make every effort to count all homeless individuals living outdoors, in shelters, and in transitional housing, coordinated, when reasonably feasible, with already existing homeless census projects including those funded in part by the United States department of housing and urban development under the McKinney-Vento homeless assistance program. The department shall determine, in consultation with local governments, the data to be collected.

All personal information collected in the census is confidential, and the department and each local government shall take all necessary steps to protect the identity and confidentiality of each person counted.

The department and each local government are prohibited from disclosing any personally identifying information about any homeless individual when there is reason to believe or evidence indicating that the homeless individual is an adult or minor victim of domestic violence, dating violence, sexual assault, or stalking or is the parent or guardian of a child victim of domestic violence, dating violence, sexual assault, or stalking; or revealing other confidential information regarding HIV/AIDS status, as found in RCW 70.24.105. The department and each local government shall not ask any homeless housing provider to disclose personally identifying information about any homeless individuals when the providers implementing those programs have reason to believe or evidence indicating that those clients are adult or minor victims of domestic violence, dating violence, sexual assault, or stalking or are the parents or guardians of child victims of domestic violence, dating violence, sexual assault,

or stalking. Summary data for the provider's facility or program may be substituted.

The Washington homeless census shall be conducted annually on a schedule created by the department. The department shall make summary data by county available to the public each year. This data, and its analysis, shall be included in the department's annual updated homeless housing program strategic plan.

Based on the annual census and provider information from the local government plans, the department shall, by the end of year four, implement an online information and referral system to enable local governments and providers to identify available housing for a homeless person. The department shall work with local governments and their providers to develop a capacity for continuous case management to assist homeless persons.

By the end of year four, the department shall implement an organizational quality management system. [2005 c 484 § 6.]

**43.185C.040 Homeless housing strategic plan—Program outcomes and performance measures and goals—Statewide data gathering instrument—Annual report.**

(1) Six months after the first Washington homeless census, the department shall, in consultation with the \*interagency council on homelessness and the affordable housing advisory board, prepare and publish a ten-year homeless housing strategic plan which shall outline statewide goals and performance measures and shall be coordinated with the plan for homeless families with children required under RCW 43.63A.650. To guide local governments in preparation of their first local homeless housing plans due December 31, 2005, the department shall issue by October 15, 2005, temporary guidelines consistent with this chapter and including the best available data on each community's homeless population. Local governments' ten-year homeless housing plans shall not be substantially inconsistent with the goals and program recommendations of the temporary guidelines and, when amended after 2005, the state strategic plan.

(2) Program outcomes and performance measures and goals shall be created by the department and reflected in the department's homeless housing strategic plan as well as interim goals against which state and local governments' performance may be measured, including:

(a) By the end of year one, completion of the first census as described in RCW 43.185C.030;

(b) By the end of each subsequent year, goals common to all local programs which are measurable and the achievement of which would move that community toward housing its homeless population; and

(c) By July 1, 2015, reduction of the homeless population statewide and in each county by fifty percent.

(3) The department shall develop a consistent statewide data gathering instrument to monitor the performance of cities and counties receiving grants in order to determine compliance with the terms and conditions set forth in the grant application or required by the department.

The department shall, in consultation with the \*interagency council on homelessness and the affordable housing advisory board, report annually to the governor and the appropriate committees of the legislature an assessment of

the state's performance in furthering the goals of the state ten-year homeless housing strategic plan and the performance of each participating local government in creating and executing a local homeless housing plan which meets the requirements of this chapter. The annual report may include performance measures such as:

(a) The reduction in the number of homeless individuals and families from the initial count of homeless persons;

(b) The number of new units available and affordable for homeless families by housing type;

(c) The number of homeless individuals identified who are not offered suitable housing within thirty days of their request or identification as homeless;

(d) The number of households at risk of losing housing who maintain it due to a preventive intervention;

(e) The transition time from homelessness to permanent housing;

(f) The cost per person housed at each level of the housing continuum;

(g) The ability to successfully collect data and report performance;

(h) The extent of collaboration and coordination among public bodies, as well as community stakeholders, and the level of community support and participation;

(i) The quality and safety of housing provided; and

(j) The effectiveness of outreach to homeless persons, and their satisfaction with the program.

(4) Based on the performance of local homeless housing programs in meeting their interim goals, on general population changes and on changes in the homeless population recorded in the annual census, the department may revise the performance measures and goals of the state homeless housing strategic plan, set goals for years following the initial ten-year period, and recommend changes in local governments' plans. [2005 c 484 § 7.]

\*Reviser's note: 2005 c 484 § 4, which established the interagency council on homelessness, was vetoed.

**43.185C.050 Local homeless housing plans.** (1) Each local homeless housing task force shall prepare and recommend to its local government legislative authority a ten-year homeless housing plan for its jurisdictional area which shall be not inconsistent with the department's statewide temporary guidelines, for the December 31, 2005, plan, and thereafter the department's ten-year homeless housing strategic plan and which shall be aimed at eliminating homelessness, with a minimum goal of reducing homelessness by fifty percent by July 1, 2015. The local government may amend the proposed local plan and shall adopt a plan by December 31, 2005. Performance in meeting the goals of this local plan shall be assessed annually in terms of the performance measures published by the department. Local plans may include specific local performance measures adopted by the local government legislative authority, and may include recommendations for any state legislation needed to meet the state or local plan goals.

(2) Eligible activities under the local plans include:

(a) Rental and furnishing of dwelling units for the use of homeless persons;

(b) Costs of developing affordable housing for homeless persons, and services for formerly homeless individuals and



families residing in transitional housing or permanent housing and still at risk of homelessness;

(c) Operating subsidies for transitional housing or permanent housing serving formerly homeless families or individuals;

(d) Services to prevent homelessness, such as emergency eviction prevention programs including temporary rental subsidies to prevent homelessness;

(e) Temporary services to assist persons leaving state institutions and other state programs to prevent them from becoming or remaining homeless;

(f) Outreach services for homeless individuals and families;

(g) Development and management of local homeless plans including homeless census data collection; identification of goals, performance measures, strategies, and costs and evaluation of progress towards established goals;

(h) Rental vouchers payable to landlords for persons who are homeless or below thirty percent of the median income or in immediate danger of becoming homeless; and

(i) Other activities to reduce and prevent homelessness as identified for funding in the local plan. [2005 c 484 § 8.]

**43.185C.060 Homeless housing account.** The homeless housing account is created in the custody of the state treasurer. The state's portion of the surcharge established in RCW 36.22.179 must be deposited in the account. Expenditures from the account may be used only for the homeless housing program as described in this chapter. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2005 c 484 § 10.]

**43.185C.070 Grant applications.** (1) During each calendar year in which moneys from the homeless housing account are available for use by the department for the homeless housing grant program, the department shall announce to all Washington counties, participating cities, and through major media throughout the state, a grant application period of at least ninety days' duration. This announcement will be made as often as the director deems appropriate for proper utilization of resources. The department shall then promptly grant as many applications as will utilize available funds, less appropriate administrative costs of the department as described in RCW 36.22.179.

(2) The department will develop, with advice and input from the affordable housing advisory board established in RCW 43.185B.020, criteria to evaluate grant applications.

(3) The department may approve applications only if they are consistent with the local and state homeless housing program strategic plans. The department may give preference to applications based on some or all of the following criteria:

(a) The total homeless population in the applicant local government service area, as reported by the most recent annual Washington homeless census;

(b) Current local expenditures to provide housing for the homeless and to address the underlying causes of homelessness as described in RCW 43.185C.005;

(c) Local government and private contributions pledged to the program in the form of matching funds, property, infrastructure improvements, and other contributions; and the degree of leveraging of other funds from local government or private sources for the program for which funds are being requested, to include recipient contributions to total project costs, including allied contributions from other sources such as professional, craft and trade services, and lender interest rate subsidies;

(d) Construction projects or rehabilitation that will serve homeless individuals or families for a period of at least twenty-five years;

(e) Projects which demonstrate serving homeless populations with the greatest needs, including projects that serve special needs populations;

(f) The degree to which the applicant project represents a collaboration between local governments, nonprofit community-based organizations, local and state agencies, and the private sector, especially through its integration with the coordinated and comprehensive plan for homeless families with children required under RCW 43.63A.650;

(g) The cooperation of the local government in the annual Washington homeless census project;

(h) The commitment of the local government and any subcontracting local governments, nonprofit organizations, and for-profit entities to employ a diverse work force;

(i) The extent, if any, that the local homeless population is disproportionate to the revenues collected under this chapter and RCW 36.22.178 and 36.22.179; and

(j) Other elements shown by the applicant to be directly related to the goal and the department's state strategic plan. [2005 c 484 § 11.]

**43.185C.080 Homeless housing grants—Participation.** (1) Only a local government is eligible to receive a homeless housing grant from the homeless housing account. Any city may assert responsibility for homeless housing within its borders if it so chooses, by forwarding a resolution to the legislative authority of the county stating its intention and its commitment to operate a separate homeless housing program. The city shall then receive a percentage of the surcharge assessed under RCW 36.22.179 equal to the percentage of the city's local portion of the real estate excise tax collected by the county. A participating city may also then apply separately for homeless housing program grants. A city choosing to operate a separate homeless housing program shall be responsible for complying with all of the same requirements as counties and shall adopt a local homeless housing plan meeting the requirements of this chapter for county local plans. However, the city may by resolution of its legislative authority accept the county's homeless housing task force as its own and based on that task force's recommendations adopt a homeless housing plan specific to the city.

(2) Local governments applying for homeless housing funds may subcontract with any other local government, housing authority, community action agency or other nonprofit organization for the execution of programs contributing to the overall goal of ending homelessness within a defined service area. All subcontracts shall be consistent with the local homeless housing plan adopted by the legisla-

tive authority of the local government, time limited, and filed with the department and shall have specific performance terms. While a local government has the authority to subcontract with other entities, the local government continues to maintain the ultimate responsibility for the homeless housing program within its borders.

(3) A county may decline to participate in the program authorized in this chapter by forwarding to the department a resolution adopted by the county legislative authority stating the intention not to participate. A copy of the resolution shall also be transmitted to the county auditor and treasurer. If such a resolution is adopted, all of the funds otherwise due to the county under RCW 43.185C.060 shall be remitted monthly to the state treasurer for deposit in the homeless housing account, without any reduction by the county for collecting or administering the funds. Upon receipt of the resolution, the department shall promptly begin to identify and contract with one or more entities eligible under this section to create and execute a local homeless housing plan for the county meeting the requirements of this chapter. The department shall expend all of the funds received from the county under this subsection to carry out the purposes of chapter 484, Laws of 2005 in the county, provided that the department may retain six percent of these funds to offset the cost of managing the county's program.

(4) A resolution by the county declining to participate in the program shall have no effect on the ability of each city in the county to assert its right to manage its own program under this chapter, and the county shall monthly transmit to the city the funds due under this chapter. [2005 c 484 § 12.]

**43.185C.090 Allocation of grant moneys—Issuance of criteria or guidelines.** The department shall allocate grant moneys from the homeless housing account to finance in whole or in part programs and projects in approved local homeless housing plans to assist homeless individuals and families gain access to adequate housing, prevent at-risk individuals from becoming homeless, address the root causes of homelessness, track and report on homeless-related data, and facilitate the movement of homeless or formerly homeless individuals along the housing continuum toward more stable and independent housing. The department may issue criteria or guidelines to guide local governments in the application process. [2005 c 484 § 13.]

**43.185C.100 Technical assistance.** The department shall provide technical assistance to any participating local government that requests such assistance. Technical assistance activities may include:

- (1) Assisting local governments to identify appropriate parties to participate on local homeless housing task forces;
- (2) Assisting local governments to identify appropriate service providers with which the local governments may subcontract for service provision and development activities, when necessary;
- (3) Assisting local governments to implement or expand homeless census programs to meet homeless housing program requirements;
- (4) Assisting in the identification of "best practices" from other areas;

[2005 RCW Supp—page 526]

(5) Assisting in identifying additional funding sources for specific projects; and

(6) Training local government and subcontractor staff. [2005 c 484 § 14.]

**43.185C.110 Progress reports—Uniform process.** The department shall establish a uniform process for participating local governments to report progress toward reducing homelessness and meeting locally established goals. [2005 c 484 § 15.]

**43.185C.120 Rules.** The department may adopt such rules as may be necessary to effect the purposes of this chapter. [2005 c 484 § 16.]

**43.185C.130 Protection of state's interest in grant program projects.** The department shall ensure that the state's interest is protected upon the development, use, sale, or change of use of projects constructed, acquired, or financed in whole or in part through the homeless housing grant program. These policies may include, but are not limited to: (1) Requiring a share of the appreciation in the project in proportion to the state's contribution to the project, or (2) requiring a lump sum repayment of the grant upon the sale or change of use of the project. [2005 c 484 § 17.]

**43.185C.140 Public assistance eligibility—Payments exempt.** The department of social and health services shall exempt payments to individuals provided under this chapter when determining eligibility for public assistance. [2005 c 484 § 20.]

**43.185C.150 Expenditures within authorized funds—Existing expenditures not reduced or supplanted.** This chapter does not require either the department or any local government to expend any funds to accomplish the goals of this chapter other than the revenues authorized in chapter 484, Laws of 2005. However, neither the department nor any local government may use any funds authorized in chapter 484, Laws of 2005 to supplant or reduce any existing expenditures of public money for the reduction or prevention of homelessness or services for homeless persons. [2005 c 484 § 21.]

**43.185C.160 County homeless housing task forces—Homeless housing plans—Reports by counties.** (1) Each county shall create a homeless housing task force to develop a ten-year homeless housing plan addressing short-term and long-term housing for homeless persons.

Membership on the task force may include representatives of the counties, cities, towns, housing authorities, civic and faith organizations, schools, community networks, human services providers, law enforcement personnel, criminal justice personnel, including prosecutors, probation officers, and jail administrators, substance abuse treatment providers, mental health care providers, emergency health care providers, businesses, at-large representatives of the community, and a homeless or formerly homeless individual.

In lieu of creating a new task force, a local government may designate an existing governmental or nonprofit body

which substantially conforms to this section and which includes at least one homeless or formerly homeless individual to serve as its homeless representative. As an alternative to a separate plan, two or more local governments may work in concert to develop and execute a joint homeless housing plan, or to contract with another entity to do so according to the requirements of this chapter. While a local government has the authority to subcontract with other entities, the local government continues to maintain the ultimate responsibility for the homeless housing program within its borders.

A county may decline to participate in the program authorized in this chapter by forwarding to the department a resolution adopted by the county legislative authority stating the intention not to participate. A copy of the resolution shall also be transmitted to the county auditor and treasurer. If a county declines to participate, the department shall create and execute a local homeless housing plan for the county meeting the requirements of this chapter.

(2) In addition to developing a ten-year homeless housing plan, each task force shall establish guidelines consistent with the statewide homeless housing strategic plan, as needed, for the following:

- (a) Emergency shelters;
- (b) Short-term housing needs;
- (c) Temporary encampments;
- (d) Supportive housing for chronically homeless persons; and
- (e) Long-term housing.

Guidelines must include, when appropriate, standards for health and safety and notifying the public of proposed facilities to house the homeless.

(3) Each county, including counties exempted from creating a new task force under subsection (1) of this section, shall report to the department of community, trade, and economic development such information as may be needed to ensure compliance with this chapter. [2005 c 485 § 1.]

**43.185C.900 Short title.** This chapter may be known and cited as the homelessness housing and assistance act. [2005 c 484 § 2.]

**43.185C.901 Conflict with federal requirements—2005 c 484.** If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state. [2005 c 484 § 24.]

**43.185C.902 Effective date—2005 c 484.** This act takes effect August 1, 2005. [2005 c 484 § 25.]

## Chapter 43.320 RCW

### DEPARTMENT OF FINANCIAL INSTITUTIONS

#### Sections

43.320.110 Financial services regulation fund.

**43.320.110 Financial services regulation fund.** There is created a local fund known as the "financial services regulation fund" which shall consist of all moneys received by the divisions of the department of financial institutions, except for the division of securities which shall deposit thirteen percent of all moneys received, except as provided in RCW 43.320.115, and which shall be used for the purchase of supplies and necessary equipment; the payment of salaries, wages, and utilities; the establishment of reserves; and other incidental costs required for the proper regulation of individuals and entities subject to regulation by the department. The state treasurer shall be the custodian of the fund. Disbursements from the fund shall be on authorization of the director of financial institutions or the director's designee. In order to maintain an effective expenditure and revenue control, the fund shall be subject in all respects to chapter 43.88 RCW, but no appropriation is required to permit expenditures and payment of obligations from the fund.

During the 2005-2007 fiscal biennium, the legislature may transfer from the financial services regulation fund to the state general fund such amounts as reflect the excess fund balance of the fund. [2005 c 518 § 932. Prior: 2003 1st sp.s. c 25 § 921; 2003 c 288 § 1; 2002 c 371 § 912; 2001 2nd sp.s. c 7 § 911; 2001 c 177 § 2; 1995 c 238 § 9; 1993 c 472 § 25; 1981 c 241 § 1. Formerly RCW 43.19.095.]

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Severability—Effective date—2002 c 371:** See notes following RCW 9.46.100.

**Severability—2001 2nd sp.s. c 7:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 2nd sp.s. c 7 § 923.]

**Effective date—2001 2nd sp.s. c 7:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 26, 2001], except for section 911 of this act which takes effect July 1, 2001." [2001 2nd sp.s. c 7 § 924.]

**Effective date—2001 c 177:** See note following RCW 43.320.080.

**Effective date—1995 c 238:** See note following RCW 18.44.011.

**Effective date—1981 c 241:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981." [1981 c 241 § 4.]

## Chapter 43.330 RCW

### DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT

#### Sections

43.330.050 Community and economic development responsibilities.

43.330.060 Trade and business responsibilities.

43.330.068 International companies investing in Washington—Eligibility for excise tax incentives.

43.330.090 Economic diversification strategies—Targeted sectors—Tourism expansion.

- 43.330.092 Film and video promotion account—Promotion of film and video production industry.
- 43.330.180 Repealed.
- 43.330.250 Economic development strategic reserve account—Authorized expenditures—Transfer of excess funds to the education construction account.

**43.330.050 Community and economic development responsibilities.** The department shall be responsible for promoting community and economic development within the state by assisting the state's communities to increase the quality of life of their citizens and their economic vitality, and by assisting the state's businesses to maintain and increase their economic competitiveness, while maintaining a healthy environment. Community and economic development efforts shall include: Efforts to increase economic opportunity; local planning to manage growth; the promotion and provision of affordable housing and housing-related services; providing public infrastructure; business and trade development; assisting firms and industrial sectors to increase their competitiveness; fostering the development of minority and women-owned businesses; facilitating technology development, transfer, and diffusion; community services and advocacy for low-income persons; and public safety efforts. The department shall have the following general functions and responsibilities:

- (1) Provide advisory assistance to the governor, other state agencies, and the legislature on community and economic development matters and issues;
- (2) Assist the governor in coordinating the activities of state agencies that have an impact on local government and communities;
- (3) Cooperate with the Washington state economic development commission, the legislature, and the governor in the development and implementation of strategic plans for the state's community and economic development efforts;
- (4) Solicit private and federal grants for economic and community development programs and administer such programs in conjunction with other programs assigned to the department by the governor or the legislature;
- (5) Cooperate with and provide technical and financial assistance to local governments, businesses, and community-based organizations serving the communities of the state for the purpose of aiding and encouraging orderly, productive, and coordinated development of the state, and, unless stipulated otherwise, give additional consideration to local communities and individuals with the greatest relative need and the fewest resources;
- (6) Participate with other states or subdivisions thereof in interstate programs and assist cities, counties, municipal corporations, governmental conferences or councils, and regional planning commissions to participate with other states and provinces or their subdivisions;
- (7) Hold public hearings and meetings to carry out the purposes of this chapter;
- (8) Conduct research and analysis in furtherance of the state's economic and community development efforts including maintenance of current information on market, demographic, and economic trends as they affect different industrial sectors, geographic regions, and communities with special economic and social problems in the state; and

(9) Develop a schedule of fees for services where appropriate. [2005 c 136 § 12; 1993 c 280 § 7.]

**Savings—Effective date—2005 c 136:** See notes following RCW 43.168.020.

**43.330.060 Trade and business responsibilities.** (1)

The department shall (a) assist in expanding the state's role as an international center of trade, culture, and finance; (b) promote and market the state's products and services both nationally and internationally; (c) work in close cooperation with other private and public international trade efforts; (d) act as a centralized location for the assimilation and distribution of trade information; and (e) establish and operate foreign offices promoting overseas trade and commerce.

(2) The department shall identify and work with Washington businesses that can use local, state, and federal assistance to increase domestic and foreign exports of goods and services.

(3) The department shall work generally with small businesses and other employers to facilitate resolution of siting, regulatory, expansion, and retention problems. This assistance shall include but not be limited to assisting in work force training and infrastructure needs, identifying and locating suitable business sites, and resolving problems with government licensing and regulatory requirements. The department shall identify gaps in needed services and develop steps to address them including private sector support and purchase of these services.

(4) The department shall work to increase the availability of capital to small businesses by developing new and flexible investment tools; by assisting in targeting and improving the efficiency of existing investment mechanisms; and by assisting in the procurement of managerial and technical assistance necessary to attract potential investors.

(5) The department shall assist women and minority-owned businesses in overcoming barriers to entrepreneurial success. The department shall contract with public and private agencies, institutions, and organizations to conduct entrepreneurial training courses for minority and women-owned businesses. The instruction shall be intensive, practical training courses in financing, marketing, managing, accounting, and recordkeeping for a small business, with an emphasis on federal, state, local, or private programs available to assist small businesses. Instruction shall be offered in major population centers throughout the state at times and locations that are convenient for minority and women small business owners. [2005 c 136 § 13; 1993 c 280 § 9.]

**Savings—Effective date—2005 c 136:** See notes following RCW 43.168.020.

**Tacoma world trade center—1993 c 134:** "The legislature recognizes that export opportunities for small and medium-sized businesses stimulates economic growth. Within current resources, the department of trade and economic development shall work with the Tacoma world trade center, to assist small and medium-sized businesses with export opportunities." [1993 c 134 § 1.]

**43.330.068 International companies investing in Washington—Eligibility for excise tax incentives.** An international company investing in Washington is included within the definition of person in RCW 82.04.030 and is eligible for excise tax incentives provided in Title 82 RCW in the same manner as any domestic company. [2005 c 135 § 2.]

**Finding—Intent—2005 c 135:** "The legislature finds that many international companies with an interest in operating in Washington are not aware of the various tax incentives that are available. It is the intent of the legislature to ensure that these international companies understand that they are eligible for these business and occupation tax and sales and use tax deferrals when investing in Washington. It is the further intent of the legislature that the department of community, trade, and economic development and associate development organizations make clear to international companies that they are eligible for the state's various tax incentives." [2005 c 135 § 1.]

#### 43.330.090 Economic diversification strategies—

**Targeted sectors—Tourism expansion.** (1) The department shall work with private sector organizations, local governments, local associate development organizations, and higher education and training institutions to assist in the development of strategies to diversify the economy, facilitate technology transfer and diffusion, and increase value-added production by focusing on targeted sectors. The targeted sectors may include, but are not limited to, software, forest products, biotechnology, environmental industries, recycling markets and waste reduction, aerospace, food processing, tourism, film and video, microelectronics, new materials, robotics, and machine tools. The department shall, on a continuing basis, evaluate the potential return to the state from devoting additional resources to a targeted sector's approach to economic development and including additional sectors in its efforts. The department shall use information gathered in each service delivery region in formulating its sectoral strategies and in designating new targeted sectors.

(2) The department shall pursue a coordinated program to expand the tourism industry throughout the state in cooperation with the public and private tourism development organizations. The department, in operating its tourism program, shall:

(a) Promote Washington as a tourism destination to national and international markets to include nature-based and wildlife viewing tourism;

(b) Provide information to businesses and local communities on tourism opportunities that could expand local revenues;

(c) Assist local communities to strengthen their tourism partnerships, including their relationships with state and local agencies;

(d) Provide leadership training and assistance to local communities to facilitate the development and implementation of local tourism plans;

(e) Coordinate the development of a statewide tourism and marketing plan. The department's tourism planning efforts shall be carried out in conjunction with public and private tourism development organizations including the department of fish and wildlife and other appropriate agencies. The plan shall specifically address mechanisms for: (i) Funding national and international marketing and nature-based tourism efforts; (ii) interagency cooperation; and (iii) integrating the state plan with local tourism plans.

(3) The department may, in carrying out its efforts to expand the tourism industry in the state:

(a) Solicit and receive gifts, grants, funds, fees, and endowments, in trust or otherwise, from tribal, local or other governmental entities, as well as private sources, and may expend the same or any income therefrom for tourism purposes. All revenue received for tourism purposes shall be

deposited into the tourism development and promotion account created in RCW 43.330.094;

(b) Host conferences and strategic planning workshops relating to the promotion of nature-based and wildlife viewing tourism;

(c) Conduct or contract for tourism-related studies;

(d) Contract with individuals, businesses, or public entities to carry out its tourism-related activities under this section;

(e) Provide tourism-related organizations with marketing and other technical assistance;

(f) Evaluate and make recommendations on proposed tourism-related policies.

(4)(a) The department shall promote, market, and encourage growth in the production of films and videos, as well as television commercials within the state; to this end the department is directed to assist in the location of a film and video production studio within the state.

(b) The department may, in carrying out its efforts to encourage film and video production in the state, solicit and receive gifts, grants, funds, fees, and endowments, in trust or otherwise, from tribal, local, or other governmental entities, as well as private sources, and may expend the same or any income therefrom for the encouragement of film and video production. All revenue received for such purposes shall be deposited into the film and video promotion account created in RCW 43.330.092.

(5) In assisting in the development of a targeted sector, the department's activities may include, but are not limited to:

(a) Conducting focus group discussions, facilitating meetings, and conducting studies to identify members of the sector, appraise the current state of the sector, and identify issues of common concern within the sector;

(b) Supporting the formation of industry associations, publications of association directories, and related efforts to create or expand the activities or industry associations;

(c) Assisting in the formation of flexible networks by providing (i) agency employees or private sector consultants trained to act as flexible network brokers and (ii) funding for potential flexible network participants for the purpose of organizing or implementing a flexible network;

(d) Helping establish research consortia;

(e) Facilitating joint training and education programs;

(f) Promoting cooperative market development activities;

(g) Analyzing the need, feasibility, and cost of establishing product certification and testing facilities and services; and

(h) Providing for methods of electronic communication and information dissemination among firms and groups of firms to facilitate network activity. [2005 c 136 § 14; 2003 c 153 § 2; 1998 c 245 § 85; 1994 c 144 § 1; 1993 c 280 § 12.]

**Savings—Effective date—2005 c 136:** See notes following RCW 43.168.020.

**Findings—2003 c 153:** "The legislature finds that tourism is a growing sector of the Washington economy. Washington has a diverse geography, geology, climate, and natural resources, and offers abundant opportunities for wildlife viewing. Nature-based tourism is the fastest growing outdoor activity and segment of the travel industry and the state can take advantage of this by marketing Washington's natural assets to international as well as national tourist markets. Expanding tourism efforts can provide Washington residents with jobs and local communities with needed revenues.

The legislature also finds that current efforts to promote Washington's natural resources and nature-based tourism to national and international markets are too diffuse and limited by funding and that a collaborative effort among state and local governments, tribes, and private enterprises can serve to leverage the investments in nature-based tourism made by each." [2003 c 153 § 1.]

**Effective date—1994 c 144:** "This act shall take effect July 1, 1994." [1994 c 144 § 3.]

**43.330.092 Film and video promotion account—Promotion of film and video production industry.** The film and video promotion account is created in the state treasury. All revenue received for film and video promotion purposes under RCW 43.330.090(4)(b) and all receipts from RCW 36.102.060(14) must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used by the department of community, trade, and economic development only for the purposes of promotion of the film and video production industry in the state of Washington. [2005 c 136 § 15; 1997 c 220 § 222 (Referendum Bill No. 48, approved June 17, 1997).]

**Savings—Effective date—2005 c 136:** See notes following RCW 43.168.020.

**Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220:** See RCW 36.102.800 through 36.102.803.

**Part headings not law—Severability—1997 c 220:** See RCW 36.102.900 and 36.102.901.

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

**43.330.250 Economic development strategic reserve account—Authorized expenditures—Transfer of excess funds to the education construction account.** (1) The economic development strategic reserve account is created in the state treasury to be used only for the purposes of this section.

(2) Only the governor, with the recommendation of the director of the department of community, trade, and economic development and the economic development commission, may authorize expenditures from the account.

(3) Expenditures from the account shall be made in an amount sufficient to fund a minimum of one staff position for the economic development commission and to cover any other operational costs of the commission.

(4) Expenditures from the account may be made to prevent closure of a business or facility, to prevent relocation of a business or facility in the state to a location outside the state, or to recruit a business or facility to the state. Expenditures may be authorized for:

- (a) Work force development;
- (b) Public infrastructure needed to support or sustain the operations of the business or facility; and

(c) Other lawfully provided assistance, including, but not limited to, technical assistance, environmental analysis, relocation assistance, and planning assistance. Funding may be provided for such assistance only when it is in the public interest and may only be provided under a contractual arrangement ensuring that the state will receive appropriate

[2005 RCW Supp—page 530]

consideration, such as an assurance of job creation or retention.

(5) The funds shall not be expended from the account unless:

(a) The circumstances are such that time does not permit the director of the department of community, trade, and economic development or the business or facility to secure funding from other state sources;

(b) The business or facility produces or will produce significant long-term economic benefits to the state, a region of the state, or a particular community in the state;

(c) The business or facility does not require continuing state support;

(d) The expenditure will result in new jobs, job retention, or higher incomes for citizens of the state;

(e) The expenditure will not supplant private investment; and

(f) The expenditure is accompanied by private investment.

(6) No more than three million dollars per year may be expended from the account for the purpose of assisting an individual business or facility pursuant to the authority specified in this section.

(7) If the account balance in the strategic reserve account exceeds fifteen million dollars at any time, the amount in excess of fifteen million dollars shall be transferred to the education construction account. [2005 c 427 § 1.]

## Chapter 43.334 RCW

### DEPARTMENT OF ARCHAEOLOGY AND HISTORIC PRESERVATION

#### Sections

43.334.010	Department created—Definitions.
43.334.020	Director—Appointment—Salary.
43.334.030	Director powers and duties.
43.334.040	Departmental divisions.
43.334.050	Deputy director—Department personnel director—Assistant directors.
43.334.060	Director's delegation of powers and duties.
43.334.070	Advisory committees or councils.
43.334.080	Federal and state cooperation—Rules—Construction.
43.334.900	Transfer of powers, duties, and functions.

**43.334.010 Department created—Definitions.** (1) There is created a department of state government to be known as the department of archaeology and historic preservation. The department is vested with all powers and duties transferred to it under this chapter and such other powers and duties as may be authorized by law.

(2) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(a) "Department" means the department of archaeology and historic preservation.

(b) "Director" means the director of the department of archaeology and historic preservation. [2005 c 333 § 1.]

**43.334.020 Director—Appointment—Salary.** The executive head and appointing authority of the department is the director. The director shall serve as the state historic preservation officer, and shall have a background in program administration, an active involvement in historic preservation, and a knowledge of the national, state, and local preser-

vation programs as they affect the state of Washington. The director shall be appointed by the governor, with the consent of the senate, and serves at the pleasure of the governor. The director shall be paid a salary to be fixed by the governor in accordance with RCW 43.03.040. If a vacancy occurs in the position while the senate is not in session, the governor shall make a temporary appointment until the next meeting of the senate. [2005 c 333 § 2.]

**43.334.030 Director powers and duties.** It is the intent of the legislature wherever possible to place the internal affairs of the department under the control of the director in order that the director may institute therein the flexible, alert, and intelligent management of its business that changing contemporary circumstances require. Therefore, whenever the director's authority is not specifically limited by law, the director has complete charge and supervisory powers over the department. The director may create such administrative structures as the director considers appropriate, except as otherwise specified by law. The director may employ such assistants and personnel as necessary for the general administration of the department. This employment shall be in accordance with the state civil service law, chapter 41.06 RCW, except as otherwise provided. [2005 c 333 § 3.]

**43.334.040 Departmental divisions.** If necessary, the department may be subdivided into divisions. Except as otherwise specified or as federal requirements may differently require, divisions shall be established and organized in accordance with plans to be prepared by the director and approved by the governor. In preparing the plans, the director shall endeavor to promote efficient public management and to improve programs. [2005 c 333 § 4.]

**43.334.050 Deputy director—Department personnel director—Assistant directors.** The director shall appoint a deputy director, a department personnel director, and assistant directors as needed to administer the department. The deputy director is responsible for the general supervision of the department in the absence or disability of the director and, in case of a vacancy in the office of director, shall continue in charge of the department until a successor is appointed and qualified, or until the governor appoints an acting director. [2005 c 333 § 5.]

**43.334.060 Director's delegation of powers and duties.** Any power or duty vested in or transferred to the director by law or executive order may be delegated by the director to the deputy director or to any other assistant or subordinate; but the director is responsible for the official acts of the officers and employees of the department. [2005 c 333 § 6.]

**43.334.070 Advisory committees or councils.** The director may appoint advisory committees or councils as required by any federal legislation as a condition to the receipt of federal funds by the department. The director may also appoint statewide committees or councils on those subject matters as are or come within the department's responsibilities. The statewide committees and councils shall have

representation from both major political parties and shall have substantial consumer representation. The committees or councils shall be constituted as required by federal law or as the director may determine. The members of the committees or councils shall hold office as follows: One-third to serve one year; one-third to serve two years; and one-third to serve three years. Upon expiration of the original terms, subsequent appointments shall be for three years except in the case of a vacancy, in which event appointment shall be only for the remainder of the unexpired term for which the vacancy occurs. No member may serve more than two consecutive terms.

Members of such state advisory committees or councils may be paid their travel expenses in accordance with RCW 43.03.050 and 43.03.060. [2005 c 333 § 7.]

**43.334.080 Federal and state cooperation—Rules—Construction.** In furtherance of the policy of the state to cooperate with the federal government in all of the programs under the jurisdiction of the department, rules as may become necessary to entitle the state to participate in federal funds may be adopted, unless expressly prohibited by law. Any internal reorganization carried out under the terms of this chapter shall meet federal requirements that are a necessary condition to state receipt of federal funds. Any section or provision of law dealing with the department that may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to comply with federal laws entitling this state to receive federal funds for the various programs of the department. If any law dealing with the department is ruled to be in conflict with federal requirements that are a prescribed condition of the allocation of federal funds to the state, or to any departments or agencies thereof, the conflicting part is declared to be inoperative solely to the extent of the conflict. [2005 c 333 § 8.]

**43.334.900 Transfer of powers, duties, and functions.** (1) The office of archaeology and historic preservation is hereby abolished and its powers, duties, and functions are hereby transferred to the department of archaeology and historic preservation.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the office of archaeology and historic preservation shall be delivered to the custody of the department of archaeology and historic preservation. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the office of archaeology and historic preservation shall be made available to the department of archaeology and historic preservation. All funds, credits, or other assets held by the office of archaeology and historic preservation shall be assigned to the department of archaeology and historic preservation.

(b) Any appropriations made to the office of archaeology and historic preservation shall, on July 24, 2005, be transferred and credited to the department of archaeology and historic preservation.

(c) If any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions

transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees of the office of archaeology and historic preservation are transferred to the jurisdiction of the department of archaeology and historic preservation. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the department of archaeology and historic preservation to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All rules and all pending business before the office of archaeology and historic preservation shall be continued and acted upon by the department of archaeology and historic preservation. All existing contracts and obligations shall remain in full force and shall be performed by the department of archaeology and historic preservation.

(5) The transfer of the powers, duties, functions, and personnel of the office of archaeology and historic preservation shall not affect the validity of any act performed before July 24, 2005.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(7) Nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the personnel resources board as provided by law. [2005 c 333 § 12.]

### Chapter 43.342 RCW

#### ASSOCIATION OF WASHINGTON GENERALS

##### Sections

- 43.342.010 Association of Washington generals—Created.  
43.342.020 Use of state flag.

**43.342.010 Association of Washington generals—Created.** (1) The association of Washington generals is organized as a private, nonprofit, nonpartisan, corporation in accordance with chapter 24.03 RCW and this section.

(2) The purpose of the association of Washington generals is to:

(a) Provide the state a means of extending formal recognition for an individual's outstanding services to the state; and

(b) Bring together those individuals to serve the state as ambassadors of trade, tourism, and international goodwill.

(3) The association of Washington generals may conduct activities in support of their mission, including but not limited to:

(a) Establishing selection criteria for selecting Washington generals;

(b) Operating a statewide essay competition;

[2005 RCW Supp—page 532]

(c) Training Washington generals as ambassadors of the state of Washington, nationally and internationally; and

(d) Promoting Washington generals as ambassadors of the state of Washington.

(4) The association of Washington generals is governed by a board of directors. The board is composed of the governor, lieutenant governor, and the secretary of state, who serve as ex officio, nonvoting members, and other officers and members as the association of Washington generals designates. The board shall:

(a) Review nominations for and be responsible for the selection of Washington generals; and

(b) Establish the title of honorary Washington general to honor worthy individuals from outside the state of Washington.

(5) The lieutenant governor's office may provide technical and financial assistance for the association of Washington generals.

(6) The legislature may make appropriations in support of the Washington generals subject to the availability of funds. [2005 c 69 § 1.]

**43.342.020 Use of state flag.** The association of Washington generals may use the image of the Washington state flag to promote the mission of the organization as set forth under RCW 43.342.010. The association retains any revenue generated by the use of the image, when the usage is consistent with the purposes under RCW 43.342.010. [2005 c 69 § 2.]

### Chapter 43.350 RCW

#### LIFE SCIENCES RESEARCH

##### Sections

- 43.350.005 Findings—Purpose—Intent.  
43.350.010 Definitions.  
43.350.020 Life sciences discovery fund authority.  
43.350.030 Authority—Trust powers.  
43.350.040 Authority—General powers.  
43.350.050 Limitation of liability.  
43.350.060 Dissolving the authority.  
43.350.070 Life sciences discovery fund.  
43.350.900 Captions not law—2005 c 424.  
43.350.901 Liberal construction—2005 c 424.  
43.350.902 Severability—2005 c 424.  
43.350.903 Effective dates—2005 c 424.

**43.350.005 Findings—Purpose—Intent.** The legislature declares that promoting the health of state residents is a fundamental purpose of state government. The legislature declares it to be a clear public purpose and governmental function to promote life sciences research to foster a preventive and predictive vision of the next generation of health-related innovations, to enhance the competitive position of Washington state in this vital sector of the economy, and to improve the quality and delivery of health care for the people of Washington. The legislature finds that public support for and promotion of life sciences research will benefit the state and its residents through improved health status and health outcomes, economic development, and contributions to scientific knowledge, and such research will lead to breakthroughs and improvements that might not otherwise be discovered due to lack of existing market incentives, especially



in the area of regenerative medicine. The legislature finds that public support for and promotion of life sciences research has the potential to provide cures or new treatments for many debilitating diseases that cost the state millions of dollars each year. It is appropriate and consistent with the intent of the master settlement agreement between the state and tobacco product manufacturers to invest a portion of the revenues derived therefrom by the state in life sciences research, to leverage the revenues with other funds, and to encourage cooperation and innovation among public and private institutions involved in life sciences research. The purpose of this chapter is to establish a life sciences discovery fund authority, to grant that authority the power to contract with the state to receive revenues under the master settlement agreement, and to contract with other entities to receive other funds, and to disburse those funds consistent with the purpose of this chapter. The life sciences discovery fund is intended to promote the best available research in life sciences disciplines through diverse Washington institutions and to build upon existing strengths in the area of biosciences and biomanufacturing in order to spread the economic benefits across the state. The life sciences discovery fund is also intended to foster improved health care outcomes and improved agricultural production research across this state and the world. The research investments of the life sciences discovery fund are intended to further the goals of the "Bio 21" report and to support future statewide, comprehensive strategies to lead the nation in life sciences-related research and employment. [2005 c 424 § 1.]

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

(1) "Authority" means the life sciences discovery fund authority created in this chapter.

(2) "Board" means the governing board of trustees of the authority.

(3) "Contribution agreement" means any agreement authorized under this chapter in which a private entity or a public entity other than the state agrees to provide to the authority contributions for the purpose of promoting life sciences research.

(4) "Life sciences research" means advanced and applied research and development intended to improve human health, including scientific study of the developing brain and human learning and development, and other areas of scientific research and development vital to the state's economy.

(5) "Master settlement agreement" means the national master settlement agreement and related documents entered into on November 23, 1998, by the state and the four principal United States tobacco product manufacturers, as amended and supplemented, for the settlement of litigation brought by the state against the tobacco product manufacturers.

(6) "Public employee" means any person employed by the state of Washington or any agency or political subdivision thereof.

(7) "Public facilities" means any public institution, public facility, public equipment, or any physical asset owned, leased, or controlled by the state of Washington or any agency or political subdivision thereof.

(8) "Public funds" means any funds received or controlled by the state of Washington or any agency or political subdivision thereof, including, but not limited to, funds derived from federal, state, or local taxes, gifts or grants from any source, public or private, federal grants or payments, or intergovernmental transfers.

(9) "State agreement" means the agreement authorized under this chapter in which the state provides to the authority the strategic contribution payments required to be made by tobacco product manufacturers to the state and the state's rights to receive such payments, pursuant to the master settlement agreement, for the purpose of promoting life sciences research.

(10) "Strategic contribution payments" means the payments designated as such under the master settlement agreement, which will be made to the state in the years 2008 through 2017. [2005 c 424 § 2.]

**43.350.020 Life sciences discovery fund authority.**

(1) The life sciences discovery fund authority is created and constitutes a public instrumentality and agency of the state, separate and distinct from the state, exercising public and essential governmental functions.

(2) The powers of the authority are vested in and shall be exercised by a board of trustees consisting of: Two members of either the house appropriations committee or the house committee dealing with technology issues, one from each caucus, to be appointed by the speaker of the house of representatives; two members of either the senate committee on ways and means or the senate committee dealing with technology issues, one from each caucus, to be appointed by the president of the senate; and seven members appointed by the governor with the consent of the senate, one of whom shall be appointed by the governor as chair of the authority and who shall serve on the board and as chair of the authority at the pleasure of the governor. The respective officials shall make the initial appointments no later than thirty days after May 12, 2005. The term of the trustees, other than the chair, is four years from the date of their appointment, except that the terms of three of the initial gubernatorial appointees, as determined by the governor, are for two years from the date of their appointment. A trustee appointed by the governor may be removed by the governor for cause under RCW 43.06.070 and 43.06.080. The appropriate official shall fill any vacancy on the board by appointment for the remainder of the unexpired term. The trustees appointed by the governor shall be compensated in accordance with RCW 43.03.240 and may be reimbursed, solely from the funds of the authority, for expenses incurred in the discharge of their duties under this chapter, subject to RCW 43.03.050 and 43.03.060. The trustees who are legislators shall be reimbursed for travel expenses in accordance with RCW 44.04.120.

(3) Seven members of the board constitute a quorum.

(4) The trustees shall elect a treasurer and secretary annually, and other officers as the trustees determine necessary, and may adopt bylaws or rules for their own government.

(5) Meetings of the board shall be held in accordance with the open public meetings act, chapter 42.30 RCW, and at the call of the chair or when a majority of the trustees so requests. Meetings of the board may be held at any location

within or out of the state, and trustees may participate in a meeting of the board by means of a conference telephone or similar communication equipment under RCW 23B.08.200.

(6) The authority is subject to audit by the state auditor.

(7) The attorney general must advise the authority and represent it in all legal proceedings. [2005 c 424 § 3.]

**43.350.030 Authority—Trust powers.** In addition to other powers and duties prescribed in this chapter, the authority is empowered to:

(1) Use public moneys in the life sciences discovery fund, leveraging those moneys with amounts received from other public and private sources in accordance with contribution agreements, to promote life sciences research;

(2) Solicit and receive gifts, grants, and bequests, and enter into contribution agreements with private entities and public entities other than the state to receive moneys in consideration of the authority's promise to leverage those moneys with amounts received through appropriations from the legislature and contributions from other public entities and private entities, in order to use those moneys to promote life sciences research. Nonstate moneys received by the authority for this purpose shall be deposited in the life sciences discovery fund created in RCW 43.350.070;

(3) Hold funds received by the authority in trust for their use pursuant to this chapter to promote life sciences research;

(4) Manage its funds, obligations, and investments as necessary and as consistent with its purpose including the segregation of revenues into separate funds and accounts;

(5) Make grants to entities pursuant to contract for the promotion of life sciences research to be conducted in the state. Grant agreements shall specify deliverables to be provided by the recipient pursuant to the grant. The authority shall solicit requests for funding and evaluate the requests by reference to factors such as: (a) The quality of the proposed research; (b) its potential to improve health outcomes, with particular attention to the likelihood that it will also lower health care costs, substitute for a more costly diagnostic or treatment modality, or offer a breakthrough treatment for a particular disease or condition; (c) its potential for leveraging additional funding; (d) its potential to provide health care benefits or benefit human learning and development; (e) its potential to stimulate the health care delivery, biomedical manufacturing, and life sciences related employment in the state; (f) the geographic diversity of the grantees within Washington; (g) evidence of potential royalty income and contractual means to recapture such income for purposes of this chapter; and (h) evidence of public and private collaboration;

(6) Create one or more advisory boards composed of scientists, industrialists, and others familiar with life sciences research; and

(7) Adopt policies and procedures to facilitate the orderly process of grant application, review, and reward. [2005 c 424 § 4.]

**43.350.040 Authority—General powers.** The authority has all the general powers necessary to carry out its purposes and duties and to exercise its specific powers. In addition to other powers specified in this chapter, the authority

[2005 RCW Supp—page 534]

may: (1) Sue and be sued in its own name; (2) make and execute agreements, contracts, and other instruments, with any public or private person or entity, in accordance with this chapter; (3) employ, contract with, or engage independent counsel, financial advisors, auditors, other technical or professional assistants, and such other personnel as are necessary or desirable to implement this chapter; (4) establish such special funds, and controls on deposits to and disbursements from them, as it finds convenient for the implementation of this chapter; (5) enter into contracts with public and private entities for life sciences research to be conducted in the state; (6) adopt rules, consistent with this chapter; (7) delegate any of its powers and duties if consistent with the purposes of this chapter; (8) exercise any other power reasonably required to implement the purposes of this chapter; and (9) hire staff and pay administrative costs. [2005 c 424 § 5.]

**43.350.050 Limitation of liability.** Members of the board and persons acting on behalf of the authority, while acting within the scope of their employment or agency, are not subject to personal liability resulting from carrying out the powers and duties conferred on them under this chapter. Neither the state nor the authority is liable for any loss, damage, harm, or other consequence resulting directly or indirectly from grants made by the authority or by any life sciences research funded by such grants. [2005 c 424 § 6.]

**43.350.060 Dissolving the authority.** The authority may petition the legislature to be dissolved upon a showing that it has no reason to exist and that any assets it retains must be distributed to one or more similar entities approved by the legislature. The legislature reserves the right to dissolve the authority after its contractual obligations to its funders and grant recipients have expired. [2005 c 424 § 7.]

**43.350.070 Life sciences discovery fund.** The life sciences discovery fund is created in the custody of the state treasurer. Only the board or the board's designee may authorize expenditures from the fund. Expenditures from the fund may be made only for purposes of this chapter. Administrative expenses of the authority, including staff support, may be paid only from the fund. Revenues to the fund consist of transfers made by the legislature from strategic contribution payments deposited in the tobacco settlement account under RCW 43.79.480, moneys received pursuant to contribution agreements entered into pursuant to RCW 43.350.030, moneys received from gifts, grants, and bequests, and interest earned on the fund. [2005 c 424 § 8.]

**Report to the legislature—2005 c 424:** "By December 1, 2006, the executive director of the life sciences discovery fund shall provide a report to the legislature on the anticipated return on investment to the state from the investment of public funds in the life sciences discovery fund, including potential job growth, royalty income, intellectual property rights, and other significant long-term benefits to the state." [2005 c 424 § 10.]

**43.350.900 Captions not law—2005 c 424.** Captions used in this act are not any part of the law. [2005 c 424 § 19.]

**43.350.901 Liberal construction—2005 c 424.** This act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed. [2005 c 424 § 20.]

**43.350.902 Severability—2005 c 424.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2005 c 424 § 22.]

**43.350.903 Effective dates—2005 c 424.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 12, 2005], except for section 16 of this act, which takes effect June 30, 2005. [2005 c 424 § 24.]

### Chapter 43.360 RCW

#### WASHINGTON MAIN STREET PROGRAM

##### Sections

43.360.005	Findings—Intent.
43.360.010	Definitions.
43.360.020	Program created—Duties.
43.360.030	Designation of specific programs—Criteria.
43.360.040	Washington main street advisory committee.
43.360.050	Washington main street trust fund account.

*Tax incentives for Washington main street program: Chapter 82.73 RCW.*

**43.360.005 Findings—Intent.** (1) The legislature finds:

(a) The continued economic vitality of downtown and neighborhood commercial districts in our state's cities is essential to community preservation, social cohesion, and economic growth;

(b) In recent years there has been a deterioration of downtown and neighborhood commercial districts in both rural and urban communities due to a shifting population base, changes in the marketplace, and greater competition from suburban shopping malls, discount centers, and business transacted through the internet;

(c) This decline has eroded the ability of businesses and property owners to renovate and enhance their commercial and residential properties; and

(d) Business owners in these districts need to maintain their local economies in order to provide goods and services to adjacent residents, to provide employment opportunities, to avoid disinvestment and economic dislocations, and to develop and sustain downtown and neighborhood commercial district revitalization programs to address these problems.

(2) It is the intent of the legislature to establish a program to:

(a) Work in partnership with these organizations;

(b) Provide technical assistance and training to local governments, business organizations, downtown and neighborhood commercial district organizations, and business and property owners to accomplish community and economic revitalization and development of business districts; and

(c) Certify a downtown or neighborhood commercial district organization's use of available tax incentives. [2005 c 514 § 901.]

**Short title—2005 c 514 §§ 901-912:** "Sections 901 through 912 of this act may be known and cited as the Washington main street act." [2005 c 514 § 1310.]

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

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

(1) "Area" means a geographic area within a local government that is described by a closed perimeter boundary.

(2) "Department" means the department of community, trade, and economic development.

(3) "Director" means the director of the department of community, trade, and economic development.

(4) "Local government" means a city, code city, or town.

(5) "Qualified levels of participation" means a local downtown or neighborhood commercial district revitalization program that has been designated by the department. [2005 c 514 § 908.]

**Short title—2005 c 514 §§ 901-912:** See note following RCW 43.360.005.

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**43.360.020 Program created—Duties.** The Washington main street program is created within the department. In order to implement the Washington main street program, the department shall:

(1) Provide technical assistance to businesses, property owners, organizations, and local governments undertaking a comprehensive downtown or neighborhood commercial district revitalization initiative and management strategy. Technical assistance may include, but is not limited to, initial site evaluations and assessments, training for local programs, training for local program staff, site visits and assessments by technical specialists, local program design assistance and evaluation, and continued local program on-site assistance;

(2) To the extent funds are made available, provide financial assistance to local governments or local organizations to assist in initial downtown or neighborhood commercial district revitalization program start-up costs, specialized training, specific project feasibility studies, market studies, and design assistance;

(3) Develop objective criteria for selecting recipients of assistance under subsections (1) and (2) of this section, which shall include priority for downtown or neighborhood commercial district revitalization programs located in a rural county as defined in RCW 43.160.020(12), and provide for designation of local programs under RCW 43.360.030;

(4) Operate the Washington main street program in accordance with the plan developed by the department, in consultation with the Washington main street advisory committee created under RCW 43.360.040; and

(5) Consider other factors the department deems necessary for the implementation of this chapter. [2005 c 514 § 909.]

**Short title—2005 c 514 §§ 901-912:** See note following RCW 43.360.005.

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**43.360.030 Designation of specific programs—Criteria.** (1) The department shall adopt criteria for the designation of local downtown or neighborhood commercial district revitalization programs and official local main street programs. In establishing the criteria, the department shall consider:

(a) The degree of interest and commitment to comprehensive downtown or neighborhood commercial district revitalization and, where applicable, historic preservation by both the public and private sectors;

(b) The evidence of potential private sector investment in the downtown or neighborhood commercial district;

(c) Where applicable, a downtown or neighborhood commercial district with sufficient historic fabric to become a foundation for an enhanced community image;

(d) The capacity of the organization to undertake a comprehensive program and the financial commitment to implement a long-term downtown or neighborhood commercial district revitalization program that includes a commitment to employ a professional program manager and maintain a sufficient operating budget;

(e) The department's existing downtown revitalization program's tier system;

(f) The national main street center's criteria for designating official main street cities; and

(g) Other factors the department deems necessary for the designation of a local program.

(2) The department shall designate local downtown or neighborhood commercial district revitalization programs and official local main street programs. The programs shall be limited to three categories of designation, one of which shall be the main street level.

(3) \*RCW 82.73.010 does not apply to any local downtown or neighborhood commercial district revitalization program unless the boundaries of the program have been identified and approved by the department. The boundaries of a local downtown or neighborhood commercial district revitalization program are typically defined using the pedestrian core of a traditional commercial district.

(4) The department may not designate a local downtown or neighborhood commercial district revitalization program or official local main street program if the program is undertaken by a local government with a population of one hundred ninety thousand persons or more. [2005 c 514 § 910.]

**\*Reviser's note:** Reference to RCW 43.360.020 was apparently intended.

**Short title—2005 c 514 §§ 901-912:** See note following RCW 43.360.005.

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**43.360.040 Washington main street advisory committee.** (1) The Washington main street advisory committee is created within the department. The members of the advisory committee are appointed by the director and consist of:

(a) The director, or the director's designee, who shall serve as chair;

(b) Two representatives from local governments;

(c) Five representatives from existing local main street programs or downtown and neighborhood commercial dis-

trict programs including a combination of staff, property owners, and business owners; and

(d) One representative from the Washington trust for historic preservation.

(2) The department shall develop a plan for the Washington main street advisory committee. The plan must describe:

(a) The objectives and strategies of the Washington main street program;

(b) How the Washington main street program will be coordinated with existing federal, state, local, and private sector business development and historic preservation efforts;

(c) The means by which private investment will be solicited and employed;

(d) The methods of selecting and providing assistance to participating local programs; and

(e) A means to solicit private contributions for state and local operations of the Washington main street program. [2005 c 514 § 911.]

**Short title—2005 c 514 §§ 901-912:** See note following RCW 43.360.005.

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**43.360.050 Washington main street trust fund account.** The Washington main street trust fund account is created in the state treasury. All receipts from private contributions, federal funds, legislative appropriations, and fees for services, if levied, must be deposited into the account. Expenditures from the account may be used only for the operation of the Washington main street program. [2005 c 514 § 912.]

**Short title—2005 c 514 §§ 901-912:** See note following RCW 43.360.005.

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

## Title 44

### STATE GOVERNMENT—LEGISLATIVE

#### Chapters

**44.04 General provisions.**

**44.05 Washington state redistricting act.**

**44.28 Joint legislative audit and review committee.**

**44.39 Joint committee on energy supply and energy conservation.**

**44.40 Legislative transportation committee—Senate and house transportation committees.**

**44.75 Transportation performance audit board.**

#### Chapter 44.04 RCW GENERAL PROVISIONS

##### Sections

44.04.260 Legislative committees—Oversight.

44.04.290 Periodic review of plans for bicycle, pedestrian, and equestrian facilities.

44.04.300 Joint transportation committee—Created—Duties.

44.04.310 Joint transportation committee—Allowances, expenses.

**44.04.260 Legislative committees—Oversight.** The joint legislative audit and review committee, the joint transportation committee, the select committee on pension policy, the legislative evaluation and accountability program committee, and the joint legislative systems committee are subject to such operational policies, procedures, and oversight as are deemed necessary by the facilities and operations committee of the senate and the executive rules committee of the house of representatives to ensure operational adequacy of the agencies of the legislative branch. As used in this section, "operational policies, procedures, and oversight" includes the development process of biennial budgets, contracting procedures, personnel policies, and compensation plans, selection of a chief administrator, facilities, and expenditures. This section does not grant oversight authority to the facilities and operations committee of the senate over any standing committee of the house of representatives or oversight authority to the executive rules committee of the house of representatives over any standing committee of the senate. [2005 c 319 § 112; 2003 c 295 § 12; 2001 c 259 § 1.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**44.04.290 Periodic review of plans for bicycle, pedestrian, and equestrian facilities.** The house and senate transportation committees shall periodically review the six-year comprehensive plans submitted by cities and counties for expenditures for bicycle, pedestrian, and equestrian facilities prepared pursuant to RCW 35.77.010 and 36.81.121. [1977 ex.s. c 235 § 12; 1975 1st ex.s. c 268 § 2. Formerly RCW 44.40.120.]

**44.04.300 Joint transportation committee—Created—Duties.** The joint transportation committee is created. The executive committee of the joint committee consists of the chairs and ranking members of the house and senate transportation committees. The chairs of the house and senate transportation committees shall serve as cochairs of the joint committee. All members of the house and senate standing committees on transportation are eligible for membership of the joint committee and shall serve when appointed by the executive committee.

The joint transportation committee shall review and research transportation programs and issues in order to educate and promote the dissemination of transportation research to state and local government policymakers, including legislators and associated staff. All four members of the executive committee shall approve the annual work plan. Membership of the committee may vary depending on the subject matter of oversight and research projects. The committee may also make recommendations for functional or performance audits to the transportation performance audit board.

The executive committee shall adopt rules and procedures for its operations. [2005 c 319 § 12.]

**Transfers—2005 c 319:** See note following RCW 47.01.075.

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**44.04.310 Joint transportation committee—Allowances, expenses.** The members of the joint transportation committee will receive allowances while attending meetings of the committee or subcommittees and while engaged in other authorized business of the committees as provided in RCW 44.04.120. Subject to RCW 44.04.260, all expenses incurred by the committee must be paid upon voucher forms as provided by the office of financial management and signed by the cochairs of the joint committee, or their authorized designees, and the authority of the chair or vice-chair to sign vouchers continues until their successors are selected. Vouchers may be drawn upon funds appropriated for the expenses of the committee. [2005 c 319 § 13.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

## Chapter 44.05 RCW

### WASHINGTON STATE REDISTRICTING ACT

#### Sections

44.05.080 Duties. (*Effective July 1, 2006.*)

**44.05.080 Duties. (*Effective July 1, 2006.*)** In addition to other duties prescribed by law, the commission shall:

(1) Adopt rules pursuant to the Administrative Procedure Act, chapter 34.05 RCW, to carry out the provisions of Article II, section 43 of the state Constitution and of this chapter, which rules shall provide that three voting members of the commission constitute a quorum to do business, and that the votes of three of the voting members are required for any official action of the commission;

(2) Act as the legislature's recipient of the final redistricting data and maps from the United States Bureau of the Census;

(3) Comply with requirements to disclose and preserve public records as specified in chapters 40.14 and 42.56 RCW;

(4) Hold open meetings pursuant to the open public meetings act, chapter 42.30 RCW;

(5) Prepare and disclose its minutes pursuant to RCW 42.32.030;

(6) Be subject to the provisions of RCW 42.17.240;

(7) Prepare and publish a report with the plan; the report will be made available to the public at the time the plan is published. The report will include but will not be limited to: (a) The population and percentage deviation from the average district population for every district; (b) an explanation of the criteria used in developing the plan with a justification of any deviation in a district from the average district population; (c) a map of all the districts; and (d) the estimated cost incurred by the counties for adjusting precinct boundaries. [2005 c 274 § 303; 1983 c 16 § 8.]

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

## Chapter 44.28 RCW

### JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE

(Formerly: Legislative budget committee)

#### Sections

44.28.088 Performance audit reports—Preliminary, final.

- 44.28.161 Transportation-related performance audits.  
 44.28.801 State public infrastructure programs and funds—Inventory—Report to legislature. (*Expires June 30, 2011.*)  
 44.28.805 Review of distributions to cities and counties—Report to legislature.

**44.28.088 Performance audit reports—Preliminary, final.** (1) When the legislative auditor has completed a performance audit authorized in the performance audit work plan, the legislative auditor shall transmit the preliminary performance audit report to the affected state agency or local government and the office of financial management for comment. The agency or local government and the office of financial management shall provide any response to the legislative auditor within thirty days after receipt of the preliminary performance audit report unless a different time period is approved by the joint committee. The legislative auditor shall incorporate the response of the agency or local government and the office of financial management into the final performance audit report.

(2) Except as provided in subsection (3) of this section, before releasing the results of a performance audit to the legislature or the public, the legislative auditor shall submit the preliminary performance audit report to the joint committee for its review, comments, and final recommendations. Any comments by the joint committee must be included as a separate addendum to the final performance audit report. Upon consideration and incorporation of the review, comments, and recommendations of the joint committee, the legislative auditor shall transmit the final performance audit report to the affected agency or local government, the director of financial management, the leadership of the senate and the house of representatives, and the appropriate standing committees of the house of representatives and the senate and shall publish the results and make the report available to the public. For purposes of this section, "leadership of the senate and the house of representatives" means the speaker of the house, the majority leaders of the senate and the house of representatives, the minority leaders of the senate and the house of representatives, the caucus chairs of both major political parties of the senate and the house of representatives, and the floor leaders of both major political parties of the senate and the house of representatives.

(3) If contracted to manage a transportation-related performance audit under RCW 44.75.090, before releasing the results of a performance audit originally directed by the transportation performance audit board to the legislature or the public, the legislative auditor shall submit the preliminary performance audit report to the transportation performance audit board for review and comments solely on the management of the audit. Any comments by the transportation performance audit board must be included as a separate addendum to the final performance audit report. Upon consideration and incorporation of the review and comments of the transportation performance audit board, the legislative auditor shall transmit the final performance audit report to the affected agency or local government, the director of financial management, the leadership of the senate and the house of representatives, and the appropriate standing committees of the house of representatives and the senate and shall publish the results and make the report available to the public. [2005 c 319 § 113; 2003 c 362 § 14; 1996 c 288 § 13.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Effective date—2003 c 362:** See RCW 44.75.901.

**44.28.161 Transportation-related performance audits.** In addition to any other audits developed or included in the audit work plan under this chapter, the legislative auditor shall manage transportation-related performance audits if contracted to do so under RCW 44.75.090. [2005 c 319 § 25; 2003 c 362 § 13.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Effective date—2003 c 362:** See RCW 44.75.901.

**44.28.801 State public infrastructure programs and funds—Inventory—Report to legislature. (*Expires June 30, 2011.*)** (1) The joint legislative audit and review committee shall conduct an inventory of all state public infrastructure programs and funds. The inventory shall identify: The public infrastructure state programs and funds and the purposes each serve; how the program or fund is implemented; the types of public infrastructure projects supported by the program or fund; the dollar amount of the projects funded by each program or fund; the balance of a fund, if applicable; and the geographic distribution of projects supported by a program or fund. Where applicable, the inventory shall identify overlaps or gaps in types of public infrastructure projects supported through state programs or funds. Where appropriate, the inventory shall evaluate the return on investment for economic development infrastructure programs. The inventory shall be delivered to the appropriate committees of the legislature by December 1, 2006.

(2) By September 1, 2010, the joint legislative audit and review committee shall submit a report on the outcomes of the job development fund program to the appropriate committees of the legislature. The report shall apply the performance and evaluation criteria developed by the community economic revitalization board and the committee and shall include a project by project review detailing how the funds were used and whether the performance measures were met. The report shall also include impacts to the availability of low-interest and interest-free loans to local governments under RCW 43.155.055, 43.155.060, 43.155.065, and 43.155.068, resulting from appropriations to the job development fund. Information in the report shall include, but not be limited to:

(a) The total funds appropriated from the public works assistance account to the job development account;

(b) The ratio of loan requests submitted to the public works board as compared to actual money available for loans in the public works assistance account since July 24, 2005;

(c) The total amount that would have been available for loans from the public works assistance account had this act not taken effect;

(d) Identification of specific loan requests that would have qualified for funding under chapter 43.155 RCW had money been available in the public works assistance account;

(e) Assessment of increased costs for otherwise qualifying projects where local governments were compelled to seek alternate funding sources. [2005 c 425 § 5.]

**Finding—Expiration date—Severability—2005 c 425:** See notes following RCW 43.160.230.

**44.28.805 Review of distributions to cities and counties—Report to legislature.** During calendar year 2008, the joint legislative audit and review committee shall review the distributions to cities and counties under RCW 43.08.290 to determine the extent to which the distributions target the needs of cities and counties for which the repeal of the motor vehicle excise tax had the greatest fiscal impact. In conducting the study, the committee shall solicit input from the cities and counties. The department of revenue and the state treasurer shall provide the committee with any data within their purview that the committee considers necessary to conduct the review. The committee shall report to the legislature the results of its findings, and any recommendations for changes to the distribution formulas under RCW 43.08.290, by December 31, 2008. [2005 c 450 § 3.]

**Effective date—2005 c 450:** See note following RCW 82.45.060.

**Chapter 44.39 RCW**

**JOINT COMMITTEE ON ENERGY SUPPLY AND ENERGY CONSERVATION**

Sections

- 44.39.010 Committee created.
- 44.39.012 Definitions.
- 44.39.070 Meetings—Energy supply alert or energy emergency—Duties.

**44.39.010 Committee created.** There is hereby created the joint committee on energy supply and energy conservation. [2005 c 299 § 1; 2001 c 214 § 30; 1977 ex.s. c 328 § 13; 1969 ex.s. c 260 § 1.]

**Intent—2005 c 299:** "It is the intent of the legislature to utilize lessons learned from efforts to conserve energy usage in single state buildings or complexes and extend conservation measures across all levels of government. Implementing conservation measures across all levels of government will create actual energy conservation savings, maintenance and cost savings to state and local governments, and savings to the state economy, which depends on affordable, realizable electricity to retain jobs. The legislature intends that conservation measures be identified and aggregated within a government entity or among multiple government entities to maximize energy savings and project efficiencies." [2005 c 299 § 3.]

**Severability—Effective date—2001 c 214:** See notes following RCW 80.50.010.

**Findings—2001 c 214:** See note following RCW 39.35.010.

**Severability—1977 ex.s. c 328:** See note following RCW 43.21G.010.

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

(1) "Committee" means the joint committee on energy supply and energy conservation.

(2) "Conservation" means reduced energy consumption or energy cost, or increased efficiency in the use of energy, and activities, measures, or equipment designed to achieve such results. [2005 c 299 § 4.]

**Intent—2005 c 299:** See note following RCW 44.39.010.

**44.39.070 Meetings—Energy supply alert or energy emergency—Duties.** (1) The committee shall meet and function at the following times: (a) At least once per year or

at anytime upon the call of the chair to receive information related to the state or regional energy supply situation; (b) during a condition of energy supply alert or energy emergency; and (c) upon the call of the chair, in response to gubernatorial action to terminate such a condition. Upon the declaration by the governor of a condition of energy supply alert or energy emergency, the committee shall meet to receive any plans proposed by the governor for programs, controls, standards, and priorities for the production, allocation, and consumption of energy during any current or anticipated condition of energy supply alert or energy emergency, any proposed plans for the suspension or modification of existing rules of the Washington Administrative Code, and any other relevant matters the governor deems desirable. The committee shall review such plans and matters and shall transmit its recommendations to the governor for review. The committee may review any voluntary programs or local or regional programs for the production, allocation, or consumption of energy which have been submitted to the committee.

(2) The committee shall receive any request from the governor for the approval of a declaration of a condition of energy emergency as provided in RCW 43.21G.040 as now or hereafter amended and shall either approve or disapprove such request.

(3) During a condition of energy supply alert, the committee shall: (a) Receive any request from the governor for an extension of the condition of energy supply alert for an additional period of time not to exceed ninety consecutive days and the findings upon which such request is based; (b) receive any request from the governor for subsequent extensions of the condition of energy supply alert for an additional period of time not to exceed one hundred twenty consecutive days and the findings upon which such a request is based; and (c) either approve or disapprove the requested extensions. When approving a request, the committee may specify a longer period than requested, up to ninety days for initial extensions and one hundred twenty days for additional extensions.

(4) During a condition of energy emergency the committee shall: (a) Receive any request from the governor for an extension of the condition of energy emergency for an additional period of time not to exceed forty-five consecutive days and the finding upon which any such request is based; (b) receive any request from the governor for subsequent extensions of the condition of energy emergency for an additional period of time not to exceed sixty consecutive days and the findings upon which such a request is based; and (c) either approve or disapprove the requested extensions. When approving a request, the committee may specify a longer period than requested, up to forty-five days for initial extensions and sixty days for additional extensions. [2005 c 299 § 2; 2002 c 192 § 1; 1977 ex.s. c 328 § 18.]

**Intent—2005 c 299:** See note following RCW 44.39.010.

**Severability—1977 ex.s. c 328:** See note following RCW 43.21G.010.

## Chapter 44.40 RCW

LEGISLATIVE TRANSPORTATION  
COMMITTEE—SENATE AND HOUSE  
TRANSPORTATION COMMITTEES

## Sections

44.40.010	through 44.40.020 Repealed.
44.40.025	Recodified as RCW 43.88.125.
44.40.030	through 44.40.100 Repealed.
44.40.120	Recodified as RCW 44.04.290.
44.40.140	Repealed.
44.40.150	Repealed.
44.40.161	Repealed.

**44.40.010 through 44.40.020 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**44.40.025 Recodified as RCW 43.88.125.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**44.40.030 through 44.40.100 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**44.40.120 Recodified as RCW 44.04.290.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

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

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

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

## Chapter 44.75 RCW

TRANSPORTATION PERFORMANCE  
AUDIT BOARD

## Sections

44.75.020	Definitions.
44.75.030	Board created—Membership.
44.75.040	Procedures, compensation, support.
44.75.050	Reviews of transportation-related agencies.
44.75.080	Direction of audit.
44.75.090	Professional experts.
44.75.100	Audit reports.
44.75.110	Scope of audit.
44.75.120	Contents of report.

*Transportation-related performance audits: RCW 44.28.161.*

**44.75.020 Definitions.** The definitions in this section apply throughout this chapter.

(1) "Economy and efficiency audit" has the meaning contained in chapter 44.28 RCW.

(2) "Joint legislative audit and review committee" means the agency created in chapter 44.28 RCW, or its statutory successor.

(3) "Legislative auditor" has the meaning contained in chapter 44.28 RCW.

(4) "Performance audit" has the meaning contained in chapter 44.28 RCW.

(5) "Performance review" means an outside evaluation of how a state agency uses its performance measures to assess the outcomes of its legislatively authorized activities.

(6) "Program audit" has the meaning contained in chapter 44.28 RCW.

(7) "Transportation performance audit board" or "board" means the board created in RCW 44.75.030.

(8) "Transportation-related agencies" or "agency" means any state or local agency, board, special purpose district, or commission that receives or generates funding primarily for transportation-related purposes. At a minimum, the department of transportation, the Washington state patrol, the department of licensing, the transportation improvement board or its successor entity, the county road administration board or its successor entity, and the traffic safety commission are considered transportation-related agencies. [2005 c 319 § 16; 2003 c 362 § 2.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**44.75.030 Board created—Membership.** (1) The transportation performance audit board is created.

(2) The board will consist of four legislative members, three citizen members with transportation-related expertise, two citizen members with performance measurement expertise, one member of the transportation commission, one ex officio nonvoting member, and one at large member. The legislative auditor is the ex officio nonvoting member. The majority and minority leaders of the house and senate transportation committees, or their designees, are the legislative members. The governor shall appoint the at large member to serve for a term of four years. The citizen members must be appointed by the governor for terms of four years, except that at least half the initial appointments will be for terms of two years. The citizen members may not be currently, or within one year, employed by the Washington state department of transportation. The governor, when appointing the citizen members with transportation-related expertise, may consult with appropriate professional associations and shall consider the following transportation-related experiences:

(a) Construction project planning, including permitting and assuring regulatory compliance;

(b) Construction means and methods and construction management, crafting and implementing environmental mitigation plans, and administration;

(c) Construction engineering services, including construction management, materials testing, materials documentation, contractor payments, inspection, surveying, and project oversight;

(d) Project management, including design estimating, contract packaging, and procurement; and

(e) Transportation planning and congestion management.

(3) The governor may not remove members from the board before the expiration of their terms unless for cause based upon a determination of incapacity, incompetence, neglect of duty, of malfeasance in office by the Thurston county superior court, upon petition and show cause proceed-



ings brought for that purpose in that court and directed to the board member in question.

(4) No member may be appointed for more than three consecutive terms. [2005 c 319 § 17; 2003 c 362 § 3.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:**  
See notes following RCW 43.17.020.

**44.75.040 Procedures, compensation, support.** (1) The board shall meet periodically. It may adopt its own rules and may establish its own procedures. It shall act collectively in harmony with recorded resolutions or motions adopted by a majority vote of the members.

(2) Each member of the transportation performance audit board will be compensated from the general appropriation for the transportation commission in accordance with RCW 43.03.250 and reimbursed for actual necessary traveling and other expenses in going to, attending, and returning from meetings of the board or that are incurred in the discharge of duties requested by the chair. However, in no event may a board member be compensated in any year for more than one hundred twenty days, except the chair may be compensated for not more than one hundred fifty days. Service on the board does not qualify as a service credit for the purposes of a public retirement system.

(3) The transportation performance audit board shall keep proper records and is subject to audit by the state auditor or other auditing entities.

(4) Staff support to the transportation performance audit board must be provided by the transportation commission, which shall provide professional support for the duties, functions, responsibilities, and activities of the board, including but not limited to information technology systems; data collection, processing, analysis, and reporting; project management; and office space, equipment, and secretarial support. Additionally, the commission shall designate, subject to board approval, a staff person to serve as the board administrator. The board administrator serves as an exempt employee and at the pleasure of the board.

(5) Each member of the transportation performance audit board shall disclose any actual or potential conflict of interest, if applicable under the circumstance, regarding all performance reviews and performance audits conducted under this chapter. [2005 c 319 § 18; 2003 c 362 § 4.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:**  
See notes following RCW 43.17.020.

**44.75.050 Reviews of transportation-related agencies.** (1) The transportation performance audit board may review the performance and outcome measures of transportation-related agencies. The purpose of these reviews is to ensure that the legislature has the means to adequately and accurately assess the performance and outcomes of those agencies and departments. Where two or more agencies have shared responsibility for functions or priorities of government, these reviews can also determine whether effective interagency cooperation and collaboration occurs in areas such as program coordination, administrative structures, information systems, and administration of grants and loans.

(2) The board shall, as soon as practicable, conduct a review of the comprehensive ten-year investment program

process, including the required criteria, under RCW 47.05.030 and 47.05.051.

(3) In conducting these reviews, the transportation performance audit board may work in consultation with the joint legislative audit and review committee, the office of financial management, and other state agencies. [2005 c 319 § 19; 2003 c 362 § 5.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:**  
See notes following RCW 43.17.020.

**44.75.080 Direction of audit.** After reviewing the performance or outcome measures and benchmarks of an agency or department, or at any time it so determines, the transportation performance audit board shall direct a full performance or functional audit of the agency or department, or a specific program within the agency or department. [2005 c 319 § 20; 2003 c 362 § 8.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:**  
See notes following RCW 43.17.020.

**44.75.090 Professional experts.** To the greatest extent possible, and to the extent funds are appropriated, the board administrator shall, subject to board approval, contract with and consult with private independent professional and technical experts to optimize the independence of the reviews and performance audits. In determining the need to contract with private experts, the board administrator shall consider the degree of difficulty of the review or audit, the relative cost of contracting for expertise, and the need to maintain auditor independence from the subject agency or program. The board administrator may, subject to board approval, contract with the legislative auditor or state auditor to serve as the contract manager of the reviews and performance audits. [2005 c 319 § 21; 2003 c 362 § 9.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:**  
See notes following RCW 43.17.020.

*Management by legislative auditor: RCW 44.28.161.*

**44.75.100 Audit reports.** (1) When the board has completed a performance audit, the board shall transmit the preliminary performance audit report to the affected state agency or local government and the office of financial management for comment. The agency or local government and the office of financial management shall provide any response to the board within thirty days after receipt of the preliminary report unless a different time period is approved by the board. The board shall incorporate the response of the agency or local government and the office of financial management into the final performance audit report. The board may also include an addendum with board comments on the management of the audit.

(2) Before releasing the results of a performance audit originally requested by the joint transportation committee to the legislature or the public, the board administrator shall submit the preliminary performance audit report to the joint committee for review and comments solely on the management of the audit. Any comments by the joint committee must be included as a separate addendum to the final performance audit report.

(3) Completed performance audits must be presented to the transportation performance audit board. Published per-

formance audits must be made available to the public through the board's web site and through customary public communications. Final reports must also be transmitted to the affected agency, the director of financial management, and the appropriate policy and fiscal standing committees of the legislature. [2005 c 319 § 22; 2003 c 362 § 10.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**44.75.110 Scope of audit.** The board administrator, or the legislative auditor or state auditor if contracted under RCW 44.75.090, shall determine in writing the scope of any performance audit directed by the transportation performance audit board, subject to the review and approval of the final scope of the audit by the transportation performance audit board. In doing so, the board administrator, or legislative auditor or state auditor if contracted under RCW 44.75.090, and the transportation performance audit board shall consider inclusion of the following elements in the scope of the audit:

- (1) Identification of potential cost savings in the agency, its programs, and its services;
- (2) Identification and recognition of best practices;
- (3) Identification of funding to the agency, to programs, and to services that can be eliminated or reduced;
- (4) Identification of programs and services that can be eliminated, reduced, or transferred to the private sector;
- (5) Analysis of gaps and overlaps in programs and services and recommendations for improving, dropping, blending, or separating functions to correct gaps or overlaps;
- (6) Analysis and recommendations for pooling information technology systems;
- (7) Analysis of the roles and functions of the agency, its programs, and its services and their compliance with statutory authority and recommendations for eliminating or changing those roles and functions and ensuring compliance with statutory authority;
- (8) Recommendations for eliminating or changing statutes, rules, and policy directives as may be necessary to ensure that the agency carry out reasonably and properly those functions expressly vested in the department by statute; and
- (9) Verification of the reliability and validity of department performance data, self-assessments, and performance measurement systems as required under RCW 43.88.090. [2005 c 319 § 23; 2003 c 362 § 11.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**44.75.120 Contents of report.** When conducting a full performance audit of an agency or department, or a specific program within an agency or department, or multiple agencies, in accordance with RCW 44.75.110, the board administrator shall solicit input from appropriate industry representatives or experts. The audit report must make recommendations regarding the continuation, abolition, consolidation, or reorganization of each affected agency, department, or program. The audit report must identify opportunities to develop government partnerships, and eliminate program redundancies that will result in increased quality, effectiveness, and efficiency of state agencies. [2005 c 319 § 24; 2003 c 362 § 12.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

## Title 46 MOTOR VEHICLES

### Chapters

- 46.01 Department of licensing.**
- 46.04 Definitions.**
- 46.09 Off-road and nonhighway vehicles.**
- 46.10 Snowmobiles.**
- 46.12 Certificates of ownership and registration.**
- 46.16 Vehicle licenses.**
- 46.17 Vehicle weight fees.**
- 46.20 Drivers' licenses—Identicators.**
- 46.23 Nonresident violator compact.**
- 46.25 Uniform commercial driver's license act.**
- 46.32 Vehicle inspection.**
- 46.37 Vehicle lighting and other equipment.**
- 46.44 Size, weight, load.**
- 46.52 Accidents—Reports—Abandoned vehicles.**
- 46.55 Towing and impoundment.**
- 46.61 Rules of the road.**
- 46.63 Disposition of traffic infractions.**
- 46.68 Disposition of revenue.**
- 46.73 Private carrier drivers.**
- 46.87 Proportional registration.**
- 46.96 Manufacturers' and dealers' franchise agreements.**

### Chapter 46.01 RCW DEPARTMENT OF LICENSING

#### Sections

- 46.01.140 Special deputies and subagents of director—Disposition of application fees.
- 46.01.320 Title and registration advisory committee.
- 46.01.325 Agent and subagent fees—Analysis and evaluation.

**46.01.140 Special deputies and subagents of director—Disposition of application fees.** (1) The county auditor, if appointed by the director of licensing shall carry out the provisions of this title relating to the licensing of vehicles and the issuance of vehicle license number plates under the direction and supervision of the director and may with the approval of the director appoint assistants as special deputies and recommend subagents to accept applications and collect fees for vehicle licenses and transfers and to deliver vehicle license number plates.

(2) A county auditor appointed by the director may request that the director appoint subagencies within the county.

(a) Upon authorization of the director, the auditor shall use an open competitive process including, but not limited to, a written business proposal and oral interview to determine the qualifications of all interested applicants.

(b) A subagent may recommend a successor who is either the subagent's sibling, spouse, or child, or a subagency employee, as long as the recommended successor participates in the open, competitive process used to select an applicant. In making successor recommendation and appointment determinations, the following provisions apply:

(i) If a subagency is held by a partnership or corporate entity, the nomination must be submitted on behalf of, and agreed to by, all partners or corporate officers.

(ii) No subagent may receive any direct or indirect compensation or remuneration from any party or entity in recognition of a successor nomination. A subagent may not receive any financial benefit from the transfer or termination of an appointment.

(iii) (a) and (b) of this subsection are intended to assist in the efficient transfer of appointments in order to minimize public inconvenience. They do not create a proprietary or property interest in the appointment.

(c) The auditor shall submit all proposals to the director, and shall recommend the appointment of one or more subagents who have applied through the open competitive process. The auditor shall include in his or her recommendation to the director, not only the name of the successor who is a relative or employee, if applicable and if otherwise qualified, but also the name of one other applicant who is qualified and was chosen through the open competitive process. The director has final appointment authority.

(3)(a) A county auditor who is appointed as an agent by the department shall enter into a standard contract provided by the director, developed with the advice of the title and registration advisory committee.

(b) A subagent appointed under subsection (2) of this section shall enter into a standard contract with the county auditor, developed with the advice of the title and registration advisory committee. The director shall provide the standard contract to county auditors.

(c) The contracts provided for in (a) and (b) of this subsection must contain at a minimum provisions that:

(i) Describe the responsibilities, and where applicable, the liability, of each party relating to the service expectations and levels, equipment to be supplied by the department, and equipment maintenance;

(ii) Require the specific type of insurance or bonds so that the state is protected against any loss of collected motor vehicle tax revenues or loss of equipment;

(iii) Specify the amount of training that will be provided by the state, the county auditor, or subagents;

(iv) Describe allowable costs that may be charged to vehicle licensing activities as provided for in (d) of this subsection;

(v) Describe the causes and procedures for termination of the contract, which may include mediation and binding arbitration.

(d) The department shall develop procedures that will standardize and prescribe allowable costs that may be assigned to vehicle licensing and vessel registration and title activities performed by county auditors.

(e) The contracts may include any provision that the director deems necessary to ensure acceptable service and the full collection of vehicle and vessel tax revenues.

(f) The director may waive any provisions of the contract deemed necessary in order to ensure that readily accessible service is provided to the citizens of the state.

(4)(a) At any time any application is made to the director, the county auditor, or other agent pursuant to any law dealing with licenses, registration, or the right to operate any vehicle or vessel upon the public highways or waters of this

state, excluding applicants already paying such fee under RCW 46.16.070 or 46.16.085, the applicant shall pay to the director, county auditor, or other agent a fee of three dollars for each application in addition to any other fees required by law.

(b) Counties that do not cover the expenses of vehicle licensing and vessel registration and title activities may submit to the department a request for cost-coverage moneys. The request must be submitted on a form developed by the department. The department shall develop procedures to verify whether a request is reasonable. Payment shall be made on requests found to be allowable from the licensing services account.

(c) Applicants for certificates of ownership, including applicants paying fees under RCW 46.16.070 or 46.16.085, shall pay to the director, county auditor, or other agent a fee of four dollars in addition to any other fees required by law.

(d) The fees under (a) and (c) of this subsection, if paid to the county auditor as agent of the director, or if paid to a subagent of the county auditor, shall be paid to the county treasurer in the same manner as other fees collected by the county auditor and credited to the county current expense fund. If the fee is paid to another agent of the director, the fee shall be used by the agent to defray his or her expenses in handling the application.

(e) Applicants required to pay the three-dollar fee established under (a) of this subsection, must pay an additional seventy-five cents, which must be collected and remitted to the state treasurer and distributed as follows:

(i) Fifty cents must be deposited into the department of licensing services account of the motor vehicle fund and must be used for agent and subagent support, which is to include but not be limited to the replacement of department-owned equipment in the possession of agents and subagents.

(ii) Twenty-five cents must be deposited into the license plate technology account created under RCW 46.16.685.

(5) A subagent shall collect a service fee of (a) ten dollars for changes in a certificate of ownership, with or without registration renewal, or verification of record and preparation of an affidavit of lost title other than at the time of the title application or transfer and (b) four dollars for registration renewal only, issuing a transit permit, or any other service under this section.

(6) If the fee is collected by the state patrol as agent for the director, the fee so collected shall be certified to the state treasurer and deposited to the credit of the state patrol highway account. If the fee is collected by the department of transportation as agent for the director, the fee shall be certified to the state treasurer and deposited to the credit of the motor vehicle fund. All such fees collected by the director or branches of his office shall be certified to the state treasurer and deposited to the credit of the highway safety fund.

(7) Any county revenues that exceed the cost of providing vehicle licensing and vessel registration and title activities in a county, calculated in accordance with the procedures in subsection (3)(d) of this section, shall be expended as determined by the county legislative authority during the process established by law for adoption of county budgets.

(8) The director may adopt rules to implement this section. [2005 c 343 § 1; 2003 c 370 § 3; 2001 c 331 § 1; 1996 c 315 § 1; 1992 c 216 § 1; 1991 c 339 § 16; 1990 c 250 § 89;

1988 c 12 § 1; 1987 c 302 § 1; 1985 c 380 § 12. Prior: 1983 c 77 § 1; 1983 c 26 § 1; 1980 c 114 § 2; 1979 c 158 § 122; 1975 1st ex.s. c 146 § 1; 1973 c 103 § 1; 1971 ex.s. c 231 § 9; 1971 ex.s. c 91 § 3; 1965 c 156 § 14; 1963 c 85 § 1; 1961 c 12 § 46.08.100; prior: 1955 c 89 § 3; 1937 c 188 § 27; RRS § 6312-27. Formerly RCW 46.08.100.]

**Application—2003 c 370:** "Sections 2 and 3 of this act take effect for renewals that are due or become due on or after November 1, 2003." [2003 c 370 § 6.] Section 2 of this act was vetoed by the governor.

**Effective dates—1996 c 315 §§ 1, 4, 5:** "(1) Section 4 of this act and the amendments to RCW 46.01.140(4) (a) and (c) by section 1 of this act become effective on vehicle fees due or to become due on January 1, 1997, and thereafter.

(2) Section 5 of this act and the amendments to RCW 46.01.140(4) (a) and (c) by section 1 of this act become effective on vessel fees due or to become due on July 1, 1997, and thereafter.

(3) The amendments to RCW 46.01.140(5) (a) and (b) by section 1 of this act become effective on July 1, 1996." [1996 c 315 § 6.]

**Effective date—1991 c 339 §§ 16, 17:** "Sections 16 and 17 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 339 § 34.]

**Severability—1990 c 250:** See note following RCW 46.16.301.

**Severability—1987 c 302:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 302 § 5.]

**Effective date—1986 c 18; 1985 c 380:** See RCW 46.87.901.

**Severability—1985 c 380:** See RCW 46.87.900.

**Effective date—1971 ex.s. c 231:** See note following RCW 46.01.130.

#### 46.01.320 Title and registration advisory committee.

The title and registration advisory committee is created within the department. The committee consists of the director or a designee, who shall serve as chair, the assistant director for vehicle services, the administrator of title and registration services, two members from each of the house and senate transportation committees, two county auditors nominated by the Washington association of county officials, and two representatives of subagents nominated by an association of vehicle subagents. The committee shall meet at least twice a year, and may meet as often as is necessary.

The committee's purpose is to foster communication between the legislature, the department, county auditors, and subagents. The committee shall make recommendations about revisions to fee structures, implications of fee revisions on cost sharing, and the development of standard contracts provided for in RCW 46.01.140(3). [2005 c 319 § 115; 1996 c 315 § 2; 1992 c 216 § 3.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**46.01.325 Agent and subagent fees—Analysis and evaluation.** (1) The director shall prepare, with the advice of the title and registration advisory committee, an annual comprehensive analysis and evaluation of agent and subagent fees. The director shall make recommendations for agent and subagent fee revisions approved by the title and registration advisory committee to the senate and house transportation committees by January 1st of every third year starting with 1996. Fee revision recommendations may be made more frequently when justified by the annual analysis and evaluation,

[2005 RCW Supp—page 544]

and requested by the title and registration advisory committee.

(2) The annual comprehensive analysis and evaluation must consider, but is not limited to:

(a) Unique and significant financial, legislative, or other relevant developments that may impact fees;

(b) Current funding for ongoing operating and maintenance automation project costs affecting revenue collection and service delivery;

(c) Future system requirements including an appropriate sharing of costs between the department, agents, and subagents;

(d) Beneficial mix of customer service delivery options based on a fee structure commensurate with quality performance standards;

(e) Appropriate indices projecting state and national growth in business and economic conditions prepared by the United States department of commerce, the department of revenue, and the revenue forecast council for the state of Washington. [2005 c 319 § 116; 1996 c 315 § 3.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

## Chapter 46.04 RCW DEFINITIONS

### Sections

46.04.1951	Gonzaga University alumni association license plates.
46.04.215	Ignition interlock device.
46.04.249	Keep Kids Safe license plates.
46.04.62240	Share the Road license plates.
46.04.62250	Signal preemption device.
46.04.62260	Ski & Ride Washington license plates.
46.04.691	Washington Lighthouses license plates.
46.04.692	Washington's National Park Fund license plates.
46.04.705	We love our pets license plates.

**46.04.1951 Gonzaga University alumni association license plates.** "Gonzaga University alumni association license plates" means license plates issued under RCW 46.16.30916 that display a symbol or artwork recognizing the efforts of the Gonzaga University alumni association in Washington state. [2005 c 85 § 2.]

**46.04.215 Ignition interlock device.** "Ignition interlock device" means breath alcohol analyzing ignition equipment or other biological or technical device certified by the state patrol and designed to prevent a motor vehicle from being operated by a person who has consumed an alcoholic beverage. The state patrol shall by rule provide standards for the certification, installation, repair, and removal of the devices. [2005 c 200 § 1; 1997 c 229 § 9; 1994 c 275 § 23; 1987 c 247 § 3. Formerly RCW 46.20.730.]

**Effective date—1997 c 229:** See note following RCW 10.05.090.

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

**46.04.249 Keep Kids Safe license plates.** "Keep Kids Safe license plates" means license plates issued under RCW 46.16.30913 that display artwork recognizing efforts to prevent child abuse and neglect in Washington state. [2005 c 53 § 2.]

**46.04.62240 Share the Road license plates.** "Share the Road license plates" means license plates that commemorate the life of Cooper Jones and display a symbol of an organization that promote[s] bicycle safety and awareness education in communities throughout Washington. [2005 c 426 § 2.]

**46.04.62250 Signal preemption device.** "Signal preemption device" means a device that is capable of altering the normal operation of a traffic control signal. Any such device manufactured by a vehicle manufacturer is not a signal preemption device for purposes of this section if the primary purpose of the device is any purpose other than the preemption of traffic signals and the device's ability to alter traffic signals is unintended and incidental to the device's primary purpose. [2005 c 183 § 1.]

**46.04.62260 Ski & Ride Washington license plates.** "Ski & Ride Washington license plates" means license plates issued under RCW 46.16.30922 that display a symbol or artwork recognizing the efforts of the Washington snowsports industry in this state. [2005 c 220 § 2.]

**46.04.691 Washington Lighthouses license plates.** "Washington Lighthouses license plates" means license plates issued under RCW 46.16.30911 that display a symbol or artwork recognizing the efforts of lighthouse environmental programs in Washington state. [2005 c 48 § 2.]

**46.04.692 Washington's National Park Fund license plates.** "Washington's National Park Fund license plates" means license plates issued under RCW 46.16.30918 that display a symbol or artwork recognizing the efforts of Washington's National Park Fund in preserving Washington's national parks for future generations in Washington state. [2005 c 177 § 2.]

**46.04.705 We love our pets license plates.** "We love our pets license plates" means license plates issued under RCW 46.16.30914 that display a symbol or artwork recognizing the efforts of the Washington state federation of animal care and control agencies in Washington state that assists local member agencies of the federation to promote and perform spay/neuter surgery of Washington state pets, in order to reduce pet overpopulation. [2005 c 71 § 2.]

## Chapter 46.09 RCW

### OFF-ROAD AND NONHIGHWAY VEHICLES

#### Sections

46.09.010	Application of chapter—Permission necessary to enter upon private lands.
46.09.115	Nonhighway use.
46.09.117	Operation by persons under thirteen.
46.09.120	Operating violations.

**46.09.010 Application of chapter—Permission necessary to enter upon private lands.** The provisions of this chapter shall apply to all lands in this state. Nothing in this chapter, RCW 79A.35.040, 79A.35.070, 79A.35.090, 79A.35.110, and 79A.35.120 shall be deemed to grant to any person the right or authority to enter upon private property

without permission of the property owner. [2005 c 213 § 2; 1972 ex.s. c 153 § 2; 1971 ex.s. c 47 § 6.]

**Findings—Construction—2005 c 213:** "The legislature finds that off-road recreational vehicles (ORVs) provide opportunities for a wide variety of outdoor recreation activities. The legislature further finds that the limited amount of ORV recreation areas presents a challenge for ORV recreational users, natural resource land managers, and private landowners. The legislature further finds that many nonhighway roads provide opportunities for ORV use and that these opportunities may reduce conflicts between users and facilitate responsible ORV recreation. However, restrictions intended for motor vehicles may prevent ORV use on certain roads, including forest service roads. Therefore, the legislature finds that local, state, and federal jurisdictions should be given the flexibility to allow ORV use on nonhighway roads they own and manage or for which they are authorized to allow public ORV use under an easement granted by the owner. Nothing in this act authorizes trespass on private property." [2005 c 213 § 1.]

**Effective date—2005 c 213:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 213 § 9.]

**Purpose—1972 ex.s. c 153:** See RCW 67.32.080.

**46.09.115 Nonhighway use.** (1) Except as otherwise provided in this section, it is lawful to operate an off-road vehicle upon a nonhighway road and in parking areas serving designated off-road vehicle areas if the state, federal, local, or private authority responsible for the management of the nonhighway road authorizes the use of off-road vehicles.

(2) Operations of an off-road vehicle on a nonhighway road under this section is exempt from licensing requirements of RCW 46.16.010 and vehicle lighting and equipment requirements of chapter 46.37 RCW.

(3) It is unlawful to operate an off-road vehicle upon a private nonhighway road if the road owner has not authorized the use of off-road vehicles.

(4) Nothing in this section authorizes trespass on private property. [2005 c 213 § 4.]

**Findings—Construction—Effective date—2005 c 213:** See notes following RCW 46.09.010.

**46.09.117 Operation by persons under thirteen.** (1) Except as specified in subsection (2) of this section, no person under thirteen years of age may operate an off-road vehicle on or across a highway or nonhighway road in this state.

(2) Persons under thirteen years of age may operate an off-road vehicle on a nonhighway road designated for off-road vehicle use under the direct supervision of a person eighteen years of age or older possessing a valid license to operate a motor vehicle under chapter 46.20 RCW. [2005 c 213 § 5.]

**Findings—Construction—Effective date—2005 c 213:** See notes following RCW 46.09.010.

**46.09.120 Operating violations.** (1) It is a traffic infraction for any person to operate any nonhighway vehicle:

(a) In such a manner as to endanger the property of another;

(b) On lands not owned by the operator or owner of the nonhighway vehicle without a lighted headlight and taillight between the hours of dusk and dawn, or when otherwise required for the safety of others regardless of ownership;

(c) On lands not owned by the operator or owner of the nonhighway vehicle without an adequate braking device or

when otherwise required for the safety of others regardless of ownership;

(d) Without a spark arrester approved by the department of natural resources;

(e) Without an adequate, and operating, muffling device which effectively limits vehicle noise to no more than eighty-six decibels on the "A" scale at fifty feet as measured by the Society of Automotive Engineers (SAE) test procedure J 331a, except that a maximum noise level of one hundred and five decibels on the "A" scale at a distance of twenty inches from the exhaust outlet shall be an acceptable substitute in lieu of the Society of Automotive Engineers test procedure J 331a when measured:

(i) At a forty-five degree angle at a distance of twenty inches from the exhaust outlet;

(ii) With the vehicle stationary and the engine running at a steady speed equal to one-half of the manufacturer's maximum allowable ("red line") engine speed or where the manufacturer's maximum allowable engine speed is not known the test speed in revolutions per minute calculated as sixty percent of the speed at which maximum horsepower is developed; and

(iii) With the microphone placed ten inches from the side of the vehicle, one-half way between the lowest part of the vehicle body and the ground plane, and in the same lateral plane as the rearmost exhaust outlet where the outlet of the exhaust pipe is under the vehicle;

(f) On lands not owned by the operator or owner of the nonhighway vehicle upon the shoulder or inside bank or slope of any nonhighway road or highway, or upon the median of any divided highway;

(g) On lands not owned by the operator or owner of the nonhighway vehicle in any area or in such a manner so as to unreasonably expose the underlying soil, or to create an erosion condition, or to injure, damage, or destroy trees, growing crops, or other vegetation;

(h) On lands not owned by the operator or owner of the nonhighway vehicle or on any nonhighway road or trail, when these are restricted to pedestrian or animal travel;

(i) On any public lands in violation of rules and regulations of the agency administering such lands; and

(j) On a private nonhighway road in violation of RCW 46.09.115(3).

(2) It is a misdemeanor for any person to operate any nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance.

(3)(a) Except for an off-road vehicle equipped with seat belts and roll bars or an enclosed passenger compartment, it is a traffic infraction for any person to operate or ride an off-road vehicle on a nonhighway road without wearing upon his or her head a motorcycle helmet fastened securely while in motion. For purposes of this section, "motorcycle helmet" has the same meaning as provided in RCW 46.37.530.

(b) Subsection (3)(a) of this section does not apply to an off-road vehicle operator operating on his or her own land.

(c) Subsection (3)(a) of this section does not apply to an off-road vehicle operator operating on agricultural lands owned or leased by the off-road vehicle operator or the operator's employer. [2005 c 213 § 3; 2003 c 377 § 1; 1979 ex.s. c 136 § 41; 1977 ex.s. c 220 § 10; 1972 ex.s. c 153 § 12; 1971 ex.s. c 47 § 17.]

**Rules of court:** *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

**Findings—Construction—Effective date—2005 c 213:** See notes following RCW 46.09.010.

**Effective date—Severability—1979 ex.s. c 136:** See notes following RCW 46.63.010.

**Purpose—1972 ex.s. c 153:** See RCW 79A.35.070.

## Chapter 46.10 RCW SNOWMOBILES

### Sections

46.10.010	Definitions.
46.10.020	Ownership, transport, or operation of snowmobile without registration prohibited.
46.10.040	Application for registration—Annual fees—Registration number—Term—Renewal—Transfer—Nonresident permit—Decals.

**46.10.010 Definitions.** As used in this chapter the words and phrases in this section shall have the designated meanings unless a different meaning is expressly provided or the context otherwise clearly indicated.

(1) "Person" shall mean any individual, firm, partnership, association, or corporation.

(2) "Snowmobile" shall mean any self-propelled vehicle capable of traveling over snow or ice, which utilizes as its means of propulsion an endless belt tread, or cleats, or any combination of these or other similar means of contact with the surface upon which it is operated, and which is steered wholly or in part by skis or sled type runners, and which is not otherwise registered as, or subject to the motor vehicle excise tax in the state of Washington.

(3) "Vintage snowmobile" means a snowmobile manufactured at least thirty years ago.

(4) "All terrain vehicle" shall mean any self-propelled vehicle other than a snowmobile, capable of cross-country travel on or immediately over land, water, snow, ice, marsh, swampland, and other natural terrain, including, but not limited to, four-wheel vehicles, amphibious vehicles, ground effect or air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind; except any vehicle designed primarily for travel on, over, or in the water, farm vehicles, or any military or law enforcement vehicles.

(5) "Owner" shall mean the person, other than a lienholder, having the property in or title to a snowmobile or all terrain vehicle, and entitled to the use or possession thereof.

(6) "Operator" means each person who operates, or is in physical control of, any snowmobile or all terrain vehicle.

(7) "Public roadway" shall mean the entire width of the right of way of any road or street designed and ordinarily used for travel or parking of motor vehicles, which is controlled by a public authority other than the Washington state department of transportation, and which is open as a matter of right to the general public for ordinary vehicular traffic.

(8) "Highways" shall mean the entire width of the right of way of all primary and secondary state highways, including all portions of the interstate highway system.

(9) "Dealer" means a person, partnership, association, or corporation engaged in the business of selling snowmobiles or all terrain vehicles at wholesale or retail in this state.

(10) "Department" shall mean the department of licensing.

(11) "Director" shall mean the director of the department of licensing.

(12) "Commission" shall mean the Washington state parks and recreation commission.

(13) "Hunt" shall mean any effort to kill, injure, capture, or disturb a wild animal or wild bird.

(14) "Committee" means the Washington state parks and recreation commission snowmobile advisory committee. [2005 c 235 § 1; 1979 ex.s. c 182 § 1; 1979 c 158 § 131; 1971 ex.s. c 29 § 1.]

**Application—2005 c 235:** "This act applies to registrations due or to become due on October 1, 2005, and thereafter." [2005 c 235 § 4.]

**46.10.020 Ownership, transport, or operation of snowmobile without registration prohibited.** (1) Except as provided in this chapter, no person shall own, transport, or operate any snowmobile within this state unless such snowmobile has been registered in accordance with the provisions of this chapter. However, a vintage snowmobile only requires registration if operated within this state.

(2) A registration number shall be assigned, without payment of a fee, to snowmobiles owned by the state of Washington or its political subdivisions, and the assigned registration number shall be displayed upon each snowmobile in such manner as provided by rules adopted by the department. [2005 c 235 § 2; 1982 c 17 § 1; 1979 ex.s. c 182 § 3; 1971 ex.s. c 29 § 2.]

**Application—2005 c 235:** See note following RCW 46.10.010.

**46.10.040 Application for registration—Annual fees—Registration number—Term—Renewal—Transfer—Nonresident permit—Decals.** (1) Application for registration shall be made to the department in the manner and upon forms the department prescribes, and shall state the name and address of each owner of the snowmobile to be registered, and shall be signed by at least one such owner, and shall be accompanied by an annual registration fee to be established by the commission, after consultation with the committee and any statewide snowmobile user groups.

(a) The annual registration fee for snowmobiles newer than thirty years is thirty dollars. The annual registration fee for vintage snowmobiles is twelve dollars. The department shall design, in cooperation with the commission, a distinct registration decal which shall be issued to vintage snowmobiles upon payment of the annual registration fee.

(b) Upon receipt of the application and the application fee, the snowmobile shall be registered and a registration number assigned, which shall be affixed to the snowmobile in a manner provided in RCW 46.10.070.

(2) The registration provided in this section shall be valid for a period of one year. At the end of the period of registration, every owner of a snowmobile in this state shall renew his or her registration in the manner the department prescribes, for an additional period of one year, upon payment of the annual registration fee as determined by the commission.

(3) Any person acquiring a snowmobile already validly registered under the provisions of this chapter must, within ten days of the acquisition or purchase of the snowmobile, make application to the department for transfer of the registration, and the application shall be accompanied by a transfer fee of five dollars.

(4) A snowmobile owned by a resident of another state or Canadian province where registration is not required by law may be issued a nonresident registration permit valid for not more than sixty days. Application for the permit shall state the name and address of each owner of the snowmobile to be registered and shall be signed by at least one owner and shall be accompanied by a registration fee of five dollars. The registration permit shall be carried on the vehicle at all times during its operation in this state.

(5) The registration fees provided in this section shall be in lieu of any personal property or excise tax heretofore imposed on snowmobiles by this state or any political subdivision thereof, and no city, county, or other municipality, and no state agency shall hereafter impose any other registration or license fee on any snowmobile in this state.

(6) The department shall make available a pair of uniform decals consistent with the provisions of RCW 46.10.070. In addition to the registration fee provided in this section the department shall charge each applicant for registration the actual cost of the decal. The department shall make available replacement decals for a fee equivalent to the actual cost of the decals. [2005 c 235 § 3; 2002 c 352 § 2; 2001 2nd sp.s. c 7 § 918; 1997 c 241 § 2; 1996 c 164 § 1; 1986 c 16 § 2; 1982 c 17 § 2; 1979 ex.s. c 182 § 5; 1973 1st ex.s. c 128 § 1; 1972 ex.s. c 153 § 20; 1971 ex.s. c 29 § 4.]

**Application—2005 c 235:** See note following RCW 46.10.010.

**Effective dates—2002 c 352:** See note following RCW 46.09.070.

**Severability—Effective date—2001 2nd sp.s. c 7:** See notes following RCW 43.320.110.

**Purpose—Policy statement as to certain state lands—1972 ex.s. c 153:** See RCW 79A.35.070.

## Chapter 46.12 RCW

### CERTIFICATES OF OWNERSHIP AND REGISTRATION

#### Sections

46.12.030	Certificate of ownership—Application—Contents—Examination of vehicle.
46.12.102	Release of owner from liability, requirements for.
46.12.290	Mobile or manufactured homes, application of chapter to—Rules.
46.12.370	Lists of registered and legal owners of vehicles—Furnished for certain purposes—Penalty for unauthorized use.
46.12.380	Disclosure of names and addresses of individual vehicle owners. ( <i>Effective until July 1, 2006.</i> )
46.12.380	Disclosure of names and addresses of individual vehicle owners. ( <i>Effective July 1, 2006.</i> )
46.12.390	Disclosure violations, penalties. ( <i>Effective July 1, 2006.</i> )

**46.12.030 Certificate of ownership—Application—Contents—Examination of vehicle.** (1) The application for a certificate of ownership shall be upon a form furnished or approved by the department and shall contain:

(a) A full description of the vehicle, which shall contain the proper vehicle identification number, the number of miles indicated on the odometer at the time of delivery of the vehicle, and any distinguishing marks of identification;

(b) The name and address of the person who is to be the registered owner of the vehicle and, if the vehicle is subject to a security interest, the name and address of the secured party;

(c) Such other information as the department may require.

(2) The department may in any instance, in addition to the information required on the application, require additional information and a physical examination of the vehicle or of any class of vehicles, or either.

(3)(a) A physical examination of the vehicle is mandatory if it has been rebuilt after surrender of the certificate of ownership to the department under RCW 46.12.070 due to the vehicle's destruction or declaration as a total loss. The inspection must verify that the vehicle identification number is genuine and agrees with the number shown on the title and registration certificate. The inspection must be made by a member of the Washington state patrol or other person authorized by the department to make such inspections.

(b)(i) A physical examination of the vehicle is mandatory if the vehicle was declared totaled or salvage under the laws of this state, or the vehicle is presented with documents from another state showing the vehicle was totaled or salvage and has not been reissued a valid registration from that state after the declaration of total loss or salvage.

(ii) The inspection must verify that the vehicle identification number is genuine and agrees with the number shown on the original documents supporting the vehicle purchase or ownership.

(iii) A Washington state patrol VIN specialist must ensure that all major component parts used for the reconstruction of a salvage or rebuildable vehicle were obtained legally. Original invoices for new and used parts must be from a vendor that is registered with the department of revenue for the collection of retail sales or use taxes or comparable agency in the jurisdiction where the major component parts were purchased. The invoices must include the name and address of the business, a description of the part or parts sold, the date of sale, and the amount of sale to include all taxes paid unless exempted by the department of revenue or comparable agency in the jurisdiction where the major component parts were purchased. Original invoices for used parts must be from a vehicle wrecker licensed under chapter 46.80 RCW or a comparable business in the jurisdiction outside Washington state where the major component part was purchased. If the parts or components were purchased from a private individual, the private individual must have title to the vehicle the parts were taken from, except as provided by RCW 46.04.3815, and the bill of sale for the parts must be notarized. The bills of sale must include the names and addresses of the sellers and purchasers, a description of the vehicle, the part or parts being sold, including the make, model, year, and identification or serial number, that date of sale, and the purchase price of the vehicle or part or parts. If the presenter is unable to provide an acceptable release of interest or proof of ownership for a vehicle or major component part as described above, an inspection must be completed for ownership-in-doubt purposes as prescribed by WAC 308-56A-210.

(iv) A vehicle presented for inspection must have all damaged major component parts replaced or repaired to meet RCW and WAC requirements before inspection of the salvage vehicle by the Washington state patrol.

(4) Rebuilt or salvage vehicles licensed in Washington must meet the requirements found under chapter 46.37 RCW to be driven upon public roadways.

(5) The application shall be subscribed by the person applying to be the registered owner and be sworn to by that applicant in the manner described by RCW 9A.72.085. The department shall retain the application in either the original, computer, or photostatic form. [2005 c 173 § 1; 2004 c 188 § 1; 2001 c 125 § 1. Prior: 1995 c 274 § 1; 1995 c 256 § 23; 1990 c 238 § 1; 1975 c 25 § 8; 1974 ex.s. c 128 § 1; 1972 ex.s. c 99 § 2; 1967 c 32 § 8; 1961 c 12 § 46.12.030; prior: 1947 c 164 § 1, part; 1937 c 188 § 3, part; Rem. Supp. 1947 § 6312-2, part.]

**Effective date—2001 c 125:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 125 § 5.]

**Effective date, implementation—1990 c 238:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect May 1, 1990. The director of licensing shall immediately take such steps as are necessary to ensure that this act is implemented on its effective date." [1990 c 238 § 9.]

**Effective date—1974 ex.s. c 128:** "This 1974 amendatory act shall take effect July 1, 1974." [1974 ex.s. c 128 § 3.]

*Notice of liability insurance requirement: RCW 46.16.212.*

**46.12.102 Release of owner from liability, requirements for.** (1) An owner who has made a bona fide sale or transfer of a vehicle and has delivered possession of it to a purchaser shall not by reason of any of the provisions of this title be deemed the owner of the vehicle so as to be subject to civil liability or criminal liability for the operation of the vehicle thereafter by another person when the owner has also fulfilled both of the following requirements:

(a) When the owner has made proper endorsement and delivery of the certificate of ownership and has delivered the certificate of registration as provided in this chapter;

(b) When the owner has delivered to the department either a properly filed report of sale that includes all of the information required in RCW 46.12.101(1) and is delivered to the department within five days of the sale of the vehicle excluding Saturdays, Sundays, and state and federal holidays, or appropriate documents for registration of the vehicle pursuant to the sale or transfer.

(2) An owner who has made a bona fide sale or transfer of a vehicle, has delivered possession of it to a purchaser, and has fulfilled the requirements of subsection (1)(a) and (b) of this section is relieved of liability and liability is transferred to the purchaser of the vehicle, for any traffic violation under this title, whether designated as a traffic infraction or classified as a criminal offense, that occurs after the date of the sale or transfer that is based on the vehicle's identification, including, but not limited to, parking infractions, high-occupancy toll lane violations, and violations recorded by automated traffic safety cameras.

(3) When a registered tow truck operator submits an abandoned vehicle report to the department for a vehicle sold at an abandoned vehicle auction, any previous owner is relieved of civil or criminal liability for the operation of the vehicle from the date of sale thereafter, and liability is transferred to the purchaser of the vehicle as listed on the aban-



doned vehicle report. [2005 c 331 § 1; 2002 c 279 § 2; 1984 c 39 § 2.]

**46.12.290 Mobile or manufactured homes, application of chapter to—Rules.** (1) The provisions of chapter 46.12 RCW insofar as they are not inconsistent with the provisions of chapter 231, Laws of 1971 ex. sess. or chapter 65.20 RCW apply to mobile or manufactured homes: PROVIDED, That RCW 46.12.080 and 46.12.250 through 46.12.270 shall not apply to mobile or manufactured homes.

(2) In order to transfer ownership of a mobile home, all registered owners of record must sign the title certificate releasing their ownership. If the mobile home was manufactured before June 15, 1976, the registered owner must sign an affidavit in the form prescribed by the department of licensing that notice was provided to the purchaser of the mobile home that failure of the mobile home to meet federal housing and urban development standards or failure of the mobile home to meet a fire and safety inspection by the department of labor and industries may result in denial by a local jurisdiction of a permit to site the mobile home.

(3) The director of licensing shall have the power to adopt such rules as necessary to implement the provisions of this chapter relating to mobile homes. [2005 c 399 § 4; 1993 c 154 § 2. Prior: 1989 c 343 § 20; 1989 c 337 § 4; 1981 c 304 § 2; 1979 c 158 § 137; 1971 ex.s. c 231 § 14.]

**Severability—Effective date—1989 c 343:** See RCW 65.20.940 and 65.20.950.

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

**Effective date—1971 ex.s. c 231:** See note following RCW 46.01.130.

**46.12.370 Lists of registered and legal owners of vehicles—Furnished for certain purposes—Penalty for unauthorized use.** In addition to any other authority which it may have, the department of licensing may furnish lists of registered and legal owners of motor vehicles only for the purposes specified in this section to:

(1) The manufacturers of motor vehicles, or their authorized agents, to be used to enable those manufacturers to carry out the provisions of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. sec. 1382-1418), including amendments or additions thereto, respecting safety-related defects in motor vehicles;

(2) Any governmental agency of the United States or Canada, or political subdivisions thereof, to be used by it or by its authorized commercial agents or contractors only in connection with the enforcement of motor vehicle or traffic laws by, or programs related to traffic safety of, that government agency. Only such parts of the list as are required for completion of the work required of the agent or contractor shall be provided to such agent or contractor;

(3) A commercial parking company requiring the names and addresses of registered owners to notify them of outstanding parking violations. Subject to the disclosure agreement provisions of RCW 46.12.380 and the requirements of Executive Order 97-01, the department may provide only the parts of the list that are required for completion of the work required of the company;

(4) An authorized agent or contractor of the department, to be used only in connection with providing motor vehicle

excise tax, licensing, title, and registration information to motor vehicle dealers;

(5) Any business regularly making loans to other persons to finance the purchase of motor vehicles, to be used to assist the person requesting the list to determine ownership of specific vehicles for the purpose of determining whether or not to provide such financing; or

(6) A company or its agents operating a toll facility under chapter 47.46 RCW or other applicable authority requiring the names, addresses, and vehicle information of motor vehicle registered owners to identify toll violators.

Where both a mailing address and residence address are recorded on the vehicle record and are different, only the mailing address will be disclosed. Both addresses will be disclosed in response to requests for disclosure from courts, law enforcement agencies, or government entities with enforcement, investigative, or taxing authority and only for use in the normal course of conducting their business.

If a list of registered and legal owners of motor vehicles is used for any purpose other than that authorized in this section, the manufacturer, governmental agency, commercial parking company, authorized agent, contractor, financial institution, toll facility operator, or their authorized agents or contractors responsible for the unauthorized disclosure or use will be denied further access to such information by the department of licensing. [2005 c 340 § 1; 2004 c 230 § 1. Prior: 1997 c 432 § 6; 1997 c 33 § 1; 1982 c 215 § 1.]

**46.12.380 Disclosure of names and addresses of individual vehicle owners. (Effective until July 1, 2006.)** (1) Notwithstanding the provisions of chapter 42.17 RCW, the name or address of an individual vehicle owner shall not be released by the department, county auditor, or agency or firm authorized by the department except under the following circumstances:

(a) The requesting party is a business entity that requests the information for use in the course of business;

(b) The request is a written request that is signed by the person requesting disclosure that contains the full legal name and address of the requesting party, that specifies the purpose for which the information will be used; and

(c) The requesting party enters into a disclosure agreement with the department in which the party promises that the party will use the information only for the purpose stated in the request for the information; and that the party does not intend to use, or facilitate the use of, the information for the purpose of making any unsolicited business contact with a person named in the disclosed information. The term "unsolicited business contact" means a contact that is intended to result in, or promote, the sale of any goods or services to a person named in the disclosed information. The term does not apply to situations where the requesting party and such person have been involved in a business transaction prior to the date of the disclosure request and where the request is made in connection with the transaction.

(2) Where both a mailing address and residence address are recorded on the vehicle record and are different, only the mailing address will be disclosed. Both addresses will be disclosed in response to requests for disclosure from courts, law enforcement agencies, or government entities with enforce-

ment, investigative, or taxing authority and only for use in the normal course of conducting their business.

(3) The disclosing entity shall retain the request for disclosure for three years.

(4) Whenever the disclosing entity grants a request for information under this section by an attorney or private investigator, the disclosing entity shall provide notice to the vehicle owner, to whom the information applies, that the request has been granted. The notice also shall contain the name and address of the requesting party.

(5) Any person who is furnished vehicle owner information under this section shall be responsible for assuring that the information furnished is not used for a purpose contrary to the agreement between the person and the department.

(6) This section shall not apply to requests for information by governmental entities or requests that may be granted under any other provision of this title expressly authorizing the disclosure of the names or addresses of vehicle owners.

(7) This section shall not apply to title history information under RCW 19.118.170. [2005 c 340 § 2; 1995 c 254 § 10; 1990 c 232 § 2; 1987 c 299 § 1; 1984 c 241 § 2.]

**Effective date—Severability—1995 c 254:** See notes following RCW 19.118.021.

**Legislative finding and purpose—1990 c 232:** "The legislature recognizes the extraordinary value of the vehicle title and registration records for law enforcement and commerce within the state. The legislature also recognizes that indiscriminate release of the vehicle owner information to be an infringement upon the rights of the owner and can subject owners to intrusions on their privacy. The purpose of this act is to limit the release of vehicle owners' names and addresses while maintaining the availability of the vehicle records for the purposes of law enforcement and commerce." [1990 c 232 § 1.]

**46.12.380 Disclosure of names and addresses of individual vehicle owners. (Effective July 1, 2006.)** (1) Notwithstanding the provisions of chapter 42.56 RCW, the name or address of an individual vehicle owner shall not be released by the department, county auditor, or agency or firm authorized by the department except under the following circumstances:

(a) The requesting party is a business entity that requests the information for use in the course of business;

(b) The request is a written request that is signed by the person requesting disclosure that contains the full legal name and address of the requesting party, that specifies the purpose for which the information will be used; and

(c) The requesting party enters into a disclosure agreement with the department in which the party promises that the party will use the information only for the purpose stated in the request for the information; and that the party does not intend to use, or facilitate the use of, the information for the purpose of making any unsolicited business contact with a person named in the disclosed information. The term "unsolicited business contact" means a contact that is intended to result in, or promote, the sale of any goods or services to a person named in the disclosed information. The term does not apply to situations where the requesting party and such person have been involved in a business transaction prior to the date of the disclosure request and where the request is made in connection with the transaction.

(2) Where both a mailing address and residence address are recorded on the vehicle record and are different, only the

mailing address will be disclosed. Both addresses will be disclosed in response to requests for disclosure from courts, law enforcement agencies, or government entities with enforcement, investigative, or taxing authority and only for use in the normal course of conducting their business.

(3) The disclosing entity shall retain the request for disclosure for three years.

(4) Whenever the disclosing entity grants a request for information under this section by an attorney or private investigator, the disclosing entity shall provide notice to the vehicle owner, to whom the information applies, that the request has been granted. The notice also shall contain the name and address of the requesting party.

(5) Any person who is furnished vehicle owner information under this section shall be responsible for assuring that the information furnished is not used for a purpose contrary to the agreement between the person and the department.

(6) This section shall not apply to requests for information by governmental entities or requests that may be granted under any other provision of this title expressly authorizing the disclosure of the names or addresses of vehicle owners.

(7) This section shall not apply to title history information under RCW 19.118.170. [2005 c 340 § 2; 2005 c 274 § 304; 1995 c 254 § 10; 1990 c 232 § 2; 1987 c 299 § 1; 1984 c 241 § 2.]

**Reviser's note:** This section was amended by 2005 c 274 § 304 and by 2005 c 340 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

**Effective date—Severability—1995 c 254:** See notes following RCW 19.118.021.

**Legislative finding and purpose—1990 c 232:** "The legislature recognizes the extraordinary value of the vehicle title and registration records for law enforcement and commerce within the state. The legislature also recognizes that indiscriminate release of the vehicle owner information to be an infringement upon the rights of the owner and can subject owners to intrusions on their privacy. The purpose of this act is to limit the release of vehicle owners' names and addresses while maintaining the availability of the vehicle records for the purposes of law enforcement and commerce." [1990 c 232 § 1.]

**46.12.390 Disclosure violations, penalties. (Effective July 1, 2006.)** (1) The department may review the activities of a person who receives vehicle record information to ensure compliance with the limitations imposed on the use of the information. The department shall suspend or revoke for up to five years the privilege of obtaining vehicle record information of a person found to be in violation of chapter 42.56 RCW, this chapter, or a disclosure agreement executed with the department.

(2) In addition to the penalty in subsection (1) of this section:

(a) The unauthorized disclosure of information from a department vehicle record; or

(b) The use of a false representation to obtain information from the department's vehicle records; or

(c) The use of information obtained from the department vehicle records for a purpose other than what is stated in the request for information or in the disclosure agreement executed with the department; or

(d) The sale or other distribution of any vehicle owner name or address to another person not disclosed in the request or disclosure agreement

is a gross misdemeanor punishable by a fine not to exceed ten thousand dollars, or by imprisonment in a county jail not to exceed one year, or by both such fine and imprisonment for each violation. [2005 c 274 § 305; 1990 c 232 § 3.]

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

**Legislative finding and purpose—1990 c 232:** See note following RCW 46.12.380.

## Chapter 46.16 RCW VEHICLE LICENSES

### Sections

46.16.010	Licenses and plates required—Penalties—Exceptions.
46.16.0105	Exemption—Vehicles in national recreation areas.
46.16.017	Emission standards—Compliance required to register, lease, rent, or sell vehicles—Exemptions.
46.16.070	License fee on trucks, buses, and for hire vehicles based on gross weight. ( <i>Effective January 1, 2006.</i> )
46.16.086	Single-axle trailers—Fee in lieu. ( <i>Effective January 1, 2006.</i> )
46.16.162	Farm vehicle trip permits. ( <i>Effective January 1, 2006.</i> )
46.16.237	Reflectorized materials—Fee.
46.16.270	Replacement of plates—Fee.
46.16.30907	Washington's Wildlife plate collection.
46.16.30908	Washington's Wildlife license plate collection—Definition.
46.16.30909	Washington state parks and recreation commission plate.
46.16.30910	Washington state parks and recreation commission special license plate—Definition.
46.16.30911	"Washington Lighthouses" plate.
46.16.30912	Lighthouse environmental programs account.
46.16.30913	"Keep Kids Safe" plate.
46.16.30914	"We love our pets" plate.
46.16.30915	We love our pets account.
46.16.30916	Gonzaga University alumni association plate.
46.16.30917	Gonzaga University alumni association account.
46.16.30918	"Washington's National Park Fund" plate.
46.16.30919	"Washington's National Park Fund" account.
46.16.30920	Armed forces plate collection.
46.16.30921	Armed forces license plate collection—Definition—No free issuance.
46.16.30922	"Ski & Ride Washington" plate.
46.16.30923	"Ski & Ride Washington" account.
46.16.30924	Wild On Washington plate.
46.16.30925	Wild On Washington license plates—Definition.
46.16.30926	Endangered Wildlife plate.
46.16.30927	Endangered Wildlife license plates—Definition.
46.16.30928	"Share the Road" plate.
46.16.30929	"Share the Road" account.
46.16.313	Special license plates—Fees.
46.16.316	Special license plates—Transfer of vehicle—Replacement plates.
46.16.333	Cooper Jones emblems.
46.16.381	Special parking for persons with disabilities—Penalties—Enforcement.
46.16.385	Versions of special plates for persons with disabilities.
46.16.390	Special plate or card issued by another jurisdiction.
46.16.570	Personalized license plates—Design.
46.16.600	Personalized license plates—Rules and regulations.
46.16.601	Personalized special plates. ( <i>Effective March 1, 2007.</i> )
46.16.690	License plate design services—Fee.
46.16.705	Special license plate review board—Created.
46.16.715	Board—Administration.
46.16.725	Board—Powers and duties—Moratorium on issuance of special plates.
46.16.745	Special license plates—Application requirements.

**46.16.010 Licenses and plates required—Penalties—Exceptions.** (1) It is unlawful for a person to operate any vehicle over and along a public highway of this state without first having obtained and having in full force and effect a cur-

rent and proper vehicle license and display vehicle license number plates therefor as by this chapter provided.

(2) Failure to make initial registration before operation on the highways of this state is a traffic infraction, and any person committing this infraction shall pay a penalty of five hundred twenty-nine dollars, no part of which may be suspended or deferred.

(3) Failure to renew an expired registration before operation on the highways of this state is a traffic infraction.

(4) The licensing of a vehicle in another state by a resident of this state, as defined in RCW 46.16.028, evading the payment of any tax or license fee imposed in connection with registration, is a gross misdemeanor punishable as follows:

(a) For a first offense, up to one year in the county jail and payment of a fine of five hundred twenty-nine dollars plus twice the amount of delinquent taxes and fees, no part of which may be suspended or deferred;

(b) For a second or subsequent offense, up to one year in the county jail and payment of a fine of five hundred twenty-nine dollars plus four times the amount of delinquent taxes and fees, no part of which may be suspended or deferred;

(c) For fines levied under (b) of this subsection, an amount equal to the avoided taxes and fees owed will be deposited in the vehicle licensing fraud account created in the state treasury;

(d) The avoided taxes and fees shall be deposited and distributed in the same manner as if the taxes and fees were properly paid in a timely fashion.

(5) These provisions shall not apply to the following vehicles:

(a) Motorized foot scooters;

(b) Electric-assisted bicycles;

(c) Off-road vehicles operating on nonhighway roads under RCW 46.09.115;

(d) Farm vehicles if operated within a radius of fifteen miles of the farm where principally used or garaged, farm tractors and farm implements including trailers designed as cook or bunk houses used exclusively for animal herding temporarily operating or drawn upon the public highways, and trailers used exclusively to transport farm implements from one farm to another during the daylight hours or at night when such equipment has lights that comply with the law;

(e) Spray or fertilizer applicator rigs designed and used exclusively for spraying or fertilization in the conduct of agricultural operations and not primarily for the purpose of transportation, and nurse rigs or equipment auxiliary to the use of and designed or modified for the fueling, repairing, or loading of spray and fertilizer applicator rigs and not used, designed, or modified primarily for the purpose of transportation;

(f) Fork lifts operated during daylight hours on public highways adjacent to and within five hundred feet of the warehouses which they serve: PROVIDED FURTHER, That these provisions shall not apply to vehicles used by the state parks and recreation commission exclusively for park maintenance and operations upon public highways within state parks;

(g) "Trams" used for transporting persons to and from facilities related to the horse racing industry as regulated in chapter 67.16 RCW, as long as the public right-of-way routes over which the trams operate are not more than one mile from

end to end, the public rights-of-way over which the tram operates have an average daily traffic of not more than 15,000 vehicles per day, and the activity is in conformity with federal law. The operator must be a licensed driver and at least eighteen years old. For the purposes of this section, "tram" also means a vehicle, or combination of vehicles linked together with a single mode of propulsion, used to transport persons from one location to another;

(h) "Special highway construction equipment" defined as follows: Any vehicle which is designed and used primarily for grading of highways, paving of highways, earth moving, and other construction work on highways and which is not designed or used primarily for the transportation of persons or property on a public highway and which is only incidentally operated or moved over the highway. It includes, but is not limited to, road construction and maintenance machinery so designed and used such as portable air compressors, air drills, asphalt spreaders, bituminous mixers, bucket loaders, track laying tractors, ditchers, leveling graders, finishing machines, motor graders, paving mixers, road rollers, scarifiers, earth moving scrapers and carryalls, lighting plants, welders, pumps, power shovels and draglines, self-propelled and tractor-drawn earth moving equipment and machinery, including dump trucks and tractor-dump trailer combinations which either (i) are in excess of the legal width, or (ii) which, because of their length, height, or unladen weight, may not be moved on a public highway without the permit specified in RCW 46.44.090 and which are not operated laden except within the boundaries of the project limits as defined by the contract, and other similar types of construction equipment, or (iii) which are driven or moved upon a public highway only for the purpose of crossing such highway from one property to another, provided such movement does not exceed five hundred feet and the vehicle is equipped with wheels or pads which will not damage the roadway surface.

Exclusions:

"Special highway construction equipment" does not include any of the following:

Dump trucks originally designed to comply with the legal size and weight provisions of this code notwithstanding any subsequent modification which would require a permit, as specified in RCW 46.44.090, to operate such vehicles on a public highway, including trailers, truck-mounted transit mixers, cranes and shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

(6) The following vehicles, whether operated solo or in combination, are exempt from license registration and displaying license plates as required by this chapter:

(a) A converter gear used to convert a semitrailer into a trailer or a two-axle truck or tractor into a three or more axle truck or tractor or used in any other manner to increase the number of axles of a vehicle. Converter gear includes an auxiliary axle, booster axle, dolly, and jeep axle.

(b) A tow dolly that is used for towing a motor vehicle behind another motor vehicle. The front or rear wheels of the towed vehicle are secured to and rest on the tow dolly that is attached to the towing vehicle by a tow bar.

(7)(a) A motor vehicle subject to initial or renewal registration under this section shall not be registered to a natural person unless the person at time of application:

(i) Presents an unexpired Washington state driver's license; or

(ii) Certifies that he or she is:

(A) A Washington resident who does not operate a motor vehicle on public roads; or

(B) Exempt from the requirement to obtain a Washington state driver's license under RCW 46.20.025.

(b) For shared or joint ownership, the department will set up procedures to verify that all owners meet the requirements of this subsection.

(c) A person falsifying residency is guilty of a gross misdemeanor punishable only by a fine of five hundred twenty-nine dollars.

(d) The department may adopt rules necessary to implement this subsection, including rules under which a natural person applying for registration may be exempt from the requirements of this subsection where the person provides evidence satisfactory to the department that he or she has a valid and compelling reason for not being able to meet the requirements of this subsection. [2005 c 350 § 1; 2005 c 323 § 2; 2005 c 213 § 6. Prior: 2003 c 353 § 8; 2003 c 53 § 238; 2000 c 229 § 1; 1999 c 277 § 4; prior: 1997 c 328 § 2; 1997 c 241 § 13; 1996 c 184 § 1; 1993 c 238 § 1; 1991 c 163 § 1; 1989 c 192 § 2; 1986 c 186 § 1; 1977 ex.s. c 148 § 1; 1973 1st ex.s. c 17 § 2; 1972 ex.s. c 5 § 2; 1969 c 27 § 3; 1967 c 202 § 2; 1963 ex.s. c 3 § 51; 1961 ex.s. c 21 § 32; 1961 c 12 § 46.16.010; prior: 1955 c 265 § 1; 1947 c 33 § 1; 1937 c 188 § 15; Rem. Supp. 1947 § 6312-15; 1929 c 99 § 5; RRS § 6324.]

**Rules of court:** *Monetary penalty schedule—IRLJ 6.2.*

**Reviser's note:** This section was amended by 2005 c 213 § 6, 2005 c 323 § 2, and by 2005 c 350 § 1, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2005 c 350:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 2005]." [2005 c 350 § 2.]

**Declaration and intent—2005 c 323:** "When a person establishes residency in this state, unless otherwise exempt by statute, the person must register any vehicles to be operated on public highways, and pay all required licensing fees and taxes. Washington residents must renew vehicle registrations annually as well. The intent of this act is to increase the monetary penalties associated with failure to properly register vehicles in the state of Washington." [2005 c 323 § 1.]

**Effective date—2005 c 323:** "This act takes effect August 1, 2005." [2005 c 323 § 4.]

**Application—2005 c 323:** "This act applies to registrations due or to become due on or after January 1, 2006." [2005 c 323 § 5.]

**Findings—Construction—Effective date—2005 c 213:** See notes following RCW 46.09.010.

**Effective date—2003 c 353:** See note following RCW 46.04.320.

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

**Effective date—2000 c 229:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 30, 2000]." [2000 c 229 § 9.]

**Effective date—1996 c 184 §§ 1-6:** "Sections 1 through 6 of this act take effect January 1, 1997." [1996 c 184 § 8.]

**Legislative intent—1989 c 192:** "The legislature recognizes that there are residents of this state who intentionally register motor vehicles in other states to evade payment of taxes and fees required by the laws of this state. This results in a substantial loss of revenue to the state. It is the intent of the legislature to impose a stronger criminal penalty upon those residents who defraud the state, thereby enhancing compliance with the registration laws of this state and further enhancing enforcement and collection efforts.

In order to encourage voluntary compliance with the registration laws of this state, administrative penalties associated with failing to register a motor vehicle are waived until September 1, 1989. It is not the intent of the legislature to waive traffic infraction or criminal traffic violations imposed prior to July 23, 1989." [1989 c 192 § 1.]

**Effective date—1989 c 192 § 2:** "Section 2 of this act shall take effect September 1, 1989." [1989 c 192 § 3.]

**46.16.0105 Exemption—Vehicles in national recreation areas.** After initial vehicle registration, motor vehicles operated solely within a national recreation area that is not accessible by a state highway are exempt from annual registration renewal and the associated fees under RCW 46.16.0621. [2005 c 79 § 1.]

**46.16.017 Emission standards—Compliance required to register, lease, rent, or sell vehicles—Exemptions.** After adoption of rules specified in RCW 70.120A.010, no vehicle shall be registered, leased, rented, or sold for use in the state starting with the model year as provided in RCW 70.120A.010 unless the vehicle: (1)(a) Is consistent with the vehicle emission standards as adopted by the department of ecology; (b) is consistent with the carbon dioxide equivalent emission standards as adopted by the department of ecology; and (c) has a California certification label for (i) all emission standards, and (ii) carbon dioxide equivalent emission standards necessary to meet fleet average requirements; or (2) has seven thousand five hundred miles or more. The department of licensing, in consultation with the department of ecology, may adopt rules necessary to implement this section and may provide for reasonable exemptions to these requirements. The department of ecology may exempt public safety vehicles from meeting the standards where the department finds that vehicles necessary to meet the needs of public safety agencies are not otherwise reasonably available. [2005 c 295 § 7.]

**Effective date—2005 c 295 §§ 1, 2, 7, and 11-13:** See note following RCW 70.120A.010.

**46.16.070 License fee on trucks, buses, and for hire vehicles based on gross weight. (Effective January 1, 2006.)** (1) In lieu of all other vehicle licensing fees, unless specifically exempt, and in addition to the mileage fees prescribed for buses and stages in RCW 46.16.125, there shall be paid and collected annually for each truck, motor truck, truck tractor, road tractor, tractor, bus, auto stage, or for hire vehicle with seating capacity of more than six, based upon the declared combined gross weight or declared gross weight under chapter 46.44 RCW, the following licensing fees by weight:

WEIGHT	SCHEDULE A	SCHEDULE B
4,000 lbs.....	\$ 40.00.....	\$ 40.00
6,000 lbs.....	\$ 50.00.....	\$ 50.00
8,000 lbs.....	\$ 60.00.....	\$ 60.00
10,000 lbs.....	\$ 62.00.....	\$ 62.00
12,000 lbs.....	\$ 79.00.....	\$ 79.00

14,000 lbs.....	\$ 90.00.....	\$ 90.00
16,000 lbs.....	\$ 102.00.....	\$ 102.00
18,000 lbs.....	\$ 154.00.....	\$ 154.00
20,000 lbs.....	\$ 171.00.....	\$ 171.00
22,000 lbs.....	\$ 185.00.....	\$ 185.00
24,000 lbs.....	\$ 200.00.....	\$ 200.00
26,000 lbs.....	\$ 211.00.....	\$ 211.00
28,000 lbs.....	\$ 249.00.....	\$ 249.00
30,000 lbs.....	\$ 287.00.....	\$ 287.00
32,000 lbs.....	\$ 346.00.....	\$ 346.00
34,000 lbs.....	\$ 368.00.....	\$ 368.00
36,000 lbs.....	\$ 399.00.....	\$ 399.00
38,000 lbs.....	\$ 438.00.....	\$ 438.00
40,000 lbs.....	\$ 501.00.....	\$ 501.00
42,000 lbs.....	\$ 521.00.....	\$ 611.00
44,000 lbs.....	\$ 532.00.....	\$ 622.00
46,000 lbs.....	\$ 572.00.....	\$ 662.00
48,000 lbs.....	\$ 596.00.....	\$ 686.00
50,000 lbs.....	\$ 647.00.....	\$ 737.00
52,000 lbs.....	\$ 680.00.....	\$ 770.00
54,000 lbs.....	\$ 734.00.....	\$ 824.00
56,000 lbs.....	\$ 775.00.....	\$ 865.00
58,000 lbs.....	\$ 806.00.....	\$ 896.00
60,000 lbs.....	\$ 859.00.....	\$ 949.00
62,000 lbs.....	\$ 921.00.....	\$ 1,011.00
64,000 lbs.....	\$ 941.00.....	\$ 1,031.00
66,000 lbs.....	\$ 1,048.00.....	\$ 1,138.00
68,000 lbs.....	\$ 1,093.00.....	\$ 1,183.00
70,000 lbs.....	\$ 1,177.00.....	\$ 1,267.00
72,000 lbs.....	\$ 1,259.00.....	\$ 1,349.00
74,000 lbs.....	\$ 1,368.00.....	\$ 1,458.00
76,000 lbs.....	\$ 1,478.00.....	\$ 1,568.00
78,000 lbs.....	\$ 1,614.00.....	\$ 1,704.00
80,000 lbs.....	\$ 1,742.00.....	\$ 1,832.00
82,000 lbs.....	\$ 1,863.00.....	\$ 1,953.00
84,000 lbs.....	\$ 1,983.00.....	\$ 2,073.00
86,000 lbs.....	\$ 2,104.00.....	\$ 2,194.00
88,000 lbs.....	\$ 2,225.00.....	\$ 2,315.00
90,000 lbs.....	\$ 2,346.00.....	\$ 2,436.00
92,000 lbs.....	\$ 2,466.00.....	\$ 2,556.00
94,000 lbs.....	\$ 2,587.00.....	\$ 2,677.00
96,000 lbs.....	\$ 2,708.00.....	\$ 2,798.00
98,000 lbs.....	\$ 2,829.00.....	\$ 2,919.00
100,000 lbs.....	\$ 2,949.00.....	\$ 3,039.00
102,000 lbs.....	\$ 3,070.00.....	\$ 3,160.00
104,000 lbs.....	\$ 3,191.00.....	\$ 3,281.00
105,500 lbs.....	\$ 3,312.00.....	\$ 3,402.00

Schedule A applies to vehicles either used exclusively for hauling logs or that do not tow trailers. Schedule B applies to vehicles that tow trailers and are not covered under Schedule A.

Every truck, motor truck, truck tractor, and tractor exceeding 6,000 pounds empty scale weight registered under chapter 46.16, 46.87, or 46.88 RCW shall be licensed for not less than one hundred fifty percent of its empty weight unless the amount would be in excess of the legal limits prescribed for such a vehicle in RCW 46.44.041 or 46.44.042, in which event the vehicle shall be licensed for the maximum weight authorized for such a vehicle or unless the vehicle is used only for the purpose of transporting any well drilling machine, air compressor, rock crusher, conveyor, hoist, don-

key engine, cook house, tool house, bunk house, or similar machine or structure attached to or made a part of such vehicle.

The following provisions apply when increasing gross or combined gross weight for a vehicle licensed under this section:

(a) The new license fee will be one-twelfth of the fee listed above for the new gross weight, multiplied by the number of months remaining in the period for which licensing fees have been paid, including the month in which the new gross weight is effective.

(b) Upon surrender of the current certificate of registration or cab card, the new licensing fees due shall be reduced by the amount of the licensing fees previously paid for the same period for which new fees are being charged.

(2) The proceeds from the fees collected under subsection (1) of this section shall be distributed in accordance with RCW 46.68.035.

(3) In lieu of the gross weight fee under subsection (1) of this section, farm vehicles may be licensed upon payment of the fee in effect under subsection (1) of this section on May 1, 2005. In order to qualify for the reduced fee under this subsection, the farm vehicle must be exempt from property taxes in accordance with RCW 84.36.630. The applicant must submit copies of the forms required under RCW 84.36.630. The application for the reduced fee under this subsection shall require the applicant to attest that the vehicle shall be used primarily for farming purposes. The department shall provide licensing agents and subagents with a schedule of the appropriate licensing fees for farm vehicles. [2005 c 314 § 204. Prior: 2003 c 361 § 201; 2003 c 1 § 3 (Initiative Measure No. 776, approved November 5, 2002); 1994 c 262 § 8; 1993 sp.s. c 23 § 60; prior: 1993 c 123 § 5; 1993 c 102 § 1; 1990 c 42 § 105; 1989 c 156 § 1; prior: 1987 1st ex.s. c 9 § 4; 1987 c 244 § 3; 1986 c 18 § 4; 1985 c 380 § 15; 1975-'76 2nd ex.s. c 64 § 1; 1969 ex.s. c 281 § 54; 1967 ex.s. c 118 § 1; 1967 ex.s. c 83 § 56; 1961 ex.s. c 7 § 11; 1961 c 12 § 46.16.070; prior: 1957 c 273 § 1; 1955 c 363 § 2; prior: 1951 c 269 § 9; 1950 ex.s. c 15 § 1, part; 1939 c 182 § 3, part; 1937 c 188 § 17, part; 1931 c 140 § 1, part; 1921 c 96 § 15, part; 1919 c 46 § 1, part; 1917 c 155 § 10, part; 1915 c 142 § 15, part; Rem. Supp. 1949 § 6312-17, part; RRS § 6326, part.]

**Effective dates—2005 c 314 §§ 110 and 201-206:** See note following RCW 46.17.010.

**Application—2005 c 314 §§ 201-206, 301, and 302:** See note following RCW 46.17.010.

**Part headings not law—2005 c 314:** See note following RCW 46.17.010.

**Application—2003 c 361 § 201:** "Section 201 of this act is effective with registrations that are due or will become due August 1, 2003, and thereafter." [2003 c 361 § 704.]

**Findings—Part headings not law—Severability—2003 c 361:** See notes following RCW 82.36.025.

**Effective dates—2003 c 361:** See note following RCW 82.08.020.

**Construction—Intent—2003 c 1 (Initiative Measure No. 776):** See notes following RCW 46.16.0621.

**Severability—Savings—2003 c 1 (Initiative Measure No. 776):** See note following RCW 81.104.160.

**Effective date—1994 c 262 §§ 8, 28:** "Sections 8 and 28 of this act take effect July 1, 1994." [1994 c 262 § 29.]

[2005 RCW Supp—page 554]

**Effective date of 1993 c 102 and c 123—1993 sp.s. c 23:** "Chapter 102, Laws of 1993 and chapter 123, Laws of 1993 each take effect January 1, 1994." [1993 sp.s. c 23 § 66.]

**Effective dates—1993 sp.s. c 23:** See note following RCW 43.89.010.

**Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42:** See notes following RCW 82.36.025.

**Application—1989 c 156:** "This act first applies to the renewal of vehicle registrations that have a December 1990 or later expiration date and all initial vehicle registrations that are effective on or after January 1, 1990." [1989 c 156 § 5.]

**Severability—Effective date—1987 1st ex.s. c 9:** See notes following RCW 46.29.050.

**Effective date—1986 c 18; 1985 c 380:** See RCW 46.87.901.

**Severability—1985 c 380:** See RCW 46.87.900.

**Effective dates—1975-'76 2nd ex.s. c 64:** "Sections 1, 2, and 5 through 24 of this 1976 amendatory act shall take effect on July 1, 1976, and sections 3 and 4 of this 1976 amendatory act shall take effect on January 1, 1977. All current and outstanding valid licenses and permits held by licensees on July 1, 1976, shall remain valid until their expiration dates, but renewals and original applications made after July 1, 1976, shall be governed by the law in effect at the time such renewal or application is made." [1975-'76 2nd ex.s. c 64 § 25.]

**Severability—1975-'76 2nd ex.s. c 64:** "If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 64 § 26.]

**Effective date—1969 ex.s. c 281:** See note following RCW 46.88.010.

**Severability—Effective dates—1967 ex.s. c 83:** See RCW 47.26.900 and 47.26.910.

**46.16.086 Single-axle trailers—Fee in lieu. (Effective January 1, 2006.)** In lieu of the license tab fees provided in RCW 46.16.0621, private use single-axle trailers of two thousand pounds scale weight or less may be licensed upon the payment of a license fee in the sum of fifteen dollars, but only if the trailer is operated upon public highways. The license fee must be collected annually for each registration year or fraction of a registration year. This reduced license fee applies only to trailers operated for personal use of the owners, and not trailers held for rental to the public or used in any commercial or business endeavor. The proceeds from the fees collected under this section shall be distributed in accordance with RCW 46.68.035. [2005 c 314 § 203.]

**Effective dates—2005 c 314 §§ 110 and 201-206:** See note following RCW 46.17.010.

**Application—2005 c 314 §§ 201-206, 301, and 302:** See note following RCW 46.17.010.

**Part headings not law—2005 c 314:** See note following RCW 46.17.010.

**46.16.162 Farm vehicle trip permits. (Effective January 1, 2006.)** (1) The owner of a farm vehicle licensed under RCW 46.16.090 purchasing a monthly license under RCW 46.16.135 may, as an alternative to the first partial month of the license registration, secure and operate the vehicle under authority of a farm vehicle trip permit issued by this state. The licensed gross weight may not exceed eighty thousand pounds for a combination of vehicles nor forty thousand pounds for a single unit vehicle with three or more axles.

(2) If a monthly license previously issued has expired, the owner of a farm vehicle may, as an alternative to purchasing a full monthly license, secure and operate the vehicle under authority of a farm vehicle trip permit issued by this state. The licensed gross weight may not exceed eighty thou-

sand pounds for a combination of vehicles nor forty thousand pounds for a single unit vehicle with three or more axles.

(3) Each farm vehicle trip permit shall authorize the operation of a single vehicle at the maximum legal weight limit for the vehicle for the period remaining in the first month of monthly license, commencing with the day of first use. No more than four such permits may be used for any one vehicle in any twelve-month period. Every permit shall identify, as the department may require, the vehicle for which it is issued and shall be completed in its entirety and signed by the operator before operation of the vehicle on the public highways of this state. Correction of data on the permit such as dates, license number, or vehicle identification number invalidates the permit. The farm vehicle trip permit shall be displayed on the vehicle to which it is issued as prescribed by the department.

(4) Vehicles operating under authority of farm vehicle trip permits are subject to all laws, rules, and regulations affecting the operation of like vehicles in this state.

(5) Farm vehicle trip permits may be obtained from the department of licensing or agents and subagents appointed by the department. The fee for each farm vehicle trip permit is six dollars and twenty-five cents. Farm vehicle trip permits sold by the department's agents or subagents are subject to fees specified in RCW 46.01.140 (4)(a), (5)(b), or (6).

(6) The proceeds from farm vehicle trip permits received by the director shall be forwarded to the state treasurer to be distributed as provided in RCW 46.68.035.

(7) No exchange, credits, or refunds may be given for farm vehicle trip permits after they have been purchased.

(8) The department of licensing may adopt rules as it deems necessary to administer this section. [2005 c 314 § 206.]

**Effective dates—2005 c 314 §§ 110 and 201-206:** See note following RCW 46.17.010.

**Application—2005 c 314 §§ 201-206, 301, and 302:** See note following RCW 46.17.010.

**Part headings not law—2005 c 314:** See note following RCW 46.17.010.

**46.16.237 Reflectorized materials—Fee.** All vehicle license number plates issued after January 1, 1968, or such earlier date as the director may prescribe with respect to plates issued in any county, shall be treated with fully reflectorized materials designed to increase the visibility and legibility of such plates at night. In addition to all other fees prescribed by law, there shall be paid and collected for each vehicle license number plate treated with such materials, the sum of two dollars and for each set of two plates, the sum of four dollars. However, one plate is available only to those vehicles that by law require only one plate. Such fees shall be deposited in the motor vehicle fund. [2005 c 314 § 301; 1987 c 52 § 1; 1967 ex.s. c 145 § 60.]

**Application—2005 c 314 §§ 201-206, 301, and 302:** See note following RCW 46.17.010.

**Part headings not law—2005 c 314:** See note following RCW 46.17.010.

**Severability—1967 ex.s. c 145:** See RCW 47.98.043.

**46.16.270 Replacement of plates—Fee.** The total replacement plate fee shall be deposited in the motor vehicle fund.

Upon the loss, defacement, or destruction of one or both of the vehicle license number plates issued for any vehicle where more than one plate was originally issued or where one or both have become so illegible or in such a condition as to be difficult to distinguish, or upon the owner's option, the owner of the vehicle shall make application for new vehicle license number plates upon a form furnished by the director. The application shall be filed with the director or the director's authorized agent, accompanied by the certificate of license registration of the vehicle and a fee in the amount of ten dollars per plate, whereupon the director, or the director's authorized agent, shall issue new vehicle license number plates to the applicant. It shall be accompanied by a fee of two dollars for a new motorcycle license number plate. In the event the director has issued license period tabs or a windshield emblem instead of vehicle license number plates, and upon the loss, defacement, or destruction of the tabs or windshield emblem, application shall be made on a form provided by the director and in the same manner as above described, and shall be accompanied by a fee of one dollar for each pair of tabs or for each windshield emblem, whereupon the director shall issue to the applicant a duplicate pair of tabs, year tabs, and when necessary month tabs or a windshield emblem to replace those lost, defaced, or destroyed. For vehicles owned, rented, or leased by the state of Washington or by any county, city, town, school district, or other political subdivision of the state of Washington or United States government, or owned or leased by the governing body of an Indian tribe as defined in RCW 46.16.020, a fee shall be charged for replacement of a vehicle license number plate only to the extent required by the provisions of RCW 46.16.020, 46.16.237, and 46.01.140. For vehicles owned, rented, or leased by foreign countries or international bodies to which the United States government is a signatory by treaty, the payment of any fee for the replacement of a vehicle license number plate shall not be required. [2005 c 314 § 302; 1997 c 291 § 3; 1990 c 250 § 32; 1987 c 178 § 2. Prior: 1986 c 280 § 4; 1986 c 30 § 3; 1975 1st ex.s. c 169 § 7; 1965 ex.s. c 78 § 1; 1961 c 12 § 46.16.270; prior: 1951 c 269 § 6; 1947 c 164 § 13; 1937 c 188 § 37; Rem. Supp. 1947 § 6312-37; 1929 c 99 § 6; 1921 c 96 § 14; 1919 c 59 § 8; 1915 c 142 § 14; RRS § 6325.]

**Application—2005 c 314 §§ 201-206, 301, and 302:** See note following RCW 46.17.010.

**Part headings not law—2005 c 314:** See note following RCW 46.17.010.

**Severability—1990 c 250:** See note following RCW 46.16.301.

**46.16.30907 Washington's Wildlife plate collection.** (1) The legislature recognizes that the Washington's Wildlife license plate collection, to include three distinct designs including bear, deer, and elk, has been reviewed by the special license plate review board under RCW 46.16.725 and was found to fully comply with all provisions of RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate collection displaying a symbol or artwork, approved by the special license plate review board and the legislature, recognizing

ing Washington's wildlife, that may be used in lieu of regular or personalized license plates for vehicles required to display one or two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. [2005 c 42 § 1.]

**46.16.30908 Washington's Wildlife license plate collection—Definition.** For the purposes of RCW 46.16.313 and 46.16.30907, the term "Washington's Wildlife license plate collection" means the collection of three separate license plate designs issued under RCW 46.16.30907. Each license plate design displays a distinct symbol or artwork recognizing the wildlife of Washington, to include bear, deer, and elk. [2005 c 42 § 2.]

**46.16.30909 Washington state parks and recreation commission plate.** (1) The legislature recognizes that the Washington state parks and recreation commission license plate application has been reviewed by the special license plate review board under RCW 46.16.725 and was found to fully comply with all provisions of RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate displaying a symbol or artwork, approved by the special license plate review board and the legislature, recognizing Washington state parks as premier destinations of uncommon quality that preserve significant natural, cultural, historical, and recreational resources, that may be used in lieu of regular or personalized license plates for vehicles required to display one and two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. [2005 c 44 § 1.]

**46.16.30910 Washington state parks and recreation commission special license plate—Definition.** For the purposes of RCW 46.16.313, "Washington state parks and recreation commission special license plate" means license plates issued under RCW 46.16.30909 that display a symbol or artwork recognizing the efforts of state parks and recreation in Washington state. [2005 c 44 § 2.]

**46.16.30911 "Washington Lighthouses" plate.** (1) The legislature recognizes that the "Washington Lighthouses" license plate has been reviewed by the special license plate review board under RCW 46.16.725, and found to fully comply with RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate displaying a symbol or artwork, approved by the special license plate review board and the legislature, recognizing an organization that supports selected Washington state lighthouses and provides environmental education programs. The special license plate may be used in lieu of regular or personalized license plates for vehicles required to display one or two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. [2005 c 48 § 1.]

**46.16.30912 Lighthouse environmental programs account.** (1) The lighthouse environmental programs account is created in the custody of the state treasurer. Upon

the department's determination that the state had been reimbursed for the cost of implementing the "Washington Lighthouses" special license plate, all receipts, except as provided in RCW 46.16.313(14) (a) and (b), from "Washington Lighthouses" license plates must be deposited into the account. Only the director of the department of licensing or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Funds in the account must be disbursed subject to the following conditions and limitations:

(a) Under the requirements set out in RCW 46.16.765, the department must contract with a qualified nonprofit organization to support selected Washington state lighthouses that are accessible to the public and staffed by volunteers; to provide environmental education programs; and to provide grants for other Washington lighthouses to assist in funding infrastructure preservation and restoration and to encourage and support interpretive programs by lighthouse docents.

(b) For the purpose of this section, a "qualified nonprofit organization" means a not-for-profit corporation incorporated and of tax exempt status under section 501(c)(3) of the federal internal revenue code. The organization must have been established for the express purposes of supporting selected Washington state lighthouses that are open to the public and staffed by volunteers; providing environmental education programs; and encouraging and supporting interpretive programs by lighthouse docents.

(c) The qualified nonprofit organization must meet all requirements set out in RCW 46.16.765. [2005 c 48 § 4.]

**46.16.30913 "Keep Kids Safe" plate.** (1) The legislature recognizes that the "Keep Kids Safe" license plate has been reviewed and approved by the special license plate review board under RCW 46.16.725, and found to fully comply with all provisions of RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate displaying artwork, approved by the special license plate review board, recognizing efforts to prevent child abuse and neglect. The special license plate may be used in lieu of regular or personalized license plates for vehicles required to display one or two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. [2005 c 53 § 1.]

**46.16.30914 "We love our pets" plate.** (1) The legislature recognizes that the "we love our pets" license plate has been reviewed by the special license plate review board under RCW 46.16.725, and found to fully comply with all provisions of RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate displaying a symbol or artwork, approved by the special license plate review board, recognizing an organization that assists local member agencies of the federation of animal welfare and control agencies to promote and perform spay/neuter surgery on Washington state pets, in order to reduce pet overpopulation. The special license plate may be used in lieu of regular or personalized license plates for vehicles required to display one or two vehicle license plates, excluding vehicles



registered under chapter 46.87 RCW, upon terms and conditions established by the department. [2005 c 71 § 1.]

**46.16.30915 We love our pets account.** (1) The we love our pets account is created in the custody of the state treasurer. Upon the department's determination that the state has been reimbursed for the cost of implementing the we love our pets special license plate, all receipts, except as provided in RCW 46.16.313(16) (a) and (b), from we love our pets license plates must be deposited into the account. Only the director of the department of licensing or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Funds in the account must be disbursed subject to the following conditions and limitations:

(a) Pursuant to the requirements set out in RCW 46.16.765, the department must contract with a qualified nonprofit organization to support and to enable the Washington federation of animal welfare and control agencies to promote and perform spay/neuter surgery of Washington state pets, in order to reduce pet overpopulation.

(b) For the purposes of this section, a "qualified nonprofit organization" means a not-for-profit corporation incorporated and operating exclusively in Washington that has received a determination of tax exempt status under section 501(c)(3) of the federal internal revenue code. The organization must have been established for the express purpose of assisting local member agencies of the federation of animal welfare and control agencies to promote and perform spay/neuter surgery on Washington state pets, in order to reduce pet overpopulation.

(c) The qualified nonprofit organization must meet all requirements set out in RCW 46.16.765. [2005 c 71 § 4.]

**46.16.30916 Gonzaga University alumni association plate.** (1) The legislature recognizes that the Gonzaga University alumni association license plate has been reviewed by the special license plate review board under RCW 46.16.725, and found to fully comply with all provisions of RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate displaying a symbol or artwork, approved by the special license plate review board, recognizing the Gonzaga University alumni association. The special license plate may be used in lieu of regular or personalized license plates for vehicles required to display one or two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. [2005 c 85 § 1.]

**46.16.30917 Gonzaga University alumni association account.** (1) The Gonzaga University alumni association account is created in the custody of the state treasurer. Upon the department's determination that the state has been reimbursed for the cost of implementing the Gonzaga University alumni association special license plate, all receipts, except as provided in RCW 46.16.313(17) (a) and (b), from Gonzaga University alumni association license plates must

be deposited into the account. Only the director of the department of licensing or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Funds in the account must be disbursed subject to the following conditions and limitations:

(a) Pursuant to the requirements set out in RCW 46.16.765, the department must contract with a qualified nonprofit organization to provide scholarship funds to needy and qualified students attending or planning to attend Gonzaga University.

(b) For the purposes of this section, a "qualified nonprofit organization" means a not-for-profit corporation incorporated and operating exclusively in Washington that has received a determination of tax exempt status under section 501(c)(3) of the federal internal revenue code. The organization must have been established for the express purpose of providing student scholarships to Gonzaga University.

(c) The qualified nonprofit organization must meet all requirements set out in RCW 46.16.765. [2005 c 85 § 4.]

**46.16.30918 "Washington's National Park Fund" plate.** (1) The legislature recognizes that the "Washington's National Park Fund" license plate has been reviewed by the special license plate review board under RCW 46.16.725, and found to fully comply with RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate displaying a symbol or artwork, approved by the special license plate review board and the legislature, recognizing Washington's National Park Fund, that may be used in lieu of regular or personalized license plates for vehicles required to display one or two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. [2005 c 177 § 1.]

**46.16.30919 "Washington's National Park Fund" account.** (1) The "Washington's National Park Fund" account is created in the custody of the state treasurer. Upon the department's determination that the state had been reimbursed for the cost of implementing the "Washington's National Park Fund" special license plate, all receipts, except as provided in RCW 46.16.313 (18) and (19), from "Washington's National Park Fund" license plates must be deposited into the account. Only the director of the department of licensing or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Funds in the account must be disbursed subject to the following conditions and limitations:

(a) Under the requirements set out in RCW 46.16.765, the department must contract with a qualified nonprofit organization to build awareness of Washington's national parks and to support priority park programs and projects in Washington's national parks, such as enhancing visitor experience, promoting volunteerism, engaging communities, and providing educational opportunities related to Washington's national parks.

(b) For the purpose of this section, a "qualified nonprofit organization" means a not-for-profit corporation incorporated and of tax exempt status under section 501(c)(3) of the federal internal revenue code. The organization must have been established for the express purposes of building awareness of Washington's national parks, enhancing visitor experience, promoting volunteerism, engaging communities, and providing educational opportunities related to Washington's national parks.

(c) The qualified nonprofit organization must meet all requirements set out in RCW 46.16.765. [2005 c 177 § 4.]

**46.16.30920 Armed forces plate collection.** (1) The legislature recognizes that the armed forces license plate collection has been reviewed and approved by the special license plate review board.

(2) The department shall issue a special license plate collection, approved by the special license plate review board and the legislature, recognizing the contribution of veterans, active duty military personnel, reservists, and members of the Washington national guard. The collection includes six separate designs, each containing a symbol representing a different branch of the armed forces to include army, navy, air force, marine corps, coast guard, and Washington national guard.

(3) Armed forces special license plates may be used in lieu of regular or personalized license plates for vehicles required to display one and two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department.

(4) Upon request, the department must make available to the purchaser, at no additional cost, a decal indicating the purchaser's military status. The department must work with the department of veterans affairs to establish a list of the decals to be made available. The list of available decals must include, but is not limited to, "veteran," "disabled veteran," "reservist," "retiree," or "active duty." The department may specify where the decal may be placed on the license plate. Decals are required to be made available only for standard six-inch by twelve-inch license plates.

(5) Armed forces license plates and decals are available only to veterans as defined in RCW 41.04.007, active duty military personnel, reservists, members of the Washington national guard, and the spouses of deceased veterans. Upon initial application, any purchaser requesting an armed forces license plate and decal will be required to show proof of eligibility by providing: A DD-214 or discharge papers if a veteran; a military identification or retired military identification card; or a declaration of fact attesting to the purchaser's eligibility as required under this section.

(6) The department of veterans affairs must enter into an agreement with the department to reimburse the department for the costs associated with providing military status decals described in subsection (4) of this section.

(7) Armed forces license plates are not available free of charge to disabled veterans, former prisoners of war, or spouses of deceased former prisoners of war under the privileges defined in RCW 73.04.110 and 73.04.115. [2005 c 216 § 1.]

**46.16.30921 Armed forces license plate collection—Definition—No free issuance.** (1) "Armed forces license plate collection" means the collection of six separate license plate designs issued under RCW 46.16.30920. Each license plate design displays a symbol representing one of the five branches of the armed forces, and one representing the Washington national guard.

(2) Armed forces license plates are not available free of charge to disabled veterans, former prisoners of war, or spouses of deceased former prisoners of war under the privileges defined in RCW 73.04.110 and 73.04.115. [2005 c 216 § 2.]

**46.16.30922 "Ski & Ride Washington" plate.** (1) The legislature recognizes that the "Ski & Ride Washington" license plate has been reviewed and approved by the special license plate review board under RCW 46.16.725, and found to fully comply with RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate displaying a symbol or artwork, approved by the special license plate review board and the legislature, recognizing the Washington snowsports industry, that may be used in lieu of regular or personalized license plates for vehicles required to display vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. [2005 c 220 § 1.]

**46.16.30923 "Ski & Ride Washington" account.** (1) The "Ski & Ride Washington" account is created in the custody of the state treasurer. Upon the department's determination that the state had been reimbursed for the cost of implementing the "Ski Washington" special license plate, all receipts, except as provided in RCW 46.16.313(21), from "Ski & Ride Washington" license plates must be deposited into the account. Only the director of the department of licensing or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Funds in the account must be disbursed subject to the following conditions and limitations:

(a) Under the requirements of RCW 46.16.765, the department must contract with a qualified nonprofit organization for the purpose of promoting winter snowsports (i.e. skiing and snowboarding) and related programs such as ski and ride safety programs, underprivileged youth "ski and ride" programs, and active, healthy lifestyle programs.

(b) The qualified nonprofit organization must meet all requirements set out in RCW 46.16.765. [2005 c 220 § 4.]

**46.16.30924 Wild On Washington plate.** (1) The legislature recognizes that the Wild On Washington license plate has been reviewed by the special license plate review board under RCW 46.16.725 and was found to fully comply with all provisions of RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate displaying a symbol or artwork, approved by the special license plate review board and the legislature, referred to as "Wild On Washington license plates," that may be used in lieu of regular or personalized license plates for vehicles required to display one or two vehicle license plates, excluding vehicles

registered under chapter 46.87 RCW, upon terms and conditions established by the department. [2005 c 224 § 1.]

**46.16.30925 Wild On Washington license plates—**

**Definition.** For the purposes of RCW 46.16.313 and 46.16.30924, the term "Wild On Washington license plates" means license plates issued under RCW 46.16.30924 that display a symbol or artwork symbolizing wildlife viewing in Washington state. [2005 c 224 § 2.]

**46.16.30926 Endangered Wildlife plate.** (1) The legislature recognizes that the Endangered Wildlife license plate has been reviewed by the special license plate review board under RCW 46.16.725 and was found to fully comply with all provisions of RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate displaying a symbol or artwork, approved by the special license plate review board and the legislature, referred to as "Endangered Wildlife license plates," that may be used in lieu of regular or personalized license plates for vehicles required to display one or two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. [2005 c 225 § 1.]

**46.16.30927 Endangered Wildlife license plates—**

**Definition.** For the purposes of RCW 46.16.313 and 46.16.30926, the term "Endangered Wildlife license plates" means license plates issued under RCW 46.16.30926 that display a symbol or artwork symbolizing endangered wildlife in Washington state. [2005 c 225 § 2.]

**46.16.30928 "Share the Road" plate.** (1) The legislature recognizes that the "Share the Road" license plate has been reviewed by the special license plate review board under RCW 46.16.725, and found to fully comply with RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate displaying a symbol or artwork, approved by the special license plate review board and the legislature, recognizing an organization that promotes bicycle safety and awareness education. The special license plate may be used in lieu of regular or personalized license plates for vehicles required to display one or two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. The special plates will commemorate the life of Cooper Jones. [2005 c 426 § 1.]

**46.16.30929 "Share the Road" account.** (1) The "Share the Road" account is created in the custody of the state treasurer. Upon the department's determination that the state had been reimbursed for the cost of implementing the "Share the Road" special license plate, all receipts, except as provided in RCW 46.16.313(24) (a) and (b), from "Share the Road" license plates must be deposited into the account. Only the director of the department of licensing or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Funds in the account must be disbursed subject to the following conditions and limitations:

(a) Under the requirements set out in RCW 46.16.765, the department must contract with a qualified nonprofit organization to promote bicycle safety and awareness education in communities throughout Washington.

(b) For the purpose of this section, a "qualified nonprofit organization" means a not-for-profit corporation incorporated and of tax exempt status under section 501(c)(3) of the federal internal revenue code. The organization must promote bicycle safety and awareness education in communities throughout Washington.

(c) The qualified nonprofit organization must meet all requirements set out in RCW 46.16.765. [2005 c 426 § 4.]

**46.16.313 Special license plates—Fees.** (1) The

department may establish a fee of no more than forty dollars for each type of special license plates issued under RCW 46.16.301(1) (a), (b), or (c), as existing before amendment by section 5, chapter 291, Laws of 1997, in an amount calculated to offset the cost of production of the special license plates and the administration of this program. This fee is in addition to all other fees required to register and license the vehicle for which the plates have been requested. All such additional special license plate fees collected by the department shall be deposited in the state treasury and credited to the motor vehicle fund.

(2) In addition to all fees and taxes required to be paid upon application and registration of a motor vehicle, the holder of a collegiate license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.

(3) In addition to all fees and taxes required to be paid upon renewal of a motor vehicle registration, the holder of a collegiate license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.

(4) In addition to all fees and taxes required to be paid upon application and registration of a motor vehicle, the holder of a special baseball stadium license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds, minus the cost of plate production, shall be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected

under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

(5) In addition to all fees and taxes required to be paid upon renewal of a motor vehicle registration, the holder of a special baseball stadium license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

(6) Effective with vehicle registrations due or to become due on January 1, 2005, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a professional fire fighters and paramedics license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the professional fire fighters and paramedics license plates. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the Washington State Council of Fire Fighters benevolent fund established under RCW 46.16.30902.

(7) Effective with annual renewals due or to become due on January 1, 2006, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a professional fire fighters and paramedics license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the professional fire fighters and paramedics special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the Washington State Council of Fire Fighters benevolent fund established under RCW 46.16.30902.

(8) Effective with vehicle registrations due or to become due on November 1, 2004, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "Helping Kids Speak" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the

state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Helping Kids Speak" special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Helping Kids Speak" account established under RCW 46.16.30904.

(9) Effective with annual renewals due or to become due on November 1, 2005, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "Helping Kids Speak" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Helping Kids Speak" special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Helping Kids Speak" account established under RCW 46.16.30904.

(10) Effective with vehicle registrations due or to become due on January 1, 2005, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "law enforcement memorial" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the law enforcement memorial special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the law enforcement memorial account established under RCW 46.16.30906.

(11) Effective with annual renewals due or to become due on January 1, 2006, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "law enforcement memorial" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the law enforcement memorial special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the law enforcement memorial account established under RCW 46.16.30906.

(12)(a) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a Washington's Wildlife collection license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the Washington's Wildlife license plate collection. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the state wildlife account. Proceeds credited to the state wildlife account from the sale of the Washington's Wildlife license plate collection may be used only for the department of fish and wildlife's game species management activities.

(b) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a Washington's Wildlife collection license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the Washington's Wildlife license plate collection. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the state wildlife account. Proceeds credited to the state wildlife account from the sale of the Washington's Wildlife license plate collection may be used only for the department of fish and wildlife's game species management activities.

(13)(a) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a Washington state parks and recreation commission special license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the Washington state parks and recreation commission special license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the state parks education and enhancement account established in RCW 79A.05.059.

(b) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes

required to be paid upon renewal of a vehicle registration, the holder of a Washington state parks and recreation commission special license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the Washington state parks and recreation commission special license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the state parks education and enhancement account established in RCW 79A.05.059.

(14)(a) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "Washington Lighthouses" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Washington Lighthouses" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the lighthouse environmental programs account established under RCW 46.16.30912.

(b) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "Washington Lighthouses" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Washington Lighthouses" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the lighthouse environmental programs account established under RCW 46.16.30912.

(15)(a) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "Keep Kids Safe" license plate shall pay an initial fee of forty-five dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying report. Pursuant to RCW

46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Keep Kids Safe" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the children's trust fund established under RCW 43.121.100.

(b) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "Keep Kids Safe" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Keep Kids Safe" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the children's trust fund established under RCW 43.121.100.

(16)(a) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "we love our pets" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administrative and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "we love our pets" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the we love our pets account established under RCW 46.16.30915.

(b) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "we love our pets" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "we love our pets" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the we love our pets account established under RCW 46.16.30915.

(17)(a) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registra-

tion of a vehicle, the holder of a "Gonzaga University alumni association" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administrative and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Gonzaga University alumni association" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the Gonzaga University alumni association account established under RCW 46.16.30917.

(b) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "Gonzaga University alumni association" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Gonzaga University alumni association" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the Gonzaga University alumni association account established under RCW 46.16.30917.

(18) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "Washington's National Park Fund" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Washington's National Park Fund" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Washington's National Park Fund" account established under RCW 46.16.30919.

(19) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "Washington's National Park Fund" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report.

Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Washington's National Park Fund" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Washington's National Park Fund" account established under RCW 46.16.30919.

(20)(a) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of an armed forces license plate shall pay an initial fee of forty dollars. The department shall retain an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the armed forces special license plate collection. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the veterans stewardship account established under RCW 43.60A.140.

(b) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of an armed forces license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the armed forces special license plate collection. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the veterans stewardship account established in RCW 43.60A.140.

(21)(a) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "Ski & Ride Washington" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Ski & Ride Washington" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Ski & Ride Washington" account established under RCW 46.16.30923.

(b) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes

required to be paid upon renewal of a vehicle registration, the holder of a "Ski & Ride Washington" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Ski & Ride Washington" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Ski & Ride Washington" account established under RCW 46.16.30923.

(22)(a) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a Wild On Washington license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the Wild On Washington license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the state wildlife account. Proceeds credited to the state wildlife account from the sale of the Wild On Washington license plates must be dedicated to the department of fish and wildlife's watchable wildlife activities defined in RCW 77.32.560(2).

(b) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a Wild On Washington license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the Wild On Washington license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the state wildlife account. Proceeds credited to the state wildlife account from the sale of the Wild On Washington license plates must be dedicated to the department of fish and wildlife's watchable wildlife activities defined in RCW 77.32.560(2).

(23)(a) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of an Endangered Wildlife license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dol-

lars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the Endangered Wildlife license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the state wildlife account. Proceeds credited to the state wildlife account from the sale of the Endangered Wildlife license plates must be used only for the department of fish and wildlife's endangered wildlife program activities.

(b) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of an Endangered Wildlife license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the Endangered Wildlife license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the state wildlife account. Proceeds credited to the state wildlife account from the sale of the Endangered Wildlife license plates must be used only for the department of fish and wildlife's endangered wildlife program activities.

(24)(a) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "Share the Road" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Share the Road" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Share the Road" account established under RCW 46.16.30929.

(b) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "Share the Road" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state

treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Share the Road" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Share the Road" account established under RCW 46.16.30929. [2005 c 426 § 3; 2005 c 225 § 3; 2005 c 224 § 3; 2005 c 220 § 3; 2005 c 216 § 3; 2005 c 177 § 3; 2005 c 85 § 3; 2005 c 71 § 3; 2005 c 53 § 3; 2005 c 48 § 3; 2005 c 44 § 3; 2005 c 42 § 3. Prior: 2004 c 221 § 3; 2004 c 48 § 3; 2004 c 35 § 3; 1997 c 291 § 8; 1996 c 165 § 506; 1995 3rd sp.s. c 1 § 103; 1994 c 194 § 4; 1990 c 250 § 4.]

**Reviser's note:** This section was amended by 2005 c 42 § 3, 2005 c 44 § 3, 2005 c 48 § 3, 2005 c 53 § 3, 2005 c 71 § 3, 2005 c 85 § 3, 2005 c 177 § 3, 2005 c 216 § 3, 2005 c 220 § 3, 2005 c 224 § 3, 2005 c 225 § 3, and by 2005 c 426 § 3, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—1996 c 165:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 165 § 510.]

**Effective date—1996 c 165:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 28, 1996]." [1996 c 165 § 511.]

**Part headings not law—Effective date—1995 3rd sp.s. c 1:** See notes following RCW 82.14.0485.

**Effective dates—1990 c 250 §§ 1-13:** See note following RCW 46.16.301.

**Severability—1990 c 250:** See note following RCW 46.16.301.

*State contribution for baseball stadium limited: RCW 82.14.0486.*

**46.16.316 Special license plates—Transfer of vehicle—Replacement plates.** Except as provided in RCW 46.16.305:

(1) When a person who has been issued a special license plate or plates: (a) Under RCW 46.16.30901, 46.16.30903, 46.16.30905, or 46.16.301 as it existed before amendment by section 5, chapter 291, Laws of 1997, or under RCW 46.16.305(2) or 46.16.324; (b) approved by the special license plate review board under RCW 46.16.715 through 46.16.775; or (c) under RCW 46.16.601 sells, trades, or otherwise transfers or releases ownership of the vehicle upon which the special license plate or plates have been displayed, he or she shall immediately report the transfer of such plate or plates to an acquired vehicle or vehicle eligible for such plates pursuant to departmental rule, or he or she shall surrender such plates to the department immediately if such surrender is required by departmental rule. If a person applies for a transfer of the plate or plates to another eligible vehicle, a transfer fee of ten dollars shall be charged in addition to all other applicable fees. Such transfer fees shall be deposited in the motor vehicle fund. Failure to surrender the plates when required is a traffic infraction.

(2) If the special license plate or plates issued by the department become lost, defaced, damaged, or destroyed, application for a replacement special license plate or plates shall be made and fees paid as provided by law for the replacement of regular license plates. [2005 c 210 § 2. Prior: 2004 c 223 § 4; 2004 c 221 § 5, 2004 c 48 § 5; 2004 c 35 § 5; 1997 c 291 § 10; 1990 c 250 § 5.]



**Effective dates—1990 c 250 §§ 1-13:** See note following RCW 46.16.301.

**Severability—1990 c 250:** See note following RCW 46.16.301.

**46.16.333 Cooper Jones emblems.** In cooperation with the Washington state patrol and the department of licensing, the traffic safety commission shall create and design, and the department shall issue, Cooper Jones license plate emblems displaying a symbol of bicycle safety that may be used on motor vehicles required to display two motor vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. These license plate emblems will fund the Cooper Jones act and provide funding for bicyclist and pedestrian safety education, enforcement, and encouragement.

Any person may purchase Cooper Jones license plate emblems. The emblems are to be displayed on the vehicle license plates in the manner described by the department, existing vehicular licensing procedures, and current laws. The fee for Cooper Jones emblems shall be twenty-five dollars. All moneys collected shall first go to the department to be deposited into the motor vehicle fund until all expenses of designing and producing the emblems are recovered. Thereafter, the department shall deduct an amount not to exceed five dollars of each fee collected for Cooper Jones emblems for administration and collection expenses. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the proceeds to the "Share the Road" account established under RCW 46.16.30929. [2005 c 426 § 5; 2002 c 264 § 3.]

**Finding—2002 c 264:** "The legislature finds that bicycling and walking are becoming increasingly popular in Washington as clean and efficient modes of transportation, as recreational activities, and as organized sports. Future plans for the state's transportation system will require increased access and safety for bicycles and pedestrians on our common roadways, and federal transportation legislation and funding programs have created strong incentives to implement these changes quickly. As a result, many more people are likely to take up bicycling in Washington both as a leisure activity and as a convenient, inexpensive form of transportation. Bicyclists are more vulnerable to injury and accident than motorists, and both should be knowledgeable about traffic laws. Bicyclists should be highly visible and predictable when riding in traffic, and be encouraged to wear bicycle safety helmets. Hundreds of bicyclists and pedestrians are seriously injured every year in accidents, and millions of dollars are spent on health care costs associated with these accidents. There is clear evidence that organized training in the rules and techniques of safe and effective cycling can significantly reduce the incidence of serious injury and accidents, increase cooperation among road users, and significantly increase the incidence of bicycle helmet use, particularly among minors. A reduction in accidents benefits the entire community. Therefore, it is appropriate for businesses and community organizations to provide donations to bicycle and pedestrian safety training programs." [2002 c 264 § 1.]

**46.16.381 Special parking for persons with disabilities—Penalties—Enforcement.** (1) The director shall grant special parking privileges to any person who has a disability that limits or impairs the ability to walk and meets one of the following criteria, as determined by a licensed physician or an advanced registered nurse practitioner licensed under chapter 18.79 RCW:

- (a) Cannot walk two hundred feet without stopping to rest;
- (b) Is severely limited in ability to walk due to arthritic, neurological, or orthopedic condition;

- (c) Is so severely disabled, that the person cannot walk without the use of or assistance from a brace, cane, another person, prosthetic device, wheelchair, or other assistive device;

- (d) Uses portable oxygen;

- (e) Is restricted by lung disease to such an extent that forced expiratory respiratory volume, when measured by spirometry is less than one liter per second or the arterial oxygen tension is less than sixty mm/hg on room air at rest;

- (f) Impairment by cardiovascular disease or cardiac condition to the extent that the person's functional limitations are classified as class III or IV under standards accepted by the American Heart Association; or

- (g) Has a disability resulting from an acute sensitivity to automobile emissions which limits or impairs the ability to walk. The personal physician or advanced registered nurse practitioner of the applicant shall document that the disability is comparable in severity to the others listed in this subsection.

(2) The applications for parking permits for persons with disabilities and parking permits for persons with temporary disabilities are official state documents. Knowingly providing false information in conjunction with the application is a gross misdemeanor punishable under chapter 9A.20 RCW. The following statement must appear on each application form immediately below the physician's or advanced registered nurse practitioner's signature and immediately below the applicant's signature: "A parking permit for a person with disabilities may be issued only for a medical necessity that severely affects mobility (RCW 46.16.381). Knowingly providing false information on this application is a gross misdemeanor. The penalty is up to one year in jail and a fine of up to \$5,000 or both."

(3) Persons who qualify for special parking privileges are entitled to receive from the department of licensing a removable windshield placard bearing the international symbol of access and an individual serial number, along with a special identification card bearing the name and date of birth of the person to whom the placard is issued, and the placard's serial number. The special identification card shall be issued no later than January 1, 2000, to all persons who are issued parking placards, including those issued for temporary disabilities, and special parking license plates for persons with disabilities. The department shall design the placard to be displayed when the vehicle is parked by suspending it from the rearview mirror, or in the absence of a rearview mirror the card may be displayed on the dashboard of any vehicle used to transport the person with disabilities. Instead of regular motor vehicle license plates, persons with disabilities are entitled to receive special license plates under this section or RCW 46.16.385 bearing the international symbol of access for one vehicle registered in the name of the person with disabilities. Persons with disabilities who are not issued the special license plates are entitled to receive a second special placard upon submitting a written request to the department. Persons who have been issued the parking privileges and who are using a vehicle or are riding in a vehicle displaying the placard or special license plates issued under this section or RCW 46.16.385 may park in places reserved for persons with physical disabilities. The director shall adopt rules providing for the issuance of special placards and license plates to pub-

lic transportation authorities, nursing homes licensed under chapter 18.51 RCW, boarding homes licensed under chapter 18.20 RCW, senior citizen centers, private nonprofit agencies as defined in chapter 24.03 RCW, and vehicles registered with the department as cabulances that regularly transport persons with disabilities who have been determined eligible for special parking privileges provided under this section. The director may issue special license plates for a vehicle registered in the name of the public transportation authority, nursing home, boarding home, senior citizen center, private nonprofit agency, or cabulance service if the vehicle is primarily used to transport persons with disabilities described in this section. Public transportation authorities, nursing homes, boarding homes, senior citizen centers, private nonprofit agencies, and cabulance services are responsible for insuring that the special placards and license plates are not used improperly and are responsible for all fines and penalties for improper use.

(4) Whenever the person with disabilities transfers or assigns his or her interest in the vehicle, the special license plates shall be removed from the motor vehicle. If another vehicle is acquired by the person with disabilities and the vehicle owner qualifies for a special plate, the plate shall be attached to the vehicle, and the director shall be immediately notified of the transfer of the plate. If another vehicle is not acquired by the person with disabilities, the removed plate shall be immediately surrendered to the director.

(5) The special license plate shall be renewed in the same manner and at the time required for the renewal of regular motor vehicle license plates under this chapter. No special license plate may be issued to a person who is temporarily disabled. A person who has a condition expected to improve within six months may be issued a temporary placard for a period not to exceed six months. If the condition exists after six months a new temporary placard shall be issued upon receipt of a new certification from the person's physician. The permanent parking placard and identification card of a person with disabilities shall be renewed at least every five years, as required by the director, by satisfactory proof of the right to continued use of the privileges. In the event of the permit holder's death, the parking placard and identification card must be immediately surrendered to the department. The department shall match and purge its data base of parking permits issued to persons with disabilities with available death record information at least every twelve months.

(6) Each person with disabilities who has been issued a permanent parking permit on or before July 1, 1998, must renew the permit no later than July 1, 2003, subject to a schedule to be set by the department, or the permit will expire.

(7) Additional fees shall not be charged for the issuance of the special placards or the identification cards. No additional fee may be charged for the issuance of the special license plates except the regular motor vehicle registration fee and any other fees and taxes required to be paid upon registration of a motor vehicle.

(8) Any unauthorized use of the special placard, special license plate issued under this section or RCW 46.16.385, or identification card is a traffic infraction with a monetary penalty of two hundred fifty dollars.

(9) It is a parking infraction, with a monetary penalty of two hundred fifty dollars for a person to make inaccessible the access aisle located next to a space reserved for persons with physical disabilities. The clerk of the court shall report all violations related to this subsection to the department.

(10) It is a parking infraction, with a monetary penalty of two hundred fifty dollars for any person to park a vehicle in a parking place provided on private property without charge or on public property reserved for persons with physical disabilities without a placard or special license plate issued under this section or RCW 46.16.385. If a person is charged with a violation, the person shall not be determined to have committed an infraction if the person produces in court or before the court appearance the placard or special license plate issued under this section or RCW 46.16.385 required under this section. A local jurisdiction providing nonmetered, on-street parking places reserved for persons with physical disabilities may impose by ordinance time restrictions of no less than four hours on the use of these parking places. A local jurisdiction may impose by ordinance time restrictions of no less than four hours on the use of nonreserved, on-street parking spaces by vehicles displaying the special parking placards or special license plates issued under this section or RCW 46.16.385. All time restrictions must be clearly posted.

(11) The penalties imposed under subsections (9) and (10) of this section shall be used by that local jurisdiction exclusively for law enforcement. The court may also impose an additional penalty sufficient to reimburse the local jurisdiction for any costs it may have incurred in removal and storage of the improperly parked vehicle.

(12) Except as provided by subsection (2) of this section, it is a traffic infraction with a monetary penalty of two hundred fifty dollars for any person willfully to obtain a special license plate issued under this section or RCW 46.16.385, placard, or identification card in a manner other than that established under this section.

(13)(a) A law enforcement agency authorized to enforce parking laws may appoint volunteers, with a limited commission, to issue notices of infractions for violations of this section or RCW 46.61.581. Volunteers must be at least twenty-one years of age. The law enforcement agency appointing volunteers may establish any other qualifications the agency deems desirable.

(b) An agency appointing volunteers under this section must provide training to the volunteers before authorizing them to issue notices of infractions.

(c) A notice of infraction issued by a volunteer appointed under this subsection has the same force and effect as a notice of infraction issued by a police officer for the same offense.

(d) A police officer or a volunteer may request a person to show the person's identification card or special parking placard when investigating the possibility of a violation of this section. If the request is refused, the person in charge of the vehicle may be issued a notice of infraction for a violation of this section.

(14) For second or subsequent violations of this section, in addition to a monetary fine, the violator must complete a minimum of forty hours of:

(a) Community restitution for a nonprofit organization that serves persons having disabilities or disabling diseases; or

(b) Any other community restitution that may sensitize the violator to the needs and obstacles faced by persons who have disabilities.

(15) The court may not suspend more than one-half of any fine imposed under subsection (8), (9), (10), or (12) of this section. [2005 c 390 § 2; 2004 c 222 § 2; 2003 c 371 § 1; 2002 c 175 § 33; 2001 c 67 § 1; 1999 c 136 § 1; 1998 c 294 § 1; 1995 c 384 § 1; 1994 c 194 § 6; 1993 c 106 § 1; 1992 c 148 § 1; 1991 c 339 § 21; 1990 c 24 § 1; 1986 c 96 § 1; 1984 c 154 § 2.]

**Effective date—2004 c 222 §§ 1 and 2:** See note following RCW 46.16.385.

**Effective date—2002 c 175:** See note following RCW 7.80.130.

**Intent—1984 c 154:** "The legislature intends to extend special parking privileges to persons with disabilities that substantially impair mobility." [1984 c 154 § 1.]

**Application—1984 c 154:** "This act applies to special license plates, cards, or decals issued after June 7, 1984. Nothing in this act invalidates special license plates, cards, or decals issued before June 7, 1984." [1984 c 154 § 9.]

**Severability—1984 c 154:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 154 § 10.]

*Accessible parking spaces required:* RCW 70.92.140.

*Free parking by disabled persons:* RCW 46.61.582.

**46.16.385 Versions of special plates for persons with disabilities.** (1) The department shall design and issue versions of special license plates including the international symbol of access described in RCW 70.92.120 for plates issued under (a) RCW 46.16.301; (b) RCW 46.16.305, except those plates issued under RCW 46.16.305 (1) and (2); (c) RCW 46.16.324; (d) RCW 46.16.745; (e) RCW 73.04.110; (f) RCW 73.04.115; (g) RCW 46.16.301(1) (a), (b), or (c), as it existed before amendment by section 5, chapter 291, Laws of 1997; (h) RCW 46.16.565; or (i) plates issued under RCW 46.16.601. The version of the special plate including the international symbol of access may be used in lieu of the parking placard issued to persons who qualify for special parking privileges under RCW 46.16.381. The department may not charge an additional fee for the issuance of the special license plate including the international symbol of access, except the regular motor vehicle registration fee, the fee associated with the particular special plate, and any other fees and taxes required to be paid upon registration of a motor vehicle. The international symbol of access must be incorporated into the design of the special license plate in a manner to be determined by the department, and under existing vehicular licensing procedures and existing laws.

(2) Persons who qualify for special parking privileges under RCW 46.16.381, and who have applied and paid the appropriate fee for any of the special license plates listed in subsection (1) of this section, are entitled to receive from the department a special license plate including the international symbol of access. The special license plate including the international symbol of access may be used for one vehicle registered in the name of the person with the disability. Persons who have been issued the parking privileges or who are using a vehicle displaying the special license plate including the international symbol of access may park in places reserved for persons with physical disabilities.

(3) Special license plates including the international symbol of access must be administered in the same manner as plates issued under RCW 46.16.381.

(4) The department shall adopt rules to implement this section. [2005 c 390 § 3; 2005 c 210 § 3; 2004 c 222 § 1.]

**Reviser's note:** This section was amended by 2005 c 210 § 3 and by 2005 c 390 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2004 c 222 §§ 1 and 2:** "Sections 1 and 2 of this act take effect November 1, 2004." [2004 c 222 § 5.]

**46.16.390 Special plate or card issued by another jurisdiction.** A special license plate or card issued by another state or country that indicates an occupant of the vehicle has disabilities, entitles the vehicle on or in which it is displayed and being used to transport the person with disabilities to lawfully park in a parking place reserved for persons with physical disabilities pursuant to chapter 70.92 RCW or authority implemental thereof. [2005 c 390 § 4; 1991 c 339 § 22; 1984 c 51 § 1.]

**46.16.570 Personalized license plates—Design.** Except for personalized plates issued under RCW 46.16.601, the personalized license plates shall be the same design as regular license plates, and shall consist of numbers or letters, or any combination thereof not exceeding seven positions unless proposed by the department and approved by the Washington state patrol and not less than one position, to the extent that there are no conflicts with existing passenger, commercial, trailer, motorcycle, or special license plates series or with the provisions of RCW 46.16.230 or 46.16.235: PROVIDED, That the maximum number of positions on personalized license plates for motorcycles shall be designated by the department. [2005 c 210 § 4; 1986 c 108 § 1; 1983 1st ex.s. c 24 § 1; 1975 c 59 § 3; 1973 1st ex.s. c 200 § 4.]

**Effective dates—1983 1st ex.s. c 24:** "Section 2 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of state government and its existing public institutions, and shall take effect on July 1, 1983. Section 1 of this act takes effect on July 1, 1984." [1983 1st ex.s. c 24 § 4.]

**46.16.600 Personalized license plates—Rules and regulations.** (1) The director of licensing may establish such rules and regulations as may be necessary to carry out the purposes of RCW 46.16.560 through 46.16.595.

(2) Upon direction by the board, the department shall adopt a rule limiting the ability of organizations and governmental entities to apply for more than one license plate series. [2005 c 210 § 5; 1979 c 158 § 143; 1973 1st ex.s. c 200 § 10.]

**46.16.601 Personalized special plates. (Effective March 1, 2007.)** (1) The following special license plate series created by the legislature may be personalized: (a) RCW 46.16.301 as currently law; (b) RCW 46.16.301(1) (a), (b), or (c), as it existed before amendment by section 5, chapter 291, Laws of 1997; (c) RCW 46.16.305, except those plates issued under RCW 46.16.305 (1) and (2); (d) RCW 46.16.324; (e) RCW 46.16.385; or (f) RCW 46.16.745.

(2) Personalized special plates issued under this section may be personalized only by using numbers or letters, or any combination thereof not exceeding seven positions, and not

less than one position, to the extent that there are no conflicts with existing license plate series. A personalized special license plate is subject to the same requirements as personalized license plates listed in RCW 46.16.575, 46.16.580, 46.16.590, 46.16.595, and 46.16.600.

(3) In addition to any other fees and taxes due at the time of registration, applicants for a personalized special license plate must pay both the fees to purchase and renew a special plate as set out in the statute creating the special plate and the personalized plate as required in RCW 46.16.585 and 46.16.606. The special plate fee must be distributed in accordance with the requirements set out in the statute creating the special plate. The personalized plate fee must be distributed under RCW 46.16.605 and 46.16.606. The transfer of personalized special plates is to be administered under RCW 46.16.316. [2005 c 210 § 1.]

**Effective date—2005 c 210 § 1:** "Section 1 of this act takes effect March 1, 2007." [2005 c 210 § 9.]

**46.16.690 License plate design services—Fee.** The department shall offer license plate design services to organizations that are sponsoring a new special license plate series or are seeking to redesign the appearance of an existing special license plate series that they sponsored. In providing this service, the department must work with the requesting organization in determining the specific qualities of the new plate design and must provide full design services to the organization. The department shall collect from the requesting organization a fee of two hundred dollars for providing license plate design services. This fee includes one original license plate design and up to five additional renditions of the original design. If the organization requests the department to provide further renditions, in addition to the five renditions provided for under the original fee, the department shall collect an additional fee of one hundred dollars per rendition. All revenue collected under this section must be deposited into the multimodal transportation account. [2005 c 210 § 6; 2003 c 361 § 502.]

**Findings—Part headings not law—Severability—2003 c 361:** See notes following RCW 82.36.025.

**Effective dates—2003 c 361:** See note following RCW 82.08.020.

**46.16.705 Special license plate review board—Created.** (1) The special license plate review board is created.

(2) The board will consist of seven members: One member appointed by the governor and who will serve as chair of the board; four members of the legislature, one from each caucus of the house of representatives and the senate; a department of licensing representative appointed by the director; and a Washington state patrol representative appointed by the chief.

(3) Members shall serve terms of four years, except that four of the members initially appointed will be appointed for terms of two years. No member may be appointed for more than three consecutive terms.

(4) The respective appointing authority may remove members from the board before the expiration of their terms only for cause based upon a determination of incapacity, incompetence, neglect of duty, or malfeasance in office as ordered by the Thurston county superior court, upon petition and show cause proceedings brought for that purpose in that

court and directed to the board member in question. [2005 c 319 § 117; 2003 c 196 § 101.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Part headings not law—2003 c 196:** See note following RCW 46.16.700.

**46.16.715 Board—Administration.** (1) The board shall meet periodically at the call of the chair, but must meet at least one time each year within ninety days before an upcoming regular session of the legislature. The board may adopt its own rules and may establish its own procedures. It shall act collectively in harmony with recorded resolutions or motions adopted by a majority vote of the members, and it must have a quorum present to take a vote on a special license plate application.

(2) The board will be compensated from the general appropriation for the department of licensing in accordance with RCW 43.03.250. Each board member will be compensated in accordance with RCW 43.03.250 and reimbursed for actual necessary traveling and other expenses in going to, attending, and returning from meetings of the board or that are incurred in the discharge of duties requested by the chair. However, in no event may a board member be compensated in any year for more than one hundred twenty days, except the chair may be compensated for not more than one hundred fifty days. Service on the board does not qualify as a service credit for the purposes of a public retirement system.

(3) The board shall keep proper records and is subject to audit by the state auditor or other auditing entities.

(4) The department of licensing shall provide administrative support to the board, which must include at least the following:

(a) Provide general staffing to meet the administrative needs of the board;

(b) Report to the board on the reimbursement status of any new special license plate series for which the state had to pay the start-up costs;

(c) Process special license plate applications and confirm that the sponsoring organization has submitted all required documentation. If an incomplete application is received, the department must return it to the sponsoring organization;

(d) Compile the annual financial reports submitted by sponsoring organizations with active special license plate series and present those reports to the board for review and approval. [2005 c 319 § 118; 2003 c 196 § 102.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Part headings not law—2003 c 196:** See note following RCW 46.16.700.

**46.16.725 Board—Powers and duties—Moratorium on issuance of special plates.** (1) The creation of the board does not in any way preclude the authority of the legislature to independently propose and enact special license plate legislation.

(2) The board must review and either approve or reject special license plate applications submitted by sponsoring organizations.

(3) Duties of the board include but are not limited to the following:

(a) Review and approve the annual financial reports submitted by sponsoring organizations with active special license plate series and present those annual financial reports to the senate and house transportation committees;

(b) Report annually to the senate and house transportation committees on the special license plate applications that were considered by the board;

(c) Issue approval and rejection notification letters to sponsoring organizations, the department, the chairs of the senate and house of representatives transportation committees, and the legislative sponsors identified in each application. The letters must be issued within seven days of making a determination on the status of an application;

(d) Review annually the number of plates sold for each special license plate series created after January 1, 2003. The board may submit a recommendation to discontinue a special license plate series to the chairs of the senate and house of representatives transportation committees;

(e) Provide policy guidance and directions to the department concerning the adoption of rules necessary to limit the number of special license plates that an organization or a governmental entity may apply for.

(4) In order to assess the effects and impact of the proliferation of special license plates, the legislature declares a temporary moratorium on the issuance of any additional plates until June 1, 2007. During this period of time, the special license plate review board created in RCW 46.16.705 and the department of licensing are prohibited from accepting, reviewing, processing, or approving any applications. Additionally, no special license plate may be enacted by the legislature during the moratorium, unless the proposed license plate has been approved by the board before February 15, 2005. [2005 c 319 § 119; 2005 c 210 § 7; 2003 c 196 § 103.]

**Reviser's note:** This section was amended by 2005 c 210 § 7 and by 2005 c 319 § 119, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Part headings not law—2003 c 196:** See note following RCW 46.16.700.

**46.16.745 Special license plates—Application requirements.** (1) A sponsoring organization meeting the requirements of RCW 46.16.735, applying for the creation of a special license plate to the special license plate review board must, on an application supplied by the department, provide the minimum application requirements in subsection (2) of this section.

(2) The sponsoring organization shall:

(a) Submit prepayment of all start-up costs associated with the creation and implementation of the special license plate in an amount determined by the department. The department shall place this money into the special license plate applicant trust account created under \*RCW 46.16.755(4);

(b) Provide a proposed license plate design;

(c) Provide a marketing strategy outlining short and long-term marketing plans for each special license plate and a financial analysis outlining the anticipated revenue and the

planned expenditures of the revenues derived from the sale of the special license plate;

(d) Provide a signature of a legislative sponsor and proposed legislation creating the special license plate;

(e) Provide proof of organizational qualifications as determined by the department as provided for in RCW 46.16.735;

(f) Provide signature sheets that include signatures from individuals who intend to purchase the special license plate and the number of plates each individual intends to purchase. The sheets must reflect a minimum of three thousand five hundred intended purchases of the special license plate.

(3) After an application is approved by the special license plate review board, the application need not be reviewed again by the board for a period of three years. [2005 c 210 § 8; 2003 c 196 § 301.]

**\*Reviser's note:** The special license plate applicant trust account is created in RCW 46.16.755(3).

**Part headings not law—2003 c 196:** See note following RCW 46.16.700.

## Chapter 46.17 RCW VEHICLE WEIGHT FEES

### Sections

- 46.17.010 Vehicle weight fee—Motor vehicles, except motor homes. *(Effective January 1, 2006.)*
- 46.17.020 Vehicle weight fee—Motor homes. *(Effective January 1, 2006.)*

**46.17.010 Vehicle weight fee—Motor vehicles, except motor homes. (Effective January 1, 2006.)** (1) There shall be paid and collected annually for motor vehicles subject to the fee under RCW 46.16.0621, except motor homes, a vehicle weight fee. The amount of the fee shall be based upon the vehicle scale weight, which is correlated with vehicle size and roadway lane usage. Fees imposed under this section must be used for transportation purposes, and shall not be used for the general support of state government. The vehicle weight fee shall be that portion of the fee as reflected on the scale weight set forth in schedule B provided in RCW 46.16.070 that is in excess of the fee imposed under RCW 46.16.0621. This fee is due at the time of initial and renewal of vehicle registration.

(2) If the resultant weight according to this section is not listed in schedule B provided in RCW 46.16.070, it shall be increased to the next higher weight pursuant to chapter 46.44 RCW.

(3) For the purpose of administering this section, the department shall rely on the vehicle empty scale weights as provided by vehicle manufacturers, or other sources defined by the department, to determine the weight of each vehicle. The department shall adopt rules for determining weight for vehicles without manufacturer empty scale weights.

(4) The vehicle weight fee under this section is imposed to provide funds to mitigate the impact of vehicle loads on the state roads and highways and is separate and distinct from other vehicle license fees. Proceeds from the fee may be used for transportation purposes, or for facilities and activities that reduce the number of vehicles or load weights on the state roads and highways.

(5) The vehicle weight fee collected under this section shall be deposited as follows:

(a) On July 1, 2006, six million dollars shall be deposited into the freight mobility investment account created in RCW 46.68.300, and the remainder collected from January 1, 2006, through June 30, 2006, shall be deposited into the multimodal transportation account;

(b) Beginning July 1, 2007, and every July 1st thereafter, three million dollars shall be deposited into the freight mobility investment account created in RCW 46.68.300, and the remainder shall be deposited into the multimodal transportation account. [2005 c 314 § 201.]

**Effective dates—2005 c 314 §§ 110 and 201-206:** "(1) Section 110 of this act takes effect July 1, 2006.

(2) Sections 201 through 206 of this act take effect January 1, 2006." [2005 c 314 § 403.]

**Application—2005 c 314 §§ 201-206, 301, and 302:** "Sections 201 through 206, 301, and 302 of this act apply to vehicle registrations that are due or become due on or after January 1, 2006." [2005 c 314 § 402.]

**Part headings not law—2005 c 314:** "Part headings used in this act are not part of the law." [2005 c 314 § 407.]

**46.17.020 Vehicle weight fee—Motor homes. (Effective January 1, 2006.)** In addition to any other fees or charges, there shall be paid and collected annually for motor homes a vehicle weight fee of seventy-five dollars. This fee is due at the time of initial and renewal of vehicle registration. The fee collected under this section shall be deposited in the multimodal transportation account. [2005 c 314 § 202.]

**Effective dates—2005 c 314 §§ 110 and 201-206:** See note following RCW 46.17.010.

**Application—2005 c 314 §§ 201-206, 301, and 302:** See note following RCW 46.17.010.

**Part headings not law—2005 c 314:** See note following RCW 46.17.020.

## Chapter 46.20 RCW

### DRIVERS' LICENSES—IDENTICARDS

#### Sections

46.20.041	Persons with physical or mental disabilities or diseases. (Effective July 1, 2006.)
46.20.049	Commercial driver's license—Additional fee, disposition.
46.20.055	Instruction permit.
46.20.070	Juvenile agricultural driving permit.
46.20.117	Identicards.
46.20.118	Negative file. (Effective January 1, 2006, until July 1, 2006.)
46.20.118	Negative file. (Effective July 1, 2006.)
46.20.120	Examinations—Waiver—Renewals—Fees.
46.20.125	Waiver—Agreement with other jurisdictions.
46.20.126	Rules.
46.20.155	Voter registration—Services. (Effective January 1, 2006.)
46.20.245	Mandatory revocation—Notice—Administrative, judicial review—Rules—Application.
46.20.265	Juvenile driving privileges—Revocation for alcohol or drug violations.
46.20.270	Conviction of offense requiring withholding driving privilege—Procedures, records, reporting, definition.
46.20.285	Offenses requiring revocation.
46.20.286	Adoption of procedures.
46.20.289	Suspension for failure to respond, appear, etc.
46.20.308	Implied consent—Test refusal—Procedures.
46.20.311	Duration of license sanctions—Reissuance or renewal.
46.20.324	Persons not entitled to interview or hearing.
46.20.334	Appeal to superior court.
46.20.750	Circumventing ignition interlock—Penalty.

[2005 RCW Supp—page 570]

**46.20.041 Persons with physical or mental disabilities or diseases. (Effective July 1, 2006.)** (1) If the department has reason to believe that a person is suffering from a physical or mental disability or disease that may affect that person's ability to drive a motor vehicle, the department must evaluate whether the person is able to safely drive a motor vehicle. As part of the evaluation:

(a) The department shall permit the person to demonstrate personally that notwithstanding the disability or disease he or she is able to safely drive a motor vehicle.

(b) The department may require the person to obtain a statement signed by a licensed physician or other proper authority designated by the department certifying the person's condition.

(i) The statement is for the confidential use of the director and the chief of the Washington state patrol and for other public officials designated by law. It is exempt from public inspection and copying notwithstanding chapter 42.56 RCW.

(ii) The statement may not be offered as evidence in any court except when appeal is taken from the order of the director canceling or withholding a person's driving privilege. However, the department may make the statement available to the director of the department of retirement systems for use in determining eligibility for or continuance of disability benefits and it may be offered and admitted as evidence in any administrative proceeding or court action concerning the disability benefits.

(2) On the basis of the evaluation the department may:

(a) Issue or renew a driver's license to the person without restrictions;

(b) Cancel or withhold the driving privilege from the person; or

(c) Issue a restricted driver's license to the person. The restrictions must be suitable to the licensee's driving ability. The restrictions may include:

(i) Special mechanical control devices on the motor vehicle operated by the licensee;

(ii) Limitations on the type of motor vehicle that the licensee may operate; or

(iii) Other restrictions determined by the department to be appropriate to assure the licensee's safe operation of a motor vehicle.

(3) The department may either issue a special restricted license or may set forth the restrictions upon the usual license form.

(4) The department may suspend or revoke a restricted license upon receiving satisfactory evidence of any violation of the restrictions. In that event the licensee is entitled to a driver improvement interview and a hearing as provided by RCW 46.20.322 or 46.20.328.

(5) Operating a motor vehicle in violation of the restrictions imposed in a restricted license is a traffic infraction. [2005 c 274 § 306; 1999 c 274 § 12; 1999 c 6 § 9; 1986 c 176 § 1; 1979 ex.s. c 136 § 54; 1979 c 61 § 2; 1965 ex.s. c 121 § 5.]

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

**Intent—1999 c 6:** See note following RCW 46.04.168.

**Effective date—Severability—1979 ex.s. c 136:** See notes following RCW 46.63.010.

**46.20.049 Commercial driver's license—Additional fee, disposition.** There shall be an additional fee for issuing any class of commercial driver's license in addition to the prescribed fee required for the issuance of the original driver's license. The additional fee for each class shall be thirty dollars for the original commercial driver's license or subsequent renewals. If the commercial driver's license is renewed or extended for a period other than five years, the fee for each class shall be six dollars for each year that the commercial driver's license is renewed or extended. The fee shall be deposited in the highway safety fund. [2005 c 314 § 309; 1999 c 308 § 4; 1989 c 178 § 21; 1985 ex.s. c 1 § 7; 1969 ex.s. c 68 § 3; 1967 ex.s. c 20 § 4. Formerly RCW 46.20.470.]

**Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401:** See note following RCW 46.68.290.

**Part headings not law—2005 c 314:** See note following RCW 46.17.010.

**Effective date—1999 c 308:** See note following RCW 46.20.120.

**Severability—Effective dates—1989 c 178:** See RCW 46.25.900 and 46.25.901.

**Effective date—1985 ex.s. c 1:** See note following RCW 46.20.070.

**Effective date—1967 ex.s. c 20:** "Sections 1, 3, and 4 of this amendatory act shall be effective January 1, 1968." [1967 ex.s. c 20 § 5.]

**46.20.055 Instruction permit. (1) Driver's instruction permit.** The department may issue a driver's instruction permit with or without a photograph to an applicant who has successfully passed all parts of the examination other than the driving test, provided the information required by RCW 46.20.091, paid a fee of twenty dollars, and meets the following requirements:

(a) Is at least fifteen and one-half years of age; or

(b) Is at least fifteen years of age and:

(i) Has submitted a proper application; and

(ii) Is enrolled in a traffic safety education program offered, approved, and accredited by the superintendent of public instruction or offered by a driver training school licensed and inspected by the department of licensing under chapter 46.82 RCW, that includes practice driving.

**(2) Waiver of written examination for instruction permit.** The department may waive the written examination, if, at the time of application, an applicant is enrolled in:

(a) A traffic safety education course as defined by RCW 28A.220.020(2); or

(b) A course of instruction offered by a licensed driver training school as defined by RCW 46.82.280(1).

The department may require proof of registration in such a course as it deems necessary.

**(3) Effect of instruction permit.** A person holding a driver's instruction permit may drive a motor vehicle, other than a motorcycle, upon the public highways if:

(a) The person has immediate possession of the permit; and

(b) An approved instructor, or a licensed driver with at least five years of driving experience, occupies the seat beside the driver.

**(4) Term of instruction permit.** A driver's instruction permit is valid for one year from the date of issue.

(a) The department may issue one additional one-year permit.

(b) The department may issue a third driver's permit if it finds after an investigation that the permittee is diligently seeking to improve driving proficiency.

(c) A person applying to renew an instruction permit must submit the application to the department in person. [2005 c 314 § 303; 2004 c 249 § 3. Prior: 2002 c 352 § 10; 2002 c 195 § 2; 1999 c 274 § 13; 1999 c 6 § 11; 1990 c 250 § 34; 1986 c 17 § 1; 1985 c 234 § 1; 1981 c 260 § 10; prior: 1979 c 63 § 1; 1979 c 61 § 3; 1969 ex.s. c 218 § 8; 1965 ex.s. c 121 § 7.]

**Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401:** See note following RCW 46.68.290.

**Part headings not law—2005 c 314:** See note following RCW 46.17.010.

**Effective dates—2002 c 352:** See note following RCW 46.09.070.

**Intent—1999 c 6:** See note following RCW 46.04.168.

**Severability—1990 c 250:** See note following RCW 46.16.301.

**46.20.070 Juvenile agricultural driving permit. (1) Agricultural driving permit authorized.** The director may issue a juvenile agricultural driving permit to a person under the age of eighteen years if:

(a) The application is signed by the applicant and the applicant's father, mother, or legal guardian;

(b) The applicant has passed the driving examination required by RCW 46.20.120;

(c) The department has investigated the applicant's need for the permit and determined that the need justifies issuance;

(d) The department has determined the applicant is capable of operating a motor vehicle without endangering himself or herself or other persons and property; and

(e) The applicant has paid a fee of twenty dollars.

The permit must contain a photograph of the person.

**(2) Effect of agricultural driving permit.** (a) The permit authorizes the holder to:

(i) Drive a motor vehicle on the public highways of this state in connection with farm work. The holder may drive only within a restricted farming locality described on the permit; and

(ii) Participate in the classroom portion of a traffic safety education course authorized under RCW 28A.220.030 or the classroom portion of a traffic safety education course offered by a driver training school licensed and inspected by the department of licensing under chapter 46.82 RCW offered in the community where the holder resides.

(b) The director may transfer the permit from one farming locality to another. A transfer is not a renewal of the permit.

**(3) Term and renewal of agricultural driving permit.** An agricultural driving permit expires one year from the date of issue.

(a) A person under the age of eighteen who holds a permit may renew the permit by paying a fee of fifteen dollars.

(b) A person applying to renew an agricultural driving permit must submit the application to the department in person.

(c) An agricultural driving permit is invalidated when a permittee attains age eighteen. In order to drive a motor vehicle on a highway he or she must obtain a motor vehicle driver's license under this chapter.

(4) **Suspension, revocation, or cancellation.** The director has sole discretion to suspend, revoke, or cancel a juvenile agricultural driving permit if:

(a) The permittee has been found to have committed an offense that requires mandatory suspension or revocation of a driver's license; or

(b) The director is satisfied that the permittee has violated the permit's restrictions. [2005 c 314 § 304; 2004 c 249 § 4. Prior: 2002 c 352 § 11; 2002 c 195 § 3; 1999 c 6 § 13; 1997 c 82 § 1; 1985 ex.s. c 1 § 1; 1979 c 61 § 4; 1969 ex.s. c 218 § 9; 1969 ex.s. c 170 § 12; 1967 c 32 § 27; 1963 c 39 § 9; 1961 c 12 § 46.20.070; prior: 1947 c 158 § 1, part; 1937 c 188 § 45, part; Rem. Supp. 1947 § 6312-45, part.]

**Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401:** See note following RCW 46.68.290.

**Part headings not law—2005 c 314:** See note following RCW 46.17.010.

**Effective dates—2002 c 352:** See note following RCW 46.09.070.

**Intent—1999 c 6:** See note following RCW 46.04.168.

**Effective date—1985 ex.s. c 1:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985." [1985 ex.s. c 1 § 14.]

**46.20.117 Identicators. (1) Issuance.** The department shall issue an identicator, containing a picture, if the applicant:

(a) Does not hold a valid Washington driver's license;

(b) Proves his or her identity as required by RCW 46.20.035; and

(c) Pays the required fee. The fee is twenty dollars unless an applicant is a recipient of continuing public assistance grants under Title 74 RCW, who is referred in writing by the secretary of social and health services. For those persons the fee must be the actual cost of production of the identicator.

(2) **Design and term.** The identicator must:

(a) Be distinctly designed so that it will not be confused with the official driver's license; and

(b) Expire on the fifth anniversary of the applicant's birthday after issuance.

(3) **Renewal.** An application for identicator renewal may be submitted by means of:

(a) Personal appearance before the department; or

(b) Mail or electronic commerce, if permitted by rule of the department and if the applicant did not renew his or her identicator by mail or by electronic commerce when it last expired. However, the department may accept an application for renewal of an identicator submitted by means of mail or electronic commerce only if specific authority and funding is provided for this purpose by June 30, 2004, in the omnibus transportation appropriations act.

An identicator may not be renewed by mail or by electronic commerce unless the renewal issued by the department includes a photograph of the identicator holder.

(4) **Cancellation.** The department may cancel an identicator if the holder of the identicator used the card or allowed others to use the card in violation of RCW 46.20.0921. [2005 c 314 § 305; 2004 c 249 § 5; 2002 c 352 § 12; 1999 c 274 § 15; 1999 c 6 § 18; 1993 c 452 § 3; 1986 c 15 § 1; 1985 ex.s.

c 1 § 3; 1985 c 212 § 1; 1981 c 92 § 2; 1971 ex.s. c 65 § 1; 1969 ex.s. c 155 § 4.]

**Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401:** See note following RCW 46.68.290.

**Part headings not law—2005 c 314:** See note following RCW 46.17.010.

**Effective dates—2002 c 352:** See note following RCW 46.09.070.

**Intent—1999 c 6:** See note following RCW 46.04.168.

**Effective date—1985 ex.s. c 1:** See note following RCW 46.20.070.

**Purpose—1971 ex.s. c 65:** "The efficient and effective operation and administration of state government affects the health, safety, and welfare of the people of this state and it is the intent and purpose of this act to promote the health, safety, and welfare of the people by improving the operation and administration of state government." [1971 ex.s. c 65 § 2.]

**Effective date—Purpose—1969 ex.s. c 155:** See notes following RCW 46.20.118.

**46.20.118 Negative file. (Effective January 1, 2006, until July 1, 2006.)** The department shall maintain a negative file. It shall contain negatives of all pictures taken by the department of licensing as authorized by RCW 46.20.070 through 46.20.119. Negatives in the file shall not be available for public inspection and copying under chapter 42.17 RCW. The department may make the file available to official governmental enforcement agencies to assist in the investigation by the agencies of suspected criminal activity. The department shall make the file available to the office of the secretary of state, at the expense of the secretary of state, to assist in maintenance of the statewide voter registration data base. The department may also provide a print to the driver's next of kin in the event the driver is deceased. [2005 c 246 § 23; 1990 c 250 § 37; 1981 c 22 § 1; 1979 c 158 § 149; 1969 ex.s. c 155 § 5.]

**Effective date—2005 c 246:** See note following RCW 10.64.140.

**Severability—1990 c 250:** See note following RCW 46.16.301.

**Purpose—1969 ex.s. c 155:** "The identification of the injured or the seriously ill is often difficult. The need for an identification file to facilitate use by proper law enforcement officers has hampered law enforcement. Personal identification for criminal, personal and commercial reasons is becoming most important at a time when it is increasingly difficult to accomplish. The legislature finds that the public health and welfare requires a standard and readily recognizable means of identification of each person living within the state. The legislature further finds that the need for an identification file by law enforcement agencies must be met. The use of photographic drivers' licenses will greatly aid the problem, but some means of identification must be provided for persons who do not possess a driver's license. The purpose of this 1969 amendatory act is to provide for the positive identification of persons, both through an expanded use of drivers' licenses and also through issue of personal identification cards for nondrivers." [1969 ex.s. c 155 § 1.]

**Effective date—1969 ex.s. c 155:** "This 1969 amendatory act shall take effect September 1, 1969." [1969 ex.s. c 155 § 7.]

*Voter registration data base: RCW 29A.08.651.*

**46.20.118 Negative file. (Effective July 1, 2006.)** The department shall maintain a negative file. It shall contain negatives of all pictures taken by the department of licensing as authorized by RCW 46.20.070 through 46.20.119. Negatives in the file shall not be available for public inspection and copying under chapter 42.56 RCW. The department may make the file available to official governmental enforcement agencies to assist in the investigation by the agencies of suspected criminal activity. The department shall make the file available to the office of the secretary of state, at the expense of the secretary of state, to assist in maintenance of the state-



wide voter registration data base. The department may also provide a print to the driver's next of kin in the event the driver is deceased. [2005 c 274 § 307; 2005 c 246 § 23; 1990 c 250 § 37; 1981 c 22 § 1; 1979 c 158 § 149; 1969 ex.s. c 155 § 5.]

**Reviser's note:** This section was amended by 2005 c 246 § 23 and by 2005 c 274 § 307, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

**Effective date—2005 c 246:** See note following RCW 10.64.140.

**Severability—1990 c 250:** See note following RCW 46.16.301.

**Purpose—1969 ex.s. c 155:** "The identification of the injured or the seriously ill is often difficult. The need for an identification file to facilitate use by proper law enforcement officers has hampered law enforcement. Personal identification for criminal, personal and commercial reasons is becoming most important at a time when it is increasingly difficult to accomplish. The legislature finds that the public health and welfare requires a standard and readily recognizable means of identification of each person living within the state. The legislature further finds that the need for an identification file by law enforcement agencies must be met. The use of photographic drivers' licenses will greatly aid the problem, but some means of identification must be provided for persons who do not possess a driver's license. The purpose of this 1969 amendatory act is to provide for the positive identification of persons, both through an expanded use of drivers' licenses and also through issue of personal identification cards for nondrivers." [1969 ex.s. c 155 § 1.]

**Effective date—1969 ex.s. c 155:** "This 1969 amendatory act shall take effect September 1, 1969." [1969 ex.s. c 155 § 7.]

*Voter registration data base: RCW 29A.08.651.*

**46.20.120 Examinations—Waiver—Renewals—Fees.** An applicant for a new or renewed driver's license must successfully pass a driver licensing examination to qualify for a driver's license. The department shall give examinations at places and times reasonably available to the people of this state.

(1) **Waiver.** The department may waive:

(a) All or any part of the examination of any person applying for the renewal of a driver's license unless the department determines that the applicant is not qualified to hold a driver's license under this title; or

(b) All or any part of the examination involving operating a motor vehicle if the applicant:

(i) Surrenders a valid driver's license issued by the person's previous home state; or

(ii) Provides for verification a valid driver's license issued by a foreign driver licensing jurisdiction with which the department has an informal agreement under RCW 46.20.125; and

(iii) Is otherwise qualified to be licensed.

(2) **Fee.** Each applicant for a new license must pay an examination fee of twenty dollars.

(a) The examination fee is in addition to the fee charged for issuance of the license.

(b) "New license" means a license issued to a driver:

(i) Who has not been previously licensed in this state; or

(ii) Whose last previous Washington license has been expired for more than five years.

(3) An application for driver's license renewal may be submitted by means of:

(a) Personal appearance before the department; or

(b) Mail or electronic commerce, if permitted by rule of the department and if the applicant did not renew his or her

license by mail or by electronic commerce when it last expired. However, the department may accept an application for renewal of a driver's license submitted by means of mail or electronic commerce only if specific authority and funding is provided for this purpose by June 30, 2004, in the omnibus transportation appropriations act.

(4) A person whose license expired or will expire while he or she is living outside the state, may:

(a) Apply to the department to extend the validity of his or her license for no more than twelve months. If the person establishes to the department's satisfaction that he or she is unable to return to Washington before the date his or her license expires, the department shall extend the person's license. The department may grant consecutive extensions, but in no event may the cumulative total of extensions exceed twelve months. An extension granted under this section does not change the expiration date of the license for purposes of RCW 46.20.181. The department shall charge a fee of five dollars for each license extension;

(b) Apply to the department to renew his or her license by mail or, if permitted by rule of the department, by electronic commerce even if subsection (3)(b) of this section would not otherwise allow renewal by that means. If the person establishes to the department's satisfaction that he or she is unable to return to Washington within twelve months of the date that his or her license expires, the department shall renew the person's license by mail or, if permitted by rule of the department, by electronic commerce.

(5) If a qualified person submits an application for renewal under subsection (3)(b) or (4)(b) of this section, he or she is not required to pass an examination nor provide an updated photograph. A license renewed by mail or by electronic commerce that does not include a photograph of the licensee must be labeled "not valid for identification purposes." [2005 c 314 § 306; 2005 c 61 § 2; 2004 c 249 § 6; 2002 c 352 § 13. Prior: 1999 c 308 § 1; 1999 c 199 § 3; 1999 c 6 § 19; 1990 c 9 § 1; 1988 c 88 § 2; 1985 ex.s. c 1 § 4; 1979 c 61 § 6; 1975 1st ex.s. c 191 § 2; 1967 c 167 § 4; 1965 ex.s. c 121 § 9; 1961 c 12 § 46.20.120; prior: 1959 c 284 § 1; 1953 c 221 § 2; 1937 c 188 § 55, part; RRS § 6312-55, part.]

**Reviser's note:** This section was amended by 2005 c 61 § 2 and by 2005 c 314 § 306, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401:** See note following RCW 46.68.290.

**Part headings not law—2005 c 314:** See note following RCW 46.17.010.

**Intent—2005 c 61:** See note following RCW 46.20.125.

**Effective dates—2002 c 352:** See note following RCW 46.09.070.

**Effective date—1999 c 308:** "Sections 1 through 5 of this act take effect July 1, 2000." [1999 c 308 § 6.]

**Effective date—1999 c 199:** See note following RCW 46.20.027.

**Intent—1999 c 6:** See note following RCW 46.04.168.

**Effective date—1985 ex.s. c 1:** See note following RCW 46.20.070.

**46.20.125 Waiver—Agreement with other jurisdictions.** (1) The department may enter into an informal agreement with one or more other licensing jurisdictions to waive the requirement for the examination involving operating a

motor vehicle by licensed drivers, age eighteen years or older, from that jurisdiction.

(2) The department may only enter into an agreement with a jurisdiction if:

(a) The jurisdiction has procedures in place to verify the validity of the drivers' licenses it issues; and

(b) The jurisdiction has agreed to waive all or any part of the driver's license examination requirements for Washington licensed drivers applying for a driver's license in that jurisdiction. [2005 c 61 § 3.]

**Intent—2005 c 61:** "The legislature recognizes the importance of global markets to our state and national economy. As a leader among states in international commerce, Washington houses many multinational corporations. Competition among states for foreign businesses and personnel is fierce and it is necessary to Washington's future economic viability to eliminate a significant regulatory barrier to efficient personnel exchange, resulting in a more attractive business climate in Washington. The legislature recognizes that more than twenty other states have entered into informal reciprocal agreements with other nations to waive driver's license testing requirements in order to ease the transition of personnel to and from those states. By removing an unnecessary barrier to efficient personnel mobility it is the intent of the legislature to strengthen and diversify Washington's economy." [2005 c 61 § 1.]

**46.20.126 Rules.** The department may make rules to carry out the purposes of RCW 46.20.120 and 46.20.125. [2005 c 61 § 4.]

**46.20.155 Voter registration—Services. (Effective January 1, 2006.)** (1) Before issuing an original license or identicard or renewing a license or identicard under this chapter, the licensing agent shall determine if the applicant wants to register to vote or transfer his or her voter registration by asking the following question:

"Do you want to register to vote or transfer your voter registration?"

If the applicant chooses to register or transfer a registration, the agent shall ask the following:

(1) "Are you a United States citizen?"

(2) "Are you or will you be eighteen years of age on or before the next election?"

If the applicant answers in the affirmative to both questions, the agent shall then provide the applicant with a voter registration form and instructions and shall record that the applicant has requested to register to vote or transfer a voter registration. If the applicant answers in the negative to either question, the agent shall not provide the applicant with a voter registration form.

(2) The department shall establish a procedure that substantially meets the requirements of subsection (1) of this section when permitting an applicant to renew a license or identicard by mail or by electronic commerce. [2005 c 246 § 24; 2004 c 249 § 7; 2001 c 41 § 14; 1990 c 143 § 6.]

**Effective date—2005 c 246:** See note following RCW 10.64.140.

**Effective date—1990 c 143:** See note following RCW 29A.08.340.

*Voter registration with driver licensing: RCW 29A.08.340 and 29A.08.350.*

**46.20.245 Mandatory revocation—Notice—Administrative, judicial review—Rules—Application.** (1) Whenever the department proposes to withhold the driving privilege

of a person or disqualify a person from operating a commercial motor vehicle and this action is made mandatory by the provisions of this chapter or other law, the department must give notice to the person in writing by posting in the United States mail, appropriately addressed, postage prepaid, or by personal service. Notice by mail is given upon deposit in the United States mail. Notice given under this subsection must specify the date upon which the driving privilege is to be withheld which shall not be less than forty-five days after the original notice is given.

(2) Within fifteen days after notice has been given to a person under subsection (1) of this section, the person may request in writing an administrative review before the department. If the request is mailed, it must be postmarked within fifteen days after the date the department has given notice. If a person fails to request an administrative review within fifteen days after the date the department gives notice, the person is considered to have defaulted and loses his or her right to an administrative review unless the department finds good cause for a request after the fifteen-day period.

(a) An administrative review under this subsection shall consist solely of an internal review of documents and records submitted or available to the department, unless the person requests an interview before the department, in which case all or any part of the administrative review may, at the discretion of the department, be conducted by telephone or other electronic means.

(b) The only issues to be addressed in the administrative review are:

(i) Whether the records relied on by the department identify the correct person; and

(ii) Whether the information transmitted from the court or other reporting agency or entity regarding the person accurately describes the action taken by the court or other reporting agency or entity.

(c) For the purposes of this section, the notice received from a court or other reporting agency or entity, regardless of form or format, is prima facie evidence that the information from the court or other reporting agency or entity regarding the person is accurate. A person requesting administrative review has the burden of showing by a preponderance of the evidence that the person is not subject to the withholding of the driving privilege.

(d) The action subject to the notification requirements of subsection (1) of this section shall be stayed during the administrative review process.

(e) Judicial review of a department order affirming the action subject to the notification requirements of subsection (1) of this section after an administrative review shall be available in the same manner as provided in RCW 46.20.308(9). The department shall certify its record to the court within thirty days after service upon the department of the petition for judicial review. The action subject to the notification requirements of subsection (1) of this section shall not automatically be stayed during the judicial review. If judicial relief is sought for a stay or other temporary remedy from the department's action, the court shall not grant relief unless the court finds that the appellant is likely to prevail in the appeal and that without a stay the appellant will suffer irreparable injury.

(3) The department may adopt rules that are considered necessary or convenient by the department for purposes of administering this section, including, but not limited to, rules regarding expedited procedures for issuing orders and expedited notice procedures.

(4) This section does not apply where an opportunity for an informal settlement, driver improvement interview, or formal hearing is otherwise provided by law or rule of the department. [2005 c 288 § 1.]

**Effective date—2005 c 288:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 288 § 9.]

**46.20.265 Juvenile driving privileges—Revocation for alcohol or drug violations.** (1) In addition to any other authority to revoke driving privileges under this chapter, the department shall revoke all driving privileges of a juvenile when the department receives notice from a court pursuant to RCW 9.41.040(5), 13.40.265, 66.44.365, 69.41.065, 69.50.420, 69.52.070, or a substantially similar municipal ordinance adopted by a local legislative authority, or from a diversion unit pursuant to RCW 13.40.265.

(2) The driving privileges of the juvenile revoked under subsection (1) of this section shall be revoked in the following manner:

(a) Upon receipt of the first notice, the department shall impose a revocation for one year, or until the juvenile reaches seventeen years of age, whichever is longer.

(b) Upon receipt of a second or subsequent notice, the department shall impose a revocation for two years or until the juvenile reaches eighteen years of age, whichever is longer.

(c) Each offense for which the department receives notice shall result in a separate period of revocation. All periods of revocation imposed under this section that could otherwise overlap shall run consecutively up to the juvenile's twenty-first birthday, and no period of revocation imposed under this section shall begin before the expiration of all other periods of revocation imposed under this section or other law. Periods of revocation imposed consecutively under this section shall not extend beyond the juvenile's twenty-first birthday.

(3)(a) If the department receives notice from a court that the juvenile's privilege to drive should be reinstated, the department shall immediately reinstate any driving privileges that have been revoked under this section if the minimum term of revocation as specified in RCW 13.40.265(1)(c), 66.44.365(3), 69.41.065(3), 69.50.420(3), 69.52.070(3), or similar ordinance has expired, and subject to subsection (2)(c) of this section.

(b) The juvenile may seek reinstatement of his or her driving privileges from the department when the juvenile reaches the age of twenty-one. A notice from the court reinstating the juvenile's driving privilege shall not be required if reinstatement is pursuant to this subsection.

(4)(a) If the department receives notice pursuant to RCW 13.40.265(2)(b) from a diversion unit that a juvenile has completed a diversion agreement for which the juvenile's driving privileges were revoked, the department shall reinstate any driving privileges revoked under this section as pro-

vided in (b) of this subsection, subject to subsection (2)(c) of this section.

(b) If the diversion agreement was for the juvenile's first violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the department shall not reinstate the juvenile's privilege to drive until the later of ninety days after the date the juvenile turns sixteen or ninety days after the juvenile entered into a diversion agreement for the offense. If the diversion agreement was for the juvenile's second or subsequent violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the department shall not reinstate the juvenile's privilege to drive until the later of the date the juvenile turns seventeen or one year after the juvenile entered into the second or subsequent diversion agreement. [2005 c 288 § 2; 2003 c 20 § 1; 1998 c 41 § 2; 1994 sp.s. c 7 § 439; 1991 c 260 § 1; 1989 c 271 § 117; 1988 c 148 § 7.]

**Effective date—2005 c 288:** See note following RCW 46.20.245.

**Intent—Construction—1998 c 41:** "It is the intent and purpose of this act to clarify procedural issues and make technical corrections to statutes relating to drivers' licenses. This act should not be construed as changing existing public policy." [1998 c 41 § 1.]

**Effective date—1998 c 41:** "This act takes effect July 1, 1998." [1998 c 41 § 15.]

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

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

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

**Legislative finding—Severability—1988 c 148:** See notes following RCW 13.40.265.

**46.20.270 Conviction of offense requiring withholding driving privilege—Procedures, records, reporting, definition.** (1) Whenever any person is convicted of any offense for which this title makes mandatory the withholding of the driving privilege of such person by the department, the court in which such conviction is had shall forthwith mark the person's Washington state driver's license or permit to drive, if any, in a manner authorized by the department. A valid driver's license or permit to drive marked under this subsection shall remain in effect until the person's driving privilege is withheld by the department pursuant to notice given under RCW 46.20.245, unless the license or permit expires or otherwise becomes invalid prior to the effective date of this action. Perfection of notice of appeal shall stay the execution of sentence including the withholding of the driving privilege.

(2) Every court having jurisdiction over offenses committed under this chapter, or any other act of this state or municipal ordinance adopted by a local authority regulating the operation of motor vehicles on highways, or any federal authority having jurisdiction over offenses substantially the same as those set forth in Title 46 RCW which occur on federal installations within this state, shall forward to the department within ten days of a forfeiture of bail or collateral deposited to secure the defendant's appearance in court, a payment of a fine or penalty, a plea of guilty or a finding of guilt, or a finding that any person has committed a traffic infraction an abstract of the court record in the form prescribed by rule of the supreme court, showing the conviction of any person or the finding that any person has committed a

traffic infraction in said court for a violation of any said laws other than regulations governing standing, stopping, parking, and pedestrian offenses.

(3) Every state agency or municipality having jurisdiction over offenses committed under this chapter, or under any other act of this state or municipal ordinance adopted by a state or local authority regulating the operation of motor vehicles on highways, may forward to the department within ten days of failure to respond, failure to pay a penalty, failure to appear at a hearing to contest the determination that a violation of any statute, ordinance, or regulation relating to standing, stopping, parking, or other infraction issued under RCW 46.63.030(1)(d) has been committed, or failure to appear at a hearing to explain mitigating circumstances, an abstract of the citation record in the form prescribed by rule of the department, showing the finding by such municipality that two or more violations of laws governing standing, stopping, and parking or one or more other infractions issued under RCW 46.63.030(1)(d) have been committed and indicating the nature of the defendant's failure to act. Such violations or infractions may not have occurred while the vehicle is stolen from the registered owner or is leased or rented under a bona fide commercial vehicle lease or rental agreement between a lessor engaged in the business of leasing vehicles and a lessee who is not the vehicle's registered owner. The department may enter into agreements of reciprocity with the duly authorized representatives of the states for reporting to each other violations of laws governing standing, stopping, and parking.

(4) For the purposes of Title 46 RCW the term "conviction" means a final conviction in a state or municipal court or by any federal authority having jurisdiction over offenses substantially the same as those set forth in Title 46 RCW which occur on federal installations in this state, an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt on a traffic law violation charge, regardless of whether the imposition of sentence or sanctions are deferred or the penalty is suspended, but not including entry into a deferred prosecution agreement under chapter 10.05 RCW.

(5) For the purposes of Title 46 RCW the term "finding that a traffic infraction has been committed" means a failure to respond to a notice of infraction or a determination made by a court pursuant to this chapter. Payment of a monetary penalty made pursuant to RCW 46.63.070(2) is deemed equivalent to such a finding. [2005 c 288 § 3; 2004 c 231 § 5; 1990 2nd ex.s. c 1 § 402; 1990 c 250 § 42; 1982 1st ex.s. c 14 § 5; 1979 ex.s. c 136 § 58; 1979 c 61 § 7; 1977 ex.s. c 3 § 1; 1967 ex.s. c 145 § 55; 1965 ex.s. c 121 § 22; 1961 c 12 § 46.20.270. Prior: 1937 c 188 § 68; RRS § 6312-68; prior: 1923 c 122 § 2, part; 1921 c 108 § 9, part; RRS § 6371, part.]

**Effective date—2005 c 288:** See note following RCW 46.20.245.

**Severability—1990 2nd ex.s. c 1:** See note following RCW 82.14.300.

**Severability—1990 c 250:** See note following RCW 46.16.301.

**Effective date—Severability—1982 1st ex.s. c 14:** See notes following RCW 46.63.060.

**Effective date—Severability—1979 ex.s. c 136:** See notes following RCW 46.63.010.

**Severability—1967 ex.s. c 145:** See RCW 47.98.043.

[2005 RCW Supp—page 576]

**46.20.285 Offenses requiring revocation.** The department shall revoke the license of any driver for the period of one calendar year unless otherwise provided in this section, upon receiving a record of the driver's conviction of any of the following offenses, when the conviction has become final:

(1) For vehicular homicide the period of revocation shall be two years. The revocation period shall be tolled during any period of total confinement for the offense;

(2) Vehicular assault. The revocation period shall be tolled during any period of total confinement for the offense;

(3) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle, for the period prescribed in RCW 46.61.5055;

(4) Any felony in the commission of which a motor vehicle is used;

(5) Failure to stop and give information or render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another or resulting in damage to a vehicle that is driven or attended by another;

(6) Perjury or the making of a false affidavit or statement under oath to the department under Title 46 RCW or under any other law relating to the ownership or operation of motor vehicles;

(7) Reckless driving upon a showing by the department's records that the conviction is the third such conviction for the driver within a period of two years. [2005 c 288 § 4; 2001 c 64 § 6. Prior: 1998 c 207 § 4; 1998 c 41 § 3; 1996 c 199 § 5; 1990 c 250 § 43; 1985 c 407 § 2; 1984 c 258 § 324; 1983 c 165 § 16; 1983 c 165 § 15; 1965 ex.s. c 121 § 24.]

**Effective date—2005 c 288:** See note following RCW 46.20.245.

**Effective date—1998 c 207:** See note following RCW 46.61.5055.

**Intent—Construction—Effective date—1998 c 41:** See notes following RCW 46.20.265.

**Severability—1996 c 199:** See note following RCW 9.94A.505.

**Severability—1990 c 250:** See note following RCW 46.16.301.

**Effective dates—1985 c 407:** See note following RCW 46.04.480.

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

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

**Legislative finding, intent—Effective dates—Severability—1983 c 165:** See notes following RCW 46.20.308.

*Revocation of license for attempting to elude pursuing police vehicle: RCW 46.61.024.*

*Vehicular assault, penalty: RCW 46.61.522.*

*Vehicular homicide, penalty: RCW 46.61.520.*

**46.20.286 Adoption of procedures.** The department of licensing shall adopt procedures in cooperation with the administrative office of the courts and the department of corrections to implement RCW 46.20.285. [2005 c 282 § 47; 1996 c 199 § 6.]

**Severability—1996 c 199:** See note following RCW 9.94A.505.

**46.20.289 Suspension for failure to respond, appear, etc.** The department shall suspend all driving privileges of a person when the department receives notice from a court under RCW 46.63.070(6), 46.63.110(6), or 46.64.025 that the

person has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation, other than for a standing, stopping, or parking violation, provided that the traffic infraction or traffic offense is committed on or after July 1, 2005. A suspension under this section takes effect pursuant to the provisions of RCW 46.20.245, and remains in effect until the department has received a certificate from the court showing that the case has been adjudicated, and until the person meets the requirements of RCW 46.20.311. In the case of failure to respond to a traffic infraction issued under RCW 46.55.105, the department shall suspend all driving privileges until the person provides evidence from the court that all penalties and restitution have been paid. A suspension under this section does not take effect if, prior to the effective date of the suspension, the department receives a certificate from the court showing that the case has been adjudicated. [2005 c 288 § 5; 2002 c 279 § 4; 1999 c 274 § 1; 1995 c 219 § 2; 1993 c 501 § 1.]

**Effective date—2005 c 288:** See note following RCW 46.20.245.

**46.20.308 Implied consent—Test refusal—Procedures.** (1) Any person who operates a motor vehicle within this state is deemed to have given consent, subject to the provisions of RCW 46.61.506, to a test or tests of his or her breath or blood for the purpose of determining the alcohol concentration or presence of any drug in his or her breath or blood if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug or was in violation of RCW 46.61.503. Neither consent nor this section precludes a police officer from obtaining a search warrant for a person's breath or blood.

(2) The test or tests of breath shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or the person to have been driving or in actual physical control of a motor vehicle while having alcohol in a concentration in violation of RCW 46.61.503 in his or her system and being under the age of twenty-one. However, in those instances where the person is incapable due to physical injury, physical incapacity, or other physical limitation, of providing a breath sample or where the person is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility or where the officer has reasonable grounds to believe that the person is under the influence of a drug, a blood test shall be administered by a qualified person as provided in RCW 46.61.506(5). The officer shall inform the person of his or her right to refuse the breath or blood test, and of his or her right to have additional tests administered by any qualified person of his or her choosing as provided in RCW 46.61.506. The officer shall warn the driver, in substantially the following language, that:

(a) If the driver refuses to take the test, the driver's license, permit, or privilege to drive will be revoked or denied for at least one year; and

(b) If the driver refuses to take the test, the driver's refusal to take the test may be used in a criminal trial; and

(c) If the driver submits to the test and the test is administered, the driver's license, permit, or privilege to drive will be suspended, revoked, or denied for at least ninety days if the driver is age twenty-one or over and the test indicates the alcohol concentration of the driver's breath or blood is 0.08 or more, or if the driver is under age twenty-one and the test indicates the alcohol concentration of the driver's breath or blood is 0.02 or more, or if the driver is under age twenty-one and the driver is in violation of RCW 46.61.502 or 46.61.504.

(3) Except as provided in this section, the test administered shall be of the breath only. If an individual is unconscious or is under arrest for the crime of vehicular homicide as provided in RCW 46.61.520 or vehicular assault as provided in RCW 46.61.522, or if an individual is under arrest for the crime of driving while under the influence of intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest results from an accident in which there has been serious bodily injury to another person, a breath or blood test may be administered without the consent of the individual so arrested.

(4) Any person who is dead, unconscious, or who is otherwise in a condition rendering him or her incapable of refusal, shall be deemed not to have withdrawn the consent provided by subsection (1) of this section and the test or tests may be administered, subject to the provisions of RCW 46.61.506, and the person shall be deemed to have received the warnings required under subsection (2) of this section.

(5) If, following his or her arrest and receipt of warnings under subsection (2) of this section, the person arrested refuses upon the request of a law enforcement officer to submit to a test or tests of his or her breath or blood, no test shall be given except as authorized under subsection (3) or (4) of this section.

(6) If, after arrest and after the other applicable conditions and requirements of this section have been satisfied, a test or tests of the person's blood or breath is administered and the test results indicate that the alcohol concentration of the person's breath or blood is 0.08 or more if the person is age twenty-one or over, or 0.02 or more if the person is under the age of twenty-one, or the person refuses to submit to a test, the arresting officer or other law enforcement officer at whose direction any test has been given, or the department, where applicable, if the arrest results in a test of the person's blood, shall:

(a) Serve notice in writing on the person on behalf of the department of its intention to suspend, revoke, or deny the person's license, permit, or privilege to drive as required by subsection (7) of this section;

(b) Serve notice in writing on the person on behalf of the department of his or her right to a hearing, specifying the steps he or she must take to obtain a hearing as provided by subsection (8) of this section;

(c) Mark the person's Washington state driver's license or permit to drive, if any, in a manner authorized by the department;

(d) Serve notice in writing that the marked license or permit, if any, is a temporary license that is valid for sixty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or until the suspension, revocation, or denial of the person's license, permit, or privilege to drive is sustained at a hearing pursuant to subsection (8) of this section, whichever occurs first. No temporary license is valid to any greater degree than the license or permit that it replaces; and

(e) Immediately notify the department of the arrest and transmit to the department within seventy-two hours, except as delayed as the result of a blood test, a sworn report or report under a declaration authorized by RCW 9A.72.085 that states:

(i) That the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or was under the age of twenty-one years and had been driving or was in actual physical control of a motor vehicle while having an alcohol concentration in violation of RCW 46.61.503;

(ii) That after receipt of the warnings required by subsection (2) of this section the person refused to submit to a test of his or her blood or breath, or a test was administered and the results indicated that the alcohol concentration of the person's breath or blood was 0.08 or more if the person is age twenty-one or over, or was 0.02 or more if the person is under the age of twenty-one; and

(iii) Any other information that the director may require by rule.

(7) The department of licensing, upon the receipt of a sworn report or report under a declaration authorized by RCW 9A.72.085 under subsection (6)(e) of this section, shall suspend, revoke, or deny the person's license, permit, or privilege to drive or any nonresident operating privilege, as provided in RCW 46.20.3101, such suspension, revocation, or denial to be effective beginning sixty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or when sustained at a hearing pursuant to subsection (8) of this section, whichever occurs first.

(8) A person receiving notification under subsection (6)(b) of this section may, within thirty days after the notice has been given, request in writing a formal hearing before the department. The person shall pay a fee of two hundred dollars as part of the request. If the request is mailed, it must be postmarked within thirty days after receipt of the notification. Upon timely receipt of such a request for a formal hearing, including receipt of the required two hundred dollar fee, the department shall afford the person an opportunity for a hearing. The department may waive the required two hundred dollar fee if the person is an indigent as defined in RCW 10.101.010. Except as otherwise provided in this section, the hearing is subject to and shall be scheduled and conducted in accordance with RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest, except that all or part of the hearing may, at the discretion of the department, be conducted by telephone or other electronic means. The hearing shall be held within sixty days following the arrest or following the date notice has been given in the event notice is given by the department following a blood test,

unless otherwise agreed to by the department and the person, in which case the action by the department shall be stayed, and any valid temporary license marked under subsection (6)(c) of this section extended, if the person is otherwise eligible for licensing. For the purposes of this section, the scope of the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration of 0.02 or more if the person was under the age of twenty-one, whether the person was placed under arrest, and (a) whether the person refused to submit to the test or tests upon request of the officer after having been informed that such refusal would result in the revocation of the person's license, permit, or privilege to drive, or (b) if a test or tests were administered, whether the applicable requirements of this section were satisfied before the administration of the test or tests, whether the person submitted to the test or tests, or whether a test was administered without express consent as permitted under this section, and whether the test or tests indicated that the alcohol concentration of the person's breath or blood was 0.08 or more if the person was age twenty-one or over at the time of the arrest, or 0.02 or more if the person was under the age of twenty-one at the time of the arrest. The sworn report or report under a declaration authorized by RCW 9A.72.085 submitted by a law enforcement officer is prima facie evidence that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or the person had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration of 0.02 or more and was under the age of twenty-one and that the officer complied with the requirements of this section.

A hearing officer shall conduct the hearing, may issue subpoenas for the attendance of witnesses and the production of documents, and shall administer oaths to witnesses. The hearing officer shall not issue a subpoena for the attendance of a witness at the request of the person unless the request is accompanied by the fee required by RCW 5.56.010 for a witness in district court. The sworn report or report under a declaration authorized by RCW 9A.72.085 of the law enforcement officer and any other evidence accompanying the report shall be admissible without further evidentiary foundation and the certifications authorized by the criminal rules for courts of limited jurisdiction shall be admissible without further evidentiary foundation. The person may be represented by counsel, may question witnesses, may present evidence, and may testify. The department shall order that the suspension, revocation, or denial either be rescinded or sustained.

(9) If the suspension, revocation, or denial is sustained after such a hearing, the person whose license, privilege, or permit is suspended, revoked, or denied has the right to file a petition in the superior court of the county of arrest to review the final order of revocation by the department in the same manner as an appeal from a decision of a court of limited jurisdiction. Notice of appeal must be filed within thirty days

after the date the final order is served or the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ 1.1, or other statutes or rules referencing de novo review, the appeal shall be limited to a review of the record of the administrative hearing. The appellant must pay the costs associated with obtaining the record of the hearing before the hearing officer. The filing of the appeal does not stay the effective date of the suspension, revocation, or denial. A petition filed under this subsection must include the petitioner's grounds for requesting review. Upon granting petitioner's request for review, the court shall review the department's final order of suspension, revocation, or denial as expeditiously as possible. The review must be limited to a determination of whether the department has committed any errors of law. The superior court shall accept those factual determinations supported by substantial evidence in the record: (a) That were expressly made by the department; or (b) that may reasonably be inferred from the final order of the department. The superior court may reverse, affirm, or modify the decision of the department or remand the case back to the department for further proceedings. The decision of the superior court must be in writing and filed in the clerk's office with the other papers in the case. The court shall state the reasons for the decision. If judicial relief is sought for a stay or other temporary remedy from the department's action, the court shall not grant such relief unless the court finds that the appellant is likely to prevail in the appeal and that without a stay the appellant will suffer irreparable injury. If the court stays the suspension, revocation, or denial it may impose conditions on such stay.

(10)(a) If a person whose driver's license, permit, or privilege to drive has been or will be suspended, revoked, or denied under subsection (7) of this section, other than as a result of a breath or blood test refusal, and who has not committed an offense for which he or she was granted a deferred prosecution under chapter 10.05 RCW, petitions a court for a deferred prosecution on criminal charges arising out of the arrest for which action has been or will be taken under subsection (7) of this section, or notifies the department of licensing of the intent to seek such a deferred prosecution, then the license suspension or revocation shall be stayed pending entry of the deferred prosecution. The stay shall not be longer than one hundred fifty days after the date charges are filed, or two years after the date of the arrest, whichever time period is shorter. If the court stays the suspension, revocation, or denial, it may impose conditions on such stay. If the person is otherwise eligible for licensing, the department shall issue a temporary license, or extend any valid temporary license marked under subsection (6) of this section, for the period of the stay. If a deferred prosecution treatment plan is not recommended in the report made under RCW 10.05.050, or if treatment is rejected by the court, or if the person declines to accept an offered treatment plan, or if the person violates any condition imposed by the court, then the court shall immediately direct the department to cancel the stay and any temporary marked license or extension of a temporary license issued under this subsection.

(b) A suspension, revocation, or denial imposed under this section, other than as a result of a breath or blood test refusal, shall be stayed if the person is accepted for deferred prosecution as provided in chapter 10.05 RCW for the incident upon which the suspension, revocation, or denial is

based. If the deferred prosecution is terminated, the stay shall be lifted and the suspension, revocation, or denial reinstated. If the deferred prosecution is completed, the stay shall be lifted and the suspension, revocation, or denial canceled.

(c) The provisions of (b) of this subsection relating to a stay of a suspension, revocation, or denial and the cancellation of any suspension, revocation, or denial do not apply to the suspension, revocation, denial, or disqualification of a person's commercial driver's license or privilege to operate a commercial motor vehicle.

(11) When it has been finally determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this state has been suspended, revoked, or denied, the department shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he or she has a license. [2005 c 314 § 307; 2005 c 269 § 1. Prior: 2004 c 187 § 1; 2004 c 95 § 2; 2004 c 68 § 2; prior: 1999 c 331 § 2; 1999 c 274 § 2; prior: 1998 c 213 § 1; 1998 c 209 § 1; 1998 c 207 § 7; 1998 c 41 § 4; 1995 c 332 § 1; 1994 c 275 § 13; 1989 c 337 § 8; 1987 c 22 § 1; prior: 1986 c 153 § 5; 1986 c 64 § 1; 1985 c 407 § 3; 1983 c 165 § 2; 1983 c 165 § 1; 1981 c 260 § 11; prior: 1979 ex.s. c 176 § 3; 1979 ex.s. c 136 § 59; 1979 c 158 § 151; 1975 1st ex.s. c 287 § 4; 1969 c 1 § 1 (Initiative Measure No. 242, approved November 5, 1968).]

**Reviser's note:** This section was amended by 2005 c 269 § 1 and by 2005 c 314 § 307, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401:** See note following RCW 46.68.290.

**Part headings not law—2005 c 314:** See note following RCW 46.17.010.

**Effective date—2004 c 187 §§ 1, 5, 7, 8, and 10:** "Sections 1, 5, 7, 8, and 10 of this act take effect July 1, 2005." [2004 c 187 § 11.]

**Contingent effect—2004 c 95 § 2:** "Section 2 of this act takes effect if section 2 of Substitute House Bill No. 3055 is enacted into law." [2004 c 95 § 17.] 2004 c 68 § 2 was enacted into law, effective June 10, 2004.

**Finding—Intent—2004 c 68:** "The legislature finds that previous attempts to curtail the incidence of driving while intoxicated have been inadequate. The legislature further finds that property loss, injury, and death caused by drinking drivers continue at unacceptable levels. This act is intended to convey the seriousness with which the legislature views this problem. To that end the legislature seeks to ensure swift and certain consequences for those who drink and drive.

To accomplish this goal, the legislature adopts standards governing the admissibility of tests of a person's blood or breath. These standards will provide a degree of uniformity that is currently lacking, and will reduce the delays caused by challenges to various breath test instrument components and maintenance procedures. Such challenges, while allowed, will no longer go to admissibility of test results. Instead, such challenges are to be considered by the finder of fact in deciding what weight to place upon an admitted blood or breath test result.

The legislature's authority to adopt standards governing the admissibility of evidence involving alcohol is well established by the Washington Supreme Court. See generally *State v. Long*, 113 Wn.2d 266, 778 P.2d 1027 (1989); *State v. Sears*, 4 Wn.2d 200, 215, 103 P.2d 337 (1940) (the legislature has the power to enact laws which create rules of evidence); *State v. Pavelich*, 153 Wash. 379, 279 P. 1102 (1929) ("rules of evidence are substantive law"). [2004 c 68 § 1.]

**Effective date—1999 c 331:** See note following RCW 9.94A.525.

**Effective date—1998 c 213:** "This act takes effect January 1, 1999." [1998 c 213 § 9.]

**Effective date—1998 c 209:** "This act takes effect January 1, 1999." [1998 c 209 § 6.]

**Effective date—1998 c 207:** See note following RCW 46.61.5055.



**Intent—Construction—Effective date—1998 c 41:** See notes following RCW 46.20.265.

**Severability—1995 c 332:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 332 § 23.]

**Effective dates—1995 c 332:** "This act shall take effect September 1, 1995, except for sections 13 and 22 of this act which are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 11, 1995]." [1995 c 332 § 24.]

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

**Effective dates—1985 c 407:** See note following RCW 46.04.480.

**Legislative finding, intent—1983 c 165:** "The legislature finds that previous attempts to curtail the incidence of driving while intoxicated have been inadequate. The legislature further finds that property loss, injury, and death caused by drinking drivers have reached unacceptable levels. This act is intended to convey the seriousness with which the legislature views this problem. To that end the legislature seeks to insure swift and certain punishment for those who drink and drive. The legislature does not intend to discourage or deter courts and other agencies from directing or providing treatment for problem drinkers. However, it is the intent that such treatment, where appropriate, be in addition to and not in lieu of the sanctions to be applied to all those convicted of driving while intoxicated." [1983 c 165 § 44.]

**Effective dates—1983 c 165:** "Sections 2, 3 through 12, 14, 16, 18, 22, 24, and 26 of chapter 165, Laws of 1983 shall take effect on January 1, 1986. The remainder of chapter 165, Laws of 1983 is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1983. The director of licensing may immediately take such steps as are necessary to insure that all sections of chapter 165, Laws of 1983 are implemented on their respective effective dates." [1984 c 219 § 1; 1983 c 165 § 47.]

**Severability—1983 c 165:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 165 § 48.]

**Severability—1979 ex.s. c 176:** See note following RCW 46.61.502.

**Effective date—Severability—1979 ex.s. c 136:** See notes following RCW 46.63.010.

**Severability, implied consent law—1969 c 1:** See RCW 46.20.911.

*Liability of medical personnel withdrawing blood:* RCW 46.61.508.

*Refusal of test—Admissibility as evidence:* RCW 46.61.517.

**46.20.311 Duration of license sanctions—Reissuance or renewal.** (1)(a) The department shall not suspend a driver's license or privilege to drive a motor vehicle on the public highways for a fixed period of more than one year, except as specifically permitted under RCW 46.20.267, 46.20.342, or other provision of law.

(b) Except for a suspension under RCW 46.20.267, 46.20.289, 46.20.291(5), 46.61.740, or 74.20A.320, whenever the license or driving privilege of any person is suspended by reason of a conviction, a finding that a traffic infraction has been committed, pursuant to chapter 46.29 RCW, or pursuant to RCW 46.20.291 or 46.20.308, the suspension shall remain in effect until the person gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW.

(c) If the suspension is the result of a violation of RCW 46.61.502 or 46.61.504, the department shall determine the person's eligibility for licensing based upon the reports provided by the alcoholism agency or probation department designated under RCW 46.61.5056 and shall deny reinstatement

until enrollment and participation in an approved program has been established and the person is otherwise qualified. If the suspension is the result of a violation of RCW 46.61.502 or 46.61.504, and the person is required pursuant to RCW 46.20.720 to drive only a motor vehicle equipped with a functioning ignition interlock, the department shall determine the person's eligibility for licensing based upon written verification by a company doing business in the state that it has installed the required device on a vehicle owned or operated by the person seeking reinstatement. If, based upon notification from the interlock provider or otherwise, the department determines that an interlock required under RCW 46.20.720 is no longer installed or functioning as required, the department shall suspend the person's license or privilege to drive. Whenever the license or driving privilege of any person is suspended or revoked as a result of noncompliance with an ignition interlock requirement, the suspension shall remain in effect until the person provides notice issued by a company doing business in the state that a vehicle owned or operated by the person is equipped with a functioning ignition interlock device.

(d) Whenever the license or driving privilege of any person is suspended as a result of certification of noncompliance with a child support order under chapter 74.20A RCW or a residential or visitation order, the suspension shall remain in effect until the person provides a release issued by the department of social and health services stating that the person is in compliance with the order.

(e)(i) The department shall not issue to the person a new, duplicate, or renewal license until the person pays a reissue fee of seventy-five dollars.

(ii) If the suspension is the result of a violation of RCW 46.61.502 or 46.61.504, or is the result of administrative action under RCW 46.20.308, the reissue fee shall be one hundred fifty dollars.

(2)(a) Any person whose license or privilege to drive a motor vehicle on the public highways has been revoked, unless the revocation was for a cause which has been removed, is not entitled to have the license or privilege renewed or restored until: (i) After the expiration of one year from the date the license or privilege to drive was revoked; (ii) after the expiration of the applicable revocation period provided by RCW 46.20.3101 or 46.61.5055; (iii) after the expiration of two years for persons convicted of vehicular homicide; or (iv) after the expiration of the applicable revocation period provided by RCW 46.20.265.

(b)(i) After the expiration of the appropriate period, the person may make application for a new license as provided by law together with a reissue fee in the amount of seventy-five dollars.

(ii) If the revocation is the result of a violation of RCW 46.20.308, 46.61.502, or 46.61.504, the reissue fee shall be one hundred fifty dollars. If the revocation is the result of a violation of RCW 46.61.502 or 46.61.504, the department shall determine the person's eligibility for licensing based upon the reports provided by the alcoholism agency or probation department designated under RCW 46.61.5056 and shall deny reissuance of a license, permit, or privilege to drive until enrollment and participation in an approved program has been established and the person is otherwise qualified. If the revocation is the result of a violation of RCW 46.61.502 or



46.61.504, and the person is required pursuant to RCW 46.20.720 to drive only a motor vehicle equipped with a functioning ignition interlock or other biological or technical device, the department shall determine the person's eligibility for licensing based upon written verification by a company doing business in the state that it has installed the required device on a vehicle owned or operated by the person applying for a new license. If, following issuance of a new license, the department determines, based upon notification from the interlock provider or otherwise, that an interlock required under RCW 46.20.720 is no longer functioning, the department shall suspend the person's license or privilege to drive until the department has received written verification from an interlock provider that a functioning interlock is installed.

(c) Except for a revocation under RCW 46.20.265, the department shall not then issue a new license unless it is satisfied after investigation of the driving ability of the person that it will be safe to grant the privilege of driving a motor vehicle on the public highways, and until the person gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW. For a revocation under RCW 46.20.265, the department shall not issue a new license unless it is satisfied after investigation of the driving ability of the person that it will be safe to grant that person the privilege of driving a motor vehicle on the public highways.

(3)(a) Whenever the driver's license of any person is suspended pursuant to Article IV of the nonresident violators compact or RCW 46.23.020 or 46.20.289 or 46.20.291(5), the department shall not issue to the person any new or renewal license until the person pays a reissue fee of seventy-five dollars.

(b) If the suspension is the result of a violation of the laws of this or any other state, province, or other jurisdiction involving (i) the operation or physical control of a motor vehicle upon the public highways while under the influence of intoxicating liquor or drugs, or (ii) the refusal to submit to a chemical test of the driver's blood alcohol content, the reissue fee shall be one hundred fifty dollars. [2005 c 314 § 308; 2004 c 95 § 3; 2003 c 366 § 2; 2001 c 325 § 2; 2000 c 115 § 7; 1998 c 212 § 1; 1997 c 58 § 807; 1995 c 332 § 11; 1994 c 275 § 27; 1993 c 501 § 5; 1990 c 250 § 45; 1988 c 148 § 9. Prior: 1985 c 407 § 4; 1985 c 211 § 1; 1984 c 258 § 325; 1983 c 165 § 18; 1983 c 165 § 17; 1982 c 212 § 5; 1981 c 91 § 1; 1979 ex.s. c 136 § 60; 1973 1st ex.s. c 36 § 1; 1969 c 1 § 2 (Initiative Measure No. 242, approved November 5, 1968); 1967 c 167 § 5; 1965 ex.s. c 121 § 27.]

**Sunset Act application:** See note following RCW 46.20.075.

**Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401:** See note following RCW 46.68.290.

**Part headings not law—2005 c 314:** See note following RCW 46.17.010.

**Finding—2000 c 115:** See note following RCW 46.20.075.

**Effective date—2000 c 115 §§ 1-10:** See note following RCW 46.20.075.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**Severability—Effective dates—1995 c 332:** See notes following RCW 46.20.308.

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

**Severability—1990 c 250:** See note following RCW 46.16.301.

**Legislative finding—Severability—1988 c 148:** See notes following RCW 13.40.265.

**Effective dates—1985 c 407:** See note following RCW 46.04.480.

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

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

**Legislative finding, intent—Effective dates—Severability—1983 c 165:** See notes following RCW 46.20.308.

**Effective date—Severability—1979 ex.s. c 136:** See notes following RCW 46.63.010.

**Severability, implied consent law—1969 c 1:** See RCW 46.20.911.

**46.20.324 Persons not entitled to interview or hearing.** Unless otherwise provided by law, a person shall not be entitled to a driver improvement interview or formal hearing under the provisions of RCW 46.20.322 through 46.20.333 when the person:

(1) Has been granted the opportunity for an administrative review, informal settlement, or formal hearing under RCW 46.20.245, 46.20.308, 46.25.120, 46.25.125, 46.65.065, 74.20A.320, or by rule of the department; or

(2) Has refused or neglected to submit to an examination as required by RCW 46.20.305. [2005 c 288 § 6; 1965 ex.s. c 121 § 31.]

**Effective date—2005 c 288:** See note following RCW 46.20.245.

**46.20.334 Appeal to superior court.** Unless otherwise provided by law, any person denied a license or a renewal of a license or whose license has been suspended or revoked by the department shall have the right within thirty days, after receiving notice of the decision following a formal hearing to file a notice of appeal in the superior court in the county of his residence. The hearing on the appeal hereunder shall be de novo. [2005 c 288 § 7; 1972 ex.s. c 29 § 4; 1965 ex.s. c 121 § 39.]

**Effective date—2005 c 288:** See note following RCW 46.20.245.

**46.20.750 Circumventing ignition interlock—Penalty.** (1) A person who is restricted to the use of a vehicle equipped with an ignition interlock device and who tampers with the device or directs, authorizes, or requests another to tamper with the device, in order to circumvent the device by modifying, detaching, disconnecting, or otherwise disabling it, is guilty of a gross misdemeanor.

(2) A person who knowingly assists another person who is restricted to the use of a vehicle equipped with an ignition interlock device to circumvent the device or to start and operate that vehicle in violation of a court order is guilty of a gross misdemeanor. The provisions of this subsection do not apply if the starting of a motor vehicle, or the request to start a motor vehicle, equipped with an ignition interlock device is done for the purpose of safety or mechanical repair of the device or the vehicle and the person subject to the court order does not operate the vehicle. [2005 c 200 § 2; 1994 c 275 § 25; 1987 c 247 § 5.]

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

### Chapter 46.23 RCW

#### NONRESIDENT VIOLATOR COMPACT

##### Sections

46.23.040 Repealed.

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

### Chapter 46.25 RCW

#### UNIFORM COMMERCIAL DRIVER'S LICENSE ACT

##### Sections

46.25.010 Definitions.  
 46.25.090 Disqualification—Grounds for, period of—Records, notice.  
 46.25.123 Mandatory reporting of positive test.  
 46.25.125 Disqualification for positive test—Procedure.

**46.25.010 Definitions.** The definitions set forth in this section apply throughout this chapter.

(1) "Alcohol" means any substance containing any form of alcohol, including but not limited to ethanol, methanol, propanol, and isopropanol.

(2) "Alcohol concentration" means:

(a) The number of grams of alcohol per one hundred milliliters of blood; or

(b) The number of grams of alcohol per two hundred ten liters of breath.

(3) "Commercial driver's license" (CDL) means a license issued in accordance with the requirements of this chapter to an individual that authorizes the individual to drive a class of commercial motor vehicle.

(4) The "commercial driver's license information system" (CDLIS) is the information system established pursuant to the CMVSA to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

(5) "Commercial driver's instruction permit" means a permit issued under RCW 46.25.060(5).

(6) "Commercial motor vehicle" means a motor vehicle designed or used to transport passengers or property:

(a) If the vehicle has a gross vehicle weight rating of 26,001 or more pounds;

(b) If the vehicle is designed to transport sixteen or more passengers, including the driver;

(c) If the vehicle is transporting hazardous materials as defined in this section; or

(d) If the vehicle is a school bus regardless of weight or size.

(7) "Conviction" has the definition set forth in RCW 46.20.270.

(8) "Disqualification" means a prohibition against driving a commercial motor vehicle.

(9) "Drive" means to drive, operate, or be in physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. For purposes of RCW 46.25.100, 46.25.110, and 46.25.120, "drive" includes

operation or physical control of a motor vehicle anywhere in the state.

(10) "Drugs" are those substances as defined by RCW 69.04.009, including, but not limited to, those substances defined by 49 C.F.R. 40.3.

(11) "Employer" means any person, including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle.

(12) "Gross vehicle weight rating" (GVWR) means the value specified by the manufacturer as the maximum loaded weight of a single or a combination or articulated vehicle, or the registered gross weight, where this value cannot be determined. The GVWR of a combination or articulated vehicle, commonly referred to as the "gross combined weight rating" or GCWR, is the GVWR of the power unit plus the GVWR of the towed unit or units.

(13) "Hazardous materials" means any material that has been designated as hazardous under 49 U.S.C. Sec. 5103 and is required to be placarded under subpart F of 49 C.F.R. part 172 or any quantity of a material listed as a select agent or toxin in 42 C.F.R. part 73.

(14) "Motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power used on highways, or any other vehicle required to be registered under the laws of this state, but does not include a vehicle, machine, tractor, trailer, or semitrailer operated exclusively on a rail.

(15) "Out-of-service order" means a temporary prohibition against driving a commercial motor vehicle.

(16) "Positive alcohol confirmation test" means an alcohol confirmation test that:

(a) Has been conducted by a breath alcohol technician under 49 C.F.R. 40; and

(b) Indicates an alcohol concentration of 0.04 or more.

A report that a person has refused an alcohol test, under circumstances that constitute the refusal of an alcohol test under 49 C.F.R. 40, will be considered equivalent to a report of a positive alcohol confirmation test for the purposes of this chapter.

(17) "School bus" means a commercial motor vehicle used to transport preprimary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events. School bus does not include a bus used as a common carrier.

(18) "Serious traffic violation" means:

(a) Excessive speeding, defined as fifteen miles per hour or more in excess of the posted limit;

(b) Reckless driving, as defined under state or local law;

(c) A violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with an accident or collision resulting in death to any person;

(d) Driving a commercial motor vehicle without obtaining a commercial driver's license;

(e) Driving a commercial motor vehicle without a commercial driver's license in the driver's possession; however, any individual who provides proof to the court by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, is not guilty of a "serious traffic offense";

(f) Driving a commercial motor vehicle without the proper class of commercial driver's license endorsement or endorsements for the specific vehicle group being operated or for the passenger or type of cargo being transported; and

(g) Any other violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, that the department determines by rule to be serious.

(19) "State" means a state of the United States and the District of Columbia.

(20) "Substance abuse professional" means an alcohol and drug specialist meeting the credentials, knowledge, training, and continuing education requirements of 49 C.F.R. 40.281.

(21) "Tank vehicle" means a vehicle that is designed to transport a liquid or gaseous material within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Tank vehicles include, but are not limited to cargo tanks and portable tanks. However, this definition does not include portable tanks having a rated capacity under one thousand gallons.

(22) "United States" means the fifty states and the District of Columbia.

(23) "Verified positive drug test" means a drug test result or validity testing result from a laboratory certified under the authority of the federal department of health and human services that:

(a) Indicates a drug concentration at or above the cutoff concentration established under 49 C.F.R. 40.87; and

(b) Has undergone review and final determination by a medical review officer.

A report that a person has refused a drug test, under circumstances that constitute the refusal of a federal department of transportation drug test under 49 C.F.R. 40, will be considered equivalent to a report of a verified positive drug test for the purposes of this chapter. [2005 c 325 § 2; 2004 c 187 § 2; 1996 c 30 § 1; 1989 c 178 § 3.]

**Intent—2005 c 325:** "It is the intent of the legislature to promote the safety of drivers and passengers on Washington roads and public transportation systems. To this end, Washington has established a reporting requirement for employers of commercial drivers who test positive for unlawful substances. The legislature recognizes that transit operators and their employers are an asset to the public transportation system and continuously strive to provide a safe and efficient mode of travel. In light of this, the legislature further intends that the inclusion of transit employers in the reporting requirements serve only to enhance the current efforts of these dedicated employers and employees as they continue to provide a safe public transportation system to the citizens of Washington." [2005 c 325 § 1.]

**Effective date—1996 c 30:** "This act takes effect October 1, 1996." [1996 c 30 § 5.]

**46.25.090 Disqualification—Grounds for, period of—Records, notice.** (1) A person is disqualified from driving a commercial motor vehicle for a period of not less than one year if a report has been received by the department pursuant to RCW 46.25.120, or if the person has been convicted of a first violation, within this or any other jurisdiction, of:

(a) Driving a motor vehicle under the influence of alcohol or any drug;

(b) Driving a commercial motor vehicle while the alcohol concentration in the person's system is 0.04 or more as determined by any testing methods approved by law in this state or any other state or jurisdiction;

(c) Leaving the scene of an accident involving a motor vehicle driven by the person;

(d) Using a motor vehicle in the commission of a felony;

(e) Refusing to submit to a test to determine the driver's alcohol concentration while driving a motor vehicle;

(f) Driving a commercial motor vehicle when, as a result of prior violations committed while operating a commercial motor vehicle, the driver's commercial driver's license is revoked, suspended, or canceled, or the driver is disqualified from operating a commercial motor vehicle;

(g) Causing a fatality through the negligent operation of a commercial motor vehicle, including but not limited to the crimes of vehicular homicide and negligent homicide.

If any of the violations set forth in this subsection occurred while transporting hazardous material, the person is disqualified for a period of not less than three years.

(2) A person is disqualified for life if it has been determined that the person has committed or has been convicted of two or more violations of any of the offenses specified in subsection (1) of this section, or any combination of those offenses, arising from two or more separate incidents.

(3) The department may adopt rules, in accordance with federal regulations, establishing guidelines, including conditions, under which a disqualification for life under subsection (2) of this section may be reduced to a period of not less than ten years.

(4) A person is disqualified from driving a commercial motor vehicle for life who uses a motor vehicle in the commission of a felony involving the manufacture, distribution, or dispensing of a controlled substance, as defined by chapter 69.50 RCW, or possession with intent to manufacture, distribute, or dispense a controlled substance, as defined by chapter 69.50 RCW.

(5) A person is disqualified from driving a commercial motor vehicle for a period of:

(a) Not less than sixty days if:

(i) Convicted of or found to have committed a second serious traffic violation while driving a commercial motor vehicle; or

(ii) Convicted of reckless driving, where there has been a prior serious traffic violation; or

(b) Not less than one hundred twenty days if:

(i) Convicted of or found to have committed a third or subsequent serious traffic violation while driving a commercial motor vehicle; or

(ii) Convicted of reckless driving, where there has been two or more prior serious traffic violations.

For purposes of determining prior serious traffic violations under this subsection, each conviction of or finding that a driver has committed a serious traffic violation while driving a commercial motor vehicle or noncommercial motor vehicle, arising from a separate incident occurring within a three-year period, must be counted.

(6) A person is disqualified from driving a commercial motor vehicle for a period of:

(a) Not less than ninety days nor more than one year if convicted of or found to have committed a first violation of an out-of-service order while driving a commercial vehicle;

(b) Not less than one year nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed two violations of out-of-service

orders while driving a commercial motor vehicle in separate incidents;

(c) Not less than three years nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed three or more violations of out-of-service orders while driving commercial motor vehicles in separate incidents;

(d) Not less than one hundred eighty days nor more than two years if the person is convicted of or is found to have committed a first violation of an out-of-service order while transporting hazardous materials, or while operating motor vehicles designed to transport sixteen or more passengers, including the driver. A person is disqualified for a period of not less than three years nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials, or while operating motor vehicles designed to transport sixteen or more passengers, including the driver.

(7) A person is disqualified from driving a commercial motor vehicle if a report has been received by the department under RCW 46.25.125 that the person has received a verified positive drug test or positive alcohol confirmation test as part of the testing program conducted under 49 C.F.R. 40. A disqualification under this subsection remains in effect until the person undergoes a drug and alcohol assessment by a substance abuse professional meeting the requirements of 49 C.F.R. 40, and the person presents evidence of satisfactory participation in or successful completion of a drug or alcohol treatment and/or education program as recommended by the substance abuse professional, and until the person has met the requirements of RCW 46.25.100. The substance abuse professional shall forward a diagnostic evaluation and treatment recommendation to the department of licensing for use in determining the person's eligibility for driving a commercial motor vehicle. Persons who are disqualified under this subsection more than twice in a five-year period are disqualified for life.

(8)(a) A person is disqualified from driving a commercial motor vehicle for the period of time specified in (b) of this subsection if he or she is convicted of or is found to have committed one of the following six offenses at a railroad-highway grade crossing while operating a commercial motor vehicle in violation of a federal, state, or local law or regulation:

(i) For drivers who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;

(ii) For drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;

(iii) For drivers who are always required to stop, failing to stop before driving onto the crossing;

(iv) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping;

(v) For all drivers, failing to obey a traffic control device or the directions of an enforcement officer at the crossing;

(vi) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.

(b) A person is disqualified from driving a commercial motor vehicle for a period of:

(i) Not less than sixty days if the driver is convicted of or is found to have committed a first violation of a railroad-highway grade crossing violation;

(ii) Not less than one hundred twenty days if the driver is convicted of or is found to have committed a second railroad-highway grade crossing violation in separate incidents within a three-year period;

(iii) Not less than one year if the driver is convicted of or is found to have committed a third or subsequent railroad-highway grade crossing violation in separate incidents within a three-year period.

(9) A person is disqualified from driving a commercial motor vehicle for not more than one year if a report has been received by the department from the federal motor carrier safety administration that the person's driving has been determined to constitute an imminent hazard as defined by 49 C.F.R. 383.5.

(10) Within ten days after suspending, revoking, or canceling a commercial driver's license or disqualifying a driver from operating a commercial motor vehicle, the department shall update its records to reflect that action. [2005 c 325 § 5; 2004 c 187 § 7. Prior: 2002 c 272 § 3; 2002 c 193 § 1; 1996 c 30 § 3; 1989 c 178 § 11.]

**Intent—2005 c 325:** See note following RCW 46.25.010.

**Effective date—2004 c 187 §§ 1, 5, 7, 8, and 10:** See note following RCW 46.20.308.

**Effective date—1996 c 30:** See note following RCW 46.25.010.

#### **46.25.123 Mandatory reporting of positive test. (1)**

All medical review officers or breath alcohol technicians hired by or under contract to a motor carrier or employer who employs drivers who operate commercial motor vehicles and who is required to have a testing program conducted under the procedures established by 49 C.F.R. 40 or to a consortium the carrier or employer belongs to, as defined in 49 C.F.R. 40.3, shall report the finding of a commercial motor vehicle driver's verified positive drug test or positive alcohol confirmation test to the department of licensing on a form provided by the department. If the employer is required to have a testing program under 49 C.F.R. 655, a report of a verified positive drug test or positive alcohol confirmation test must not be forwarded to the department under this subsection unless the test is a preemployment drug test conducted under 49 C.F.R. 655.41 or a preemployment alcohol test conducted under 49 C.F.R. 655.42.

(2)(a) A motor carrier or employer who employs drivers who operate commercial motor vehicles and who is required to have a testing program conducted under the procedures established by 49 C.F.R. 40, or the consortium the carrier or employer belongs to, must report a refusal by a commercial motor vehicle driver to take a drug or alcohol test, under circumstances that constitute the refusal of a test under 49 C.F.R. 40 and where such refusal has not been reported by a medical review officer or breath alcohol technician, to the department of licensing on a form provided by the department.

(b) An employer who is required to have a testing program under 49 C.F.R. 655 must report a commercial motor vehicle driver's verified positive drug test or a positive alcohol confirmation test when: (i) The driver's employment has been terminated or the driver has resigned; (ii) any grievance

process, up to but not including arbitration, has been concluded; and (iii) at the time of termination or resignation the driver has not been cleared to return to safety-sensitive functions.

(3) Motor carriers, employers, or consortiums shall make it a written condition of their contract or agreement with a medical review officer or breath alcohol technician, regardless of the state where the medical review officer or breath alcohol technician is located, that the medical review officer or breath alcohol technician is required to report all Washington state licensed drivers who have a verified positive drug test or positive alcohol confirmation test to the department of licensing within three business days of the verification or confirmation. Failure to obtain this contractual condition or agreement with the medical review officer or breath alcohol technician by the motor carrier, employer, or consortium, or failure to report a refusal as required by subsection (2) of this section, will result in an administrative fine as provided in RCW 46.32.100 or 81.04.405.

(4) Substances obtained for testing may not be used for any purpose other than drug or alcohol testing under 49 C.F.R. 40. [2005 c 325 § 3; 2002 c 272 § 1.]

**Intent—2005 c 325:** See note following RCW 46.25.010.

**46.25.125 Disqualification for positive test—Procedure.** (1) When the department of licensing receives a report from a medical review officer, breath alcohol technician, employer, contractor, or consortium that a driver has a verified positive drug test or positive alcohol confirmation test, as part of the testing program conducted under 49 C.F.R. 40, the department shall disqualify the driver from driving a commercial motor vehicle under RCW 46.25.090(7) subject to a hearing as provided in this section. The department shall notify the person in writing of the disqualification by first class mail. The notice must explain the procedure for the person to request a hearing.

(2) A person disqualified from driving a commercial motor vehicle for having a verified positive drug test or positive alcohol confirmation test may request a hearing to challenge the disqualification within twenty days from the date notice is given. If the request for a hearing is mailed, it must be postmarked within twenty days after the department has given notice of the disqualification.

(3) The hearing must be conducted in the county of the person's residence, except that the department may conduct all or part of the hearing by telephone or other electronic means.

(4) For the purposes of this section, or for the purpose of a hearing de novo in an appeal to superior court, the hearing must be limited to the following issues: (a) Whether the driver is the person who is the subject of the report; (b) whether the motor carrier, employer, or consortium has a program that is subject to the federal requirements under 49 C.F.R. 40; and (c) whether the medical review officer or breath alcohol technician making the report accurately followed the protocols established to verify or confirm the results, or if the driver refused a test, whether the circumstances constitute the refusal of a test under 49 C.F.R. 40. Evidence may be presented to demonstrate that the test results are a false positive. For the purpose of a hearing under

this section, a copy of a positive test result with a declaration by the tester or medical review officer or breath alcohol technician stating the accuracy of the laboratory protocols followed to arrive at the test result is prima facie evidence:

(i) Of a verified positive drug test or positive alcohol confirmation test result;

(ii) That the motor carrier, employer, or consortium has a program that is subject to the federal requirements under 49 C.F.R. 40; and

(iii) That the medical review officer or breath alcohol technician making the report accurately followed the protocols for testing established to verify or confirm the results.

After the hearing, the department shall order the disqualification of the person either be rescinded or sustained.

(5) If the person does not request a hearing within the twenty-day time limit, or if the person fails to appear at a hearing, the person has waived the right to a hearing and the department shall sustain the disqualification.

(6) A decision by the department disqualifying a person from driving a commercial motor vehicle is stayed and does not take effect while a formal hearing is pending under this section or during the pendency of a subsequent appeal to superior court so long as there is no conviction for a moving violation or no finding that the person has committed a traffic infraction that is a moving violation and the department receives no further report of a verified positive drug test or positive alcohol confirmation test during the pendency of the hearing and appeal. If the disqualification is sustained after the hearing, the person who is disqualified may file a petition in the superior court of the county of his or her residence to review the final order of disqualification by the department in the manner provided in RCW 46.20.334.

(7) The department of licensing may adopt rules specifying further requirements for requesting and conducting a hearing under this section.

(8) The department of licensing is not civilly liable for damage resulting from disqualifying a driver based on a verified positive drug test or positive alcohol confirmation test result as required by this section or for damage resulting from release of this information that occurs in the normal course of business. [2005 c 325 § 4; 2002 c 272 § 2.]

**Intent—2005 c 325:** See note following RCW 46.25.010.

## Chapter 46.32 RCW VEHICLE INSPECTION

### Sections

46.32.100 Violations—Penalties.

**46.32.100 Violations—Penalties.** In addition to all other penalties provided by law, a commercial motor vehicle that is subject to terminal safety audits under this chapter and an officer, agent, or employee of a company operating a commercial motor vehicle who violates or who procures, aids, or abets in the violation of this title or any order or rule of the state patrol is liable for a penalty of one hundred dollars for each violation, except for each violation of 49 C.F.R. Pt. 382, controlled substances and alcohol use and testing, 49 C.F.R. Sec. 391.15, disqualification of drivers, and 49 C.F.R. Sec. 396.9(c)(2), moving a vehicle placed out of service before the

out of service defects have been satisfactorily repaired, for which the person is liable for a penalty of five hundred dollars. Each violation is a separate and distinct offense, and in case of a continuing violation every day's continuance is a separate and distinct violation.

The penalty provided in this section is due and payable when the person incurring it receives a notice in writing from the patrol describing the violation and advising the person that the penalty is due. The patrol may, upon written application for review, received within fifteen days, remit or mitigate a penalty provided for in this section or discontinue a prosecution to recover the penalty upon such terms it deems proper and may ascertain the facts upon all such applications in such manner and under such rules as it deems proper. If the amount of the penalty is not paid to the patrol within fifteen days after receipt of the notice imposing the penalty, or application for remission or mitigation has not been made within fifteen days after the violator has received notice of the disposition of the application, the patrol may commence an adjudicative proceeding under chapter 34.05 RCW in the name of the state of Washington to confirm the violation and recover the penalty. In all such proceedings the procedure and rules of evidence are as specified in chapter 34.05 RCW except as otherwise provided in this chapter. All penalties recovered under this section shall be paid into the state treasury and credited to the state patrol highway account of the motor vehicle fund. [2005 c 444 § 1; 1998 c 172 § 1; 1995 c 272 § 3.]

**Effective dates—1995 c 272:** See note following RCW 46.32.090.

### Chapter 46.37 RCW

#### VEHICLE LIGHTING AND OTHER EQUIPMENT

##### Sections

46.37.010	Scope and effect of regulations—General penalty.
46.37.190	Warning devices on vehicles—Other drivers yield and stop.
46.37.395	Compression brakes (Jake brakes).
46.37.540	Odometers—Disconnecting, resetting, or turning back prohibited.
46.37.670	Signal preemption devices—Prohibited—Exceptions.
46.37.671	Signal preemption device—Possession—Penalty.
46.37.672	Signal preemption device—Use, sale, purchase—Penalty.
46.37.673	Signal preemption device—Accident—Property damage or less than substantial bodily harm—Penalty.
46.37.674	Signal preemption device—Accident—Substantial bodily harm—Penalty.
46.37.675	Signal preemption device—Accident—Death—Penalty.
46.37.680	Sound system attachment.

**46.37.010 Scope and effect of regulations—General penalty.** (1) It is a traffic infraction for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this chapter or in regulations issued by the chief of the Washington state patrol, or which is equipped in any manner in violation of this chapter or the state patrol's regulations, or for any person to do any act forbidden or fail to perform any act required under this chapter or the state patrol's regulations.

(2) Nothing contained in this chapter or the state patrol's regulations shall be construed to prohibit the use of additional

parts and accessories on any vehicle not inconsistent with the provisions of this chapter or the state patrol's regulations.

(3) The provisions of the chapter and the state patrol's regulations with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers, or farm tractors except as herein made applicable.

(4) No owner or operator of a farm tractor, self-propelled unit of farm equipment, or implement of husbandry shall be guilty of a crime or subject to penalty for violation of RCW 46.37.160 as now or hereafter amended unless such violation occurs on a public highway.

(5) It is a traffic infraction for any person to sell or offer for sale vehicle equipment which is required to be approved by the state patrol as prescribed in RCW 46.37.005 unless it has been approved by the state patrol.

(6) The provisions of this chapter with respect to equipment required on vehicles shall not apply to motorcycles or motor-driven cycles except as herein made applicable.

(7) This chapter does not apply to off-road vehicles used on nonhighway roads.

(8) This chapter does not apply to vehicles used by the state parks and recreation commission exclusively for park maintenance and operations upon public highways within state parks.

(9) Notices of traffic infraction issued to commercial drivers under the provisions of this chapter with respect to equipment required on commercial motor vehicles shall not be considered for driver improvement purposes under chapter 46.20 RCW.

(10) Whenever a traffic infraction is chargeable to the owner or lessee of a vehicle under subsection (1) of this section, the driver shall not be arrested or issued a notice of traffic infraction unless the vehicle is registered in a jurisdiction other than Washington state, or unless the infraction is for an offense that is clearly within the responsibility of the driver.

(11) Whenever the owner or lessee is issued a notice of traffic infraction under this section the court may, on the request of the owner or lessee, take appropriate steps to make the driver of the vehicle, or any other person who directs the loading, maintenance, or operation of the vehicle, a codefendant. If the codefendant is held solely responsible and is found to have committed the traffic infraction, the court may dismiss the notice against the owner or lessee. [2005 c 213 § 7; 1997 c 241 § 14; 1989 c 178 § 22; 1987 c 330 § 707; 1979 ex.s. c 136 § 69; 1977 ex.s. c 355 § 1; 1963 c 154 § 1; 1961 c 12 § 46.37.010. Prior: 1955 c 269 § 1; prior: 1937 c 189 § 14, part; RRS § 6360-14, part; RCW 46.40.010, part; 1929 c 178 § 2; 1927 c 309 § 19; 1921 c 96 § 22, part; 1919 c 59 § 10, part; 1917 c 155 § 15, part; 1915 c 142 § 21, part; RRS § 6362-19.]

**Rules of court:** *Monetary penalty schedule—IRLJ 6.2.*

**Findings—Construction—Effective date—2005 c 213:** See notes following RCW 46.09.010.

**Severability—Effective dates—1989 c 178:** See RCW 46.25.900 and 46.25.901.

**Construction—Application of rules—Severability—1987 c 330:** See notes following RCW 28B.12.050.

**Effective date—Severability—1979 ex.s. c 136:** See notes following RCW 46.63.010.

**Severability—1977 ex.s. c 355:** "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the

remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 355 § 57.]

**Effective date—1963 c 154:** "This act shall take effect on January 1, 1964." [1963 c 154 § 32.]

*Moving defective vehicle: RCW 46.32.060.*

**46.37.190 Warning devices on vehicles—Other drivers yield and stop.** (1) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive marking required by this chapter, be equipped with at least one lamp capable of displaying a red light visible from at least five hundred feet in normal sunlight and a siren capable of giving an audible signal.

(2) Every school bus and private carrier bus shall, in addition to any other equipment and distinctive markings required by this chapter, be equipped with a "stop" signal upon a background not less than fourteen by eighteen inches displaying the word "stop" in letters of distinctly contrasting colors not less than eight inches high, and shall further be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall be capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level and these lights shall have sufficient intensity to be visible at five hundred feet in normal sunlight.

(3) Vehicles operated by public agencies whose law enforcement duties include the authority to stop and detain motor vehicles on the public highways of the state may be equipped with a siren and lights of a color and type designated by the state patrol for that purpose. The state patrol may prohibit the use of these sirens and lights on vehicles other than the vehicles described in this subsection.

(4) The lights described in this section shall not be mounted nor used on any vehicle other than a school bus, a private carrier bus, or an authorized emergency or law enforcement vehicle.

(5) The use of the signal equipment described in this section and RCW 46.37.670, except the signal preemption devices used by public transit vehicles and department of transportation, city, or county maintenance vehicles that are not used in conjunction with emergency equipment, shall impose upon drivers of other vehicles the obligation to yield right of way and stop as prescribed in RCW 46.61.210, 46.61.370, and 46.61.350. [2005 c 183 § 8; 1993 c 401 § 2; 1987 c 330 § 710; 1985 c 331 § 1; 1982 c 101 § 1; 1971 ex.s. c 92 § 1; 1970 ex.s. c 100 § 5; 1965 ex.s. c 155 § 53; 1963 c 154 § 14; 1961 c 12 § 46.37.190. Prior: 1957 c 66 § 1; 1955 c 269 § 19.]

**Rules of court:** *Monetary penalty schedule—IRLJ 6.2.*

**Construction—Application of rules—Severability—1987 c 330:** See notes following RCW 28B.12.050.

**46.37.395 Compression brakes (Jake brakes).** (1) This section applies to all motor vehicles with a declared gross weight in excess of 10,000 pounds operated on public roads and equipped with engine compression brake devices. An engine compression brake device is any device that uses the engine and transmission to impede the forward motion of the motor vehicle by compression of the engine.

(2) The driver of a motor vehicle equipped with a device that uses the compression of the motor vehicle engine shall not use the device unless:

(a) The motor vehicle is equipped with an operational muffler and exhaust system to prevent excess noise. The muffler and exhaust system must maintain the noise level at eighty-three decibels or less for motor vehicles manufactured after January 1, 1979, and eighty decibels or less for motor vehicles manufactured after January 1, 1988; or

(b) The driver reasonably believes that an emergency exists which requires the use of the device to: (i) Protect against an immediate threat to the physical safety of the driver or others; (ii) protect against immediate threat of damage to property; or (iii) effectively reduce the speed of the motor vehicle using the manufacturer's motor vehicle braking system when declining from an elevated roadway.

(3) The monetary penalty for violating subsection (2) of this section is: (a) Two hundred fifty dollars for the first violation; (b) five hundred dollars for the second violation; and (c) seven hundred fifty dollars for each violation thereafter.

(4) The Washington state patrol must establish rules for Washington state law enforcement agencies to enforce subsection (2) of this section.

(5) All medium and heavy trucks must comply with federal code 205 - transportation equipment noise emission controls, subpart B.

(6) Nothing in this section prohibits a local jurisdiction from implementing an ordinance that is more restrictive than the state law and Washington state patrol rules regarding the use of compression brakes. [2005 c 320 § 1.]

**46.37.540 Odometers—Disconnecting, resetting, or turning back prohibited.** (1) The legislature intends to make it illegal for persons to turn forward the odometer on a new car to avoid compliance with the emissions standards required by chapter 295, Laws of 2005.

(2) It shall be unlawful for any person to disconnect, turn back, turn forward, or reset the odometer of any motor vehicle with the intent to change the number of miles indicated on the odometer gauge. A violation of this subsection is a gross misdemeanor. [2005 c 295 § 8; 1983 c 3 § 119; 1969 c 112 § 2.]

**Findings—2005 c 295:** See note following RCW 70.120A.010.

*Motor vehicle dealers, unlawful acts and practices: RCW 46.70.180.*

**46.37.670 Signal preemption devices—Prohibited—Exceptions.** (1) Signal preemption devices shall not be installed or used on or with any vehicle other than an emergency vehicle authorized by the state patrol, a publicly owned law enforcement or emergency vehicle, a department of transportation, city, or county maintenance vehicle, or a public transit vehicle.

(2) This section does not apply to any of the following:

(a) A law enforcement agency and law enforcement personnel in the course of providing law enforcement services;

(b) A fire station or a fire fighter in the course of providing fire prevention or fire extinguishing services;

(c) An emergency medical service or ambulance in the course of providing emergency medical transportation or ambulance services;

(d) An operator, passenger, or owner of an authorized emergency vehicle in the course of his or her emergency duties;

(e) Department of transportation, city, or county maintenance personnel while performing maintenance;

(f) Public transit personnel in the performance of their duties. However, public transit personnel operating a signal preemption device shall have second degree priority to law enforcement personnel, fire fighters, emergency medical personnel, and other authorized emergency vehicle personnel, when simultaneously approaching the same traffic control signal;

(g) A mail or package delivery service or employee or agent of a mail or package delivery service in the course of shipping or delivering a signal preemption device;

(h) An employee or agent of a signal preemption device manufacturer or retailer in the course of his or her employment in providing, selling, manufacturing, or transporting a signal preemption device to an individual or agency described in this subsection. [2005 c 183 § 2.]

**Reviser's note:** 2005 c 183 directed that this section be added to chapter 46.61 RCW, but codification in chapter 46.37 RCW appears more appropriate.

**46.37.671 Signal preemption device—Possession—Penalty.** (1) It is unlawful to possess a signal preemption device except as authorized in RCW 46.37.670.

(2) A person who violates this section is guilty of a misdemeanor. [2005 c 183 § 3.]

**Reviser's note:** 2005 c 183 directed that this section be added to chapter 46.61 RCW, but codification in chapter 46.37 RCW appears more appropriate.

**46.37.672 Signal preemption device—Use, sale, purchase—Penalty.** (1) It is unlawful to:

(a) Use a signal preemption device except as authorized in RCW 46.37.670;

(b) Sell a signal preemption device to a person other than a person described in RCW 46.37.670; or

(c) Purchase a signal preemption device for use other than a duty as described in RCW 46.37.670.

(2) A person who violates this section is guilty of a gross misdemeanor. [2005 c 183 § 4.]

**Reviser's note:** 2005 c 183 directed that this section be added to chapter 46.61 RCW, but codification in chapter 46.37 RCW appears more appropriate.

**46.37.673 Signal preemption device—Accident—Property damage or less than substantial bodily harm—Penalty.** (1) When an accident that results only in injury to property or injury to a person that does not arise to substantial bodily harm as defined in RCW 9A.04.110 occurs as a proximate result of the operation of a signal preemption device which was not authorized in RCW 46.37.670, the driver is guilty of negligently causing an accident by use of a signal preemption device.

(2) Negligently causing an accident by use of a signal preemption device is a class C felony punishable under chapter 9A.20 RCW. [2005 c 183 § 5.]

**Reviser's note:** 2005 c 183 directed that this section be added to chapter 46.61 RCW, but codification in chapter 46.37 RCW appears more appropriate.

[2005 RCW Supp—page 588]

**46.37.674 Signal preemption device—Accident—Substantial bodily harm—Penalty.** (1) When an accident that results in injury to a person that arises to substantial bodily harm as defined in RCW 9A.04.110 occurs as a proximate result of the operation of a signal preemption device which was not authorized in RCW 46.37.670, the driver is guilty of negligently causing substantial bodily harm by use of a signal preemption device.

(2) Negligently causing substantial bodily harm by use of a signal preemption device is a class B felony punishable under chapter 9A.20 RCW. [2005 c 183 § 6.]

**Reviser's note:** 2005 c 183 directed that this section be added to chapter 46.61 RCW, but codification in chapter 46.37 RCW appears more appropriate.

**46.37.675 Signal preemption device—Accident—Death—Penalty.** (1) When an accident that results in death to a person occurs as a proximate result of the operation of a signal preemption device which was not authorized in RCW 46.37.670, the driver is guilty of negligently causing death by use of a signal preemption device.

(2) Negligently causing death by use of a signal preemption device is a class B felony punishable under chapter 9A.20 RCW. [2005 c 183 § 7.]

**Reviser's note:** 2005 c 183 directed that this section be added to chapter 46.61 RCW, but codification in chapter 46.37 RCW appears more appropriate.

**46.37.680 Sound system attachment.** (1) All vehicle sound system components, including any supplemental speaker systems or components, must be securely attached to the vehicle regardless of where the components are located, so that the components cannot become dislodged or loose during operation of the vehicle.

(2) Enforcement of this section by law enforcement officers may be accomplished only as a secondary action when a driver of a vehicle has been detained for a suspected violation of this title or an equivalent local ordinance or some other offense.

(3) The Washington state traffic safety commission shall create and implement a statewide educational program regarding the safety risks of unsecured vehicle sound system components, including supplemental speaker systems or components. The educational program shall include information regarding securely attaching sound system components to the vehicle, regardless of where the components are located, so that the components do not become dislodged or loose during the operation of the vehicle. The commission shall create and implement this program within the commission's existing budget. [2005 c 50 § 1.]

**Short title—2005 c 50:** "This act shall be known as the Courtney Amison Act." [2005 c 50 § 2.]

## Chapter 46.44 RCW SIZE, WEIGHT, LOAD

### Sections

46.44.010	Outside width limit.
46.44.013	Appurtenances on recreational vehicles.
46.44.030	Maximum lengths.
46.44.0915	Heavy haul industrial corridors—Overweight sealed containers.



- 46.44.101 Interstate travel by specialized equipment.  
 46.44.170 Mobile home or park model trailer movement special permit and decal—Responsibility for taxes—License plates—Rules.

**46.44.010 Outside width limit.** The total outside width of any vehicle or load thereon must not exceed eight and one-half feet; except that an externally mounted rear vision mirror may extend beyond the width limits of the vehicle body to a point that allows the driver a view to the rear of the vehicle along both sides in conformance with Federal National Safety Standard 111 (49 C.F.R. 571.111), and RCW 46.37.400. Excluded from this calculation of width are certain devices that provide added safety, energy conservation, or are otherwise necessary, and are not designed or used to carry cargo. The width-exclusive devices must be identified in rules adopted by the department of transportation under RCW 46.44.101. A width-exclusive device must not extend more than three inches beyond the width limit of the vehicle body. [2005 c 189 § 1; 1997 c 63 § 1; 1983 c 278 § 1; 1961 c 12 § 46.44.010. Prior: 1947 c 200 § 4; 1937 c 189 § 47; Rem. Supp. 1947 § 6360-47; 1923 c 181 § 4, part; RRS § 6362-8, part.]

**46.44.013 Appurtenances on recreational vehicles.** Motor homes, travel trailers, and campers may exceed the maximum width established under RCW 46.44.010 if the excess width is attributable to appurtenances that do not extend beyond the body of the vehicle by more than four inches, or if an awning, by more than six inches. As used in this section, "appurtenance" means an appendage that is installed by a factory or a vehicle dealer and is intended as an integral part of the motor home, travel trailer, or camper. "Appurtenance" does not include an item temporarily affixed or attached to the exterior of a vehicle for the purpose of transporting the item from one location to another. "Appurtenance" does not include an item that obstructs the driver's rearward vision. [2005 c 264 § 1.]

**46.44.030 Maximum lengths.** It is unlawful for any person to operate upon the public highways of this state any vehicle having an overall length, with or without load, in excess of forty feet. This restriction does not apply to (1) a municipal transit vehicle, (2) auto stage, private carrier bus, school bus, or motor home with an overall length not to exceed forty-six feet, or (3) an articulated auto stage with an overall length not to exceed sixty-one feet.

It is unlawful for any person to operate upon the public highways of this state any combination consisting of a tractor and semitrailer that has a semitrailer length in excess of fifty-three feet or a combination consisting of a tractor and two trailers in which the combined length of the trailers exceeds sixty-one feet, with or without load.

It is unlawful for any person to operate on the highways of this state any combination consisting of a truck and trailer, or log truck and stinger-steered pole trailer, with an overall length, with or without load, in excess of seventy-five feet. "Stinger-steered," as used in this section, means the coupling device is located behind the tread of the tires of the last axle of the towing vehicle.

These length limitations do not apply to vehicles transporting poles, pipe, machinery, or other objects of a structural nature that cannot be dismembered and operated by a public utility when required for emergency repair of public service facilities or properties, but in respect to night transportation every such vehicle and load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of any projecting load to clearly mark the dimensions of the load.

Excluded from the calculation of length are certain devices that provide added safety, energy conservation, or are otherwise necessary, and are not designed or used to carry cargo. The length-exclusive devices must be identified in rules adopted by the department of transportation under RCW 46.44.101. [2005 c 189 § 2; 2000 c 102 § 1; 1995 c 26 § 1; 1994 c 59 § 2; 1993 c 301 § 1; 1991 c 113 § 1; 1990 c 28 § 1; 1985 c 351 § 1; 1984 c 104 § 1; 1983 c 278 § 2; 1979 ex.s. c 113 § 4; 1977 ex.s. c 64 § 1; 1975-'76 2nd ex.s. c 53 § 1; 1974 ex.s. c 76 § 2; 1971 ex.s. c 248 § 2; 1967 ex.s. c 145 § 61; 1963 ex.s. c 3 § 52; 1961 ex.s. c 21 § 36; 1961 c 12 § 46.44.030. Prior: 1959 c 319 § 25; 1957 c 273 § 14; 1951 c 269 § 22; prior: 1949 c 221 § 1, part; 1947 c 200 § 5, part; 1941 c 116 § 1, part; 1937 c 189 § 49, part; Rem. Supp. 1949 § 6360-49, part.]

**Effective date—1995 c 26:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 1, 1995." [1995 c 26 § 2.]

**Severability—1967 ex.s. c 145:** See RCW 47.98.043.

**46.44.0915 Heavy haul industrial corridors—Overweight sealed containers.** (1) The department of transportation, with respect to state highways maintained within port district property, may, at the request of a port commission, make and enter into agreements with port districts and adjacent jurisdictions or agencies of the districts, for the purpose of identifying, managing, and maintaining short heavy haul industrial corridors within port district property for the movement of overweight sealed containers used in international trade.

(2) The department may issue special permits to vehicles operating in the heavy haul industrial corridor to carry weight in excess of weight limits established in RCW 46.44.041. However, the excess weight on a single axle, tandem axle, or any axle group must not exceed that allowed by RCW 46.44.091 (1) and (2), weight per tire must not exceed six hundred pounds per inch width of tire, and gross vehicle weight must not exceed one hundred five thousand five hundred pounds.

(3) The entity operating or hiring vehicles moving overweight sealed containers used in international trade must pay a fee for each special permit of one hundred dollars per month or one thousand dollars annually, beginning from the date of issue, for all movements under the special permit made on state highways within the heavy haul industrial corridor. Under no circumstances are the for hire carriers or rail customers responsible for the purchase or cost of the permits. All funds collected, except the amount retained by authorized agents of the department under RCW 46.44.096, must be forwarded to the state treasurer and deposited in the motor vehicle fund.

(4) For purposes of this section, an overweight sealed container used in international trade, including its contents, is considered nondivisible when transported within a heavy haul industrial corridor defined by the department.

(5) Any agreement entered into by the department as authorized under this section with a port district adjacent to Puget Sound and located within a county that has a population of more than seven hundred thousand, but less than one million, must limit the applicability of any established heavy haul corridor to that portion of state route no. 509 beginning at milepost 0.25 in the vicinity of East 'D' Street and ending at milepost 3.88 in the vicinity of Taylor Way.

(6) The department of transportation may adopt reasonable rules to implement this section. [2005 c 311 § 1.]

**46.44.101 Interstate travel by specialized equipment.**

The department of transportation may, within the provisions set forth in this chapter, adopt rules for size and weight criteria relating to vehicles considered to be specialized equipment by the federal highway administration for interstate travel or as determined by the department for intrastate travel. [2005 c 189 § 3.]

**46.44.170 Mobile home or park model trailer movement special permit and decal—Responsibility for taxes—License plates—Rules.** (1) Any person moving a mobile home as defined in RCW 46.04.302 or a park model trailer as defined in RCW 46.04.622 upon public highways of the state must obtain:

(a) A special permit from the department of transportation and local authorities pursuant to RCW 46.44.090 and 46.44.093 and shall pay the proper fee as prescribed by RCW 46.44.0941 and 46.44.096; and

(b) For mobile homes constructed before June 15, 1976, and already situated in the state: (i) A certification from the department of labor and industries that the mobile home was inspected for fire safety; or (ii) an affidavit in the form prescribed by the department of community, trade, and economic development signed by the owner at the county treasurer's office at the time of the application for the movement permit stating that the mobile home is being moved by the owner for his or her continued occupation or use; or (iii) a copy of the certificate of ownership or title together with an affidavit signed under penalty of perjury by the certified owner stating that the mobile home is being transferred to a wrecking yard or similar facility for disposal. In addition, the destroyed mobile home must be removed from the assessment rolls of the county and any outstanding taxes on the destroyed mobile home must be removed by the county treasurer.

(2) A special permit issued as provided in subsection (1) of this section for the movement of any mobile home or a park model trailer that is assessed for purposes of property taxes shall not be valid until the county treasurer of the county in which the mobile home or park model trailer is located shall endorse or attach his or her certificate that all property taxes which are a lien or which are delinquent, or both, upon the mobile home or park model trailer being moved have been satisfied. Further, any mobile home or park model trailer required to have a special movement permit

under this section shall display an easily recognizable decal. However, endorsement or certification by the county treasurer and the display of the decal is not required:

(a) When a mobile home or park model trailer is to enter the state or is being moved from a manufacturer or distributor to a retail sales outlet or directly to the purchaser's designated location or between retail and sales outlets;

(b) When a signed affidavit of destruction is filed with the county assessor and the mobile home or park model trailer is being moved to a disposal site by a landlord as defined in RCW 59.20.030 after (i) the mobile home or park model trailer has been abandoned as defined in RCW 59.20.030; or (ii) a final judgment for restitution of the premises under RCW 59.18.410 has been executed in favor of the landlord with regard to the mobile home or park model trailer. The mobile home or park model trailer will be removed from the tax rolls and, upon notification by the assessor, any outstanding taxes on the destroyed mobile home or park model trailer will be removed by the county treasurer; or

(c) When a signed affidavit of destruction is filed with the county assessor by any mobile home or park model trailer owner or any property owner with an abandoned mobile home or park model trailer, the same shall be removed from the tax rolls and upon notification by the assessor, any outstanding taxes on the destroyed mobile home or park model trailer shall be removed by the county treasurer.

(3) If the landlord of a mobile home park takes ownership of a mobile home or park model trailer with the intent to resell or rent the same under RCW 59.20.030 after (a) the mobile home or park model trailer has been abandoned as defined in RCW 59.20.030; or (b) a final judgment for restitution of the premises under RCW 59.18.410 has been executed in favor of the landlord with regard to the mobile home or park model trailer, the outstanding taxes become the responsibility of the landlord.

(4) It is the responsibility of the owner of the mobile home or park model trailer subject to property taxes or the agent to obtain the endorsement and decal from the county treasurer before a mobile home or park model trailer is moved.

(5) This section does not prohibit the issuance of vehicle license plates for a mobile home or park model trailer subject to property taxes, but plates shall not be issued unless the mobile home or park model trailer subject to property taxes for which plates are sought has been listed for property tax purposes in the county in which it is principally located and the appropriate fee for the license has been paid.

(6) The department of transportation, the department of labor and industries, and local authorities are authorized to adopt reasonable rules for implementing the provisions of this section. The department of transportation shall adopt rules specifying the design, reflective characteristics, annual coloration, and for the uniform implementation of the decal required by this section. By January 1, 2006, the department of labor and industries shall also adopt procedures for notifying destination local jurisdictions concerning the arrival of mobile homes that failed safety inspections. [2005 c 399 § 1; 2004 c 79 § 4; 2003 c 61 § 1; 2002 c 168 § 6; 1986 c 211 § 4. Prior: 1985 c 395 § 1; 1985 c 22 § 1; 1980 c 152 § 1; 1977 ex.s. c 22 § 2.]

**Severability—1977 ex.s. c 22:** See note following RCW 46.04.302.

**Chapter 46.52 RCW**  
**ACCIDENTS—REPORTS—**  
**ABANDONED VEHICLES**

Sections

46.52.030 Accident reports. (*Effective January 1, 2006.*)  
46.52.060 Tabulation and analysis of reports—Availability for use.  
(*Effective January 1, 2006.*)

**46.52.030 Accident reports.** (*Effective January 1, 2006.*) (1) Unless a report is to be made by a law enforcement officer under subsection (3) of this section, the driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to the property of any one person to an apparent extent equal to or greater than the minimum amount established by rule adopted by the chief of the Washington state patrol in accordance with subsection (5) of this section, shall, within four days after such accident, make a written report of such accident to the chief of police of the city or town if such accident occurred within an incorporated city or town or the county sheriff or state patrol if such accident occurred outside incorporated cities and towns. Nothing in this subsection prohibits accident reports from being filed by drivers where damage to property is less than the minimum amount or where a law enforcement officer has submitted a report.

(2) The original of the report shall be immediately forwarded by the authority receiving the report to the chief of the Washington state patrol at Olympia, Washington. The Washington state patrol shall give the department of licensing full access to the report.

(3) Any law enforcement officer who investigates an accident for which a report is required under subsection (1) of this section shall submit an investigator's report as required by RCW 46.52.070.

(4) The chief of the Washington state patrol may require any driver of any vehicle involved in an accident, of which report must be made as provided in this section, to file supplemental reports whenever the original report in the chief's opinion is insufficient, and may likewise require witnesses of any such accident to render reports. For this purpose, the chief of the Washington state patrol shall prepare and, upon request, supply to any police department, coroner, sheriff, and any other suitable agency or individual, sample forms of accident reports required hereunder, which reports shall be upon a form devised by the chief of the Washington state patrol and shall call for sufficiently detailed information to disclose all material facts with reference to the accident to be reported thereon, including the location, the circumstances, the conditions then existing, the persons and vehicles involved, the insurance information required under RCW 46.30.030, personal injury or death, if any, the amounts of property damage claimed, the total number of vehicles involved, whether the vehicles were legally parked, legally standing, or moving, whether such vehicles were occupied at the time of the accident, and whether any driver involved in the accident was distracted at the time of the accident. Distractions contributing to an accident must be reported on the accident form and include at least the following minimum

reporting options: Not distracted; operating a handheld electronic telecommunication device; operating a hands-free wireless telecommunication device; other electronic devices (including, but not limited to, PDA's, laptop computers, navigational devices, etc.); adjusting an audio or entertainment system; smoking; eating or drinking; reading or writing; grooming; interacting with children, passengers, animals, or objects in the vehicle; other inside distractions; outside distractions; and distraction unknown. Every required accident report shall be made on a form prescribed by the chief of the Washington state patrol and each authority charged with the duty of receiving such reports shall provide sufficient report forms in compliance with the form devised. The report forms shall be designated so as to provide that a copy may be retained by the reporting person.

(5) The chief of the Washington state patrol shall adopt rules establishing the accident-reporting threshold for property damage accidents. Beginning October 1, 1987, the accident-reporting threshold for property damage accidents shall be five hundred dollars. The accident-reporting threshold for property damage accidents shall be revised when necessary, but not more frequently than every two years. The revisions shall only be for the purpose of recognizing economic changes as reflected by an inflationary index recommended by the office of financial management. The revisions shall be guided by the change in the index for the time period since the last revision. [2005 c 171 § 1; 1997 c 248 § 1; 1996 c 183 § 1; 1989 c 353 § 5; 1987 c 463 § 2; 1981 c 30 § 1; 1979 c 158 § 160; 1979 c 11 § 2. Prior: 1977 ex.s. c 369 § 2; 1977 ex.s. c 68 § 1; 1969 ex.s. c 40 § 2; 1967 c 32 § 54; 1965 ex.s. c 119 § 1; 1961 c 12 § 46.52.030; prior: 1943 c 154 § 1; 1937 c 189 § 135; RRS § 6360-135.]

**Effective date—2005 c 171:** "This act takes effect January 1, 2006." [2005 c 171 § 3.]

**Effective date—1997 c 248:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 2, 1997]." [1997 c 248 § 2.]

**Effective date—1996 c 183:** "This act takes effect July 1, 1996." [1996 c 183 § 3.]

**Severability—Effective date—1989 c 353:** See RCW 46.30.900 and 46.30.901.

**46.52.060 Tabulation and analysis of reports—Availability for use.** (*Effective January 1, 2006.*) It shall be the duty of the chief of the Washington state patrol to file, tabulate, and analyze all accident reports and to publish annually, immediately following the close of each fiscal year, and monthly during the course of the year, statistical information based thereon showing the number of accidents, the location, the frequency, whether any driver involved in the accident was distracted at the time of the accident and the circumstances thereof, and other statistical information which may prove of assistance in determining the cause of vehicular accidents. Distractions contributing to an accident to be reported must include at least the following: Not distracted; operating a handheld electronic telecommunication device; operating a hands-free wireless telecommunication device; other electronic devices (including, but not limited to, PDA's, laptop computers, navigational devices, etc.); adjusting an audio or entertainment system; smoking; eating or drinking;

reading or writing; grooming; interacting with children, passengers, animals, or objects in the vehicle; other inside distractions; outside distractions; and distraction unknown.

Such accident reports and analysis or reports thereof shall be available to the director of licensing, the department of transportation, the utilities and transportation commission, the traffic safety commission, and other public entities authorized by the chief of the Washington state patrol, or their duly authorized representatives, for further tabulation and analysis for pertinent data relating to the regulation of highway traffic, highway construction, vehicle operators and all other purposes, and to publish information so derived as may be deemed of publication value. [2005 c 171 § 2; 1998 c 169 § 1; 1979 c 158 § 161; 1977 c 75 § 67; 1967 c 32 § 56; 1961 c 12 § 46.52.060. Prior: 1937 c 189 § 138; RRS § 6360-138.]

Effective date—2005 c 171: See note following RCW 46.52.030.

Chapter 46.55 RCW

TOWING AND IMPOUNDMENT

Sections

- 46.55.010 Definitions.
46.55.113 Removal by police officer.
46.55.300 Vehicle immobilization.

46.55.010 Definitions. The definitions set forth in this section apply throughout this chapter:

- (1) "Abandoned vehicle" means a vehicle that a registered tow truck operator has impounded and held in the operator's possession for one hundred twenty consecutive hours.
(2) "Immobilize" means the use of a locking wheel boot that, when attached to the wheel of a vehicle, prevents the vehicle from moving without damage to the tire to which the locking wheel boot is attached.
(3) "Abandoned vehicle report" means the document prescribed by the state that the towing operator forwards to the department after a vehicle has become abandoned.
(4) "Impound" means to take and hold a vehicle in legal custody. There are two types of impounds—public and private.
(a) "Public impound" means that the vehicle has been impounded at the direction of a law enforcement officer or by a public official having jurisdiction over the public property upon which the vehicle was located.
(b) "Private impound" means that the vehicle has been impounded at the direction of a person having control or possession of the private property upon which the vehicle was located.
(5) "Junk vehicle" means a vehicle certified under RCW 46.55.230 as meeting at least three of the following requirements:

- (a) Is three years old or older;
(b) Is extensively damaged, such damage including but not limited to any of the following: A broken window or windshield, or missing wheels, tires, motor, or transmission;
(c) Is apparently inoperable;
(d) Has an approximate fair market value equal only to the approximate value of the scrap in it.
(6) "Master log" means the document or an electronic facsimile prescribed by the department and the Washington

state patrol in which an operator records transactions involving impounded vehicles.

(7) "Registered tow truck operator" or "operator" means any person who engages in the impounding, transporting, or storage of unauthorized vehicles or the disposal of abandoned vehicles.

(8) "Residential property" means property that has no more than four living units located on it.

(9) "Suspended license impound" means an impound ordered under RCW 46.55.113 because the operator was arrested for a violation of RCW 46.20.342 or 46.20.345.

(10) "Tow truck" means a motor vehicle that is equipped for and used in the business of towing vehicles with equipment as approved by the state patrol.

(11) "Tow truck number" means the number issued by the department to tow trucks used by a registered tow truck operator in the state of Washington.

(12) "Tow truck permit" means the permit issued annually by the department that has the classification of service the tow truck may provide stamped upon it.

(13) "Tow truck service" means the transporting upon the public streets and highways of this state of vehicles, together with personal effects and cargo, by a tow truck of a registered operator.

(14) "Unauthorized vehicle" means a vehicle that is subject to impoundment after being left unattended in one of the following public or private locations for the indicated period of time:

Subject to removal after:

- (a) Public locations:
(i) Constituting an accident or a traffic hazard as defined in RCW 46.55.113 . . . . . Immediately
(ii) On a highway and tagged as described in RCW 46.55.085 . . . . . 24 hours
(iii) In a publicly owned or controlled parking facility, properly posted under RCW 46.55.070 . . . . . Immediately
(b) Private locations:
(i) On residential property . . . . . Immediately
(ii) On private, nonresidential property, properly posted under RCW 46.55.070 . . . . . Immediately
(iii) On private, nonresidential property, not posted . . . . . 24 hours

[2005 c 88 § 2; 1999 c 398 § 2; 1998 c 203 § 8; 1994 c 176 § 1; 1991 c 292 § 1; 1989 c 111 § 1. Prior: 1987 c 330 § 739; 1987 c 311 § 1; 1985 c 377 § 1.]

Finding—1998 c 203: See note following RCW 46.55.105.

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.55.113 Removal by police officer. (1) Whenever the driver of a vehicle is arrested for a violation of RCW 46.61.502, 46.61.504, 46.20.342, or 46.20.345, the vehicle is subject to summary impoundment, pursuant to the terms and conditions of an applicable local ordinance or state agency rule at the direction of a law enforcement officer.

(2) In addition, a police officer may take custody of a vehicle, at his or her discretion, and provide for its prompt

removal to a place of safety under any of the following circumstances:

(a) Whenever a police officer finds a vehicle standing upon the roadway in violation of any of the provisions of RCW 46.61.560, the officer may provide for the removal of the vehicle or require the driver or other person in charge of the vehicle to move the vehicle to a position off the roadway;

(b) Whenever a police officer finds a vehicle unattended upon a highway where the vehicle constitutes an obstruction to traffic or jeopardizes public safety;

(c) Whenever a police officer finds an unattended vehicle at the scene of an accident or when the driver of a vehicle involved in an accident is physically or mentally incapable of deciding upon steps to be taken to protect his or her property;

(d) Whenever the driver of a vehicle is arrested and taken into custody by a police officer;

(e) Whenever a police officer discovers a vehicle that the officer determines to be a stolen vehicle;

(f) Whenever a vehicle without a special license plate, placard, or decal indicating that the vehicle is being used to transport a person with disabilities under RCW 46.16.381 is parked in a stall or space clearly and conspicuously marked under RCW 46.61.581 which space is provided on private property without charge or on public property;

(g) Upon determining that a person is operating a motor vehicle without a valid driver's license in violation of RCW 46.20.005 or with a license that has been expired for ninety days or more;

(h) When a vehicle is illegally occupying a truck, commercial loading zone, restricted parking zone, bus, loading, hooded-meter, taxi, street construction or maintenance, or other similar zone where, by order of the director of transportation or chiefs of police or fire or their designees, parking is limited to designated classes of vehicles or is prohibited during certain hours, on designated days or at all times, if the zone has been established with signage for at least twenty-four hours and where the vehicle is interfering with the proper and intended use of the zone. Signage must give notice to the public that a vehicle will be removed if illegally parked in the zone.

(3) When an arrest is made for a violation of RCW 46.20.342, if the vehicle is a commercial vehicle and the driver of the vehicle is not the owner of the vehicle, before the summary impoundment directed under subsection (1) of this section, the police officer shall attempt in a reasonable and timely manner to contact the owner of the vehicle and may release the vehicle to the owner if the owner is reasonably available, as long as the owner was not in the vehicle at the time of the stop and arrest and the owner has not received a prior release under this subsection or RCW 46.55.120(1)(a)(ii).

(4) Nothing in this section may derogate from the powers of police officers under the common law. For the purposes of this section, a place of safety may include the business location of a registered tow truck operator. [2005 c 390 § 5. Prior: 2003 c 178 § 1; 2003 c 177 § 1; 1998 c 203 § 4; 1997 c 66 § 7; 1996 c 89 § 1; 1994 c 275 § 32; 1987 c 311 § 10. Formerly RCW 46.61.565.]

**Finding—1998 c 203:** See note following RCW 46.55.105.

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

**46.55.300 Vehicle immobilization.** (1) A property owner shall not immobilize any vehicle owned by a person other than the property owner.

(2) This section does not apply to property owned by the state or any unit of local government.

(3) A violation of this section is a gross misdemeanor. [2005 c 88 § 1.]

## Chapter 46.61 RCW RULES OF THE ROAD

### Sections

46.61.110	Overtaking on the left.
46.61.120	Limitations on overtaking on the left.
46.61.125	Further limitations on driving to left of center of roadway.
46.61.126	Pedestrians and bicyclists—Legal duties.
46.61.212	Approaching stationary emergency vehicle.
46.61.581	Parking spaces for persons with disabilities—Indication, access—Failure, penalty.
46.61.655	Dropping load, other materials—Covering.
46.61.687	Child passenger restraint required—Conditions—Exceptions—Penalty for violation—Dismissal—Noncompliance not negligence—Immunity. ( <i>Effective until June 1, 2007.</i> )
46.61.687	Child passenger restraint required—Conditions—Exceptions—Penalty for violation—Dismissal—Noncompliance not negligence—Immunity. ( <i>Effective June 1, 2007.</i> )
46.61.6871	Child passenger safety technician—Immunity.

**46.61.110 Overtaking on the left.** The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions and special rules hereinafter stated:

(1) The driver of a vehicle overtaking other traffic proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken traffic.

(2) The driver of a vehicle approaching a pedestrian or bicycle that is on the roadway or on the right-hand shoulder or bicycle lane of the roadway shall pass to the left at a safe distance to clearly avoid coming into contact with the pedestrian or bicyclist, and shall not again drive to the right side of the roadway until safely clear of the overtaken pedestrian or bicyclist.

(3) Except when overtaking and passing on the right is permitted, overtaken traffic shall give way to the right in favor of an overtaking vehicle on audible signal and shall not increase speed until completely passed by the overtaking vehicle. [2005 c 396 § 1; 1965 ex.s. c 155 § 17.]

**Rules of court:** *Monetary penalty schedule—IRLJ 6.2.*

**46.61.120 Limitations on overtaking on the left.** No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing other traffic proceeding in the same direction unless authorized by the provisions of RCW 46.61.100 through 46.61.160 and unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the operation of any traffic approaching from the opposite direction or any traffic overtaken. In every event the overtaking vehicle must return to an authorized lane of travel as soon as practicable and in the event the passing movement involves the use of a lane authorized for vehicles approaching from the opposite

direction, before coming within two hundred feet of any approaching traffic. [2005 c 396 § 2; 1965 ex.s. c 155 § 19.]

**Rules of court:** *Monetary penalty schedule—IRLJ 6.2.*

**46.61.125 Further limitations on driving to left of center of roadway.** (1) No vehicle shall be driven on the left side of the roadway under the following conditions:

(a) When approaching or upon the crest of a grade or a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event other traffic might approach from the opposite direction;

(b) When approaching within one hundred feet of or traversing any intersection or railroad grade crossing;

(c) When the view is obstructed upon approaching within one hundred feet of any bridge, viaduct or tunnel;

(d) When a bicycle or pedestrian is within view of the driver and is approaching from the opposite direction, or is present, in the roadway, shoulder, or bicycle lane within a distance unsafe to the bicyclist or pedestrian due to the width or condition of the roadway, shoulder, or bicycle lane.

(2) The foregoing limitations shall not apply upon a one-way roadway, nor under the conditions described in RCW 46.61.100(1)(b), nor to the driver of a vehicle turning left into or from an alley, private road or driveway. [2005 c 396 § 3; 1972 ex.s. c 33 § 2; 1965 ex.s. c 155 § 20.]

**Rules of court:** *Monetary penalty schedule—IRLJ 6.2.*

**46.61.126 Pedestrians and bicyclists—Legal duties.** Nothing in RCW 46.61.110, 46.61.120, or 46.61.125 relieves pedestrians and bicyclists of their legal duties while traveling on public highways. [2005 c 396 § 4.]

**46.61.212 Approaching stationary emergency vehicle.** The driver of any motor vehicle, upon approaching a stationary authorized emergency vehicle that is making use of audible and/or visual signals meeting the requirements of RCW 46.37.190 or of a police vehicle properly and lawfully displaying a flashing, blinking, or alternating emergency light or lights, shall:

(1) On a highway having at least four lanes, at least two of which are intended for traffic proceeding in the same direction as the approaching vehicle, proceed with caution and, if reasonable, with due regard for safety and traffic conditions, yield the right of way by making a lane change or moving away from the lane or shoulder occupied by the stationary authorized emergency vehicle or police vehicle; or

(2) If changing lanes or moving away would be unreasonable or unsafe, proceed with due caution and reduce the speed of the vehicle. [2005 c 413 § 1.]

**46.61.581 Parking spaces for persons with disabilities—Indication, access—Failure, penalty.** A parking space or stall for a person with a disability shall be indicated by a vertical sign with the international symbol of access, whose colors are white on a blue background, described under RCW 70.92.120. The sign may include additional language such as, but not limited to, an indication of the amount of the monetary penalty defined in RCW 46.16.381 for parking in the space without a valid permit.

[2005 RCW Supp—page 594]

Failure of the person owning or controlling the property where required parking spaces are located to erect and maintain the sign is a class 2 civil infraction under chapter 7.80 RCW for each parking space that should be so designated. The person owning or controlling the property where the required parking spaces are located shall ensure that the parking spaces are not blocked or made inaccessible, and failure to do so is a class 2 civil infraction. [2005 c 390 § 1; 1998 c 294 § 2; 1988 c 74 § 1; 1984 c 154 § 4.]

**Intent—Application—Severability—1984 c 154:** See notes following RCW 46.16.381.

*Accessible parking spaces required:* RCW 70.92.140.

*Special parking for persons with disabilities—Unauthorized use:* RCW 46.16.381.

**46.61.655 Dropping load, other materials—Covering.** (1) No vehicle shall be driven or moved on any public highway unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction.

(2) No person may operate on any public highway any vehicle with any load unless the load and such covering as required thereon by subsection (3) of this section is securely fastened to prevent the covering or load from becoming loose, detached, or in any manner a hazard to other users of the highway.

(3) Any vehicle operating on a paved public highway with a load of dirt, sand, or gravel susceptible to being dropped, spilled, leaked, or otherwise escaping therefrom shall be covered so as to prevent spillage. Covering of such loads is not required if six inches of freeboard is maintained within the bed.

(4)(a) Any person operating a vehicle from which any glass or objects have fallen or escaped, which would constitute an obstruction or injure a vehicle or otherwise endanger travel upon such public highway shall immediately cause the public highway to be cleaned of all such glass or objects and shall pay any costs therefor.

(b) Any vehicle with deposits of mud, rocks, or other debris on the vehicle's body, fenders, frame, undercarriage, wheels, or tires shall be cleaned of such material before the operation of the vehicle on a paved public highway.

(5) The state patrol may make necessary rules to carry into effect the provisions of this section, applying such provisions to specific conditions and loads and prescribing means, methods, and practices to effectuate such provisions.

(6) Nothing in this section may be construed to prohibit a public maintenance vehicle from dropping sand on a highway to enhance traction, or sprinkling water or other substances to clean or maintain a highway.

(7)(a)(i) A person is guilty of failure to secure a load in the first degree if he or she, with criminal negligence, fails to secure a load or part of a load to his or her vehicle in compliance with subsection (1), (2), or (3) of this section and causes substantial bodily harm to another.

(ii) Failure to secure a load in the first degree is a gross misdemeanor.

(b)(i) A person is guilty of failure to secure a load in the second degree if he or she, with criminal negligence, fails to secure a load or part of a load to his or her vehicle in compli-

ance with subsection (1) or (2) of this section and causes damage to property of another.

(ii) Failure to secure a load in the second degree is a misdemeanor.

(c) A person who fails to secure a load or part of a load to his or her vehicle in compliance with subsection (1), (2), or (3) of this section is guilty of an infraction if such failure does not amount to a violation of (a) or (b) of this subsection. [2005 c 431 § 1; 1990 c 250 § 56; 1986 c 89 § 1; 1971 ex.s. c 307 § 22; 1965 ex.s. c 52 § 1; 1961 c 12 § 46.56.135. Prior: 1947 c 200 § 3, part; 1937 c 189 § 44, part; Rem. Supp. 1947 § 6360-44, part. Formerly RCW 46.56.135.]

**Rules of court:** *Monetary penalty schedule—IRLJ 6.2.*

**Severability—1990 c 250:** See note following RCW 46.16.301.

**Severability—1971 ex.s. c 307:** See RCW 70.93.900.

*Littering: Chapter 70.93 RCW.*

*Transporting waste to landfills: RCW 70.93.097.*

**46.61.687 Child passenger restraint required—Conditions—Exceptions—Penalty for violation—Dismissal—Noncompliance not negligence—Immunity. (Effective until June 1, 2007.)** (1) Whenever a child who is less than sixteen years of age is being transported in a motor vehicle that is in operation and that is required by RCW 46.37.510 to be equipped with a safety belt system in a passenger seating position, or is being transported in a neighborhood electric vehicle that is in operation, the driver of the vehicle shall keep the child properly restrained as follows:

(a) If the child is less than six years old and/or sixty pounds and the passenger seating position equipped with a safety belt system allows sufficient space for installation, then the child will be restrained in a child restraint system that complies with standards of the United States department of transportation and that is secured in the vehicle in accordance with instructions of the manufacturer of the child restraint system;

(b) If the child is less than one year of age or weighs less than twenty pounds, the child shall be properly restrained in a rear-facing infant seat;

(c) If the child is more than one but less than four years of age or weighs less than forty pounds but at least twenty pounds, the child shall be properly restrained in a forward facing child safety seat restraint system;

(d) If the child is less than six but at least four years of age or weighs less than sixty pounds but at least forty pounds, the child shall be properly restrained in a child booster seat;

(e) If the child is six years of age or older or weighs more than sixty pounds, the child shall be properly restrained with the motor vehicle's safety belt properly adjusted and fastened around the child's body or an appropriately fitting booster seat; and

(f) Enforcement of (a) through (e) of this subsection is subject to a visual inspection by law enforcement to determine if the child restraint system in use is appropriate for the child's individual height, weight, and age. The visual inspection for usage of a forward facing child safety seat must ensure that the seat in use is equipped with a four-point shoulder harness system. The visual inspection for usage of a booster seat must ensure that the seat belt properly fits across the child's lap and the shoulder strap crosses the center of the

child's chest. The visual inspection for the usage of a seat belt by a child must ensure that the lap belt properly fits across the child's lap and the shoulder strap crosses the center of the child's chest. In determining violations, consideration to the above criteria must be given in conjunction with the provisions of (a) through (e) of this subsection. The driver of a vehicle transporting a child who is under the age of six years old or weighs less than sixty pounds, when the vehicle is equipped with a passenger side air bag supplemental restraint system, and the air bag system is activated, shall transport the child in the back seat positions in the vehicle where it is practical to do so.

(2) A person violating subsection (1)(a) through (e) of this section may be issued a notice of traffic infraction under chapter 46.63 RCW. If the person to whom the notice was issued presents proof of acquisition of an approved child passenger restraint system or a child booster seat, as appropriate, within seven days to the jurisdiction issuing the notice and the person has not previously had a violation of this section dismissed, the jurisdiction shall dismiss the notice of traffic infraction.

(3) Failure to comply with the requirements of this section shall not constitute negligence by a parent or legal guardian; nor shall failure to use a child restraint system be admissible as evidence of negligence in any civil action.

(4) This section does not apply to: (a) For hire vehicles, (b) vehicles designed to transport sixteen or less passengers, including the driver, operated by auto transportation companies, as defined in RCW 81.68.010, (c) vehicles providing customer shuttle service between parking, convention, and hotel facilities, and airport terminals, and (d) school buses.

(5) As used in this section "child booster seat" means a child passenger restraint system that meets the Federal Motor Vehicle Safety Standards set forth in 49 C.F.R. 571.213 that is designed to elevate a child to properly sit in a federally approved lap/shoulder belt system.

(6) The requirements of subsection (1)(a) through (e) of this section do not apply in any seating position where there is only a lap belt available and the child weighs more than forty pounds.

(7)(a) Except as provided in (b) of this subsection, a person who has a current national certification as a child passenger safety technician and who in good faith provides inspection, adjustment, or educational services regarding child passenger restraint systems is not liable for civil damages resulting from any act or omission in providing the services, other than acts or omissions constituting gross negligence or willful or wanton misconduct.

(b) The immunity provided in this subsection does not apply to a certified child passenger safety technician who is employed by a retailer of child passenger restraint systems and who, during his or her hours of employment and while being compensated, provides inspection, adjustment, or educational services regarding child passenger restraint systems. [2005 c 415 § 1; 2003 c 353 § 5; 2000 c 190 § 2; 1994 c 100 § 1; 1993 c 274 § 1; 1987 c 330 § 745; 1983 c 215 § 2.]

**Effective date—2003 c 353:** See note following RCW 46.04.320.

**Intent—2000 c 190:** "The legislature recognizes that fewer than five percent of all drivers use child booster seats for children over the age of four years. The legislature also recognizes that seventy-one percent of deaths resulting from car accidents could be eliminated if every child under the age

of sixteen used an appropriate child safety seat, booster seat, or seat belt. The legislature further recognizes the National Transportation Safety Board's recommendations that promote the use of booster seats to increase the safety of children under eight years of age. Therefore, it is the legislature's intent to decrease deaths and injuries to children by promoting safety education and injury prevention measures, as well as increasing public awareness on ways to maximize the protection of children in vehicles." [2000 c 190 § 1.]

**Short title—2000 c 190:** "This act may be known and cited as the Anton Skeen Act." [2000 c 190 § 5.]

**Effective date—2000 c 190:** "This act takes effect July 1, 2002." [2000 c 190 § 6.]

**Construction—Application of rules—Severability—1987 c 330:** See notes following RCW 28B.12.050.

**Severability—1983 c 215:** See note following RCW 46.37.505.

*Standards for child passenger restraint systems: RCW 46.37.505.*

**46.61.687 Child passenger restraint required—Conditions—Exceptions—Penalty for violation—Dismissal—Noncompliance not negligence—Immunity. (Effective June 1, 2007.)** (1) Whenever a child who is less than sixteen years of age is being transported in a motor vehicle that is in operation and that is required by RCW 46.37.510 to be equipped with a safety belt system in a passenger seating position, or is being transported in a neighborhood electric vehicle that is in operation, the driver of the vehicle shall keep the child properly restrained as follows:

(a) A child must be restrained in a child restraint system, if the passenger seating position equipped with a safety belt system allows sufficient space for installation, until the child is eight years old, unless the child is four feet nine inches or taller. The child restraint system must comply with standards of the United States department of transportation and must be secured in the vehicle in accordance with instructions of the vehicle manufacturer and the child restraint system manufacturer.

(b) A child who is eight years of age or older or four feet nine inches or taller shall be properly restrained with the motor vehicle's safety belt properly adjusted and fastened around the child's body or an appropriately fitting child restraint system.

(c) The driver of a vehicle transporting a child who is under thirteen years old shall transport the child in the back seat positions in the vehicle where it is practical to do so.

(2) Enforcement of subsection (1) of this section is subject to a visual inspection by law enforcement to determine if the child restraint system in use is appropriate for the child's individual height, weight, and age. The visual inspection for usage of a child restraint system must ensure that the child restraint system is being used in accordance with the instruction of the vehicle and the child restraint system manufacturers. The driver of a vehicle transporting a child who is under thirteen years old shall transport the child in the back seat positions in the vehicle where it is practical to do so.

(3) A person violating subsection (1) of this section may be issued a notice of traffic infraction under chapter 46.63 RCW. If the person to whom the notice was issued presents proof of acquisition of an approved child passenger restraint system or a child booster seat, as appropriate, within seven days to the jurisdiction issuing the notice and the person has not previously had a violation of this section dismissed, the jurisdiction shall dismiss the notice of traffic infraction.

[2005 RCW Supp—page 596]

(4) Failure to comply with the requirements of this section shall not constitute negligence by a parent or legal guardian. Failure to use a child restraint system shall not be admissible as evidence of negligence in any civil action.

(5) This section does not apply to: (a) For hire vehicles, (b) vehicles designed to transport sixteen or less passengers, including the driver, operated by auto transportation companies, as defined in RCW 81.68.010, (c) vehicles providing customer shuttle service between parking, convention, and hotel facilities, and airport terminals, and (d) school buses.

(6) As used in this section, "child restraint system" means a child passenger restraint system that meets the Federal Motor Vehicle Safety Standards set forth in 49 C.F.R. 571.213.

(7) The requirements of subsection (1) of this section do not apply in any seating position where there is only a lap belt available and the child weighs more than forty pounds.

(8)(a) Except as provided in (b) of this subsection, a person who has a current national certification as a child passenger safety technician and who in good faith provides inspection, adjustment, or educational services regarding child passenger restraint systems is not liable for civil damages resulting from any act or omission in providing the services, other than acts or omissions constituting gross negligence or willful or wanton misconduct.

(b) The immunity provided in this subsection does not apply to a certified child passenger safety technician who is employed by a retailer of child passenger restraint systems and who, during his or her hours of employment and while being compensated, provides inspection, adjustment, or educational services regarding child passenger restraint systems. [2005 c 415 § 1; 2005 c 132 § 1; 2003 c 353 § 5; 2000 c 190 § 2; 1994 c 100 § 1; 1993 c 274 § 1; 1987 c 330 § 745; 1983 c 215 § 2.]

**Reviser's note:** This section was amended by 2005 c 132 § 1 and by 2005 c 415 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2005 c 132 § 1:** "Section 1 of this act takes effect June 1, 2007." [2005 c 132 § 3.]

**Effective date—2003 c 353:** See note following RCW 46.04.320.

**Intent—2000 c 190:** "The legislature recognizes that fewer than five percent of all drivers use child booster seats for children over the age of four years. The legislature also recognizes that seventy-one percent of deaths resulting from car accidents could be eliminated if every child under the age of sixteen used an appropriate child safety seat, booster seat, or seat belt. The legislature further recognizes the National Transportation Safety Board's recommendations that promote the use of booster seats to increase the safety of children under eight years of age. Therefore, it is the legislature's intent to decrease deaths and injuries to children by promoting safety education and injury prevention measures, as well as increasing public awareness on ways to maximize the protection of children in vehicles." [2000 c 190 § 1.]

**Short title—2000 c 190:** "This act may be known and cited as the Anton Skeen Act." [2000 c 190 § 5.]

**Effective date—2000 c 190:** "This act takes effect July 1, 2002." [2000 c 190 § 6.]

**Construction—Application of rules—Severability—1987 c 330:** See notes following RCW 28B.12.050.

**Severability—1983 c 215:** See note following RCW 46.37.505.

*Standards for child passenger restraint systems: RCW 46.37.505.*

**46.61.6871 Child passenger safety technician—Immunity.** A person who has a current national certification



as a child passenger safety technician and who in good faith provides inspection, adjustment, or educational services regarding child passenger restraint systems is not liable for civil damages resulting from any act or omission in providing the services, other than acts or omissions constituting gross negligence or willful or wanton misconduct. [2005 c 132 § 2.]

### Chapter 46.63 RCW

#### DISPOSITION OF TRAFFIC INFRACTIONS

##### Sections

46.63.020	Violations as traffic infractions—Exceptions.
46.63.030	Notice of traffic infraction—Issuance—Abandoned vehicles.
46.63.073	Rental vehicles.
46.63.075	Toll evasion—Presumption.
46.63.110	Monetary penalties.
46.63.170	Traffic safety cameras.

**46.63.020 Violations as traffic infractions—Exceptions.** Failure to perform any act required or the performance of any act prohibited by this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution relating to traffic including parking, standing, stopping, and pedestrian offenses, is designated as a traffic infraction and may not be classified as a criminal offense, except for an offense contained in the following provisions of this title or a violation of an equivalent administrative regulation or local law, ordinance, regulation, or resolution:

(1) RCW 46.09.120(2) relating to the operation of a non-highway vehicle while under the influence of intoxicating liquor or a controlled substance;

(2) RCW 46.09.130 relating to operation of nonhighway vehicles;

(3) RCW 46.10.090(2) relating to the operation of a snowmobile while under the influence of intoxicating liquor or narcotics or habit-forming drugs or in a manner endangering the person of another;

(4) RCW 46.10.130 relating to the operation of snowmobiles;

(5) Chapter 46.12 RCW relating to certificates of ownership and registration and markings indicating that a vehicle has been destroyed or declared a total loss;

(6) RCW 46.16.010 relating to the nonpayment of taxes and fees by failure to register a vehicle and falsifying residency when registering a motor vehicle;

(7) RCW 46.16.011 relating to permitting unauthorized persons to drive;

(8) RCW 46.16.160 relating to vehicle trip permits;

(9) RCW 46.16.381(2) relating to knowingly providing false information in conjunction with an application for a special placard or license plate for disabled persons' parking;

(10) RCW 46.20.005 relating to driving without a valid driver's license;

(11) RCW 46.20.091 relating to false statements regarding a driver's license or instruction permit;

(12) RCW 46.20.0921 relating to the unlawful possession and use of a driver's license;

(13) RCW 46.20.342 relating to driving with a suspended or revoked license or status;

(14) RCW 46.20.345 relating to the operation of a motor vehicle with a suspended or revoked license;

(15) RCW 46.20.410 relating to the violation of restrictions of an occupational or temporary restricted driver's license;

(16) RCW 46.20.740 relating to operation of a motor vehicle without an ignition interlock device in violation of a license notation that the device is required;

(17) RCW 46.20.750 relating to assisting another person to start a vehicle equipped with an ignition interlock device;

(18) RCW 46.25.170 relating to commercial driver's licenses;

(19) Chapter 46.29 RCW relating to financial responsibility;

(20) RCW 46.30.040 relating to providing false evidence of financial responsibility;

(21) RCW 46.37.435 relating to wrongful installation of sunscreening material;

(22) RCW 46.37.650 relating to the sale, resale, distribution, or installation of a previously deployed air bag;

(23) RCW 46.44.180 relating to operation of mobile home pilot vehicles;

(24) RCW 46.48.175 relating to the transportation of dangerous articles;

(25) RCW 46.52.010 relating to duty on striking an unattended car or other property;

(26) RCW 46.52.020 relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(27) RCW 46.52.090 relating to reports by repairmen, storagemen, and appraisers;

(28) RCW 46.52.130 relating to confidentiality of the driving record to be furnished to an insurance company, an employer, and an alcohol/drug assessment or treatment agency;

(29) RCW 46.55.020 relating to engaging in the activities of a registered tow truck operator without a registration certificate;

(30) RCW 46.55.035 relating to prohibited practices by tow truck operators;

(31) RCW 46.61.015 relating to obedience to police officers, flaggers, or fire fighters;

(32) RCW 46.61.020 relating to refusal to give information to or cooperate with an officer;

(33) RCW 46.61.022 relating to failure to stop and give identification to an officer;

(34) RCW 46.61.024 relating to attempting to elude pursuing police vehicles;

(35) RCW 46.61.500 relating to reckless driving;

(36) RCW 46.61.502 and 46.61.504 relating to persons under the influence of intoxicating liquor or drugs;

(37) RCW 46.61.503 relating to a person under age twenty-one driving a motor vehicle after consuming alcohol;

(38) RCW 46.61.520 relating to vehicular homicide by motor vehicle;

(39) RCW 46.61.522 relating to vehicular assault;

(40) RCW 46.61.5249 relating to first degree negligent driving;

(41) RCW 46.61.527(4) relating to reckless endangerment of roadway workers;

(42) RCW 46.61.530 relating to racing of vehicles on highways;

(43) RCW 46.61.655(7) (a) and (b) relating to failure to secure a load;

(44) RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running;

(45) RCW 46.61.740 relating to theft of motor vehicle fuel;

(46) RCW 46.37.671 through 46.37.675 relating to signal preemption devices;

(47) RCW 46.64.010 relating to unlawful cancellation of or attempt to cancel a traffic citation;

(48) RCW 46.64.048 relating to attempting, aiding, abetting, coercing, and committing crimes;

(49) Chapter 46.65 RCW relating to habitual traffic offenders;

(50) RCW 46.68.010 relating to false statements made to obtain a refund;

(51) Chapter 46.70 RCW relating to unfair motor vehicle business practices, except where that chapter provides for the assessment of monetary penalties of a civil nature;

(52) Chapter 46.72 RCW relating to the transportation of passengers in for hire vehicles;

(53) RCW 46.72A.060 relating to limousine carrier insurance;

(54) RCW 46.72A.070 relating to operation of a limousine without a vehicle certificate;

(55) RCW 46.72A.080 relating to false advertising by a limousine carrier;

(56) Chapter 46.80 RCW relating to motor vehicle wreckers;

(57) Chapter 46.82 RCW relating to driver's training schools;

(58) RCW 46.87.260 relating to alteration or forgery of a cab card, letter of authority, or other temporary authority issued under chapter 46.87 RCW;

(59) RCW 46.87.290 relating to operation of an unregistered or unlicensed vehicle under chapter 46.87 RCW. [2005 c 431 § 2; 2005 c 323 § 3; 2005 c 183 § 10; 2004 c 95 § 14; 2003 c 33 § 4; 2001 c 325 § 4; 1999 c 86 § 6; 1998 c 294 § 3. Prior: 1997 c 229 § 13; 1997 c 66 § 8; prior: 1996 c 307 § 6; 1996 c 287 § 7; 1996 c 93 § 3; 1996 c 87 § 21; 1996 c 31 § 3; prior: 1995 1st sp.s. c 16 § 1; 1995 c 332 § 16; 1995 c 256 § 25; prior: 1994 c 275 § 33; 1994 c 141 § 2; 1993 c 501 § 8; 1992 c 32 § 4; 1991 c 339 § 27; prior: 1990 c 250 § 59; 1990 c 95 § 3; prior: 1989 c 353 § 8; 1989 c 178 § 27; 1989 c 111 § 20; prior: 1987 c 388 § 11; 1987 c 247 § 6; 1987 c 244 § 55; 1987 c 181 § 2; 1986 c 186 § 3; prior: 1985 c 377 § 28; 1985 c 353 § 2; 1985 c 302 § 7; 1983 c 164 § 6; 1982 c 10 § 12; prior: 1981 c 318 § 2; 1981 c 19 § 1; 1980 c 148 § 7; 1979 ex.s. c 136 § 2.]

**Reviser's note:** This section was amended by 2005 c 183 § 10, 2005 c 323 § 3, and by 2005 c 431 § 2, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Declaration and intent—Effective date—Application—2005 c 323:** See notes following RCW 46.16.010.

**Effective date—1997 c 229:** See note following RCW 10.05.090.

**Effective date—1995 1st sp.s. c 16:** "This act shall take effect September 1, 1995." [1995 1st sp.s. c 16 § 2.]

**Severability—Effective dates—1995 c 332:** See notes following RCW 46.20.308.

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

**Effective date—1994 c 141:** See note following RCW 46.61.527.

**Severability—1990 c 250:** See note following RCW 46.16.301.

**Severability—Effective date—1989 c 353:** See RCW 46.30.900 and 46.30.901.

**Severability—Effective dates—1989 c 178:** See RCW 46.25.900 and 46.25.901.

**Severability—1987 c 388:** See note following RCW 46.20.342.

**Effective dates—1987 c 244:** See note following RCW 46.12.020.

**Severability—Effective date—1985 c 377:** See RCW 46.55.900 and 46.55.902.

**Severability—1982 c 10:** See note following RCW 6.13.080.

**Severability—1981 c 19:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 19 § 7.]

**Effective date—1980 c 148:** See note following RCW 46.10.090.

**Effective date—Severability—1979 ex.s. c 136:** See notes following RCW 46.63.010.

**46.63.030 Notice of traffic infraction—Issuance—Abandoned vehicles.** (1) A law enforcement officer has the authority to issue a notice of traffic infraction:

(a) When the infraction is committed in the officer's presence;

(b) When the officer is acting upon the request of a law enforcement officer in whose presence the traffic infraction was committed;

(c) If an officer investigating at the scene of a motor vehicle accident has reasonable cause to believe that the driver of a motor vehicle involved in the accident has committed a traffic infraction;

(d) When the notice of infraction is detected through the use of a photo enforcement system under RCW 46.63.160; or

(e) When the notice of infraction is detected through the use of an automated traffic safety camera under RCW 46.63.170.

(2) A court may issue a notice of traffic infraction upon receipt of a written statement of the officer that there is reasonable cause to believe that an infraction was committed.

(3) If any motor vehicle without a driver is found parked, standing, or stopped in violation of this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution, the officer finding the vehicle shall take its registration number and may take any other information displayed on the vehicle which may identify its user, and shall conspicuously affix to the vehicle a notice of traffic infraction.

(4) In the case of failure to redeem an abandoned vehicle under RCW 46.55.120, upon receiving a complaint by a registered tow truck operator that has incurred costs in removing, storing, and disposing of an abandoned vehicle, an officer of the law enforcement agency responsible for directing the removal of the vehicle shall send a notice of infraction by certified mail to the last known address of the person responsible under RCW 46.55.105. The notice must be entitled "Littering—Abandoned Vehicle" and give notice of the monetary penalty. The officer shall append to the notice of infraction, on a form prescribed by the department of licensing, a notice indicating the amount of costs incurred as a result of removing, storing, and disposing of the abandoned vehicle, less any amount realized at auction, and a statement that monetary penalties for the infraction will not be considered as having been paid until the monetary penalty payable under this chapter has been paid and the court is satisfied that

the person has made restitution in the amount of the deficiency remaining after disposal of the vehicle. [2005 c 167 § 2; 2004 c 231 § 2; 2002 c 279 § 14; 1995 c 219 § 5; 1994 c 176 § 3; 1987 c 66 § 2; 1980 c 128 § 10; 1979 ex.s. c 136 § 3.]

**Effective date—Severability—1980 c 128:** See notes following RCW 46.63.060.

**Effective date—Severability—1979 ex.s. c 136:** See notes following RCW 46.63.010.

**46.63.073 Rental vehicles.** (1) In the event a traffic infraction is based on a vehicle's identification, and the registered owner of the vehicle is a rental car business, the law enforcement agency shall, before a notice of infraction may be issued, provide a written notice to the rental car business that a notice of infraction may be issued to the rental car business if the rental car business does not, within thirty days of receiving the written notice, provide to the issuing agency by return mail:

(a) A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred; or

(b) A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred.

Timely mailing of this statement to the issuing law enforcement agency relieves a rental car business of any liability under this chapter for the notice of infraction. In lieu of identifying the vehicle operator, the rental car business may pay the applicable penalty.

(2) For the purpose of this section, a "traffic infraction based on a vehicle's identification" includes, but is not limited to, parking infractions, high-occupancy toll lane violations, and violations recorded by automated traffic safety cameras. [2005 c 331 § 2.]

**46.63.075 Toll evasion—Presumption.** (1) In a traffic infraction case involving an infraction detected through the use of a photo enforcement system under RCW 46.63.160, or detected through the use of an automated traffic safety camera under RCW 46.63.170, proof that the particular vehicle described in the notice of traffic infraction was in violation of any such provision of RCW 46.63.160 or 46.63.170, together with proof that the person named in the notice of traffic infraction was at the time of the violation the registered owner of the vehicle, constitutes in evidence a prima facie presumption that the registered owner of the vehicle was the person in control of the vehicle at the point where, and for the time during which, the violation occurred.

(2) This presumption may be overcome only if the registered owner states, under oath, in a written statement to the court or in testimony before the court that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person other than the registered owner. [2005 c 167 § 3; 2004 c 231 § 3.]

**46.63.110 Monetary penalties.** (1) A person found to have committed a traffic infraction shall be assessed a monetary penalty. No penalty may exceed two hundred and fifty dollars for each offense unless authorized by this chapter or title.

(2) The monetary penalty for a violation of (a) RCW 46.55.105(2) is two hundred fifty dollars for each offense; (b) RCW 46.61.210(1) is five hundred dollars for each offense. No penalty assessed under this subsection (2) may be reduced.

(3) The supreme court shall prescribe by rule a schedule of monetary penalties for designated traffic infractions. This rule shall also specify the conditions under which local courts may exercise discretion in assessing fines and penalties for traffic infractions. The legislature respectfully requests the supreme court to adjust this schedule every two years for inflation.

(4) There shall be a penalty of twenty-five dollars for failure to respond to a notice of traffic infraction except where the infraction relates to parking as defined by local law, ordinance, regulation, or resolution or failure to pay a monetary penalty imposed pursuant to this chapter. A local legislative body may set a monetary penalty not to exceed twenty-five dollars for failure to respond to a notice of traffic infraction relating to parking as defined by local law, ordinance, regulation, or resolution. The local court, whether a municipal, police, or district court, shall impose the monetary penalty set by the local legislative body.

(5) Monetary penalties provided for in chapter 46.70 RCW which are civil in nature and penalties which may be assessed for violations of chapter 46.44 RCW relating to size, weight, and load of motor vehicles are not subject to the limitation on the amount of monetary penalties which may be imposed pursuant to this chapter.

(6) Whenever a monetary penalty, fee, cost, assessment, or other monetary obligation is imposed by a court under this chapter it is immediately payable. If the court determines, in its discretion, that a person is not able to pay a monetary obligation in full, and not more than one year has passed since the later of July 1, 2005, or the date the monetary obligation initially became due and payable, the court shall enter into a payment plan with the person, unless the person has previously been granted a payment plan with respect to the same monetary obligation, or unless the person is in noncompliance of any existing or prior payment plan, in which case the court may, at its discretion, implement a payment plan. If the court has notified the department that the person has failed to pay or comply and the person has subsequently entered into a payment plan and made an initial payment, the court shall notify the department that the infraction has been adjudicated, and the department shall rescind any suspension of the person's driver's license or driver's privilege based on failure to respond to that infraction. "Payment plan," as used in this section, means a plan that requires reasonable payments based on the financial ability of the person to pay. The person may voluntarily pay an amount at any time in addition to the payments required under the payment plan.

(a) If a payment required to be made under the payment plan is delinquent or the person fails to complete a community restitution program on or before the time established under the payment plan, unless the court determines good cause therefor and adjusts the payment plan or the community restitution plan accordingly, the court shall notify the department of the person's failure to meet the conditions of the plan, and the department shall suspend the person's driver's license or driving privilege until all monetary obliga-

tions, including those imposed under subsections (3) and (4) of this section, have been paid, and court authorized community restitution has been completed, or until the department has been notified that the court has entered into a new time payment or community restitution agreement with the person.

(b) If a person has not entered into a payment plan with the court and has not paid the monetary obligation in full on or before the time established for payment, the court shall notify the department of the delinquency. The department shall suspend the person's driver's license or driving privilege until all monetary obligations have been paid, including those imposed under subsections (3) and (4) of this section, or until the person has entered into a payment plan under this section.

(c) If the payment plan is to be administered by the court, the court may assess the person a reasonable administrative fee to be wholly retained by the city or county with jurisdiction. The administrative fee shall not exceed ten dollars per infraction or twenty-five dollars per payment plan, whichever is less.

(d) Nothing in this section precludes a court from contracting with outside entities to administer its payment plan system. When outside entities are used for the administration of a payment plan, the court may assess the person a reasonable fee for such administrative services, which fee may be calculated on a periodic, percentage, or other basis.

(e) If a court authorized community restitution program for offenders is available in the jurisdiction, the court may allow conversion of all or part of the monetary obligations due under this section to court authorized community restitution in lieu of time payments if the person is unable to make reasonable time payments.

(7) In addition to any other penalties imposed under this section and not subject to the limitation of subsection (1) of this section, a person found to have committed a traffic infraction shall be assessed a fee of five dollars per infraction. Under no circumstances shall this fee be reduced or waived. Revenue from this fee shall be forwarded to the state treasurer for deposit in the emergency medical services and trauma care system trust account under RCW 70.168.040.

(8)(a) In addition to any other penalties imposed under this section and not subject to the limitation of subsection (1) of this section, a person found to have committed a traffic infraction other than of RCW 46.61.527 shall be assessed an additional penalty of twenty dollars. The court may not reduce, waive, or suspend the additional penalty unless the court finds the offender to be indigent. If a court authorized community restitution program for offenders is available in the jurisdiction, the court shall allow offenders to offset all or a part of the penalty due under this subsection (8) by participation in the court authorized community restitution program.

(b) Eight dollars and fifty cents of the additional penalty under (a) of this subsection shall be remitted to the state treasurer. The remaining revenue from the additional penalty must be remitted under chapters 2.08, 3.46, 3.50, 3.62, 10.82, and 35.20 RCW. Money remitted under this subsection to the state treasurer must be deposited as provided in RCW 43.08.250. The balance of the revenue received by the county or city treasurer under this subsection must be deposited into the county or city current expense fund. Moneys

retained by the city or county under this subsection shall constitute reimbursement for any liabilities under RCW 43.135.060.

(9) If a legal proceeding, such as garnishment, has commenced to collect any delinquent amount owed by the person for any penalty imposed by the court under this section, the court may, at its discretion, enter into a payment plan.

(10) The monetary penalty for violating RCW 46.37.395 is: (a) Two hundred fifty dollars for the first violation; (b) five hundred dollars for the second violation; and (c) seven hundred fifty dollars for each violation thereafter. [2005 c 413 § 2; 2005 c 320 § 2; 2005 c 288 § 8; 2003 c 380 § 2. Prior: 2002 c 279 § 15; 2002 c 175 § 36; 2001 c 289 § 2; 1997 c 331 § 3; 1993 c 501 § 11; 1986 c 213 § 2; 1984 c 258 § 330; prior: 1982 1st ex.s. c 14 § 4; 1982 1st ex.s. c 12 § 1; 1982 c 10 § 13; prior: 1981 c 330 § 7; 1981 c 19 § 6; 1980 c 128 § 4; 1979 ex.s. c 136 § 13.]

**Rules of court:** *Monetary penalty schedule—IRLJ 6.2.*

**Reviser's note:** This section was amended by 2005 c 288 § 8, 2005 c 320 § 2, and by 2005 c 413 § 2, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2005 c 288:** See note following RCW 46.20.245.

**Effective date—2002 c 175:** See note following RCW 7.80.130.

**Effective date—1997 c 331:** See note following RCW 70.168.135.

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

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

**Effective date—Severability—1982 1st ex.s. c 14:** See notes following RCW 46.63.060.

**Severability—1982 c 10:** See note following RCW 6.13.080.

**Severability—1981 c 330:** See note following RCW 3.62.060.

**Severability—1981 c 19:** See note following RCW 46.63.020.

**Effective date—Severability—1980 c 128:** See notes following RCW 46.63.060.

**Effective date—Severability—1979 ex.s. c 136:** See notes following RCW 46.63.010.

*Additional statutory assessments: RCW 3.62.090.*

**46.63.170 Traffic safety cameras.** (1) The use of automated traffic safety cameras for issuance of notices of infraction is subject to the following requirements:

(a) The appropriate local legislative authority must first enact an ordinance allowing for their use to detect one or more of the following: Stoplight, railroad crossing, or school speed zone violations. At a minimum, the local ordinance must contain the restrictions described in this section and provisions for public notice and signage. Cities and counties using automated traffic safety cameras before July 24, 2005, are subject to the restrictions described in this section, but are not required to enact an authorizing ordinance.

(b) Use of automated traffic safety cameras is restricted to two-arterial intersections, railroad crossings, and school speed zones only.

(c) Automated traffic safety cameras may only take pictures of the vehicle and vehicle license plate and only while an infraction is occurring. The picture must not reveal the face of the driver or of passengers in the vehicle.

(d) A notice of infraction must be mailed to the registered owner of the vehicle within fourteen days of the violation, or to the renter of a vehicle within fourteen days of

establishing the renter's name and address under subsection (3)(a) of this section. The law enforcement officer issuing the notice of infraction shall include with it a certificate or facsimile thereof, based upon inspection of photographs, microphotographs, or electronic images produced by an automated traffic safety camera, stating the facts supporting the notice of infraction. This certificate or facsimile is prima facie evidence of the facts contained in it and is admissible in a proceeding charging a violation under this chapter. The photographs, microphotographs, or electronic images evidencing the violation must be available for inspection and admission into evidence in a proceeding to adjudicate the liability for the infraction. A person receiving a notice of infraction based on evidence detected by an automated traffic safety camera may respond to the notice by mail.

(e) The registered owner of a vehicle is responsible for an infraction under RCW 46.63.030(1)(e) unless the registered owner overcomes the presumption in RCW 46.63.075, or, in the case of a rental car business, satisfies the conditions under subsection (3) of this section. If appropriate under the circumstances, a renter identified under subsection (3)(a) of this section is responsible for an infraction.

(f) Notwithstanding any other provision of law, all photographs, microphotographs, or electronic images prepared under this section are for the exclusive use of law enforcement in the discharge of duties under this section and are not open to the public and may not be used in a court in a pending action or proceeding unless the action or proceeding relates to a violation under this section. No photograph, microphotograph, or electronic image may be used for any purpose other than enforcement of violations under this section nor retained longer than necessary to enforce this section.

(g) All locations where an automated traffic safety camera is used must be clearly marked by placing signs in locations that clearly indicate to a driver that he or she is entering a zone where traffic laws are enforced by an automated traffic safety camera.

(h) If a county or city has established an authorized automated traffic safety camera program under this section, the compensation paid to the manufacturer or vendor of the equipment used must be based only upon the value of the equipment and services provided or rendered in support of the system, and may not be based upon a portion of the fine or civil penalty imposed or the revenue generated by the equipment.

(2) Infractions detected through the use of automated traffic safety cameras are not part of the registered owner's driving record under RCW 46.52.101 and 46.52.120. Additionally, infractions generated by the use of automated traffic safety cameras under this section shall be processed in the same manner as parking infractions, including for the purposes of RCW 3.46.120, 3.50.100, 35.20.220, 46.16.216, and 46.20.270(3). However, the amount of the fine issued for an infraction generated through the use of an automated traffic safety camera shall not exceed the amount of a fine issued for other parking infractions within the jurisdiction.

(3) If the registered owner of the vehicle is a rental car business, the law enforcement agency shall, before a notice of infraction being issued under this section, provide a written notice to the rental car business that a notice of infraction may be issued to the rental car business if the rental car busi-

ness does not, within eighteen days of receiving the written notice, provide to the issuing agency by return mail:

(a) A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred; or

(b) A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred; or

(c) In lieu of identifying the vehicle operator, the rental car business may pay the applicable penalty.

Timely mailing of this statement to the issuing law enforcement agency relieves a rental car business of any liability under this chapter for the notice of infraction.

(4) Nothing in this section prohibits a law enforcement officer from issuing a notice of traffic infraction to a person in control of a vehicle at the time a violation occurs under RCW 46.63.030(1) (a), (b), or (c).

(5) For the purposes of this section, "automated traffic safety camera" means a device that uses a vehicle sensor installed to work in conjunction with an intersection traffic control system, a railroad grade crossing control system, or a speed measuring device, and a camera synchronized to automatically record one or more sequenced photographs, microphotographs, or electronic images of the rear of a motor vehicle at the time the vehicle fails to stop when facing a steady red traffic control signal or an activated railroad grade crossing control signal, or exceeds a speed limit in a school speed zone as detected by a speed measuring device. [2005 c 167 § 1.]

## Chapter 46.68 RCW

### DISPOSITION OF REVENUE

#### Sections

46.68.035	Disposition of combined vehicle licensing fees. ( <i>Effective January 1, 2006.</i> )
46.68.090	Distribution of statewide fuel taxes.
46.68.110	Distribution of amount allocated to cities and towns.
46.68.135	Multimodal account, transportation infrastructure account—Annual transfers.
46.68.290	Transportation partnership account.
46.68.300	Freight mobility investment account.

**46.68.035 Disposition of combined vehicle licensing fees. (*Effective January 1, 2006.*)** All proceeds from combined vehicle licensing fees received by the director for vehicles licensed under RCW 46.16.070 and 46.16.085, the license fee under RCW 46.16.086, and the farm vehicle trip permit under RCW 46.16.162 shall be forwarded to the state treasurer to be distributed into accounts according to the following method:

(1) The sum of two dollars for each vehicle shall be deposited into the multimodal transportation account, except that for each vehicle registered by a county auditor or agent to a county auditor pursuant to RCW 46.01.140, the sum of two dollars shall be credited to the current county expense fund.

(2) The remainder shall be distributed as follows:

(a) 24.00 percent shall be deposited into the state patrol highway account of the motor vehicle fund;

(b) 1.8 percent shall be deposited into the Puget Sound ferry operations account of the motor vehicle fund;

(c) 6.38 percent shall be deposited into the transportation 2003 account (nickel account); and

(d) On July 1, 2006, six million dollars shall be deposited into the freight mobility investment account created in RCW 46.68.300 and beginning on July 1, 2007, and every July 1st thereafter, three million dollars shall be deposited into the freight mobility investment account created in RCW 46.68.300;

(e) The remaining proceeds shall be deposited into the motor vehicle fund. [2005 c 314 § 205; 2003 c 361 § 202; 2000 2nd sp.s. c 4 § 8; 1993 c 102 § 7; 1990 c 42 § 106; 1989 c 156 § 4; 1985 c 380 § 21.]

**Effective dates—2005 c 314 §§ 110 and 201-206:** See note following RCW 46.17.010.

**Application—2005 c 314 §§ 201-206, 301, and 302:** See note following RCW 46.17.010.

**Part headings not law—2005 c 314:** See note following RCW 46.17.010.

**Findings—Part headings not law—Severability—2003 c 361:** See notes following RCW 82.36.025.

**Effective dates—2003 c 361:** See note following RCW 82.08.020.

**Effective dates—2000 2nd sp.s. c 4 §§ 4-10:** See note following RCW 43.89.010.

**Effective date of 1993 c 102 and c 123—1993 sp.s. c 23:** See note following RCW 46.16.070.

**Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42:** See notes following RCW 82.36.025.

**Application—1989 c 156:** See note following RCW 46.16.070.

**Effective date—1986 c 18; 1985 c 380:** See RCW 46.87.901.

**Severability—1985 c 380:** See RCW 46.87.900.

**46.68.090 Distribution of statewide fuel taxes.** (1) All moneys that have accrued or may accrue to the motor vehicle fund from the motor vehicle fuel tax and special fuel tax shall be first expended for purposes enumerated in (a) and (b) of this subsection. The remaining net tax amount shall be distributed monthly by the state treasurer in accordance with subsections (2) through (7) of this section.

(a) For payment of refunds of motor vehicle fuel tax and special fuel tax that has been paid and is refundable as provided by law;

(b) For payment of amounts to be expended pursuant to appropriations for the administrative expenses of the offices of state treasurer, state auditor, and the department of licensing of the state of Washington in the administration of the motor vehicle fuel tax and the special fuel tax, which sums shall be distributed monthly.

(2) All of the remaining net tax amount collected under RCW 82.36.025(1) and 82.38.030(1) shall be distributed as set forth in (a) through (j) of this section.

(a) For distribution to the motor vehicle fund an amount equal to 44.387 percent to be expended for highway purposes of the state as defined in RCW 46.68.130;

(b) For distribution to the special category C account, hereby created in the motor vehicle fund, an amount equal to 3.2609 percent to be expended for special category C projects. Special category C projects are category C projects that, due to high cost only, will require bond financing to complete construction.

The following criteria, listed in order of priority, shall be used in determining which special category C projects have the highest priority:

(i) Accident experience;

(ii) Fatal accident experience;

(iii) Capacity to move people and goods safely and at reasonable speeds without undue congestion; and

(iv) Continuity of development of the highway transportation network.

Moneys deposited in the special category C account in the motor vehicle fund may be used for payment of debt service on bonds the proceeds of which are used to finance special category C projects under this subsection (2)(b);

(c) For distribution to the Puget Sound ferry operations account in the motor vehicle fund an amount equal to 2.3283 percent;

(d) For distribution to the Puget Sound capital construction account in the motor vehicle fund an amount equal to 2.3726 percent;

(e) For distribution to the urban arterial trust account in the motor vehicle fund an amount equal to 7.5597 percent;

(f) For distribution to the transportation improvement account in the motor vehicle fund an amount equal to 5.6739 percent and expended in accordance with RCW 47.26.086;

(g) For distribution to the cities and towns from the motor vehicle fund an amount equal to 10.6961 percent in accordance with RCW 46.68.110;

(h) For distribution to the counties from the motor vehicle fund an amount equal to 19.2287 percent: (i) Out of which there shall be distributed from time to time, as directed by the department of transportation, those sums as may be necessary to carry out the provisions of RCW 47.56.725; and (ii) less any amounts appropriated to the county road administration board to implement the provisions of RCW 47.56.725(4), with the balance of such county share to be distributed monthly as the same accrues for distribution in accordance with RCW 46.68.120;

(i) For distribution to the county arterial preservation account, hereby created in the motor vehicle fund an amount equal to 1.9565 percent. These funds shall be distributed by the county road administration board to counties in proportions corresponding to the number of paved arterial lane miles in the unincorporated area of each county and shall be used for improvements to sustain the structural, safety, and operational integrity of county arterials. The county road administration board shall adopt reasonable rules and develop policies to implement this program and to assure that a pavement management system is used;

(j) For distribution to the rural arterial trust account in the motor vehicle fund an amount equal to 2.5363 percent and expended in accordance with RCW 36.79.020.

(3) The remaining net tax amount collected under RCW 82.36.025(2) and 82.38.030(2) shall be distributed to the transportation 2003 account (nickel account).

(4) The remaining net tax amount collected under RCW 82.36.025(3) and 82.38.030(3) shall be distributed as follows:

(a) 8.3333 percent shall be distributed to the incorporated cities and towns of the state in accordance with RCW 46.68.110;

(b) 8.3333 percent shall be distributed to counties of the state in accordance with RCW 46.68.120; and

(c) The remainder shall be distributed to the transportation partnership account created in RCW 46.68.290.

(5) The remaining net tax amount collected under RCW 82.36.025(4) and 82.38.030(4) shall be distributed as follows:

(a) 8.3333 percent shall be distributed to the incorporated cities and towns of the state in accordance with RCW 46.68.110;

(b) 8.3333 percent shall be distributed to counties of the state in accordance with RCW 46.68.120; and

(c) The remainder shall be distributed to the transportation partnership account created in RCW 46.68.290.

(6) The remaining net tax amount collected under RCW 82.36.025 (5) and (6) and 82.38.030 (5) and (6) shall be distributed to the transportation partnership account created in RCW 46.68.290.

(7) Nothing in this section or in RCW 46.68.130 may be construed so as to violate any terms or conditions contained in any highway construction bond issues now or hereafter authorized by statute and whose payment is by such statute pledged to be paid from any excise taxes on motor vehicle fuel and special fuels. [2005 c 314 § 103; 2003 c 361 § 403. Prior: 1999 c 269 § 2; 1999 c 94 § 6; prior: 1994 c 225 § 2; 1994 c 179 § 3; 1991 c 342 § 56; 1990 c 42 § 102; 1983 1st ex.s. c 49 § 21; 1979 c 158 § 184; 1977 ex.s. c 317 § 8; 1967 c 32 § 74; 1961 ex.s. c 7 § 5; 1961 c 12 § 46.68.090; prior: 1943 c 115 § 3; 1939 c 181 § 2; Rem. Supp. 1943 § 6600-1d; 1937 c 208 §§ 2, part, 3, part.]

**Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401:** See note following RCW 46.68.290.

**Part headings not law—2005 c 314:** See note following RCW 46.17.010.

**Findings—Part headings not law—Severability—2003 c 361:** See notes following RCW 82.36.025.

**Effective dates—2003 c 361:** See note following RCW 82.08.020.

**Effective date—1999 c 269:** See note following RCW 36.78.070.

**Legislative finding—Effective dates—1999 c 94:** See notes following RCW 43.84.092.

**Effective date—1994 c 225:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect May 1, 1994." [1994 c 225 § 4.]

**Effective dates—1991 c 342:** See note following RCW 47.26.167.

**Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42:** See notes following RCW 82.36.025.

**Severability—Effective date—1983 1st ex.s. c 49:** See RCW 36.79.900 and 36.79.901.

**Effective dates—Severability—1977 ex.s. c 317:** See notes following RCW 82.36.010.

*Rural arterial trust account:* RCW 36.79.020.

*Urban arterial trust account:* RCW 47.26.080.

**46.68.110 Distribution of amount allocated to cities and towns.** Funds credited to the incorporated cities and towns of the state as set forth in RCW 46.68.090 shall be subject to deduction and distribution as follows:

(1) One and one-half percent of such sums distributed under RCW 46.68.090 shall be deducted monthly as such sums are credited and set aside for the use of the department of transportation for the supervision of work and expendi-

tures of such incorporated cities and towns on the city and town streets thereof, including the supervision and administration of federal-aid programs for which the department of transportation has responsibility: PROVIDED, That any moneys so retained and not expended shall be credited in the succeeding biennium to the incorporated cities and towns in proportion to deductions herein made;

(2) Thirty-three one-hundredths of one percent of such funds distributed under RCW 46.68.090 shall be deducted monthly, as such funds accrue, and set aside for the use of the department of transportation for the purpose of funding the cities' share of the costs of highway jurisdiction studies and other studies. Any funds so retained and not expended shall be credited in the succeeding biennium to the cities in proportion to the deductions made;

(3) One percent of such funds distributed under RCW 46.68.090 shall be deducted monthly, as such funds accrue, to be deposited in the urban arterial trust account, to implement the city hardship assistance program, as provided in RCW 47.26.164. However, any moneys so retained and not required to carry out the program as of July 1st of each odd-numbered year thereafter, shall be provided within sixty days to the treasurer and distributed in the manner prescribed in subsection (4) of this section;

(4) After making the deductions under subsections (1) through (3) of this section and RCW 35.76.050, the balance remaining to the credit of incorporated cities and towns after such deduction shall be apportioned monthly as such funds accrue among the several cities and towns within the state ratably on the basis of the population last determined by the office of financial management. [2005 c 314 § 106; 2005 c 89 § 1; 2003 c 361 § 404. Prior: 1999 c 269 § 3; 1999 c 94 § 9; 1996 c 94 § 1; prior: 1991 sp.s. c 15 § 46; 1991 c 342 § 59; 1989 1st ex.s. c 6 § 41; 1987 1st ex.s. c 10 § 37; 1985 c 460 § 32; 1979 c 151 § 161; 1975 1st ex.s. c 100 § 1; 1961 ex.s. c 7 § 7; 1961 c 12 § 46.68.110; prior: 1957 c 175 § 11; 1949 c 143 § 1; 1943 c 83 § 2; 1941 c 232 § 1; 1939 c 181 § 4; Rem. Supp. 1949 § 6600-3a; 1937 c 208 §§ 2, part, 3, part.]

**Reviser's note:** This section was amended by 2005 c 89 § 1 and by 2005 c 314 § 106, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401:** See note following RCW 46.68.290.

**Part headings not law—2005 c 314:** See note following RCW 46.17.010.

**Findings—Part headings not law—Severability—2003 c 361:** See notes following RCW 82.36.025.

**Effective dates—2003 c 361:** See note following RCW 82.08.020.

**Effective date—1999 c 269:** See note following RCW 36.78.070.

**Legislative finding—Effective dates—1999 c 94:** See notes following RCW 43.84.092.

**Construction—Severability—1991 sp.s. c 15:** "The appropriations of moneys and the designation of funds and accounts by this and other acts of the 1991 legislature shall be construed in a manner consistent with legislation enacted by the 1985, 1987, and 1989 legislatures to conform state funds and accounts with generally accepted accounting principles. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 sp.s. c 15 § 69.]

**Effective dates—1991 c 342:** See note following RCW 47.26.167.

**Severability—1989 1st ex.s. c 6:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of

the act or the application of the provision to other persons or circumstances is not affected." [1989 1st ex.s. c 6 § 75.]

**Severability—1987 1st ex.s. c 10:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 1st ex.s. c 10 § 60.]

**Severability—1985 c 460:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 460 § 42.]

*Expense of cost-audit examination of city and town street records payable from funds withheld under RCW 46.68.110(1): RCW 35.76.050.*

*Population determination, office of financial management: Chapter 43.62 RCW.*

**46.68.135 Multimodal account, transportation infrastructure account—Annual transfers.** Beginning July 1, 2007, and each year thereafter, the state treasurer shall transfer five million dollars from the multimodal account to the transportation infrastructure account created under RCW 82.44.190. The funds must be distributed for rail capital improvements only. [2005 c 314 § 111.]

**Part headings not law—2005 c 314:** See note following RCW 46.17.010.

**46.68.290 Transportation partnership account.** (1) The transportation partnership account is hereby created in the state treasury. All distributions to the account from RCW 46.68.090 must be deposited into the account. Money in the account may be spent only after appropriation. Expenditures from the account must be used only for projects or improvements identified as 2005 transportation partnership projects or improvements in the omnibus transportation appropriations act, including any principal and interest on bonds authorized for the projects or improvements.

(2) If a regional transportation plan has not been adopted by January 2007, the legislature intends to reprioritize allocation of funding for the projects identified on the 2005 transportation partnership project list so that complete and functioning transportation projects can be constructed in a reasonable time.

(3) By January 1, 2006, the transportation performance audit board must develop performance measures and benchmarks for the evaluation of the expenditures of the transportation partnership account. The board must also develop an audit plan and schedule for audits of the performance of the department of transportation's delivery of the plan as defined by project list, schedule, and budget enacted by the legislature.

(4) The legislature finds that:

(a) Citizens demand and deserve accountability of transportation-related programs and expenditures. Transportation-related programs must continuously improve in quality, efficiency, and effectiveness in order to increase public trust;

(b) Transportation-related agencies that receive tax dollars must continuously improve the way they operate and deliver services so citizens receive maximum value for their tax dollars; and

(c) Fair, independent, comprehensive performance audits of transportation-related agencies overseen by the elected state auditor are essential to improving the efficiency,

economy, and effectiveness of the state's transportation system.

(5) For purposes of chapter 314, Laws of 2005:

(a) "Performance audit" means an objective and systematic assessment of a state agency or agencies or any of their programs, functions, or activities by the state auditor or designee in order to help improve agency efficiency, effectiveness, and accountability. Performance audits include economy and efficiency audits and program audits.

(b) "Transportation-related agency" means any state agency, board, or commission that receives funding primarily for transportation-related purposes. At a minimum, the department of transportation, the transportation improvement board or its successor entity, the county road administration board or its successor entity, and the traffic safety commission are considered transportation-related agencies. The Washington state patrol and the department of licensing shall not be considered transportation-related agencies under chapter 314, Laws of 2005.

(6) Within the authorities and duties under chapter 43.09 RCW, the state auditor shall establish criteria and protocols for performance audits. Transportation-related agencies shall be audited using criteria that include generally accepted government auditing standards as well as legislative mandates and performance objectives established by state agencies. Mandates include, but are not limited to, agency strategies, timelines, program objectives, and mission and goals as required in RCW 43.88.090.

(7) Within the authorities and duties under chapter 43.09 RCW, the state auditor may conduct performance audits for transportation-related agencies. The state auditor shall contract with private firms to conduct the performance audits.

(8) The audits may include:

(a) Identification of programs and services that can be eliminated, reduced, consolidated, or enhanced;

(b) Identification of funding sources to the transportation-related agency, to programs, and to services that can be eliminated, reduced, consolidated, or enhanced;

(c) Analysis of gaps and overlaps in programs and services and recommendations for improving, dropping, blending, or separating functions to correct gaps or overlaps;

(d) Analysis and recommendations for pooling information technology systems used within the transportation-related agency, and evaluation of information processing and telecommunications policy, organization, and management;

(e) Analysis of the roles and functions of the transportation-related agency, its programs, and its services and their compliance with statutory authority and recommendations for eliminating or changing those roles and functions and ensuring compliance with statutory authority;

(f) Recommendations for eliminating or changing statutes, rules, and policy directives as may be necessary to ensure that the transportation-related agency carry out reasonably and properly those functions vested in the agency by statute;

(g) Verification of the reliability and validity of transportation-related agency performance data, self-assessments, and performance measurement systems as required under RCW 43.88.090;

(h) Identification of potential cost savings in the transportation-related agency, its programs, and its services;



- (i) Identification and recognition of best practices;
- (j) Evaluation of planning, budgeting, and program evaluation policies and practices;
- (k) Evaluation of personnel systems operation and management;
- (l) Evaluation of purchasing operations and management policies and practices;
- (m) Evaluation of organizational structure and staffing levels, particularly in terms of the ratio of managers and supervisors to nonmanagement personnel; and
- (n) Evaluation of transportation-related project costs, including but not limited to environmental mitigation, competitive bidding practices, permitting processes, and capital project management.

(9) Within the authorities and duties under chapter 43.09 RCW, the state auditor must provide the preliminary performance audit reports to the audited state agency for comment. The auditor also may seek input on the preliminary report from other appropriate officials. Comments must be received within thirty days after receipt of the preliminary performance audit report unless a different time period is approved by the state auditor. The final performance audit report shall include the objectives, scope, and methodology; the audit results, including findings and recommendations; the agency's response and conclusions; and identification of best practices.

(10) The state auditor shall provide final performance audit reports to the citizens of Washington, the governor, the joint legislative audit and review committee, the transportation performance audit board, the appropriate legislative committees, and other appropriate officials. Final performance audit reports shall be posted on the internet.

(11) The audited transportation-related agency is responsible for follow-up and corrective action on all performance audit findings and recommendations. The audited agency's plan for addressing each audit finding and recommendation shall be included in the final audit report. The plan shall provide the name of the contact person responsible for each action, the action planned, and the anticipated completion date. If the audited agency does not agree with the audit findings and recommendations or believes action is not required, then the action plan shall include an explanation and specific reasons.

The office of financial management shall require periodic progress reports from the audited agency until all resolution has occurred. The office of financial management is responsible for achieving audit resolution. The office of financial management shall annually report by December 31st the status of performance audit resolution to the appropriate legislative committees and the state auditor. The legislature shall consider the performance audit results in connection with the state budget process.

The auditor may request status reports on specific audits or findings.

(12) For the period from July 1, 2005, until June 30, 2007, the amount of \$4,000,000 is appropriated from the transportation partnership account to the state auditors office for the purposes of subsections (4) through (11) of this section.

(13) When appointing the citizen members with performance measurement expertise to the transportation perfor-

mance audit board, the governor shall appoint the state auditor, or his or her designee.

(14) If the state auditor's financial audit of a transportation-related agency implies that a performance audit is warranted, the transportation performance audit board shall include in its annual work plan the performance audit recommended by the state auditor. [2005 c 314 § 104.]

**Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401:** "Sections 101 through 107, 109, 303 through 310 [309], and 401 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2005." [2005 c 314 § 405.]

**Part headings not law—2005 c 314:** See note following RCW 46.17.010.

**46.68.300 Freight mobility investment account.** The freight mobility investment account is hereby created in the state treasury. Money in the account may be spent only after appropriation. Expenditures from the account may be used only for freight mobility projects identified in the omnibus transportation appropriations act, including any principal and interest on bonds authorized for the projects or improvements. [2005 c 314 § 105.]

**Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401:** See note following RCW 46.68.290.

**Part headings not law—2005 c 314:** See note following RCW 46.17.010.

## Chapter 46.73 RCW PRIVATE CARRIER DRIVERS

### Sections

46.73.010 Qualifications and hours of service.

**46.73.010 Qualifications and hours of service.** The Washington state patrol may adopt rules establishing standards for qualifications and hours of service of drivers for private carriers as defined by RCW 81.80.010(6). Such standards shall correlate with and, as far as reasonable, conform to the regulations contained in Title 49 C.F.R., Chapter 3, Subchapter B, Parts 391 and 395, on July 28, 1985. [2005 c 319 § 120; 1985 c 333 § 1.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

## Chapter 46.87 RCW PROPORTIONAL REGISTRATION (Formerly: International Registration Plan)

### Sections

46.87.010 Applicability—Implementation.  
46.87.020 Definitions.  
46.87.030 Part-year registration—Credit for unused fees.  
46.87.050 Deposit of fees.  
46.87.070 Reciprocity for trailers, semitrailers, pole trailers.  
46.87.080 Cab cards, validation tabs, special license plates—Design, procedures—Issuance, refusal, revocation.  
46.87.085 Repealed.  
46.87.120 Mileage data for applications.  
46.87.130 Transaction fee.  
46.87.140 Application—Filing, contents—Fees and taxes—Assessments, due date.  
46.87.170 Repealed.  
46.87.180 Repealed.  
46.87.190 Suspension or cancellation of benefits.

46.87.901 Repealed.

**46.87.010 Applicability—Implementation.** This chapter applies to proportional registration and reciprocity granted under the provisions of the International Registration Plan (IRP). This chapter shall become effective and be implemented beginning with the 1988 registration year.

(1) Provisions and terms of the IRP prevail unless given a different meaning in chapter 46.04 RCW, this chapter, or in rules adopted under the authority of this chapter.

(2) The director may adopt and enforce rules deemed necessary to implement and administer this chapter.

(3) Owners having a fleet of apportionable vehicles operating in two or more IRP member jurisdictions may elect to proportionally register the vehicles of the fleet under the provisions of the IRP and this chapter in lieu of full or temporary registration as provided for in chapters 46.16 or 46.88 RCW.

(4) If a due date or an expiration date established under authority of this chapter falls on a Saturday, Sunday, or a state legal holiday, such period is automatically extended through the end of the next business day. [2005 c 194 § 1; 1987 c 244 § 15; 1986 c 18 § 22; 1985 c 380 § 1.]

**Effective dates—1987 c 244:** See note following RCW 46.12.020.

**46.87.020 Definitions.** Terms used in this chapter have the meaning given to them in the International Registration Plan (IRP), in chapter 46.04 RCW, or as otherwise defined in this section. Definitions given to terms by the IRP prevail unless given a different meaning in this chapter or in rules adopted under authority of this chapter.

(1) "Apportionable vehicle" has the meaning given by the IRP, except that it does not include vehicles with a declared gross weight of twelve thousand pounds or less. Apportionable vehicles include trucks, tractors, truck tractors, road tractors, and buses, each as separate and licensable vehicles.

(2) "Cab card" is a certificate of registration issued for a vehicle upon which is disclosed the jurisdictions and registered gross weights in such jurisdictions for which the vehicle is registered.

(3) "Credentials" means cab cards, apportioned plates (for Washington-based fleets), and validation tabs issued for proportionally registered vehicles.

(4) "Declared combined gross weight" means the total unladen weight of any combination of vehicles plus the weight of the maximum load to be carried on the combination of vehicles as set by the registrant in the application pursuant to chapter 46.44 RCW and for which registration fees have been or are to be paid.

(5) "Declared gross weight" means the total unladen weight of any vehicle plus the weight of the maximum load to be carried on the vehicle as set by the registrant in the application pursuant to chapter 46.44 RCW and for which registration fees have been or are to be paid. In the case of a bus, auto stage, or a passenger-carrying for hire vehicle with a seating capacity of more than six, the declared gross weight shall be determined by multiplying the average load factor of one hundred and fifty pounds by the number of seats in the vehicle, including the driver's seat, and add this amount to the unladen weight of the vehicle. If the resultant gross weight is

not listed in RCW 46.16.070, it will be increased to the next higher gross weight so listed pursuant to chapter 46.44 RCW.

(6) "Department" means the department of licensing.

(7) "Fleet" means one or more apportionable vehicles in the IRP.

(8) "In-jurisdiction miles" means the total miles accumulated in a jurisdiction during the preceding year by vehicles of the fleet while they were a part of the fleet.

(9) "IRP" means the International Registration Plan.

(10) "Jurisdiction" means and includes a state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country, and a state or province of a foreign country.

(11) "Motor carrier" means an entity engaged in the transportation of goods or persons. The term includes a for-hire motor carrier, private motor carrier, contract motor carrier, or exempt motor carrier. The term includes a registrant licensed under this chapter, a motor vehicle lessor, and a motor vehicle lessee.

(12) "Owner" means a person or business firm who holds the legal title to a vehicle, or if a vehicle is the subject of an agreement for its conditional sale with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or if a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control, for security or otherwise, or if a mortgagor of a vehicle is entitled to possession, then the owner is deemed to be the person or business firm in whom is vested right of possession or control.

(13) "Preceding year" means the period of twelve consecutive months immediately before July 1st of the year immediately before the commencement of the registration or license year for which apportioned registration is sought.

(14) "Prorate percentage" is the factor that is applied to the total proratable fees and taxes to determine the apportionable or prorate fees required for registration in a particular jurisdiction. It is determined by dividing the in-jurisdiction miles for a particular jurisdiction by the total miles. This term is synonymous with the term "mileage percentage."

(15) "Registrant" means a person, business firm, or corporation in whose name or names a vehicle or fleet of vehicles is registered.

(16) "Registration year" means the twelve-month period during which the registration plates issued by the base jurisdiction are valid according to the laws of the base jurisdiction.

(17) "Total miles" means the total number of miles accumulated in all jurisdictions during the preceding year by all vehicles of the fleet while they were a part of the fleet. Mileage accumulated by vehicles of the fleet that did not engage in interstate operations is not included in the fleet miles. [2005 c 194 § 2; 2003 c 85 § 1; 1997 c 183 § 2; 1994 c 262 § 12; 1993 c 307 § 12; 1991 c 163 § 4; 1990 c 42 § 111; 1987 c 244 § 16; 1985 c 380 § 2.]

**Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42:** See notes following RCW 82.36.025.

**Effective dates—1987 c 244:** See note following RCW 46.12.020.

**46.87.030 Part-year registration—Credit for unused fees.** (1) When application to register an apportionable vehi-

cle is made, the Washington prorated fees may be reduced by one-twelfth for each full registration month that has elapsed at the time a temporary authorization permit (TAP) was issued or if no TAP was issued, at such time as an application for registration is received in the department. If a vehicle is being added to a currently registered fleet, the prorate percentage previously established for the fleet for such registration year shall be used in the computation of the proportional fees and taxes due.

(2) If any vehicle is withdrawn from a proportionally registered fleet during the period for which it is registered under this chapter, the registrant of the fleet shall notify the department on appropriate forms prescribed by the department. The department may require the registrant to surrender credentials that were issued to the vehicle. If a motor vehicle is permanently withdrawn from a proportionally registered fleet because it has been destroyed, sold, or otherwise completely removed from the service of the fleet registrant, the unused portion of the licensing fee paid under RCW 46.16.070 with respect to the vehicle reduced by one-twelfth for each calendar month and fraction thereof elapsing between the first day of the month of the current registration year in which the vehicle was registered and the date the notice of withdrawal, accompanied by such credentials as may be required, is received in the department, shall be credited to the fleet proportional registration account of the registrant. Credit shall be applied against the licensing fee liability for subsequent additions of motor vehicles to be proportionally registered in the fleet during such registration year or for additional licensing fees due under RCW 46.16.070 or to be due upon audit under RCW 46.87.310. If any credit is less than fifteen dollars, no credit will be entered. In lieu of credit, the registrant may choose to transfer the unused portion of the licensing fee for the motor vehicle to the new owner, in which case it shall remain with the motor vehicle for which it was originally paid. In no event may any amount be credited against fees other than those for the registration year from which the credit was obtained nor is any amount subject to refund. [2005 c 194 § 3; 1997 c 183 § 3; 1993 c 307 § 13; 1987 c 244 § 18; 1986 c 18 § 23; 1985 c 380 § 3.]

**Effective dates—1987 c 244:** See note following RCW 46.12.020.

**46.87.050 Deposit of fees.** Each day the department shall forward to the state treasurer the fees collected under this chapter, and within ten days of the end of each registration quarter, a detailed report identifying the amount to be deposited to each account for which fees are required for the licensing of proportionally registered vehicles. Such fees shall be deposited pursuant to RCW 46.68.035 and 82.44.170. [2005 c 194 § 4; 1987 c 244 § 20; 1985 c 380 § 5.]

**Effective dates—1987 c 244:** See note following RCW 46.12.020.

**46.87.070 Reciprocity for trailers, semitrailers, pole trailers.** Trailers, semitrailers, and pole trailers that are properly based in jurisdictions other than Washington, and that display currently registered license plates from such jurisdictions will be granted vehicle license reciprocity in this state without the need of further vehicle license registration. If pole trailers are not required to be licensed separately by a member jurisdiction, such vehicles may be operated in this

state without displaying a current base license plate. [2005 c 194 § 5; 1993 c 123 § 1. Prior: 1991 c 339 § 9; 1991 c 163 § 5; 1990 c 42 § 112; 1987 c 244 § 22; 1985 c 380 § 7.]

**Effective date of 1993 c 102 and c 123—1993 sp.s. c 23:** See note following RCW 46.16.070.

**Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42:** See notes following RCW 82.36.025.

**Effective dates—1987 c 244:** See note following RCW 46.12.020.

**46.87.080 Cab cards, validation tabs, special license plates—Design, procedures—Issuance, refusal, revocation.** (1) Upon making satisfactory application and payment of applicable fees and taxes for proportional registration under this chapter, the department shall issue a cab card and validation tab for each vehicle, and to vehicles of Washington-based fleets, two distinctive apportionable license plates for each motor vehicle. License plates shall be displayed on vehicles as required by RCW 46.16.240. The number and plate shall be of a design, size, and color determined by the department. The plates shall be treated with reflectorized material and clearly marked with the words "WASHINGTON" and "APPORTIONED," both words to appear in full and without abbreviation.

(2) The cab card serves as the certificate of registration for a proportionally registered vehicle. The face of the cab card shall contain the name and address of the registrant as contained in the records of the department, the license plate number assigned to the vehicle by the base jurisdiction, the vehicle identification number, and such other description of the vehicle and data as the department may require. The cab card shall be signed by the registrant, or a designated person if the registrant is a business firm, and shall at all times be carried in or on the vehicle to which it was issued.

(3) The apportioned license plates are not transferrable from vehicle to vehicle unless otherwise determined by rule and shall be used only on the vehicle to which they are assigned by the department for as long as they are legible or until such time as the department requires them to be removed and returned to the department.

(4) Distinctive validation tab(s) of a design, size, and color determined by the department shall be affixed to the apportioned license plate(s) as prescribed by the department to indicate the month, if necessary, and year for which the vehicle is registered.

(5) Renewals shall be effected by the issuance and display of such tab(s) after making satisfactory application and payment of applicable fees and taxes.

(6) Fleet vehicles so registered and identified shall be deemed to be fully licensed and registered in this state for any type of movement or operation. However, in those instances in which a grant of authority is required for interstate or intrastate movement or operation, no such vehicle may be operated in interstate or intrastate commerce in this state unless the owner has been granted interstate operating authority in the case of interstate operations or intrastate operating authority by the Washington utility and transportation commission in the case of intrastate operations and unless the vehicle is being operated in conformity with that authority.

(7) The department may issue temporary authorization permits (TAPs) to qualifying operators for the operation of vehicles pending issuance of license identification. A fee of

one dollar plus a one dollar filing fee shall be collected for each permit issued. The permit fee shall be deposited in the motor vehicle fund, and the filing fee shall be deposited in the highway safety fund. The department may adopt rules for use and issuance of the permits.

(8) The department may refuse to issue any license or permit authorized by subsection (1) or (7) of this section to any person: (a) Who formerly held any type of license or permit issued by the department pursuant to chapter 46.16, 46.85, 46.87, 82.36, or 82.38 RCW that has been revoked for cause, which cause has not been removed; or (b) who is a subterfuge for the real party in interest whose license or permit issued by the department pursuant to chapter 46.16, 46.85, 46.87, 82.36, or 82.38 RCW and has been revoked for cause, which cause has not been removed; or (c) who, as an individual licensee, or officer, director, owner, or managing employee of a nonindividual licensee, has had a license or permit issued by the department pursuant to chapter 46.16, 46.85, 46.87, 82.36, or 82.38 RCW which has been revoked for cause, which cause has not been removed; or (d) who has an unsatisfied debt to the state assessed under either chapter 46.16, 46.85, 46.87, 82.36, 82.38, or 82.44 RCW.

(9) The department may revoke the license or permit authorized by subsection (1) or (7) of this section issued to any person for any of the grounds constituting cause for denial of licenses or permits set forth in subsection (8) of this section.

(10) Before such refusal or revocation under subsection (8) or (9) of this section, the department shall grant the applicant a hearing and at least ten days written notice of the time and place of the hearing. [2005 c 194 § 6; 1998 c 115 § 1; 1993 c 307 § 14; 1987 c 244 § 23; 1985 c 380 § 8.]

**Effective dates—1987 c 244:** See note following RCW 46.12.020.

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

**46.87.120 Mileage data for applications.** (1) The initial application for proportional registration of a fleet shall state the mileage data with respect to the fleet for the preceding year in this and other jurisdictions. If no operations were conducted with the fleet during the preceding year, the application shall contain a full statement of the proposed method of operation and estimates of annual mileage in each of the jurisdictions in which operation is contemplated. The registrant shall determine the in-jurisdiction and total miles to be used in computing the fees and taxes due for the fleet. The department may evaluate and adjust the estimate in the application if it is not satisfied as to its correctness.

(2) When operations of a Washington-based fleet is materially changed through merger, acquisition, or extended authority, the registrant shall notify the department, which shall then require the filing of an amended application setting forth the proposed operation by use of estimated mileage for all jurisdictions. The department may adjust the estimated mileage by audit or otherwise to an actual travel basis to insure proper fee payment. The actual travel basis may be used for determination of fee payments until such time as a normal mileage year is available under the new operation.

[2005 RCW Supp—page 608]

[2005 c 194 § 7; 1997 c 183 § 4; 1990 c 42 § 113; 1987 c 244 § 25.]

**Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42:** See notes following RCW 82.36.025.

**Effective dates—1987 c 244:** See note following RCW 46.12.020.

**46.87.130 Transaction fee.** In addition to all other fees prescribed for the proportional registration of vehicles under this chapter, the department shall collect a vehicle transaction fee each time a vehicle is added to a Washington-based fleet, and each time the proportional registration of a Washington-based vehicle is renewed. The exact amount of the vehicle transaction fee shall be fixed by rule but shall not exceed ten dollars. This fee shall be deposited in the motor vehicle fund. [2005 c 194 § 8; 1987 c 244 § 26.]

**Effective dates—1987 c 244:** See note following RCW 46.12.020.

**46.87.140 Application—Filing, contents—Fees and taxes—Assessments, due date.** (1) Any owner engaged in interstate operations of one or more fleets of apportionable vehicles may, in lieu of registration of the vehicles under chapter 46.16 RCW, register and license the vehicles of each fleet under this chapter by filing a proportional registration application for each fleet with the department. The application shall contain the following information and such other information pertinent to vehicle registration as the department may require:

(a) A description and identification of each vehicle of the fleet.

(b) The member jurisdictions in which registration is desired and such other information as member jurisdictions require.

(c) An original or renewal application shall also be accompanied by a mileage schedule for each fleet.

(d) The USDOT number issued to the registrant and the USDOT number of the motor carrier responsible for the safety of the vehicle, if different.

(e) A completed Motor Carrier Identification Report (MCS-150) at the time of fleet renewal or at the time of vehicle registration, if required by the department.

(f) The Taxpayer Identification Number of the registrant and the motor carrier responsible for the safety of the vehicle, if different.

(2) Each application shall, at the time and in the manner required by the department, be supported by payment of a fee computed as follows:

(a) Divide the in-jurisdiction miles by the total miles and carry the answer to the nearest thousandth of a percent (three places beyond the decimal, e.g. 10.543%). This factor is known as the prorate percentage.

(b) Determine the total proratable fees and taxes required for each vehicle in the fleet for which registration is requested, based on the regular annual fees and taxes or applicable fees and taxes for the unexpired portion of the registration year under the laws of each jurisdiction for which fees or taxes are to be calculated.

Applicable fees and taxes for vehicles of Washington-based fleets are those prescribed under RCW 46.16.070, 46.16.085, and 82.38.075, as applicable. If, during the registration period, the lessor of an apportioned vehicle changes

and the vehicle remains in the fleet of the registrant, the department shall only charge those fees prescribed for the issuance of new apportioned license plates, validation tabs, and cab card.

(c) Multiply the total, proratable fees or taxes for each motor vehicle by the prorate percentage applicable to the desired jurisdiction and round the results to the nearest cent.

(d) Add the total fees and taxes determined in (c) of this subsection for each vehicle to the nonproratable fees required under the laws of the jurisdiction for which fees are being calculated. Nonproratable fees required for vehicles of Washington-based fleets are the administrative fee required by RCW 82.38.075, if applicable, and the vehicle transaction fee pursuant to the provisions of RCW 46.87.130.

(e) The amount due and payable for the application is the sum of the fees and taxes calculated for each member jurisdiction in which registration of the fleet is desired.

(3) All assessments for proportional registration fees are due and payable in United States funds on the date presented or mailed to the registrant at the address listed in the proportional registration records of the department. The registrant may petition for reassessment of the fees or taxes due under this section within thirty days of the date of original service as provided for in this chapter. [2005 c 194 § 9; 2003 c 85 § 2; 1997 c 183 § 5; 1991 c 339 § 10; 1990 c 42 § 114; 1987 c 244 § 27.]

**Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42:** See notes following RCW 82.36.025.

**Effective dates—1987 c 244:** See note following RCW 46.12.020.

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

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

**46.87.190 Suspension or cancellation of benefits.** The department may suspend or cancel the exemptions, benefits, or privileges granted under chapter 46.85 RCW or this chapter to any person or business firm who violates any of the conditions or terms of the IRP or who violates the laws of this state relating to the operation or registration of vehicles or rules lawfully adopted thereunder. [2005 c 194 § 10; 1987 c 244 § 32.]

**Effective dates—1987 c 244:** See note following RCW 46.12.020.

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

## Chapter 46.96 RCW

### MANUFACTURERS' AND DEALERS' FRANCHISE AGREEMENTS

#### Sections

46.96.150 Protest of new or relocated dealership—Hearing—Arbitration.  
(Effective January 1, 2006.)

**46.96.150 Protest of new or relocated dealership—Hearing—Arbitration.** (Effective January 1, 2006.) (1) Within thirty days after receipt of the notice under RCW

46.96.140, or within thirty days after the end of an appeal procedure provided by the manufacturer, whichever is greater, a new motor vehicle dealer so notified or entitled to notice may file a petition with the department protesting the proposed establishment or relocation. The petition shall contain a short statement setting forth the reasons for the dealer's objection to the proposed establishment or relocation. Upon the filing of a protest and the receipt of the filing fee, the department shall promptly notify the manufacturer that a timely protest has been filed and shall request the appointment of an administrative law judge under chapter 34.12 RCW to conduct a hearing. The manufacturer shall not establish or relocate the new motor vehicle dealer until the administrative law judge has held a hearing and has determined that there is good cause for permitting the proposed establishment or relocation. When more than one protest is filed against the establishment or relocation of the same dealer, the administrative law judge shall consolidate the hearings to expedite disposition of the matter.

(2) If a manufacturer provides in the franchise agreement or by written statement distributed and provided to its dealers for arbitration under the Uniform Arbitration Act, chapter 7.04A RCW, as a mechanism for resolving disputes relating to the establishment of an additional new motor vehicle dealer or the relocation of a new motor vehicle dealer, then the provisions of this section and RCW 46.96.170 relating to hearings by an administrative law judge do not apply, and a dispute regarding the establishment of an additional new motor vehicle dealer or the relocation of an existing new motor vehicle dealer shall be determined in an arbitration proceeding conducted in accordance with the Uniform Arbitration Act, chapter 7.04A RCW. The thirty-day period for filing a protest under this section still applies except that the protesting dealer shall file his protest with the manufacturer within thirty days after receipt of the notice under RCW 46.96.140.

(3) The dispute shall be referred for arbitration to such arbitrator as may be agreed upon by the parties to the dispute. If the parties cannot agree upon a single arbitrator within thirty days from the date the protest is filed, the protesting dealer will select an arbitrator, the manufacturer will select an arbitrator, and the two arbitrators will then select a third. If a third arbitrator is not agreed upon within thirty days, any party may apply to the superior court, and the judge of the superior court having jurisdiction will appoint the third arbitrator. The protesting dealer will pay the arbitrator selected by him, and the manufacturer will pay the arbitrator it selected. The expense of the third arbitrator and all other expenses of arbitration will be shared equally by the parties. Attorneys' fees and fees paid to expert witnesses are not expenses of arbitration and will be paid by the person incurring them.

(4) Notwithstanding the terms of a franchise or written statement of the manufacturer and notwithstanding the terms of a waiver, the arbitration will take place in the state of Washington in the county where the protesting dealer has his principal place of business. RCW 46.96.160 applies to a determination made by the arbitrator or arbitrators in determining whether good cause exists for permitting the proposed establishment or relocation of a new motor vehicle dealer, and the manufacturer has the burden of proof to estab-

lish that good cause exists for permitting the proposed establishment or relocation. After a hearing has been held, the arbitrator or arbitrators shall render a decision as expeditiously as possible, but in any event not later than one hundred twenty days from the date the arbitrator or arbitrators are selected or appointed. The manufacturer shall not establish or relocate the new motor vehicle dealer until the arbitration hearing has been held and the arbitrator or arbitrators have determined that there is good cause for permitting the proposed establishment or relocation. The written decision of the arbitrator is binding upon the parties unless modified, corrected, or vacated under the Washington Arbitration Act. Any party may appeal the decision of the arbitrator under the Uniform Arbitration Act, chapter 7.04A RCW.

(5) If the franchise agreement or the manufacturer's written statement distributed and provided to its dealers does not provide for arbitration under the Uniform Arbitration Act as a mechanism for resolving disputes relating to the establishment of an additional new motor vehicle dealer or the relocation of a new motor vehicle dealer, then the hearing provisions of this section and RCW 46.96.170 apply. Nothing in this section is intended to preclude a new motor vehicle dealer from electing to use any other dispute resolution mechanism offered by a manufacturer. [2005 c 433 § 43; 1994 c 274 § 2.]

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

## Title 47

### PUBLIC HIGHWAYS AND TRANSPORTATION

#### Chapters

47.01	Department of transportation.
47.04	General provisions.
47.05	Priority programming for highway development.
47.06	Statewide transportation planning.
47.06A	Freight mobility.
47.10	Highway construction bonds.
47.12	Acquisition and disposition of state highway property.
47.17	State highway routes.
47.26	Development in urban areas—Urban arterials.
47.29	Transportation innovative partnerships.
47.36	Traffic control devices.
47.42	Highway advertising control act—Scenic vistas act.
47.46	Public-private transportation initiatives.
47.56	State toll bridges, tunnels, and ferries.
47.58	Existing and additional bridges.
47.60	Puget Sound ferry and toll bridge system.
47.64	Marine employees—Public employment relations.
47.66	Multimodal transportation programs.
47.68	Aeronautics.
47.74	Multistate highway transportation agreement.
47.76	Rail freight service.
47.80	Regional transportation planning organizations.

## Chapter 47.01 RCW

### DEPARTMENT OF TRANSPORTATION

#### Sections

47.01.041	Secretary of transportation—Appointment, salary, removal.
47.01.061	Commission—Procedures and internal operations.
47.01.071	Commission—Functions, powers, and duties.
47.01.075	Transportation policy development.
47.01.101	Secretary—Authority and duties.
47.01.145	Repealed.
47.01.280	Application for improvements to existing highways.
47.01.330	Office of transit mobility.
47.01.340	Local and regional transportation goals.

**47.01.041 Secretary of transportation—Appointment, salary, removal.** The executive head of the department of transportation shall be the secretary of transportation, who shall be appointed by the governor with the advice and consent of the senate, and shall be paid a salary to be fixed by the governor in accordance with the provisions of RCW 43.03.040. The secretary shall be an ex officio member of the transportation commission without a vote. The secretary shall serve at the pleasure of the governor. [2005 c 319 § 3; 1983 1st ex.s. c 53 § 28; 1977 ex.s. c 151 § 4.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Severability—1983 1st ex.s. c 53:** See note following RCW 47.10.802.

**47.01.061 Commission—Procedures and internal operations.** (1) The commission shall meet at such times as it deems advisable but at least once every month. It may adopt its own rules and regulations and may establish its own procedure. It shall act collectively in harmony with recorded resolutions or motions adopted by majority vote of at least four members. The commission may appoint an administrative secretary, and shall elect one of its members chairman for a term of one year. The chairman shall be able to vote on all matters before the commission. The commission may from time to time retain planners, consultants, and other technical personnel to advise it in the performance of its duties.

(2) The commission shall submit to each regular session of the legislature held in an odd-numbered year its own budget proposal necessary for the commission's operations separate from that proposed for the department.

(3) Each member of the commission shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for actual necessary traveling and other expenses in going to, attending, and returning from meetings of the commission, and actual and necessary traveling and other expenses incurred in the discharge of such duties as may be requested by a majority vote of the commission or by the secretary of transportation, but in no event shall a commissioner be compensated in any year for more than one hundred twenty days, except the chairman of the commission who may be paid compensation for not more than one hundred fifty days. Service on the commission shall not be considered as service credit for the purposes of any public retirement system.

(4) Each member of the commission shall disclose any actual or potential conflict of interest, if applicable under the circumstance, regarding any commission business. [2005 c 319 § 4; 1987 c 364 § 2; 1984 c 287 § 94; 1983 1st ex.s. c 53 § 29; 1981 c 59 § 1; 1977 ex.s. c 151 § 6.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Legislative findings—Severability—Effective date—1984 c 287:** See notes following RCW 43.03.220.

**Severability—1983 1st ex.s. c 53:** See note following RCW 47.10.802.

**47.01.071 Commission—Functions, powers, and duties.** The transportation commission shall have the following functions, powers, and duties:

(1) To propose policies to be adopted by the governor and the legislature designed to assure the development and maintenance of a comprehensive and balanced statewide transportation system which will meet the needs of the people of this state for safe and efficient transportation services. Wherever appropriate the policies shall provide for the use of integrated, intermodal transportation systems to implement the social, economic, and environmental policies, goals, and objectives of the people of the state, and especially to conserve nonrenewable natural resources including land and energy. To this end the commission shall:

(a) Develop transportation policies which are based on the policies, goals, and objectives expressed and inherent in existing state laws;

(b) Inventory the adopted policies, goals, and objectives of the local and area-wide governmental bodies of the state and define the role of the state, regional, and local governments in determining transportation policies, in transportation planning, and in implementing the state transportation plan;

(c) Propose a transportation policy for the state;

(d) Establish a procedure for review and revision of the state transportation policy and for submission of proposed changes to the governor and the legislature;

(e) To integrate the statewide transportation plan with the needs of the elderly and handicapped, and to coordinate federal and state programs directed at assisting local governments to answer such needs;

(2) To provide for the effective coordination of state transportation planning with national transportation policy, state and local land use policies, and local and regional transportation plans and programs;

(3) In conjunction with the provisions under RCW 47.01.075, to provide for public involvement in transportation designed to elicit the public's views both with respect to adequate transportation services and appropriate means of minimizing adverse social, economic, environmental, and energy impact of transportation programs;

(4) To prepare a comprehensive and balanced statewide transportation plan which shall be based on the transportation policy adopted by the governor and the legislature and applicable state and federal laws. The plan shall be reviewed and revised, and submitted to the governor and the house of representatives and senate standing committees on transportation, prior to each regular session of the legislature during an even-numbered year thereafter.

The plan shall take into account federal law and regulations relating to the planning, construction, and operation of transportation facilities;

(5) To propose to the governor and the legislature prior to the convening of each regular session held in an odd-num-

bered year a recommended budget for the operations of the commission as required by RCW 47.01.061;

(6) To approve the issuance and sale of all bonds authorized by the legislature for capital construction of state highways, toll facilities, Columbia Basin county roads (for which reimbursement to the motor vehicle fund has been provided), urban arterial projects, and aviation facilities;

(7) To adopt such rules, regulations, and policy directives as may be necessary to carry out reasonably and properly those functions expressly vested in the commission by statute;

(8) To contract with the office of financial management or other appropriate state agencies for administrative support, accounting services, computer services, and other support services necessary to carry out its other statutory duties;

(9) To exercise such other specific powers and duties as may be vested in the transportation commission by this or any other provision of law. [2005 c 319 § 5; 1981 c 59 § 2; 1980 c 87 § 45; 1977 ex.s. c 151 § 7.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**47.01.075 Transportation policy development.** (1) The transportation commission shall provide a forum for the development of transportation policy in Washington state. It may recommend to the secretary of transportation, the governor, and the legislature means for obtaining appropriate citizen and professional involvement in all transportation policy formulation and other matters related to the powers and duties of the department. It may further hold hearings and explore ways to improve the mobility of the citizenry. At least every five years, the commission shall convene regional forums to gather citizen input on transportation issues.

(2) Every two years, in coordination with the development of the state biennial budget, the commission shall prepare the statewide multimodal transportation progress report that outlines the transportation priorities of the ensuing biennium. The report must:

(a) Consider the citizen input gathered at the forums;

(b) Be developed with the assistance of state transportation-related agencies and organizations;

(c) Be developed with the input from state, local, and regional jurisdictions, transportation service providers, and key transportation stakeholders;

(d) Be considered by the secretary of transportation and other state transportation-related agencies in preparing proposed agency budgets and executive request legislation;

(e) Be submitted by the commission to the governor by October 1st of each even-numbered year for consideration by the governor.

(3) In fulfilling its responsibilities under this section, the commission may create ad hoc committees or other such committees of limited duration as necessary.

(4) In order to promote a better transportation system, the commission shall offer policy guidance and make recommendations to the governor and the legislature in key issue areas, including but not limited to:

(a) Transportation finance;

(b) Preserving, maintaining, and operating the statewide transportation system;

(c) Transportation infrastructure needs;

- (d) Promoting best practices for adoption and use by transportation-related agencies and programs;
- (e) Transportation efficiencies that will improve service delivery and/or coordination;
- (f) Improved planning and coordination among transportation agencies and providers; and
- (g) Use of intelligent transportation systems and other technology-based solutions. [2005 c 319 § 6.]

**Transfers—2005 c 319:** "(1)(a) All reports, documents, surveys, books, records, files, papers, or written material relating to the conduct of performance reviews and audits in the possession of the legislative transportation committee must be delivered to the custody of the transportation commission. Any remaining documents, books, records, files, papers, and written materials must be delivered to the custody of the joint transportation committee. All funds, credits, or other assets held by the legislative transportation committee for the purposes of staffing the transportation performance audit board are assigned to the transportation commission. Any remaining funds, credits, or other assets held by the legislative transportation committee are assigned to the joint transportation committee.

(b) If any question arises as to the transfer of any funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(2) All employees of the legislative transportation committee are transferred to the jurisdiction of the transportation commission for the support of the transportation performance audit board. However, the commission may, if staffing needs warrant, assign the employees to other commission functions." [2005 c 319 § 15.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**47.01.101 Secretary—Authority and duties.** The secretary shall have the authority and it shall be his or her duty:

- (1) To serve as chief executive officer of the department with full administrative authority to direct all its activities;
- (2) To organize the department as he or she may deem necessary to carry out the work and responsibilities of the department effectively;
- (3) To designate and establish such transportation district or branch offices as may be necessary or convenient, and to appoint assistants and delegate any powers, duties, and functions to them or any officer or employee of the department as deemed necessary to administer the department efficiently;
- (4) To direct and coordinate the programs of the various divisions of the department to assure that they achieve the greatest possible mutual benefit, produce a balanced overall effort, and eliminate unnecessary duplication of activity;
- (5) To adopt all department rules that are subject to the adoption procedures contained in the state administrative procedure act, except rules subject to adoption by the commission pursuant to statute;
- (6) To maintain and safeguard the official records of the department, including the commission's recorded resolutions and orders;
- (7) To provide, under contract or interagency agreement, full staff support to the commission to assist it in carrying out its functions, powers, and duties;
- (8) To execute and implement the biennial operating budget for the operation of the department in accordance with chapter 43.88 RCW and with legislative appropriation;

[2005 RCW Supp—page 612]

(9) To advise the governor and the legislature with respect to matters under the jurisdiction of the department; and

(10) To exercise all other powers and perform all other duties as are now or hereafter provided by law. [2005 c 319 § 7. Prior: 1987 c 505 § 48; 1987 c 179 § 1; 1983 1st ex.s. c 53 § 30; 1977 ex.s. c 151 § 10.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Severability—1983 1st ex.s. c 53:** See note following RCW 47.10.802.  
*Regulations governing parking facilities:* RCW 46.61.577.

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

**47.01.280 Application for improvements to existing highways.** (1) Upon receiving an application for improvements to an existing state highway or highways pursuant to RCW 43.160.074 from the community economic revitalization board, the transportation commission shall, in a timely manner, determine whether or not the proposed state highway improvements:

- (a) Meet the safety and design criteria of the department of transportation;
- (b) Will impair the operational integrity of the existing highway system;
- (c) Will affect any other improvements planned by the department; and
- (d) Will be consistent with its policies developed pursuant to RCW 47.01.071.

(2) Upon completion of its determination of the factors contained in subsection (1) of this section and any other factors it deems pertinent, the transportation commission shall forward its approval, as submitted or amended or disapproval of the proposed improvements to the board, along with any recommendation it may wish to make concerning the desirability and feasibility of the proposed development. If the transportation commission disapproves any proposed improvements, it shall specify its reasons for disapproval.

(3) Upon notification from the board of an application's approval pursuant to RCW 43.160.074, the transportation commission shall direct the department of transportation to carry out the improvements in coordination with the applicant. [2005 c 319 § 121; 1999 c 94 § 10; 1985 c 433 § 6.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Legislative finding—Effective dates—1999 c 94:** See notes following RCW 43.84.092.

**Nonseverability—1985 c 433:** See note following RCW 43.160.074.

**47.01.330 Office of transit mobility.** (1) The secretary shall establish an office of transit mobility. The purpose of the office is to facilitate the integration of decentralized public transportation services with the state transportation system. The goals of the office of transit mobility are: (a) To facilitate connection and coordination of transit services and planning; and (b) maximizing opportunities to use public transportation to improve the efficiency of transportation corridors.

(2) The duties of the office include, but are not limited to, the following:



(a) Developing a statewide strategic plan that creates common goals for transit agencies and reduces competing plans for cross-jurisdictional service;

(b) Developing a park and ride lot program;

(c) Encouraging long-range transit planning;

(d) Providing public transportation expertise to improve linkages between regional transportation planning organizations and transit agencies;

(e) Strengthening policies for inclusion of transit and transportation demand management strategies in route development, corridor plan standards, and budget proposals;

(f) Recommending best practices to integrate transit and demand management strategies with regional and local land use plans in order to reduce traffic and improve mobility and access;

(g) Producing recommendations for the public transportation section of the Washington transportation plan; and

(h) Participating in all aspects of corridor planning, including freight planning, ferry system planning, and passenger rail planning.

(3) In forming the office, the secretary shall use existing resources to the greatest extent possible.

(4) The office of transit mobility shall establish measurable performance objectives for evaluating the success of its initiatives and progress toward accomplishing the overall goals of the office.

(5) The office of transit mobility must report quarterly to the secretary, and annually to the transportation committees of the legislature, on the progress of the office in meeting the goals and duties provided in this section. [2005 c 318 § 2.]

**Findings—Intent—2005 c 318:** "The legislature finds that the state needs to reestablish itself as a leader in public transportation.

The legislature also finds that increased demands on transportation resources require increased coordination among public transportation service providers.

The legislature also finds that the efficiency of transportation corridors would be enhanced by a more proactive and integrated approach to public transportation service delivery and planning.

The legislature also finds that the state department of transportation is in the unique position of being able to improve connectivity between service territories of transit agencies and modes of transportation.

The legislature also finds that the state should be a center of excellence in public transportation planning and research and providing technical assistance to transit agencies serving urban, suburban, and rural areas.

Therefore, it is the intent of the legislature that the state department of transportation be a leader in public transportation. The department shall play a guiding role in coordinating decentralized public transportation services, increasing connectivity between them, advocating for public transportation as a means to increase corridor efficiency, and increasing the integration of public transportation and the highway system." [2005 c 318 § 1.]

#### **47.01.340 Local and regional transportation goals.**

Local and regional transportation agencies shall adopt common transportation goals. The office of transit mobility shall review local and regional transportation plans, including plans required under RCW 35.58.2795, 36.70A.070(6), 36.70A.210, and 47.80.023, to provide for the efficient integration of multimodal and multijurisdictional transportation planning. [2005 c 318 § 3.]

**Findings—Intent—2005 c 318:** See note following RCW 47.01.330.

## **Chapter 47.04 RCW GENERAL PROVISIONS**

### Sections

47.04.210	Reimbursable transportation expenditures—Processing and accounting.
47.04.220	Miscellaneous transportation programs account.
47.04.260	Latecomer fees.

**47.04.210 Reimbursable transportation expenditures—Processing and accounting.** Federal funds that are administered by the department of transportation and are passed through to municipal corporations or political subdivisions of the state and moneys that are received as total reimbursement for goods, services, or projects constructed by the department of transportation are removed from the transportation budget. To process and account for these expenditures a new treasury trust account is created to be used for all department of transportation one hundred percent federal and local reimbursable transportation expenditures. This new account is nonbudgeted and nonappropriated. At the same time, federal and private local appropriations and full-time equivalents in subprograms R2, R3, T6, Y6, and Z2 processed through this new account are removed from the department of transportation's 1997-99 budget.

The department of transportation may make expenditures from the account before receiving federal and local reimbursements. However, at the end of each biennium, the account must maintain a zero or positive cash balance. In the twenty-fourth month of each biennium the department of transportation shall calculate and transfer sufficient cash from either the motor vehicle fund or the multimodal transportation account to cover any negative cash balances. The amount transferred is calculated based on expenditures from each fund. In addition, any interest charges accruing to the new account must be distributed to the motor vehicle fund and the multimodal transportation account.

The department of transportation shall provide an annual report to the senate and house transportation committees and the office of financial management on expenditures and full-time equivalents processed through the new account. The report must also include recommendations for process changes, if needed. [2005 c 319 § 122; 2001 2nd sp.s. c 14 § 601; 1997 c 94 § 1.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Severability—2001 2nd sp.s. c 14:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 2nd sp.s. c 14 § 612.]

**Effective date—2001 2nd sp.s. c 14:** "Except for section 608 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 26, 2001]." [2001 2nd sp.s. c 14 § 613.]

**Effective date—1997 c 94:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 94 § 4.]

**47.04.220 Miscellaneous transportation programs account.** (1) The miscellaneous transportation programs account is created in the custody of the state treasurer.

(2) Moneys from the account may be used only for the costs of:

(a) Miscellaneous transportation services provided by the department that are reimbursed by other public and private entities;

(b) Local transportation projects for which the department is a conduit for federal reimbursement to a municipal corporation or political subdivision; or

(c) Other reimbursable activities as recommended by the senate and house transportation committees and approved by the office of financial management.

(3) Moneys received as reimbursement for expenditures under subsection (2) of this section must be deposited into the account.

(4) No appropriation is required for expenditures from this account. This fund is not subject to allotment procedures provided under chapter 43.88 RCW.

(5) Only the secretary of transportation or the secretary's designee may authorize expenditures from the account.

(6) It is the intent of the legislature that this account maintain a zero or positive cash balance at the end of each biennium. Toward this purpose the department may make expenditures from the account before receiving reimbursements under subsection (2) of this section. Before the end of the biennium, the department shall transfer sufficient cash to cover any negative cash balances from the motor vehicle fund and the multimodal transportation account to the miscellaneous transportation programs account for unrecovered reimbursements. The department shall calculate the distribution of this transfer based on expenditures. In the ensuing biennium the department shall transfer the reimbursements received in the miscellaneous transportation programs account back to the motor vehicle fund and the multimodal transportation account to the extent of the cash transferred at biennium end. The department shall also distribute any interest charges accruing to the miscellaneous transportation programs account to the motor vehicle fund and the multimodal transportation account. Adjustments for any indirect cost recoveries may also be made at this time.

(7) The department shall provide an annual report to the senate and house transportation committees and the office of financial management on the expenditures and full-time equivalents processed through the miscellaneous transportation programs account. The report must also include recommendations for changes to the process, if needed. [2005 c 319 § 123; 2001 2nd sp.s. c 14 § 602; 1997 c 94 § 2.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Severability—Effective date—2001 2nd sp.s. c 14:** See notes following RCW 47.04.210.

**Effective date—1997 c 94:** See note following RCW 47.04.210.

**47.04.260 Latecomer fees.** The department of transportation may impose and collect latecomer fees on behalf of another entity for infrastructure improvement projects initially funded partially or entirely by private sources. However, there must be an agreement in place between the department of transportation and the entity, before the imposition and collection of any such fees, that specifies (1) the collection process, (2) the maximum amount that may be collected,

and (3) the period of time during which the collection may occur. [2005 c 317 § 30.]

### Chapter 47.05 RCW

#### PRIORITY PROGRAMMING FOR HIGHWAY DEVELOPMENT

##### Sections

47.05.021	Functional classification of highways.
47.05.030	Ten-year programs—Investments, improvements, preservation.
47.05.035	Allocation of funds, factors.
47.05.051	Ten-year comprehensive investment program—Priority selection criteria—Improvement program criteria—Departure from criteria.
47.05.090	Repealed.

**47.05.021 Functional classification of highways.** (1) The department shall conduct periodic analyses of the entire state highway system, report to the commission and the chairs of the transportation committees of the senate and house of representatives, any subsequent recommendations to subdivide, classify, and subclassify all designated state highways into the following three functional classes:

(a) The "principal arterial system" shall consist of a connected network of rural arterial routes with appropriate extensions into and through urban areas, including all routes designated as part of the interstate system, which serve corridor movements having travel characteristics indicative of substantial statewide and interstate travel;

(b) The "minor arterial system" shall, in conjunction with the principal arterial system, form a rural network of arterial routes linking cities and other activity centers which generate long distance travel, and, with appropriate extensions into and through urban areas, form an integrated network providing interstate and interregional service; and

(c) The "collector system" shall consist of routes which primarily serve the more important intercounty, intracounty, and intraurban travel corridors, collect traffic from the system of local access roads and convey it to the arterial system, and on which, regardless of traffic volume, the predominant travel distances are shorter than on arterial routes.

(2) The transportation commission shall adopt a functional classification of highways. The commission shall consider the recommendations of the department and testimony from the public and local municipalities. The commission shall give consideration to criteria consistent with this section and federal regulations relating to the functional classification of highways, including but not limited to the following:

(a) Urban population centers within and without the state stratified and ranked according to size;

(b) Important traffic generating economic activities, including but not limited to recreation, agriculture, government, business, and industry;

(c) Feasibility of the route, including availability of alternate routes within and without the state;

(d) Directness of travel and distance between points of economic importance;

(e) Length of trips;

(f) Character and volume of traffic;

(g) Preferential consideration for multiple service which shall include public transportation;

(h) Reasonable spacing depending upon population density; and

(i) System continuity.

(3) The transportation commission or the legislature shall designate state highways of statewide significance under RCW 47.06.140. If the commission designates a state highway of statewide significance, it shall submit a list of such facilities for adoption by the legislature. This statewide system shall include at a minimum interstate highways and other statewide principal arterials that are needed to connect major communities across the state and support the state's economy.

(4) The transportation commission shall designate a freight and goods transportation system. This statewide system shall include state highways, county roads, and city streets. The commission, in cooperation with cities and counties, shall review and make recommendations to the legislature regarding policies governing weight restrictions and road closures which affect the transportation of freight and goods. [2005 c 319 § 8; 2002 c 56 § 301. Prior: 1998 c 245 § 95; 1998 c 171 § 5; 1993 c 490 § 2; 1987 c 505 § 50; 1979 ex.s. c 122 § 1; 1977 ex.s. c 130 § 1.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Captions and subheadings not law—Severability—2002 c 56:** See RCW 36.120.900 and 36.120.901.

**Severability—1979 ex.s. c 122:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 122 § 10.]

**Effective dates—1977 ex.s. c 130:** "Section 1 of this 1977 act modifying the functional classification of state highways shall apply to the long range plan for highway improvements and to the six year program for highway construction commencing July 1, 1979 and to the preparation thereof and shall take effect July 1, 1977. Section 2 of this 1977 act shall take effect July 1, 1979." [1977 ex.s. c 130 § 3.]

**47.05.030 Ten-year programs—Investments, improvements, preservation.** The transportation commission shall adopt a comprehensive ten-year investment program specifying program objectives and performance measures for the preservation and improvement programs defined in this section. The adopted ten-year investment program must be forwarded as a recommendation to the governor and the legislature. In the specification of investment program objectives and performance measures, the transportation commission, in consultation with the Washington state department of transportation, shall define and adopt standards for effective programming and prioritization practices including a needs analysis process. The analysis process must ensure the identification of problems and deficiencies, the evaluation of alternative solutions and trade-offs, and estimations of the costs and benefits of prospective projects. The investment program must be revised based on directions by the office of financial management. The investment program must be based upon the needs identified in the state-owned highway component of the statewide transportation plan as defined in \*RCW 47.01.071(3).

(1) The preservation program consists of those investments necessary to preserve the existing state highway system and to restore existing safety features, giving consideration to lowest life cycle costing. The preservation program

must require use of the most cost-effective pavement surfaces, considering:

(a) Life-cycle cost analysis;

(b) Traffic volume;

(c) Subgrade soil conditions;

(d) Environmental and weather conditions;

(e) Materials available; and

(f) Construction factors.

The comprehensive ten-year investment program for preservation must identify projects for two years and an investment plan for the remaining eight years.

(2) The improvement program consists of investments needed to address identified deficiencies on the state highway system to increase mobility, address congestion, and improve safety, support for the economy, and protection of the environment. The ten-year investment program for improvements must identify projects for two years and major deficiencies proposed to be addressed in the ten-year period giving consideration to relative benefits and life cycle costing. The transportation commission shall give higher priority for correcting identified deficiencies on those facilities classified as facilities of statewide significance as defined in RCW 47.06.140. Project prioritization must be based primarily upon cost-benefit analysis, where appropriate.

The transportation commission shall approve and present the comprehensive ten-year investment program to the governor and the legislature as directed by the office of financial management. [2005 c 319 § 9; 2002 c 5 § 402; 1998 c 171 § 6; 1993 c 490 § 3; 1987 c 179 § 2; 1979 ex.s. c 122 § 2; 1977 ex.s. c 151 § 44; 1975 1st ex.s. c 143 § 1; 1973 2nd ex.s. c 12 § 4; 1969 ex.s. c 39 § 3; 1965 ex.s. c 170 § 33; 1963 c 173 § 3.]

**\*Reviser's note:** RCW 47.01.071 was amended by 2005 c 319 § 5, changing subsection (3) to subsection (4).

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Effective date—2002 c 5 §§ 401-404:** See note following RCW 47.05.010.

**Captions not law—Severability—2002 c 5:** See notes following RCW 47.01.012.

**Severability—1979 ex.s. c 122:** See note following RCW 47.05.021.

**47.05.035 Allocation of funds, factors.** (1) The department shall use the transportation demand modeling tools developed under subsection (2) of this section to evaluate investments based on the best mode or improvement, or mix of modes and improvements, to meet current and future long-term demand within a corridor or system for the lowest cost. The end result of these demand modeling tools is to provide a cost-benefit analysis by which the department can determine the relative mobility improvement and congestion relief each mode or improvement under consideration will provide and the relative investment each mode or improvement under consideration will need to achieve that relief.

(2) The department will participate in the refinement, enhancement, and application of existing transportation demand modeling tools to be used to evaluate investments. This participation and use of transportation demand modeling tools will be phased in.

(3) In developing program objectives and performance measures, the department shall evaluate investment trade-

offs between the preservation and improvement programs. In making these investment trade-offs, the department shall evaluate, using cost-benefit techniques, roadway and bridge maintenance activities as compared to roadway and bridge preservation program activities and adjust those programs accordingly.

(4) The department shall allocate the estimated revenue between preservation and improvement programs giving primary consideration to the following factors:

(a) The relative needs in each of the programs and the system performance levels that can be achieved by meeting these needs;

(b) The need to provide adequate funding for preservation to protect the state's investment in its existing highway system;

(c) The continuity of future transportation development with those improvements previously programmed; and

(d) The availability of dedicated funds for a specific type of work.

(5) The commission shall review the results of the department's findings and shall consider those findings in the development of the ten-year program. [2005 c 319 § 10; 2002 c 5 § 403; 1993 c 490 § 4; 1987 c 179 § 3; 1979 ex.s. c 122 § 3; 1975 1st ex.s. c 143 § 2.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Effective date—2002 c 5 §§ 401-404:** See note following RCW 47.05.010.

**Captions not law—Severability—2002 c 5:** See notes following RCW 47.01.012.

**Severability—1979 ex.s. c 122:** See note following RCW 47.05.021.

**47.05.051 Ten-year comprehensive investment program—Priority selection criteria—Improvement program criteria—Departure from criteria.** (1) The comprehensive ten-year investment program shall be based upon the needs identified in the state-owned highway component of the statewide multimodal transportation plan as defined in RCW 47.01.071(4) and priority selection systems that incorporate the following criteria:

(a) Priority programming for the preservation program shall take into account the following, not necessarily in order of importance:

(i) Extending the service life of the existing highway system, including using the most cost-effective pavement surfaces, considering:

(A) Life-cycle cost analysis;

(B) Traffic volume;

(C) Subgrade soil conditions;

(D) Environmental and weather conditions;

(E) Materials available; and

(F) Construction factors;

(ii) Ensuring the structural ability to carry loads imposed upon highways and bridges; and

(iii) Minimizing life cycle costs. The transportation commission in carrying out the provisions of this section may delegate to the department of transportation the authority to select preservation projects to be included in the ten-year program.

(b) Priority programming for the improvement program must be based primarily upon the following, not necessarily in order of importance:

(i) Traffic congestion, delay, and accidents;

(ii) Location within a heavily traveled transportation corridor;

(iii) Except for projects in cities having a population of less than five thousand persons, synchronization with other potential transportation projects, including transit and multimodal projects, within the heavily traveled corridor; and

(iv) Use of benefit/cost analysis wherever feasible to determine the value of the proposed project.

(c) Priority programming for the improvement program may also take into account:

(i) Support for the state's economy, including job creation and job preservation;

(ii) The cost-effective movement of people and goods;

(iii) Accident and accident risk reduction;

(iv) Protection of the state's natural environment;

(v) Continuity and systematic development of the highway transportation network;

(vi) Consistency with local comprehensive plans developed under chapter 36.70A RCW including the following if they have been included in the comprehensive plan:

(A) Support for development in and revitalization of existing downtowns;

(B) Extent that development implements local comprehensive plans for rural and urban residential and nonresidential densities;

(C) Extent of compact, transit-oriented development for rural and urban residential and nonresidential densities;

(D) Opportunities for multimodal transportation; and

(E) Extent to which the project accommodates planned growth and economic development;

(vii) Consistency with regional transportation plans developed under chapter 47.80 RCW;

(viii) Public views concerning proposed improvements;

(ix) The conservation of energy resources;

(x) Feasibility of financing the full proposed improvement;

(xi) Commitments established in previous legislative sessions;

(xii) Relative costs and benefits of candidate programs.

(d) Major projects addressing capacity deficiencies which prioritize allowing for preliminary engineering shall be reprioritized during the succeeding biennium, based upon updated project data. Reprioritized projects may be delayed or canceled by the transportation commission if higher priority projects are awaiting funding.

(e) Major project approvals which significantly increase a project's scope or cost from original prioritization estimates shall include a review of the project's estimated revised priority rank and the level of funding provided. Projects may be delayed or canceled by the transportation commission if higher priority projects are awaiting funding.

(2) The commission may depart from the priority programming established under subsection (1) of this section:

(a) To the extent that otherwise funds cannot be utilized feasibly within the program; (b) as may be required by a court judgment, legally binding agreement, or state and federal laws and regulations; (c) as may be required to coordinate

with federal, local, or other state agency construction projects; (d) to take advantage of some substantial financial benefit that may be available; (e) for continuity of route development; or (f) because of changed financial or physical conditions of an unforeseen or emergent nature. The commission or secretary of transportation shall maintain in its files information sufficient to show the extent to which the commission has departed from the established priority.

(3) The commission shall identify those projects that yield freight mobility benefits or that alleviate the impacts of freight mobility upon affected communities. [2005 c 319 § 11; 2002 c 189 § 3; 2002 c 5 § 406; 1998 c 175 § 12; 1993 c 490 § 5; 1987 c 179 § 5; 1979 ex.s. c 122 § 5; 1975 1st ex.s. c 143 § 4.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Intent—2002 c 5:** "The legislature intends that funding for transportation mobility improvements be allocated to the worst traffic chokepoints in the state. Furthermore, the legislature intends to fund projects that provide systemic relief throughout a transportation corridor, rather than spot improvements that fail to improve overall mobility within a corridor." [2002 c 5 § 405.]

**Reports:** "The department of transportation shall report the results of its priority programming under RCW 47.05.051 to the transportation committees of the senate and house of representatives by December 1, 2003, and December 1, 2005." [2002 c 5 § 407.]

**Captions not law—Severability—2002 c 5:** See notes following RCW 47.01.012.

**Severability—1998 c 175:** See RCW 47.06A.900.

**Severability—1979 ex.s. c 122:** See note following RCW 47.05.021.

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

## Chapter 47.06 RCW

### STATEWIDE TRANSPORTATION PLANNING

#### Sections

47.06.110 Public transportation plan.

**47.06.110 Public transportation plan.** The state-interest component of the statewide multimodal transportation plan shall include a state public transportation plan that:

(1) Articulates the state vision of an interest in public transportation and provides quantifiable objectives, including benefits indicators;

(2) Identifies the goals for public transit and the roles of federal, state, regional, and local entities in achieving those goals;

(3) Recommends mechanisms for coordinating state, regional, and local planning for public transportation;

(4) Recommends mechanisms for coordinating public transportation with other transportation services and modes;

(5) Recommends criteria, consistent with the goals identified in subsection (2) of this section and with RCW 82.44.180 (2) and (3), for existing federal authorizations administered by the department to transit agencies; and

(6) Recommends a statewide public transportation facilities and equipment management system as required by federal law.

In developing the state public transportation plan, the department shall involve local jurisdictions, public and pri-

vate providers of transportation services, nonmotorized interests, and state agencies with an interest in public transportation, including but not limited to the departments of community, trade, and economic development, social and health services, and ecology, the office of the superintendent of public instruction, the office of the governor, and the office of financial management.

The department shall submit to the senate and house transportation committees by December 1st of each year, reports summarizing the plan's progress. [2005 c 319 § 124; 1996 c 186 § 512; 1995 c 399 § 120; 1993 c 446 § 11.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Findings—Intent—Part headings not law—Effective date—1996 c 186:** See notes following RCW 43.330.904.

*Environmental review of transportation projects: RCW 47.01.290.*

## Chapter 47.06A RCW

### FREIGHT MOBILITY

#### Sections

47.06A.020 Board—Duties.

**47.06A.020 Board—Duties.** (1) The board shall:

(a) Adopt rules and procedures necessary to implement the freight mobility strategic investment program;

(b) Solicit from public entities proposed projects that meet eligibility criteria established in accordance with subsection (4) of this section; and

(c) Review and evaluate project applications based on criteria established under this section, and prioritize and select projects comprising a portfolio to be funded in part with grants from state funds appropriated for the freight mobility strategic investment program. In determining the appropriate level of state funding for a project, the board shall ensure that state funds are allocated to leverage the greatest amount of partnership funding possible. After selecting projects comprising the portfolio, the board shall submit them as part of its budget request to the office of financial management and the legislature. The board shall ensure that projects submitted as part of the portfolio are not more appropriately funded with other federal, state, or local government funding mechanisms or programs. The board shall reject those projects that appear to improve overall general mobility with limited enhancement for freight mobility.

The board shall provide periodic progress reports on its activities to the office of financial management and the senate and house transportation committees.

(2) The board may:

(a) Accept from any state or federal agency, loans or grants for the financing of any transportation project and enter into agreements with any such agency concerning the loans or grants;

(b) Provide technical assistance to project applicants;

(c) Accept any gifts, grants, or loans of funds, property, or financial, or other aid in any form from any other source on any terms and conditions which are not in conflict with this chapter;

(d) Adopt rules under chapter 34.05 RCW as necessary to carry out the purposes of this chapter; and

(e) Do all things necessary or convenient to carry out the powers expressly granted or implied under this chapter.

(3) The board shall designate strategic freight corridors within the state. The board shall update the list of designated strategic corridors not less than every two years, and shall establish a method of collecting and verifying data, including information on city and county-owned roadways.

(4) The board shall utilize threshold project eligibility criteria that, at a minimum, includes the following:

- (a) The project must be on a strategic freight corridor;
- (b) The project must meet one of the following conditions:
  - (i) It is primarily aimed at reducing identified barriers to freight movement with only incidental benefits to general or personal mobility; or
  - (ii) It is primarily aimed at increasing capacity for the movement of freight with only incidental benefits to general or personal mobility; or
  - (iii) It is primarily aimed at mitigating the impact on communities of increasing freight movement, including roadway/railway conflicts; and

(c) The project must have a total public benefit/total public cost ratio of equal to or greater than one.

(5) From June 11, 1998, through the biennium ending June 30, 2001, the board shall use the multicriteria analysis and scoring framework for evaluating and ranking eligible freight mobility and freight mitigation projects developed by the freight mobility project prioritization committee and contained in the January 16, 1998, report entitled "Project Eligibility, Priority and Selection Process for a Strategic Freight Investment Program." The prioritization process shall measure the degree to which projects address important program objectives and shall generate a project score that reflects a project's priority compared to other projects. The board shall assign scoring points to each criterion that indicate the relative importance of the criterion in the overall determination of project priority. After June 30, 2001, the board may supplement and refine the initial project priority criteria and scoring framework developed by the freight mobility project prioritization committee as expertise and experience is gained in administering the freight mobility program.

(6) It is the intent of the legislature that each freight mobility project contained in the project portfolio submitted by the board utilize the greatest amount of nonstate funding possible. The board shall adopt rules that give preference to projects that contain the greatest levels of financial participation from nonprogram fund sources. The board shall consider twenty percent as the minimum partnership contribution, but shall also ensure that there are provisions allowing exceptions for projects that are located in areas where minimal local funding capacity exists or where the magnitude of the project makes the adopted partnership contribution financially unfeasible.

(7) The board shall develop and recommend policies that address operational improvements that primarily benefit and enhance freight movement, including, but not limited to, policies that reduce congestion in truck lanes at border crossings and weigh stations and provide for access to ports during nonpeak hours. [2005 c 319 § 125; 1999 c 216 § 1; 1998 c 175 § 3.]

(8) The board shall develop and recommend policies that address operational improvements that primarily benefit and enhance freight movement, including, but not limited to, policies that reduce congestion in truck lanes at border crossings and weigh stations and provide for access to ports during nonpeak hours. [2005 c 319 § 125; 1999 c 216 § 1; 1998 c 175 § 3.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:**  
See notes following RCW 43.17.020.

## Chapter 47.10 RCW HIGHWAY CONSTRUCTION BONDS

### Sections

47.10.790	Issuance and sale of general obligation bonds—State route 90 improvements.
47.10.801	Issuance and sale of general obligation bonds.
47.10.802	Administration and amount of bond sales.

### SELECTED PROJECTS AND IMPROVEMENTS—2005 ACT

47.10.873	Bond issue authorized.
47.10.874	Administration and amount of sale.
47.10.875	Proceeds—Deposit and use.
47.10.876	Statement of general obligation—Pledge of excise taxes.
47.10.877	Repayment procedure—Bond retirement fund.
47.10.878	Equal charge against motor vehicle and special fuels tax revenues.

**47.10.790 Issuance and sale of general obligation bonds—State route 90 improvements.** (1) In order to provide funds for the location, design, right of way, and construction of selected interstate highway improvements, there shall be issued and sold upon the request of the Washington state transportation commission, a total of one hundred million dollars of general obligation bonds of the state of Washington to pay the state's share of costs for completion of state route 90 (state route 5 to state route 405) and other related state highway projects eligible for regular federal interstate funding and until December 31, 1989, to temporarily pay the regular federal share of construction of completion projects on state route 90 (state route 5 to state route 405) and other related state highway projects eligible for regular interstate funding in advance of federal-aid apportionments under the provisions of 23 U.S.C. Secs. 115 or 122: PROVIDED, That the total amount of bonds issued to temporarily pay the regular federal share of construction of federal-aid interstate highways in advance of federal-aid apportionments as authorized by this section and RCW 47.10.801 shall not exceed one hundred twenty million dollars: PROVIDED FURTHER, That the transportation commission shall adopt plans for the obligation of federal-aid apportionments received in federal fiscal year 1985 and subsequent years to pay the regular federal share of federal-aid interstate highway construction projects or to convert such apportionments under the provisions of 23 U.S.C. Secs. 115 or 122.

(2) The transportation commission may at any time find and determine that any amount of the bonds authorized in subsection (1) of this section, and not then sold, are no longer required to be issued and sold for the purposes described in subsection (1) of this section.

(3) Any bonds authorized by subsection (1) of this section that the transportation commission determines are no longer required for the purpose of paying the cost of the designated interstate highway improvements described therein shall be issued and sold, upon the request of the Washington state transportation commission, to provide funds for the location, design, right of way, and construction of major transportation improvements throughout the state. [2005 c 319 § 126; 1985 c 406 § 1; 1982 c 19 § 3; 1981 c 316 § 10; 1979 ex.s. c 180 § 1.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Severability—1982 c 19:** See note following RCW 47.10.801.

**Severability—1981 c 316:** See RCW 47.10.811.

**47.10.801 Issuance and sale of general obligation bonds.** (1) In order to provide funds necessary for the location, design, right of way, and construction of selected interstate and other state highway improvements, there shall be issued and sold, subject to subsections (2), (3), and (4) of this section, upon the request of the Washington state transportation commission a total of four hundred sixty million dollars of general obligation bonds of the state of Washington for the following purposes and specified sums:

(a) Not to exceed two hundred twenty-five million dollars to pay the state's share of costs for federal-aid interstate highway improvements and until December 31, 1989, to temporarily pay the regular federal share of construction of federal-aid interstate highway improvements to complete state routes 82, 90, 182, and 705 in advance of federal-aid apportionments under the provisions of 23 U.S.C. Secs. 115 or 122: PROVIDED, That the total amount of bonds issued to temporarily pay the regular federal share of construction of federal-aid interstate highways in advance of federal-aid apportionments as authorized by this section and RCW 47.10.790 shall not exceed one hundred twenty million dollars: PROVIDED FURTHER, That the transportation commission shall adopt plans for the obligation of federal-aid apportionments received in federal fiscal year 1985 and subsequent years to pay the regular federal share of federal-aid interstate highway construction projects or to convert such apportionments under the provisions of 23 U.S.C. Secs. 115 or 122;

(b) Two hundred twenty-five million dollars for major transportation improvements throughout the state that are identified as category C improvements and for selected major non-interstate construction and reconstruction projects that are included as Category A Improvements;

(c) Ten million dollars for state highway improvements necessitated by planned economic development, as determined through the procedures set forth in RCW 43.160.074 and 47.01.280.

(2) The amount of bonds authorized in subsection (1)(a) of this section shall be reduced if the transportation commission determines that any of the bonds that have not been sold are no longer required.

(3) The amount of bonds authorized in subsection (1)(b) of this section shall be increased by an amount not to exceed, and concurrent with, any reduction of bonds authorized under subsection (1)(a) of this section in the manner prescribed in subsection (2) of this section.

(4) The transportation commission may decrease the amount of bonds authorized in subsection (1)(c) of this section and increase the amount of bonds authorized in subsection (1)(a) or (b) of this section, or both by an amount equal to the decrease in subsection (1)(c) of this section. The transportation commission may decrease the amount of bonds authorized in subsection (1)(c) of this section only if the legislature appropriates an equal amount of funds from the motor vehicle fund - basic account for the purposes enumerated in subsection (1)(c) of this section. [2005 c 319 § 127;

1999 c 94 § 13; 1994 c 173 § 1. Prior: 1985 c 433 § 7; 1985 c 406 § 2; 1982 c 19 § 1; 1981 c 316 § 1.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Legislative finding—Effective dates—1999 c 94:** See notes following RCW 43.84.092.

**Effective date—1994 c 173:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 30, 1994]." [1994 c 173 § 2.]

**Nonseverability—1985 c 433:** See note following RCW 43.160.074.

**Severability—1982 c 19:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 19 § 5.]

#### **47.10.802 Administration and amount of bond sales.**

Upon request being made by the transportation commission, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds authorized by RCW 47.10.801 in accordance with chapter 39.42 RCW. The amount of such bonds issued and sold under RCW 47.10.801 through 47.10.809 in any biennium may not exceed the amount of a specific appropriation therefor. Such bonds may be sold from time to time in such amounts as may be necessary for the orderly progress of the state highway improvements specified in RCW 47.10.801. The amount of bonds issued and sold under RCW 47.10.801(1)(a) in any biennium shall not, except as provided in that section, exceed the amount required to match federal-aid interstate funds available to the state of Washington. The bonds shall be sold in such manner, at such time or times, in such amounts, and at such price or prices as the state finance committee shall determine. The state finance committee may obtain insurance, letters of credit, or other credit facility devices with respect to the bonds and may authorize the execution and delivery of agreements, promissory notes, and other obligations for the purpose of insuring the payment or enhancing the marketability of the bonds. Promissory notes or other obligations issued under this section shall not constitute a debt or the contracting of indebtedness under any constitutional or statutory indebtedness limitation if their payment is conditioned upon the failure of the state to pay the principal of or interest on the bonds with respect to which the promissory notes or other obligations relate. The state finance committee may authorize the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purposes of retiring the bonds during the life of the project for which they were issued. [2005 c 319 § 128; 1986 c 290 § 1; 1983 1st ex.s. c 53 § 23; 1982 c 19 § 2; 1981 c 316 § 2.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Severability—1983 1st ex.s. c 53:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 1st ex.s. c 53 § 36.]

**Severability—1982 c 19:** See note following RCW 47.10.801.

SELECTED PROJECTS AND IMPROVEMENTS—  
2005 ACT

**47.10.873 Bond issue authorized.** In order to provide funds necessary for the location, design, right of way, and construction of selected projects or improvements that are identified as 2005 transportation partnership projects or improvements in the omnibus transportation budget [2005 c 313], there shall be issued and sold upon the request of the department of transportation a total of five billion one hundred million dollars of general obligation bonds of the state of Washington. [2005 c 315 § 1.]

**Effective date—2005 c 315:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 315 § 8.]

**47.10.874 Administration and amount of sale.** Upon the request of the department of transportation, as appropriate, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds in RCW 47.10.873 through 47.10.878 in accordance with chapter 39.42 RCW. Bonds authorized by RCW 47.10.873 through 47.10.878 shall be sold in the manner, at time or times, in amounts, and at the price as the state finance committee shall determine. No bonds may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds.

The state finance committee shall consider the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purpose of retiring the bonds during the life of the project for which they were issued. [2005 c 315 § 2.]

**Effective date—2005 c 315:** See note following RCW 47.10.873.

**47.10.875 Proceeds—Deposit and use.** The proceeds from the sale of bonds authorized by RCW 47.10.873 shall be deposited in the transportation partnership account in the motor vehicle fund. The proceeds shall be available only for the purposes enumerated in RCW 47.10.873, for the payment of bond anticipation notes, if any, and for the payment of bond issuance costs, including the costs of underwriting. [2005 c 315 § 3.]

**Effective date—2005 c 315:** See note following RCW 47.10.873.

**47.10.876 Statement of general obligation—Pledge of excise taxes.** Bonds issued under the authority of RCW 47.10.873 through 47.10.878 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal and interest on the bonds shall be first payable in the manner provided in RCW 47.10.873 through 47.10.878 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. Proceeds of these excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.10.873 through 47.10.878, and the legislature agrees to continue to

[2005 RCW Supp—page 620]

impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.10.873 through 47.10.878. [2005 c 315 § 4.]

**Effective date—2005 c 315:** See note following RCW 47.10.873.

**47.10.877 Repayment procedure—Bond retirement fund.** Both principal and interest on the bonds issued for the purposes of RCW 47.10.873 through 47.10.878 shall be payable from the highway bond retirement fund. The state finance committee may provide that a special account be created in the fund to facilitate payment of the principal and interest. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required for principal and interest on the bonds in accordance with the bond proceedings. The state treasurer shall withdraw revenues from the transportation partnership account in the motor vehicle fund and deposit in the highway bond retirement fund, or a special account in the fund, such amounts, and at such times, as are required by the bond proceedings.

Any funds required for bond retirement or interest on the bonds authorized by RCW 47.10.873 through 47.10.878 shall be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the transportation partnership account in the motor vehicle fund. Funds required shall never constitute a charge against any other allocations of motor vehicle fuel and special fuel tax revenues to the state, counties, cities, and towns unless the amount arising from excise taxes on motor vehicle and special fuels distributed to the transportation 2005 [partnership] account proves insufficient to meet the requirements for bond retirement or interest on any such bonds.

Any payments for bond retirement or interest on the bonds taken from other revenues from the motor vehicle fuel or special fuel taxes that are distributable to the state, counties, cities, and towns shall be repaid from the first revenues from the motor vehicle fuel or special fuel taxes distributed to the transportation partnership account not required for bond retirement or interest on the bonds. [2005 c 315 § 5.]

**Effective date—2005 c 315:** See note following RCW 47.10.873.

**47.10.878 Equal charge against motor vehicle and special fuels tax revenues.** Bonds issued under the authority of RCW 47.10.873 through 47.10.877 and this section and any other general obligation bonds of the state of Washington that have been or that may be authorized and that pledge motor vehicle and special fuels excise taxes for the payment of principal and interest thereon shall be an equal charge against the revenues from such motor vehicle and special fuels excise taxes. [2005 c 315 § 6.]

**Effective date—2005 c 315:** See note following RCW 47.10.873.

**Chapter 47.12 RCW**  
**ACQUISITION AND DISPOSITION OF STATE**  
**HIGHWAY PROPERTY**

Sections

47.12.360 Repealed.



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

### Chapter 47.17 RCW STATE HIGHWAY ROUTES

#### Sections

47.17.520 State route No. 290.  
47.17.850 State route No. 906.

**47.17.520 State route No. 290.** A state highway to be known as state route number 290 is established as follows:

Beginning at a junction with state route number 90 in Spokane, thence northeasterly by way of Millwood, Trentwood, and Newman Lake to the termination of Idaho state highway number 53 at the Washington-Idaho boundary line. [2005 c 14 § 1; 1977 ex.s. c 6 § 1; 1970 ex.s. c 51 § 105.]

**47.17.850 State route No. 906.** A state highway to be known as state route number 906 is established as follows:

Beginning at a junction with state route number 90 at the West Summit interchange of Snoqualmie Pass, thence along the alignment of the state route number 90 as it existed on May 11, 1967, in a southeasterly direction to a junction with state route number 90 at the Hyak interchange. [2005 c 319 § 129; 1984 c 7 § 139; 1977 ex.s. c 235 § 16; 1971 ex.s. c 73 § 26; 1970 ex.s. c 51 § 171.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Severability—1984 c 7:** See note following RCW 47.01.141.

### Chapter 47.26 RCW DEVELOPMENT IN URBAN AREAS— URBAN ARTERIALS

#### Sections

47.26.167 Jurisdictional transfers.  
47.26.170 Long-range arterial construction planning—Arterial inventory data.  
47.26.340 Small city pavement and sidewalk account.  
47.26.345 Small city pavement and sidewalk funding.

**47.26.167 Jurisdictional transfers.** The legislature recognizes the need for a multijurisdictional body to review future requests for jurisdictional transfers. The board is hereby directed, beginning September 1, 1991, to receive petitions from cities, counties, or the state requesting any addition or deletion from the state highway system. The board is required to utilize the criteria established in RCW 47.17.001 in evaluating petitions and to adopt rules for implementation of this process. The board shall forward to the senate and house transportation committees by November 15 each year any recommended jurisdictional transfers. [2005 c 319 § 130; 1991 c 342 § 62.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Effective dates—1991 c 342:** "(1) Sections 62 and 63 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 1, 1991.

(2) The remainder of this act shall take effect April 1, 1992." [1991 c 342 § 68.]

**47.26.170 Long-range arterial construction planning—Arterial inventory data.** Each county having within its boundaries an urban area and cities and towns shall prepare and submit to the transportation improvement board arterial inventory data required to determine the long-range arterial construction needs. The counties, cities, and towns shall revise the arterial inventory data every four years to show the current arterial construction needs through the advanced planning period, and as revised shall submit them to the transportation improvement board during the first week of January every four years beginning in 1996. The inventory data shall be prepared pursuant to guidelines established by the transportation improvement board. As information is updated, it shall be made available to the commission. [2005 c 319 § 131; 1994 c 179 § 16; 1988 c 167 § 19; 1984 c 7 § 156; 1971 ex.s. c 291 § 2; 1967 ex.s. c 83 § 23.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Savings—Severability—1988 c 167:** See notes following RCW 47.26.121.

**Severability—1984 c 7:** See note following RCW 47.01.141.

**47.26.340 Small city pavement and sidewalk account.** The small city pavement and sidewalk account is created in the state treasury. All state money allocated to the small city pavement and sidewalk account for the ongoing support of cities and towns must be deposited into the account. Money in the account may be spent only after appropriation. Expenditures from the account must be used for small city pavement and sidewalk projects or improvements selected by the board in accordance with RCW 47.26.345, to pay principal and interest on bonds authorized for these projects or improvements, to make grants or loans in accordance with this chapter, or to pay for engineering feasibility studies selected by the board. [2005 c 83 § 2.]

**Findings—2005 c 83:** "The state legislature finds that it is in the state's interest to support the economic vitality of all cities and towns and recognizes that those cities and towns with a population of less than five thousand are unable to fully maintain and preserve their street system. Therefore, the legislature finds it is necessary to create a small city pavement and sidewalk account." [2005 c 83 § 1.]

**Effective dates—2005 c 83:** "Except for section 5 of this act which takes effect July 1, 2006, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 83 § 6.]

**47.26.345 Small city pavement and sidewalk funding.** All cities and towns with a population of less than five thousand are eligible to receive money from the small city pavement and sidewalk account created under RCW 47.26.340 for maintenance, repair, and resurfacing of city and town streets. The board shall determine the allocation of money based on:

(1) The amount of available funds within the small city pavement and sidewalk account;

(2) Whether the city or town meets one or more of the following criteria:

(a) The city or town has identified a street in a six-year transportation improvement plan, as defined by RCW 35.77.010, or a project identified through the use of a pavement management system;

(b) The city or town has provided pavement rating information on the proposed street improvement or street network improvement;

(c) The city or town has provided sidewalk information on the proposed sidewalk system improvement;

(d) The city or town has provided information, where available, on traffic conditions for truck routes, bus routes, and traffic volumes;

(e) The city or town has the ability to provide a local match as demonstrated by one or more of the following:

(i) A funding match based upon a city's assessed valuation;

(ii) Community involvement and support, including volunteer participation, such as landscaping and maintaining landscaping along the street or sidewalk system; or

(iii) Partnership efforts with federal or other state programs, including the department of community, trade, and economic development mainstreet program. [2005 c 83 § 3.]

**Findings—Effective dates—2005 c 83:** See notes following RCW 47.26.340.

### Chapter 47.29 RCW

#### TRANSPORTATION INNOVATIVE PARTNERSHIPS

##### Sections

47.29.010	Finding—Intent.
47.29.020	Definitions.
47.29.030	Transportation commission powers and duties.
47.29.040	Purpose.
47.29.050	Eligible projects.
47.29.060	Eligible financing.
47.29.070	Use of federal funds and similar revenues.
47.29.080	Other sources of funds or property.
47.29.090	Project review, evaluation, and selection.
47.29.100	Administrative fee.
47.29.110	Funds for proposal evaluation and negotiation.
47.29.120	Expert consultation.
47.29.130	Contracted studies.
47.29.140	Partnership agreements.
47.29.150	Public involvement and participation.
47.29.160	Approval and execution.
47.29.170	Unsolicited proposals.
47.29.180	Advisory committees.
47.29.190	Confidentiality.
47.29.200	Prevailing wages.
47.29.210	Government agreements.
47.29.220	Eminent domain.
47.29.230	Transportation innovative partnership account.
47.29.240	Use of account.
47.29.250	Issuing bonds and other obligations.
47.29.260	Study and report.
47.29.270	Federal laws.
47.29.900	Captions not law.

**47.29.010 Finding—Intent.** (1) The legislature finds that the public-private [transportation] initiatives act created under chapter 47.46 RCW has not met the needs and expectations of the public or private sectors for the development of transportation projects. The legislature intends to phase out chapter 47.46 RCW coincident with the completion of the Tacoma Narrows Bridge - SR 16 public-private partnership. From July 24, 2005, this chapter will provide a more desirable and effective approach to developing transportation projects in partnership with the private sector by applying lessons learned from other states and from this state's ten-year experience with chapter 47.46 RCW.

(2) It is the legislature's intent to achieve the following goals through the creation of this new approach to public-private partnerships:

(a) To provide a well-defined mechanism to facilitate the collaboration between public and private entities in transportation;

(b) To bring innovative thinking from the private sector and other states to bear on public projects within the state;

(c) To provide greater flexibility in achieving the transportation projects; and

(d) To allow for creative cost and risk sharing between the public and private partners.

(3) The legislature intends that the powers granted in this chapter to the commission or department are in addition to any powers granted under chapter 47.56 RCW.

(4) It is further the intent of the legislature that the commission shall be responsible for receiving, reviewing, and approving proposals with technical support of the department; rule making; and for oversight of contract execution. The department shall be responsible for evaluating proposals and negotiating contracts. [2005 c 317 § 1.]

**47.29.020 Definitions.** The definitions in this section apply throughout this chapter.

(1) "Authority" means the transportation commission.

(2) "Commission" means the transportation commission.

(3) "Department" means the department of transportation.

(4) "Eligible project" means any project eligible for development under RCW 47.29.050.

(5) "Eligible public works project" means only a project that meets the criteria of either RCW 47.29.060 (3) or (4).

(6) "Private sector partner" and "private partner" means a person, entity, or organization that is not the federal government, a state, or a political subdivision of a state.

(7) "Public funds" means all moneys derived from taxes, fees, charges, tolls, etc.

(8) "Public sector partner" and "public partner" means any federal or state unit of government, bistrate transportation organization, or any other political subdivision of any state.

(9) "Transportation innovative partnership program" or "program" means the program as outlined in RCW 47.29.040.

(10) "Transportation project" means a project, whether capital or operating, where the state's primary purpose for the project is to preserve or facilitate the safe transport of people or goods via any mode of travel. However, this does not include projects that are primarily for recreational purposes, such as parks, hiking trails, off-road vehicle trails, etc.

(11) "Unit of government" means any department or agency of the federal government, any state or agency, office, or department of a state, any city, county, district, commission, authority, entity, port, or other public corporation organized and existing under statutory law or under a voter-approved charter or initiative, and any intergovernmental entity created under chapter 39.34 RCW or this chapter. [2005 c 317 § 2.]

**47.29.030 Transportation commission powers and duties.** In addition to the powers it now possesses, the commission shall:

(1) Approve or review contracts or agreements authorized in this chapter;

(2) Adopt rules to carry out this chapter and govern the program, which at a minimum must address the following issues:

(a) The types of projects allowed; however, all allowed projects must be included in the Washington transportation plan or identified by the authority as being a priority need for the state;

(b) The types of contracts allowed, with consideration given to the best practices available;

(c) The composition of the team responsible for the evaluation of proposals to include:

(i) Washington state department of transportation staff;

(ii) An independent representative of a consulting or contracting field with no interests in the project that is prohibited from becoming a project manager for the project and bidding on any part of the project;

(iii) An observer from the state auditor's office or the joint legislative audit and review committee;

(iv) A person appointed by the commission, if the secretary of transportation is a cabinet member, or appointed by the governor if the secretary of transportation is not a cabinet member; and

(v) A financial expert;

(d) Minimum standards and criteria required of all proposals;

(e) Procedures for the proper solicitation, acceptance, review, and evaluation of projects;

(f) Criteria to be considered in the evaluation and selection of proposals that includes:

(i) Comparison with the department's internal ability to complete the project that documents the advantages of completing the project as a partnership versus solely as a public venture; and

(ii) Factors such as, but not limited to: Priority, cost, risk sharing, scheduling, and management conditions;

(g) The protection of confidential proprietary information while still meeting the need for public disclosure that is consistent with RCW 47.29.190;

(h) Protection for local contractors to participate in subcontracting opportunities;

(i) Specifying that maintenance issues must be resolved in a manner consistent with the personnel system reform act, chapter 41.80 RCW;

(j) Specifying that provisions regarding patrolling and law enforcement on a public facility are subject to approval by the Washington state patrol;

(3) Adopt guidelines to address security and performance issues.

Preliminary rules and guidelines developed under this section must be submitted to the chairs and ranking members of both transportation committees by November 30, 2005, for review and comment. All final rules and guidelines must be submitted to the full legislature during the 2006 session for review. [2005 c 317 § 3.]

**47.29.040 Purpose.** The Transportation Innovative Partnerships Act is created for the planning, acquisition, design, financing, management, development, construction, reconstruction, replacement, improvement, maintenance, preservation, repair, and operation of transportation projects. The goals of this chapter are to:

(1) Reduce the cost of transportation project delivery;

(2) Recover transportation investment costs;

(3) Develop an expedited project delivery process;

(4) Encourage business investment in public infrastructure;

(5) Use any fund source outside the state treasury, where financially advantageous and in the public interest;

(6) Maximize innovation;

(7) Develop partnerships between and among private entities and the public sector for the advancement of public purposes on mutually beneficial terms;

(8) Create synergies between and among public sector entities to develop projects that serve both transportation and other important public purposes; and

(9) Access specialized construction management and project management services and techniques available in the private sector. [2005 c 317 § 4.]

**47.29.050 Eligible projects.** Projects eligible for development under this chapter include:

(1) Transportation projects, whether capital or operating, where the state's primary purpose for the project is to facilitate the safe transport of people or goods via any mode of travel. However, this does not include projects that are primarily for recreational purposes, such as parks, hiking trails, off-road vehicle trails, etc.; and

(2) Facilities, structures, operations, properties, vehicles, vessels, or the like that are developed concurrently with an eligible transportation project and that are capable of (a) providing revenues to support financing of an eligible transportation project, or (b) that are public projects that advance public purposes unrelated to transportation. [2005 c 317 § 5.]

**47.29.060 Eligible financing.** (1) Subject to the limitations in this section, the department may, in connection with the evaluation of eligible projects, consider any financing mechanisms identified under subsections (3) through (5) of this section or any other lawful source, either integrated as part of a project proposal or as a separate, stand-alone proposal to finance a project. Financing may be considered for all or part of a proposed project. A project may be financed in whole or in part with:

(a) The proceeds of grant anticipation revenue bonds authorized by 23 U.S.C. Sec. 122 and applicable state law. Legislative authorization and appropriation is required in order to use this source of financing;

(b) Grants, loans, loan guarantees, lines of credit, revolving lines of credit, or other financing arrangements available under the Transportation Infrastructure Finance and Innovation Act under 23 U.S.C. Sec. 181 et seq., or any other applicable federal law;

(c) Infrastructure loans or assistance from the state infrastructure bank established by RCW 82.44.195;

(d) Federal, state, or local revenues, subject to appropriation by the applicable legislative authority;

(e) User fees, tolls, fares, lease proceeds, rents, gross or net receipts from sales, proceeds from the sale of development rights, franchise fees, or any other lawful form of consideration.

(2) As security for the payment of financing described in this section, the revenues from the project may be pledged, but no such pledge of revenues constitutes in any manner or to any extent a general obligation of the state. Any financing described in this section may be structured on a senior, parity, or subordinate basis to any other financing.

(3) For any transportation project developed under this chapter that is owned, leased, used, or operated by the state, as a public facility, if indebtedness is issued, it must be issued by the state treasurer for the transportation project.

(4) For other public projects defined in RCW 47.29.050(2) that are developed in conjunction with a transportation project, financing necessary to develop, construct, or operate the public project must be approved by the state finance committee or by the governing board of a public benefit corporation as provided in the federal Internal Revenue Code section 63-20;

(5) For projects that are developed in conjunction with a transportation project but are not themselves a public facility or public project, any lawful means of financing may be used. [2005 c 317 § 6.]

#### **47.29.070 Use of federal funds and similar revenues.**

The department may accept from the United States or any of its agencies such funds as are available to this state or to any other unit of government for carrying out the purposes of this chapter, whether the funds are made available by grant, loan, or other financing arrangement. The department may enter into such agreements and other arrangements with the United States or any of its agencies as may be necessary, proper, and convenient for carrying out the purposes of this chapter, subject to RCW 47.29.080. [2005 c 317 § 7.]

**47.29.080 Other sources of funds or property.** The department may accept from any source any grant, donation, gift, or other form of conveyance of land, money, other real or personal property, or other valuable thing made to the state of Washington, the department, or a local government for carrying out the purposes of this chapter.

Any eligible project may be financed in whole or in part by contribution of any funds or property made by any private entity or public sector partner that is a party to any agreement entered into under this chapter. [2005 c 317 § 8.]

#### **47.29.090 Project review, evaluation, and selection.**

(1) Subject to subsection (2) of this section, the commission may:

(a) Solicit concepts or proposals for eligible projects from private entities and units of government;

(b) On or after January 1, 2007, accept unsolicited concepts or proposals for eligible projects from private entities and units of government, subject to RCW 47.29.170;

(c) Direct the department to evaluate projects for inclusion in the transportation innovative partnerships program that are already programmed or identified for traditional development by the state;

(d) Direct the department to evaluate the concepts or proposals received under this section; and

(e) Select potential projects based on the concepts or proposals. The evaluation under this subsection must include consultation with any appropriate unit of government.

(2) Before undertaking any of the activities contained in subsection (1) of this section, the commission must have:

(a) Completed the tolling feasibility study; and

(b) Adopted rules specifying procedures for the proper solicitation, acceptance, review, and evaluation of projects, which procedures must include:

(i) A comparison with the department's internal ability to complete the project that documents the advantages of completing the project as a partnership versus solely as a public venture; and

(ii) Factors such as priority, cost, risk sharing, scheduling, and management conditions. [2005 c 317 § 9.]

**47.29.100 Administrative fee.** The department may charge a reasonable administrative fee for the evaluation of an unsolicited project proposal. The amount of the fee will be established in rules of the commission. [2005 c 317 § 10.]

**47.29.110 Funds for proposal evaluation and negotiation.** The department may spend, out of any funds identified for the purpose, such moneys as may be necessary for the evaluation of concepts or proposals for eligible projects and for negotiating agreements for eligible projects authorized by this chapter. The department may employ engineers, consultants, or other experts the department determines are needed for the purposes of doing the evaluation and negotiation. Expenses incurred by the department under this section before the issuance of transportation project bonds or other financing must be paid by the department and charged to the appropriate project. The department shall keep records and accounts showing each amount so charged.

Unless otherwise provided in the omnibus transportation budget the funds spent by the department under this section in connection with the project must be repaid from the proceeds of the bonds or other financing upon the sale of transportation project bonds or upon obtaining other financing for an eligible project, as allowed by law or contract. [2005 c 317 § 11.]

**47.29.120 Expert consultation.** The commission and department may consult with legal, financial, and other experts inside and outside the public sector in the evaluation, negotiation, and development of projects under this chapter, consistent with RCW 43.10.040 where applicable. [2005 c 317 § 12.]

**47.29.130 Contracted studies.** Notwithstanding any other provision of law, and in the absence of any direct federal funding or direction, the department may contract with a private developer of a selected project proposal to conduct environmental impact studies and engineering and technical studies. [2005 c 317 § 13.]

**47.29.140 Partnership agreements.** (1) The following provisions must be included in any agreement to which the state is a party:

(a) For any project that proposes terms for stand-alone maintenance or asset management services for a public facility, those services must be provided in a manner consistent with any collective bargaining agreements, the personnel system reform act (chapter 41.80 RCW), and civil service laws that are in effect for the public facility;

(b) Transportation projects that are selected for development under this chapter must be identified in the Washington transportation plan or be identified by the authority as being a priority need for the state;

(c) If there is a tolling component to the project, then it must be specified that tolling technology used in the project must be consistent with tolling technology standards adopted by the department for transportation-related projects;

(d) Provisions for bonding, financial guarantees, deposits, or the posting of other security to secure the payment of laborers, subcontractors, and suppliers who perform work or provide materials as part of the project;

(e) All projects must be financed in a manner consistent with RCW 47.29.060. This chapter is null and void if this subsection or RCW 47.29.060 fails to become law or is held invalid by a court of final jurisdiction.

(2) Agreements between the state and private sector partners entered into under this section must specifically include the following contractual elements:

(a) The point in the project at which public and private sector partners will enter the project and which partners will assume responsibility for specific project elements;

(b) How the partners will share management of the risks of the project;

(c) How the partners will share the costs of development of the project;

(d) How the partners will allocate financial responsibility for cost overruns;

(e) The penalties for nonperformance;

(f) The incentives for performance;

(g) The accounting and auditing standards to be used to evaluate work on the project;

(h) For any project that reverts to public ownership, the responsibility for reconstruction or renovations that are required in order for a facility to meet all applicable government standards upon reversion of the facility to the state; and

(i) Provisions for patrolling and law enforcement on transportation projects that are public facilities. [2005 c 317 § 14.]

**47.29.150 Public involvement and participation.** (1) Before final approval, agreements entered into under this chapter must include a process that provides for public involvement and participation with respect to the development of the projects. This plan must be submitted along with the proposed agreement, and both must be approved under RCW 47.29.160 before the state may enter a binding agreement.

(2) All workshops, forums, open houses, meetings, public hearings, or similar public gatherings must be administered and attended by representatives of the state and any other public entities that are party to an agreement authorized by this chapter. [2005 c 317 § 15.]

**47.29.160 Approval and execution.** (1) Before approving an agreement under subsection (2) of this section, the commission, with the technical assistance of the department, must:

(a) Prepare a financial analysis that fully discloses all project costs, direct and indirect, including costs of any financing;

(b) Publish notice and make available the contents of the agreement, with the exception of patent information, at least twenty days before the public hearing required in (c) of this subsection; and

(c) Hold a public hearing on the proposed agreement, with proper notice provided at least twenty days before the hearing. The public hearing must be held within the boundaries of the county seat of the county containing the project.

(2) The commission must allow at least twenty days from the public hearing on the proposed agreement required under subsection (1)(c) of this section before approving and executing any agreements authorized under this chapter. [2005 c 317 § 16.]

**47.29.170 Unsolicited proposals.** Before accepting any unsolicited project proposals, the commission must adopt rules to facilitate the acceptance, review, evaluation, and selection of unsolicited project proposals. These rules must include the following:

(1) Provisions that specify unsolicited proposals must meet predetermined criteria;

(2) Provisions governing procedures for the cessation of negotiations and consideration;

(3) Provisions outlining that unsolicited proposals are subject to a two-step process that begins with concept proposals and would only advance to the second step, which are fully detailed proposals, if the commission so directed;

(4) Provisions that require concept proposals to include at least the following information: Proposers' qualifications and experience; description of the proposed project and impact; proposed project financing; and known public benefits and opposition; and

(5) Provisions that specify the process to be followed if the commission is interested in the concept proposal, which must include provisions:

(a) Requiring that information regarding the potential project would be published for a period of not less than thirty days, during which time entities could express interest in submitting a proposal;

(b) Specifying that if letters of interest were received during the thirty days, then an additional sixty days for submission of the fully detailed proposal would be allowed; and

(c) Procedures for what will happen if there are insufficient proposals submitted or if there are no letters of interest submitted in the appropriate time frame.

The commission may adopt other rules as necessary to avoid conflicts with existing laws, statutes, or contractual obligations of the state.

The commission may not accept or consider any unsolicited proposals before January 1, 2007. [2005 c 317 § 17.]

**47.29.180 Advisory committees.** For projects with costs, including financing costs, of three hundred million dollars or greater, advisory committees are required.

(1) The commission must establish an advisory committee to advise with respect to eligible projects. An advisory committee must consist of not fewer than five and not more than nine members, as determined by the public partners. Members must be appointed by the commission, or for projects with joint public sector participation, in a manner agreed to by the commission and any participating unit of government. In making appointments to the committee, the commission shall consider persons or organizations offering a diversity of viewpoints on the project.

(2) An advisory committee shall review concepts or proposals for eligible projects and submit comments to the public sector partners.

(3) An advisory committee shall meet as necessary at times and places fixed by the department, but not less than twice per year. The state shall provide personnel services to assist the advisory committee within the limits of available funds. An advisory committee may adopt rules to govern its proceedings and may select officers.

(4) An advisory committee must be dissolved once the project has been fully constructed and debt issued to pay for the project has been fully retired. [2005 c 317 § 18.]

**47.29.190 Confidentiality.** A proposer shall identify those portions of a proposal that the proposer considers to be confidential, proprietary information, or trade secrets and provide any justification as to why these materials, upon request, should not be disclosed by the authority. Patent information will be covered until the patent expires. Other information such as originality of design or records of negotiation may only be protected under this section until an agreement is reached. Disclosure must occur before final agreement and execution of the contract. Projects under federal jurisdiction or using federal funds must conform to federal regulations under the Freedom of Information Act. [2005 c 317 § 19.]

**47.29.200 Prevailing wages.** If public funds are used to pay any costs of construction of a public facility that is part of an eligible project, chapter 39.12 RCW applies to the entire eligible public works project. [2005 c 317 § 20.]

**47.29.210 Government agreements.** The state may, either separately or in combination with any other public sector partner, enter into working agreements, coordination agreements, or similar implementation agreements, including the formation of bistate transportation organizations, to carry out the joint implementation of a transportation project selected under this chapter. The state may enter into agreements with other units of government or Canadian provinces for transborder transportation projects. [2005 c 317 § 21.]

**47.29.220 Eminent domain.** The state may exercise the power of eminent domain to acquire property, rights of way, or other rights in property for projects that are necessary to implement an eligible project developed under this chapter, regardless of whether the property will be owned in fee simple by the state. [2005 c 317 § 22.]

[2005 RCW Supp—page 626]

**47.29.230 Transportation innovative partnership account.** (1) The transportation innovative partnership account is established in the custody of the state treasurer separate and distinct from the state general fund. Interest earned by the transportation innovative partnership account must be credited to the account. The account is subject to allotment procedures under chapter 43.88 RCW.

(2) The following moneys must be deposited into the transportation innovative partnership account:

(a) Proceeds from bonds or other financing instruments issued under RCW 47.29.250;

(b) Revenues received from any transportation project developed under this chapter or developed under the general powers granted to the department; and

(c) Any other moneys that are by donation, grant, contract, law, or other means transferred, allocated, or appropriated to the account.

(3) Moneys in the transportation innovative partnership account may only be expended upon evidence of approval by the Washington state legislature, either upon appropriation of supporting state funds or by other statutory direction.

(4) The state treasurer shall serve as a fiduciary for the purpose of carrying out this chapter and implementing all or portions of any transportation project financed under this chapter.

(5) Moneys in the transportation innovative partnership account that were derived from revenue subject to Article II, section 40 (Amendment 18) of the Washington state Constitution, may be used only for purposes authorized by that provision of the state Constitution.

(6) The state treasurer shall establish separate subaccounts within the transportation innovative partnership account for each transportation project that is initiated under this chapter or under the general powers granted to the department. Except as provided in subsection (5) of this section, the state may pledge moneys in the transportation innovative partnership account to secure revenue bonds or any other debt obligations relating to the project for which the account is established. [2005 c 317 § 23.]

**47.29.240 Use of account.** (1) The state may use moneys in the transportation innovative partnership subaccount to ensure the repayment of loan guarantees or extensions of credit made to or on behalf of private entities engaged in the planning, acquisition, financing, development, design, construction, reconstruction, replacement, improvement, maintenance, preservation, management, repair, or operation of any eligible project that is related to a subaccount established under this chapter.

(2) The lien of a pledge made under this section is subordinate to the lien of a pledge securing bonds payable from moneys in the motor vehicle fund established in RCW 46.68.070, or the transportation innovative partnership account established in RCW 47.29.230. [2005 c 317 § 24.]

**47.29.250 Issuing bonds and other obligations.** (1) In addition to any authority the commission or department has to issue and sell bonds and other similar obligations, this section establishes continuing authority for the issuance and sale of bonds and other similar obligations in a manner consistent with this section. To finance a project in whole or in part, the

commission may request that the state treasurer issue revenue bonds on behalf of the public sector partner. The bonds must be secured by a pledge of, and a lien on, and be payable only from moneys in the transportation innovative partnership account established in RCW 47.29.230, and any other revenues specifically pledged to repayment of the bonds. Such a pledge by the public partner creates a lien that is valid and binding from the time the pledge is made. Revenue bonds issued under this section are not general obligations of the state or local government and are not secured by or payable from any funds or assets of the state other than the moneys and revenues specifically pledged to the repayment of such revenue bonds.

(2) Moneys received from the issuance of revenue bonds or other debt obligations, including any investment earnings thereon, may be spent:

- (a) For the purpose of financing the costs of the project for which the bonds are issued;
- (b) To pay the costs and other administrative expenses of the bonds;
- (c) To pay the costs of credit enhancement or to fund any reserves determined to be necessary or advantageous in connection with the revenue bonds; and
- (d) To reimburse the public sector partners for any costs related to carrying out the projects authorized under this chapter. [2005 c 317 § 25.]

**47.29.260 Study and report.** The department shall conduct a study of:

- (1) The contracting powers and project management authorities it currently possesses; those same powers and authorities authorized under this chapter; and those powers and authorities employed by other states or the private sector;
- (2) Methods of encouraging competition for the development of transportation projects; and
- (3) Any additional procedures that may be necessary or desirable for negotiating contracts in situations of a single qualified bidder, in either solicited or unsolicited proposals.

The department must submit its report, along with any recommended legislative changes, to the commission by November 1, 2005, and to the governor and the legislature for consideration in the 2006 legislative session. [2005 c 317 § 26.]

**47.29.270 Federal laws.** Notwithstanding any provision of this chapter, applicable federal laws, rules, and regulations govern in any situation that involves federal funds if the federal laws, rules, or regulations:

- (1) Conflict with any provision of this chapter;
- (2) Require procedures that are additional to or different from those provided in this chapter; or
- (3) Require contract provisions not authorized in this chapter. If no federal funds are provided, state laws, rates, and rules will govern. [2005 c 317 § 27.]

**47.29.900 Captions not law.** Captions used in this chapter are not part of the law. [2005 c 317 § 28.]

## Chapter 47.36 RCW

### TRAFFIC CONTROL DEVICES

#### Sections

- 47.36.030 Traffic control devices—Specifications to counties and cities—Signs, banners over highways.
- 47.36.310 Motorist information signs—Interstate highways—Contents, placement, fees.
- 47.36.320 Motorist information signs, tourist-oriented directional signs—Primary and scenic roads—Contents, placement, fees.
- 47.36.325 Repealed.
- 47.36.330 Motorist information signs—Maximum number and distance.
- 47.36.360 Motorist information signs—"RV" logo.

**47.36.030 Traffic control devices—Specifications to counties and cities—Signs, banners over highways.** (1) The secretary of transportation shall have the power and it shall be its duty to adopt and designate a uniform state standard for the manufacture, display, erection, and location of all signs, signals, signboards, guideposts, and other traffic devices erected or to be erected upon the state highways of the state of Washington for the purpose of furnishing information to persons traveling upon such state highways regarding traffic regulations, directions, distances, points of danger, and conditions requiring caution, and for the purpose of imposing restrictions upon persons operating vehicles thereon. Such signs shall conform as nearly as practicable to the manual of specifications for the manufacture, display, and erection of uniform traffic control devices for streets and highways and all amendments, corrections, and additions thereto.

(2) The department of transportation shall prepare plans and specifications of the uniform state standard of traffic devices so adopted and designated, showing the materials, colors, and designs thereof, and shall upon the issuance of any such plans and specifications or revisions thereof and upon request, furnish to the boards of county commissioners and the governing body of any incorporated city or town, a copy thereof. Signs, signals, signboards, guideposts, and other traffic devices erected on county roads shall conform in all respects to the specifications of color, design, and location approved by the secretary. Traffic devices hereafter erected within incorporated cities and towns shall conform to such uniform state standard of traffic devices so far as is practicable. The uniform system must allow local transit authority bus shelters located within the right of way of the state highway system to display and maintain commercial advertisements subject to applicable federal regulations, if any.

(3) The uniform system adopted by the secretary under this section may allow signs, banners, or decorations over a highway that:

- (a) Are in unincorporated areas;
- (b) Are at least twenty vertical feet above a highway; and
- (c) Do not interfere with or obstruct the view of any traffic control device.

The department shall adopt rules regulating signs, banners, or decorations installed under this subsection (3). [2005 c 398 § 1; 2003 c 198 § 3; 1977 ex.s. c 151 § 61; 1961 c 13 § 47.36.030. Prior: 1945 c 178 § 1, part; 1937 c 53 § 48, part; Rem. Supp. 1945 § 6400-48, part; prior: 1931 c 118 § 1, part; RRS § 6308-1, part; 1923 c 102 § 1, part; 1917 c 78 § 1, part; RRS § 6303, part.]

**47.36.310 Motorist information signs—Interstate highways—Contents, placement, fees.** The department is authorized to erect and maintain motorist information sign panels within the right of way of the interstate highway system to give the traveling public specific information as to gas, food, lodging, camping, or tourist-oriented business available on a crossroad at or near an interchange. Motorist information sign panels shall include the words "GAS," "FOOD," "LODGING," "CAMPING," or "TOURIST ACTIVITIES" and the letters "RV" next to a gas, food, lodging, camping, or tourist activity sign if the business or destination accommodates recreational vehicles, and directional information. Directional information may contain one or more individual business signs maintained on the panel. The "RV" logo for businesses or destinations that accommodate recreational vehicles shall be placed in the lower right corner of the gas, food, lodging, camping, or tourist activity sign and shall be in the form of a small yellow circle with the letters "RV" in black. In managing the number of individual business signs to be displayed, the department must ensure the use of available space on a panel is maximized. Motorist information sign panels are authorized within the corporate limits of cities and towns and areas zoned for commercial or industrial uses at locations where there is adequate distance between interchanges to ensure compliance with the Manual on Uniform Traffic Control Devices. The erection and maintenance of motorist information sign panels shall also conform to the Manual on Uniform Traffic Control Devices and rules adopted by the state department of transportation. A motorist service or tourist-oriented business located within one mile of an interstate highway shall not be permitted to display its name, brand, or trademark on a motorist information sign panel unless its owner has first entered into an agreement with the department limiting the height of its on-premise signs at the site of its service installation to not more than fifteen feet higher than the roof of its main building measured to the bottom of the on-premise sign. The restriction for on-premise signs does not apply if the sign is not visible from the highway. The department may, on a case-by-case basis, waive the height restriction when an on-premise sign is visible from the rural interstate system. The department shall charge sufficient fees for the display of individual business signs to recover the costs of their installation and maintenance, and shall charge sufficient fees to recover costs for the erection and maintenance of the motorist information sign panels. [2005 c 407 § 1; 1999 c 201 § 3; 1987 c 469 § 3; 1986 c 114 § 1; 1985 c 142 § 1; 1984 c 7 § 223; 1974 ex.s. c 80 § 2. Formerly RCW 47.42.046.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

**47.36.320 Motorist information signs, tourist-oriented directional signs—Primary and scenic roads—Contents, placement, fees.** The department is authorized to erect and maintain motorist information sign panels within the right of way of noninterstate highways to give the traveling public specific information as to gas, food, lodging, recreation, or tourist-oriented businesses accessible by way of highways intersecting the noninterstate highway. The motorist information sign panels are permitted only at locations within the corporate limits of cities and towns and areas zoned for commercial or industrial uses where there is ade-

[2005 RCW Supp—page 628]

quate distance between interchanges to ensure compliance with the Manual on Uniform Traffic Control Devices. Motorist information sign panels shall include the words "GAS," "FOOD," "LODGING," "RECREATION," or "TOURIST ACTIVITIES" and the letters "RV" next to a gas, food, lodging, camping, or tourist activity sign if the business or destination accommodates recreational vehicles, and directional information. Directional information may contain one or more individual business signs maintained on the panel. The "RV" logo for businesses or destinations that accommodate recreational vehicles shall be placed in the lower right corner of the gas, food, lodging, camping, or tourist activity sign and shall be in the form of a small yellow circle with the letters "RV" in black. In managing the number of individual business signs to be displayed, the department must ensure the use of available space on a panel is maximized. The erection and maintenance of motorist information sign panels along noninterstate highways shall also conform to the Manual on Uniform Traffic Control Devices and rules adopted by the state department of transportation. A motorist service or tourist-oriented business located within one mile of a noninterstate highway shall not be permitted to display its name, brand, or trademark on a motorist information sign panel unless its owner has first entered into an agreement with the department limiting the height of its on-premise signs at the site of its service installation to not more than fifteen feet higher than the roof of its main building measured to the bottom of the on-premise sign.

The department shall adopt rules for the erection and maintenance of tourist-oriented directional signs with the following restrictions:

(1) Where installed, they shall be placed in advance of the "GAS," "FOOD," "LODGING," "RECREATION," or "RV" motorist information sign panels previously described in this section;

(2) Signs shall not be placed to direct a motorist to an activity visible from the main traveled roadway;

(3) Premises on which the qualified tourist-oriented business is located must be within fifteen miles of the state highway except as provided in RCW 47.36.330(3) (b) and (c), and necessary supplemental signing on local roads must be provided before the installation of the signs on the state highway.

The department shall charge sufficient fees for the display of individual business signs to recover the costs of their installation and maintenance, and shall charge sufficient fees to recover the costs for the erection and maintenance of the motorist information sign panels. [2005 c 407 § 2. Prior: 1999 c 213 § 1; 1999 c 201 § 4; 1986 c 114 § 2; 1985 c 376 § 4; 1985 c 142 § 2; 1984 c 7 § 224; 1974 ex.s. c 80 § 4. Formerly RCW 47.42.047.]

**Legislative intent—1985 c 376:** See note following RCW 47.42.020.

**Severability—1984 c 7:** See note following RCW 47.01.141.

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

**47.36.330 Motorist information signs—Maximum number and distance.** (1) Not more than six business signs



may be permitted on motorist information sign panels authorized by RCW 47.36.310 and 47.36.320.

(2) The maximum distance that eligible service facilities may be located on either side of an interchange or intersection to qualify for a business sign are as follows:

(a) On interstate highways, gas, food, or lodging activities shall be located within three miles. Camping or tourist-oriented activities shall be within five miles.

(b) On noninterstate highways, gas, food, lodging, recreation, or tourist-oriented activities shall be located within five miles.

(3)(a) If no eligible services are located within the distance limits prescribed in subsection (2) of this section, the distance limits shall be increased until an eligible service of a type being considered is reached, up to a maximum of fifteen miles.

(b) The department may erect and maintain signs on an alternate route that is longer than fifteen miles if it is safer and still provides reasonable and convenient travel to an eligible service.

(c) The department may erect and maintain signs on a route up to a maximum of twenty miles if it qualifies as an eligible service and is within a distressed area as defined in RCW 43.168.020. [2005 c 136 § 16; 1999 c 213 § 2; 1999 c 201 § 5; 1985 c 142 § 3. Formerly RCW 47.42.0475.]

**Reviser's note:** This section was amended by 1999 c 201 § 5 and by 1999 c 213 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Savings—Effective date—2005 c 136:** See notes following RCW 43.168.020.

#### **47.36.360 Motorist information signs—"RV" logo.**

(1) The department of transportation shall not include the logo "RV" under RCW 47.36.310 and 47.36.320 unless a business or destination requests an "RV" logo and the department determines that the gas, food, or lodging business or the camping or tourist activity destination provides parking spaces, overhang clearances, and entrances and exits designed to accommodate recreational or other large vehicles.

(2) The department may charge a reasonable fee in accordance with RCW 47.36.310 or 47.36.320 to defray the costs associated with the installation and maintenance of signs with "RV" logos.

(3) The department may adopt rules necessary to administer this section. [2005 c 407 § 3.]

### **Chapter 47.42 RCW**

#### **HIGHWAY ADVERTISING CONTROL ACT— SCENIC VISTAS ACT**

##### Sections

47.42.020 Definitions.

**47.42.020 Definitions.** The definitions set forth in this section apply throughout this chapter.

(1) "Department" means the Washington state department of transportation.

(2) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(3) "Interstate system" means any state highway which is or does become part of the national system of interstate and defense highways as described in section 103(d) of title 23, United States Code.

(4) "Maintain" means to allow to exist.

(5) "Person" means this state or any public or private corporation, firm, partnership, association, as well as any individual or individuals.

(6) "Primary system" means any state highway which is or does become part of the federal-aid primary system as described in section 103(b) of title 23, United States Code.

(7) "Scenic system" means (a) any state highway within any public park, federal forest area, public beach, public recreation area, or national monument, (b) any state highway or portion thereof outside the boundaries of any incorporated city or town designated by the legislature as a part of the scenic system, or (c) any state highway or portion thereof outside the boundaries of any incorporated city or town designated by the legislature as a part of the scenic and recreational highway system except for the sections of highways specifically excluded in RCW 47.42.025 or located within areas zoned by the governing county for predominantly commercial and industrial uses, and having development visible to the highway, as determined by the department.

(8) "Sign" means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing that is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of the interstate system or other state highway. "Sign" does not include a display authorized under RCW 47.36.030(3) promoting a local agency sponsored event that does not include advertising.

(9) "Commercial and industrial areas" means any area zoned commercial or industrial by a county or municipal code, or if unzoned or zoned for general uses by a county or municipal code, that area occupied by three or more separate and distinct commercial or industrial activities, or any combination thereof, within a space of five hundred feet and the area within five hundred feet of such activities on both sides of the highway. The area shall be measured from the outer edges of the regularly used buildings, parking lots, or storage or processing areas of the commercial or industrial activity and not from the property lines of the parcels upon which the activities are located. Measurements shall be along or parallel to the edge of the main traveled way of the highway. The following shall not be considered commercial or industrial activities:

(a) Agricultural, forestry, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands;

(b) Transient or temporary activities;

(c) Railroad tracks and minor sidings;

(d) Signs;

(e) Activities more than six hundred and sixty feet from the nearest edge of the right of way;

(f) Activities conducted in a building principally used as a residence.

If any commercial or industrial activity that has been used in defining or delineating an unzoned area ceases to operate for a period of six continuous months, any signs located within the former unzoned area become nonconforming and shall not be maintained by any person.

(10) "Roadside area information panel or display" means a panel or display located so as not to be readable from the main traveled way, erected in a safety rest area, scenic overlook, or similar roadside area, for providing motorists with information in the specific interest of the traveling public.

(11) "Temporary agricultural directional sign" means a sign on private property adjacent to state highway right of way to provide directional information to places of business offering for sale seasonal agricultural products on the property where the sale is taking place. [2005 c 398 § 2; 1993 c 430 § 10; 1991 c 94 § 1; 1990 c 258 § 1; 1987 c 469 § 2; 1985 c 376 § 2; 1984 c 7 § 222; 1977 ex.s. c 258 § 1; 1974 ex.s. c 80 § 1; 1971 ex.s. c 62 § 1; 1961 c 96 § 2.]

**Legislative findings and intent—1990 c 258:** See note following RCW 47.40.100.

**Legislative intent—1985 c 376:** "It is the intent of the legislature that state highway information and directional signs provide appropriate guidance to all motorists traveling throughout the state. Such guidance should include the identity, location, and types of recreational, cultural, educational, entertainment, or unique or unusual commercial activities whose principle source of visitation is derived from motorists not residing in the immediate locale of the activity. Such informational and directional signs shall comply with Title 23, United States Code and the rules adopted by the department under RCW 47.42.060." [1985 c 376 § 1.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

## Chapter 47.46 RCW

### PUBLIC-PRIVATE TRANSPORTATION INITIATIVES

#### Sections

47.46.030	Demonstration projects—Selection—Public involvement.
47.46.040	Demonstration projects—Terms of agreements—Public participation.
47.46.090	Citizen advisory committee—Tolls.
47.46.091	Tacoma Narrows bridge citizen advisory committee.

**47.46.030 Demonstration projects—Selection—Public involvement.** (1) The secretary or a designee shall solicit proposals from, and negotiate and enter into agreements with, private entities to undertake as appropriate, together with the department and other public entities, all or a portion of the study, planning, design, construction, operation, and maintenance of transportation systems and facilities, using in whole or in part public or private sources of financing.

The public-private initiatives program may develop up to six demonstration projects. Each proposal shall be weighed on its own merits, and each of the six agreements shall be negotiated individually, and as a stand-alone project.

(2) If project proposals selected prior to September 1, 1994, are terminated by the public or private sectors, the department shall not select any new projects, including project proposals submitted to the department prior to September 1, 1994, and designated by the transportation commission as placeholder projects, after June 16, 1995, until June 30, 1997.

The department, in consultation with the legislative transportation committee, shall conduct a program and fiscal

audit of the public-private initiatives program for the biennium ending June 30, 1997. The department shall submit a progress report to the legislative transportation committee on the program and fiscal audit by June 30, 1996, with preliminary and final audit reports due December 1, 1996, and June 30, 1997, respectively.

The department shall develop and submit a proposed public involvement plan to the 1997 legislature to identify the process for selecting new potential projects and the associated costs of implementing the plan. The legislature must adopt the public involvement plan before the department may proceed with any activity related to project identification and selection. Following legislative adoption of the public involvement plan, the department is authorized to implement the plan and to identify potential new projects.

The public involvement plan for projects selected after June 30, 1997, shall, at a minimum, identify projects that: (a) Have the potential of achieving overall public support among users of the projects, residents of communities in the vicinity of the projects, and residents of communities impacted by the projects; (b) meet a state transportation need; (c) provide a significant state benefit; and (d) provide competition among proposers and maximum cost benefits to users. Prospective projects may include projects identified by the department or submitted by the private sector.

Projects that meet the minimum criteria established under this section and the requirements of the public involvement plan developed by the department and approved by the legislature shall be submitted to the Washington state transportation commission for its review. Forty-five days after the submission to the commission of the list of eligible projects, the secretary is authorized to solicit proposals for the eligible project.

(3) Prior to entering into agreements with private entities under the requirements of RCW 47.46.040 for any project proposal selected before September 1, 1994, or after June 30, 1997, except as provided for in subsections (11) and (12) of this section, the department shall require an advisory vote as provided under subsections (5) through (9) of this section.

(4) The advisory vote shall apply to project proposals selected prior to September 1, 1994, or after June 30, 1997, that receive public opposition as demonstrated by the submission to the department of original petitions bearing at least five thousand signatures of individuals opposing the project collected and submitted in accordance with the dates established in subsections (11) and (12) of this section. The advisory vote shall be on the preferred alternative identified under the requirements of chapter 43.21C RCW and, if applicable, the national environmental policy act, 42 U.S.C. 4321 et seq. The execution by the department of the advisory vote process established in this section is subject to the prior appropriation of funds by the legislature for the purpose of conducting environmental impact studies, a public involvement program, local involvement committee activities, traffic and economic impact analyses, engineering and technical studies, and the advisory vote.

(5) In preparing for the advisory vote, the department shall conduct a comprehensive analysis of traffic patterns and economic impact to define the geographical boundary of the project area that is affected by the imposition of tolls or user fees authorized under this chapter. The area so defined is

referred to in this section as the affected project area. In defining the affected project area, the department shall, at a minimum, undertake: (a) A comparison of the estimated percentage of residents of communities in the vicinity of the project and in other communities impacted by the project who could be subject to tolls or user fees and the estimated percentage of other users and transient traffic that could be subject to tolls or user fees; (b) an analysis of the anticipated traffic diversion patterns; (c) an analysis of the potential economic impact resulting from proposed toll rates or user fee rates imposed on residents, commercial traffic, and commercial entities in communities in the vicinity of and impacted by the project; (d) an analysis of the economic impact of tolls or user fees on the price of goods and services generally; and (e) an analysis of the relationship of the project to state transportation needs and benefits.

(6)(a) After determining the definition of the affected project area, the department shall establish a committee comprised of individuals who represent cities and counties in the affected project area; organizations formed to support or oppose the project; and users of the project. The committee shall be named the public-private local involvement committee, and be known as the local involvement committee.

(b) The members of the local involvement committee shall be: (i) An elected official from each city within the affected project area; (ii) an elected official from each county within the affected project area; (iii) two persons from each county within the affected project area who represent an organization formed in support of the project, if the organization exists; (iv) two persons from each county within the affected project area who represent an organization formed to oppose the project, if the organization exists; and (v) four public members active in a statewide transportation organization. If the committee makeup results in an even number of committee members, there shall be an additional appointment of an elected official from the county in which all, or the greatest portion of the project is located.

(c) City and county elected officials shall be appointed by a majority of the members of the city or county legislative authorities of each city or county within the affected project area, respectively. The county legislative authority of each county within the affected project area shall identify and validate organizations officially formed in support of or in opposition to the project and shall make the appointments required under this section from a list submitted by the chair of the organizations. Public members shall be appointed by the governor. All appointments to the local involvement committee shall be made and submitted to the department of transportation no later than January 1, 1996, for projects selected prior to September 1, 1994, and no later than thirty days after the affected project area is defined for projects selected after June 30, 1997. Vacancies in the membership of the local involvement committee shall be filled by the appointing authority under (b)(i) through (v) of this subsection for each position on the committee.

(d) The local involvement committee shall serve in an advisory capacity to the department on all matters related to the execution of the advisory vote.

(e) Members of the local involvement committee serve without compensation and may not receive subsistence, lodging expenses, or travel expenses.

(7) The department shall conduct a minimum thirty-day public comment period on the definition of the geographical boundary of the project area. The department, in consultation with the local involvement committee, shall make adjustments, if required, to the definition of the geographical boundary of the affected project area, based on comments received from the public. Within fourteen calendar days after the public comment period, the department shall set the boundaries of the affected project area in units no smaller than a precinct as defined in RCW 29A.04.121.

(8) The department, in consultation with the local involvement committee, shall develop a description for selected project proposals. After developing the description of the project proposal, the department shall publish the project proposal description in newspapers of general circulation for seven calendar days in the affected project area. Within fourteen calendar days after the last day of the publication of the project proposal description, the department shall transmit a copy of the map depicting the affected project area and the description of the project proposal to the county auditor of the county in which any portion of the affected project area is located.

(9) Upon receipt of the map and the description of the project proposal, the county auditor shall, within thirty days, verify the precincts that are located within the affected project area. The county auditor shall prepare the text identifying and describing the affected project area and the project proposal using the definition of the geographical boundary of the affected project area and the project description submitted by the department and shall set an election date for the submission of a ballot proposition authorizing the imposition of tolls or user fees to implement the proposed project within the affected project area, which date may be the next succeeding general election to be held in the state, or at a special election, if requested by the department. The text of the project proposal must appear in a voter's pamphlet for the affected project area. The department shall pay the costs of publication and distribution. The special election date must be the next date for a special election provided under RCW 29A.04.330 that is at least sixty days but, if authorized under RCW 29A.04.330, no more than ninety days after the receipt of the final map and project description by the auditor. The department shall pay the cost of an election held under this section.

(10) Notwithstanding any other provision of law, the department may contract with a private developer of a selected project proposal to conduct environmental impact studies, a public involvement program, and engineering and technical studies funded by the legislature. For projects subject to this subsection, the department shall not enter into an agreement under RCW 47.46.040 prior to the advisory vote on the preferred alternative.

(11) Subsections (5) through (9) of this section shall not apply to project proposals selected prior to September 1, 1994, that have no organized public opposition as demonstrated by the submission to the department of original petitions bearing at least five thousand signatures of individuals opposing the project, collected and submitted after September 1, 1994, and by thirty calendar days after June 16, 1995.

(12) Subsections (5) through (9) of this section shall not apply to project proposals selected after June 30, 1997, that

have no organized public opposition as demonstrated by the submission to the department of original petitions bearing at least five thousand signatures of individuals opposing the project, collected and submitted by ninety calendar days after project selection. [2005 c 319 § 132; 2002 c 114 § 3; 1996 c 280 § 1; 1995 2nd sp.s. c 19 § 2; 1993 c 370 § 3.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Finding—Intent—2002 c 114:** See RCW 47.46.011.

**Captions not law—2002 c 114:** See note following RCW 47.46.011.

**Effective date—1996 c 280:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 29, 1996]." [1996 c 280 § 2.]

**Effective date—1995 2nd sp.s. c 19:** See note following RCW 47.46.010.

**47.46.040 Demonstration projects—Terms of agreements—Public participation.** (1) The secretary or a designee shall consult with legal, financial, and other experts within and outside state government in the negotiation and development of the agreements.

(2) Agreements may provide for private ownership of the projects during the construction period. After completion and final acceptance of each project or discrete segment thereof, the agreement may provide for state ownership of the transportation systems and facilities and lease to the private entity unless the state elects to provide for ownership of the facility by the private entity during the term of the agreement.

The state may lease each of the demonstration projects, or applicable project segments, to the private entities for operating purposes for up to fifty years.

(3) The department may exercise any power possessed by it to facilitate the development, construction, financing operation, and maintenance of transportation projects under this section. Agreements for maintenance services entered into under this section shall provide for full reimbursement for services rendered by the department or other state agencies. Agreements for police services for projects, involving state highway routes, developed under agreements shall be entered into with the Washington state patrol. The agreement for police services shall provide that the state patrol will be reimbursed for costs on a comparable basis with the costs incurred for comparable service on other state highway routes. The department may provide services for which it is reimbursed, including but not limited to preliminary planning, environmental certification, and preliminary design of the demonstration projects.

(4) The plans and specifications for each project constructed under this section shall comply with the department's standards for state projects. A facility constructed by and leased to a private entity is deemed to be a part of the state highway system for purposes of identification, maintenance, and enforcement of traffic laws and for the purposes of applicable sections of this title. Upon reversion of the facility to the state, the project must meet all applicable state standards. Agreements shall address responsibility for reconstruction or renovations that are required in order for a facility to meet all applicable state standards upon reversion of the facility to the state.

(5) For the purpose of facilitating these projects and to assist the private entity in the financing, development, construction, and operation of the transportation systems and facilities, the agreements may include provisions for the department to exercise its authority, including the lease of facilities, rights of way, and airspace, exercise of the power of eminent domain, granting of development rights and opportunities, granting of necessary easements and rights of access, issuance of permits and other authorizations, protection from competition, remedies in the event of default of either of the parties, granting of contractual and real property rights, liability during construction and the term of the lease, authority to negotiate acquisition of rights of way in excess of appraised value, and any other provision deemed necessary by the secretary.

(6) The agreements entered into under this section may include provisions authorizing the state to grant necessary easements and lease to a private entity existing rights of way or rights of way subsequently acquired with public or private financing. The agreements may also include provisions to lease to the entity airspace above or below the right of way associated or to be associated with the private entity's transportation facility. In consideration for the reversion rights in these privately constructed facilities, the department may negotiate a charge for the lease of airspace rights during the term of the agreement for a period not to exceed fifty years. If, after the expiration of this period, the department continues to lease these airspace rights to the private entity, it shall do so only at fair market value. The agreement may also provide the private entity the right of first refusal to undertake projects utilizing airspace owned by the state in the vicinity of the public-private project.

(7) Agreements under this section may include any contractual provision that is necessary to protect the project revenues required to repay the costs incurred to study, plan, design, finance, acquire, build, install, operate, enforce laws, and maintain toll highways, bridges, and tunnels and which will not unreasonably inhibit or prohibit the development of additional public transportation systems and facilities. Agreements under this section must secure and maintain liability insurance coverage in amounts appropriate to protect the project's viability and may address state indemnification of the private entity for design and construction liability where the state has approved relevant design and construction plans.

(8) Agreements entered into under this section shall include a process that provides for public involvement in decision making with respect to the development of the projects.

(9)(a) In carrying out the public involvement process required in subsection (8) of this section, the private entity shall proactively seek public participation through a process appropriate to the characteristics of the project that assesses and demonstrates public support among: Users of the project, residents of communities in the vicinity of the project, and residents of communities impacted by the project.

(b) The private entity shall conduct a comprehensive public involvement process that provides, periodically throughout the development and implementation of the project, users and residents of communities in the affected

project area an opportunity to comment upon key issues regarding the project including, but not limited to: (i) Alternative sizes and scopes; (ii) design; (iii) environmental assessment; (iv) right of way and access plans; (v) traffic impacts; (vi) tolling or user fee strategies and tolling or user fee ranges; (vii) project cost; (viii) construction impacts; (ix) facility operation; and (x) any other salient characteristics.

(c) If the affected project area has not been defined, the private entity shall define the affected project area by conducting, at a minimum: (i) A comparison of the estimated percentage of residents of communities in the vicinity of the project and in other communities impacted by the project who could be subject to tolls or user fees and the estimated percentage of other users and transient traffic that could be subject to tolls or user fees; (ii) an analysis of the anticipated traffic diversion patterns; (iii) an analysis of the potential economic impact resulting from proposed toll rates or user fee rates imposed on residents, commercial traffic, and commercial entities in communities in the vicinity of and impacted by the project; (iv) an analysis of the economic impact of tolls or user fees on the price of goods and services generally; and (v) an analysis of the relationship of the project to state transportation needs and benefits.

The agreement may require an advisory vote by users of and residents in the affected project area.

(d) In seeking public participation, the private entity shall establish a local involvement committee or committees comprised of residents of the affected project area, individuals who represent cities and counties in the affected project area, organizations formed to support or oppose the project, if such organizations exist, and users of the project. The private entity shall, at a minimum, establish a committee as required under the specifications of RCW 47.46.030(6)(b) (ii) and (iii) and appointments to such committee shall be made no later than thirty days after the project area is defined.

(e) Local involvement committees shall act in an advisory capacity to the department and the private entity on all issues related to the development and implementation of the public involvement process established under this section.

(f) The department and the private entity shall provide the local involvement committees with progress reports on the status of the public involvement process including the results of an advisory vote, if any occurs.

(10) Nothing in this chapter limits the right of the secretary and his or her agents to render such advice and to make such recommendations as they deem to be in the best interests of the state and the public. [2005 c 319 § 133; 2002 c 114 § 16; 2001 c 64 § 14; 1995 2nd sp.s. c 19 § 3; 1993 c 370 § 4.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Finding—Intent—2002 c 114:** See RCW 47.46.011.

**Captions not law—2002 c 114:** See note following RCW 47.46.011.

**Effective date—1995 2nd sp.s. c 19:** See note following RCW 47.46.010.

**47.46.090 Citizen advisory committee—Tolls.** (1) A citizen advisory committee must be created for any project developed under this chapter that imposes toll charges for use of a transportation facility. The governor shall appoint nine members to the committee, all of whom must be permanent residents of the affected project area as defined for each

project. Members of the committee shall serve without compensation.

(2) The citizen advisory committee shall serve in an advisory capacity to the commission on all matters related to the imposition of tolls including, but not limited to, (a) the feasibility of providing discounts to frequent users, electronic transponder users, senior citizens, or students; (b) the tradeoff of lower tolls versus the early retirement of debt; and (c) a consideration of variable, or time of day pricing.

(3) No toll charge may be imposed or modified unless the citizen advisory committee has been given at least twenty days to review and comment on any proposed toll charge schedule. In setting toll rates, the commission shall give consideration to any recommendations of the citizen advisory committee. [2005 c 329 § 1; 2002 c 114 § 6.]

**Finding—Intent—2002 c 114:** See RCW 47.46.011.

**Captions not law—2002 c 114:** See note following RCW 47.46.011.

**47.46.091 Tacoma Narrows bridge citizen advisory committee.** The Tacoma Narrows bridge citizen advisory committee is hereby created as directed under RCW 47.46.090. The advisory committee members shall be appointed proportionately, to the extent practicable, from those areas from which the majority of the trips originate on the bridge according to the latest traffic analysis by the department. [2005 c 329 § 2.]

## Chapter 47.56 RCW

### STATE TOLL BRIDGES, TUNNELS, AND FERRIES

#### Sections

47.56.031	Approval of tolls.
47.56.076	Regional transportation investment district—Tolls—Approval by the voters.
47.56.078	Transportation benefit district—Tolls authorized.
47.56.270	1950 Tacoma Narrows bridge part of primary highways.
47.56.273	through 47.56.360 Repealed.
47.56.380	through 47.56.590 Repealed.
47.56.401	High-occupancy toll lanes defined.
47.56.403	High-occupancy toll lane pilot project.
47.56.610	through 47.56.706 Repealed.
47.56.7115	Repealed.
47.56.7125	Repealed.
47.56.740	through 47.56.761 Repealed.

**47.56.031 Approval of tolls.** No tolls may be imposed on new or existing highways or bridges without specific legislative authorization, or upon a majority vote of the people within the boundaries of the unit of government empowered to impose tolls. This section applies to chapter 47.56 RCW and to any tolls authorized under chapter 47.29 RCW, the transportation innovative partnership act of 2005. [2005 c 335 § 2.]

**47.56.076 Regional transportation investment district—Tolls—Approval by the voters.** Upon approval of a majority of the voters within its boundaries voting on the ballot proposition, and only for the purposes authorized in RCW 36.120.050(1)(g), a regional transportation investment district may authorize vehicle tolls on state routes where improvements financed in whole or in part by a regional transportation investment district add additional lanes to, or reconstruct lanes on, a highway of statewide significance.

The department shall administer the collection of vehicle tolls authorized on designated facilities unless otherwise specified in law, and the state transportation commission, or its successor, shall be the tolling authority. [2005 c 335 § 3; 2002 c 56 § 403.]

**Captions and subheadings not law—Severability—2002 c 56:** See RCW 36.120.900 and 36.120.901.

**47.56.078 Transportation benefit district—Tolls authorized.** Subject to the provisions under chapter 36.73 RCW, a transportation benefit district may authorize vehicle tolls on state routes or federal highways, city streets, or county roads, within the boundaries of the district, unless otherwise prohibited by law. The department of transportation shall administer the collection of vehicle tolls authorized on state routes or federal highways, unless otherwise specified in law or by contract, and the state transportation commission, or its successor, may approve, set, and impose the tolls in amounts sufficient to implement the district's transportation improvement finance plan. The district shall administer the collection of vehicle tolls authorized on city streets or county roads, and shall set and impose the tolls, only with approval of the transportation commission, in amounts sufficient to implement the district's transportation improvement plan. Tolls may vary for type of vehicle, for time of day, for traffic conditions, and/or other factors designed to improve performance of the facility or the transportation network. [2005 c 336 § 25.]

**Effective date—2005 c 336:** See note following RCW 36.73.015.

**47.56.270 1950 Tacoma Narrows bridge part of primary highways.** The 1950 Tacoma Narrows bridge in chapter 47.17 RCW made a part of the primary state highways of the state of Washington shall, upon completion, be operated, maintained, kept up, and repaired by the department in the manner provided in this chapter, and the cost of such operation, maintenance, upkeep, and repair shall be paid from funds appropriated for the use of the department for the construction and maintenance of the primary state highways of the state of Washington. This section does not apply to that portion of the Tacoma Narrows bridge facility first opened to traffic after June 13, 2002. [2005 c 335 § 4; 2002 c 114 § 20; 1983 c 3 § 129; 1961 c 13 § 47.56.270. Prior: 1939 c 5 § 4; RRS § 6524-3a.]

**Finding—Intent—2002 c 114:** See RCW 47.46.011.

**Captions not law—2002 c 114:** See note following RCW 47.46.011.

**47.56.273 through 47.56.360 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**47.56.380 through 47.56.590 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**47.56.401 High-occupancy toll lanes defined.** For the purposes of RCW 46.61.165, 47.56.403, and 47.66.090, "high-occupancy toll lanes" means one or more lanes of a highway that charges tolls as a means of regulating access to or the use of the facility, to maintain travel speed and reliability.

[2005 RCW Supp—page 634]

ity. Supporting facilities include, but are not limited to, approaches, enforcement areas, improvements, buildings, and equipment. [2005 c 312 § 2.]

**Intent—2005 c 312:** "The legislature recognizes that the Puget Sound region is faced with growing traffic congestion and has limited ability to expand freeway capacity due to financial, environmental, and physical constraints. Freeway high-occupancy vehicle lanes have been an effective means of providing transit, vanpools, and carpools with a fast trip on congested freeway corridors, but in many cases, these lanes are themselves getting crowded during the peak commute times, while some are being underused at off-peak times.

It is the intent of the legislature to maximize the effectiveness and efficiency of the freeway system. To evaluate methods to accomplish this, it is beneficial to evaluate alternative approaches to managing the use of freeway high-occupancy vehicle lanes, including pilot projects to determine and demonstrate the effectiveness and benefits of implementing high-occupancy toll lanes. The legislature acknowledges that state route 167 provides an ideal test of the high-occupancy toll lane concept because it is a congested corridor, it has underused capacity in the high-occupancy vehicle lane, and it has adequate right of way for improvements needed to test the concept. Therefore, it is the intent of this act to direct that the department of transportation, as a pilot project, develop and operate a high-occupancy toll lane on state route 167 in King county and to conduct an evaluation of that project to determine impacts on freeway efficiency, effectiveness for transit, feasibility of financing improvements through tolls, and the impacts on freeway users." [2005 c 312 § 1.]

**Captions—2005 c 312:** "Section captions used in this act are not any part of the law." [2005 c 312 § 9.]

**47.56.403 High-occupancy toll lane pilot project. (1)** The department may provide for the establishment, construction, and operation of a pilot project of high-occupancy toll lanes on state route 167 high-occupancy vehicle lanes within King county. The department may issue, buy, and redeem bonds, and deposit and expend them; secure and remit financial and other assistance in the construction of high-occupancy toll lanes, carry insurance, and handle any other matters pertaining to the high-occupancy toll lane pilot project.

(2) Tolls for high-occupancy toll lanes will be established as follows:

(a) The schedule of toll charges for high-occupancy toll lanes must be established by the transportation commission and collected in a manner determined by the commission.

(b) Toll charges shall not be assessed on transit buses and vanpool vehicles owned or operated by any public agency.

(c) The department shall establish performance standards for the state route 167 high-occupancy toll lane pilot project. The department must automatically adjust the toll charge, using dynamic tolling, to ensure that toll-paying single-occupant vehicle users are only permitted to enter the lane to the extent that average vehicle speeds in the lane remain above forty-five miles per hour at least ninety percent of the time during peak hours. The toll charge may vary in amount by time of day, level of traffic congestion within the highway facility, vehicle occupancy, or other criteria, as the commission may deem appropriate. The commission may also vary toll charges for single-occupant inherently low-emission vehicles such as those powered by electric batteries, natural gas, propane, or other clean burning fuels.

(d) The commission shall periodically review the toll charges to determine if the toll charges are effectively maintaining travel time, speed, and reliability on the highway facilities.

(3) The department shall monitor the state route 167 high-occupancy toll lane pilot project and shall annually report to the transportation commission and the legislature on operations and findings. At a minimum, the department shall provide facility use data and review the impacts on:

- (a) Freeway efficiency and safety;
- (b) Effectiveness for transit;
- (c) Person and vehicle movements by mode;
- (d) Ability to finance improvements and transportation services through tolls; and

(e) The impacts on all highway users. The department shall analyze aggregate use data and conduct, as needed, separate surveys to assess usage of the facility in relation to geographic, socioeconomic, and demographic information within the corridor in order to ascertain actual and perceived questions of equitable use of the facility.

(4) The department shall modify the pilot project to address identified safety issues and mitigate negative impacts to high-occupancy vehicle lane users.

(5) Authorization to impose high-occupancy vehicle tolls for the state route 167 high-occupancy toll pilot project expires if either of the following two conditions apply:

(a) If no contracts have been let by the department to begin construction of the toll facilities associated with this pilot project within four years of July 24, 2005; or

(b) Four years after toll collection begins under this section.

(6) The department of transportation shall adopt rules that allow automatic vehicle identification transponders used for electronic toll collection to be compatible with other electronic payment devices or transponders from the Washington state ferry system, other public transportation systems, or other toll collection systems to the extent that technology permits.

(7) The conversion of a single existing high-occupancy vehicle lane to a high-occupancy toll lane as proposed for SR-167 must be taken as the exception for this pilot project.

(8) A violation of the lane restrictions applicable to the high-occupancy toll lanes established under this section is a traffic infraction.

(9) Procurement activity associated with this pilot project shall be open and competitive in accordance with chapter 39.29 RCW. [2005 c 312 § 3.]

**Intent—Captions—2005 c 312:** See notes following RCW 47.56.401.

**47.56.610 through 47.56.706 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**47.56.7115 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**47.56.7125 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**47.56.740 through 47.56.761 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Chapter 47.58 RCW

### EXISTING AND ADDITIONAL BRIDGES

#### Sections

47.58.500 Repealed.

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

## Chapter 47.60 RCW

### PUGET SOUND FERRY AND TOLL BRIDGE SYSTEM

#### Sections

47.60.326 Schedule of charges for state ferries—Review by department, factors considered—Rule making by commission.  
 47.60.445 Repealed.  
 47.60.450 Repealed.  
 47.60.502 Repealed.  
 47.60.503 Repealed.

**47.60.326 Schedule of charges for state ferries—Review by department, factors considered—Rule making by commission.** (1) In order to maintain an adequate, fair, and economically sound schedule of charges for the transportation of passengers, vehicles, and commodities on the Washington state ferries, the department of transportation each year shall conduct a full review of such charges.

(2) Prior to February 1st of each odd-numbered year the department shall transmit to the transportation commission a report of its review together with its recommendations for the revision of a schedule of charges for the ensuing biennium. The commission on or before July 1st of that year shall adopt as a rule, in the manner provided by the Washington administrative procedure act, a schedule of charges for the Washington state ferries for the ensuing biennium commencing July 1st. The schedule may initially be adopted as an emergency rule if necessary to take effect on, or as near as possible to, July 1st.

(3) The department in making its review and formulating recommendations and the commission in adopting a schedule of charges may consider any of the following factors:

- (a) The amount of subsidy available to the ferry system for maintenance and operation;
- (b) The time and distance of ferry runs;
- (c) The maintenance and operation costs for ferry runs with a proper adjustment for higher costs of operating outmoded or less efficient equipment;
- (d) The efficient distribution of traffic between cross-sound routes;
- (e) The desirability of reasonable rates for persons using the ferry system to commute daily to work and other frequent users who live in ferry-dependent communities;
- (f) The effect of proposed fares in increasing walk-on and vehicular passenger use;
- (g) The effect of proposed fares in promoting all types of ferry use during nonpeak periods;
- (h) The estimated revenues that are projected to be earned by the ferry system from commercial advertisements, parking, contracts, leases, and other sources;
- (i) The repurchase of multiple fares, whether for a single rider or multiple riders;

(j) Such other factors as prudent managers of a major ferry system would consider.

(4) If at any time during the biennium it appears that projected revenues from the Puget Sound ferry operations account and any other operating subsidy available to the Washington state ferries will be less than the projected total cost of maintenance and operation of the Washington state ferries for the biennium, the department shall forthwith undertake a review of its schedule of charges to ascertain whether or not the schedule of charges should be revised. The department shall, upon completion of its review report, submit its recommendation to the transportation commission which may in its sound discretion revise the schedule of charges as required to meet necessary maintenance and operation expenditures of the ferry system for the biennium or may defer action until the regular annual review and revision of ferry charges as provided in subsection (2) of this section.

(5) The provisions of RCW 47.60.330 relating to public participation shall apply to the process of revising ferry tolls under this section.

(6) Under RCW 43.135.055, the transportation commission may increase ferry tolls included in the schedule of charges adopted under this section by a percentage that exceeds the fiscal growth factor.

(7) Notwithstanding the provisions of this section and chapter 81.28 RCW, and using sound business judgment, the chief executive officer of the ferry system may authorize the use of promotional, discounted, and special event fares to the general public and commercial enterprises for the purpose of maximizing capacity use and the revenues collected by the ferry system. The department shall report to the transportation commission a summary of the promotional, discounted, and special event fares offered during each fiscal year and the financial results from these activities. [2005 c 270 § 1; 2003 c 374 § 4; 2001 1st sp.s. c 1 § 1; 1999 c 94 § 27; 1990 c 42 § 406; 1983 c 15 § 25; 1981 c 344 § 5.]

**Effective date—2001 1st sp.s. c 1:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 2, 2001]." [2001 1st sp.s. c 1 § 2.]

**Legislative finding—Effective dates—1999 c 94:** See notes following RCW 43.84.092.

**Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42:** See notes following RCW 82.36.025.

**Severability—1983 c 15:** See RCW 47.64.910.

**Severability—1981 c 344:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 344 § 8.]

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

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

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

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

[2005 RCW Supp—page 636]

## Chapter 47.64 RCW

### MARINE EMPLOYEES—PUBLIC EMPLOYMENT RELATIONS

#### Sections

47.64.220 Salary survey, fact-finding. (*Effective July 1, 2006.*)

**47.64.220 Salary survey, fact-finding. (*Effective July 1, 2006.*)** (1) Prior to collective bargaining, the marine employees' commission shall conduct a salary survey. The results of the survey shall be published in a report which shall be a public document comparing wages, hours, employee benefits, and conditions of employment of involved ferry employees with those of public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia doing directly comparable but not necessarily identical work, giving consideration to factors peculiar to the area and the classifications involved. Such survey report shall be for the purpose of disclosing generally prevailing levels of compensation, benefits, and conditions of employment. It shall be used to guide generally but not to define or limit collective bargaining between the parties. The commission shall make such other findings of fact as the parties may request during bargaining or impasse.

(2) Except as provided in subsection (3) of this section, salary and employee benefit information collected from private employers that identifies a specific employer with the salary and employee benefit rates which that employer pays to its employees is not subject to public disclosure under chapter 42.56 RCW.

(3) A person or entity, having reason to believe that the salary survey results are inaccurate, may submit a petition to the state auditor requesting an audit of the data upon which the salary survey results are based. The state auditor shall review and analyze all data collected for the salary survey, including proprietary information, but is prohibited from disclosing the salary survey data to any other person or entity, except by court order. [2005 c 274 § 308; 1999 c 256 § 1; 1989 c 327 § 2; 1983 c 15 § 13.]

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

**Retroactive application—1999 c 256 § 1:** "Section 1, chapter 256, Laws of 1999 is a clarification of existing law and applies retroactively." [1999 c 256 § 3.]

## Chapter 47.66 RCW

### MULTIMODAL TRANSPORTATION PROGRAMS

#### Sections

47.66.030 Regional mobility grants.  
47.66.040 Selection process—Local matching funds.  
47.66.080 Grant programs examination.  
47.66.090 High-occupancy toll lanes operations account.

**47.66.030 Regional mobility grants.** (1) The department shall establish a regional mobility grant program. The purpose of the grant program is to aid local governments in funding projects such as intercounty connectivity service, park and ride lots, rush hour transit service, and capital projects that improve the connectivity and efficiency of our transportation system. The department shall identify cost-effective projects that reduce delay for people and goods and



improve connectivity between counties and regional population centers. The department shall submit a prioritized list of all projects requesting funding to the legislature by December 1st of each year.

(2) The department may establish an advisory committee to carry out the mandates of this chapter.

(3) The department must report annually to the transportation committees of the legislature on the status of any grants projects funded by the program created under this section. [2005 c 318 § 4; 1996 c 49 § 3; 1995 c 269 § 2604; 1993 c 393 § 5.]

**Findings—Intent—2005 c 318:** See note following RCW 47.01.330.

**Effective date—1995 c 269:** See note following RCW 9.94A.850.

**Part headings not law—Severability—1995 c 269:** See notes following RCW 13.40.005.

#### 47.66.040 Selection process—Local matching funds.

(1) The department shall select projects based on a competitive process. The competition shall be consistent with the following criteria:

- (a) Local, regional, and state transportation plans;
- (b) Local transit development plans; and
- (c) Local comprehensive land use plans.

(2) The following criteria shall be considered by the department in selecting programs and projects:

(a) Objectives of the growth management act, the high capacity transportation act, the commute trip reduction act, transportation demand management programs, federal and state air quality requirements, and federal Americans with Disabilities Act and related state accessibility requirements; and

(b) Enhancing the efficiency of regional corridors in moving people among jurisdictions and modes of transportation, energy efficiency issues, reducing delay for people and goods, freight and goods movement as related to economic development, regional significance, rural isolation, the leveraging of other funds, and safety and security issues.

(3) The department shall determine the appropriate level of local match required for each project based on the source of funds. [2005 c 318 § 5; 1995 c 269 § 2606; 1993 c 393 § 6.]

**Findings—Intent—2005 c 318:** See note following RCW 47.01.330.

**Effective date—1995 c 269:** See note following RCW 9.94A.850.

**Part headings not law—Severability—1995 c 269:** See notes following RCW 13.40.005.

**47.66.080 Grant programs examination.** Beginning in 2005, and every other year thereafter, the department shall examine the division's existing grant programs, and the methods used to allocate grant funds, to determine the program's effectiveness, and whether the methods used to allocate funds result in an equitable distribution of the grants. The department shall submit a report of the findings to the transportation committees of the legislature. [2005 c 318 § 6.]

**Findings—Intent—2005 c 318:** See note following RCW 47.01.330.

**47.66.090 High-occupancy toll lanes operations account.** The high-occupancy toll lanes operations account is created in the state treasury. The department shall deposit all revenues received by the department as toll charges col-

lected from high-occupancy toll lane users. Moneys in this account may be spent only if appropriated by the legislature. Moneys in this account may be used for, but be not limited to, debt service, planning, administration, construction, maintenance, operation, repair, rebuilding, enforcement, and expansion of high-occupancy toll lanes and to increase transit, vanpool and carpool, and trip reduction services in the corridor. A reasonable proportion of the moneys in this account must be dedicated to increase transit, vanpool, carpool, and trip reduction services in the corridor. A reasonable proportion of the moneys in this account must be dedicated to increase transit, vanpool, carpool, and trip reduction services in the corridor. [2005 c 312 § 4.]

**Intent—Captions—2005 c 312:** See notes following RCW 47.56.401.

## Chapter 47.68 RCW

### AERONAUTICS

(Formerly: Chapter 14.04 RCW, Aeronautics commission)

#### Sections

47.68.230	Aircraft, airman, and airwoman certificates required.
47.68.233	Repealed.
47.68.234	Repealed.
47.68.236	Repealed.
47.68.240	Penalties for violations.
47.68.390	Airport capacity and facilities assessment.
47.68.400	Airport capacity and facilities market analysis.
47.68.410	Aviation planning council. ( <i>Expires July 1, 2009.</i> )

**47.68.230 Aircraft, airman, and airwoman certificates required.** It shall be unlawful for any person to operate or cause or authorize to be operated any civil aircraft within this state unless such aircraft has an appropriate effective certificate, permit, or license issued by the United States, if such certificate, permit, or license is required by the United States, and a current registration certificate issued by the secretary of transportation, if registration of the aircraft with the department of transportation is required by this chapter. It shall be unlawful for any person to engage in aeronautics as an airman or airwoman in the state unless the person has an appropriate effective airman or airwoman certificate, permit, rating, or license issued by the United States authorizing him or her to engage in the particular class of aeronautics in which he or she is engaged, if such certificate, permit, rating, or license is required by the United States.

Where a certificate, permit, rating, or license is required for an airman or airwoman by the United States, it shall be kept in his or her personal possession when he or she is operating within the state. Where a certificate, permit, or license is required by the United States or by this chapter for an aircraft, it shall be carried in the aircraft at all times while the aircraft is operating in the state and shall be conspicuously posted in the aircraft where it may be readily seen by passengers or inspectors. Such certificates shall be presented for inspection upon the demand of any peace officer, or any other officer of the state or of a municipality or member, official, or employee of the department of transportation authorized pursuant to this chapter to enforce the aeronautics laws, or any official, manager, or person in charge of any airport, or upon the reasonable request of any person. [2005 c 341 § 1; 1993 c 208 § 5; 1987 c 220 § 1; 1979 c 158 § 205; 1967 ex.s. c 68

§ 2; 1967 ex.s. c 9 § 7; 1949 c 49 § 11; 1947 c 165 § 23; Rem. Supp. 1949 § 10964-103. Formerly RCW 14.04.230.]

**Effective date—2005 c 341:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 341 § 6.]

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

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

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

**47.68.240 Penalties for violations.** (1) Except as provided in subsection (2) of this section, any person violating any of the provisions of this chapter, or any of the rules, regulations, or orders issued pursuant thereto, is guilty of a misdemeanor.

(2)(a) Any person violating any of the provisions of RCW 47.68.220, 47.68.230, or 47.68.255 is guilty of a gross misdemeanor.

(b) In addition to, or in lieu of, the penalties provided in this section, or as a condition to the suspension of a sentence which may be imposed pursuant thereto, for violations of RCW 47.68.220 and 47.68.230, the court in its discretion may prohibit the violator from operating an aircraft within the state for such period as it may determine but not to exceed one year. Violation of the duly imposed prohibition of the court may be treated as a separate offense under this section or as a contempt of court.

(3) In addition to the provisions of subsections (1) and (2) of this section, failure to register an aircraft, as required by this chapter is subject to the following civil penalties:

(a) If the aircraft registration is sixty days to one hundred nineteen days past due, the civil penalty is one hundred dollars.

(b) If the aircraft registration is one hundred twenty days to one hundred eighty days past due, the civil penalty is two hundred dollars.

(c) If the aircraft registration is over one hundred eighty days past due, the civil penalty is four hundred dollars.

(4) The revenue from penalties prescribed in subsection (3) of this section must be deposited into the aeronautics account under RCW 82.42.090. [2005 c 341 § 2. Prior: 2003 c 375 § 3; 2003 c 53 § 265; 2000 c 229 § 2; 1999 c 277 § 5; 1993 c 238 § 3; 1987 c 202 § 216; 1983 c 3 § 145; 1947 c 165 § 24; Rem. Supp. 1947 § 10964-104. Formerly RCW 14.04.240.]

**Effective date—2005 c 341:** See note following RCW 47.68.230.

**Effective date—2003 c 375:** See note following RCW 47.68.233.

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

**Effective date—2000 c 229:** See note following RCW 46.16.010.

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

**47.68.390 Airport capacity and facilities assessment.** (1) The aviation division of the department of transportation shall conduct a statewide airport capacity and facilities

assessment. The assessment must include a statewide analysis of existing airport facilities, and passenger and air cargo transportation capacity, regarding both commercial aviation and general aviation; however, the primary focus of the assessment must be on commercial aviation. The assessment must at a minimum address the following issues:

(a) Existing airport facilities, both commercial and general aviation, including air side, land side, and airport service facilities;

(b) Existing air and airport capacity, including the number of annual passengers and air cargo operations;

(c) Existing airport services, including fixed based operator services, fuel services, and ground services; and

(d) Existing airspace capacity.

(2) The department shall consider existing information, technical analyses, and other research the department deems appropriate. The department may contract and consult with private independent professional and technical experts regarding the assessment.

(3) The department shall submit the assessment to the appropriate standing committees of the legislature, the governor, the transportation commission, and regional transportation planning organizations by July 1, 2006. [2005 c 316 § 1.]

**47.68.400 Airport capacity and facilities market analysis.** (1) After submitting the assessment under RCW 47.68.390, the aviation division of the department of transportation shall conduct a statewide airport capacity and facilities market analysis. The analysis must include a statewide needs analysis of airport facilities, passenger and air cargo transportation capacity, and demand and forecast market needs over the next twenty-five years with a more detailed analysis of the Puget Sound, southwest Washington, Spokane, and Tri-Cities regions. The analysis must address the forecasted needs of both commercial aviation and general aviation; however, the primary focus of the analysis must be on commercial aviation. The analysis must at a minimum address the following issues:

(a) A forecast of future airport facility needs based on passenger and air cargo operations and demand, airline planning, and a determination of aviation trends, demographic, geographic, and market factors that may affect future air travel demand;

(b) A determination of when the state's existing commercial service airports will reach their capacity;

(c) The factors that may affect future air travel and when capacity may be reached and in which location;

(d) The role of the state, metropolitan planning organizations, regional transportation planning organizations, the federal aviation administration, and airport sponsors in addressing statewide airport facilities and capacity needs; and

(e) Whether the state, metropolitan planning organizations, regional transportation planning organizations, the federal aviation administration, or airport sponsors have identified options for addressing long-range capacity needs at airports, or in regions, that will reach capacity before the year 2030.

(2) The department shall consider existing information, technical analyses, and other research the department deems appropriate. The department may contract and consult with

private independent professional and technical experts regarding the analysis.

(3) The department shall submit the analysis to the appropriate standing committees of the legislature, the governor, the transportation commission, and regional transportation planning organizations by July 1, 2007. [2005 c 316 § 2.]

**47.68.410 Aviation planning council. (Expires July 1, 2009.)** (1) Upon completion of both the statewide assessment and analysis required under RCW 47.68.390 and 47.68.400, and to the extent funds are appropriated to the department for this purpose, the governor shall appoint an aviation planning council to consist of the following members: (a) The director of the aviation division of the department of transportation, or a designee; (b) the director of the department of community, trade, and economic development, or a designee; (c) a member of the transportation commission, who shall be the chair of the council; (d) two members of the general public familiar with airport issues, including the impacts of airports on communities, one of whom must be from western Washington and one of whom must be from eastern Washington; (e) a technical expert familiar with federal aviation administration airspace and control issues; (f) a commercial airport operator; (g) a member of a growth management hearings board; (h) a representative of the Washington airport management association; and (i) an airline representative. The chair of the council may designate another councilmember to serve as the acting chair in the absence of the chair. The department of transportation shall provide all administrative and staff support for the council.

(2) The purpose of the council is to make recommendations, based on the findings of the assessment and analysis completed under RCW 47.68.390 and 47.68.400, regarding how best to meet the statewide commercial and general aviation capacity needs, as determined by the council. The council shall determine which regions of the state are in need of improvement regarding the matching of existing, or projected, airport facilities, and the long-range capacity needs at airports within the region expected to reach capacity before the year 2030. After determining these areas, the council shall make recommendations regarding the placement of future commercial and general aviation airport facilities designed to meet the need for improved aviation planning in the region. The council shall include public input in making final recommendations.

(3) The council shall submit its recommendations to the appropriate standing committees of the legislature, the governor, the transportation commission, and applicable regional transportation planning organizations.

(4) This section expires July 1, 2009. [2005 c 316 § 3.]

**Chapter 47.74 RCW**

**MULTISTATE HIGHWAY TRANSPORTATION AGREEMENT**

Sections

- 47.74.010 Repealed.
- 47.74.020 Repealed.

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

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

**Chapter 47.76 RCW**

**RAIL FREIGHT SERVICE**

Sections

- 47.76.340 Repealed.

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

**Chapter 47.80 RCW**

**REGIONAL TRANSPORTATION PLANNING ORGANIZATIONS**

Sections

- 47.80.030 Regional transportation plan—Contents, review, use.
- 47.80.060 Executive board membership.

**47.80.030 Regional transportation plan—Contents, review, use.** (1) Each regional transportation planning organization shall develop in cooperation with the department of transportation, providers of public transportation and high capacity transportation, ports, and local governments within the region, adopt, and periodically update a regional transportation plan that:

(a) Is based on a least cost planning methodology that identifies the most cost-effective facilities, services, and programs;

(b) Identifies existing or planned transportation facilities, services, and programs, including but not limited to major roadways including state highways and regional arterials, transit and nonmotorized services and facilities, multimodal and intermodal facilities, marine ports and airports, railroads, and noncapital programs including transportation demand management that should function as an integrated regional transportation system, giving emphasis to those facilities, services, and programs that exhibit one or more of the following characteristics:

(i) Crosses member county lines;

(ii) Is or will be used by a significant number of people who live or work outside the county in which the facility, service, or project is located;

(iii) Significant impacts are expected to be felt in more than one county;

(iv) Potentially adverse impacts of the facility, service, program, or project can be better avoided or mitigated through adherence to regional policies;

(v) Transportation needs addressed by a project have been identified by the regional transportation planning process and the remedy is deemed to have regional significance; and

(vi) Provides for system continuity;

(c) Establishes level of service standards for state highways and state ferry routes, with the exception of transportation facilities of statewide significance as defined in RCW

47.06.140. These regionally established level of service standards for state highways and state ferries shall be developed jointly with the department of transportation, to encourage consistency across jurisdictions. In establishing level of service standards for state highways and state ferries, consideration shall be given for the necessary balance between providing for the free interjurisdictional movement of people and goods and the needs of local commuters using state facilities;

(d) Includes a financial plan demonstrating how the regional transportation plan can be implemented, indicating resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommending any innovative financing techniques to finance needed facilities, services, and programs;

(e) Assesses regional development patterns, capital investment and other measures necessary to:

(i) Ensure the preservation of the existing regional transportation system, including requirements for operational improvements, resurfacing, restoration, and rehabilitation of existing and future major roadways, as well as operations, maintenance, modernization, and rehabilitation of existing and future transit, railroad systems and corridors, and nonmotorized facilities; and

(ii) Make the most efficient use of existing transportation facilities to relieve vehicular congestion and maximize the mobility of people and goods;

(f) Sets forth a proposed regional transportation approach, including capital investments, service improvements, programs, and transportation demand management measures to guide the development of the integrated, multimodal regional transportation system. For regional growth centers, the approach must address transportation concurrency strategies required under RCW 36.70A.070 and include a measurement of vehicle level of service for off-peak periods and total multimodal capacity for peak periods; and

(g) Where appropriate, sets forth the relationship of high capacity transportation providers and other public transit providers with regard to responsibility for, and the coordination between, services and facilities.

(2) The organization shall review the regional transportation plan biennially for currency and forward the adopted plan along with documentation of the biennial review to the state department of transportation.

(3) All transportation projects, programs, and transportation demand management measures within the region that have an impact upon regional facilities or services must be consistent with the plan and with the adopted regional growth and transportation strategies. [2005 c 328 § 2; 1998 c 171 § 9; 1994 c 158 § 4; 1990 1st ex.s. c 17 § 55.]

**47.80.060 Executive board membership.** In order to qualify for state planning funds available to regional transportation planning organizations, the regional transportation planning organizations containing any county with a population in excess of one million shall provide voting membership on its executive board to the state transportation commission, the state department of transportation, and the four largest public port districts within the region as determined by gross operating revenues. It shall further assure that at

least fifty percent of the county and city local elected officials who serve on the executive board also serve on transit agency boards or on a regional transit authority. [2005 c 334 § 1; 1992 c 101 § 31.]

**Section headings not part of law—Severability—Effective date—1992 c 101:** See RCW 81.112.900 through 81.112.902.

## Title 48

### INSURANCE

#### Chapters

<b>48.02</b>	<b>Insurance commissioner.</b>
<b>48.05</b>	<b>Insurers—General requirements.</b>
<b>48.11</b>	<b>Insuring powers.</b>
<b>48.14</b>	<b>Fees and taxes.</b>
<b>48.17</b>	<b>Agents, brokers, solicitors, and adjusters.</b>
<b>48.18</b>	<b>The insurance contract.</b>
<b>48.20</b>	<b>Disability insurance.</b>
<b>48.21</b>	<b>Group and blanket disability insurance.</b>
<b>48.23</b>	<b>Life insurance and annuities.</b>
<b>48.24</b>	<b>Group life and annuities.</b>
<b>48.29</b>	<b>Title insurers.</b>
<b>48.30</b>	<b>Unfair practices and frauds.</b>
<b>48.30A</b>	<b>Insurance fraud.</b>
<b>48.31</b>	<b>Mergers, rehabilitation, liquidation, supervision.</b>
<b>48.32</b>	<b>Washington insurance guaranty association act.</b>
<b>48.32A</b>	<b>Washington life and disability insurance guaranty association act.</b>
<b>48.34</b>	<b>Credit life insurance and credit accident and health insurance.</b>
<b>48.38</b>	<b>Charitable gift annuity business.</b>
<b>48.41</b>	<b>Health insurance coverage access act.</b>
<b>48.43</b>	<b>Insurance reform.</b>
<b>48.44</b>	<b>Health care services.</b>
<b>48.46</b>	<b>Health maintenance organizations.</b>
<b>48.62</b>	<b>Local government insurance transactions.</b>
<b>48.66</b>	<b>Medicare supplemental health insurance act.</b>
<b>48.92</b>	<b>Liability risk retention.</b>
<b>48.94</b>	<b>Reinsurance intermediary act.</b>
<b>48.98</b>	<b>Managing general agents act.</b>
<b>48.104</b>	<b>Holocaust victims insurance relief act.</b>
<b>48.110</b>	<b>Service contracts.</b>
<b>48.130</b>	<b>Interstate insurance product regulation compact.</b>

#### Chapter 48.02 RCW

### INSURANCE COMMISSIONER

#### Sections

48.02.062	Mental health services—Rules.
48.02.065	Confidentiality of documents, materials, or other information—Public disclosure. ( <i>Effective until July 1, 2006.</i> )
48.02.065	Confidentiality of documents, materials, or other information—Public disclosure. ( <i>Effective July 1, 2006.</i> )
48.02.180	Publication of insurance code and related statutes, manuals, etc.—Distribution—Sale.

**48.02.062 Mental health services—Rules.** The insurance commissioner may adopt rules to implement RCW 48.21.241, 48.44.341, and 48.46.291, except that the rules do not apply to health benefit plans administered or operated under chapter 41.05 or 70.47 RCW. [2005 c 6 § 10.]

**Findings—Intent—Severability—2005 c 6:** See notes following RCW 41.05.600.

**48.02.065 Confidentiality of documents, materials, or other information—Public disclosure. (Effective until July 1, 2006.)** (1) Documents, materials, or other information as described in either subsection (5) or (6), or both, of this section are confidential by law and privileged, are not subject to public disclosure under chapter 42.17 RCW, and are not subject to subpoena directed to the commissioner or any person who received documents, materials, or other information while acting under the authority of the commissioner. The commissioner is authorized to use such documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The confidentiality and privilege created by this section and \*RCW 42.17.31916 applies only to the commissioner, any person acting under the authority of the commissioner, the national association of insurance commissioners and its affiliates and subsidiaries, regulatory and law enforcement officials of other states and nations, the federal government, and international authorities.

(2) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner is permitted or required to testify in any private civil action concerning any confidential and privileged documents, materials, or information subject to subsection (1) of this section.

(3) The commissioner:

(a) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (1) of this section, with (i) the national association of insurance commissioners and its affiliates and subsidiaries, and (ii) regulatory and law enforcement officials of other states and nations, the federal government, and international authorities, if the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;

(b) May receive documents, materials, or information, including otherwise either confidential or privileged, or both, documents, materials, or information, from (i) the national association of insurance commissioners and its affiliates and subsidiaries, and (ii) regulatory and law enforcement officials of other states and nations, the federal government, and international authorities and shall maintain as confidential and privileged any document, material, or information received that is either confidential or privileged, or both, under the laws of the jurisdiction that is the source of the document, material, or information; and

(c) May enter into agreements governing the sharing and use of information consistent with this subsection.

(4) No waiver of an existing privilege or claim of confidentiality in the documents, materials, or information may occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (3) of this section.

(5) Documents, materials, or information, which is either confidential or privileged, or both, which has been provided to the commissioner by (a) the national association of insurance commissioners and its affiliates and subsidiaries, (b) regulatory or law enforcement officials of other states and

nations, the federal government, or international authorities, or (c) agencies of this state, is confidential and privileged only if the documents, materials, or information is protected from disclosure by the applicable laws of the jurisdiction that is the source of the document, material, or information.

(6) Working papers, documents, materials, or information produced by, obtained by, or disclosed to the commissioner or any other person in the course of a financial or market conduct examination are not required to be disclosed by the commissioner unless cited by the commissioner in connection with an agency action as defined in RCW 34.05.010(3). The commissioner shall notify a party that produced the documents, materials, or information five business days before disclosure in connection with an agency action. The notified party may seek injunctive relief in any Washington state superior court to prevent disclosure of any documents, materials, or information it believes is confidential or privileged. In civil actions between private parties or in criminal actions, disclosure to the commissioner under this section does not create any privilege or claim of confidentiality or waive any existing privilege or claim of confidentiality.

(7)(a) After receipt of a public disclosure request, the commissioner shall disclose the documents, materials, or information under subsection (6) of this section that relate to a financial or market conduct examination undertaken as a result of a proposed change of control of a nonprofit or mutual health insurer governed in whole or in part by chapter 48.31B or 48.31C RCW.

(b) The commissioner is not required to disclose the documents, materials, or information in (a) of this subsection if:

(i) The documents, materials, or information are otherwise privileged or exempted from public disclosure; or

(ii) The commissioner finds that the public interest in disclosure of the documents, materials, or information is outweighed by the public interest in nondisclosure in that particular instance.

(8) Any person may petition a Washington state superior court to allow inspection of information exempt from public disclosure under subsection (6) of this section when the information is connected to allegations of negligence or malfeasance by the commissioner related to a financial or market conduct examination. The court shall conduct an in-camera review after notifying the commissioner and every party that produced the information. The court may order the commissioner to allow the petitioner to have access to the information provided the petitioner maintains the confidentiality of the information. The petitioner must not disclose the information to any other person, except upon further order of the court. After conducting a regular hearing, the court may order that the information can be disclosed publicly if the court finds that there is a public interest in the disclosure of the information and the exemption of the information from public disclosure is clearly unnecessary to protect any individual's right of privacy or any vital governmental function. [2005 c 126 § 1; 2001 c 57 § 1.]

**\*Reviser's note:** RCW 42.17.31916 was repealed by 2005 c 274 § 429, effective July 1, 2006.

**48.02.065 Confidentiality of documents, materials, or other information—Public disclosure. (Effective July 1, 2006.)** (1) Documents, materials, or other information as

described in either subsection (5) or (6), or both, of this section are confidential by law and privileged, are not subject to public disclosure under chapter 42.56 RCW, and are not subject to subpoena directed to the commissioner or any person who received documents, materials, or other information while acting under the authority of the commissioner. The commissioner is authorized to use such documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The confidentiality and privilege created by this section and RCW 42.56.400(9) applies only to the commissioner, any person acting under the authority of the commissioner, the national association of insurance commissioners and its affiliates and subsidiaries, regulatory and law enforcement officials of other states and nations, the federal government, and international authorities.

(2) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner is permitted or required to testify in any private civil action concerning any confidential and privileged documents, materials, or information subject to subsection (1) of this section.

(3) The commissioner:

(a) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (1) of this section, with (i) the national association of insurance commissioners and its affiliates and subsidiaries, and (ii) regulatory and law enforcement officials of other states and nations, the federal government, and international authorities, if the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;

(b) May receive documents, materials, or information, including otherwise either confidential or privileged, or both, documents, materials, or information, from (i) the national association of insurance commissioners and its affiliates and subsidiaries, and (ii) regulatory and law enforcement officials of other states and nations, the federal government, and international authorities and shall maintain as confidential and privileged any document, material, or information received that is either confidential or privileged, or both, under the laws of the jurisdiction that is the source of the document, material, or information; and

(c) May enter into agreements governing the sharing and use of information consistent with this subsection.

(4) No waiver of an existing privilege or claim of confidentiality in the documents, materials, or information may occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (3) of this section.

(5) Documents, materials, or information, which is either confidential or privileged, or both, which has been provided to the commissioner by (a) the national association of insurance commissioners and its affiliates and subsidiaries, (b) regulatory or law enforcement officials of other states and nations, the federal government, or international authorities, or (c) agencies of this state, is confidential and privileged only if the documents, materials, or information is protected from disclosure by the applicable laws of the jurisdiction that is the source of the document, material, or information.

(6) Working papers, documents, materials, or information produced by, obtained by, or disclosed to the commissioner or any other person in the course of a financial or market conduct examination are not required to be disclosed by the commissioner unless cited by the commissioner in connection with an agency action as defined in RCW 34.05.010(3). The commissioner shall notify a party that produced the documents, materials, or information five business days before disclosure in connection with an agency action. The notified party may seek injunctive relief in any Washington state superior court to prevent disclosure of any documents, materials, or information it believes is confidential or privileged. In civil actions between private parties or in criminal actions, disclosure to the commissioner under this section does not create any privilege or claim of confidentiality or waive any existing privilege or claim of confidentiality.

(7)(a) After receipt of a public disclosure request, the commissioner shall disclose the documents, materials, or information under subsection (6) of this section that relate to a financial or market conduct examination undertaken as a result of a proposed change of control of a nonprofit or mutual health insurer governed in whole or in part by chapter 48.31B or 48.31C RCW.

(b) The commissioner is not required to disclose the documents, materials, or information in (a) of this subsection if:

(i) The documents, materials, or information are otherwise privileged or exempted from public disclosure; or

(ii) The commissioner finds that the public interest in disclosure of the documents, materials, or information is outweighed by the public interest in nondisclosure in that particular instance.

(8) Any person may petition a Washington state superior court to allow inspection of information exempt from public disclosure under subsection (6) of this section when the information is connected to allegations of negligence or malfeasance by the commissioner related to a financial or market conduct examination. The court shall conduct an in-camera review after notifying the commissioner and every party that produced the information. The court may order the commissioner to allow the petitioner to have access to the information provided the petitioner maintains the confidentiality of the information. The petitioner must not disclose the information to any other person, except upon further order of the court. After conducting a regular hearing, the court may order that the information can be disclosed publicly if the court finds that there is a public interest in the disclosure of the information and the exemption of the information from public disclosure is clearly unnecessary to protect any individual's right of privacy or any vital governmental function. [2005 c 274 § 309; 2005 c 126 § 1; 2001 c 57 § 1.]

**Reviser's note:** This section was amended by 2005 c 126 § 1 and by 2005 c 274 § 309, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

**48.02.180 Publication of insurance code and related statutes, manuals, etc.—Distribution—Sale.** (1) The commissioner may periodically prepare and publish:

(a) Title 48 RCW, Title 284 WAC, insurance bulletins and technical assistance advisories, and other laws, rules, or regulations relevant to the regulation of insurance;

(b) Manuals and other material relating to examinations for licensure; and

(c) Any other publications authorized under Title 48 RCW.

(2) The commissioner may provide copies of the publications referred to in subsection (1)(a) of this section free of charge to:

(a) Public offices and officers in this state;

(b) Public officials of other states and jurisdictions that regulate insurance;

(c) The library of congress; and

(d) Officers of the armed forces of the United States of America located at military installations in this state who are concerned with insurance transactions at or involving the military installations.

(3) Except as provided in subsection (2) of this section, the commissioner shall sell the publications referred to in subsection (1) of this section. The commissioner may charge a reasonable price that is not less than the cost of publication, handling, and distribution. The commissioner shall promptly deposit all funds received under this subsection with the state treasurer to the credit of the insurance commissioner's regulatory account. For appropriation purposes, the funds received and deposited by the commissioner are a recovery of a previous expenditure. [2005 c 223 § 1; 1981 c 339 § 1; 1977 c 75 § 70; 1959 c 225 § 1.]

**Chapter 48.05 RCW**

**INSURERS—GENERAL REQUIREMENTS**

Sections

- 48.05.340 Capital and surplus requirements.
- 48.05.360 Repealed.

**48.05.340 Capital and surplus requirements. (1)**

Subject to RCW 48.05.350 to qualify for authority to transact any one kind of insurance as defined in chapter 48.11 RCW or combination of kinds of insurance as set forth in this subsection, a foreign or alien insurer, whether stock or mutual, or a domestic insurer formed after July 24, 2005, must possess unimpaired paid-in capital stock, if a stock insurer, or unimpaired surplus if a mutual insurer, and additional funds in surplus, as follows, and must thereafter maintain unimpaired a combined total of: (a) The paid-in capital stock if a stock insurer or surplus if a mutual insurer, plus (b) additional funds in surplus equal to the total of the following initial requirements:

Kind or kinds of insurance	Paid-in capital stock or basic surplus	Additional surplus
Life . . . . .	\$2,000,000	\$2,000,000
Disability . . . . .	2,000,000	2,000,000
Life and disability . . . . .	2,400,000	2,400,000
Property . . . . .	2,000,000	2,000,000
Marine & transportation . . . . .	2,000,000	2,000,000

General casualty	2,400,000	2,400,000
Vehicle . . . . .	2,000,000	2,000,000
Surety . . . . .	2,000,000	2,000,000
Any two of the following kinds of insurance: Property, marine & transportation, general casualty, vehicle, surety, disability . . . . .	3,000,000	3,000,000
Multiple lines (all insurances except life and title insurance) . . . . .	3,000,000	3,000,000
Title	2,000,000	2,000,000

(2) Capital and surplus requirements are based upon all the kinds of insurance transacted by the insurer wherever it operates or proposes to operate, whether or not only a portion of the kinds are to be transacted in this state.

(3) Until December 31, 1996, a foreign or alien insurer holding a certificate of authority to transact insurance in this state immediately prior to June 9, 1994, may continue to be authorized to transact the same kinds of insurance as long as it is otherwise qualified for that authority. A domestic insurer, except a title insurer, holding a certificate of authority to transact insurance in this state immediately prior to June 9, 1994, may continue to be authorized to transact the same kinds of insurance as long as it is otherwise qualified for such an authority and thereafter maintains unimpaired the amount of paid-in capital stock, if a stock insurer, or basic surplus, if a mutual or reciprocal insurer, and special or additional surplus as required of it under laws in force immediately prior to June 9, 1994. [2005 c 223 § 2; 1995 c 83 § 14; 1994 c 171 § 1; 1993 c 462 § 50; 1991 sp.s. c 5 § 1; 1982 c 181 § 3; 1980 c 135 § 1; 1967 c 150 § 5; 1963 c 195 § 7.]

**Severability—Implementation—1993 c 462:** See RCW 48.31B.901 and 48.31B.902.

**Effective date—1991 sp.s. c 5:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 sp.s. c 5 § 3.]

**Severability—1982 c 181:** See note following RCW 48.03.010.

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

**Chapter 48.11 RCW  
INSURING POWERS**

Sections

- 48.11.100 "Title insurance" defined.
- 48.11.140 Limitation of single risk.

**48.11.100 "Title insurance" defined.** "Title insurance" is insurance of owners of property or others having an interest in real property, against loss by encumbrance, or defective titles, or adverse claim to title, and associated services. [2005 c 223 § 3; 1947 c 79 § .11.10; Rem. Supp. 1947 § 45.11.10.]

48.11.140 Limitation of single risk. (1) An insurer may not retain any risk on any one subject of insurance, whether located or to be performed in this state or elsewhere, in an amount exceeding ten percent of its surplus to policyholders.

(2) For the purposes of this section, a "subject of insurance" as to insurance against fire includes all properties insured by the same insurer that are reasonably subject to loss or damage from the same fire.

(3) Reinsurance in an alien reinsurer not qualified under RCW 48.12.166 may not be deducted in determining risk retained for the purposes of this section.

(4) In the case of surety insurance, the net retention shall be computed after deduction of reinsurances, the amount assumed by any co-surety, the value of any security deposited, pledged, or held subject to the consent of the surety and for the protection of the surety.

(5) This section does not apply to life insurance, disability insurance, title insurance, or insurance of marine risks or marine protection and indemnity risks. [2005 c 223 § 4; 1993 c 462 § 53; 1983 c 3 § 149; 1959 c 225 § 2; 1947 c 79 § .11.14; Rem. Supp. 1947 § 45.11.14.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

Chapter 48.14 RCW
FEES AND TAXES

Sections

- 48.14.010 Fee schedule.
48.14.0201 Premiums and prepayments tax—Health care services—Exemptions—State preemption.
48.14.029 Repealed. (Effective July 1, 2006.)

48.14.010 Fee schedule. (1) The commissioner shall collect in advance the following fees:

- (a) For filing charter documents:
(i) Original charter documents, bylaws or record of organization of insurers, or certified copies thereof, required to be filed . . . . . \$250.00
(ii) Amended charter documents, or certified copy thereof, other than amendments of bylaws . . . . . \$ 10.00
(iii) No additional charge or fee shall be required for filing any of such documents in the office of the secretary of state.
(b) Certificate of authority:
(i) Issuance . . . . . \$ 25.00
(ii) Renewal . . . . . \$ 25.00
(c) Annual statement of insurer, filing . . . . . \$ 20.00
(d) Organization or financing of domestic insurers and affiliated corporations:
(i) Application for solicitation permit, filing . . . . . \$100.00
(ii) Issuance of solicitation permit . . . . . \$ 25.00
(e) Agents' licenses:
(i) Agent's qualification licenses every two years . . . . . \$ 50.00

- (ii) Filing of appointment of each such agent, every two years . . . . . \$ 20.00
(iii) Limited license issued pursuant to RCW 48.17.190, every two years . . . . . \$ 20.00
(f) Reinsurance intermediary licenses:
(i) Reinsurance intermediary-broker, each year . . . . . \$ 50.00
(ii) Reinsurance intermediary-manager, each year . . . . . \$100.00
(g) Brokers' licenses:
(i) Broker's license, every two years . . . . . \$100.00
(ii) Surplus line broker, every two years . . . . . \$200.00
(h) Solicitors' license, every two years . . . . . \$ 20.00
(i) Adjusters' licenses:
(i) Independent adjuster, every two years . . . . . \$ 50.00
(ii) Public adjuster, every two years . . . . . \$ 50.00
(j) Resident general agent's license, every two years . . . . . \$ 50.00
(k) Managing general agent appointment, every two years . . . . . \$200.00
(l) Examination for license, each examination:
All examinations, except examinations administered by an independent testing service, the fees for which are to be approved by the commissioner and collected directly by and retained by such independent testing service . . . . . \$ 20.00
(m) Miscellaneous services:
(i) Filing other documents . . . . . \$ 5.00
(ii) Commissioner's certificate under seal . . . . . \$ 5.00
(iii) Copy of documents filed in the commissioner's office, reasonable charge therefor as determined by the commissioner.

(2) All fees so collected shall be remitted by the commissioner to the state treasurer not later than the first business day following, and shall be placed to the credit of the general fund.

(a) Fees for examinations administered by an independent testing service that are approved by the commissioner under subsection (1)(l) of this section shall be collected directly by the independent testing service and retained by it.

(b) Fees for copies of documents filed in the commissioner's office shall be remitted by the commissioner to the state treasurer not later than the first business day following, and shall be placed to the credit of the insurance commissioner's regulatory account. [2005 c 223 § 5; 1994 c 131 § 2; 1993 c 462 § 57; 1988 c 248 § 7; 1981 c 111 § 1; 1979 ex.s. c 269 § 1; 1977 ex.s. c 182 § 1; 1969 ex.s. c 241 § 8; 1967 c 150 § 12; 1955 c 303 § 4; 1947 c 79 § .14.01; Rem. Supp. 1947 § 45.14.01.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.



**Effective date, implementation—1979 ex.s. c 269:** "This act shall take effect on April 1, 1980. The insurance commissioner is authorized to immediately take such steps as are necessary to insure that this 1979 act is implemented on its effective date." [1979 ex.s. c 269 § 10.]

**48.14.0201 Premiums and prepayments tax—Health care services—Exemptions—State preemption.** (1) As used in this section, "taxpayer" means a health maintenance organization as defined in RCW 48.46.020, a health care service contractor as defined in RCW 48.44.010, or a self-funded multiple employer welfare arrangement as defined in RCW 48.125.010.

(2) Each taxpayer shall pay a tax on or before the first day of March of each year to the state treasurer through the insurance commissioner's office. The tax shall be equal to the total amount of all premiums and prepayments for health care services received by the taxpayer during the preceding calendar year multiplied by the rate of two percent.

(3) Taxpayers shall prepay their tax obligations under this section. The minimum amount of the prepayments shall be percentages of the taxpayer's tax obligation for the preceding calendar year recomputed using the rate in effect for the current year. For the prepayment of taxes due during the first calendar year, the minimum amount of the prepayments shall be percentages of the taxpayer's tax obligation that would have been due had the tax been in effect during the previous calendar year. The tax prepayments shall be paid to the state treasurer through the commissioner's office by the due dates and in the following amounts:

- (a) On or before June 15, forty-five percent;
- (b) On or before September 15, twenty-five percent;
- (c) On or before December 15, twenty-five percent.

(4) For good cause demonstrated in writing, the commissioner may approve an amount smaller than the preceding calendar year's tax obligation as recomputed for calculating the health maintenance organization's, health care service contractor's, self-funded multiple employer welfare arrangement's, or certified health plan's prepayment obligations for the current tax year.

(5) Moneys collected under this section shall be deposited in the general fund through March 31, 1996, and in the health services account under RCW 43.72.900 after March 31, 1996.

(6) The taxes imposed in this section do not apply to:

(a) Amounts received by any taxpayer from the United States or any instrumentality thereof as prepayments for health care services provided under Title XVIII (medicare) of the federal social security act.

(b) Amounts received by any taxpayer from the state of Washington as prepayments for health care services provided under:

(i) The medical care services program as provided in RCW 74.09.035;

(ii) The Washington basic health plan on behalf of subsidized enrollees as provided in chapter 70.47 RCW; or

(iii) The medicaid program on behalf of elderly or disabled clients as provided in chapter 74.09 RCW when these prepayments are received prior to July 1, 2009, and are associated with a managed care contract program that has been implemented on a voluntary demonstration or pilot project basis.

(c) Amounts received by any health care service contractor, as defined in RCW 48.44.010, as prepayments for health care services included within the definition of practice of dentistry under RCW 18.32.020.

(d) Participant contributions to self-funded multiple employer welfare arrangements that are not taxable in this state.

(7) Beginning January 1, 2000, the state does hereby preempt the field of imposing excise or privilege taxes upon taxpayers and no county, city, town, or other municipal subdivision shall have the right to impose any such taxes upon such taxpayers. This subsection shall be limited to premiums and payments for health benefit plans offered by health care service contractors under chapter 48.44 RCW, health maintenance organizations under chapter 48.46 RCW, and self-funded multiple employer welfare arrangements as defined in RCW 48.125.010. The preemption authorized by this subsection shall not impair the ability of a county, city, town, or other municipal subdivision to impose excise or privilege taxes upon the health care services directly delivered by the employees of a health maintenance organization under chapter 48.46 RCW.

(8)(a) The taxes imposed by this section apply to a self-funded multiple employer welfare arrangement only in the event that they are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the commissioner shall initially request an advisory opinion from the United States department of labor or obtain a declaratory ruling from a federal court on the legality of imposing state premium taxes on these arrangements. Once the legality of the taxes has been determined, the multiple employer welfare arrangement certified by the insurance commissioner must begin payment of these taxes.

(b) If there has not been a final determination of the legality of these taxes, then beginning on the earlier of (i) the date the fourth multiple employer welfare arrangement has been certified by the insurance commissioner, or (ii) April 1, 2006, the arrangement shall deposit the taxes imposed by this section into an interest bearing escrow account maintained by the arrangement. Upon a final determination that the taxes are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., all funds in the interest bearing escrow account shall be transferred to the state treasurer.

(9) The effect of transferring contracts for health care services from one taxpayer to another taxpayer is to transfer the tax prepayment obligation with respect to the contracts.

(10) On or before June 1st of each year, the commissioner shall notify each taxpayer required to make prepayments in that year of the amount of each prepayment and shall provide remittance forms to be used by the taxpayer. However, a taxpayer's responsibility to make prepayments is not affected by failure of the commissioner to send, or the taxpayer to receive, the notice or forms. [2005 c 405 § 1; 2005 c 223 § 6; 2005 c 7 § 1; 2004 c 260 § 24; 1998 c 323 § 1; 1997 c 154 § 1; 1993 sp.s. c 25 § 601; 1993 c 492 § 301.]

**Reviser's note:** This section was amended by 2005 c 7 § 1, 2005 c 223 § 6, and by 2005 c 405 § 1, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2005 c 7:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 15, 2005]." [2005 c 7 § 3.]

**Severability—Effective date—2004 c 260:** See RCW 48.125.900 and 48.125.901.

**Effective date—1997 c 154:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 154 § 2.]

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

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

**48.14.029 Repealed. (Effective July 1, 2006.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

### Chapter 48.17 RCW AGENTS, BROKERS, SOLICITORS, AND ADJUSTERS

#### Sections

48.17.150 Agent's and broker's qualifications—Continuing education requirements.

**48.17.150 Agent's and broker's qualifications—Continuing education requirements.** (1) To qualify for an agent's or broker's license, an applicant must otherwise comply with this code and must:

- (a) Be at least eighteen years of age, if an individual;
- (b) Be a bona fide resident of and actually reside in this state, or if a corporation, be other than an insurer and maintain a lawfully established place of business in this state, except as provided in RCW 48.17.330;
- (c) Be empowered to be an agent or broker under its members' agreement, if a firm, or by its articles of incorporation, if a corporation;
- (d) Complete the minimum educational requirements for the issuance of an agent's license for the kinds of insurance specified in RCW 48.17.210 as may be required by regulation issued by the commissioner;
- (e) Successfully pass any examination as required under RCW 48.17.110;
- (f) Be a trustworthy person;
- (g)(i) If for an agent's license, be appointed as its agent by one or more authorized insurers, subject to issuance of the license;
- (ii) The commissioner may by regulation establish requirements, including notification formats, in addition to or in lieu of the requirements of (g)(i) of this subsection to allow an agent to act as a representative of and place insurance with an insurer without first notifying the commissioner of the appointment for a period of time up to but not exceeding thirty days from the date the first insurance application is executed by the agent; and
- (h) If for broker's license, have had at least two years experience either as an agent, solicitor, adjuster, general agent, broker, or as an employee of insurers or representa-

[2005 RCW Supp—page 646]

tives of insurers, and special education or training of sufficient duration and extent reasonably to satisfy the commissioner that the applicant possesses the competence necessary to fulfill the responsibilities of broker.

(2) The commissioner shall by regulation establish minimum continuing education requirements for the renewal or reissuance of a license to an agent or a broker.

(a) The commissioner shall require that continuing education courses will be made available on a statewide basis in order to ensure that persons residing in all geographical areas of this state will have a reasonable opportunity to attend such courses.

(b) The continuing education requirements must be appropriate to the license for the kinds of insurance specified in RCW 48.17.210.

(c) The continuing education requirements may be waived by the commissioner for good cause shown.

(3) If the commissioner finds that the applicant is qualified and that the license fee has been paid, the license shall be issued. Otherwise, the commissioner shall refuse to issue the license. [2005 c 223 § 7; 1994 c 131 § 4; 1988 c 248 § 9; 1979 ex.s. c 269 § 7; 1971 ex.s. c 292 § 47; 1967 c 150 § 19; 1961 c 194 § 4; 1947 c 79 § .17.15; Rem. Supp. 1947 § 45.17.15.]

**Effective date, implementation—1979 ex.s. c 269:** See note following RCW 48.14.010.

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

### Chapter 48.18 RCW THE INSURANCE CONTRACT

#### Sections

48.18.010 Scope of chapter.  
48.18.030 Insurable interest—Personal insurances—Nonprofit organizations—Rules.  
48.18.060 Application—Consent—When required.  
48.18.100 Forms of policies—Filing, certification, and approval—Exceptions.  
48.18.103 Forms of commercial property casualty policies—Legislative intent—Issuance prior to filing—Disapproval by commissioner—Definition.  
48.18.430 Exemption of proceeds, commutation—Annuities.  
48.18.570 Life insurance—Lawful travel destinations.  
48.18.580 Employer-owned life insurance—Requirements.  
48.18.583 Employer-owned life insurance—Application to policies.  
48.18.586 Employer-owned life insurance—Rules.

**48.18.010 Scope of chapter.** This chapter applies to insurances other than ocean marine and foreign trade insurances. [2005 c 337 § 2; 1947 c 79 § .18.01; Rem. Supp. 1947 § 45.18.01.]

**Finding—Intent—2005 c 337:** See note following RCW 48.18.030.

**48.18.030 Insurable interest—Personal insurances—Nonprofit organizations—Rules.** (1) Any individual of competent legal capacity may insure his or her own life or body for the benefit of any person. A person may not insure the life or body of another individual unless the benefits under the contract are payable to the individual insured or the individual's personal representative, or to a person having, at the time when the contract was made, an insurable interest in the individual insured.

(2) If the beneficiary, assignee or other payee under any contract made in violation of this section receives from the

insurer any benefits accruing upon the death, disability, or injury of the individual insured, the individual insured or the individual's executor or administrator may maintain an action to recover any benefits from the person receiving them.

(3)(a) "Insurable interest" as used in this section and in RCW 48.18.060 includes only the following interests:

(i) In the case of individuals related closely by blood or by law, a substantial interest engendered by love and affection; and

(ii) In the case of other persons, a lawful and substantial economic interest in having the life, health, or bodily safety of the individual insured continue, as distinguished from an interest that would arise only by, or would be enhanced in value by, the death, disability, or injury of the individual insured.

(b) An individual who is party to a contract or option for the purchase or sale of an interest in a business partnership or firm, or of shares of stock of a close corporation or of an interest in those shares, has an insurable interest in the life of each individual party to the contract and for the purposes of that contract only, in addition to any insurable interest that may otherwise exist as to the life of such individual.

(c) A guardian, trustee, or other fiduciary has an insurable interest in the life of any person for whose benefit the fiduciary holds property, and in the life of any other individual in whose life the person has an insurable interest.

(d) Subject to rules adopted under subsection (4) of this section, upon joint application with a nonprofit organization for, or transfer to a nonprofit organization of, an insurance policy on the life of a person naming the organization as owner and beneficiary, a nonprofit organization's interest in the life of a person if:

(i) The nonprofit organization was established exclusively for religious, charitable, scientific, literary, or educational purposes, or to promote amateur athletic competition, to conduct testing for public safety, or to prevent cruelty to children or animals; and

(ii) The nonprofit organization:

(A) Has existed for a minimum of five years; or

(B) Has been issued a certificate of exemption to conduct a charitable gift annuity business under RCW 48.38.010, or is authorized to conduct a charitable gift annuity business under RCW 28B.10.485; or

(C) Has been organized, and at all times has been operated, exclusively for benefit of, to perform the functions of, or to carry out the purposes of one or more nonprofit organizations described in (d)(ii)(A) or (B) of this subsection and is operated, supervised, or controlled by or in connection with one or more of those nonprofit organizations; and

(iii) For a joint application, the person is not an employee, officer, or director of the organization who receives significant compensation from the organization and who became affiliated with the organization in that capacity less than one year before the joint application.

(4) The commissioner may adopt rules governing joint applications for, and transfers of, life insurance under subsection (3)(d) of this section. The rules may include:

(a) Standards for full and fair disclosure that set forth the manner, content, and required disclosure for the sale of life insurance issued under subsection (3)(d) of this section; and

(b) For joint applications, a grace period of thirty days during which the insured person may direct the nonprofit organization to return the policy and the insurer to refund any premium paid to the party that, directly or indirectly, paid the premium; and

(c) Standards for granting an exemption from the five-year existence requirement of subsection (3)(d)(ii)(A) of this section to a private foundation that files with the insurance commissioner documents, stipulations, and information as the insurance commissioner may require to carry out the purpose of subsection (3)(d) of this section.

(5) Nothing in this section permits the personal representative of the insured's estate to recover the proceeds of a policy on the life of a deceased insured person that was applied for jointly by, or transferred to, an organization covered by subsection (3)(d) of this section, where the organization was named owner and beneficiary of the policy.

This subsection applies to all life insurance policies applied for by, or transferred to, an organization covered by subsection (3)(d) of this section, regardless of the time of application or transfer and regardless of whether the organization would have been covered at the time of application or transfer. [2005 c 337 § 3; 1992 c 51 § 1; 1973 1st ex.s. c 89 § 3; 1947 c 79 § .18.03; Rem. Supp. 1947 § 45.18.03.]

**Finding—Intent—2005 c 337:** "The legislature finds that there is a long-standing principle that corporations have an insurable interest in the lives of key personnel. Nationally, some corporations have begun to insure the lives of personnel that have not met the insurable interest standard of Washington. Entry-level workers have been insured by their corporate employer for the benefit of the corporate employer. The legislature intends to clarify this subject and preclude corporations from insuring the lives of employees when the employees are not key personnel and the corporations have no insurable interest in the lives of those employees." [2005 c 337 § 1.]

*Use of trust funds by fiduciaries for life insurance: RCW 11.110.120.*

#### **48.18.060 Application—Consent—When required.**

A life or disability insurance contract upon an individual may not be made or take effect unless at the time the contract is made the individual insured applies for or consents to the contract in writing, except in the following cases:

(1) A spouse may insure the life of the other spouse.

(2) Any person having an insurable interest in the life of a minor, or any person upon whom a minor is dependent for support and maintenance, may insure the life of the minor.

(3) A contract of group or blanket disability insurance may be effectuated upon an individual.

(4) A contract of group life insurance may be effectuated upon an individual, except as otherwise provided in RCW 48.18.580. [2005 c 337 § 5; 1947 c 79 § .18.06; Rem. Supp. 1947 § 45.18.06.]

**Finding—Intent—2005 c 337:** See note following RCW 48.18.030.

#### **48.18.100 Forms of policies—Filing, certification, and approval—Exceptions.**

(1) No insurance policy form or application form where written application is required and is to be attached to the policy, or printed life or disability rider or endorsement form may be issued, delivered, or used unless it has been filed with and approved by the commissioner. This section does not apply to:

(a) Surety bond forms;

(b) Forms filed under RCW 48.18.103;

(c) Forms exempted from filing requirements by the commissioner under RCW 48.18.103;

(d) Manuscript policies, riders, or endorsements of unique character designed for and used with relation to insurance upon a particular subject; or

(e) Contracts of insurance procured under the provisions of chapter 48.15 RCW.

(2) Every such filing containing a certification, in a form approved by the commissioner, by either the chief executive officer of the insurer or by an actuary who is a member of the American academy of actuaries, attesting that the filing complies with Title 48 RCW and Title 284 of the Washington Administrative Code, may be used by the insurer immediately after filing with the commissioner. The commissioner may order an insurer to cease using a certified form upon the grounds set forth in RCW 48.18.110. This subsection does not apply to certain types of policy forms designated by the commissioner by rule.

(3) Except as provided in RCW 48.18.103, every filing that does not contain a certification pursuant to subsection (2) of this section must be made not less than thirty days in advance of issuance, delivery, or use. At the expiration of the thirty days, the filed form shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the commissioner. The commissioner may extend by not more than an additional fifteen days the period within which he or she may affirmatively approve or disapprove any form, by giving notice of the extension before expiration of the initial thirty-day period. At the expiration of the period that has been extended, and in the absence of prior affirmative approval or disapproval, the form shall be deemed approved. The commissioner may withdraw any approval at any time for cause. By approval of any form for immediate use, the commissioner may waive any unexpired portion of the initial thirty-day waiting period.

(4) The commissioner's order disapproving any form or withdrawing a previous approval must state the grounds for disapproval.

(5) No form may knowingly be issued or delivered as to which the commissioner's approval does not then exist.

(6) The commissioner may, by rule, exempt from the requirements of this section any class or type of insurance policy forms if filing and approval is not desirable or necessary for the protection of the public.

(7) Every member or subscriber to a rating organization must adhere to the form filings made on its behalf by the organization. Deviations from the organization are permitted only when filed with the commissioner in accordance with this chapter. [2005 c 223 § 8; 1997 c 428 § 3; 1989 c 25 § 1; 1982 c 181 § 16; 1947 c 79 § .18.10; Rem. Supp. 1947 § 45.18.10.]

**Effective date—1989 c 25:** "This act shall take effect on September 1, 1989." [1989 c 25 § 10.]

**Severability—1982 c 181:** See note following RCW 48.03.010.

*Format of disability policies: RCW 48.20.012.*

**48.18.103 Forms of commercial property casualty policies—Legislative intent—Issuance prior to filing—Disapproval by commissioner—Definition.** (1) It is the intent of the legislature to assist the purchasers of commercial property casualty insurance by allowing policies to be issued

more expeditiously and provide a more competitive market for forms.

(2) Commercial property casualty policies may be issued prior to filing the forms.

(3) All commercial property casualty forms must be filed with the commissioner within thirty days after an insurer issues any policy using them. This subsection does not apply to:

(a) Types or classes of forms that the commissioner exempts from filing by rule; and

(b) Manuscript policies, riders, or endorsements of unique character designed for and used with relation to insurance upon a particular subject.

(4) If, within thirty days after a commercial property casualty form has been filed, the commissioner finds that the form does not meet the requirements of this chapter, the commissioner shall disapprove the form and give notice to the insurer or rating organization that made the filing, specifying how the form fails to meet the requirements and stating when, within a reasonable period thereafter, the form shall be deemed no longer effective. The commissioner may extend the time for review an additional fifteen days by giving notice to the insurer prior to the expiration of the original thirty-day period.

(5) Upon a final determination of a disapproval of a policy form under subsection (4) of this section, the insurer must amend any previously issued disapproved form by endorsement to comply with the commissioner's disapproval.

(6) For purposes of this section, "commercial property casualty" means insurance pertaining to a business, profession, occupation, nonprofit organization, or public entity for the lines of property and casualty insurance defined in RCW 48.11.040, 48.11.050, 48.11.060, or 48.11.070.

(7) Except as provided in subsection (5) of this section, the disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in the notice of disapproval.

(8) Every member or subscriber to a rating organization must adhere to the form filings made on its behalf by the organization. An insurer may deviate from forms filed on its behalf by an organization only if the insurer files the forms with the commissioner in accordance with this chapter.

(9) In the event a hearing is held on the actions of the commissioner under subsection (4) of this section, the burden of proof shall be on the commissioner. [2005 c 223 § 9; 2003 c 248 § 4; 1997 c 428 § 1.]

**48.18.430 Exemption of proceeds, commutation—Annuities.** (1) The benefits, rights, privileges, and options under any annuity contract that are due the annuitant who paid the consideration for the annuity contract are not subject to execution and the annuitant may not be compelled to exercise those rights, powers, or options, and creditors are not allowed to interfere with or terminate the contract, except:

(a) As to amounts paid for or as premium on an annuity with intent to defraud creditors, with interest thereon, and of which the creditor has given the insurer written notice at its home office prior to making the payments to the annuitant out of which the creditor seeks to recover. The notice must specify the amount claimed or the facts that will enable the insurer to determine the amount, and must set forth the facts that will

enable the insurer to determine the insurance or annuity contract, the person insured or annuitant and the payments sought to be avoided on the basis of fraud.

(b) The total exemption of benefits presently due and payable to an annuitant periodically or at stated times under all annuity contracts may not at any time exceed two thousand five hundred dollars per month for the length of time represented by the installments, and a periodic payment in excess of two thousand five hundred dollars per month is subject to garnishee execution to the same extent as are wages and salaries.

(c) If the total benefits presently due and payable to an annuitant under all annuity contracts at any time exceeds payment at the rate of two thousand five hundred dollars per month, then the court may order the annuitant to pay to a judgment creditor or apply on the judgment, in installments, the portion of the excess benefits that the court determines to be just and proper, after due regard for the reasonable requirements of the judgment debtor and the judgment debtor's dependent family, as well as any payments required to be made by the annuitant to other creditors under prior court orders.

(2) The benefits, rights, privileges, or options accruing under an annuity contract to a beneficiary or assignee are not transferable or subject to commutation, and if the benefits are payable periodically or at stated times, the same exemptions and exceptions contained in this section for the annuitant apply to the beneficiary or assignee.

(3) An annuity contract within the meaning of this section is any obligation to pay certain sums at stated times, during life or lives, or for a specified term or terms, issued for a valuable consideration, regardless of whether or not the sums are payable to one or more persons, jointly or otherwise, but does not include payments under life insurance contracts at stated times during life or lives, or for a specified term or terms. [2005 c 223 § 10; 1949 c 190 § 25; 1947 c 79 § .18.43; Rem. Supp. 1949 § 45.18.43.]

**48.18.570 Life insurance—Lawful travel destinations.** (1) No life insurer may deny or refuse to accept an application for insurance, or refuse to insure, refuse to renew, cancel, restrict, or otherwise terminate a policy of insurance, or charge a different rate for the same coverage, based upon the applicant's or insured person's past or future lawful travel destinations.

(2) Nothing in this section prohibits a life insurer from excluding or limiting coverage of specific lawful travel, or charging a differential rate for such coverage, when bona fide statistical differences in risk or exposure have been substantiated. [2005 c 441 § 1.]

**48.18.580 Employer-owned life insurance—Requirements.** (1) "Employer-owned life insurance policy" as used in this section and RCW 48.18.583 means an insurance policy purchased by an employer on the life of an employee, for the benefit of a person other than the employee or the employee's personal representative.

(2) An employer-owned life insurance policy may not be made or take effect unless at the time the contract is made the individual insured consents to the contract in writing.

(3) An employer may not retaliate in any manner against an employee for providing written notice that he or she does not want to be insured under an employer-owned life insurance policy.

(4) No later than thirty days after the date on which an employer purchases an employer-owned life insurance policy on the life of an employee, the employer must provide to the employee a written notice that contains the following information:

(a) A statement that the employer carries an employer-owned life insurance policy on the life of the employee;

(b) The identity of the insurance carrier of the policy;

(c) The maximum face amount of the policy at issue; and

(d) The identity of the beneficiary of the policy. [2005 c 337 § 4.]

**Finding—Intent—2005 c 337:** See note following RCW 48.18.030.

**48.18.583 Employer-owned life insurance—Application to policies.** With respect to employer-owned life insurance policies, chapter 337, Laws of 2005 shall apply only to policies issued and delivered after July 24, 2005. [2005 c 337 § 6.]

**Finding—Intent—2005 c 337:** See note following RCW 48.18.030.

**48.18.586 Employer-owned life insurance—Rules.** The commissioner shall adopt rules to implement RCW 48.18.010, 48.18.030, 48.18.060, 48.18.580, and 48.18.583. [2005 c 337 § 7.]

**Finding—Intent—2005 c 337:** See note following RCW 48.18.030.

## Chapter 48.20 RCW

### DISABILITY INSURANCE

#### Sections

48.20.530 Nonresident pharmacies. (*Effective July 1, 2006.*)

**48.20.530 Nonresident pharmacies. (*Effective July 1, 2006.*)** For the purposes of this chapter, a nonresident pharmacy is defined as any pharmacy located outside this state that ships, mails, or delivers, in any manner, except when delivered in person to an enrolled participant or his/her representative, controlled substances, legend drugs, or devices into this state.

After October 1, 1991, an insurer providing coverage of prescription drugs from nonresident pharmacies may only provide coverage from licensed nonresident pharmacies. The insurers shall obtain proof of current licensure in conformity with this section and RCW 18.64.350 through 18.64.400 from the nonresident pharmacy and keep that proof of licensure on file.

The department of health may request from the insurer the proof of current licensure for all nonresident pharmacies through which the insurer is providing coverage for prescription drugs to residents of the state of Washington. This information, which may constitute a full or partial customer list, shall be confidential and exempt from public disclosure, and from the requirements of chapter 42.56 RCW. The board or the department shall not be restricted in the disclosure of the name of a nonresident pharmacy that is or has been licensed under RCW 18.64.360 or 18.64.370 or of the identity of a

nonresident pharmacy disciplined under RCW 18.64.350 through 18.64.400. [2005 c 274 § 310; 1991 c 87 § 7.]

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

**Effective date—1991 c 87:** See note following RCW 18.64.350.

### Chapter 48.21 RCW

#### GROUP AND BLANKET DISABILITY INSURANCE

##### Sections

- 48.21.047 Requirements for plans offered to small employers—Definitions.
- 48.21.240 Mental health treatment, optional supplemental coverage—Waiver.
- 48.21.241 Mental health services—Definition—Coverage required, when.
- 48.21.330 Nonresident pharmacies. (*Effective July 1, 2006.*)

**48.21.047 Requirements for plans offered to small employers—Definitions.** (1) An insurer may not offer any health benefit plan to any small employer without complying with RCW 48.21.045(3).

(2) Employers purchasing health plans provided through associations or through member-governed groups formed specifically for the purpose of purchasing health care are not small employers and the plans are not subject to RCW 48.21.045(3).

(3) For purposes of this section, "health benefit plan," "health plan," and "small employer" mean the same as defined in RCW 48.43.005. [2005 c 223 § 11; 1995 c 265 § 22.]

**Captions not law—Effective dates—Savings—Severability—1995 c 265:** See notes following RCW 70.47.015.

**48.21.240 Mental health treatment, optional supplemental coverage—Waiver.** (1) For groups not covered by RCW 48.21.241, each group insurer providing disability insurance coverage in this state for hospital or medical care under contracts which are issued, delivered, or renewed in this state shall offer optional supplemental coverage for mental health treatment for the insured and the insured's covered dependents.

(2) Benefits shall be provided under the optional supplemental coverage for mental health treatment whether treatment is rendered by: (a) A licensed mental health provider regulated under chapter 18.57, 18.71, 18.79, 18.83, or 18.225 RCW; (b) a community mental health agency licensed by the department of social and health services pursuant to chapter 71.24 RCW; or (c) a state hospital as defined in RCW 72.23.010. The treatment shall be covered at the usual and customary rates for such treatment. The insurer providing optional coverage under the provisions of this section for mental health services may establish separate usual and customary rates for services rendered by the different categories of providers listed in (a) through (c) of this subsection. However, the treatment may be subject to contract provisions with respect to reasonable deductible amounts or copayments. In order to qualify for coverage under this section, a licensed community mental health agency shall have in effect a plan for quality assurance and peer review, and the treatment shall be supervised by one of the categories of providers listed in (a) of this subsection.

[2005 RCW Supp—page 650]

(3) For groups not covered by RCW 48.21.241, the group disability insurance contract may provide that all the coverage for mental health treatment is waived for all covered members if the contract holder so states in advance in writing to the insurer.

(4) This section shall not apply to a group disability insurance contract that has been entered into in accordance with a collective bargaining agreement between management and labor representatives prior to March 1, 1987. [2005 c 6 § 7; 1987 c 283 § 3; 1986 c 184 § 2; 1983 c 35 § 1.]

**Findings—Intent—Severability—2005 c 6:** See notes following RCW 41.05.600.

**Severability—Savings—1987 c 283:** See notes following RCW 43.20A.020.

**Legislative intent—1986 c 184:** "It is the intent of the legislature that all insurers, health care service contractors, and health maintenance organizations that provide health care coverage in the state shall offer the option of including mental health treatment in their health benefit plans. Further it is the intent of the legislature that all mental health care benefit plans shall provide reimbursement for mental health treatment by every type of provider listed as follows: Physicians licensed under chapter 18.71 or 18.57 RCW, psychologists licensed under chapter 18.83 RCW, and community mental health agencies licensed under chapter 71.24 RCW." [1986 c 184 § 1.]

**Effective date—1986 c 184:** "This act shall take effect March 1, 1987." [1986 c 184 § 5.]

**Severability—1986 c 184:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 184 § 6.]

**Effective date—1983 c 35:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1983." [1983 c 35 § 5.]

**Severability—1983 c 35:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 35 § 4.]

**48.21.241 Mental health services—Definition—Coverage required, when.** (1) For the purposes of this section, "mental health services" means medically necessary outpatient and inpatient services provided to treat mental disorders covered by the diagnostic categories listed in the most current version of the diagnostic and statistical manual of mental disorders, published by the American psychiatric association, on July 24, 2005, or such subsequent date as may be provided by the insurance commissioner by rule, consistent with the purposes of chapter 6, Laws of 2005, with the exception of the following categories, codes, and services: (a) Substance related disorders; (b) life transition problems, currently referred to as "V" codes, and diagnostic codes 302 through 302.9 as found in the diagnostic and statistical manual of mental disorders, 4th edition, published by the American psychiatric association; (c) skilled nursing facility services, home health care, residential treatment, and custodial care; and (d) court ordered treatment unless the insurer's medical director or designee determines the treatment to be medically necessary.

(2) All group disability insurance contracts and blanket disability insurance contracts providing health benefit plans that provide coverage for medical and surgical services shall provide:

(a) For all health benefit plans established or renewed on or after January 1, 2006, for groups of more than fifty employees coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(b) For all health benefit plans established or renewed on or after January 1, 2008, for groups of more than fifty employees coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(c) For all health benefit plans established or renewed on or after July 1, 2010, for groups of more than fifty employees coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services. If the health benefit plan imposes any deductible, mental health services shall be included with medical and surgical services for the purpose of meeting the deductible requirement. Treatment limitations or any other financial requirements on coverage for mental health services are only allowed if the same limitations or requirements are imposed on coverage for medical and surgical services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(3) In meeting the requirements of subsection (2)(a) and (b) of this section, health benefit plans may not reduce the number of mental health outpatient visits or mental health inpatient days below the level in effect on July 1, 2002.

(4) This section does not prohibit a requirement that mental health services be medically necessary as determined by the medical director or designee, if a comparable requirement is applicable to medical and surgical services.

(5) Nothing in this section shall be construed to prevent the management of mental health services. [2005 c 6 § 3.]

**Findings—Intent—Severability—2005 c 6:** See notes following RCW 41.05.600.

**48.21.330 Nonresident pharmacies. (Effective July 1, 2006.)** For the purposes of this chapter, a nonresident pharmacy is defined as any pharmacy located outside this state that ships, mails, or delivers, in any manner, except when delivered in person to an enrolled participant or his/her representative, controlled substances, legend drugs, or devices into this state.

After October 1, 1991, an insurer providing coverage of prescription drugs from nonresident pharmacies may only provide coverage from licensed nonresident pharmacies. The insurers shall obtain proof of current licensure in conformity with this section and RCW 18.64.350 through 18.64.400 from the nonresident pharmacy and keep that proof of licensure on file.

The department may request from the insurer the proof of current licensure for all nonresident pharmacies through which the insurer is providing coverage for prescription drugs for residents of the state of Washington. This information, which may constitute a full or partial customer list, shall be confidential and exempt from public disclosure, and from the requirements of chapter 42.56 RCW. The board or the department shall not be restricted in the disclosure of the name of a nonresident pharmacy that is or has been licensed under RCW 18.64.360 or 18.64.370 or of the identity of a nonresident pharmacy disciplined under RCW 18.64.350 through 18.64.400. [2005 c 274 § 311; 1991 c 87 § 8.]

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

**Effective date—1991 c 87:** See note following RCW 18.64.350.

## Chapter 48.23 RCW

### LIFE INSURANCE AND ANNUITIES

#### Sections

48.23.010 Scope of chapter.

**48.23.010 Scope of chapter.** This chapter applies to contracts of life insurance and annuities other than group life insurance, group annuities, and, except for RCW 48.23.260, 48.23.270, and 48.23.340, other than industrial life insurance. However, Title 48 RCW does not apply to charitable gift annuities issued by a board of a state university, regional university, or a state college, nor to the issuance thereof. [2005 c 223 § 12; 1979 c 130 § 2; 1947 c 79 § .23.01; Rem. Supp. 1947 § 45.23.01.]

**Severability—1979 c 130:** See note following RCW 28B.10.485.

**Chapter 48.24 RCW**  
**GROUP LIFE AND ANNUITIES**

## Sections

- 48.24.020 Employee groups.  
48.24.030 Dependents of employees or members of certain groups (*as amended by 2005 c 222*).  
48.24.030 Dependents of employees or members of certain groups (*as amended by 2005 c 223*).

**48.24.020 Employee groups.** The lives of a group of individuals may be insured under a policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustee is deemed the policyholder, insuring employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

(1) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract or otherwise. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees.

(2) The premium for the policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by him or her, or partly from such funds and partly from funds contributed by the insured employees, or from funds contributed entirely by the insured employees. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at least two employees at date of issue.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees. [2005 c 222 § 1; 1955 c 303 § 29; 1947 c 79 § .24.02; Rem. Supp. 1947 § 45.24.02.]

**48.24.030 Dependents of employees or members of certain groups (*as amended by 2005 c 222*).** (1) Insurance under any group life insurance policy issued pursuant to RCW 48.24.020, or 48.24.050, or 48.24.060, or 48.24.070 or 48.24.090 may (~~(, if seventy-five percent of the then insured employees or labor union members or public employee association members or members of the Washington state patrol elect,)~~) be extended to insure the spouse and dependent children, or any class or classes thereof, of each such insured employee or member who so elects, in amounts in accordance with a plan which precludes individual selection by the employees or members or by the employer or labor union or trustee, and which insurance on the life of any one family member including a spouse shall not be in excess of (~~(fifty percent of the insurance on the life of the insured employee or member)~~) the amount purchased by the insured employee.

Premiums for the insurance on such family members shall be paid by the policyholder, either from the employer's funds (~~(or)~~) funds contributed (~~(by)~~) to him or her, employee's funds, trustee's funds, or labor union funds (~~(~~

and/or from funds contributed by the insured employees or members, or from both)).

(2) Such a spouse insured pursuant to this section shall have the same conversion right as to the insurance on his or her life as is vested in the employee or member under this chapter. [2005 c 222 § 2; 1993 c 132 § 1; 1975 1st ex.s. c 266 § 11; 1965 ex.s. c 70 § 23; 1963 c 192 § 1; 1953 c 197 § 10; 1947 c 79 § .24.03; Rem. Supp. 1947 § 45.24.03.]

**48.24.030 Dependents of employees or members of certain groups (*as amended by 2005 c 223*).** (1) Insurance under any group life insurance policy issued (~~(pursuant to)~~) under RCW 48.24.020, (~~(or)~~) 48.24.050, (~~(or)~~) 48.24.060, (~~(or)~~) 48.24.070, or 48.24.090 may, if seventy-five percent of the then insured employees or labor union members or public employee association members or members of the Washington state patrol elect, be extended to insure the spouse and dependent children, or any class or classes thereof, of each (~~(such)~~) insured employee or member who so elects, in amounts in accordance with a plan (~~(which)~~) that precludes individual selection by the employees or members or by the employer or labor union or trustee (~~(, and which insurance on the life of any one family member including a spouse shall not be in excess of fifty percent of the insurance on the life of the insured employee or member)~~).

Premiums for the insurance on (~~(such)~~) the family members shall be paid by the policyholder, either from the employer's funds or funds contributed by him, trustee's funds, or labor union funds, and/or from funds contributed by the insured employees or members, or from both.

(2) (~~(Such)~~) A spouse insured (~~(pursuant to)~~) under this section (~~(shall have)~~) has the same conversion right as to the insurance on his or her life as is vested in the employee or member under this chapter. [2005 c 223 § 13; 1993 c 132 § 1; 1975 1st ex.s. c 266 § 11; 1965 ex.s. c 70 § 23; 1963 c 192 § 1; 1953 c 197 § 10; 1947 c 79 § .24.03; Rem. Supp. 1947 § 45.24.03.]

**Reviser's note:** RCW 48.24.030 was amended twice during the 2005 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

**Severability—1975 1st ex.s. c 266:** See note following RCW 48.01.010.

**Chapter 48.29 RCW**  
**TITLE INSURERS**

## Sections

- 48.29.010 Scope of chapter—Definitions.  
48.29.020 Certificate of authority—Qualifications.  
48.29.030 Repealed.  
48.29.060 Repealed.  
48.29.070 Repealed.  
48.29.090 Repealed.  
48.29.100 Repealed.  
48.29.110 Repealed.  
48.29.120 Reserve requirements.  
48.29.130 Investments.  
48.29.155 Agent license—Financial responsibility—Definitions.  
48.29.170 Agents—Separate licenses for individuals not required.

**48.29.010 Scope of chapter—Definitions.** (1) This chapter relates only to title insurers for real property.

(2) This code does not apply to persons engaged in the business of preparing and issuing abstracts of title to property and certifying to their correctness so long as the persons do not guarantee or insure the titles.

(3) For purposes of this chapter, unless the context clearly requires otherwise:

(a) "Title policy" means any written instrument, contract, or guarantee by means of which title insurance liability is assumed.

(b) "Abstract of title" means a written representation, provided under contract, whether written or oral, intended to be relied upon by the person who has contracted for the receipt of this representation, listing all recorded convey-



ances, instruments, or documents that, under the laws of the state of Washington, impart constructive notice with respect to the chain of title to the real property described. An abstract of title is not a title policy as defined in this subsection.

(c) "Preliminary report," "commitment," or "binder" means reports furnished in connection with an application for title insurance and are offers to issue a title policy subject to the stated exceptions in the reports, the conditions and stipulations of the report and the issued policy, and other matters as may be incorporated by reference. The reports are not abstracts of title, nor are any of the rights, duties, or responsibilities applicable to the preparation and issuance of an abstract of title applicable to the issuance of any report. The report is not a representation as to the condition of the title to real property, but is a statement of terms and conditions upon which the issuer is willing to issue its title policy, if the offer is accepted. [2005 c 223 § 14; 1997 c 14 § 1; 1947 c 79 § .29.01; Rem. Supp. 1947 § 45.29.01.]

**48.29.020 Certificate of authority—Qualifications.**

A title insurer is not entitled to have a certificate of authority unless:

- (1) It is a stock corporation;
- (2) It owns or leases and maintains a complete set of tract indexes of the county in this state in which its principal office is located; and
- (3) It has and maintains the capital and surplus requirements set forth in RCW 48.05.340. [2005 c 223 § 15; 1990 c 76 § 1; 1955 c 86 § 12; 1947 c 79 § .29.02; Rem. Supp. 1947 § 45.29.02.]

**Effective date—Supervision of transfers—1955 c 86:** See notes following RCW 48.05.080.

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

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

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

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

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

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

**48.29.120 Reserve requirements.** In determining the financial condition of a title insurer doing business under this title, the general provisions of chapter 48.12 RCW requiring the establishment of reserves sufficient to cover all known and unknown liabilities including allocated and unallocated loss adjustment expense apply, except that a title insurer shall establish and maintain:

- (1) A known claim reserve in an amount estimated to be sufficient to cover all unpaid losses, claims, and allocated

loss adjustment expenses arising under title insurance policies, guaranteed certificates of title, guaranteed searches, and guaranteed abstracts of title, and all unpaid losses, claims, and allocated loss adjustment expenses for which the title insurer may be liable, and for which the insurer has received notice by or on behalf of the insured, holder of a guarantee or escrow, or security depositor;

(2)(a) A statutory or unearned premium reserve consisting of:

(i) The amount of the special reserve fund that was required prior to July 24, 2005, which balance must be released in accordance with (b) of this subsection; and

(ii) Additions to the reserve after July 24, 2005, must be made out of total charges for title insurance policies and guarantees written, as set forth in the title insurer's most recent annual statement on file with the commissioner, equal to the sum of the following:

(A) For each title insurance policy on a single risk written or assumed after July 24, 2005, fifteen cents per one thousand dollars of net retained liability for policies under five hundred thousand dollars; and

(B) For each title insurance policy on a single risk written or assumed after July 24, 2005, ten cents per one thousand dollars of net retained liability for policies of five hundred thousand or greater.

(b) The aggregate of the amounts set aside in this reserve in any calendar year pursuant to (a) of this subsection must be released from the reserve and restored to net profits over a period of twenty years under the following formula:

(i) Thirty-five percent of the aggregate sum on July 1st of the year next succeeding the year of addition;

(ii) Fifteen percent of the aggregate sum on July 1st of each of the succeeding two years;

(iii) Ten percent of the aggregate sum on July 1st of the next succeeding year;

(iv) Three percent of the aggregate sum on July 1st of each of the next three succeeding years;

(v) Two percent of the aggregate sum on July 1st of each of the next three succeeding years; and

(vi) One percent of the aggregate sum on July 1st of each of the next succeeding ten years.

(c) The insurer shall calculate an adjusted statutory unearned premium reserve as of July 24, 2005. The adjusted reserve is calculated as if (a)(ii) and (b) of this subsection had been in effect for all years beginning twenty years prior to July 24, 2005. For purposes of this calculation, the balance of the reserve as of that date is deemed to be zero. If the adjusted reserve so calculated exceeds the aggregate amount set aside for statutory or unearned premiums in the insurer's annual statement on file with the commissioner on July 24, 2005, the insurer shall, out of total charges for policies of title insurance, increase its statutory or unearned premium reserve by an amount equal to one-sixth of that excess in each of the succeeding six years, commencing with the calendar year that includes July 24, 2005, until the entire excess has been added.

(d) The aggregate of the amounts set aside in this reserve in any calendar year as adjustments to the insurer's statutory or unearned premium reserve under (c) of this subsection shall be released from the reserve and restored to net profits, or equity if the additions required by (c) of this subsection

reduced equity directly, over a period not exceeding ten years under to the [under the] following table:

Year of Addition	Release
Year 1 <sup>1</sup>	Equally over 10 years
Year 2	Equally over 9 years
Year 3	Equally over 8 years
Year 4	Equally over 7 years
Year 5	Equally over 6 years
Year 6	Equally over 5 years

<sup>1</sup>(The calendar year following July 24, 2005).

(3) A supplemental reserve shall be established consisting of any other reserves necessary, when taken in combination with the reserves required by subsections (1) and (2) of this section, to cover the company's liabilities with respect to all losses, claims, and loss adjustment expenses.

(4) The supplemental reserve required under subsection (3) of this section shall be phased in as follows: Twenty-five percent of the otherwise applicable supplemental reserve is required until December 31, 2006; fifty percent of the otherwise applicable supplemental reserve is required until December 31, 2007; and seventy-five percent of the otherwise applicable supplemental reserve is required until December 31, 2008. [2005 c 223 § 16; 1947 c 79 § .29.12; Rem. Supp. 1947 § 45.29.12.]

**48.29.130 Investments.** A domestic title insurer shall invest its funds as follows:

(1) Funds in an amount not less than its reserve required by RCW 48.29.120 must be kept invested in investments eligible for domestic life insurers.

(2) Other funds may be invested in:

(a) The insurer's plant and equipment, up to a maximum of fifty percent of capital plus surplus.

(b) Stocks and bonds of abstract companies when approved by the commissioner.

(c) Investments eligible for the investment of funds of any domestic insurer. [2005 c 223 § 17; 1967 c 150 § 30; 1947 c 79 § .29.13; Rem. Supp. 1947 § 45.29.13.]

**48.29.155 Agent license—Financial responsibility—Definitions.** (1) At the time of filing an application for a title insurance agent license, or any renewal or reinstatement of a title insurance agent license, the applicant shall provide satisfactory evidence to the commissioner of having obtained the following as evidence of financial responsibility:

(a) A fidelity bond or fidelity insurance providing coverage in the aggregate amount of two hundred thousand dollars with a deductible no greater than ten thousand dollars covering the applicant and each corporate officer, partner, escrow officer, and employee of the applicant conducting the business of an escrow agent as defined in RCW 18.44.011 and exempt from licensing under RCW 18.44.021(6), or a guarantee from a licensed title insurance company as authorized by subsection (5) of this section; and

(b) A surety bond in the amount of ten thousand dollars executed by the applicant as obligor and by a surety company authorized, or eligible under chapter 48.15 RCW, to do a surety business in this state as surety, or some other security

approved by the commissioner, unless the fidelity bond or fidelity insurance obtained by the licensee to satisfy the requirement in (a) of this subsection does not have a deductible. The bond shall run to the state of Washington as obligee, and shall run to the benefit of the state and any person or persons who suffer loss by reason of the applicant's or its employee's violation of this chapter. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all rules adopted under this chapter, and shall reimburse all persons who suffer loss by reason of a violation of this chapter or rules adopted under this chapter. The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the commissioner of its intent to cancel the bond. The cancellation shall be effective thirty days after the notice is received by the commissioner. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond is not liable for any penalties imposed on the licensee, including but not limited to any increased damages or attorneys' fees, or both, awarded under RCW 19.86.090.

(2) For the purposes of this section, a "fidelity bond" means a primary commercial blanket bond or its equivalent satisfactory to the commissioner and written by an insurer authorized, or eligible under chapter 48.15 RCW, to transact this line of business in the state of Washington. The bond shall provide fidelity coverage for any fraudulent or dishonest acts committed by any one or more of the employees, officers, or owners as defined in the bond, acting alone or in collusion with others. The bond shall be for the sole benefit of the title insurance agent and under no circumstances whatsoever shall the bonding company be liable under the bond to any other party. The bond shall name the title insurance agent as obligee and shall protect the obligee against the loss of money or other real or personal property belonging to the obligee, or in which the obligee has a pecuniary interest, or for which the obligee is legally liable or held by the obligee in any capacity, whether the obligee is legally liable therefor or not. The bond may be canceled by the insurer upon delivery of thirty days' written notice to the commissioner and to the title insurance agent.

(3) For the purposes of this section, "fidelity insurance" means employee dishonesty insurance or its equivalent satisfactory to the commissioner and written by an insurer authorized, or eligible under chapter 48.15 RCW, to transact this line of business in the state of Washington. The insurance shall provide coverage for any fraudulent or dishonest acts committed by any one or more of the employees, officers, or owners as defined in the policy of insurance, acting alone or in collusion with others. The insurance shall be for the sole benefit of the title insurance agent and under no circumstances whatsoever shall the insurance company be liable under the insurance to any other party. The insurance shall name the title insurance agent as the named insured and shall protect the named insured against the loss of money or other

real or personal property belonging to the named insured, or in which the named insured has a pecuniary interest, or for which the named insured is legally liable or held by the named insured in any capacity, whether the named insured is legally liable therefor or not. The insurance coverage may be canceled by the insurer upon delivery of thirty days' written notice to the commissioner and to the title insurance agent.

(4) The fidelity bond or fidelity insurance, and the surety bond or other form of security approved by the commissioner, shall be kept in full force and effect as a condition precedent to the title insurance agent's authority to transact business in this state, and the title insurance agent shall supply the commissioner with satisfactory evidence thereof upon request.

(5) A title insurance company authorized to do business in Washington under RCW 48.05.030 may provide a guarantee in a form satisfactory to the commissioner accepting financial responsibility, up to the aggregate amount of two hundred thousand dollars, for any fraudulent or dishonest acts committed by any one or more of the employees, officers, or owners of a title insurance agent that is appointed as the title insurance company's agent. A title insurance company providing a guarantee as permitted under this subsection may only do so on behalf of its properly appointed title insurance agents. If the title insurance agent is an agent for two or more title insurance companies, any liability under the guarantee shall be borne by the title insurance company for those escrows for which a title insurance commitment or policy was issued on behalf of that title insurance company. If no commitment or policy was issued regarding the escrow for which moneys were lost, including but not limited to collection escrows, each title insurance company, for which the agent was appointed at the time of the fraudulent or dishonest act, shares in the liability. The liability will be shared proportionally, as follows: The premium the agent remitted to the title insurance company in the year prior to the fraudulent or dishonest act will be compared to the total premium the agent remitted to all title insurance companies, for whom the title insurance agent was appointed, during the same period.

(6) All title insurance agents licensed on or before July 24, 2005, shall comply with this section within thirty days following July 24, 2005. [2005 c 115 § 1; 2003 c 202 § 1.]

**48.29.170 Agents—Separate licenses for individuals not required.** Title insurance agents are exempt from the provisions of RCW 48.17.180(1) that require that each individual empowered to exercise the authority of a licensed firm or corporation must be separately licensed. [2005 c 223 § 18; 1981 c 223 § 2.]

**Chapter 48.30 RCW**

**UNFAIR PRACTICES AND FRAUDS**

Sections

- 48.30.270 Public building or construction contracts—Surety bonds or insurance—Violations concerning—Exemption.
- 48.30.300 Unfair discrimination, generally.

**48.30.270 Public building or construction contracts—Surety bonds or insurance—Violations concerning—Exemption.** (1) No officer or employee of this state, or

of any public agency, public authority or public corporation except a public corporation or public authority created pursuant to agreement or compact with another state, and no person acting or purporting to act on behalf of such officer or employee, or public agency or public authority or public corporation, shall, with respect to any public building or construction contract which is about to be, or which has been competitively bid, require the bidder to make application to, or to furnish financial data to, or to obtain or procure, any of the surety bonds or contracts of insurance specified in connection with such contract, or specified by any law, general, special or local, from a particular insurer or agent or broker.

(2) No such officer or employee or any person, acting or purporting to act on behalf of such officer or employee shall negotiate, make application for, obtain or procure any of such surety bonds or contracts of insurance, except contracts of insurance for builder's risk or owner's protective liability, which can be obtained or procured by the bidder, contractor or subcontractor.

(3) This section shall not be construed to prevent the exercise by such officer or employee on behalf of the state or such public agency, public authority, or public corporation of its right to approve the form, sufficiency or manner or execution of the surety bonds or contracts of insurance furnished by the insurer selected by the bidder to underwrite such bonds, or contracts of insurance.

(4) Any provisions in any invitation for bids, or in any of the contract documents, in conflict with this section are declared to be contrary to the public policy of this state.

(5) A violation of this section shall be subject to the penalties provided by RCW 48.01.080.

(6) This section shall not apply to public construction projects, when the actual or estimated aggregate value of the project, exclusive of insurance and surety costs, exceeds two hundred million dollars. For purposes of applying the two hundred million dollar threshold set forth in this subsection, the term "public construction project" means a project that has a public owner and has phases, segments, or component parts relating to a common geographic site or public transportation system, but does not include the aggregation of unrelated construction projects.

(7) The exclusions specified in subsection (6) of this section do not apply to surety bonds. [2005 c 352 § 1; (2003 c 323 § 2 repealed by 2005 c 352 § 2); 2003 c 323 § 1. Prior: 2000 2nd sp.s. c 4 § 33; 2000 c 143 § 2; 1983 2nd ex.s. c 1 § 6; 1967 ex.s. c 12 § 3.]

*State convention and trade center—Corporation exempt: RCW 67.40.020.*

**48.30.300 Unfair discrimination, generally.** Notwithstanding any provision contained in Title 48 RCW to the contrary:

A person or entity engaged in the business of insurance in this state may not refuse to issue any contract of insurance or cancel or decline to renew such contract because of the sex or marital status, or the presence of any sensory, mental, or physical handicap of the insured or prospective insured. The amount of benefits payable, or any term, rate, condition, or type of coverage may not be restricted, modified, excluded, increased, or reduced on the basis of the sex or marital status, or be restricted, modified, excluded, or reduced on the basis

of the presence of any sensory, mental, or physical handicap of the insured or prospective insured. This subsection does not prohibit fair discrimination on the basis of sex, or marital status, or the presence of any sensory, mental, or physical handicap when bona fide statistical differences in risk or exposure have been substantiated. [2005 c 223 § 19; 1993 c 492 § 287; 1975-'76 2nd ex.s. c 119 § 7.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

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

## Chapter 48.30A RCW INSURANCE FRAUD

### Sections

- 48.30A.045 Insurance antifraud plan—File plan and changes with commissioner—Exemptions.  
 48.30A.060 Insurance antifraud plan—Actions taken by insurer—Report—Not public records. (*Effective until July 1, 2006.*)  
 48.30A.060 Insurance antifraud plan—Actions taken by insurer—Report—Not public records. (*Effective July 1, 2006.*)  
 48.30A.065 Insurance antifraud plan or summary report—Failure to file or exercise good faith—Penalty—Failure to follow plan—Civil penalty.

**48.30A.045 Insurance antifraud plan—File plan and changes with commissioner—Exemptions.** (1) Each insurer licensed to write direct insurance in this state, except those exempted in subsection (2) of this section, shall institute and maintain an insurance antifraud plan. An insurer licensed after July 1, 1995, shall file its antifraud plan within six months of licensure. An insurer shall file any change to the antifraud plan with the insurance commissioner within thirty days after the plan has been modified.

(2) This section does not apply to:

- (a) Health carriers, as defined in RCW 48.43.005;
- (b) Life insurers;
- (c) Title insurers;
- (d) Property or casualty insurers with annual gross written medical malpractice insurance premiums in this state that exceed fifty percent of their total annual gross written premiums in this state;
- (e) Credit-related insurance written in connection with a credit transaction in which the creditor is named as a beneficiary or loss payee under the policy, except vendor single-interest or collateral protection coverage as defined in RCW 48.22.110(4); or
- (f) Insurers with gross written premiums of less than one thousand dollars in Washington during the reporting year. [2005 c 223 § 20; 1997 c 92 § 1; 1995 c 285 § 9.]

**48.30A.060 Insurance antifraud plan—Actions taken by insurer—Report—Not public records.** (*Effective until July 1, 2006.*) By March 31st of each year, each insurer shall provide to the insurance commissioner a summary report on actions taken under its antifraud plan to prevent and combat insurance fraud. The report must also include, but not be limited to, measures taken to protect and ensure the integrity of electronic data processing-generated data and manually compiled data, statistical data on the amount of resources committed to combatting fraud, and the amount of fraud identified and recovered during the reporting

period. The antifraud plans and summary of the insurer's antifraud activities are not public records and are exempt from chapter 42.17 RCW, are proprietary, are not subject to public examination, and are not discoverable or admissible in civil litigation. [2005 c 223 § 21; 1995 c 285 § 12.]

**48.30A.060 Insurance antifraud plan—Actions taken by insurer—Report—Not public records.** (*Effective July 1, 2006.*) By March 31st of each year, each insurer shall provide to the insurance commissioner a summary report on actions taken under its antifraud plan to prevent and combat insurance fraud. The report must also include, but not be limited to, measures taken to protect and ensure the integrity of electronic data processing-generated data and manually compiled data, statistical data on the amount of resources committed to combatting fraud, and the amount of fraud identified and recovered during the reporting period. The antifraud plans and summary of the insurer's antifraud activities are not public records and are exempt from chapter 42.56 RCW, are proprietary, are not subject to public examination, and are not discoverable or admissible in civil litigation. [2005 c 274 § 312; 2005 c 223 § 21; 1995 c 285 § 12.]

**Reviser's note:** This section was amended by 2005 c 223 § 21 and by 2005 c 274 § 312, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

**48.30A.065 Insurance antifraud plan or summary report—Failure to file or exercise good faith—Penalty—Failure to follow plan—Civil penalty.** An insurer that fails to file a timely antifraud plan or summary report or that fails to make a good faith attempt to file an antifraud plan that complies with RCW 48.30A.050 or a summary report that complies with RCW 48.30A.060, is subject to the penalty provisions of RCW 48.01.080, but no penalty may be imposed for the first filing made by an insurer under this chapter. An insurer that fails to follow the antifraud plan is subject to a civil penalty not to exceed ten thousand dollars for each violation, at the discretion of the commissioner after consideration of all relevant factors, including the willfulness of the violation. [2005 c 223 § 22; 1995 c 285 § 13.]

## Chapter 48.31 RCW

### MERGERS, REHABILITATION, LIQUIDATION, SUPERVISION

#### Sections

- 48.31.020 Definitions—Insurer, exceeded its powers, consent.  
 48.31.100 Foreign or alien insurers—Conservation, ancillary proceedings.  
 48.31.115 Immunity from suit and liability—Persons entitled to protection.  
 48.31.400 Administrative supervision—Conditions—Notice and hearing.  
 48.31.405 Administrative supervision—Confidentiality.  
 48.31.410 Administrative supervision—Standards and procedures—Limitations on insurer.  
 48.31.415 Administrative supervision—Insurer may contest.  
 48.31.420 Administrative supervision—No limitation on judicial proceedings.  
 48.31.425 Administrative supervision—Commissioner contacts.  
 48.31.430 Administrative supervision—Chapters 48.04 and 34.05 RCW.  
 48.31.435 Administrative supervision—Rules.

48.31.900 Severability—2005 c 432.

**48.31.020 Definitions—Insurer, exceeded its powers, consent.** (1) For the purposes of this chapter, other than as to RCW 48.31.010, and in addition to persons included under RCW 48.99.010, the term "insurer" shall be deemed to include an insurer authorized under chapter 48.05 RCW, an insurer or institution holding a certificate of exemption under RCW 48.38.010, a health care service contractor registered under chapter 48.44 RCW, and a health maintenance organization registered under chapter 48.46 RCW, as well as all persons engaged as, or purporting to be engaged as insurers, institutions issuing charitable gift annuities, health care service contractors, or health maintenance organizations in this state, and to persons in process of organization to become insurers, institutions issuing charitable gift annuities, health care service contractors, or health maintenance organizations.

(2) The definitions in this subsection apply throughout this chapter unless the context clearly requires otherwise.

(a) "Exceeded its powers" means the following conditions:

(i) The insurer has refused to permit examination of its books, papers, accounts, records, or affairs by the commissioner, his or her deputies, employees, or duly commissioned examiners as required by this title or any rules adopted by the commissioner;

(ii) A domestic insurer has unlawfully removed from this state books, papers, accounts, or records necessary for an examination of the insurer;

(iii) The insurer has failed to promptly comply with the filing of any applicable financial reports as required by this title or any rules adopted by the commissioner;

(iv) The insurer has neglected or refused to observe a lawful order of the commissioner to comply, within the time prescribed by law, with any prohibited deficiency in its applicable capital, capital stock, or surplus;

(v) The insurer is continuing to transact insurance or write business after its license has been revoked or suspended by the commissioner;

(vi) The insurer, by contract or otherwise, has unlawfully or has in violation of an order of the commissioner or with respect to a transaction to which the insurer has without first having obtained written approval of the commissioner if approval is required by law:

(A) Totally reinsured its entire outstanding business; or

(B) Merged or consolidated substantially its entire property or business with another insurer; or

(vii) The insurer engaged in any transaction in which it is not authorized to engage under this title or any rules adopted by the commissioner.

(b) "Consent" means agreement to administrative supervision by the insurer. [2005 c 432 § 1; 1998 c 284 § 8; 1989 c 151 § 1; 1947 c 79 § .31.02; Rem. Supp. 1947 § 45.31.02.]

**48.31.100 Foreign or alien insurers—Conservation, ancillary proceedings.** (1) An order to conserve the assets of a foreign or alien insurer must direct the commissioner immediately to take possession of the property of the insurer within this state and to conserve it, subject to the further direction of the court.

(2) Whenever a domiciliary receiver is appointed for a foreign or alien insurer in its domiciliary state that is also a reciprocal state, as defined in RCW 48.99.010, the court shall on application of the commissioner appoint the commissioner as the ancillary receiver in this state, subject to the provisions of the uniform insurers liquidation act. [2005 c 223 § 23; 1947 c 79 § .31.10; Rem. Supp. 1947 § 45.31.10.]

**48.31.115 Immunity from suit and liability—Persons entitled to protection.** (1) The persons entitled to protection under this section are:

(a) The commissioner and any other receiver or administrative supervisor responsible for conducting a delinquency proceeding under this chapter, including present and former commissioners, administrative supervisors, and receivers; and

(b) The commissioner's employees, meaning all present and former special deputies and assistant special deputies and special receivers and special administrative supervisors appointed by the commissioner and all persons whom the commissioner, special deputies, or assistant special deputies have employed to assist in a delinquency proceeding under this chapter. Attorneys, accountants, auditors, and other professional persons or firms who are retained as independent contractors, and their employees, are not considered employees of the commissioner for purposes of this section.

(2) The commissioner and the commissioner's employees are immune from suit and liability, both personally and in their official capacities, for a claim for damage to or loss of property or personal injury or other civil liability caused by or resulting from an alleged act or omission of the commissioner or an employee arising out of or by reason of his or her duties or employment. However, nothing in this subsection may be construed to hold the commissioner or an employee immune from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of the commissioner or an employee.

(3) If a legal action is commenced against the commissioner or an employee, whether against him or her personally or in his or her official capacity, alleging property damage, property loss, personal injury, or other civil liability caused by or resulting from an alleged act or omission of the commissioner or an employee arising out of or by reason of his or her duties or employment, the commissioner and any employee shall be indemnified from the assets of the insurer for all expenses, attorneys' fees, judgments, settlements, decrees, or amounts due and owing or paid in satisfaction of or incurred in the defense of the legal action unless it is determined upon a final adjudication on the merits that the alleged act or omission of the commissioner or employee giving rise to the claim did not arise out of or by reason of his or her duties or employment, or was caused by intentional or willful and wanton misconduct.

(a) Attorneys' fees and related expenses incurred in defending a legal action for which immunity or indemnity is available under this section shall be paid from the assets of the insurer, as they are incurred, in advance of the final disposition of such action upon receipt of an undertaking by or on behalf of the commissioner or employee to repay the attorneys' fees and expenses if it is ultimately determined upon a final adjudication on the merits and that the commissioner or

employee is not entitled to immunity or indemnity under this section.

(b) Any indemnification under this section is an administrative expense of the insurer.

(c) In the event of an actual or threatened litigation against the commissioner or an employee for which immunity or indemnity may be available under this section, a reasonable amount of funds that in the judgment of the commissioner may be needed to provide immunity or indemnity shall be segregated and reserved from the assets of the insurer as security for the payment of indemnity until all applicable statutes of limitation have run or all actual or threatened actions against the commissioner or an employee have been completely and finally resolved, and all obligations of the insurer and the commissioner under this section have been satisfied.

(d) In lieu of segregation and reserving of funds, the commissioner may obtain a surety bond or make other arrangements that will enable the commissioner to secure fully the payment of all obligations under this section.

(4) If a legal action against an employee for which indemnity may be available under this section is settled before final adjudication on the merits, the insurer shall pay the settlement amount on behalf of the employee, or indemnify the employee for the settlement amount, unless the commissioner determines:

(a) That the claim did not arise out of or by reason of the employee's duties or employment; or

(b) That the claim was caused by the intentional or willful and wanton misconduct of the employee.

(5) In a legal action in which the commissioner is a defendant, that portion of a settlement relating to the alleged act or omission of the commissioner is subject to the approval of the court before which the delinquency proceeding is pending. The court may not approve that portion of the settlement if it determines:

(a) That the claim did not arise out of or by reason of the commissioner's duties or employment; or

(b) That the claim was caused by the intentional or willful and wanton misconduct of the commissioner.

(6) Nothing in this section removes or limits an immunity, indemnity, benefit of law, right, or defense otherwise available to the commissioner, an employee, or any other person, not an employee under subsection (1)(b) of this section, who is employed by or in the office of the commissioner or otherwise employed by the state.

(7)(a) Subsection (2) of this section applies to any suit based in whole or in part on an alleged act or omission that takes place on or after July 25, 1993.

(b) No legal action lies against the commissioner or an employee based in whole or in part on an alleged act or omission that took place before July 25, 1993, unless suit is filed and valid service of process is obtained within twelve months after July 25, 1993.

(c) Subsections (3), (4), and (5) of this section apply to a suit that is pending on or filed after July 25, 1993, without regard to when the alleged act or omission took place. [2005 c 432 § 2; 1993 c 462 § 60.]

**Severability—Implementation—1993 c 462:** See RCW 48.31B.901 and 48.31B.902.

**48.31.400 Administrative supervision—Conditions—Notice and hearing.** (1) An insurer may be subject to administrative supervision by the commissioner if upon examination or at any other time the commissioner makes a finding that:

(a) The insurer's condition renders the continuance of its business financially hazardous to the public or to its insureds consistent with this title or any rules adopted by the commissioner;

(b) The insurer has or appears to have exceeded its powers granted under its certificate of authority and this title or any rules adopted by the commissioner;

(c) The insurer has failed to comply with the applicable provisions of Title 48 RCW or rules adopted by the commissioner such that its condition has or will render the continuance of its business financially hazardous to the public or to its insureds;

(d) The business of the insurer is being conducted fraudulently; or

(e) The insurer gives its consent.

(2) If the commissioner determines that the conditions set forth in subsection (1) of this section exist, the commissioner shall:

(a) Notify the insurer of his or her determination;

(b) Furnish to the insurer a written list of the requirements to abate this determination; and

(c) Notify the insurer that it is under the supervision of the commissioner and that the commissioner is applying and effectuating the provisions of this chapter. Action by the commissioner shall be subject to review pursuant to chapters 48.04 and 34.05 RCW.

(3) If placed under administrative supervision, the insurer has sixty days, or another period of time as designated by the commissioner, to comply with the requirements of the commissioner subject to the provisions of this chapter.

(4) If it is determined after notice and hearing that the conditions giving rise to the administrative supervision still exist at the end of the supervision period under subsection (3) of this section, the commissioner may extend the period.

(5) If it is determined that none of the conditions giving rise to the administrative supervision exist, or that the insurer has remedied the conditions that gave rise to the supervision, the commissioner shall release the insurer from supervision. [2005 c 432 § 3.]

**48.31.405 Administrative supervision—Confidentiality.** (1) Except as set forth in this section, proceedings, hearings, notices, correspondence, reports, records, and other information in the possession of the commissioner relating to the supervision of any insurer under this chapter are confidential and are not subject to chapter 42.17 RCW, are not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action, except as provided by this section. However, the commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(2) The employees of the commissioner have access to these proceedings, hearings, notices, correspondence, reports, records, or information as permitted by the commissioner. Neither the commissioner nor any person who

received documents, materials, or other information while acting under the authority of the commissioner is permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (1) of this section.

(3) The commissioner may share the notices, correspondence, reports, records, or information with other state, federal, and international regulatory agencies, with the national association of insurance commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, if the commissioner determines that the disclosure is necessary or proper for the enforcement of the laws of this or another state of the United States, and provided that the recipient agrees to maintain the confidentiality of the documents, material, or other information. No waiver of any applicable privilege or claim of confidentiality may occur as a result of the sharing of documents, materials, or other information under this subsection.

(4) The commissioner may open the proceedings or hearings or make public the notices, correspondence, reports, records, or other information if the commissioner deems that it is in the best interest of the public or in the best interest of the insurer or its insureds, creditors, or the general public. However, the determination of whether to disclose any confidential information at the public proceedings or hearings is subject to applicable law.

(5) This section does not apply to hearings, notices, correspondence, reports, records, or other information obtained upon the appointment of a receiver for the insurer by a court of competent jurisdiction. [2005 c 432 § 4.]

**48.31.410 Administrative supervision—Standards and procedures—Limitations on insurer.** During the period of administrative supervision, the commissioner or the commissioner's designated appointee shall serve as the administrative supervisor. The commissioner shall establish standards and procedures that maintain reasonable and customary claims practices and otherwise provide for the orderly continuation of the insurer's operations and business. Considering these standards and procedures, the commissioner may provide that the insurer may not do any of the following things during the period of supervision, without the prior approval of the commissioner or the appointed administrative supervisor:

- (1) Dispose of, convey, or encumber any of its assets or its business in force;
- (2) Withdraw any of its bank accounts;
- (3) Lend any of its funds;
- (4) Invest any of its funds;
- (5) Transfer any of its property;
- (6) Incur any debt, obligation, or liability;
- (7) Merge or consolidate with another company;
- (8) Approve new premiums or renew any policies;
- (9) Enter into any new reinsurance contract or treaty;
- (10) Terminate, surrender, forfeit, convert, or lapse any insurance policy, certificate, or contract, except for nonpayment of premiums due;
- (11) Release, pay, or refund premium deposits; accrued cash or loan values; unearned premiums; or other reserves on any insurance policy, certificate, or contract;
- (12) Make any material change in management; or

(13) Increase salaries and benefits of officers or directors or the preferential payment of bonuses, dividends, or other payments deemed preferential. [2005 c 432 § 5.]

**48.31.415 Administrative supervision—Insurer may contest.** During the period of administrative supervision the insurer may contest an action taken, proposed to be taken, or failed to be taken by the administrative supervisor specifying the manner wherein the action being complained of would not result in improving the condition of the insurer. Denial of the insurer's request upon reconsideration entitles the insurer to request a proceeding under chapters 48.04 and 34.05 RCW. [2005 c 432 § 6.]

**48.31.420 Administrative supervision—No limitation on judicial proceedings.** RCW 48.31.020, 48.31.115, 48.31.400 through 48.31.415, 48.31.425, and 48.31.435 do not preclude the commissioner from initiating judicial proceedings to place an insurer in rehabilitation or liquidation proceedings or other delinquency proceedings, however designated under the laws of this state, regardless of whether the commissioner has previously initiated administrative supervision proceedings under this chapter against the insurer. [2005 c 432 § 7.]

**48.31.425 Administrative supervision—Commissioner contacts.** The commissioner may meet with the administrative supervisor appointed under this chapter and with the attorney or other representative of the administrative supervisor, without the presence of any other person, at the time of any proceeding or during the pendency of any proceeding held under authority of this chapter to carry out the commissioner's duties under this chapter or for the supervisor to carry out his or her duties under this chapter. [2005 c 432 § 8.]

**48.31.430 Administrative supervision—Chapters 48.04 and 34.05 RCW.** An action or the failure to act by the commissioner is subject to chapters 48.04 and 34.05 RCW. [2005 c 432 § 9.]

**48.31.435 Administrative supervision—Rules.** The commissioner may adopt rules to implement and administer RCW 48.31.020, 48.31.115, and 48.31.400 through 48.31.425. [2005 c 432 § 10.]

**48.31.900 Severability—2005 c 432.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2005 c 432 § 11.]

## Chapter 48.32 RCW

### WASHINGTON INSURANCE GUARANTY ASSOCIATION ACT

#### Sections

48.32.010	Purpose.
48.32.020	Scope.
48.32.030	Definitions.
48.32.040	Creation of the association—Required accounts.

48.32.050	Board of directors.
48.32.060	Powers and duties of the association.
48.32.100	Nonduplication of recovery.
48.32.901	Effective date—2005 c 100.

**48.32.010 Purpose.** The purpose of this chapter is to provide a mechanism for the payment of covered claims to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders under certain policies of insurance covered by the scope of this chapter because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide an association to assess the cost of such protection among insurers. [2005 c 100 § 1; 1971 ex.s. c 265 § 1.]

**48.32.020 Scope.** This chapter applies to all kinds of direct insurance, except life, title, surety, disability, credit, mortgage guaranty, workers' compensation, and ocean marine. Workers' compensation as used in this section does not include longshore and harbor workers' compensation act insurance. [2005 c 100 § 2; 1987 c 185 § 29; 1975-'76 2nd ex.s. c 109 § 2; 1971 ex.s. c 265 § 2.]

**Intent—Severability—1987 c 185:** See notes following RCW 51.12.130.

**48.32.030 Definitions.** As used in this chapter:

(1) "Account" means one of the three accounts created in RCW 48.32.040.

(2) "Association" means the Washington insurance guaranty association created in RCW 48.32.040.

(3) "Commissioner" means the insurance commissioner of this state.

(4) "Covered claim" means:

(a) Except for longshore and harbor workers' compensation act insurance, an unpaid claim, including one for unearned premiums, that arises out of and is within the coverage of an insurance policy to which this chapter applies issued by an insurer, if such insurer becomes an insolvent insurer after the first day of April, 1971 and (i) the claimant or insured is a resident of this state at the time of the insured event; or (ii) the property from which the claim arises is permanently located in this state. "Covered claim" does not include any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise. However, a claim for any such amount asserted against a person insured under a policy issued by an insurer which has become an insolvent insurer, which, if it were not a claim by or for the benefit of a reinsurer, insurer, insurance pool, or underwriting association, would be a "covered claim" may be filed directly with the receiver of the insolvent insurer, but in no event may any such claim be asserted in any legal action against the insured of such insolvent insurer. In addition, "covered claim" does not include any claim filed with the association subsequent to the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer; and

(b) For longshore and harbor workers' compensation act insurance, an unpaid claim, excluding one for unearned premiums, for benefits due an injured worker under the longshore and harbor workers' compensation act that is within the coverage of an insurance policy to which this chapter applies issued by an insurer, if that insurer becomes an insolvent

insurer after April 20, 2005, and (i) the worksite from which the injury occurred is within this state or on the navigable waters within or immediately offshore of this state, or (ii) the worksite from which the injury occurred is outside this state, the injured worker is a permanent resident of this state, the injured worker is temporarily working at the worksite from which the injury occurred, and the injured worker is not covered under a policy of longshore and harbor workers' compensation insurance issued in another state. "Covered claim" does not include any amount due any insurer, reinsurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise.

(5) "Insolvent insurer" means:

(a) An insurer (i) authorized to transact insurance in this state either at the time the policy was issued or when the insured event occurred and (ii) determined to be insolvent and ordered liquidated by a court of competent jurisdiction, and which adjudication was subsequent to the first day of April, 1971; and

(b) In the case of an insurer writing longshore and harbor workers' compensation act insurance, an insurer (i) authorized to write this class of insurance at the time the policy was written and (ii) determined to be insolvent and ordered liquidated by a court of competent jurisdiction subsequent to April 20, 2005.

(6) "Longshore and harbor workers' compensation act" means the longshore and harbor workers' compensation act as defined in U.S.C. Title 33, Chapter 18, 901 et seq. and its extensions commonly known as the defense base act, outer continental shelf lands act, nonappropriated funds instrumentalities act, District of Columbia workers' compensation act, and the war hazards act.

(7) "Member insurer" means any person who (a) writes any kind of insurance to which this chapter applies under RCW 48.32.020, including the exchange of reciprocal or interinsurance contracts, and (b) holds a certificate of authority to transact insurance in this state.

(8) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this chapter applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

(9) "Person" means any individual, corporation, partnership, association, or voluntary organization. [2005 c 100 § 3; 1975-'76 2nd ex.s. c 109 § 3; 1971 ex.s. c 265 § 3.]

**48.32.040 Creation of the association—Required accounts.** There is hereby created a nonprofit unincorporated legal entity to be known as the Washington insurance guaranty association. All insurers defined as member insurers in RCW 48.32.030 shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and approved under RCW 48.32.070 and shall exercise its powers through a board of directors established under RCW 48.32.050. For purposes of administration and assessment, the association shall be divided into three separate accounts: (1) The automobile insurance account; (2) the account for longshore and harbor workers' compensation act insurance; and (3) the



account for all other insurance to which this chapter applies. [2005 c 100 § 4; 1975-'76 2nd ex.s. c 109 § 4; 1971 ex.s. c 265 § 4.]

**48.32.050 Board of directors.** (1) The board of directors of the association shall consist of not less than five nor more than nine persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the commissioner.

(2) In approving selections to the board, the commissioner shall consider among other things whether all member insurers are fairly represented. In the event of the insolvency of a member insurer who writes longshore and harbor workers' compensation act insurance, at least one member of the board must represent the interests of this class of insurer, and this member shall be added to the board at the next annual meeting following the insolvency.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors. [2005 c 100 § 5; 1975-'76 2nd ex.s. c 109 § 5; 1971 ex.s. c 265 § 5.]

**48.32.060 Powers and duties of the association.** (1) The association shall:

(a)(i) For other than covered claims involving the longshore and harbor workers' compensation act, be obligated to the extent of the covered claims existing prior to the order of liquidation and arising within thirty days after the order of liquidation, or before the policy expiration date if less than thirty days after the order of liquidation, or before the insured replaces the policy or on request effects cancellation, if he or she does so within thirty days of the order of liquidation, but such an obligation includes only that amount of each covered claim which is in excess of one hundred dollars and is less than three hundred thousand dollars. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the face amount of the policy from which the claim arises.

(ii) For covered claims involving longshore and harbor workers' compensation act insurance, be obligated to the extent of covered claims for insolvencies occurring after April 20, 2005. This obligation is for the statutory obligations established under the longshore and harbor workers' compensation act. However, the insured employer shall reimburse the association for any deductibles that are owed as part of the insured's obligations.

(b) Be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent.

(c)(i) Allocate claims paid and expenses incurred among the three accounts enumerated in RCW 48.32.040 separately, and assess member insurers separately for each account amounts necessary to pay the obligations of the association under (a) of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insol-

veny, the cost of examinations under RCW 48.32.110, and other expenses authorized by this chapter. Except as provided for in this subsection for member insurers who write longshore and harbor workers' compensation act insurance, the assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the calendar year preceding the assessment on the kinds of insurance in the account. Each member insurer shall be notified of the assessment not later than thirty days before it is due. No member insurer may be assessed in any year on any account an amount greater than two percent of that member insurer's net direct written premiums for the calendar year preceding the assessment on the kinds of insurance in the account. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in any account an amount sufficient to make all necessary payments from that account, the funds available may be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association shall pay claims in any order which it may deem reasonable, including the payment of claims in the order such claims are received from claimants or in groups or categories of claims, or otherwise. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Each member insurer serving as a servicing facility may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by such member insurer if they are chargeable to the account for which the assessment is made.

(ii) For member insurers who write longshore and harbor workers' compensation act insurance, (c)(i) of this subsection applies except as modified by the following:

(A) Beginning July 1, 2005, and prior to an insolvency, each member insurer who writes longshore and harbor workers' compensation act insurance in this state, whether on a primary or excess coverage basis, shall be assessed at a rate to be determined by the association, but not more than an annual rate of three percent of the net direct written premium for the calendar year preceding the assessment on this kind of insurance. Insurer assessments prior to an insolvency shall continue until a fund is established that equals four percent of the aggregate net direct premium for the calendar year preceding the assessment on all insurers authorized to write this kind of insurance;

(B) Subsequent to an insolvency, each member insurer who writes longshore and harbor workers' compensation act insurance in this state, whether on a primary or excess coverage basis, shall be assessed at a rate to be determined by the association, but not more than an annual rate of three percent of the net direct written premium for the calendar year preceding the assessment on this kind of insurance. Insurer assessments subsequent to an insolvency shall continue until a fund is established that the association deems sufficient to meet all claim and loan obligations of the fund, provided that

the net fund balance may not at any time exceed four percent of the aggregate net direct premium for the calendar year preceding the assessment on all insurers authorized to write this kind of insurance; and

(C) If any insurer fails to provide its net direct written premium data in an accurate and timely manner upon request by the association, the association may, at its discretion, substitute that insurer's direct written premiums for workers' compensation reported or reportable in its statutory annual statement page fourteen data for the state of Washington.

(d) Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims.

(e) Notify such persons as the commissioner directs under RCW 48.32.080(2)(a).

(f) Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer.

(g) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this chapter.

(2) The association may:

(a) Appear in, defend, and appeal any action on a claim brought against the association.

(b) Employ or retain such persons as are necessary to handle claims and perform other duties of the association.

(c) Borrow funds necessary to effect the purposes of this chapter in accord with the plan of operation. If such a loan is related to the account for longshore and harbor workers' compensation act insurance, the association may seek such a loan from the Washington longshore and harbor workers' compensation act insurance assigned risk plan under RCW 48.22.070 or from other interested parties.

(d) Sue or be sued.

(e) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this chapter.

(f) Perform such other acts as are necessary or proper to effectuate the purpose of this chapter.

(g) Refund to the member insurers in proportion to the contribution of each member insurer to that account that amount by which the assets of the account exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year.

(3) The association shall not access any funds from the automobile insurance account or the account for all other insurance to which this chapter applies to cover the cost of claims or administration arising under the account for longshore and harbor workers' compensation act insurance. [2005 c 100 § 6; 1975-'76 2nd ex.s. c 109 § 6; 1971 ex.s. c 265 § 6.]

**48.32.100 Nonduplication of recovery.** (1) Any person having a claim against his or her insurer under any provision in his or her insurance policy which is also a covered

claim shall be required to exhaust first any right under that policy. Any amount payable on a covered claim under this chapter shall be reduced by the amount of a recovery under the claimant's insurance policy.

(2) Any person having a claim that may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured except that if it is a first party claim for damage to property with a permanent location, from the association of the location of the property, and if it is a workers' compensation claim or a longshore and harbor workers' compensation act claim, from the association of the permanent residence of the claimant. Any recovery under this chapter shall be reduced by the amount of the recovery from any other insurance guaranty association or its equivalent. [2005 c 100 § 7; 1987 c 185 § 30; 1971 ex.s. c 265 § 10.]

**Intent—Severability—1987 c 185:** See notes following RCW 51.12.130.

**48.32.901 Effective date—2005 c 100.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 20, 2005]. [2005 c 100 § 8.]

## Chapter 48.32A RCW

### WASHINGTON LIFE AND DISABILITY INSURANCE GUARANTY ASSOCIATION ACT

#### Sections

48.32A.185 Prohibited advertisement of insurance guaranty association act in insurance sales—Notice to policy owners. (*Effective July 1, 2006.*)

**48.32A.185 Prohibited advertisement of insurance guaranty association act in insurance sales—Notice to policy owners.** (*Effective July 1, 2006.*) (1) No person, including an insurer, agent, or affiliate of an insurer may make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement, or statement, written or oral, which uses the existence of the insurance guaranty association of this state for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by the Washington life and disability insurance guaranty association act. However, this section does not apply to the Washington life and disability insurance guaranty association or any other entity which does not sell or solicit insurance.

(2) Within one hundred eighty days after July 22, 2001, the association shall prepare a summary document describing the general purposes and current limitations of this chapter and complying with subsection (3) of this section. This document must be submitted to the commissioner for approval. The document must also be available upon request by a policy owner. The distribution, delivery, contents, or interpretation of this document does not guarantee that either the policy or the contract or the owner of the policy or contract is cov-

ered in the event of the impairment or insolvency of a member insurer. The description document must be revised by the association as amendments to this chapter may require. Failure to receive this document does not give the policy owner, contract owner, certificate holder, or insured any greater rights than those stated in this chapter.

(3) The document prepared under subsection (2) of this section must contain a clear and conspicuous disclaimer on its face. The commissioner shall establish the form and content of the disclaimer. The disclaimer must:

(a) State the name and address of the life and disability insurance guaranty association and insurance department;

(b) Prominently warn the policy or contract owner that the life and disability insurance guaranty association may not cover the policy or, if coverage is available, it is subject to substantial limitations and exclusions and conditioned on continued residence in this state;

(c) State the types of policies for which guaranty funds provide coverage;

(d) State that the insurer and its agents are prohibited by law from using the existence of the life and disability insurance guaranty association for the purpose of sales, solicitation, or inducement to purchase any form of insurance;

(e) State that the policy or contract owner should not rely on coverage under the life and disability insurance guaranty association when selecting an insurer;

(f) Explain rights available and procedures for filing a complaint to allege a violation of any provisions of this chapter; and

(g) Provide other information as directed by the commissioner including but not limited to, sources for information about the financial condition of insurers provided that the information is not proprietary and is subject to disclosure under chapter 42.56 RCW.

(4) A member insurer must retain evidence of compliance with subsection (2) of this section for as long as the policy or contract for which the notice is given remains in effect. [2005 c 274 § 313; 2001 c 50 § 19.]

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

### Chapter 48.34 RCW

#### CREDIT LIFE INSURANCE AND CREDIT ACCIDENT AND HEALTH INSURANCE

Sections

48.34.910 Repealed.

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

### Chapter 48.38 RCW

#### CHARITABLE GIFT ANNUITY BUSINESS

Sections

48.38.030 Charitable annuity contract or policy form—Contents.

**48.38.030 Charitable annuity contract or policy form—Contents.** Each charitable annuity contract or policy form must include the following information:

(1) The value of the property to be transferred;

(2) The amount of the annuity to be paid to the transferor or the transferor's nominee;

(3) The manner in which and the intervals at which payment is to be made;

(4) The age of the person during whose life payment is to be made; and

(5) The reasonable value as of the date of the agreement of the benefits created. This value may not exceed by more than fifteen percent the net single premium for the benefits, determined according to the standard of valuation set forth in RCW 48.38.020(3). [2005 c 223 § 24; 1979 c 130 § 8.]

**Severability—1979 c 130:** See note following RCW 28B.10.485.

### Chapter 48.41 RCW

#### HEALTH INSURANCE COVERAGE ACCESS ACT

Sections

48.41.060 Board powers and duties.

48.41.090 Financial participation in pool—Computation, deficit assessments.

**48.41.060 Board powers and duties.** (1) The board shall have the general powers and authority granted under the laws of this state to insurance companies, health care service contractors, and health maintenance organizations, licensed or registered to offer or provide the kinds of health coverage defined under this title. In addition thereto, the board shall:

(a) Designate or establish the standard health questionnaire to be used under RCW 48.41.100 and 48.43.018, including the form and content of the standard health questionnaire and the method of its application. The questionnaire must provide for an objective evaluation of an individual's health status by assigning a discreet measure, such as a system of point scoring to each individual. The questionnaire must not contain any questions related to pregnancy, and pregnancy shall not be a basis for coverage by the pool. The questionnaire shall be designed such that it is reasonably expected to identify the eight percent of persons who are the most costly to treat who are under individual coverage in health benefit plans, as defined in RCW 48.43.005, in Washington state or are covered by the pool, if applied to all such persons;

(b) Obtain from a member of the American academy of actuaries, who is independent of the board, a certification that the standard health questionnaire meets the requirements of (a) of this subsection;

(c) Approve the standard health questionnaire and any modifications needed to comply with this chapter. The standard health questionnaire shall be submitted to an actuary for certification, modified as necessary, and approved at least every eighteen months. The designation and approval of the standard health questionnaire by the board shall not be subject to review and approval by the commissioner. The standard health questionnaire or any modification thereto shall not be used until ninety days after public notice of the approval of the questionnaire or any modification thereto, except that the initial standard health questionnaire approved for use by the board after March 23, 2000, may be used immediately following public notice of such approval;

(d) Establish appropriate rates, rate schedules, rate adjustments, expense allowances, claim reserve formulas and any other actuarial functions appropriate to the operation of the pool. Rates shall not be unreasonable in relation to the coverage provided, the risk experience, and expenses of providing the coverage. Rates and rate schedules may be adjusted for appropriate risk factors such as age and area variation in claim costs and shall take into consideration appropriate risk factors in accordance with established actuarial underwriting practices consistent with Washington state individual plan rating requirements under RCW 48.44.022 and 48.46.064;

(e)(i) Assess members of the pool in accordance with the provisions of this chapter, and make advance interim assessments as may be reasonable and necessary for the organizational or interim operating expenses. Any interim assessments will be credited as offsets against any regular assessments due following the close of the year.

(ii) Self-funded multiple employer welfare arrangements are subject to assessment under this subsection only in the event that assessments are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the commissioner shall initially request an advisory opinion from the United States department of labor or obtain a declaratory ruling from a federal court on the legality of imposing assessments on these arrangements before imposing the assessment. Once the legality of the assessments has been determined, the multiple employer welfare arrangement certified by the insurance commissioner must begin payment of these assessments.

(iii) If there has not been a final determination of the legality of these assessments, then beginning on the earlier of (A) the date the fourth multiple employer welfare arrangement has been certified by the insurance commissioner, or (B) April 1, 2006, the arrangement shall deposit the assessments imposed by this subsection into an interest bearing escrow account maintained by the arrangement. Upon a final determination that the assessments are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., all funds in the interest bearing escrow account shall be transferred to the board;

(f) Issue policies of health coverage in accordance with the requirements of this chapter;

(g) Establish procedures for the administration of the premium discount provided under RCW 48.41.200(3)(a)(iii);

(h) Contract with the Washington state health care authority for the administration of the premium discounts provided under RCW 48.41.200(3)(a) (i) and (ii);

(i) Set a reasonable fee to be paid to an insurance agent licensed in Washington state for submitting an acceptable application for enrollment in the pool; and

(j) Provide certification to the commissioner when assessments will exceed the threshold level established in RCW 48.41.037.

(2) In addition thereto, the board may:

(a) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this chapter including the authority, with the approval of the commissioner, to enter into contracts with similar pools of other states for the joint performance of common administrative functions, or

with persons or other organizations for the performance of administrative functions;

(b) Sue or be sued, including taking any legal action as necessary to avoid the payment of improper claims against the pool or the coverage provided by or through the pool;

(c) Appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the pool, policy, and other contract design, and any other function within the authority of the pool; and

(d) Conduct periodic audits to assure the general accuracy of the financial data submitted to the pool, and the board shall cause the pool to have an annual audit of its operations by an independent certified public accountant.

(3) Nothing in this section shall be construed to require or authorize the adoption of rules under chapter 34.05 RCW. [2005 c 7 § 2; 2004 c 260 § 26; 2000 c 79 § 9; 1997 c 337 § 5; 1997 c 231 § 211; 1989 c 121 § 3; 1987 c 431 § 6.]

**Effective date—2005 c 7:** See note following RCW 48.14.0201.

**Severability—Effective date—2004 c 260:** See RCW 48.125.900 and 48.125.901.

**Effective date—Severability—2000 c 79:** See notes following RCW 48.04.010.

**Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231:** See notes following RCW 48.43.005.

**Report on implementation of 1987 c 431:** "The board shall report to the commissioner and the appropriate committees of the legislature by April 1, 1990, on the implementation of this act. The report shall include information regarding enrollment, coverage utilization, cost, and any problems with the program and suggest remedies." [1987 c 431 § 26.]

**48.41.090 Financial participation in pool—Computation, deficit assessments.** (1) Following the close of each accounting year, the pool administrator shall determine the net premium (premiums less administrative expense allowances), the pool expenses of administration, and incurred losses for the year, taking into account investment income and other appropriate gains and losses.

(2)(a) Each member's proportion of participation in the pool shall be determined annually by the board based on annual statements and other reports deemed necessary by the board and filed by the member with the commissioner; and shall be determined by multiplying the total cost of pool operation by a fraction. The numerator of the fraction equals that member's total number of resident insured persons, including spouse and dependents, covered under all health plans in the state by that member during the preceding calendar year. The denominator of the fraction equals the total number of resident insured persons, including spouses and dependents, covered under all health plans in the state by all pool members during the preceding calendar year.

(b) For purposes of calculating the numerator and the denominator under (a) of this subsection:

(i) All health plans in the state by the state health care authority include only the uniform medical plan;

(ii) Each ten resident insured persons, including spouse and dependents, under a stop loss plan or the uniform medical plan shall count as one resident insured person;

(iii) Health plans serving medical care services program clients under RCW 74.09.035 are exempted from the calculation; and

(iv) Health plans established to serve elderly or disabled medicaid clients under chapter 74.09 RCW when the plan has

been implemented on a demonstration or pilot project basis are exempted from the calculation until July 1, 2009.

(c) Except as provided in RCW 48.41.037, any deficit incurred by the pool shall be recouped by assessments among members apportioned under this subsection pursuant to the formula set forth by the board among members.

(3) The board may abate or defer, in whole or in part, the assessment of a member if, in the opinion of the board, payment of the assessment would endanger the ability of the member to fulfill its contractual obligations. If an assessment against a member is abated or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other members in a manner consistent with the basis for assessments set forth in subsection (2) of this section. The member receiving such abatement or deferment shall remain liable to the pool for the deficiency.

(4) If assessments exceed actual losses and administrative expenses of the pool, the excess shall be held at interest and used by the board to offset future losses or to reduce pool premiums. As used in this subsection, "future losses" includes reserves for incurred but not reported claims. [2005 c 405 § 2; 2000 c 79 § 11; 1989 c 121 § 6; 1987 c 431 § 9.]

**Effective date—Severability—2000 c 79:** See notes following RCW 48.04.010.

## Chapter 48.43 RCW

### INSURANCE REFORM

(Formerly: Certified health plans)

#### Sections

48.43.055	Procedures for review and adjudication of health care provider complaints—Requirements. ( <i>Effective January 1, 2006.</i> )
48.43.600	Overpayment recovery—Carrier.
48.43.605	Overpayment recovery—Health care provider.

**48.43.055 Procedures for review and adjudication of health care provider complaints—Requirements.** (*Effective January 1, 2006.*) Each health carrier as defined under RCW 48.43.005 shall file with the commissioner its procedures for review and adjudication of complaints initiated by health care providers. Procedures filed under this section shall provide a fair review for consideration of complaints. Every health carrier shall provide reasonable means allowing any health care provider aggrieved by actions of the health carrier to be heard after submitting a written request for review. If the health carrier fails to grant or reject a request within thirty days after it is made, the complaining health care provider may proceed as if the complaint had been rejected. A complaint that has been rejected by the health carrier may be submitted to nonbinding mediation. Mediation shall be conducted under chapter 7.07 RCW, or any other rules of mediation agreed to by the parties. This section is solely for resolution of provider complaints. Complaints by, or on behalf of, a covered person are subject to the grievance processes in RCW 48.43.530. [2005 c 172 § 19; 2002 c 300 § 6; 1995 c 265 § 20.]

**Short title—Captions not law—Severability—Effective date—2005 c 172:** See RCW 7.07.900 through 7.07.902 and 7.07.904.

**Captions not law—Effective dates—Savings—Severability—1995 c 265:** See notes following RCW 70.47.015.

**48.43.600 Overpayment recovery—Carrier.** (1) Except in the case of fraud, or as provided in subsections (2) and (3) of this section, a carrier may not: (a) Request a refund from a health care provider of a payment previously made to satisfy a claim unless it does so in writing to the provider within twenty-four months after the date that the payment was made; or (b) request that a contested refund be paid any sooner than six months after receipt of the request. Any such request must specify why the carrier believes the provider owes the refund. If a provider fails to contest the request in writing to the carrier within thirty days of its receipt, the request is deemed accepted and the refund must be paid.

(2) A carrier may not, if doing so for reasons related to coordination of benefits with another carrier or entity responsible for payment of a claim: (a) Request a refund from a health care provider of a payment previously made to satisfy a claim unless it does so in writing to the provider within thirty months after the date that the payment was made; or (b) request that a contested refund be paid any sooner than six months after receipt of the request. Any such request must specify why the carrier believes the provider owes the refund, and include the name and mailing address of the entity that has primary responsibility for payment of the claim. If a provider fails to contest the request in writing to the carrier within thirty days of its receipt, the request is deemed accepted and the refund must be paid.

(3) A carrier may at any time request a refund from a health care provider of a payment previously made to satisfy a claim if: (a) A third party, including a government entity, is found responsible for satisfaction of the claim as a consequence of liability imposed by law, such as tort liability; and (b) the carrier is unable to recover directly from the third party because the third party has either already paid or will pay the provider for the health services covered by the claim.

(4) If a contract between a carrier and a health care provider conflicts with this section, this section shall prevail. However, nothing in this section prohibits a health care provider from choosing at any time to refund to a carrier any payment previously made to satisfy a claim.

(5) For purposes of this section, "refund" means the return, either directly or through an offset to a future claim, of some or all of a payment already received by a health care provider.

(6) This section neither permits nor precludes a carrier from recovering from a subscriber, enrollee, or beneficiary any amounts paid to a health care provider for benefits to which the subscriber, enrollee, or beneficiary was not entitled under the terms and conditions of the health plan, insurance policy, or other benefit agreement.

(7) This section does not apply to claims for health care services provided through dental-only health carriers, health care services provided under Title XVIII (medicare) of the social security act, or medicare supplemental plans regulated under chapter 48.66 RCW. [2005 c 278 § 1.]

**Application—2005 c 278:** "This act applies to contracts issued or renewed on or after January 1, 2006." [2005 c 278 § 3.]

**48.43.605 Overpayment recovery—Health care provider.** (1) Except in the case of fraud, or as provided in subsection (2) of this section, a health care provider may not: (a) Request additional payment from a carrier to satisfy a claim

unless he or she does so in writing to the carrier within twenty-four months after the date that the claim was denied or payment intended to satisfy the claim was made; or (b) request that the additional payment be made any sooner than six months after receipt of the request. Any such request must specify why the provider believes the carrier owes the additional payment.

(2) A health care provider may not, if doing so for reasons related to coordination of benefits with another carrier or entity responsible for payment of a claim: (a) Request additional payment from a carrier to satisfy a claim unless he or she does so in writing to the carrier within thirty months after the date the claim was denied or payment intended to satisfy the claim was made; or (b) request that the additional payment be made any sooner than six months after receipt of the request. Any such request must specify why the provider believes the carrier owes the additional payment, and include the name and mailing address of any entity that has disclaimed responsibility for payment of the claim.

(3) If a contract between a carrier and a health care provider conflicts with this section, this section shall prevail. However, nothing in this section prohibits a carrier from choosing at any time to make additional payments to a provider to satisfy a claim.

(4) This section does not apply to claims for health care services provided through dental-only health carriers, health care services provided under Title XVIII (medicare) of the social security act, or medicare supplemental plans regulated under chapter 48.66 RCW. [2005 c 278 § 2.]

**Application—2005 c 278:** See note following RCW 48.43.600.

### Chapter 48.44 RCW HEALTH CARE SERVICES

#### Sections

48.44.240	Chemical dependency benefits—Provisions of group contracts delivered or renewed after January 1, 1988.
48.44.340	Mental health treatment, optional supplemental coverage—Waiver.
48.44.341	Mental health services—Definition—Coverage required, when.
48.44.470	Nonresident pharmacies. ( <i>Effective July 1, 2006.</i> )

**48.44.240 Chemical dependency benefits—Provisions of group contracts delivered or renewed after January 1, 1988.** Each group contract for health care services that is delivered or issued for delivery or renewed, on or after January 1, 1988, must contain provisions providing benefits for the treatment of chemical dependency rendered to covered persons by a provider that is an "approved treatment program" under RCW 70.96A.020(3). [2005 c 223 § 25; 1990 1st ex.s. c 3 § 12; 1987 c 458 § 16; 1975 1st ex.s. c 266 § 14; 1974 ex.s. c 119 § 4.]

**Effective date—Severability—1987 c 458:** See notes following RCW 48.21.160.

**Severability—1975 1st ex.s. c 266:** See note following RCW 48.01.010.

**Legislative declaration—1974 ex.s. c 119:** See RCW 48.21.160.

*Chemical dependency benefits, rules: RCW 48.21.197.*

**48.44.340 Mental health treatment, optional supplemental coverage—Waiver.** (1) For groups not covered by [2005 RCW Supp—page 666]

RCW 48.44.341, each health care service contractor providing hospital or medical services or benefits in this state under group contracts for health care services under this chapter which are issued, delivered, or renewed in this state shall offer optional supplemental coverage for mental health treatment for the insured and the insured's covered dependents.

(2) Benefits shall be provided under the optional supplemental coverage for mental health treatment whether treatment is rendered by: (a) A licensed mental health provider regulated under chapter 18.57, 18.71, 18.79, 18.83, or 18.225 RCW; (b) a community mental health agency licensed by the department of social and health services pursuant to chapter 71.24 RCW; or (c) a state hospital as defined in RCW 72.23.010. The treatment shall be covered at the usual and customary rates for such treatment. The health care service contractor providing optional coverage under the provisions of this section for mental health services may establish separate usual and customary rates for services rendered by the different categories of providers listed in (a) through (c) of this subsection. However, the treatment may be subject to contract provisions with respect to reasonable deductible amounts or copayments. In order to qualify for coverage under this section, a licensed community mental health agency shall have in effect a plan for quality assurance and peer review, and the treatment shall be supervised by one of the categories of providers listed in (a) of this subsection.

(3) For groups not covered by RCW 48.44.341, the group contract for health care services may provide that all the coverage for mental health treatment is waived for all covered members if the contract holder so states in advance in writing to the health care service contractor.

(4) This section shall not apply to a group health care service contract that has been entered into in accordance with a collective bargaining agreement between management and labor representatives prior to March 1, 1987. [2005 c 6 § 8; 1987 c 283 § 4; 1986 c 184 § 3; 1983 c 35 § 2.]

**Findings—Intent—Severability—2005 c 6:** See notes following RCW 41.05.600.

**Severability—Savings—1987 c 283:** See notes following RCW 43.20A.020.

**Legislative intent—Effective date—Severability—1986 c 184:** See notes following RCW 48.21.240.

**Effective date—Severability—1983 c 35:** See notes following RCW 48.21.240.

**48.44.341 Mental health services—Definition—Coverage required, when.** (1) For the purposes of this section, "mental health services" means medically necessary outpatient and inpatient services provided to treat mental disorders covered by the diagnostic categories listed in the most current version of the diagnostic and statistical manual of mental disorders, published by the American psychiatric association, on July 24, 2005, or such subsequent date as may be provided by the insurance commissioner by rule, consistent with the purposes of chapter 6, Laws of 2005, with the exception of the following categories, codes, and services: (a) Substance related disorders; (b) life transition problems, currently referred to as "V" codes, and diagnostic codes 302 through 302.9 as found in the diagnostic and statistical manual of mental disorders, 4th edition, published by the American psychiatric association; (c) skilled nursing facility services,

home health care, residential treatment, and custodial care; and (d) court ordered treatment unless the health care service contractor's medical director or designee determines the treatment to be medically necessary.

(2) All health service contracts providing health benefit plans that provide coverage for medical and surgical services shall provide:

(a) For all health benefit plans established or renewed on or after January 1, 2006, for groups of more than fifty employees coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(b) For all health benefit plans established or renewed on or after January 1, 2008, for groups of more than fifty employees coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(c) For all health benefit plans established or renewed on or after July 1, 2010, for groups of more than fifty employees coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services. If the health benefit plan imposes any deductible, mental health services shall be included with medical and surgical services for the purpose of meeting the deductible requirement. Treatment limitations or any other financial requirements on coverage for mental health services are only allowed if the same limitations or requirements are imposed on coverage for medical and surgical services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(3) In meeting the requirements of subsection (2)(a) and (b) of this section, health benefit plans may not reduce the number of mental health outpatient visits or mental health inpatient days below the level in effect on July 1, 2002.

(4) This section does not prohibit a requirement that mental health services be medically necessary as determined by the medical director or designee, if a comparable requirement is applicable to medical and surgical services.

(5) Nothing in this section shall be construed to prevent the management of mental health services. [2005 c 6 § 4.]

**Findings—Intent—Severability—2005 c 6:** See notes following RCW 41.05.600.

**48.44.470 Nonresident pharmacies. (Effective July 1, 2006.)** For the purposes of this chapter, a nonresident pharmacy is defined as any pharmacy located outside this state that ships, mails, or delivers, in any manner, except when delivered in person to an enrolled participant or his/her representative, controlled substances, legend drugs, or devices into this state.

After October 1, 1991, a health care service contractor providing coverage of prescription drugs from nonresident pharmacies may only provide coverage from licensed nonresident pharmacies. The health care service contractors shall obtain proof of current licensure in conformity with this section and RCW 18.64.350 through 18.64.400 from the nonresident pharmacy and keep that proof of licensure on file.

The department may request from the health care service contractor the proof of current licensure for all nonresident pharmacies through which the insurer is providing coverage for prescription drugs for residents of the state of Washington. This information, which may constitute a full or partial customer list, shall be confidential and exempt from public disclosure, and from the requirements of chapter 42.56 RCW. The board or the department shall not be restricted in the disclosure of the name of a nonresident pharmacy that is or has been licensed under RCW 18.64.360 or 18.64.370 or of the identity of a nonresident pharmacy disciplined under RCW 18.64.350 through 18.64.400. [2005 c 274 § 314; 1991 c 87 § 9.]

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

**Effective date—1991 c 87:** See note following RCW 18.64.350.

## Chapter 48.46 RCW

### HEALTH MAINTENANCE ORGANIZATIONS

#### Sections

48.46.290	Mental health treatment, optional supplemental coverage—Waiver.
48.46.291	Mental health services—Definition—Coverage required, when.
48.46.540	Nonresident pharmacies. ( <i>Effective July 1, 2006.</i> )

**48.46.290 Mental health treatment, optional supplemental coverage—Waiver.** (1) For groups not covered by RCW 48.46.291, each health maintenance organization pro-

viding services or benefits for hospital or medical care coverage in this state under group health maintenance agreements which are issued, delivered, or renewed in this state shall offer optional supplemental coverage for mental health treatment to the enrolled participant and the enrolled participant's covered dependents.

(2) Benefits shall be provided under the optional supplemental coverage for mental health treatment whether treatment is rendered by the health maintenance organization or the health maintenance organization refers the enrolled participant or the enrolled participant's covered dependents for treatment by: (a) A licensed mental health provider regulated under chapter 18.57, 18.71, 18.79, 18.83, or 18.225 RCW; (b) a community mental health agency licensed by the department of social and health services pursuant to chapter 71.24 RCW; or (c) a state hospital as defined in RCW 72.23.010. The treatment shall be covered at the usual and customary rates for such treatment. The health maintenance organization providing optional coverage under the provisions of this section for mental health services may establish separate usual and customary rates for services rendered by the different categories of providers listed in (a) through (c) of this subsection. However, the treatment may be subject to contract provisions with respect to reasonable deductible amounts or copayments. In order to qualify for coverage under this section, a licensed community mental health agency shall have in effect a plan for quality assurance and peer review, and the treatment shall be supervised by one of the categories of providers listed in (a) of this subsection.

(3) For groups not covered by RCW 48.46.291, the group health maintenance agreement may provide that all the coverage for mental health treatment is waived for all covered members if the contract holder so states in advance in writing to the health maintenance organization.

(4) This section shall not apply to a group health maintenance agreement that has been entered into in accordance with a collective bargaining agreement between management and labor representatives prior to March 1, 1987. [2005 c 6 § 9; 1987 c 283 § 5; 1986 c 184 § 4; 1983 c 35 § 3.]

**Findings—Intent—Severability—2005 c 6:** See notes following RCW 41.05.600.

**Severability—Savings—1987 c 283:** See notes following RCW 43.20A.020.

**Legislative intent—Effective date—Severability—1986 c 184:** See notes following RCW 48.21.240.

**Effective date—Severability—1983 c 35:** See notes following RCW 48.21.240.

**48.46.291 Mental health services—Definition—Coverage required, when.** (1) For the purposes of this section, "mental health services" means medically necessary outpatient and inpatient services provided to treat mental disorders covered by the diagnostic categories listed in the most current version of the diagnostic and statistical manual of mental disorders, published by the American psychiatric association, on July 24, 2005, or such subsequent date as may be provided by the insurance commissioner by rule, consistent with the purposes of chapter 6, Laws of 2005, with the exception of the following categories, codes, and services: (a) Substance related disorders; (b) life transition problems, currently referred to as "V" codes, and diagnostic codes 302 through

302.9 as found in the diagnostic and statistical manual of mental disorders, 4th edition, published by the American psychiatric association; (c) skilled nursing facility services, home health care, residential treatment, and custodial care; and (d) court ordered treatment unless the health maintenance organization's medical director or designee determines the treatment to be medically necessary.

(2) All health benefit plans offered by health maintenance organizations that provide coverage for medical and surgical services shall provide:

(a) For all health benefit plans established or renewed on or after January 1, 2006, for groups of more than fifty employees coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(b) For all health benefit plans established or renewed on or after January 1, 2008, for groups of more than fifty employees coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(c) For all health benefit plans established or renewed on or after July 1, 2010, for groups of more than fifty employees coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services. If the health benefit plan imposes any deductible, mental health services shall be included with medical and surgical services for the purpose of meeting the deductible requirement. Treatment limitations or any other financial requirements on coverage for mental health services are only allowed if the same



limitations or requirements are imposed on coverage for medical and surgical services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(3) In meeting the requirements of subsection (2)(a) and (b) of this section, health benefit plans may not reduce the number of mental health outpatient visits or mental health inpatient days below the level in effect on July 1, 2002.

(4) This section does not prohibit a requirement that mental health services be medically necessary as determined by the medical director or designee, if a comparable requirement is applicable to medical and surgical services.

(5) Nothing in this section shall be construed to prevent the management of mental health services. [2005 c 6 § 5.]

**Findings—Intent—Severability—2005 c 6:** See notes following RCW 41.05.600.

**48.46.540 Nonresident pharmacies. (Effective July 1, 2006.)** For the purposes of this chapter, a nonresident pharmacy is defined as any pharmacy located outside this state that ships, mails, or delivers, in any manner, except when delivered in person to an enrolled participant or his/her representative, controlled substances, legend drugs, or devices into this state.

After October 1, 1991, a health maintenance organization providing coverage of prescription drugs from nonresident pharmacies may only provide coverage from licensed nonresident pharmacies. The health maintenance organizations shall obtain proof of current licensure in conformity with this section and RCW 18.64.350 through 18.64.400 from the nonresident pharmacy and keep that proof of licensure on file.

The department may request from the health maintenance organization the proof of current licensure for all nonresident pharmacies through which the insurer is providing coverage for prescription drugs for residents of the state of Washington. This information, which may constitute a full or partial customer list, shall be confidential and exempt from public disclosure, and from the requirements of chapter 42.56 RCW. The board or the department shall not be restricted in the disclosure of the name of a nonresident pharmacy that is or has been licensed under RCW 18.64.360 or 18.64.370 or of the identity of a nonresident pharmacy disciplined under RCW 18.64.350 through 18.64.400. [2005 c 274 § 315; 1991 c 87 § 10.]

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

**Effective date—1991 c 87:** See note following RCW 18.64.350.

## Chapter 48.62 RCW

### LOCAL GOVERNMENT INSURANCE TRANSACTIONS

#### Sections

48.62.031	Authority to self-insure—Options—Risk manager.
48.62.034	Joint self-insurance program—Actions authorized.
48.62.101	Access to information—Executive sessions—Public records act. (Effective July 1, 2006.)

**48.62.031 Authority to self-insure—Options—Risk manager.** (1) The governing body of a local government entity may individually self-insure, may join or form a self-insurance program together with other entities, and may jointly purchase insurance or reinsurance with other entities for property and liability risks, and health and welfare benefits only as permitted under this chapter. In addition, the entity or entities may contract for or hire personnel to provide risk management, claims, and administrative services in accordance with this chapter.

(2) The agreement to form a joint self-insurance program shall be made under chapter 39.34 RCW and may create a separate legal or administrative entity with powers delegated thereto. Such entity may include or create a nonprofit corporation organized under chapter 24.03 or 24.06 RCW or a partnership organized under chapter 25.04 RCW.

(3) Every individual and joint self-insurance program is subject to audit by the state auditor.

(4) If provided for in the agreement or contract established under chapter 39.34 RCW, a joint self-insurance program may, in conformance with this chapter:

(a) Contract or otherwise provide for risk management and loss control services;

(b) Contract or otherwise provide legal counsel for the defense of claims and other legal services;

(c) Consult with the state insurance commissioner and the state risk manager;

(d) Jointly purchase insurance and reinsurance coverage in such form and amount as the program's participants agree by contract;

(e) Obligate the program's participants to pledge revenues or contribute money to secure the obligations or pay the expenses of the program, including the establishment of a reserve or fund for coverage; and

(f) Possess any other powers and perform all other functions reasonably necessary to carry out the purposes of this chapter.

(5) A local government entity that has decided to assume a risk of loss must have available for inspection by the state auditor a written report indicating the class of risk or risks the governing body of the entity has decided to assume.

(6) Every joint self-insurance program governed by this chapter shall appoint the risk manager as its attorney to receive service of, and upon whom shall be served, all legal process issued against it in this state upon causes of action arising in this state.

(a) Service upon the risk manager as attorney shall constitute service upon the program. Service upon joint insurance programs subject to chapter 30, Laws of 1991 1st sp. sess. can be had only by service upon the risk manager. At the time of service, the plaintiff shall pay to the risk manager a fee to be set by the risk manager, taxable as costs in the action.

(b) With the initial filing for approval with the risk manager, each joint self-insurance program shall designate by name and address the person to whom the risk manager shall forward legal process so served upon him or her. The joint self-insurance program may change such person by filing a new designation.

(c) The appointment of the risk manager as attorney shall be irrevocable, shall bind any successor in interest or to the

assets or liabilities of the joint self-insurance program, and shall remain in effect as long as there is in force in this state any contract made by the joint self-insurance program or liabilities or duties arising therefrom.

(d) The risk manager shall keep a record of the day and hour of service upon him or her of all legal process. A copy of the process, by registered mail with return receipt requested, shall be sent by the risk manager, to the person designated for the purpose by the joint self-insurance program in its most recent such designation filed with the risk manager. No proceedings shall be had against the joint self-insurance program, and the program shall not be required to appear, plead, or answer, until the expiration of forty days after the date of service upon the risk manager. [2005 c 147 § 1; 1991 sp.s. c 30 § 3.]

**48.62.034 Joint self-insurance program—Actions authorized.** (1) For the purpose of carrying out a joint self-insurance program, a joint self-insurance program and a separate legal entity created under RCW 48.62.031 each may:

(a) Contract indebtedness and issue and sell revenue bonds evidencing such indebtedness or establish lines of credit pursuant to and in the manner provided for local governments in chapter 39.46 RCW with the joint board under RCW 39.34.030; board of directors under RCW 48.62.081; or governing board of a separate legal entity formed under RCW 48.62.031, performing the functions to be performed by the governing body of a local government under chapter 39.46 RCW and appointing a treasurer to perform the functions to be performed by the treasurer under chapter 39.46 RCW;

(b) Contract indebtedness and issue and sell short-term obligations evidencing such indebtedness pursuant to and in the manner provided for municipal corporations in chapter 39.50 RCW with the joint board under RCW 39.34.030; board of directors under RCW 48.62.081; or governing board of a separate legal entity formed under RCW 48.62.031, performing the functions to be performed by the governing body of a municipal corporation under chapter 39.50 RCW; and

(c) Contract indebtedness and issue and sell refunding bonds pursuant to and in the manner provided for public bodies in chapter 39.53 RCW with the joint board under RCW 39.34.030; board of directors under RCW 48.62.081; or governing board of a separate legal entity formed under RCW 48.62.031, performing the functions to be performed by the governing body of a public body under chapter 39.53 RCW.

(2) For the purpose of carrying out a joint self-insurance program, a joint self-insurance program and a separate legal entity formed under RCW 48.62.031 each may make loans of the proceeds of revenue bonds issued under this section to a joint self-insurance program or a local government entity that has joined or formed a joint self-insurance program.

(3) For the purpose of carrying out a joint self-insurance program, a joint self-insurance program and each local government entity that has joined or formed a joint self-insurance program may accept loans of the proceeds of revenue bonds issued under this section. [2005 c 147 § 2.]

**48.62.101 Access to information—Executive sessions—Public records act.** (*Effective July 1, 2006.*) (1) All

[2005 RCW Supp—page 670]

self-insurance programs governed by this chapter may provide for executive sessions in accordance with chapter 42.30 RCW to consider litigation and settlement of claims when it appears that public discussion of these matters would impair the program's ability to conduct its business effectively.

(2) Notwithstanding any provision to the contrary contained in the public records act, chapter 42.56 RCW, in a claim or action against the state or a local government entity, no person is entitled to discover that portion of any funds or liability reserve established for purposes of satisfying a claim or cause of action, except that the reserve is discoverable in a supplemental or ancillary proceeding to enforce a judgment. All other records of individual or joint self-insurance programs are subject to disclosure in accordance with chapter 42.56 RCW.

(3) In accordance with chapter 42.56 RCW, bargaining groups representing local government employees shall have reasonable access to information concerning the experience and performance of any health and welfare benefits program established for the benefit of such employees. [2005 c 274 § 316; 1991 sp.s. c 30 § 10.]

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

## Chapter 48.66 RCW MEDICARE SUPPLEMENTAL HEALTH INSURANCE ACT

### Sections

48.66.020	Definitions.
48.66.025	Restrictions on issuers—Age of applicants—Preexisting conditions.
48.66.045	Mandated coverage for replacement policies—Rates on a community-rated basis.
48.66.055	Termination or disenrollment—Application for coverage—Eligible persons—Types of policies—Guaranteed issue periods.
48.66.130	Preexisting condition limitations.

**48.66.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Medicare supplemental insurance" or "medicare supplement insurance policy" refers to a group or individual policy of disability insurance or a subscriber contract of a health care service contractor, a health maintenance organization, or a fraternal benefit society, which relates its benefits to medicare, or which is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare. Such term does not include:

(a) A policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations; or

(b) A policy issued pursuant to a contract under section 1876 of the federal social security act (42 U.S.C. Sec. 1395 et seq.), or an issued policy under a demonstration specified in 42 U.S.C. Sec. 1395(g)(1); or

(c) Medicare advantage plans established under medicare part C; or

(d) Outpatient prescription drug plans established under medicare part D; or

(e) Any health care prepayment plan that provides benefits pursuant to an agreement under section 1833(a)(1)(A) of the federal social security act.

(2) "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

(3) "Medicare advantage plan" means a plan of coverage for health benefits under medicare part C as defined in 42 U.S.C. Sec. 1395w-28(b), and includes:

(a) Coordinated care plans which provide health care services, including but not limited to health maintenance organization plans (with or without a point-of-service option), plans offered by provider-sponsored organizations, and preferred provider organization plans;

(b) Medical savings account plans coupled with a contribution into a medicare advantage plan medical savings account; and

(c) Medicare advantage private fee-for-service plans.

(4) "Medicare eligible expenses" means health care expenses of the kinds covered by medicare parts A and B, to the extent recognized as reasonable and medically necessary by medicare.

(5) "Applicant" means:

(a) In the case of an individual medicare supplement insurance policy or subscriber contract, the person who seeks to contract for insurance benefits; and

(b) In the case of a group medicare supplement insurance policy or subscriber contract, the proposed certificate holder.

(6) "Certificate" means any certificate delivered or issued for delivery in this state under a group medicare supplement insurance policy.

(7) "Loss ratio" means the incurred claims as a percentage of the earned premium computed under rules adopted by the insurance commissioner.

(8) "Preexisting condition" means a covered person's medical condition that caused that person to have received medical advice or treatment during a specified time period immediately prior to the effective date of coverage.

(9) "Disclosure form" means the form designated by the insurance commissioner which discloses medicare benefits, the supplemental benefits offered by the insurer, and the remaining amount for which the insured will be responsible.

(10) "Issuer" includes insurance companies, health care service contractors, health maintenance organizations, fraternal benefit societies, and any other entity delivering or issuing for delivery medicare supplement policies or certificates to a resident of this state.

(11) "Bankruptcy" means when a medicare advantage organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in the state.

(12) "Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than sixty-three days.

(13)(a) "Creditable coverage" means, with respect to an individual, coverage of the individual provided under any of the following:

(i) A group health plan;

(ii) Health insurance coverage;

(iii) Part A or part B of Title XVIII of the social security act (medicare);

(iv) Title XIX of the social security act (medicaid), other than coverage consisting solely of benefits under section 1928;

(v) Chapter 55 of Title 10 U.S.C. (CHAMPUS);

(vi) A medical care program of the Indian health service or of a tribal organization;

(vii) A state health benefits risk pool;

(viii) A health plan offered under chapter 89 of Title 5 U.S.C. (federal employees health benefits program);

(ix) A public health plan as defined in federal regulation; and

(x) A health benefit plan under section 5(e) of the peace corps act (22 U.S.C. Sec. 2504(e)).

(b) "Creditable coverage" does not include one or more, or any combination, of the following:

(i) Coverage only for accident or disability income insurance, or any combination thereof;

(ii) Coverage issued as a supplement to liability insurance;

(iii) Liability insurance, including general liability insurance and automobile liability insurance;

(iv) Worker's compensation or similar insurance;

(v) Automobile medical payment insurance;

(vi) Credit-only insurance;

(vii) Coverage for on-site medical clinics; and

(viii) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.

(c) "Creditable coverage" does not include the following benefits if they are provided under a separate policy, certificate, or contract of insurance or are otherwise not an integral part of the plan:

(i) Limited scope dental or vision benefits;

(ii) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; and

(iii) Other similar, limited benefits as are specified in federal regulations.

(d) "Creditable coverage" does not include the following benefits if offered as independent, noncoordinated benefits:

(i) Coverage only for a specified disease or illness; and

(ii) Hospital indemnity or other fixed indemnity insurance.

(e) "Creditable coverage" does not include the following if it is offered as a separate policy, certificate, or contract of insurance:

(i) Medicare supplemental health insurance as defined under section 1882(g)(1) of the social security act;

(ii) Coverage supplemental to the coverage provided under chapter 55 of Title 10 U.S.C.; and

(iii) Similar supplemental coverage provided to coverage under a group health plan.

(14) "Employee welfare benefit plan" means a plan, fund, or program of employee benefits as defined in 29 U.S.C. Sec. 1002 (employee retirement income security act).

(15) "Insolvency" means when an issuer, licensed to transact the business of insurance in this state, has had a final

order of liquidation entered against it with a finding of insolvency by a court of competent jurisdiction in the issuer's state of domicile. [2005 c 41 § 3; 1996 c 269 § 1; 1995 c 85 § 1; 1992 c 138 § 1; 1981 c 153 § 2.]

**Intent—2005 c 41:** See note following RCW 48.66.025.

**Effective date—1996 c 269:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 29, 1996]." [1996 c 269 § 2.]

**48.66.025 Restrictions on issuers—Age of applicants—Preexisting conditions.** (1) An issuer may not deny or condition the issuance or effectiveness of any medicare supplement policy or certificate available for sale in this state, or discriminate in the pricing of a policy or certificate, because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six-month period beginning with the first day of the first month in which an individual is both sixty-five years of age or older and is enrolled for benefits under medicare part B. Each medicare supplement policy and certificate currently available from an insurer must be made available to all applicants who qualify under this subsection without regard to age.

(2) If an applicant qualifies under this section and submits an application during the time period referenced in subsection (1) of this section and, as of the date of application, has had a continuous period of creditable coverage of at least three months, the issuer may not exclude benefits based on a preexisting condition.

(3) If an applicant qualified under this section submits an application during the time period referenced in subsection (1) of this section and, as of the date of application, has had a continuous period of creditable coverage that is less than three months, the issuer must reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. [2005 c 41 § 2.]

**Intent—2005 c 41:** "This act is intended to satisfy the directive from the centers for medicare and medicaid services requiring states to implement changes to their medicare supplement insurance requirements to comply with the standards prescribed by the medicare modernization act that are consistent with amendments to the national association of insurance commissioners medicare supplement insurance minimum standards model act along with other corrections to be compliant with federal requirements." [2005 c 41 § 1.]

**48.66.045 Mandated coverage for replacement policies—Rates on a community-rated basis.** Every issuer of a medicare supplement insurance policy or certificate providing coverage to a resident of this state issued on or after January 1, 1996, shall:

(1) Unless otherwise provided for in RCW 48.66.055, issue coverage under its standardized benefit plans B, C, D, E, F, G, K, and L without evidence of insurability to any resident of this state who is eligible for both medicare hospital and physician services by reason of age or by reason of disability or end-stage renal disease, if the medicare supplement policy replaces another medicare supplement standardized benefit plan policy or certificate B, C, D, E, F, G, K, or L, or

other more comprehensive coverage than the replacing policy;

(2) Unless otherwise provided for in RCW 48.66.055, issue coverage under its standardized plans A, H, I, and J without evidence of insurability to any resident of this state who is eligible for both medicare hospital and physician services by reason of age or by reason of disability or end-stage renal disease, if the medicare supplement policy replaces another medicare supplement policy or certificate which is the same standardized plan as the replaced policy. After December 31, 2005, plans H, I, and J may be replaced only by the same plan if that plan has been modified to remove outpatient prescription drug coverage; and

(3) Set rates only on a community-rated basis. Premiums shall be equal for all policyholders and certificate holders under a standardized medicare supplement benefit plan form, except that an issuer may vary premiums based on spousal discounts, frequency of payment, and method of payment including automatic deposit of premiums and may develop no more than two rating pools that distinguish between an insured's eligibility for medicare by reason of:

(a) Age; or

(b) Disability or end-stage renal disease. [2005 c 41 § 4; 2004 c 83 § 1; 1999 c 334 § 1; 1995 c 85 § 3.]

**Intent—2005 c 41:** See note following RCW 48.66.025.

**Severability—2004 c 83:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 83 § 2.]

**Effective date—2004 c 83:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 22, 2004]." [2004 c 83 § 3.]

**Effective date—1999 c 334:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 1999]." [1999 c 334 § 2.]

**48.66.055 Termination or disenrollment—Application for coverage—Eligible persons—Types of policies—Guaranteed issue periods.** (1) Under this section, persons eligible for a medicare supplement policy or certificate are those individuals described in subsection (3) of this section who, subject to subsection (3)(b)(ii) of this section, apply to enroll under the policy not later than sixty-three days after the date of the termination of enrollment described in subsection (3) of this section, and who submit evidence of the date of termination or disenrollment, or medicare part D enrollment, with the application for a medicare supplement policy.

(2) With respect to eligible persons, an issuer may not deny or condition the issuance or effectiveness of a medicare supplement policy described in subsection (4) of this section that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a medicare supplement policy.

(3) "Eligible persons" means an individual that meets the requirements of (a), (b), (c), (d), (e), or (f) of this subsection, as follows:

(a) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under medicare; and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual;

(b)(i) The individual is enrolled with a medicare advantage organization under a medicare advantage plan under part C of medicare, and any of the following circumstances apply, or the individual is sixty-five years of age or older and is enrolled with a program of all inclusive care for the elderly (PACE) provider under section 1894 of the social security act, and there are circumstances similar to those described in this subsection (3)(b) that would permit discontinuance of the individual's enrollment with the provider if the individual were enrolled in a medicare advantage plan:

(A) The certification of the organization or plan has been terminated;

(B) The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

(C) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the secretary of the United States department of health and human services, but not including termination of the individual's enrollment on the basis described in section 1851(g)(3)(B) of the federal social security act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under section 1856 of the federal social security act), or the plan is terminated for all individuals within a residence area;

(D) The individual demonstrates, in accordance with guidelines established by the secretary of the United States department of health and human services, that:

(I) The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

(II) The organization, an agent, or other entity acting on the organization's behalf materially misrepresented the plan's provisions in marketing the plan to the individual; or

(E) The individual meets other exceptional conditions as the secretary of the United States department of health and human services may provide.

(ii)(A) An individual described in (b)(i) of this subsection may elect to apply (a) of this subsection by substituting, for the date of termination of enrollment, the date on which the individual was notified by the medicare advantage organization of the impending termination or discontinuance of the medicare advantage plan it offers in the area in which the individual resides, but only if the individual disenrolls from the plan as a result of such notification.

(B) In the case of an individual making the election under (b)(ii)(A) of this subsection, the issuer involved shall accept the application of the individual submitted before the date of termination of enrollment, but the coverage under subsection (1) of this section is only effective upon termination of coverage under the medicare advantage plan involved;

(c)(i) The individual is enrolled with:

(A) An eligible organization under a contract under section 1876 (medicare risk or cost);

(B) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

(C) An organization under an agreement under section 1833(a)(1)(A) (health care prepayment plan); or

(D) An organization under a medicare select policy; and

(ii) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under (b)(i) of this subsection;

(d) The individual is enrolled under a medicare supplement policy and the enrollment ceases because:

(i)(A) Of the insolvency of the issuer or bankruptcy of the nonissuer organization; or

(B) Of other involuntary termination of coverage or enrollment under the policy;

(ii) The issuer of the policy substantially violated a material provision of the policy; or

(iii) The issuer, an agent, or other entity acting on the issuer's behalf materially misrepresented the policy's provisions in marketing the policy to the individual;

(e)(i) The individual was enrolled under a medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any medicare advantage organization under a medicare advantage plan under part C of medicare, any eligible organization under a contract under section 1876 (medicare risk or cost), any similar organization operating under demonstration project authority, any PACE program under section 1894 of the social security act or a medicare select policy; and

(ii) The subsequent enrollment under (e)(i) of this subsection is terminated by the enrollee during any period within the first twelve months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under section 1851(e) of the federal social security act);

(f) The individual, upon first becoming eligible for benefits under part A of medicare at age sixty-five, enrolls in a medicare advantage plan under part C of medicare, or in a PACE program under section 1894, and disenrolls from the plan or program by not later than twelve months after the effective date of enrollment; or

(g) The individual enrolls in a medicare part D plan during the initial enrollment period and, at the time of enrollment in part D, was enrolled under a medicare supplement policy that covers outpatient prescription drugs, and the individual terminates enrollment in the medicare supplement policy and submits evidence of enrollment in medicare part D along with the application for a policy described in subsection (4)(d) of this section.

(4) An eligible person under subsection (3) of this section is entitled to a medicare supplement policy as follows:

(a) A person eligible under subsection (3)(a), (b), (c), and (d) of this section is entitled to a medicare supplement policy that has a benefit package classified as plan A through F (including F with a high deductible), K, or L, offered by any issuer;

(b)(i) Subject to (b)(ii) of this subsection, a person eligible under subsection (3)(e) of this section is entitled to the

same medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in (a) of this subsection;

(ii) After December 31, 2005, if the individual was most recently enrolled in a medicare supplement policy with an outpatient prescription drug benefit, a medicare supplement policy described in this subsection (4)(b)(ii) is:

(A) The policy available from the same issuer but modified to remove outpatient prescription drug coverage; or

(B) At the election of the policyholder, an A, B, C, F (including F with a high deductible), K, or L policy that is offered by any issuer;

(c) A person eligible under subsection (3)(f) of this section is entitled to any medicare supplement policy offered by any issuer; and

(d) A person eligible under subsection (3)(g) of this section is entitled to a medicare supplement policy that has a benefit package classified as plan A, B, C, F (including F with a high deductible), K, or L and that is offered and is available for issuance to new enrollees by the same issuer that issued the individual's medicare supplement policy with outpatient prescription drug coverage.

(5)(a) At the time of an event described in subsection (3) of this section, and because of which an individual loses coverage or benefits due to the termination of a contract, agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, must notify the individual of his or her rights under this section, and of the obligations of issuers of medicare supplement policies under subsection (1) of this section. The notice must be communicated contemporaneously with the notification of termination.

(b) At the time of an event described in subsection (3) of this section, and because of which an individual ceases enrollment under a contract, agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, must notify the individual of his or her rights under this section, and of the obligations of issuers of medicare supplement policies under subsection (1) of this section. The notice must be communicated within ten working days of the issuer receiving notification of disenrollment.

(6) Guaranteed issue time periods:

(a) In the case of an individual described in subsection (3)(a) of this section, the guaranteed issue period begins on the later of: (i) The date the individual receives a notice of termination or cessation of all supplemental health benefits (or, if a notice is not received, notice that a claim has been denied because of a termination or cessation), or (ii) the date that the applicable coverage terminates or ceases, and ends sixty-three days thereafter;

(b) In the case of an individual described in subsection (3)(b), (c), (e), or (f) of this section whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends sixty-three days after the date the applicable coverage is terminated;

(c) In the case of an individual described in subsection (3)(d)(i) of this section, the guaranteed issue period begins on the earlier of: (i) The date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice if any, and (ii) the date that the applicable coverage is terminated, and ends on the date that is sixty-three days after the date the coverage is terminated;

(d) In the case of an individual described in subsection (3)(b), (d)(ii) and (iii), (e), or (f) of this section, who disenrolls voluntarily, the guaranteed issue period begins on the date that is sixty days before the effective date of the disenrollment and ends on the date that is sixty-three days after the effective date;

(e) In the case of an individual described in subsection (3)(g) of this section, the guaranteed issue period begins on the date the individual receives notice pursuant to section 1882(v)(2)(B) of the federal social security act from the medicare supplement issuer during the sixty-day period immediately preceding the initial part D enrollment period and ends on the date that is sixty-three days after the effective date of the individual's coverage under medicare part D; and

(f) In the case of an individual described in subsection (3) of this section but not described in the preceding provisions of this subsection, the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is sixty-three days after the effective date.

(7) In the case of an individual described in subsection (3)(e) of this section whose enrollment with an organization or provider described in subsection (3)(e)(i) of this section is involuntarily terminated within the first twelve months of enrollment, and who, without an intervening enrollment, enrolls with another organization or provider, the subsequent enrollment is an initial enrollment as described in subsection (3)(e) of this section.

(8) In the case of an individual described in subsection (3)(f) of this section whose enrollment with a plan or in a program described in subsection (3)(f) of this section is involuntarily terminated within the first twelve months of enrollment, and who, without an intervening enrollment, enrolls in another plan or program, the subsequent enrollment is an initial enrollment as described in subsection (3)(f) of this section.

(9) For purposes of subsection (3)(e) and (f) of this section, an enrollment of an individual with an organization or provider described in subsection (3)(e)(i) of this section, or with a plan or in a program described in subsection (3)(f) of this section is not an initial enrollment under this subsection after the two-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan, or program. [2005 c 41 § 5; 2002 c 300 § 4.]

**Intent—2005 c 41:** See note following RCW 48.66.025.

**48.66.130 Preexisting condition limitations.** (1) On or after January 1, 1996, and notwithstanding any other provision of Title 48 RCW, a medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than three months from the effective date of coverage because it involved a preexisting condition.

(2) On or after January 1, 1996, a medicare supplement policy or certificate shall not define a preexisting condition more restrictively than as a condition for which medical advice was given or treatment was recommended by or received from a physician, or other health care provider acting within the scope of his or her license, within three months before the effective date of coverage.

(3) If a medicare supplement insurance policy or certificate contains any limitations with respect to preexisting conditions, such limitations must appear as a separate paragraph of the policy or certificate and be labeled as "Preexisting Condition Limitations."

(4) No exclusion or limitation of preexisting conditions may be applied to policies or certificates replaced in accordance with the provisions of RCW 48.66.045 if the policy or certificate replaced had been in effect for at least three months.

(5) If a medicare supplement policy or certificate replaces another medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods in the new medicare supplement policy or certificate for similar benefits to the extent such time was spent under the original policy.

(6) If a medicare supplement policy or certificate replaces another medicare supplement policy or certificate which has been in effect for at least three months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods for benefits similar to those contained in the original policy or certificate. [2005 c 41 § 6; 2002 c 300 § 3; 1995 c 85 § 2; 1992 c 138 § 9; 1981 c 153 § 13.]

**Intent—2005 c 41:** See note following RCW 48.66.025.

**Chapter 48.92 RCW**

**LIABILITY RISK RETENTION**

Sections

48.92.120 Agents, brokers, solicitors—License required.

**48.92.120 Agents, brokers, solicitors—License required.** (1) A person may not act or aid in any manner in soliciting, negotiating, or procuring liability insurance in this state from a risk retention group unless the person is licensed as an insurance agent or broker for casualty insurance in accordance with chapter 48.17 RCW and pays the fees designated for the license under RCW 48.14.010.

(2)(a) A person may not act or aid in any manner in soliciting, negotiating, or procuring liability insurance in this state for a purchasing group from an authorized insurer or a risk retention group chartered in a state unless the person is licensed as an insurance agent or broker for casualty insurance in accordance with chapter 48.17 RCW and pays the fees designated for the license under RCW 48.14.010.

(b) A person may not act or aid in any manner in soliciting, negotiating, or procuring liability insurance coverage in this state for a member of a purchasing group under a purchasing group's policy unless the person is licensed as an insurance agent or broker for casualty insurance in accordance with chapter 48.17 RCW and pays the fees designated for the license under RCW 48.14.010.

(c) A person may not act or aid in any manner in soliciting, negotiating, or procuring liability insurance from an insurer not authorized to do business in this state on behalf of a purchasing group located in this state unless the person is licensed as a surplus lines broker in accordance with chapter 48.15 RCW and pays the fees designated for the license under RCW 48.14.010.

(3) For purposes of acting as an agent or broker for a risk retention group or purchasing group under subsections (1) and (2) of this section, the requirement of residence in this state does not apply.

(4) Every person licensed under chapters 48.15 and 48.17 RCW, on business placed with risk retention groups or written through a purchasing group, must inform each prospective insured of the provisions of the notice required under RCW 48.92.040(7) in the case of a risk retention group and RCW 48.92.090(2) in the case of a purchasing group. [2005 c 223 § 31; 1993 c 462 § 101; 1987 c 306 § 12.]

**Severability—Implementation—1993 c 462:** See RCW 48.31B.901 and 48.31B.902.

**Chapter 48.94 RCW**

**REINSURANCE INTERMEDIARY ACT**

Sections

48.94.010 Acting as a reinsurance intermediary-broker or reinsurance intermediary-manager—Commissioner's powers—Licenses—Attorney exemption. *(Effective July 1, 2006.)*

**48.94.010 Acting as a reinsurance intermediary-broker or reinsurance intermediary-manager—Commissioner's powers—Licenses—Attorney exemption.** *(Effective July 1, 2006.)* (1) No person, firm, association, or corporation may act as a reinsurance intermediary-broker in this state if the person, firm, association, or corporation maintains an office either directly or as a member or employee of a firm or association, or an officer, director, or employee of a corporation:

(a) In this state, unless the person, firm, association, or corporation is a licensed reinsurance intermediary-broker in this state; or

(b) In another state, unless the person, firm, association, or corporation is a licensed reinsurance intermediary-broker in this state or another state having a regulatory scheme substantially similar to this chapter.

(2) No person, firm, association, or corporation may act as a reinsurance intermediary-manager:

(a) For a reinsurer domiciled in this state, unless the person, firm, association, or corporation is a licensed reinsurance intermediary-manager in this state;

(b) In this state, if the person, firm, association, or corporation maintains an office either directly or as a member or employee of a firm or association, or an officer, director, or employee of a corporation in this state, unless the person, firm, association, or corporation is a licensed reinsurance intermediary-manager in this state;

(c) In another state for a nondomestic reinsurer, unless the person, firm, association, or corporation is a licensed rein-

insurance intermediary-manager in this state or another state having a substantially similar regulatory scheme.

(3) The commissioner may require a reinsurance intermediary-manager subject to subsection (2) of this section to:

(a) File a bond in an amount and from an insurer acceptable to the commissioner for the protection of the reinsurer; and

(b) Maintain an errors and omissions policy in an amount acceptable to the commissioner.

(4)(a) The commissioner may issue a reinsurance intermediary license to a person, firm, association, or corporation who has complied with the requirements of this chapter. Any such license issued to a firm or association authorizes all the members of the firm or association and any designated employees to act as reinsurance intermediaries under the license, and all such persons may be named in the application and any supplements to it. Any such license issued to a corporation authorizes all of the officers, and any designated employees and directors of it, to act as reinsurance intermediaries on behalf of the corporation, and all such persons must be named in the application and any supplements to it.

(b) If the applicant for a reinsurance intermediary license is a nonresident, the applicant, as a condition precedent to receiving or holding a license, shall designate the commissioner as agent for service of process in the manner, and with the same legal effect, provided for by this title for designation of service of process upon unauthorized insurers, and also shall furnish the commissioner with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting the nonresident reinsurance intermediary may be served. The licensee shall promptly notify the commissioner in writing of every change in its designated agent for service of process, but the change does not become effective until acknowledged by the commissioner.

(5) The commissioner may refuse to issue a reinsurance intermediary license if, in his or her judgment, the applicant, anyone named on the application, or a member, principal, officer, or director of the applicant, is not trustworthy, or that a controlling person of the applicant is not trustworthy to act as a reinsurance intermediary, or that any of the foregoing has given cause for revocation or suspension of the license, or has failed to comply with a prerequisite for the issuance of such license. Upon written request, the commissioner will furnish a summary of the basis for refusal to issue a license, which document is privileged and not subject to chapter 42.56 RCW.

(6) Licensed attorneys at law of this state when acting in their professional capacity as such are exempt from this section. [2005 c 274 § 317; 1993 c 462 § 24.]

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

## Chapter 48.98 RCW

### MANAGING GENERAL AGENTS ACT

#### Sections

48.98.015 Contract required between a managing general agent and an insurer—Minimum provisions.

[2005 RCW Supp—page 676]

**48.98.015 Contract required between a managing general agent and an insurer—Minimum provisions.** A managing general agent may not place business with an insurer unless there is in force a written contract between the managing general agent and the insurer that sets forth the responsibilities of each party and, where both parties share responsibility for a particular function, that specifies the division of the responsibilities, and that contains the following minimum provisions:

(1) The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of the managing general agent during the pendency of a dispute regarding the cause for termination.

(2) The managing general agent shall render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis.

(3) The managing general agent shall hold funds collected for the account of an insurer in a fiduciary capacity in an FDIC insured financial institution. This account must be used for all payments on behalf of the insurer. The managing general agent may retain no more than three months' estimated claims payments and allocated loss adjustment expenses.

(4) The managing general agent shall maintain separate records of business written for each insurer. The insurer has access to and the right to copy all accounts and records related to its business in a form usable by the insurer, and the commissioner has access to all books, bank accounts, and records of the managing general agent in a form usable to the commissioner. Those records must be retained according to the requirements of this title and rules adopted under it.

(5) The managing general agent may not assign the contract in whole or part.

(6)(a) Appropriate underwriting guidelines must include at least the following: The maximum annual premium volume; the basis of the rates to be charged; the types of risks that may be written; maximum limits of liability; applicable exclusions; territorial limitations; policy cancellation provisions; and the maximum policy period.

(b) The insurer has the right to cancel or not renew any policy of insurance, subject to the applicable laws and rules, including those in chapter 48.18 RCW.

(7) If the contract permits the managing general agent to settle claims on behalf of the insurer:

(a) All claims must be reported to the insurer in a timely manner;

(b) A copy of the claim file must be sent to the insurer at its request or as soon as it becomes known that the claim:

(i) Has the potential to exceed an amount determined by the commissioner, or exceeds the limit set by the insurer, whichever is less;

(ii) Involves a coverage dispute;

(iii) May exceed the managing general agent's claims settlement authority;

(iv) Is open for more than six months; or

(v) Is closed by payment in excess of an amount set by the commissioner or an amount set by the insurer, whichever is less;



(c) All claim files are the joint property of the insurer and the managing general agent. However, upon an order of liquidation of the insurer, those files become the sole property of the insurer or its liquidator or successor. The managing general agent has reasonable access to and the right to copy the files on a timely basis; and

(d) Settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the managing general agent's settlement authority during the pendency of a dispute regarding the cause for termination.

(8) When electronic claims files are in existence, the contract must address the timely transmission of the data.

(9) If the contract provides for a sharing of interim profits by the managing general agent, and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments or in any other manner, interim profits may not be paid to the managing general agent until one year after they are earned for property insurance business and five years after they are earned on casualty business and not until the profits have been verified under RCW 48.98.020.

(10) The managing general agent may not:

(a) Bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind automatic reinsurance contracts under obligatory automatic agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which the automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules;

(b) Commit the insurer to participate in insurance or reinsurance syndicates;

(c) Use an agent that is not appointed to represent the insurer in accordance with the requirements of chapter 48.17 RCW;

(d) Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, that may not exceed one percent of the insurer's policyholder surplus as of December 31st of the last-completed calendar year;

(e) Collect a payment from a reinsurer or commit the insurer to a claim settlement with a reinsurer, without prior approval of the insurer. If prior approval is given, a report must be promptly forwarded to the insurer;

(f) Permit an agent appointed by it to serve on the insurer's board of directors;

(g) Jointly employ an individual who is employed by the insurer; or

(h) Appoint a submanaging general agent. [2005 c 223 § 32; 1993 c 462 § 37.]

### Chapter 48.104 RCW

#### HOLOCAUST VICTIMS INSURANCE RELIEF ACT

##### Sections

48.104.050 Holocaust insurance company registry—Authority—Availability of information. (*Effective July 1, 2006, until December 31, 2010.*)

**48.104.050 Holocaust insurance company registry—Authority—Availability of information.** (*Effective July 1, 2006, until December 31, 2010.*) (1) To facilitate the work of the Holocaust survivor assistance office, the insurance commissioner may establish and maintain a central registry containing records and information relating to insurance policies, as described in RCW 48.104.060, of victims, living and deceased, of the Holocaust. The registry shall be known as the Holocaust insurance company registry. The insurance commissioner shall establish standards and procedures to make the information in the registry available to the public to the extent necessary and appropriate to determine the existence of insurance policies and to identify beneficiaries, successors in interest, or other persons entitled to the proceeds of such policies, and to enable such persons to claim proceeds to which they may be entitled, while protecting the privacy of policyholders, their survivors, and their family members. All information received by the Holocaust insurance company registry or Holocaust survivor assistance office from any insurer, related company, or foreign government or regulator shall be considered and deemed to be matters and information relating to an examination and part of an examination report that the insurance commissioner may treat as confidential and withhold from public inspection under RCW 48.03.040(6)(c) and 48.03.050. To the extent necessary and appropriate to secure access to documents and information located in or subject to the jurisdiction of other states and countries, the insurance commissioner is authorized to enter into agreements or to provide assurances that any or all documents and information received from an entity regulated by or subject to the laws of such other state or country, or received from any agency of the government of any such state or country, will be treated as confidential by the insurance commissioner and will not be disclosed to any person except with the approval of the appropriate authority of such state or country or except as permitted or authorized by the laws of such state or country, and any such agreement shall be binding and enforceable notwithstanding chapter 42.56 RCW. To the extent necessary and appropriate to secure access to documents and information from or in the possession of the international commission as to which the international commission has given assurances of confidentiality or privacy, the insurance commissioner is authorized to enter into agreements or to provide assurances that any or all such documents and information will be treated as confidential by the insurance commissioner and will not be disclosed to any person except with the approval of the international commission or as permitted by any agreement or assurances given by the international commission, and any such agreement shall be binding and enforceable notwithstanding chapter 42.56 RCW.

(2) The insurance commissioner may cooperate and exchange information with other states establishing similar registries and with the international commission, and may enter into agreements whereby a single registry may be established on behalf of, and to provide services to the citizens and residents of, several states. [2005 c 274 § 318; 1999 c 8 § 5.]

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

**Chapter 48.110 RCW**  
**SERVICE CONTRACTS**

## Sections

- 48.110.030 Registration required—Application—Required information—Grounds for refusal—Annual renewal.  
48.110.040 Filing of annual report—Fee—Investigations—Confidentiality.

**48.110.030 Registration required—Application—Required information—Grounds for refusal—Annual renewal.** (1) A person may not act as, or offer to act as, or hold himself or herself out to be a service contract provider in this state, nor may a service contract be sold to a consumer in this state, unless the service contract provider has a valid registration as a service contract provider issued by the commissioner.

(2) Applicants to be a service contract provider must make an application to the commissioner upon a form to be furnished by the commissioner. The application must include or be accompanied by the following information and documents:

(a) All basic organizational documents of the service contract provider, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement, bylaws, and other applicable documents, and all amendments to those documents;

(b) The identities of the service contract provider's executive officer or officers directly responsible for the service contract provider's service contract business, and, if more than fifty percent of the service contract provider's gross revenue is derived from the sale of service contracts, the identities of the service contract provider's directors and stockholders having beneficial ownership of ten percent or more of any class of securities;

(c) Audited annual financial statements or other financial reports acceptable to the commissioner for the two most recent years which prove that the applicant is solvent and any information the commissioner may require in order to review the current financial condition of the applicant. If the service contract provider is relying on RCW 48.110.050(2) (a) or (c) to assure the faithful performance of its obligations to service contract holders, then the audited financial statements of the service contract provider's parent company may be substituted for the audited financial statements of the service contract provider;

(d) An application fee of two hundred fifty dollars, which shall be deposited into the general fund; and

(e) Any other pertinent information required by the commissioner.

(3) The applicant shall appoint the commissioner as its attorney to receive service of legal process in any action, suit, or proceeding in any court. This appointment is irrevocable and shall bind the service contract provider or any successor in interest, shall remain in effect as long as there is in force in this state any contract or any obligation arising therefrom related to residents of this state, and shall be processed in accordance with RCW 48.05.210.

(4) The commissioner may refuse to issue a registration if the commissioner determines that the service contract provider, or any individual responsible for the conduct of the

affairs of the service contract provider under subsection (2)(b) of this section, is not competent, trustworthy, financially responsible, or has had a license as a service contract provider or similar license denied or revoked for cause by any state.

(5) A registration issued under this section is valid, unless surrendered, suspended, or revoked by the commissioner, or not renewed for so long as the service contract provider continues in business in this state and remains in compliance with this chapter. A registration is subject to renewal annually on the first day of July upon application of the service contract provider and payment of a fee of two hundred dollars, which shall be deposited into the general fund. If not so renewed, the registration expires on the June 30th next preceding.

(6) A service contract provider shall keep current the information required to be disclosed in its registration under this section by reporting all material changes or additions within thirty days after the end of the month in which the change or addition occurs. [2005 c 223 § 33; 1999 c 112 § 4.]

**48.110.040 Filing of annual report—Fee—Investigations—Confidentiality.** (1) Every registered service contract provider that is assuring its faithful performance of its obligations to its service contract holders by complying with RCW 48.110.050(2)(b) must file an annual report for the preceding calendar year with the commissioner on or before March 1st of each year, or within any extension of time the commissioner for good cause may grant. The report must be in the form and contain those matters as the commissioner prescribes and shall be verified by at least two officers of the service contract provider.

(2) At the time of filing the report, the service contract provider must pay a filing fee of twenty dollars which shall be deposited into the general fund.

(3) As part of any investigation by the commissioner, the commissioner may require a service contract provider to file monthly financial reports whenever, in the commissioner's discretion, there is a need to more closely monitor the financial activities of the service contract provider. Monthly financial statements must be filed in the commissioner's office no later than the twenty-fifth day of the month following the month for which the financial report is being filed. These monthly financial reports are the internal financial statements of the service contract provider. The monthly financial reports that are filed with the commissioner constitute information that might be damaging to the service contract provider if made available to its competitors, and therefore shall be kept confidential by the commissioner. This information may not be made public or be subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner. [2005 c 223 § 34; 1999 c 112 § 5.]

**Chapter 48.130 RCW**  
**INTERSTATE INSURANCE PRODUCT**  
**REGULATION COMPACT**

## Sections

- 48.130.005 Purposes—Insurance commissioner represents state.  
48.130.010 Definitions.

48.130.020	Commission created.
48.130.030	Commission's powers.
48.130.040	Commission membership—Management and legislative committees—Liability.
48.130.050	Commission actions—Voting.
48.130.060	Commission rule making—Uniform standards and operating procedures—States may opt out.
48.130.070	Commission rule making—Confidentiality of information and records—Compliance with compact.
48.130.080	Dispute resolution.
48.130.090	Commission approval of product—Filing—Rule making.
48.130.100	Commission disapproval of product—Appeal.
48.130.110	Commission expenses—Budget—Tax exempt—Accounting.
48.130.120	Compact, commission, compact amendments—When effective.
48.130.130	Withdrawal from compact, how—Default by state—Dissolution of compact.
48.130.140	Effect of compact—Other state laws—Binding on compacting states, when.
48.130.900	Severability—2005 c 92.
48.130.901	Construction—2005 c 92.

**48.130.005 Purposes—Insurance commissioner represents state.** Under the terms and conditions of this chapter, the state of Washington seeks to join with other states and establish the interstate insurance product regulation compact and thus become a member of the interstate insurance product regulation commission. The insurance commissioner is hereby designated to serve as the representative of this state to the commission. The purposes of the compact under this chapter are, through means of joint and cooperative action among the compacting states:

- (1) To promote and protect the interest of consumers of individual and group annuity, life insurance, disability income, and long-term care insurance products;
- (2) To develop uniform standards for insurance products covered under the compact;
- (3) To establish a central clearinghouse to receive and provide prompt review of insurance products covered under the compact and, in certain cases, advertisements related thereto, submitted by insurers authorized to do business in one or more compacting states;
- (4) To give appropriate regulatory approval to those product filings and advertisements satisfying the applicable uniform standard;
- (5) To improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform standards and review of insurance products covered under the compact;
- (6) To create the interstate insurance product regulation commission; and
- (7) To perform these and such other related functions as may be consistent with the state regulation of the business of insurance. [2005 c 92 § 1.]

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

- (1) "Advertisement" means any material designed to create public interest in a product, or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace, or retain a policy, as more specifically defined in the rules and operating procedures of the commission.
- (2) "Bylaws" means those bylaws established by the commission for its governance, or for directing or controlling the commission's actions or conduct.

(3) "Compact" means the compact set forth in this chapter.

(4) "Compacting state" means any state which has enacted the compact and which has not withdrawn under RCW 48.130.130(1) or been terminated under RCW 48.130.130(2).

(5) "Commission" means the interstate insurance product regulation commission established in RCW 48.130.020.

(6) "Commissioner" means the insurance commissioner or the chief insurance regulatory official of a state including but not limited to commissioner, superintendent, director, or administrator.

(7) "Domiciliary state" means the state in which an insurer is incorporated or organized; or, in the case of an alien insurer, its state of entry.

(8) "Insurer" means any entity licensed by a state to issue contracts of insurance for any of the lines of insurance covered by the compact.

(9) "Member" means the person chosen by a compacting state as its representative to the commission, or his or her designee.

(10) "Noncompacting state" means any state which is not at the time a compacting state.

(11) "Operating procedures" mean procedures adopted by the commission implementing a rule, uniform standard, or a provision of the compact.

(12) "Product" means the form of a policy or contract, including any application, endorsement, or related form which is attached to and made a part of the policy or contract, and any evidence of coverage or certificate, for an individual or group annuity, life insurance, disability income, or long-term care insurance product that an insurer is authorized to issue.

(13) "Rule" means a statement of general or particular applicability and future effect adopted by the commission, including a uniform standard developed under RCW 48.130.060, designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of the commission, which shall have the force and effect of law in the compacting states.

(14) "State" means any state, district, or territory of the United States of America.

(15) "Third-party filer" means an entity that submits a product filing to the commission on behalf of an insurer.

(16) "Uniform standard" means a standard adopted by the commission for a product line, under RCW 48.130.060, and includes all of the product requirements in aggregate. However, each uniform standard shall be construed, whether express or implied, to prohibit the use of any inconsistent, misleading, or ambiguous provisions in a product and the form of the product made available to the public shall not be unfair, inequitable, or against public policy as determined by the commission. [2005 c 92 § 2.]

**48.130.020 Commission created.** (1) The compacting states hereby create and establish a joint public agency known as the interstate insurance product regulation commission. Under RCW 48.130.030, the commission will have the power to develop uniform standards for product lines, receive and provide prompt review of products filed therewith, and give approval to those product filings satisfying applicable

uniform standards. However, it is not intended for the commission to be the exclusive entity for receipt and review of insurance product filings. This section does not prohibit any insurer from filing its product in any state wherein the insurer is licensed to conduct the business of insurance; and any such filing shall be subject to the laws of the state where filed.

(2) The commission is a body corporate and politic, and an instrumentality of the compacting states.

(3) The commission is solely responsible for its liabilities except as otherwise specifically provided in the compact.

(4) Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. [2005 c 92 § 3.]

**48.130.030 Commission's powers.** The commission shall have the following powers:

(1) To adopt rules, under RCW 48.130.060, which shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in the compact;

(2) To exercise its rule-making authority and establish reasonable uniform standards for products covered under the compact, and advertisement related thereto, which shall have the force and effect of law and shall be binding in the compacting states, but only for those products filed with the commission. However, a compacting state shall have the right to opt out of such uniform standard under RCW 48.130.060, to the extent and in the manner provided in this compact. Any uniform standard established by the commission for long-term care insurance products may provide the same or greater protections for consumers as, but shall not provide less than, those protections set forth in the national association of insurance commissioners' long-term care insurance model act and long-term care insurance model regulation, respectively, adopted as of 2001. The commission shall consider whether any subsequent amendments to the long-term care insurance model act or long-term care insurance model regulation adopted by the national association of insurance commissioners require amending of the uniform standards established by the commission for long-term care insurance products;

(3) To receive and review in an expeditious manner products filed with the commission, and rate filings for disability income and long-term care insurance products, and give approval of those products and rate filings that satisfy the applicable uniform standard, where such approval shall have the force and effect of law and be binding on the compacting states to the extent and in the manner provided in the compact;

(4) To receive and review in an expeditious manner advertisement relating to long-term care insurance products for which uniform standards have been adopted by the commission, and give approval to all advertisement that satisfies the applicable uniform standard. For any product covered under this compact, other than long-term care insurance products, the commission shall have the authority to require an insurer to submit all or any part of its advertisement with respect to that product for review or approval prior to use, if the commission determines that the nature of the product is such that an advertisement of the product could have the capacity or tendency to mislead the public. The actions of the

commission as provided in this section shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in the compact;

(5) To exercise its rule-making authority and designate products and advertisement that may be subject to a self-certification process without the need for prior approval by the commission;

(6) To adopt operating procedures, under RCW 48.130.060, which shall be binding in the compacting states to the extent and in the manner provided in the compact;

(7) To bring and prosecute legal proceedings or actions in its name as the commission. However, the standing of any state insurance department to sue or be sued under applicable law shall not be affected;

(8) To issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence;

(9) To establish and maintain offices;

(10) To purchase and maintain insurance and bonds;

(11) To borrow, accept, or contract for services of personnel, including, but not limited to, employees of a compacting state;

(12) To hire employees, professionals, or specialists, and elect or appoint officers, and to fix their compensation, define their duties, and give them appropriate authority to carry out the purposes of the compact, and determine their qualifications; and to establish the commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel;

(13) To accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same. However, the commission shall strive to avoid any appearance of impropriety;

(14) To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed. However, the commission shall strive to avoid any appearance of impropriety;

(15) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;

(16) To remit filing fees to compacting states as may be set forth in the bylaws, rules, or operating procedures;

(17) To enforce compliance by compacting states with rules, uniform standards, operating procedures, and bylaws;

(18) To provide for dispute resolution among compacting states;

(19) To advise compacting states on issues relating to insurers domiciled or doing business in noncompacting jurisdictions, consistent with the purposes of the compact;

(20) To provide advice and training to those personnel in state insurance departments responsible for product review, and to be a resource for state insurance departments;

(21) To establish a budget and make expenditures;

(22) To borrow money;

(23) To appoint committees, including advisory committees comprising members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in the bylaws;

(24) To provide and receive information from, and to cooperate with, law enforcement agencies;

(25) To adopt and use a corporate seal; and

(26) To perform such other functions as may be necessary or appropriate to achieve the purposes of the compact consistent with the state regulation of the business of insurance. [2005 c 92 § 4.]

**48.130.040 Commission membership—Management and legislative committees—Liability.** (1)(a) Each compacting state shall have and be limited to one member. Each member shall be qualified to serve in that capacity pursuant to applicable law of the compacting state. Any member may be removed or suspended from office as provided by the law of the state from which he or she shall be appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the compacting state wherein the vacancy exists. This section does not affect the manner in which a compacting state determines the election or appointment and qualification of its own commissioner.

(b) Each member shall be entitled to one vote and shall have an opportunity to participate in the governance of the commission in accordance with the bylaws. Notwithstanding any provision in this chapter to the contrary, no action of the commission with respect to the adoption of a uniform standard shall be effective unless two-thirds of the members vote in favor thereof.

(c) The commission shall, by a majority of the members, prescribe bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes, and exercise the powers, of the compact, including, but not limited to:

(i) Establishing the fiscal year of the commission;

(ii) Providing reasonable procedures for appointing and electing members, as well as holding meetings, of the management committee;

(iii) Providing reasonable standards and procedures for:  
(A) The establishment and meetings of other committees; and  
(B) governing any general or specific delegation of any authority or function of the commission;

(iv) Providing reasonable procedures for calling and conducting meetings of the commission that consists [consist] of a majority of commission members, ensuring reasonable advance notice of each such meeting and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' proprietary information, including trade secrets. The commission may meet in camera only after a majority of the entire membership votes to close a meeting. As soon as practicable, the commission must make public: (A) A copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed; and (B) votes taken during such meeting;

(v) Establishing the titles, duties, and authority and reasonable procedures for the election of the officers of the commission;

(vi) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the commission;

(vii) Adopting a code of ethics to address permissible and prohibited activities of commission members and employees; and

(viii) Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the compact and after the payment or reserving of all of its debts and obligations.

(d) The commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the compacting states.

(2)(a) A management committee comprising no more than fourteen members shall be established as follows:

(i) One member from each of the six compacting states with the largest premium volume for individual and group annuities, life, disability income, and long-term care insurance products, determined from the records of the national association of insurance commissioners for the prior year;

(ii) Four members from those compacting states with at least two percent of the market based on the premium volume described under (a)(i) of this subsection, other than the six compacting states with the largest premium volume, selected on a rotating basis as provided in the bylaws; and

(iii) Four members from those compacting states with less than two percent of the market, based on the premium volume described under (a)(i) of this subsection, with one selected from each of the four zone regions of the national association of insurance commissioners as provided in the bylaws.

(b) The management committee shall have such authority and duties as may be set forth in the bylaws, including but not limited to:

(i) Managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission;

(ii) Establishing and overseeing an organizational structure within, and appropriate procedures for, the commission to provide for the creation of uniform standards and other rules, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a compacting state to opt out of a uniform standard. However, a uniform standard shall not be submitted to the compacting states for adoption unless approved by two-thirds of the members of the management committee;

(iii) Overseeing the offices of the commission; and

(iv) Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations in order to advance the goals of the commission.

(c) The commission shall elect annually officers from the management committee, with each having such authority and duties, as may be specified in the bylaws.

(d) The management committee may, subject to the approval of the commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the commission may deem appropriate. The executive director shall serve as secretary to the commission, but shall not be a member of the commission. The executive director shall hire and supervise such other staff as may be authorized by the commission.

(3)(a) A legislative committee comprising state legislators or their designees shall be established to monitor the operations of, and make recommendations to, the commission, including the management committee. However, the manner of selection and term of any legislative committee member shall be as set forth in the bylaws. Prior to the adoption by the commission of any uniform standard, revision to the bylaws, annual budget, or other significant matter as may be provided in the bylaws, the management committee shall consult with and report to the legislative committee.

(b) The commission shall establish two advisory committees, one of which shall comprise consumer representatives independent of the insurance industry, and the other comprising insurance industry representatives.

(c) The commission may establish additional advisory committees as its bylaws may provide for the carrying out of its functions.

(4) The commission shall maintain its corporate books and records in accordance with the bylaws.

(5)(a) The members, officers, executive director, employees, and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities. However, this subsection (5)(a) does not protect any such person from suit or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of that person.

(b) The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities. However, this subsection (5)(b) does not prohibit that person from retaining his or her own counsel. Also, the actual or alleged act, error, or omission may not have resulted from that person's intentional or willful and wanton misconduct.

(c) The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities. However, the actual or alleged act, error, or omission may not have resulted from the intentional or willful and wanton misconduct of that person. [2005 c 92 § 5.]

**48.130.050 Commission actions—Voting.** (1) The commission shall meet and take such actions as are consistent with the provisions of the compact and the bylaws.

(2) Each member of the commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the commission. A member shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for members' participation in meetings by telephone or other means of communication.

(3) The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws. [2005 c 92 § 6.]

**48.130.060 Commission rule making—Uniform standards and operating procedures—States may opt out.** (1)

The commission shall adopt reasonable rules, including uniform standards, and operating procedures in order to effectively and efficiently achieve the purposes of the compact. In the event the commission exercises its rule-making authority in a manner that is beyond the scope of the purposes of this chapter, then such an action by the commission shall be invalid and have no force and effect.

(2) Rules and operating procedures shall be made pursuant to a rule-making process that conforms to the model state administrative procedure act of 1981 as amended, as may be appropriate to the operations of the commission. Before the commission adopts a uniform standard, the commission shall give written notice to the relevant state legislative committees in each compacting state responsible for insurance issues of its intention to adopt the uniform standard. The commission in adopting a uniform standard shall consider fully all submitted materials and issue a concise explanation of its decision.

(3) A uniform standard shall become effective ninety days after its adoption by the commission or such later date as the commission may determine. However, a compacting state may opt out of a uniform standard as provided in this section. "Opt out" means any action by a compacting state to decline to adopt or participate in an adopted uniform standard. All other rules and operating procedures, and amendments thereto, shall become effective as of the date specified in each rule, operating procedure, or amendment.

(4)(a) A compacting state may opt out of a uniform standard, either by legislation or regulation adopted by the insurance department under the compacting state's administrative procedure act. If a compacting state elects to opt out of a uniform standard by rule, it must: (i) Give written notice to the commission no later than ten business days after the uniform standard is adopted, or at the time the state becomes a compacting state; and (ii) find that the uniform standard does not provide reasonable protections to the citizens of the state, given the conditions in the state.

(b) The commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the state which warrant a departure from the uniform standard and determining that the uniform standard would not reasonably protect the citizens of the state. The commissioner must consider and balance the following factors and find that the conditions in the state and needs of the citizens of the state outweigh: (i) The intent of the legislature to participate in, and the benefits of, an interstate agreement to establish national uniform consumer protections for the products subject to this chapter; and

(ii) the presumption that a uniform standard adopted by the commission provides reasonable protections to consumers of the relevant product.

(c) A compacting state may, at the time of its enactment of the compact, prospectively opt out of all uniform standards involving long-term care insurance products by expressly providing for such opt out in the enacted compact, and such an opt out shall not be treated as a material variance in the offer or acceptance of any state to participate in the compact. Such an opt out shall be effective at the time of enactment of the compact by the compacting state and shall apply to all existing uniform standards involving long-term care insurance products and those subsequently promulgated.

(5) If a compacting state elects to opt out of a uniform standard, the uniform standard shall remain applicable in the compacting state electing to opt out until such time the opt out legislation is enacted into law or the regulation opting out becomes effective. Once the opt out of a uniform standard by a compacting state becomes effective as provided under the laws of that state, the uniform standard shall have no further force and effect in that state unless and until the legislation or regulation implementing the opt out is repealed or otherwise becomes ineffective under the laws of the state. If a compacting state opts out of a uniform standard after the uniform standard has been made effective in that state, the opt out shall have the same prospective effect as provided under RCW 48.130.130 for withdrawals.

(6) If a compacting state has formally initiated the process of opting out of a uniform standard by regulation, and while the regulatory opt out is pending, the compacting state may petition the commission, at least fifteen days before the effective date of the uniform standard, to stay the effectiveness of the uniform standard in that state. The commission may grant a stay if it determines the regulatory opt out is being pursued in a reasonable manner and there is a likelihood of success. If a stay is granted or extended by the commission, the stay or extension thereof may postpone the effective date by up to ninety days, unless affirmatively extended by the commission. However, a stay may not be permitted to remain in effect for more than one year unless the compacting state can show extraordinary circumstances which warrant a continuance of the stay, including, but not limited to, the existence of a legal challenge which prevents the compacting state from opting out. A stay may be terminated by the commission upon notice that the rule-making process has been terminated.

(7) Not later than thirty days after a rule or operating procedure is adopted, any person may file a petition for judicial review of the rule or operating procedure. However, the filing of such a petition shall not stay or otherwise prevent the rule or operating procedure from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the commission consistent with applicable law and shall not find the rule or operating procedure to be unlawful if the rule or operating procedure represents a reasonable exercise of the commission's authority. [2005 c 92 § 7.]

**48.130.070 Commission rule making—Confidentiality of information and records—Compliance with compact.** (1) The commission shall adopt rules establishing con-

ditions and procedures for public inspection and copying of its information and official records, except such information and records involving the privacy of individuals and insurers' trade secrets. The commission may adopt additional rules under which it may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(2) Except as to privileged records, data, and information, the laws of any compacting state pertaining to confidentiality or nondisclosure shall not relieve any compacting state commissioner of the duty to disclose any relevant records, data or information to the commission. However, disclosure to the commission does not waive or otherwise affect any confidentiality requirement. Also, except as otherwise expressly provided in this chapter, the commission shall not be subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data, and information in its possession. Confidential information of the commission shall remain confidential after such information is provided to any commissioner.

(3) The commission shall monitor compacting states for compliance with duly adopted bylaws, rules, including uniform standards, and operating procedures. The commission shall notify any noncomplying compacting state in writing of its noncompliance with commission bylaws, rules or operating procedures. If a noncomplying compacting state fails to remedy its noncompliance within the time specified in the notice of noncompliance, the compacting state shall be deemed to be in default as set forth in RCW 48.130.130.

(4) The commissioner of any state in which an insurer is authorized to do business, or is conducting the business of insurance, shall continue to exercise his or her authority to oversee the market regulation of the activities of the insurer in accordance with the provisions of the state's law. The commissioner's enforcement of compliance with the compact is governed by the following provisions:

(a) With respect to the commissioner's market regulation of a product or advertisement that is approved or certified to the commission, the content of the product or advertisement shall not constitute a violation of the provisions, standards, or requirements of the compact except upon a final order of the commission, issued at the request of a commissioner after prior notice to the insurer and an opportunity for hearing before the commission.

(b) Before a commissioner may bring an action for violation of any provision, standard, or requirement of the compact relating to the content of an advertisement not approved or certified to the commission, the commission, or an authorized commission officer or employee, must authorize the action. However, authorization under this subsection (4)(b) does not require notice to the insurer, opportunity for hearing, or disclosure of requests for authorization or records of the commission's action on such requests. [2005 c 92 § 8.]

**48.130.080 Dispute resolution.** The commission shall attempt, upon the request of a member, to resolve any disputes or other issues that are subject to this compact and which may arise between two or more compacting states, or

between compacting states and noncompacting states, and the commission shall adopt an operating procedure providing for resolution of such disputes. [2005 c 92 § 9.]

**48.130.090 Commission approval of product—Filing—Rule making.** (1) Insurers and third-party filers seeking to have a product approved by the commission shall file the product with, and pay applicable filing fees to, the commission. This chapter does not restrict or otherwise prevent an insurer from filing its product with the insurance department in any state wherein the insurer is licensed to conduct the business of insurance, and such filing shall be subject to the laws of the states where filed.

(2) The commission shall establish appropriate filing and review processes and procedures pursuant to commission rules and operating procedures. The commission shall adopt rules to establish conditions and procedures under which the commission will provide public access to product filing information. In establishing such rules, the commission shall consider the interests of the public in having access to such information, as well as protection of personal medical and financial information and trade secrets, that may be contained in a product filing or supporting information.

(3) Any product approved by the commission may be sold or otherwise issued in those compacting states for which the insurer is legally authorized to do business. [2005 c 92 § 10.]

**48.130.100 Commission disapproval of product—Appeal.** (1) Not later than thirty days after the commission has given notice of a disapproved product or advertisement filed with the commission, the insurer or third-party filer whose filing was disapproved may appeal the determination to a review panel appointed by the commission. The commission shall adopt rules to establish procedures for appointing such review panels and provide for notice and hearing. An allegation that the commission, in disapproving a product or advertisement filed with the commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with RCW 48.130.020(4).

(2) The commission shall have authority to monitor, review, and reconsider products and advertisement subsequent to their filing or approval upon a finding that the product does not meet the relevant uniform standard. Where appropriate, the commission may withdraw or modify its approval after proper notice and hearing, subject to the appeal process in subsection (1) of this section. [2005 c 92 § 11.]

**48.130.110 Commission expenses—Budget—Tax exempt—Accounting.** (1) The commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations, the commission may accept contributions and other forms of funding from the national association of insurance commissioners, compacting states, and other sources. Contributions and other forms of funding from other sources shall be of such a nature that the independence of the commission concerning the performance of its duties shall not be compromised.

(2) The commission shall collect a filing fee from each insurer and third-party filer filing a product with the commission to cover the cost of the operations and activities of the commission and its staff in a total amount sufficient to cover the commission's annual budget.

(3) The commission's budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in RCW 48.130.060.

(4) The commission shall be exempt from all taxation in and by the compacting states.

(5) The commission shall not pledge the credit of any compacting state, except by and with the appropriate legal authority of that compacting state.

(6) The commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control. The internal financial accounts of the commission shall be subject to the accounting procedures established under its bylaws. The financial accounts and reports including the system of internal controls and procedures of the commission shall be audited annually by an independent certified public accountant. Upon the determination of the commission, but no less frequently than every three years, the review of the independent auditor shall include a management and performance audit of the commission. The commission shall make an annual report to the governor and legislature of the compacting states, which shall include a report of the independent audit. The commission's internal accounts shall not be confidential and such materials may be shared with the commissioner of any compacting state upon request. However, any work papers related to any internal or independent audit and any information regarding the privacy of individuals and insurers' proprietary information, including trade secrets, shall remain confidential.

(7) A compacting state does not have any claim to or ownership of any property held by or vested in the commission or to any commission funds held under this chapter. [2005 c 92 § 12.]

**48.130.120 Compact, commission, compact amendments—When effective.** (1) Any state is eligible to become a compacting state.

(2) The compact shall become effective and binding upon legislative enactment of the compact into law by two compacting states. However, the commission shall become effective for purposes of adopting uniform standards for, reviewing, and giving approval or disapproval of products filed with the commission that satisfy applicable uniform standards only after twenty-six states are compacting states or, alternatively, by states representing greater than forty percent of the premium volume for life insurance, annuity, disability income, and long-term care insurance products, based on records of the national association of insurance commissioners for the prior year. Thereafter, it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state.

(3) Amendments to the compact may be proposed by the commission for enactment by the compacting states. An amendment does not become effective and binding upon the commission and the compacting states unless and until all



compacting states enact the amendment into law. [2005 c 92 § 13.]

**48.130.130 Withdrawal from compact, how—Default by state—Dissolution of compact.** (1)(a) Once effective, the compact shall continue in force and remain binding upon each and every compacting state. However, a compacting state may withdraw from the compact by enacting a statute specifically repealing the statute which enacted the compact into law.

(b) The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal shall not apply to any product filings approved or self-certified, or any advertisement of such products, on the date the repealing statute becomes effective, except by mutual agreement of the commission and the withdrawing state unless the approval is rescinded by the withdrawing state as provided in (e) of this subsection.

(c) The commissioner of the withdrawing state shall immediately notify the management committee in writing upon the introduction of legislation repealing the compact in the withdrawing state.

(d) The commission shall notify the other compacting states of the introduction of such legislation within ten days after its receipt of notice thereof.

(e) The withdrawing state is responsible for all obligations, duties, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the commission and the withdrawing state. The commission's approval of products and advertisement prior to the effective date of withdrawal shall continue to be effective and be given full force and effect in the withdrawing state, unless formally rescinded by the withdrawing state in the same manner as provided by the laws of the withdrawing state for the prospective disapproval of products or advertisement previously approved under state law.

(f) Reinstatement following withdrawal of any compacting state shall occur upon the effective date of the withdrawing state reenacting the compact.

(2)(a) If the commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under the compact, the bylaws, or adopted rules or operating procedures, then, after notice and hearing as set forth in the bylaws, all rights, privileges, and benefits conferred by the compact on the defaulting state shall be suspended from the effective date of default as fixed by the commission. The grounds for default include, but are not limited to, failure of a compacting state to perform its obligations or responsibilities, and any other grounds designated in commission rules. The commission shall immediately notify the defaulting state in writing of the defaulting state's suspension pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact and all rights, privileges, and ben-

efits conferred by the compact shall be terminated from the effective date of termination.

(b) Product approvals by the commission or product self-certifications, or any advertisement in connection with such product, that are in force on the effective date of termination shall remain in force in the defaulting state in the same manner as if the defaulting state had withdrawn voluntarily under subsection (1) of this section.

(c) Reinstatement following termination of any compacting state requires a reenactment of the compact.

(3)(a) The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state.

(b) Upon the dissolution of the compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws. [2005 c 92 § 14.]

**48.130.140 Effect of compact—Other state laws—Binding on compacting states, when.** (1)(a) The compact does not prevent the enforcement of any other law of a compacting state, except as provided in (b) of this subsection.

(b) For any product approved or certified to the commission, the rules, uniform standards, and any other requirements of the commission shall constitute the exclusive provisions applicable to the content, approval, and certification of such products. For advertisement that is subject to the commission's authority, any rule, uniform standard, or other requirement of the commission which governs the content of the advertisement shall constitute the exclusive provision that a commissioner may apply to the content of the advertisement. However, no action taken by the commission shall abrogate or restrict: (i) The access of any person to state courts; (ii) remedies available under state law related to breach of contract, tort, or other laws not specifically directed to the content of the product; (iii) state law relating to the construction of insurance contracts; or (iv) the authority of the attorney general of the state, including but not limited to maintaining any actions or proceedings, as authorized by law.

(c) All insurance products filed with individual states shall be subject to the laws of those states.

(2)(a) All lawful actions of the commission, including all rules and operating procedures adopted by the commission, are binding upon the compacting states.

(b) All agreements between the commission and the compacting states are binding in accordance with their terms.

(c) Upon the request of a party to a conflict over the meaning or interpretation of commission actions, and upon a majority vote of the compacting states, the commission may issue advisory opinions regarding the meaning or interpretation in dispute.

(d) In the event any provision of the compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by that provision upon the commission shall be ineffective as to that compacting state, and those obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which those obligations, duties, powers, or jurisdiction are

delegated by law in effect at the time the compact becomes effective. [2005 c 92 § 15.]

**48.130.900 Severability—2005 c 92.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2005 c 92 § 16.]

**48.130.901 Construction—2005 c 92.** This chapter shall be liberally construed. [2005 c 92 § 17.]

## Title 49

### LABOR REGULATIONS

#### Chapters

**49.12 Industrial welfare.**

**49.44 Violations—Prohibited practices.**

**49.66 Health care activities.**

#### Chapter 49.12 RCW

#### INDUSTRIAL WELFARE

##### Sections

49.12.265 Sick leave, time off—Care of family members—Definitions.

**49.12.265 Sick leave, time off—Care of family members—Definitions.** The definitions in this section apply throughout RCW 49.12.270 through 49.12.295 unless the context clearly requires otherwise.

(1) "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is: (a) Under eighteen years of age; or (b) eighteen years of age or older and incapable of self-care because of a mental or physical disability.

(2) "Grandparent" means a parent of a parent of an employee.

(3) "Parent" means a biological or adoptive parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child.

(4) "Parent-in-law" means a parent of the spouse of an employee.

(5) "Sick leave or other paid time off" means time allowed under the terms of an appropriate state law, collective bargaining agreement, or employer policy, as applicable, to an employee for illness, vacation, and personal holiday. If paid time is not allowed to an employee for illness, "sick leave or other paid time off" also means time allowed under the terms of an appropriate state law, collective bargaining agreement, or employer policy, as applicable, to an employee for disability under a plan, fund, program, or practice that is: (a) Not covered by the employee retirement income security act of 1974, 29 U.S.C. Sec. 1001 et seq.; and (b) not established or maintained through the purchase of insurance.

(6) "Spouse" means a husband or wife, as the case may be. [2005 c 499 § 1; 2002 c 243 § 2.]

**Effective date—2002 c 243:** "This act takes effect January 1, 2003." [2002 c 243 § 4.]

[2005 RCW Supp—page 686]

## Chapter 49.44 RCW

### VIOLATIONS—PROHIBITED PRACTICES

#### Sections

49.44.120 Requiring lie detector tests—Penalty.

49.44.190 Noncompetition agreements for broadcasting industry employees—Restrictions—Trade secrets protected.

**49.44.120 Requiring lie detector tests—Penalty.** (1) It shall be unlawful for any person, firm, corporation or the state of Washington, its political subdivisions or municipal corporations to require, directly or indirectly, that any employee or prospective employee take or be subjected to any lie detector or similar tests as a condition of employment or continued employment: PROVIDED, That this section shall not apply to persons making initial application for employment with any law enforcement agency or with the juvenile court services agency of any county: PROVIDED FURTHER, That this section shall not apply to either the initial application for employment or continued employment of persons who manufacture, distribute, or dispense controlled substances as defined in chapter 69.50 RCW, or to persons in sensitive positions directly involving national security.

(2) Nothing in this section shall be construed to prohibit the use of psychological tests as defined in RCW 18.83.010.

(3) Any person violating this section is guilty of a misdemeanor.

(4) As used in this section, "person" includes any individual, firm, corporation, or agency or political subdivision of the state.

(5) Nothing in this section may be construed as limiting any statutory or common law rights of any person illegally denied employment or continued employment under this section for purposes of any civil action or injunctive relief. [2005 c 265 § 1; 2003 c 53 § 278; 1985 c 426 § 1; 1973 c 145 § 1; 1965 c 152 § 1.]

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

**49.44.190 Noncompetition agreements for broadcasting industry employees—Restrictions—Trade secrets protected.** (1) If an employee subject to an employee noncompetition agreement is terminated without just cause or laid off by action of the employer, the noncompetition agreement is void and unenforceable.

(2) Nothing in this section restricts the right of an employer to protect trade secrets or other proprietary information by lawful means in equity or under applicable law.

(3) Nothing in this section has the effect of terminating, or in any way modifying, any rights or liabilities resulting from an employee noncompetition agreement that was entered into before December 31, 2005.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Employee" means an employee of a broadcasting industry employer other than a sales or management employee.

(b) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other entity which engages in any business, industry, profession, or activity in this state and employs one or more employees, and includes the state, counties, cities, and all municipal corpora-

tions, public corporations, political subdivisions of the state, and charitable organizations.

(c) "Employee noncompetition agreement" means an agreement, written or oral, express or implied, between an employer and employee under which the employee agrees not to compete, either alone or as an employee of another, with the employer in providing services after termination of employment.

(d) "Broadcasting industry" means employers that distribute or transmit electronic signals to the public at large using television (VHF or UHF), radio (AM, FM, or satellite), or cable television technologies, or which prepare, develop, or create programs or messages to be transmitted by electronic signal using television, radio, or cable technology. [2005 c 176 § 1.]

**Chapter 49.66 RCW**

**HEALTH CARE ACTIVITIES**

Sections

49.66.090 Board of arbitration—Members—Selection—Chair. (*Effective January 1, 2006.*)

**49.66.090 Board of arbitration—Members—Selection—Chair.** (*Effective January 1, 2006.*) In the event that a health care activity and an employees' bargaining unit shall reach an impasse, the matters in dispute shall be submitted to a board of arbitration composed of three arbitrators for final and binding resolution. The board shall be selected in the following manner: Within ten days, the employer shall appoint one arbitrator and the employees shall appoint one arbitrator. The two arbitrators so selected and named shall within ten days agree upon and select the name of a third arbitrator who shall act as chairman. If, upon the expiration of the period allowed therefor the arbitrators are unable to agree on the selection of a third arbitrator, such arbitrator shall be appointed at the request of either party in accordance with RCW 7.04A.110, and that person shall act as chair of the arbitration board. [2005 c 433 § 44; 1973 2nd ex.s. c 3 § 7; 1972 ex.s. c 156 § 9.]

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

**Title 50**

**UNEMPLOYMENT COMPENSATION**

**Chapters**

- 50.01 General provisions.**
- 50.13 Records and information—Privacy and confidentiality.**
- 50.16 Funds.**
- 50.20 Benefits and claims.**
- 50.29 Employer experience rating.**
- 50.38 Labor market information and economic analysis.**
- 50.40 Miscellaneous provisions.**

**Chapter 50.01 RCW  
GENERAL PROVISIONS**

Sections

- 50.01.010 Preamble. (*Expires June 30, 2007.*)
- 50.01.020 Report on chapter 133, Laws of 2005. (*Expires January 1, 2008.*)

**50.01.010 Preamble.** (*Expires June 30, 2007.*) Whereas, economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this state; involuntary unemployment is, therefore, a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. Social security requires protection against this greatest hazard of our economic life. This can be provided only by application of the insurance principle of sharing the risks, and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing powers and limiting the serious social consequences of relief assistance. The state of Washington, therefore, exercising herein its police and sovereign power endeavors by this title to remedy any widespread unemployment situation which may occur and to set up safeguards to prevent its recurrence in the years to come. The legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own, and that this title shall be liberally construed for the purpose of reducing involuntary unemployment and the suffering caused thereby to the minimum. [2005 c 133 § 2; 2003 2nd sp.s. c 4 § 1; 1945 c 35 § 2; Rem. Supp. 1945 § 9998-141. Prior: 1937 c 162 § 2.]

**Expiration date—Intent—2005 c 133:** "(1) Section 2 of this act expires June 30, 2007.

(2) It is the intent of the legislature that the expiration of sections or subsections of this act results in those sections of law being returned to the law in effect immediately before April 22, 2005." [2005 c 133 § 10.]

**Findings—Intent—Conflict with federal requirements—Effective date—2005 c 133:** See notes following RCW 50.20.120.

**Additional employees authorized—2005 c 133:** See note following RCW 50.01.020.

**Conflict with federal requirements—2003 2nd sp.s. c 4:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2003 2nd sp.s. c 4 § 36.]

**Severability—2003 2nd sp.s. c 4:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 2nd sp.s. c 4 § 37.]

**Effective date—2003 2nd sp.s. c 4:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 20, 2003]." [2003 2nd sp.s. c 4 § 39.]

**50.01.020 Report on chapter 133, Laws of 2005. (Expires January 1, 2008.)** (1) By October 1, 2006, and October 1, 2007, the employment security department must report to the appropriate committees of the legislature on the impact, or projected impact, of sections 2 and 3, chapter 133, Laws of 2005 on the unemployment trust fund in the three consecutive fiscal years beginning with the year before the report date.

(2) This section expires January 1, 2008. [2005 c 133 § 7.]

**Reviser's note:** This section was directed to be codified in chapter 50.29 RCW, but placement in chapter 50.01 RCW appears to be more appropriate.

**Additional employees authorized—2005 c 133:** "To establish additional capacity within the employment security department, the department is authorized to add two full-time equivalent employees to develop economic models for estimating the impacts of policy changes on the unemployment insurance system and the unemployment trust fund." [2005 c 133 § 8.]

**Expiration date—Intent—2005 c 133:** See note following RCW 50.01.010.

**Findings—Intent—Conflict with federal requirements—Effective date—2005 c 133:** See notes following RCW 50.20.120.

### Chapter 50.13 RCW

#### RECORDS AND INFORMATION—PRIVACY AND CONFIDENTIALITY

##### Sections

50.13.015	Information held private and confidential—Requests for disclosure. ( <i>Effective July 1, 2006.</i> )
50.13.030	Rules. ( <i>Effective July 1, 2006.</i> )
50.13.040	Access of individual or employing unit to records and information. ( <i>Effective July 1, 2006.</i> )
50.13.060	Access to records or information by governmental agencies. ( <i>Effective July 1, 2006.</i> )
50.13.080	Disclosure of records or information to private persons or organizations contracting to assist in operation and management of department—Penalties. ( <i>Effective July 1, 2006.</i> )

**50.13.015 Information held private and confidential—Requests for disclosure. (Effective July 1, 2006.)** (1) If information provided to the department by another governmental agency is held private and confidential by state or federal laws, the department may not release such information.

(2) Information provided to the department by another governmental entity conditioned upon privacy and confidentiality is to be held private and confidential according to the agreement between the department and other governmental agency.

(3) The department may hold private and confidential information obtained for statistical analysis, research, or study purposes if the information was supplied voluntarily, conditioned upon maintaining confidentiality of the information.

(4) Persons requesting disclosure of information held by the department under subsection (1) or (2) of this section shall request such disclosure from the agency providing the information to the department rather than from the department.

(5) This section supersedes any provisions of chapter 42.56 RCW to the contrary. [2005 c 274 § 319; 1989 c 92 § 3.]

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

[2005 RCW Supp—page 688]

**50.13.030 Rules. (Effective July 1, 2006.)** The commissioner shall have the authority to adopt, amend, or rescind rules interpreting and implementing the provisions of this chapter. In particular, these rules shall specify the procedure to be followed to obtain information or records to which the public has access under this chapter or chapter 42.56 RCW. [2005 c 274 § 320; 1977 ex.s. c 153 § 3.]

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

**50.13.040 Access of individual or employing unit to records and information. (Effective July 1, 2006.)** (1) An individual shall have access to all records and information concerning that individual held by the employment security department, unless the information is exempt from disclosure under RCW 42.56.410.

(2) An employing unit shall have access to its own records and to any records and information relating to a benefit claim by an individual if the employing unit is either the individual's last employer or is the individual's base year employer.

(3) An employing unit shall have access to any records and information relating to any decision to allow or deny benefits if:

(a) The decision is based on employment or an offer of employment with the employing unit; or

(b) If the decision is based on material information provided by the employing unit.

(4) An employing unit shall have access to general summaries of benefit claims by individuals whose benefits are chargeable to the employing unit's experience rating or reimbursement account. [2005 c 274 § 321; 1993 c 483 § 6; 1977 ex.s. c 153 § 4.]

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

**Conflict with federal requirements—Severability—1993 c 483:** See notes following RCW 50.04.293.

**50.13.060 Access to records or information by governmental agencies. (Effective July 1, 2006.)** (1) Governmental agencies, including law enforcement agencies, prosecuting agencies, and the executive branch, whether state, local, or federal shall have access to information or records deemed private and confidential under this chapter if the information or records are needed by the agency for official purposes and:

(a) The agency submits an application in writing to the employment security department for the records or information containing a statement of the official purposes for which the information or records are needed and specific identification of the records or information sought from the department; and

(b) The director, commissioner, chief executive, or other official of the agency has verified the need for the specific information in writing either on the application or on a separate document; and

(c) The agency requesting access has served a copy of the application for records or information on the individual or employing unit whose records or information are sought and has provided the department with proof of service. Service shall be made in a manner which conforms to the civil rules

for superior court. The requesting agency shall include with the copy of the application a statement to the effect that the individual or employing unit may contact the public records officer of the employment security department to state any objections to the release of the records or information. The employment security department shall not act upon the application of the requesting agency until at least five days after service on the concerned individual or employing unit. The employment security department shall consider any objections raised by the concerned individual or employing unit in deciding whether the requesting agency needs the information or records for official purposes.

(2) The requirements of subsections (1) and (9) of this section shall not apply to the state legislative branch. The state legislature shall have access to information or records deemed private and confidential under this chapter, if the legislature or a legislative committee finds that the information or records are necessary and for official purposes. If the employment security department does not make information or records available as provided in this subsection, the legislature may exercise its authority granted by chapter 44.16 RCW.

(3) In cases of emergency the governmental agency requesting access shall not be required to formally comply with the provisions of subsection (1) of this section at the time of the request if the procedures required by subsection (1) of this section are complied with by the requesting agency following the receipt of any records or information deemed private and confidential under this chapter. An emergency is defined as a situation in which irreparable harm or damage could occur if records or information are not released immediately.

(4) The requirements of subsection (1)(c) of this section shall not apply to governmental agencies where the procedures would frustrate the investigation of possible violations of criminal laws or to the release of employing unit names, addresses, number of employees, and aggregate employer wage data for the purpose of state governmental agencies preparing small business economic impact statements under chapter 19.85 RCW or preparing cost-benefit analyses under RCW 34.05.328(1) (c) and (d). Information provided by the department and held to be private and confidential under state or federal laws must not be misused or released to unauthorized parties. A person who misuses such information or releases such information to unauthorized parties is subject to the sanctions in RCW 50.13.080.

(5) Governmental agencies shall have access to certain records or information, limited to such items as names, addresses, social security numbers, and general information about benefit entitlement or employer information possessed by the department, for comparison purposes with records or information possessed by the requesting agency to detect improper or fraudulent claims, or to determine potential tax liability or employer compliance with registration and licensing requirements. In those cases the governmental agency shall not be required to comply with subsection (1)(c) of this section, but the requirements of the remainder of subsection (1) of this section must be satisfied.

(6) Governmental agencies may have access to certain records and information, limited to employer information possessed by the department for purposes authorized in chap-

ter 50.38 RCW. Access to these records and information is limited to only those individuals conducting authorized statistical analysis, research, and evaluation studies. Only in cases consistent with the purposes of chapter 50.38 RCW are government agencies not required to comply with subsection (1)(c) of this section, but the requirements of the remainder of subsection (1) of this section must be satisfied. Information provided by the department and held to be private and confidential under state or federal laws shall not be misused or released to unauthorized parties subject to the sanctions in RCW 50.13.080.

(7) Disclosure to governmental agencies of information or records obtained by the employment security department from the federal government shall be governed by any applicable federal law or any agreement between the federal government and the employment security department where so required by federal law. When federal law does not apply to the records or information state law shall control.

(8) The department may provide information for purposes of statistical analysis and evaluation of the WorkFirst program or any successor state welfare program to the department of social and health services, the office of financial management, and other governmental entities with oversight or evaluation responsibilities for the program in accordance with RCW 43.20A.080. The confidential information provided by the department shall remain the property of the department and may be used by the authorized requesting agencies only for statistical analysis, research, and evaluation purposes as provided in RCW 74.08A.410 and 74.08A.420. The department of social and health services, the office of financial management, or other governmental entities with oversight or evaluation responsibilities for the program are not required to comply with subsection (1)(c) of this section, but the requirements of the remainder of subsection (1) of this section and applicable federal laws and regulations must be satisfied. The confidential information used for evaluation and analysis of welfare reform supplied to the authorized requesting entities with regard to the WorkFirst program or any successor state welfare program are exempt from public inspection and copying under chapter 42.56 RCW.

(9) The disclosure of any records or information by a governmental agency which has obtained the records or information under this section is prohibited unless the disclosure is directly connected to the official purpose for which the records or information were obtained.

(10) In conducting periodic salary or fringe benefit studies pursuant to law, the department of personnel shall have access to records of the employment security department as may be required for such studies. For such purposes, the requirements of subsection (1)(c) of this section need not apply.

(11)(a) To promote the reemployment of job seekers, the commissioner may enter into data-sharing contracts with partners of the one-stop career development system. The contracts shall provide for the transfer of data only to the extent that the transfer is necessary for the efficient provisions of work force programs, including but not limited to public labor exchange, unemployment insurance, worker training and retraining, vocational rehabilitation, vocational education, adult education, transition from public assistance, and support services. The transfer of information under con-

tracts with one-stop partners is exempt from subsection (1)(c) of this section.

(b) An individual who applies for services from the department and whose information will be shared under (a) of this subsection (11) must be notified that his or her private and confidential information in the department's records will be shared among the one-stop partners to facilitate the delivery of one-stop services to the individual. The notice must advise the individual that he or she may request that private and confidential information not be shared among the one-stop partners and the department must honor the request. In addition, the notice must:

(i) Advise the individual that if he or she requests that private and confidential information not be shared among one-stop partners, the request will in no way affect eligibility for services;

(ii) Describe the nature of the information to be shared, the general use of the information by one-stop partner representatives, and among whom the information will be shared;

(iii) Inform the individual that shared information will be used only for the purpose of delivering one-stop services and that further disclosure of the information is prohibited under contract and is not subject to disclosure under chapter 42.56 RCW; and

(iv) Be provided in English and an alternative language selected by the one-stop center or job service center as appropriate for the community where the center is located.

If the notice is provided in-person, the individual who does not want private and confidential information shared among the one-stop partners must immediately advise the one-stop partner representative of that decision. The notice must be provided to an individual who applies for services telephonically, electronically, or by mail, in a suitable format and within a reasonable time after applying for services, which shall be no later than ten working days from the department's receipt of the application for services. A one-stop representative must be available to answer specific questions regarding the nature, extent, and purpose for which the information may be shared.

(12) To facilitate improved operation and evaluation of state programs, the commissioner may enter into data-sharing contracts with other state agencies only to the extent that such transfer is necessary for the efficient operation or evaluation of outcomes for those programs. The transfer of information by contract under this subsection is exempt from subsection (1)(c) of this section.

(13) The misuse or unauthorized release of records or information by any person or organization to which access is permitted by this chapter subjects the person or organization to a civil penalty of five thousand dollars and other applicable sanctions under state and federal law. Suit to enforce this section shall be brought by the attorney general and the amount of any penalties collected shall be paid into the employment security department administrative contingency fund. The attorney general may recover reasonable attorneys' fees for any action brought to enforce this section. [2005 c 274 § 322; 2003 c 165 § 3; 2000 c 134 § 2. Prior: 1997 c 409 § 605; 1997 c 58 § 1004; 1996 c 79 § 1; 1993 c 281 § 59; 1981 c 177 § 1; 1979 ex.s. c 177 § 1; 1977 ex.s. c 153 § 6.]

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

[2005 RCW Supp—page 690]

**Findings—2000 c 134:** "The legislature finds that individuals in need of employment and related services would be better served by integrating employment and training services to form a comprehensive network of state and local programs, called a one-stop career development system. Successful integration of employment and training services demands prompt and efficient exchange of information among service providers. The legislature further finds that efficient operation of state programs and their evaluation demand at times information held by the employment security department. Current restrictions on information exchange hamper this coordination, resulting in increased administrative costs, reduced levels of service, and fewer positive outcomes than could otherwise be achieved." [2000 c 134 § 1.]

**Conflict with federal requirements—2000 c 134:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2000 c 134 § 4.]

**Severability—2000 c 134:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2000 c 134 § 5.]

**Effective date—1997 c 409 § 605:** "Section 605 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 19, 1997]." [1997 c 409 § 608.]

**Part headings—Severability—1997 c 409:** See notes following RCW 43.22.051.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Conflict with federal requirements—1996 c 79:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1996 c 79 § 3.]

**Effective date—1996 c 79:** "This act shall take effect July 1, 1996." [1996 c 79 § 4.]

**Effective date—1993 c 281:** See note following RCW 41.06.022.

**50.13.080 Disclosure of records or information to private persons or organizations contracting to assist in operation and management of department—Penalties. (Effective July 1, 2006.)**

(1) The employment security department shall have the right to disclose information or records deemed private and confidential under this chapter to any private person or organization when such disclosure is necessary to permit private contracting parties to assist in the operation and management of the department in instances where certain departmental functions may be delegated to private parties to increase the department's efficiency or quality of service to the public. The private persons or organizations shall use the information or records solely for the purpose for which the information was disclosed and shall be bound by the same rules of privacy and confidentiality as employment security department employees.

(2) Nothing in this section shall be construed as limiting or restricting the effect of RCW 42.56.070(9).

(3) The misuse or unauthorized release of records or information deemed private and confidential under this chapter by any private person or organization to which access is permitted by this section shall subject the person or organization to a civil penalty of five thousand dollars and other applicable sanctions under state and federal law. Suit to enforce this section shall be brought by the attorney general and the amount of any penalties collected shall be paid into the employment security department administrative contingency fund. The attorney general may recover reasonable attorneys' fees for any action brought to enforce this section. [2005 c 274 § 323; 1996 c 79 § 2; 1977 ex.s. c 153 § 8.]

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

**Conflict with federal requirements—Effective date—1996 c 79:** See notes following RCW 50.13.060.

## Chapter 50.16 RCW

### FUNDS

#### Sections

50.16.010 Unemployment compensation fund—Administrative contingency fund—Federal interest payment fund.

50.16.030 Withdrawals from federal unemployment trust fund.

**50.16.010 Unemployment compensation fund—Administrative contingency fund—Federal interest payment fund.** (1) There shall be maintained as special funds, separate and apart from all public moneys or funds of this state an unemployment compensation fund, an administrative contingency fund, and a federal interest payment fund, which shall be administered by the commissioner exclusively for the purposes of this title, and to which RCW 43.01.050 shall not be applicable.

(2)(a) The unemployment compensation fund shall consist of:

(i) All contributions collected under RCW 50.24.010 and payments in lieu of contributions collected pursuant to the provisions of this title;

(ii) Any property or securities acquired through the use of moneys belonging to the fund;

(iii) All earnings of such property or securities;

(iv) Any moneys received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the social security act, as amended;

(v) All money recovered on official bonds for losses sustained by the fund;

(vi) All money credited to this state's account in the unemployment trust fund pursuant to section 903 of the social security act, as amended;

(vii) All money received from the federal government as reimbursement pursuant to section 204 of the federal-state extended compensation act of 1970 (84 Stat. 708-712; 26 U.S.C. Sec. 3304); and

(viii) All moneys received for the fund from any other source.

(b) All moneys in the unemployment compensation fund shall be commingled and undivided.

(3)(a) Except as provided in (b) of this subsection, the administrative contingency fund shall consist of:

(i) All interest on delinquent contributions collected pursuant to this title;

(ii) All fines and penalties collected pursuant to the provisions of this title;

(iii) All sums recovered on official bonds for losses sustained by the fund; and

(iv) Revenue received under RCW 50.24.014.

(b) All fees, fines, forfeitures, and penalties collected or assessed by a district court because of the violation of this title or rules adopted under this title shall be remitted as provided in chapter 3.62 RCW.

(c) Moneys available in the administrative contingency fund, other than money in the special account created under RCW 50.24.014(1)(a), shall be expended upon the direction of the commissioner, with the approval of the governor, whenever it appears to him or her that such expenditure is necessary solely for:

(i) The proper administration of this title and no federal funds are available for the specific purpose to which such expenditure is to be made, provided, the moneys are not substituted for appropriations from federal funds which, in the absence of such moneys, would be made available.

(ii) The proper administration of this title for which purpose appropriations from federal funds have been requested but not yet received, provided, the administrative contingency fund will be reimbursed upon receipt of the requested federal appropriation.

(iii) The proper administration of this title for which compliance and audit issues have been identified that establish federal claims requiring the expenditure of state resources in resolution. Claims must be resolved in the following priority: First priority is to provide services to eligible participants within the state; second priority is to provide substitute services or program support; and last priority is the direct payment of funds to the federal government.

(d) During the 2005-2007 fiscal biennium, the cost of the job skills program at community and technical colleges as appropriated by the legislature.

Money in the special account created under RCW 50.24.014(1)(a) may only be expended, after appropriation, for the purposes specified in this section and RCW 50.62.010, 50.62.020, 50.62.030, 50.24.014, 50.44.053, and 50.22.010. [2005 c 518 § 933. Prior: 2003 2nd sp.s. c 4 § 23; 2003 1st sp.s. c 25 § 925; 2002 c 371 § 914; prior: 1993 c 483 § 7; 1993 c 226 § 10; 1993 c 226 § 9; 1991 sp.s. c 13 § 59; 1987 c 202 § 218; 1985 ex.s. c 5 § 6; 1983 1st ex.s. c 13 § 5; 1980 c 142 § 1; 1977 ex.s. c 292 § 24; 1973 c 73 § 4; 1969 ex.s. c 199 § 27; 1959 c 170 § 1; 1955 c 286 § 2; 1953 ex.s. c 8 § 5; 1945 c 35 § 60; Rem. Supp. 1945 § 9998-198; prior: 1943 c 127 § 6; 1941 c 253 §§ 7, 10; 1939 c 214 § 11; 1937 c 162 § 13.]

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

**Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4:** See notes following RCW 50.01.010.

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Severability—Effective date—2002 c 371:** See notes following RCW 9.46.100.

**Conflict with federal requirements—Severability—1993 c 483:** See notes following RCW 50.04.293.

**Effective dates—1993 c 226 §§ 10, 12, and 14:** "(1) Sections 10 and 12 of this act shall take effect June 30, 1999;

(2) Section 14 of this act shall take effect January 1, 1998." [1993 c 226 § 20.]

**Conflict with federal requirements—1993 c 226:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1993 c 226 § 21.]

**Severability—1993 c 226:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 226 § 22.]

**Application—1993 c 226:** "This act applies to tax rate years beginning with tax rate year 1994." [1993 c 226 § 23.]

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

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

**Conflict with federal requirements—Severability—1985 ex.s. c 5:** See notes following RCW 50.62.010.

**Conflict with federal requirements—1983 1st ex.s. c 13:** "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state." [1983 1st ex.s. c 13 § 13.]

**Effective dates—1977 ex.s. c 292:** See note following RCW 50.04.116.

**Effective dates—1973 c 73:** See note following RCW 50.04.030.

**50.16.030 Withdrawals from federal unemployment trust fund.** (1)(a) Except as provided in (b) and (c) of this subsection, moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and repayment of loans from the federal government to guarantee solvency of the unemployment compensation fund in accordance with regulations prescribed by the commissioner, except that money credited to this state's account pursuant to section 903 of the social security act, as amended, shall be used exclusively as provided in RCW 50.16.030(5). The commissioner shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to its account therein, as he or she deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall issue his or her warrants for the payment of benefits solely from such benefits account.

(b) Moneys for the payment of regular benefits as defined in RCW 50.22.010 shall be requisitioned during fiscal years 2006 and 2007 in the following order:

(i) First, from the moneys credited to this state's account in the unemployment trust fund pursuant to section 903 of the social security act, as amended in section 209 of the temporary extended unemployment compensation act of 2002 (42 U.S.C. Sec. 1103(d)), the amount equal to the amount of benefits charged that exceed the contributions paid in the four consecutive calendar quarters ending on June 30, 2006, for

the fiscal year 2006 calculation, and ending on June 30, 2007, for the fiscal year 2007 calculation, because the social cost factor contributions that employers are subject to under RCW 50.29.025(2)(b)(ii)(B) are less than the social cost factor contributions that these employers would have been subject to if RCW 50.29.025(2)(b)(ii)(A) had applied to these employers; and

(ii) Second, after the requisitioning required under (b)(i) of this subsection in the respective fiscal year, from all other moneys credited to this state's account in the unemployment trust fund.

(c) After the requisitioning required under (b) of this subsection, if applicable, moneys for the payment of regular benefits as defined in RCW 50.22.010 shall be requisitioned during calendar year 2007 in the following order:

(i) First, from the moneys credited to this state's account in the unemployment trust fund pursuant to section 903 of the social security act, as amended in section 209 of the temporary extended unemployment compensation act of 2002 (42 U.S.C. Sec. 1103(d)), the amount equal to the amount of benefits paid under RCW 50.20.120(2)(c)(ii) beginning on the first Sunday following April 22, 2005, and ending on June 30, 2007, that exceed the amount of benefits that would have been paid if the weekly benefit amount had been determined as one percent of the total wages paid in the individual's base year; and

(ii) Second, after the requisitioning required under (c)(i) of this subsection in the respective calendar year, from all other moneys credited to this state's account in the unemployment trust fund.

(2) Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody, and RCW 43.01.050, as amended, shall not apply. All warrants issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer and the countersignature of the commissioner, or his or her duly authorized agent for that purpose.

(3) Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or in the discretion of the commissioner, shall be redeposited with the secretary of the treasury of the United States of America to the credit of this state's account in the unemployment trust fund.

(4) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the social security act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this title pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

(a) Specifies the purposes for which such money is appropriated and the amounts appropriated therefor;



(b) Limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law; and

(c) Limits the amount which may be obligated during a twelve-month period beginning on July 1st and ending on the next June 30th to an amount which does not exceed the amount by which (i) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the social security act, as amended, during the same twelve-month period and the thirty-four preceding twelve-month periods, exceeds (ii) the aggregate of the amounts obligated pursuant to RCW 50.16.030 (4), (5) and (6) and charged against the amounts credited to the account of this state during any of such thirty-five twelve-month periods. For the purposes of RCW 50.16.030 (4), (5) and (6), amounts obligated during any such twelve-month period shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administration during any such twelve-month period may be charged against any amount credited during such a twelve-month period earlier than the thirty-fourth twelve-month period preceding such period: PROVIDED, That any amount credited to this state's account under section 903 of the social security act, as amended, which has been appropriated for expenses of administration, whether or not withdrawn from the trust fund shall be excluded from the unemployment compensation fund balance for the purpose of experience rating credit determination.

(5) Money credited to the account of this state pursuant to section 903 of the social security act, as amended, may not be withdrawn or used except for the payment of benefits and for the payment of expenses of administration and of public employment offices pursuant to RCW 50.16.030 (4), (5) and (6). However, moneys credited because of excess amounts in federal accounts in federal fiscal years 1999, 2000, and 2001 shall be used solely for the administration of the unemployment compensation program and are not subject to appropriation by the legislature for any other purpose.

(6) Money requisitioned as provided in RCW 50.16.030 (4), (5) and (6) for the payment of expenses of administration shall be deposited in the unemployment compensation fund, but until expended, shall remain a part of the unemployment compensation fund. The commissioner shall maintain a separate record of the deposit, obligation, expenditure and return of funds so deposited. Any money so deposited which either will not be obligated within the period specified by the appropriation law or remains unobligated at the end of the period, and any money which has been obligated within the period but will not be expended, shall be returned promptly to the account of this state in the unemployment trust fund. [2005 c 133 § 6; 1999 c 36 § 1; 1983 1st ex.s. c 7 § 1; 1973 c 6 § 1; 1969 ex.s. c 201 § 1; 1959 c 170 § 2; 1945 c 35 § 62; Rem. Supp. 1945 § 9998-200. Prior: 1943 c 127 § 6; 1941 c 253 § 7.]

**Expiration date—Intent—2005 c 133:** See note following RCW 50.01.010.

**Findings—Intent—Conflict with federal requirements—Effective date—2005 c 133:** See notes following RCW 50.20.120.

**Additional employees authorized—2005 c 133:** See note following RCW 50.01.020.

**Conflict with federal requirements—1999 c 36:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1999 c 36 § 2.]

## Chapter 50.20 RCW BENEFITS AND CLAIMS

### Sections

50.20.120	Amount of benefits.
50.20.190	Recovery of benefit payments.

**50.20.120 Amount of benefits.** (1)(a) Subject to the other provisions of this title, benefits shall be payable to any eligible individual during the individual's benefit year in a maximum amount equal to the lesser of thirty times the weekly benefit amount, as determined in subsection (2) of this section, or one-third of the individual's base year wages under this title: PROVIDED, That as to any week which falls in an extended benefit period as defined in RCW 50.22.010(1), an individual's eligibility for maximum benefits in excess of twenty-six times his or her weekly benefit amount will be subject to the terms and conditions set forth in RCW 50.22.020.

(b) With respect to claims that have an effective date on or after the first Sunday of the calendar month immediately following the month in which the commissioner finds that the state unemployment rate is six and eight-tenths percent or less, benefits shall be payable to any eligible individual during the individual's benefit year in a maximum amount equal to the lesser of twenty-six times the weekly benefit amount, as determined in subsection (2) of this section, or one-third of the individual's base year wages under this title.

(2)(a) For claims with an effective date before January 4, 2004, an individual's weekly benefit amount shall be an amount equal to one twenty-fifth of the average quarterly wages of the individual's total wages during the two quarters of the individual's base year in which such total wages were highest.

(b) With respect to claims with an effective date on or after January 4, 2004, and before January 2, 2005, an individual's weekly benefit amount shall be an amount equal to one twenty-fifth of the average quarterly wages of the individual's total wages during the three quarters of the individual's base year in which such total wages were highest.

(c)(i) With respect to claims with an effective date on or after January 2, 2005, except as provided in (c)(ii) of this subsection, an individual's weekly benefit amount shall be an amount equal to one percent of the total wages paid in the individual's base year.

(ii) With respect to claims with an effective date on or after the first Sunday following April 22, 2005, and before July 1, 2007, an individual's weekly benefit amount shall be an amount equal to three and eighty-five one-hundredths percent of the average quarterly wages of the individual's total

wages during the two quarters of the individual's base year in which such total wages were highest.

(3) The maximum and minimum amounts payable weekly shall be determined as of each June 30th to apply to benefit years beginning in the twelve-month period immediately following such June 30th.

(a)(i) With respect to claims that have an effective date before January 4, 2004, the maximum amount payable weekly shall be seventy percent of the "average weekly wage" for the calendar year preceding such June 30th.

(ii) With respect to claims that have an effective date on or after January 4, 2004, the maximum amount payable weekly shall be either four hundred ninety-six dollars or sixty-three percent of the "average weekly wage" for the calendar year preceding such June 30th, whichever is greater.

(b) The minimum amount payable weekly shall be fifteen percent of the "average weekly wage" for the calendar year preceding such June 30th.

(4) If any weekly benefit, maximum benefit, or minimum benefit amount computed herein is not a multiple of one dollar, it shall be reduced to the next lower multiple of one dollar. [2005 c 133 § 3; 2003 2nd sp.s. c 4 § 11; 2002 c 149 § 4; 1993 c 483 § 12; 1984 c 205 § 1; 1983 1st ex.s. c 23 § 11; 1981 c 35 § 5; 1980 c 74 § 3; 1977 ex.s. c 33 § 7; 1970 ex.s. c 2 § 5; 1959 c 321 § 2; 1955 c 209 § 1; 1951 c 265 § 11; 1949 c 214 § 16; 1945 c 35 § 80; Rem. Supp. 1949 § 9998-218. Prior: 1943 c 127 § 1; 1941 c 253 § 1; 1939 c 214 § 1; 1937 c 162 § 3.]

**Findings—Intent—2005 c 133:** "The legislature finds that the unemployment insurance system was created to set aside unemployment reserves to be used for the benefit of persons who are unemployed through no fault of their own and to maintain purchasing power and limit the social consequences of unemployment. The legislature further finds that the system is falling short of these goals by failing to recognize the importance of applying liberal construction for the purpose of reducing involuntary unemployment, and the suffering caused by it, to the minimum, and by failing to provide equitable benefits to unemployed workers. The legislature also recognizes the desirability of managing the system to take into account the goal of reducing costs to foster a competitive business climate. The legislature intends to adjust the balance between these goals by reinstating the requirement for liberal construction and making other adjustments in the system that will allow reasonable improvements in benefit equity, including reinstating a weekly benefit calculation based on the wages in the two quarters of the claimant's base year in which wages were the highest. The legislature finds that these adjustments are critical to the health and welfare of unemployed workers, and to the purchasing power essential to the economic health and welfare of communities and the state, and should be implemented as soon as feasible." [2005 c 133 § 1.]

**Conflict with federal requirements—2005 c 133:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2005 c 133 § 11.]

**Effective date—2005 c 133:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 22, 2005]." [2005 c 133 § 12.]

**Expiration date—Intent—2005 c 133:** See note following RCW 50.01.010.

**Additional employees authorized—2005 c 133:** See note following RCW 50.01.020.

[2005 RCW Supp—page 694]

**Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4:** See notes following RCW 50.01.010.

**Conflict with federal requirements—Severability—2002 c 149:** See notes following RCW 50.22.140.

**Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483:** See notes following RCW 50.04.293.

**Conflict with federal requirements—1984 c 205:** "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1984 c 205 § 11.]

**Severability—1984 c 205:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 205 § 12.]

**Effective dates—1984 c 205:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 21, 1984], except as follows:

- (1) Sections 6 and 13 of this act shall take effect on January 1, 1985;
- (2) Section 7 of this act shall be effective for compensable weeks of unemployment beginning on or after January 6, 1985; and
- (3) Section 9 of this act shall take effect on July 1, 1985." [1984 c 205 § 14.]

**Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23:** See notes following RCW 50.04.073.

**Construction—Effective dates—Severability—1981 c 35:** See notes following RCW 50.22.030.

**Severability—Effective dates—1980 c 74:** See notes following RCW 50.04.323.

**Effective dates—Construction—1977 ex.s. c 33:** See notes following RCW 50.04.030.

**Effective date—1970 ex.s. c 2:** See note following RCW 50.04.020.

**Effective date—1959 c 321:** See note following RCW 50.20.080.

**Severability—1951 c 265:** See note following RCW 50.98.070.

**50.20.190 Recovery of benefit payments.** (1) An individual who is paid any amount as benefits under this title to which he or she is not entitled shall, unless otherwise relieved pursuant to this section, be liable for repayment of the amount overpaid. The department shall issue an overpayment assessment setting forth the reasons for and the amount of the overpayment. The amount assessed, to the extent not collected, may be deducted from any future benefits payable to the individual: PROVIDED, That in the absence of a back pay award, a settlement affecting the allowance of benefits, fraud, misrepresentation, or willful nondisclosure, every determination of liability shall be mailed or personally served not later than two years after the close of or final payment made on the individual's applicable benefit year for which the purported overpayment was made, whichever is later, unless the merits of the claim are subjected to administrative or judicial review in which event the period for serving the determination of liability shall be extended to allow service of the determination of liability during the six-month period following the final decision affecting the claim.

(2) The commissioner may waive an overpayment if the commissioner finds that the overpayment was not the result of fraud, misrepresentation, willful nondisclosure, or fault attributable to the individual and that the recovery thereof

would be against equity and good conscience: PROVIDED, HOWEVER, That the overpayment so waived shall be charged against the individual's applicable entitlement for the eligibility period containing the weeks to which the overpayment was attributed as though such benefits had been properly paid.

(3) Any assessment herein provided shall constitute a determination of liability from which an appeal may be had in the same manner and to the same extent as provided for appeals relating to determinations in respect to claims for benefits: PROVIDED, That an appeal from any determination covering overpayment only shall be deemed to be an appeal from the determination which was the basis for establishing the overpayment unless the merits involved in the issue set forth in such determination have already been heard and passed upon by the appeal tribunal. If no such appeal is taken to the appeal tribunal by the individual within thirty days of the delivery of the notice of determination of liability, or within thirty days of the mailing of the notice of determination, whichever is the earlier, the determination of liability shall be deemed conclusive and final. Whenever any such notice of determination of liability becomes conclusive and final, the commissioner, upon giving at least twenty days notice by certified mail return receipt requested to the individual's last known address of the intended action, may file with the superior court clerk of any county within the state a warrant in the amount of the notice of determination of liability plus a filing fee under RCW 36.18.012(10). The clerk of the county where the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the person(s) mentioned in the warrant, the amount of the notice of determination of liability, and the date when the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to, and any interest in, all real and personal property of the person(s) against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. A warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law for a civil judgment. A copy of the warrant shall be mailed to the person(s) mentioned in the warrant by certified mail to the person's last known address within five days of its filing with the clerk.

(4) On request of any agency which administers an employment security law of another state, the United States, or a foreign government and which has found in accordance with the provisions of such law that a claimant is liable to repay benefits received under such law, the commissioner may collect the amount of such benefits from the claimant to be refunded to the agency. In any case in which under this section a claimant is liable to repay any amount to the agency of another state, the United States, or a foreign government, such amounts may be collected without interest by civil action in the name of the commissioner acting as agent for such agency if the other state, the United States, or the foreign government extends such collection rights to the employment security department of the state of Washington, and provided that the court costs be paid by the governmental agency benefiting from such collection.

(5) Any employer who is a party to a back pay award or settlement due to loss of wages shall, within thirty days of the award or settlement, report to the department the amount of the award or settlement, the name and social security number of the recipient of the award or settlement, and the period for which it is awarded. When an individual has been awarded or receives back pay, for benefit purposes the amount of the back pay shall constitute wages paid in the period for which it was awarded. For contribution purposes, the back pay award or settlement shall constitute wages paid in the period in which it was actually paid. The following requirements shall also apply:

(a) The employer shall reduce the amount of the back pay award or settlement by an amount determined by the department based upon the amount of unemployment benefits received by the recipient of the award or settlement during the period for which the back pay award or settlement was awarded;

(b) The employer shall pay to the unemployment compensation fund, in a manner specified by the commissioner, an amount equal to the amount of such reduction;

(c) The employer shall also pay to the department any taxes due for unemployment insurance purposes on the entire amount of the back pay award or settlement notwithstanding any reduction made pursuant to (a) of this subsection;

(d) If the employer fails to reduce the amount of the back pay award or settlement as required in (a) of this subsection, the department shall issue an overpayment assessment against the recipient of the award or settlement in the amount that the back pay award or settlement should have been reduced; and

(e) If the employer fails to pay to the department an amount equal to the reduction as required in (b) of this subsection, the department shall issue an assessment of liability against the employer which shall be collected pursuant to the procedures for collection of assessments provided herein and in RCW 50.24.110.

(6) When an individual fails to repay an overpayment assessment that is due and fails to arrange for satisfactory repayment terms, the commissioner shall impose an interest penalty of one percent per month of the outstanding balance. Interest shall accrue immediately on overpayments assessed pursuant to RCW 50.20.070 and shall be imposed when the assessment becomes final. For any other overpayment, interest shall accrue when the individual has missed two or more of the individual's monthly payments either partially or in full. The interest penalty shall be used, first, to fully fund either social security number cross-match audits or other more effective activities that ensure that individuals are entitled to all amounts of benefits that they are paid, second, to fund other detection and recovery of overpayment and collection activities, and third, during the 2005-07 fiscal biennium, the cost of the job skills program at community and technical colleges as appropriated by the legislature. [2005 c 518 § 934; 2003 2nd sp.s. c 4 § 26; 2002 c 371 § 915; 2001 c 146 § 7; 1995 c 90 § 1; 1993 c 483 § 13; 1991 c 117 § 3; 1990 c 245 § 5; 1989 c 92 § 2; 1981 c 35 § 6; 1975 1st ex.s. c 228 § 3; 1973 1st ex.s. c 158 § 7; 1953 ex.s. c 8 § 14; 1951 c 215 § 8; 1947 c 215 § 18; 1945 c 35 § 87; Rem. Supp. 1947 § 9998-225. Prior: 1943 c 127 § 12; 1941 c 253 § 13; 1939 c 214 § 14; 1937 c 162 § 16.]

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

**Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4:** See notes following RCW 50.01.010.

**Severability—Effective date—2002 c 371:** See notes following RCW 9.46.100.

**Conflict with federal requirements—1995 c 90:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1995 c 90 § 2.]

**Application—1995 c 90:** "This act applies to job separations occurring after July 1, 1995." [1995 c 90 § 3.]

**Effective date—1995 c 90:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 18, 1995]." [1995 c 90 § 4.]

**Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483:** See notes following RCW 50.04.293.

**Conflict with federal requirements—Severability—Effective dates—1991 c 117:** See notes following RCW 50.04.030.

**Conflict with federal requirements—1990 c 245:** See note following RCW 50.04.030.

**Severability—1981 c 35:** See note following RCW 50.22.030.

**Effective date—1975 1st ex.s. c 228:** See note following RCW 50.04.355.

**Effective date—1973 1st ex.s. c 158:** See note following RCW 50.08.020.

*Government or retirement pension plan payments as remuneration or wages—Recovery of excess over benefits allowable, limitations: RCW 50.04.323.*

## Chapter 50.29 RCW

### EMPLOYER EXPERIENCE RATING

#### Sections

- 50.29.021 Experience rating accounts—Benefits not charged—Claims with an effective date on or after January 4, 2004.  
50.29.025 Contribution rate.

**50.29.021 Experience rating accounts—Benefits not charged—Claims with an effective date on or after January 4, 2004.** (1) This section applies to benefits charged to the experience rating accounts of employers for claims that have an effective date on or after January 4, 2004.

(2)(a) An experience rating account shall be established and maintained for each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, based on existing records of the employment security department.

(b) Benefits paid to an eligible individual shall be charged to the experience rating accounts of each of such individual's employers during the individual's base year in the same ratio that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year, except as otherwise provided in this section.

(c) When the eligible individual's separating employer is a covered contribution paying base year employer, benefits paid to the eligible individual shall be charged to the experience rating account of only the individual's separating employer if the individual qualifies for benefits under:

(i) RCW 50.20.050(2)(b)(i), as applicable, and became unemployed after having worked and earned wages in the bona fide work; or

(ii) RCW 50.20.050(2)(b)(v) through (x).

(3) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rating accounts of employers except those employers described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, as follows:

(a) Benefits paid to any individual later determined to be ineligible shall not be charged to the experience rating account of any contribution paying employer.

(b) Benefits paid to an individual filing under the provisions of chapter 50.06 RCW shall not be charged to the experience rating account of any contribution paying employer only if:

(i) The individual files under RCW 50.06.020(1) after receiving crime victims' compensation for a disability resulting from a nonwork-related occurrence; or

(ii) The individual files under RCW 50.06.020(2).

(c) Benefits paid which represent the state's share of benefits payable as extended benefits defined under RCW 50.22.010(6) shall not be charged to the experience rating account of any contribution paying employer.

(d) In the case of individuals who requalify for benefits under RCW 50.20.050 or 50.20.060, benefits based on wage credits earned prior to the disqualifying separation shall not be charged to the experience rating account of the contribution paying employer from whom that separation took place.

(e) Individuals who qualify for benefits under RCW 50.20.050(2)(b)(iv), as applicable, shall not have their benefits charged to the experience rating account of any contribution paying employer.

(f) With respect to claims with an effective date on or after the first Sunday following April 22, 2005, and before July 1, 2007, benefits paid that exceed the benefits that would have been paid if the weekly benefit amount for the claim had been determined as one percent of the total wages paid in the individual's base year shall not be charged to the experience rating account of any contribution paying employer.

(4)(a) A contribution paying base year employer, not otherwise eligible for relief of charges for benefits under this section, may receive such relief if the benefit charges result from payment to an individual who:

(i) Last left the employ of such employer voluntarily for reasons not attributable to the employer;

(ii) Was discharged for misconduct or gross misconduct connected with his or her work not a result of inability to meet the minimum job requirements;

(iii) Is unemployed as a result of closure or severe curtailment of operation at the employer's plant, building, worksite, or other facility. This closure must be for reasons

directly attributable to a catastrophic occurrence such as fire, flood, or other natural disaster; or

(iv) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who at some time during the base year was concurrently employed and subsequently separated from at least one other base year employer. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter 50.60 RCW.

(b) The employer requesting relief of charges under this subsection must request relief in writing within thirty days following mailing to the last known address of the notification of the valid initial determination of such claim, stating the date and reason for the separation or the circumstances of continued employment. The commissioner, upon investigation of the request, shall determine whether relief should be granted. [2005 c 133 § 4; 2003 2nd sp.s. c 4 § 21.]

**Expiration date—Intent—2005 c 133:** See note following RCW 50.01.010.

**Findings—Intent—Conflict with federal requirements—Effective date—2005 c 133:** See notes following RCW 50.20.120.

**Additional employees authorized—2005 c 133:** See note following RCW 50.01.020.

**Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4:** See notes following RCW 50.01.010.

**50.29.025 Contribution rate.** (1) Except as provided in subsection (2) of this section, the contribution rate for each employer subject to contributions under RCW 50.24.010 shall be determined under this subsection.

(a) A fund balance ratio shall be determined by dividing the balance in the unemployment compensation fund as of the September 30th immediately preceding the rate year by the total remuneration paid by all employers subject to contributions during the second calendar year preceding the rate year and reported to the department by the following March 31st. The division shall be carried to the fourth decimal place with the remaining fraction, if any, disregarded. The fund balance ratio shall be expressed as a percentage.

(b) The interval of the fund balance ratio, expressed as a percentage, shall determine which tax schedule in (e) of this subsection shall be in effect for assigning tax rates for the rate year. The intervals for determining the effective tax schedule shall be:

Interval of the Fund Balance Ratio Expressed as a Percentage	Effective Tax Schedule
2.90 and above	AA
2.10 to 2.89	A
1.70 to 2.09	B
1.40 to 1.69	C
1.00 to 1.39	D
0.70 to 0.99	E
Less than 0.70	F

(c) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (i) Identifica-

tion number; (ii) benefit ratio; (iii) taxable payrolls for the four calendar quarters immediately preceding the computation date and reported to the department by the cut-off date; (iv) a cumulative total of taxable payrolls consisting of the employer's taxable payroll plus the taxable payrolls of all other employers preceding him or her in the array; and (v) the percentage equivalent of the cumulative total of taxable payrolls.

(d) Each employer in the array shall be assigned to one of twenty rate classes according to the percentage intervals of cumulative taxable payrolls set forth in (e) of this subsection: PROVIDED, That if an employer's taxable payroll falls within two or more rate classes, the employer and any other employer with the same benefit ratio shall be assigned to the lowest rate class which includes any portion of the employer's taxable payroll.

(e) Except as provided in RCW 50.29.026, the contribution rate for each employer in the array shall be the rate specified in the following tables for the rate class to which he or she has been assigned, as determined under (d) of this subsection, within the tax schedule which is to be in effect during the rate year:

Percent of Cumulative Taxable Payrolls		Schedules of Contributions Rates for Effective Tax Schedule								
From	To	Rate Class	Rate							
			AA	A	B	C	D	E	F	
0.00	5.00	1	0.47	0.47	0.57	0.97	1.47	1.87	2.47	
5.01	10.00	2	0.47	0.47	0.77	1.17	1.67	2.07	2.67	
10.01	15.00	3	0.57	0.57	0.97	1.37	1.77	2.27	2.87	
15.01	20.00	4	0.57	0.73	1.11	1.51	1.90	2.40	2.98	
20.01	25.00	5	0.72	0.92	1.30	1.70	2.09	2.59	3.08	
25.01	30.00	6	0.91	1.11	1.49	1.89	2.29	2.69	3.18	
30.01	35.00	7	1.00	1.29	1.69	2.08	2.48	2.88	3.27	
35.01	40.00	8	1.19	1.48	1.88	2.27	2.67	3.07	3.47	
40.01	45.00	9	1.37	1.67	2.07	2.47	2.87	3.27	3.66	
45.01	50.00	10	1.56	1.86	2.26	2.66	3.06	3.46	3.86	
50.01	55.00	11	1.84	2.14	2.45	2.85	3.25	3.66	3.95	
55.01	60.00	12	2.03	2.33	2.64	3.04	3.44	3.85	4.15	
60.01	65.00	13	2.22	2.52	2.83	3.23	3.64	4.04	4.34	
65.01	70.00	14	2.40	2.71	3.02	3.43	3.83	4.24	4.54	
70.01	75.00	15	2.68	2.90	3.21	3.62	4.02	4.43	4.63	
75.01	80.00	16	2.87	3.09	3.42	3.81	4.22	4.53	4.73	
80.01	85.00	17	3.27	3.47	3.77	4.17	4.57	4.87	4.97	
85.01	90.00	18	3.67	3.87	4.17	4.57	4.87	4.97	5.17	
90.01	95.00	19	4.07	4.27	4.57	4.97	5.07	5.17	5.37	
95.01	100.00	20	5.40	5.40	5.40	5.40	5.40	5.40	5.40	

(f) The contribution rate for each employer not qualified to be in the array shall be as follows:

(i) Employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due shall be assigned a contribution rate two-tenths higher than that in rate class 20 for the applicable rate year, except employers who have an approved agency-deferred payment contract by September 30 of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and pay-

ment in a timely manner, the employer's tax rate shall immediately revert to a contribution rate two-tenths higher than that in rate class 20 for the applicable rate year; and

(ii) For all other employers not qualified to be in the array, the contribution rate shall be a rate equal to the average industry rate as determined by the commissioner; however, the rate may not be less than one percent.

(2) Beginning with contributions assessed for rate year 2005, the contribution rate for each employer subject to contributions under RCW 50.24.010 shall be the sum of the array calculation factor rate and the graduated social cost factor rate determined under this subsection, and the solvency surcharge determined under RCW 50.29.041, if any.

(a) The array calculation factor rate shall be determined as follows:

(i) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (A) Identification number; (B) benefit ratio; and (C) taxable payrolls for the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(ii) Each employer in the array shall be assigned to one of forty rate classes according to his or her benefit ratio as follows, and, except as provided in RCW 50.29.026, the array calculation factor rate for each employer in the array shall be the rate specified in the rate class to which the employer has been assigned:

Benefit Ratio		Rate Class	Rate (percent)
At least	Less than		
	0.000001	1	0.00
0.000001	0.001250	2	0.13
0.001250	0.002500	3	0.25
0.002500	0.003750	4	0.38
0.003750	0.005000	5	0.50
0.005000	0.006250	6	0.63
0.006250	0.007500	7	0.75
0.007500	0.008750	8	0.88
0.008750	0.010000	9	1.00
0.010000	0.011250	10	1.15
0.011250	0.012500	11	1.30
0.012500	0.013750	12	1.45
0.013750	0.015000	13	1.60
0.015000	0.016250	14	1.75
0.016250	0.017500	15	1.90
0.017500	0.018750	16	2.05
0.018750	0.020000	17	2.20
0.020000	0.021250	18	2.35
0.021250	0.022500	19	2.50
0.022500	0.023750	20	2.65
0.023750	0.025000	21	2.80
0.025000	0.026250	22	2.95
0.026250	0.027500	23	3.10
0.027500	0.028750	24	3.25

0.028750	0.030000	25	3.40
0.030000	0.031250	26	3.55
0.031250	0.032500	27	3.70
0.032500	0.033750	28	3.85
0.033750	0.035000	29	4.00
0.035000	0.036250	30	4.15
0.036250	0.037500	31	4.30
0.037500	0.040000	32	4.45
0.040000	0.042500	33	4.60
0.042500	0.045000	34	4.75
0.045000	0.047500	35	4.90
0.047500	0.050000	36	5.05
0.050000	0.052500	37	5.20
0.052500	0.055000	38	5.30
0.055000	0.057500	39	5.35
0.057500		40	5.40

(b) The graduated social cost factor rate shall be determined as follows:

(i)(A) Except as provided in (b)(i)(B), (C), and (D) of this subsection, the commissioner shall calculate the flat social cost factor for a rate year by dividing the total social cost by the total taxable payroll. The division shall be carried to the second decimal place with the remaining fraction disregarded unless it amounts to five hundredths or more, in which case the second decimal place shall be rounded to the next higher digit. The flat social cost factor shall be expressed as a percentage.

(B) If, on the cut-off date, the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide more than ten months of unemployment benefits, the commissioner shall calculate the flat social cost factor for the rate year immediately following the cut-off date by reducing the total social cost by the dollar amount that represents the number of months for which the balance in the unemployment compensation fund on the cut-off date will provide benefits above ten months and dividing the result by the total taxable payroll. However, the calculation under this subsection (2)(b)(i)(B) for a rate year may not result in a flat social cost factor that is more than two-tenths lower than the calculation under (b)(i)(A) of this subsection for that rate year. For the purposes of this subsection, the commissioner shall determine the number of months of unemployment benefits in the unemployment compensation fund using the benefit cost rate for the average of the three highest calendar benefit cost rates in the twenty consecutive completed calendar years immediately preceding the cut-off date or a period of consecutive calendar years immediately preceding the cut-off date that includes three recessions, if longer.

(C) The minimum flat social cost factor calculated under this subsection (2)(b) shall be six-tenths of one percent.

(D) With respect to rate year 2007, the flat social cost factor shall be the lesser of:

(I) The flat social cost factor determined under (b)(i)(A) through (C) of this subsection; or

(II) The flat social cost factor that would be determined under (b)(i)(A) through (C) of this subsection if RCW 50.20.120(2)(c)(i) had been in effect during the immediately preceding rate year.

(ii)(A) Except as provided in (b)(ii)(B) of this subsection, the graduated social cost factor rate for each employer in the array is the flat social cost factor multiplied by the percentage specified as follows for the rate class to which the employer has been assigned in (a)(ii) of this subsection, except that the sum of an employer's array calculation factor rate and the graduated social cost factor rate may not exceed six and five-tenths percent or, for employers whose North American industry classification system code is within "111," "112," "1141," "115," "3114," "3117," or "42448," may not exceed six percent:

- (I) Rate class 1 - 78 percent;
- (II) Rate class 2 - 82 percent;
- (III) Rate class 3 - 86 percent;
- (IV) Rate class 4 - 90 percent;
- (V) Rate class 5 - 94 percent;
- (VI) Rate class 6 - 98 percent;
- (VII) Rate class 7 - 102 percent;
- (VIII) Rate class 8 - 106 percent;
- (IX) Rate class 9 - 110 percent;
- (X) Rate class 10 - 114 percent;
- (XI) Rate class 11 - 118 percent; and
- (XII) Rate classes 12 through 40 - 120 percent.

(B) For contributions assessed beginning July 1, 2005, through June 30, 2007, for employers whose North American industry classification system code is "111," "112," "1141," "115," "3114," "3117," "42448," or "49312," the graduated social cost factor rate is zero.

(iii) For the purposes of this section:

(A) "Total social cost" means:

(I) Except as provided in (b)(iii)(A)(II) of this subsection, the amount calculated by subtracting the array calculation factor contributions paid by all employers with respect to the four consecutive calendar quarters immediately preceding the computation date and paid to the employment security department by the cut-off date from the total unemployment benefits paid to claimants in the same four consecutive calendar quarters. To calculate the flat social cost factor for rate year 2005, the commissioner shall calculate the total social cost using the array calculation factor contributions that would have been required to be paid by all employers in the calculation period if (a) of this subsection had been in effect for the relevant period.

(II) For rate year 2007, the amount calculated under (b)(iii)(A)(I) of this subsection reduced by the amount of benefits charged that exceed the contributions paid in the four consecutive calendar quarters immediately preceding the applicable computation date because, as applicable, specified employers are subject to the social cost contributions under (b)(ii)(B) of this subsection, and/or because the social cost factor contributions are paid under (b)(i)(D)(II) of this subsection.

(B) "Total taxable payroll" means the total amount of wages subject to tax, as determined under RCW 50.24.010, for all employers in the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(c) The array calculation factor rate for each employer not qualified to be in the array shall be as follows:

(i) Employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due shall be assigned an array calculation factor rate two-tenths higher than that in rate class 40, except employers who have an approved agency-deferred payment contract by September 30th of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the employer's tax rate shall immediately revert to an array calculation factor rate two-tenths higher than that in rate class 40; and

(ii) For all other employers not qualified to be in the array, the array calculation factor rate shall be a rate equal to the average industry array calculation factor rate as determined by the commissioner, plus fifteen percent of that amount; however, the rate may not be less than one percent or more than the array calculation factor rate in rate class 40.

(d) The graduated social cost factor rate for each employer not qualified to be in the array shall be as follows:

(i) For employers whose array calculation factor rate is determined under (c)(i) of this subsection, the social cost factor rate shall be the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection.

(ii) For employers whose array calculation factor rate is determined under (c)(ii) of this subsection, the social cost factor rate shall be a rate equal to the average industry social cost factor rate as determined by the commissioner, plus fifteen percent of that amount, but not more than the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection.

(3) Assignment of employers by the commissioner to industrial classification, for purposes of this section, shall be in accordance with established classification practices found in the "Standard Industrial Classification Manual" issued by the federal office of management and budget to the third digit provided in the standard industrial classification code, or in the North American industry classification system code. [2005 c 133 § 5; 2003 2nd sp.s. c 4 § 14; 2003 c 4 § 1; 2000 c 2 § 4; 1995 c 4 § 2; (1995 c 4 § 1 expired January 1, 1998). Prior: 1993 c 483 § 21; 1993 c 226 § 14; 1993 c 226 § 13; 1990 c 245 § 7; 1989 c 380 § 79; 1987 c 171 § 3; 1985 ex.s. c 5 § 7; 1984 c 205 § 5.]

**Expiration date—Intent—2005 c 133:** See note following RCW 50.01.010.

**Findings—Intent—Conflict with federal requirements—Effective date—2005 c 133:** See notes following RCW 50.20.120.

**Additional employees authorized—2005 c 133:** See note following RCW 50.01.020.

**Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4:** See notes following RCW 50.01.010.

**Application—2003 c 4 § 1:** "Section 1 of this act applies to rate years beginning on or after January 1, 2003." [2003 c 4 § 2.]

**Effective date—2003 c 4:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 12, 2003]." [2003 c 4 § 3.]

**Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15:** See note following RCW 50.22.150.

**Conflict with federal requirements—Severability—Effective date—2000 c 2:** See notes following RCW 50.04.355.

**Effective dates—1995 c 4:** "(1) Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 16, 1995].

(2) Section 2 of this act shall take effect January 1, 1998." [1995 c 4 § 4.]

**Expiration date—1995 c 4 § 1:** "Section 1 of this act shall expire January 1, 1998." [1995 c 4 § 5.]

**Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483:** See notes following RCW 50.04.293.

**Elevation of employer contribution rates—Report by commissioner—1993 c 226:** "Prior to any increase in the employer tax schedule as provided in section 13, chapter 226, Laws of 1993, the commissioner shall provide a report to the appropriate committees of the legislature specifying to what extent the work force training expenditures in chapter 226, Laws of 1993 elevated employer contribution rates for the effective tax schedule." [1993 c 226 § 16.]

**Effective dates—1993 c 226 §§ 10, 12, and 14:** See note following RCW 50.16.010.

**Conflict with federal requirements—Severability—Application—1993 c 226:** See notes following RCW 50.16.010.

**Conflict with federal requirements—Effective dates—1990 c 245:** See notes following RCW 50.04.030.

**Effective date—1989 c 380 §§ 78-81:** See note following RCW 50.04.150.

**Conflict with federal requirements—1989 c 380:** See note following RCW 50.04.150.

**Severability—1989 c 380:** See RCW 15.58.942.

**Conflict with federal requirements—Severability—1987 c 171:** See notes following RCW 50.62.010.

**Conflict with federal requirements—Severability—1985 ex.s. c 5:** See notes following RCW 50.62.010.

**Conflict with federal requirements—Severability—Effective dates—1984 c 205:** See notes following RCW 50.20.120.

## Chapter 50.38 RCW

### LABOR MARKET INFORMATION AND ECONOMIC ANALYSIS

(Formerly: Occupational information service—Forecast)

#### Sections

50.38.060 Department—Powers. (*Effective July 1, 2006.*)

**50.38.060 Department—Powers. (*Effective July 1, 2006.*)** To implement this chapter, the department has authority to:

(1) Establish mechanisms to recover actual costs incurred in producing and providing otherwise nonfunded labor market information.

(a) If the commissioner, in his or her discretion, determines that providing labor market information is in the public interest, the requested information may be provided at reduced costs.

(b) The department shall provide access to labor market information products that constitute public records available for public inspection and copying under chapter 42.56 RCW, at fees not exceeding those allowed under RCW 42.56.120 and consistent with the department's fee schedule;

(2) Receive federal set aside funds from several federal programs that are authorized to fund state and local labor market information and are required to use such information in support of their programs;

[2005 RCW Supp—page 700]

(3) Enter into agreements with other public agencies for statistical analysis, research, or evaluation studies of local, state, and federally funded employment, training, education, and job creation programs to increase the efficiency or quality of service provided to the public consistent with chapter 50.13 RCW;

(4) Coordinate with other state agencies to study ways to standardize federal and state multi-agency administrative records, such as unemployment insurance information and other information to produce employment, training, education, and economic analysis needed to improve labor market information products and services; and

(5) Produce agricultural labor market information and economic analysis needed to facilitate the efficient and effective matching of the local supply and demand of agricultural labor critical to an effective agricultural labor exchange in Washington state. Information collected for an agricultural labor market information effort will be coordinated with other federal, state, and local statistical agencies to minimize reporting burden through cooperative data collection efforts for statistical analysis, research, or studies. [2005 c 274 § 324; 1993 c 62 § 6.]

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

## Chapter 50.40 RCW

### MISCELLANEOUS PROVISIONS

#### Sections

50.40.065 "Vendors in good standing"—Determination by governor's committee on disability issues and employment—Advisory subcommittee—Rules. (*Expires December 31, 2009.*)

50.40.066 Rules to implement RCW 50.40.065—Fees authorized—Vendors in good standing account. (*Expires December 31, 2009.*)

**50.40.065 "Vendors in good standing"—Determination by governor's committee on disability issues and employment—Advisory subcommittee—Rules. (*Expires December 31, 2009.*)** (1) No less frequently than once each year, the governor's committee on disability issues and employment shall determine whether entities seeking to qualify as vendors in good standing, pursuant to this section and RCW 43.19.531, have achieved, or continue to work towards, the goal of enhancing opportunities for persons of disabilities to maximize their employment and career advancement, and increase the number employed and their wages.

(2) In making the determination provided for in subsection (1) of this section, the governor's committee on disability issues and employment shall appoint and, except in the case of malfeasance or misfeasance, shall rely upon the conclusions of an advisory subcommittee consisting of: (a) Three members chosen from among those current or former clients of a community rehabilitation program who have nominated themselves, at least one of whom must be a person with a developmental disability; (b) one member chosen from among those guardians, parents, or other relatives of a current client or employee of a community rehabilitation program who have nominated themselves; (c) one member chosen from among those who have been nominated by a community rehabilitation program; (d) one member chosen from among those owners of a business owned and operated by persons



with disabilities who have nominated themselves; (e) one member who is designated by the developmental disabilities council; (f) one member who is a member of and selected by the governor's committee on disability issues and employment; (g) one member who is designated by the secretary of the department of social and health services; and (h) one member who is designated by the director of the department of services for the blind.

(3) The advisory subcommittee appointed by the governor's committee on disability issues and employment shall conclude that entities seeking to qualify, pursuant to this section and RCW 43.19.531, as vendors in good standing, have achieved, or continue to work towards, the goal of enhancing opportunities for persons of disabilities to maximize their employment and career advancement, and increase the number employed and their wages if, and only if, the entity provides reasonably conclusive evidence that, during the twelve-month period immediately preceding the entity's application, at least one-half of the following measurement categories applicable to the entity have been either achieved, pursuant to rules established under subsection (4) of this section, or have been improved as compared to the entity's condition with respect to that measurement category one year ago:

(a) The number of people with disabilities in the entity's total work force who are working in integrated settings;

(b) The percentage of the people with disabilities in the entity's total work force who are working in integrated settings;

(c) The number of people with disabilities in the entity's total work force who are working in individual supported employment settings;

(d) The percentage of the people with disabilities in the entity's total work force who are working in individual supported employment settings;

(e) The number of people with disabilities in the entity's total work force who, during the last twelve months, have transitioned to less restrictive employment settings either within the entity or with other community employers;

(f) The number of people with disabilities in the entity's total work force who are earning at least the state minimum wage;

(g) The percentage of the people with disabilities in the entity's total work force who are earning at least the state minimum wage;

(h) The number of people with disabilities serving in supervisory capacities within the entity;

(i) The percentage of supervisory positions within the entity that are occupied by people with disabilities;

(j) The number of people with disabilities serving in an ownership capacity or on the governing board of the entity;

(k) The ratio of the total amount paid by the entity in wages, salaries, and related employment benefits to people with disabilities, as compared to the amount paid by the entity in wages, salaries, and related employment benefits paid by the entity to persons without disabilities during the previous year; and

(l) The percentage of people with disabilities in the entity's total work force for whom the entity has developed a reasonable, achievable, and written career plan.

(4) The commissioner shall consult with the advisory subcommittee established in subsection (2) of this section to

develop and adopt rules establishing the measurement at which it is deemed that the measurement categories identified in subsection (3)(b), (d), (e), (g), (h), (j), (k), and (l) of this section have been achieved.

(5) This section expires December 31, 2009. [2005 c 204 § 6; 2003 c 136 § 7.]

**50.40.066 Rules to implement RCW 50.40.065—Fees authorized—Vendors in good standing account. (Expires December 31, 2009.)**

(1) The commissioner is authorized to adopt rules to implement RCW 50.40.065, including but not limited to authority to establish (a) a nonrefundable application fee of not more than five hundred dollars to be paid by each entity seeking to establish or renew qualification as a vendor in good standing, pursuant to RCW 43.19.531 and 50.40.065; (b) a fee of not more than two percent of the face amount of any contract awarded under chapter 136, Laws of 2003; or (c) both fees identified in (a) and (b) of this subsection.

(2) The fee or fees established pursuant to subsection (1) of this section must set a level of revenue sufficient to recover costs incurred by the department of general administration in fulfilling the duties identified in RCW 43.19.531 and the governor's committee on disability issues and employment in fulfilling the duties identified in RCW 50.40.065.

(3) The vendors in good standing account is created in the custody of the state treasurer. All receipts from the fee or fees established pursuant to subsection (1) of this section must be deposited into the account. Expenditures from the account may be used only for the purpose described in subsection (2) of this section. Expenditures from the account may be authorized only upon the approval of both the director of the department of general administration and the commissioner, or their respective designees. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(4) This section expires December 31, 2009, and any unencumbered funds remaining in the vendors in good standing account on that date shall revert to the general fund. [2005 c 204 § 7; 2003 c 136 § 8.]

## Title 51

### INDUSTRIAL INSURANCE

#### Chapters

**51.14 Self-insurers.**

**51.16 Assessment and collection of premiums—Payrolls and records.**

**51.28 Notice and report of accident—Application for compensation.**

**51.32 Compensation—Right to and amount.**

**51.36 Medical aid.**

**51.44 Funds.**

#### Chapter 51.14 RCW

##### SELF-INSURERS

#### Sections

51.14.030 Certification of employer as self-insurer. (*Effective July 1, 2008.*)

- 51.14.110 Employer's duty to maintain records, furnish information—Electronic reporting system—Confidentiality of claims data—Rules. (*Expires July 1, 2008.*)
- 51.14.110 Employer's duty to maintain records, furnish information—Electronic reporting system—Requirement and penalties—Confidentiality of claims data—Rules. (*Effective July 1, 2008.*)

**51.14.030 Certification of employer as self-insurer.** (*Effective July 1, 2008.*) The director may issue a certification that an employer is qualified as a self-insurer when such employer meets the following requirements:

(1) He or she has fulfilled the requirements of RCW 51.14.020.

(2) He or she has submitted to the department a payroll report for the preceding consecutive twelve month period.

(3) He or she has submitted to the department a sworn itemized statement accompanied by an independent audit of the employer's books demonstrating to the director's satisfaction that the employer has sufficient liquid assets to meet his or her estimated liabilities as a self-insurer.

(4) He or she has demonstrated to the department the existence of the safety organization maintained by him or her within his or her establishment that indicates a record of accident prevention.

(5) He or she has submitted to the department a description of the administrative organization to be maintained by him or her to manage industrial insurance matters including:

- (a) The reporting of injuries;
- (b) The authorization of medical care;
- (c) The payment of compensation;
- (d) The handling of claims for compensation;
- (e) The name and location of each business location of the employer; and
- (f) The qualifications of the personnel of the employer to perform this service.

(6) He or she has demonstrated to the department the ability and commitment to submit electronically the claims [data] required by RCW 51.14.110.

Such certification shall remain in effect until withdrawn by the director or surrendered by the employer with the approval of the director. An employer's qualification as a self-insurer shall become effective on the date of certification or any date specified in the certificate after the date of certification. [2005 c 145 § 3; 1977 ex.s. c 323 § 10; 1971 ex.s. c 289 § 28.]

**Effective date—2005 c 145 §§ 2 and 3:** See note following RCW 51.14.110.

**Severability—Effective date—1977 ex.s. c 323:** See notes following RCW 51.04.040.

**51.14.110 Employer's duty to maintain records, furnish information—Electronic reporting system—Confidentiality of claims data—Rules.** (*Expires July 1, 2008.*)

(1) Every self-insurer shall maintain a record of all payments of compensation made under this title. The self-insurer shall furnish to the director all information the self-insurer has in its possession as to any disputed claim, upon forms approved by the director.

(2)(a) The department shall establish an electronic reporting system for the submission to the department of specified self-insurance claims data to more effectively mon-

[2005 RCW Supp—page 702]

itor the performance of self-insurers and to obtain claims information in an efficient manner.

(b) Claims data reported to the department electronically by individual self-insurers are confidential in accordance with RCW 51.16.070 and 51.28.070. The department may publish, for statistical purposes, aggregated claims data that contain no personal identifiers.

(3) The department shall adopt rules to administer this section. [2005 c 145 § 1; 1971 ex.s. c 289 § 35.]

**Expiration date—2005 c 145 § 1:** "Section 1 of this act expires July 1, 2008." [2005 c 145 § 4.]

**51.14.110 Employer's duty to maintain records, furnish information—Electronic reporting system—Requirement and penalties—Confidentiality of claims data—Rules.** (*Effective July 1, 2008.*) (1) Every self-insurer shall maintain a record of all payments of compensation made under this title. The self-insurer shall furnish to the director all information the self-insurer has in its possession as to any disputed claim, upon forms approved by the director.

(2)(a) The department shall establish an electronic reporting system for the submission to the department of specified self-insurance claims data to more effectively monitor the performance of self-insurers and to obtain claims information in an efficient manner.

(b) Self-insurers shall submit claims data electronically in the format and frequency prescribed by the department.

(c) Electronic submittal to the department of specified claims data is required to maintain self-insurance certification. The department shall establish an escalating schedule of penalties for noncompliance with this requirement, up to and including withdrawal of self-insurance certification.

(d) Claims data reported to the department electronically by individual self-insurers are confidential in accordance with RCW 51.16.070 and 51.28.070. The department may publish, for statistical purposes, aggregated claims data that contain no personal identifiers.

(3) The department shall adopt rules to administer this section. [2005 c 145 § 2; 1971 ex.s. c 289 § 35.]

**Effective date—2005 c 145 §§ 2 and 3:** "Sections 2 and 3 of this act take effect July 1, 2008." [2005 c 145 § 5.]

## Chapter 51.16 RCW

### ASSESSMENT AND COLLECTION OF PREMIUMS—PAYROLLS AND RECORDS

#### Sections

- 51.16.035 Classifications—Premiums—Rules—Workers' compensation advisory committee recommendations.
- 51.16.220 Reimbursement from disaster response account for nongovernment employees.

**51.16.035 Classifications—Premiums—Rules—Workers' compensation advisory committee recommendations.** (1) The department shall classify all occupations or industries in accordance with their degree of hazard and fix therefor basic rates of premium which shall be:

(a) The lowest necessary to maintain actuarial solvency of the accident and medical aid funds in accordance with recognized insurance principles; and

(b) Designed to attempt to limit fluctuations in premium rates.

(2) The department shall formulate and adopt rules governing the method of premium calculation and collection and providing for a rating system consistent with recognized principles of workers' compensation insurance which shall be designed to stimulate and encourage accident prevention and to facilitate collection. The department may annually, or at such other times as it deems necessary to achieve the objectives under this section, readjust rates in accordance with the rating system to become effective on such dates as the department may designate.

(3)(a) After the first report is issued by the state auditor under RCW 51.44.115, the workers' compensation advisory committee shall review the report and, as the committee deems appropriate, may make recommendations to the department concerning:

(i) The level or levels of a contingency reserve that are appropriate to maintain actuarial solvency of the accident and medical aid funds, limit premium rate fluctuations, and account for economic conditions; and

(ii) When surplus funds exist in the trust funds, the circumstances under which the department should give premium dividends, or similar measures, or temporarily reduce rates below the rates fixed under subsection (1) of this section, including any recommendations regarding notifications that should be given before taking the action.

(b) Following subsequent reports issued by the state auditor under RCW 51.44.115, the workers' compensation advisory committee may, as it deems appropriate, update its recommendations to the department on the matters covered under (a) of this subsection.

(4) In providing a retrospective rating plan under RCW 51.18.010, the department may consider each individual retrospective rating group as a single employing entity for purposes of dividends or premium discounts. [2005 c 410 § 1; 1999 c 7 § 8; 1989 c 49 § 1; 1980 c 129 § 4; 1977 ex.s. c 350 § 24; 1971 ex.s. c 289 § 16.]

**Applicability—2005 c 410 § 1:** "Section 1 of this act applies to industrial insurance rates adopted by the department of labor and industries that take effect on or after January 1, 2008." [2005 c 410 § 2.]

**Severability—1999 c 7:** See RCW 51.18.900.

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

**51.16.220 Reimbursement from disaster response account for nongovernment employees.** (1) When a worker of a nongovernment employer is injured or develops an occupational disease due to an exposure while assisting in the life and rescue phase of an emergency, in response to a request for assistance from a state or local government entity, including fire service or law enforcement, the cost of benefits shall be reimbursed from the disaster response account, RCW 38.52.105, to the appropriate workers' compensation fund, or to the self-insured employer, as the case may be. The cost of such injuries or occupational diseases shall not be charged to the experience record of a state fund employer.

(2) For the purposes of this section, "life and rescue phase" means the first seventy-two hours after the occurrence of a natural or man-made disaster in which a state or municipal entity, including fire service or law enforcement,

acknowledges or declares such a disaster and requests assistance from the private sector in locating and rescuing survivors. The initial life and rescue phase may be extended for a finite period of time by declaration of the state or municipal entity requesting assistance. [2005 c 422 § 1.]

**Rules—2005 c 422:** "The department of labor and industries may adopt rules to implement this act." [2005 c 422 § 3.]

**Effective date—2005 c 422:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 11, 2005]." [2005 c 422 § 4.]

**Chapter 51.28 RCW**

**NOTICE AND REPORT OF ACCIDENT—  
APPLICATION FOR COMPENSATION**

Sections

- 51.28.015 Injury reporting—Findings—Department educational initiative—Alternative reporting system—Study and report.
- 51.28.020 Worker's application for compensation—Physician or licensed advanced registered nurse practitioner to aid in. (*Expires June 30, 2007.*)
- 51.28.020 Worker's application for compensation—Physician to aid in. (*Effective June 30, 2007.*)
- 51.28.080 Determination of compensation for temporary total disability—Notification of employer.

**51.28.015 Injury reporting—Findings—Department educational initiative—Alternative reporting system—Study and report.** (1) The legislature finds that:

(a) In 1998, the joint legislative audit and review committee, in its performance audit of the Washington industrial insurance system, reported that one of the most significant causes for delayed benefit payments to workers and lack of employer involvement in claims was the manner in which claims were reported. Under this system of reporting, the worker generally reports the injury to a physician who, in turn, reports the injury to the department.

(b) The performance audit further reported that adopting a system in which the employee reports to the employer and the employer reports to the department would speed the first payment of benefits to the worker and involve the employer, from the beginning of the claim, in assisting in the management of the claim, including returning the worker to work.

(c) The performance audit also recognized that there would be instances in which workers would be reluctant to report injuries to employers and that, therefore, the system of physician reporting should be retained as an alternative, and employer reporting should be tested on a widespread basis.

(2)(a) The department of labor and industries shall develop and implement an initiative to encourage the reporting of industrial injuries by the worker to his or her employer and by the employer to the department. Under this initiative, the department must take steps to educate workers and employers about the benefits and importance of prompt reporting of injuries.

(b) By December 1, 2006, the department of labor and industries shall develop and make statutory recommendations for an alternative system of reporting injuries under which the worker would report to the employer and the employer would report to the department. Upon passage of such legislation, the department shall immediately begin an educational effort to promote this method of reporting.

(3)(a) The department must conduct a study of:

(i) Claims that are not reported promptly, including but not limited to a review of the circumstances of such claims, the type of injuries involved in such claims, and the reasons for the failure to report such claims promptly;

(ii) The effect of the educational initiative required under subsection (2)(a) of this section on whether the number of claims reported to employers increased, whether there was a reduction in delays in benefit payments, and whether there was an improvement in employer involvement in assisting with claims management and an increase in appropriate return-to-work and better outcomes for injured workers and employers; and

(iii) The results of the efforts of the centers of occupational health education in early reporting and early notification of employers, and the general lessons that can be drawn from these results for the larger workers' compensation program.

(b) By December 1, 2006, the department must report on the results of the study to the appropriate committees of the legislature. [2005 c 108 § 1.]

**51.28.020 Worker's application for compensation—Physician or licensed advanced registered nurse practitioner to aid in. (Expires June 30, 2007.)** (1)(a) Where a worker is entitled to compensation under this title he or she shall file with the department or his or her self-insured employer, as the case may be, his or her application for such, together with the certificate of the physician or licensed advanced registered nurse practitioner who attended him or her. An application form developed by the department shall include a notice specifying the worker's right to receive health services from a physician or licensed advanced registered nurse practitioner of the worker's choice under RCW 51.36.010, including chiropractic services under RCW 51.36.015, and listing the types of providers authorized to provide these services.

(b) The physician or licensed advanced registered nurse practitioner who attended the injured worker shall inform the injured worker of his or her rights under this title and lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the department without charge to the worker. The department shall provide physicians with a manual which outlines the procedures to be followed in applications for compensation involving occupational diseases, and which describes claimants' rights and responsibilities related to occupational disease claims.

(2) If the application required by this section is:

(a) Filed on behalf of the worker by the physician or licensed advanced registered nurse practitioner who attended the worker, the physician or licensed advanced registered nurse practitioner may transmit the application to the department electronically using facsimile mail;

(b) Made to the department and the employer has not received a copy of the application, the department shall immediately send a copy of the application to the employer; or

(c) Made to a self-insured employer, the employer shall forthwith send a copy of the application to the department. [2005 c 108 § 2; 2004 c 65 § 4; 2001 c 231 § 2; 1984 c 159 §

3; 1977 ex.s. c 350 § 33; 1971 ex.s. c 289 § 38; 1961 c 23 § 51.28.020. Prior: 1927 c 310 § 6, part; 1921 c 182 § 7, part; 1911 c 74 § 12, part; RRS § 7686, part.]

**Expiration date—2005 c 108 § 2:** "Section 2 of this act expires June 30, 2007." [2005 c 108 § 5.]

**Report to legislature—Effective date—Expiration date—Severability—2004 c 65:** See notes following RCW 51.04.030.

**Effective date—2001 c 231:** See note following RCW 51.28.010.

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

**51.28.020 Worker's application for compensation—Physician to aid in. (Effective June 30, 2007.)** (1)(a) Where a worker is entitled to compensation under this title he or she shall file with the department or his or her self-insured employer, as the case may be, his or her application for such, together with the certificate of the physician who attended him or her. An application form developed by the department shall include a notice specifying the worker's right to receive health services from a physician of the worker's choice under RCW 51.36.010, including chiropractic services under RCW 51.36.015, and listing the types of providers authorized to provide these services.

(b) The physician who attended the injured worker shall inform the injured worker of his or her rights under this title and lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the department without charge to the worker. The department shall provide physicians with a manual which outlines the procedures to be followed in applications for compensation involving occupational diseases, and which describes claimants' rights and responsibilities related to occupational disease claims.

(2) If the application required by this section is:

(a) Filed on behalf of the worker by the physician who attended the worker, the physician may transmit the application to the department electronically using facsimile mail;

(b) Made to the department and the employer has not received a copy of the application, the department shall immediately send a copy of the application to the employer; or

(c) Made to a self-insured employer, the employer shall forthwith send a copy of the application to the department. [2005 c 108 § 3; 2001 c 231 § 2; 1984 c 159 § 3; 1977 ex.s. c 350 § 33; 1971 ex.s. c 289 § 38; 1961 c 23 § 51.28.020. Prior: 1927 c 310 § 6, part; 1921 c 182 § 7, part; 1911 c 74 § 12, part; RRS § 7686, part.]

**Effective date—2005 c 108 § 3:** "Section 3 of this act takes effect June 30, 2007." [2005 c 108 § 6.]

**Effective date—2001 c 231:** See note following RCW 51.28.010.

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

**51.28.080 Determination of compensation for temporary total disability—Notification of employer.** (1) An employer shall be promptly notified by the department when:

(a) The department has received an application for compensation under this title. If the employer is a state fund employer, the department shall instruct the employer to submit a report of accident form and provide a telephone number for assistance in the reporting process; and

(b) It has determined that a worker of that employer is entitled to compensation under RCW 51.32.090.

(2) Notification shall include, in nontechnical language, an explanation of the employer's rights under this title. [2005 c 108 § 4; 1985 c 338 § 2.]

**Chapter 51.32 RCW**

**COMPENSATION—RIGHT TO AND AMOUNT**

Sections

51.32.220 Reduction in total disability compensation—Limitations—Notice—Waiver—Adjustment for retroactive reduction in federal social security disability benefit—Restrictions—Report.

**51.32.220 Reduction in total disability compensation—Limitations—Notice—Waiver—Adjustment for retroactive reduction in federal social security disability benefit—Restrictions—Report.** (1) For persons receiving compensation for temporary or permanent total disability pursuant to the provisions of this chapter, such compensation shall be reduced by an amount equal to the benefits payable under the federal old-age, survivors, and disability insurance act as now or hereafter amended not to exceed the amount of the reduction established pursuant to 42 U.S.C. Sec. 424a. However, such reduction shall not apply when the combined compensation provided pursuant to this chapter and the federal old-age, survivors, and disability insurance act is less than the total benefits to which the federal reduction would apply, pursuant to 42 U.S.C. 424a. Where any person described in this section refuses to authorize the release of information concerning the amount of benefits payable under said federal act the department's estimate of said amount shall be deemed to be correct unless and until the actual amount is established and no adjustment shall be made for any period of time covered by any such refusal.

(2) Any reduction under subsection (1) of this section shall be effective the month following the month in which the department or self-insurer is notified by the federal social security administration that the person is receiving disability benefits under the federal old-age, survivors, and disability insurance act: PROVIDED, That in the event of an overpayment of benefits the department or self-insurer may not recover more than the overpayments for the six months immediately preceding the date the department or self-insurer notifies the worker that an overpayment has occurred: PROVIDED FURTHER, That upon determining that there has been an overpayment, the department or self-insurer shall immediately notify the person who received the overpayment that he or she shall be required to make repayment pursuant to this section and RCW 51.32.230.

(3) Recovery of any overpayment must be taken from future temporary or permanent total disability benefits or permanent partial disability benefits provided by this title. In the case of temporary or permanent total disability benefits, the recovery shall not exceed twenty-five percent of the monthly amount due from the department or self-insurer or one-sixth of the total overpayment, whichever is the lesser.

(4) No reduction may be made unless the worker receives notice of the reduction prior to the month in which the reduction is made.

(5) In no event shall the reduction reduce total benefits to less than the greater amount the worker may be entitled to under this title or the federal old-age, survivors, and disability insurance act.

(6) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his or her discretion to waive, in whole or in part, the amount of any overpayment where the recovery would be against equity and good conscience.

(7) Subsection (1) of this section applies to:

(a) Workers under the age of sixty-two whose effective entitlement to total disability compensation begins before January 2, 1983;

(b) Workers under the age of sixty-five whose effective entitlement to total disability compensation begins after January 1, 1983; and

(c) Workers who will become sixty-five years of age on or after June 10, 2004.

(8)(a) If the federal social security administration makes a retroactive reduction in the federal social security disability benefit entitlement of a worker for periods of temporary total, temporary partial, or total permanent disability for which the department or self-insurer also reduced the worker's benefit amounts under this section, the department or self-insurer, as the case may be, shall make adjustments in the calculation of benefits and pay the additional benefits to the worker as appropriate. However, the department or self-insurer shall not make changes in the calculation or pay additional benefits unless the worker submits a written request, along with documentation satisfactory to the director of an overpayment assessment by the social security administration, to the department or self-insurer, as the case may be.

(b) Additional benefits paid under this subsection:

(i) Are paid without interest and without regard to whether the worker's claim under this title is closed; and

(ii) Do not affect the status or the date of the claim's closure.

(c) This subsection applies only to requests for adjustments that are submitted before July 1, 2007, and does not apply to requests on claims for which a determination on the request has been made and is not subject to further appeal.

(d) By December 1, 2006, the department must report to the appropriate committees of the legislature concerning the benefit adjustments authorized in this subsection and must include information about similar benefit adjustments, if any, authorized in other states with social security disability benefit offset requirements. The report must include recommendations on whether additional statutory changes might be warranted in light of the actions of the federal social security administration. [2005 c 198 § 1; 2004 c 92 § 1; 1982 c 63 § 19; 1979 ex.s. c 231 § 1; 1979 ex.s. c 151 § 1; 1977 ex.s. c 323 § 19; 1975 1st ex.s. c 286 § 3.]

**Effective dates—Implementation—1982 c 63:** See note following RCW 51.32.095.

**Applicability—1979 ex.s. c 231:** "This 1979 act applies to all cases in which notification of the first reduction in compensation pursuant to RCW 51.32.220 is mailed after June 15, 1979, regardless of when the basis, authority, or cause for such reduction may have arisen. To such extent, this 1979 act applies retrospectively, but in all other respects it applies prospectively." [1979 ex.s. c 231 § 2.]

**Severability—1979 ex.s. c 231:** "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 231 § 3.]

**Applicability—1979 ex.s. c 151:** "This 1979 act applies to all cases in which notification of the first reduction in compensation pursuant to RCW 51.32.220 is mailed after May 10, 1979, regardless of when the basis, authority, or cause for such reduction may have arisen. To such extent, this 1979 act applies retrospectively, but in all other respects it applies prospectively." [1979 ex.s. c 151 § 3.]

**Severability—1979 ex.s. c 151:** "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 151 § 4.]

**Severability—Effective date—1977 ex.s. c 323:** See notes following RCW 51.04.040.

### Chapter 51.36 RCW MEDICAL AID

#### Sections

- 51.36.022 Residence modification assistance—Rules—Report to legislature.  
51.36.120 Confidential information. (*Effective July 1, 2006.*)

**51.36.022 Residence modification assistance—Rules—Report to legislature.** (1) The legislature finds that there is a need to clarify the process and standards under which the department provides residence modification assistance to workers who have sustained catastrophic injury.

(2) The director shall adopt rules that take effect no later than nine months after July 24, 2005, to establish guidelines and processes for residence modification pursuant to RCW 51.36.020(7).

(3) In developing rules under this section, the director shall consult with interested persons, including persons with expertise in the rehabilitation of catastrophically disabled individuals and modifications for adaptive housing.

(4) These rules must address at least the following:

(a) The process for a catastrophically injured worker to access the residence modification benefits provided by RCW 51.36.020; and

(b) How the department may address the needs and preferences of the individual worker on a case-by-case basis taking into account information provided by the injured worker. For purposes of determining the needs and requirements of the worker under RCW 51.36.020, including whether a modification is medically necessary, the department must consider all available information regarding the medical condition and physical restrictions of the injured worker, including the opinion of the worker's attending health services provider.

(5) The rules should be based upon nationally accepted guidelines and publications addressing adaptive residential housing. The department must consider the guidelines established by the United States department of veterans affairs in their publication entitled "Handbook for Design: Specially Adapted Housing," and the recommendations published in "The Accessible Housing Design File" by Barrier Free Environments, Inc.

(6) In developing rules under this section, the director shall consult with other persons with an interest in improving standards for adaptive housing.

[2005 RCW Supp—page 706]

(7) The director shall report by December 2007 to the appropriate committees of the legislature on the rules adopted under this section. [2005 c 411 § 1.]

**51.36.120 Confidential information. (*Effective July 1, 2006.*)** When contracting for health care services and equipment, the department, upon request of a contractor, shall keep confidential financial and valuable trade information, which shall be exempt from public inspection and copying under chapter 42.56 RCW. [2005 c 274 § 325; 1989 c 189 § 2.]

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

### Chapter 51.44 RCW FUNDS

#### Sections

- 51.44.040 Second injury fund. (*Contingent expiration date.*)  
51.44.115 Financial statements and information—Annual audit and report.

**51.44.040 Second injury fund. (*Contingent expiration date.*)** (1) There shall be in the office of the state treasurer, a fund to be known and designated as the "second injury fund", which shall be used only for the purpose of defraying charges against it as provided in RCW 51.16.120 and 51.32.250. The fund shall be administered by the director. The state treasurer shall be the custodian of the second injury fund and shall be authorized to disburse moneys from it only upon written order of the director.

(2) Payments to the second injury fund from the accident fund shall be made pursuant to rules adopted by the director.

(3)(a) Assessments for the second injury fund shall be imposed on self-insurers pursuant to rules adopted by the director. Such rules shall provide for at least the following:

(i) Except as provided in (a)(ii) of this subsection, the amount assessed each self-insurer must be in the proportion that the payments made from the fund on account of claims made against self-insurers bears to the total sum of payments from the fund.

(ii) Except as provided in section 2, chapter 475, Laws of 2005, beginning with assessments imposed on or after July 1, 2009, the department shall experience rate the amount assessed each self-insurer as long as the aggregate amount assessed is in the proportion that the payments made from the fund on account of claims made against self-insurers bears to the total sum of payments from the fund. The experience rating factor must provide equal weight to the ratio between expenditures made by the second injury fund for claims of the self-insurer to the total expenditures made by the second injury fund for claims of all self-insurers for the prior three fiscal years and the ratio of workers' compensation claim payments under this title made by the self-insurer to the total worker's compensation claim payments made by all self-insurers under this title for the prior three fiscal years. The weighted average of these two ratios must be divided by the latter ratio to arrive at the experience factor.

(b) For purposes of this subsection, "expenditures made by the second injury fund" mean the costs and charges described under RCW 51.32.250 and 51.16.120 (3) and (4),

and the amounts assessed to the second injury fund as described under RCW 51.16.120(1). Under no circumstances does "expenditures made by the second injury fund" include any subsequent payments, assessments, or adjustments for pensions, where the applicable second injury fund entitlement was established outside of the three fiscal years. [2005 c 475 § 1; 1982 c 63 § 14; 1977 ex.s. c 323 § 21; 1972 ex.s. c 43 § 27; 1961 c 23 § 51.44.040. Prior: 1959 c 308 § 17; 1947 c 183 § 1; 1945 c 219 § 2; Rem. Supp. 1947 § 7676-1b.]

**Contingent expiration date—Outcome study—Report—2005 c 475:**

"(1) If the outcome study conducted by the department of labor and industries under subsection (2)(a)(i) or (ii) of this section shows a negative impact of fifteen percent or more to workers following claim closure among non-pension self-insured claimants, section 1, chapter 475, Laws of 2005 expires June 30, 2013.

(2) The department shall conduct an outcome study of the experience rating system established in section 1, chapter 475, Laws of 2005. In conducting the study, the department must:

(a) Compare the outcomes for workers of self-insured employers whose industrial insurance claims with temporary total disability benefits for more than thirty days are closed between July 1, 2002, and June 30, 2004, with similar claims of workers of self-insured employers closed between July 1, 2009, and June 30, 2011. For the purposes of subsection (1) of this section, the department must provide two separate comparisons of such workers as follows: (i) The first comparison includes the aggregate preinjury wages for all nonpension injured workers compared with their aggregate wages at claim closure in each of the two study groups; and (ii) the second comparison includes the proportion of all nonpension injured workers who are found able to work but have not returned to work, as reported by self-insurers in the eligibility assessment reports submitted to the department on the claims in the first study group, compared with the proportion of such workers who are found able to work but have not returned to work, as reported in the eligibility assessment reports submitted on claims in the second study group;

(b) Study whether the workers potentially impacted by the experience rating program have improved return-to-work outcomes, whether the number of impacted workers found to be employable increases, whether there is a change in long-term disability outcomes among the impacted workers, and whether the number of permanent total disability pensions among impacted workers is affected and, if so, the nature of the impact; and

(c) Develop, in consultation with representatives of the impacted workers and the self-insured community, a study methodology that must be provided to the workers' compensation advisory committee for review and comment. The study methodology must include appropriate controls to account for economic fluctuation, wage inflation, and other independent variables.

(3) The department must report to the appropriate committees of the legislature by December 1, 2012, on the results of the study." [2005 c 475 § 2.]

**Effective dates—Implementation—1982 c 63:** See note following RCW 51.32.095.

**Severability—Effective date—1977 ex.s. c 323:** See notes following RCW 51.04.040.

**51.44.115 Financial statements and information—Annual audit and report.** (1) The department shall:

(a) Prepare financial statements on the state fund in accordance with generally accepted accounting principles, including but not limited to financial statements on the accident fund, the medical aid fund, the supplemental pension fund, and the second injury fund. Statements must be presented separately by fund and in the aggregate; and

(b) Prepare financial information for the accident fund, medical aid fund, and pension reserve fund based on statutory accounting practices and principles promulgated by the national association of insurance commissioners for the purpose of maintaining actuarial solvency of these funds.

(2) Beginning in 2006, and, to avoid duplication, coordinated with any audit that may be conducted under RCW 43.09.310, the state auditor shall conduct annual audits of the state fund. As part of the audits required under this section, the state auditor may contract with firms qualified to perform all or part of the financial audit, as necessary.

(a) The firm or firms conducting the reviews shall be familiar with the accounting standards applicable to the accounts under review and shall have experience in workers' compensation reserving, discounting, and rate making.

(b) The scope of the financial audit shall include, but is not limited to:

(i) An opinion on whether the financial statements were prepared in accordance with generally accepted accounting principles;

(ii) An assessment of the financial impact of the proposed rate level on the actuarial solvency of the accident, medical aid, and pension reserve funds, taking into consideration the risks inherent with insurance and the effects of the actuarial assumptions, discount rates, reserving, retrospective rating program, refunds, and individual employer rate classes, as well as the standard accounting principles used for insurance underwriting purposes; and

(iii) A statement of actuarial opinion on whether the loss and loss adjustment expense reserves for the accident, medical aid, and pension reserve funds were prepared in accordance with generally accepted actuarial principles.

(c) The department shall cooperate with the state auditor in all respects and shall permit the state auditor full access to all information deemed necessary for a true and complete review.

(d) The cost of the audit shall be paid by the state fund under separate contract.

(3) The state auditor shall issue an annual report to the governor, the leaders of the majority and minority caucuses in the senate and the house of representatives, the director of the office of financial management, and the director of the department, on the results of the financial audit and reviews, within six months of the end of the fiscal year. The report may include recommendations.

(4) The audit report shall be available for public inspection.

(5) Within ninety days after the state auditor completes and delivers to the appropriate authority an audit under subsection (2) of this section, the director of the department shall notify the state auditor in writing of the measures taken and proposed to be taken, if any, to respond to the recommendations of the audit report. The state auditor may extend the ninety-day period for good cause. [2005 c 387 § 1.]

## Title 52

### FIRE PROTECTION DISTRICTS

#### Chapters

**52.02 Formation.**

**52.14 Commissioners.**

**52.33 Fire departments—Performance measures.**

### Chapter 52.02 RCW FORMATION

## Sections

52.02.020 Districts authorized—Health clinic services.

**52.02.020 Districts authorized—Health clinic services.** (1) Fire protection districts for the provision of fire prevention services, fire suppression services, emergency medical services, and for the protection of life and property in areas outside of cities and towns, except where the cities and towns have been annexed into a fire protection district or where the district is continuing service pursuant to RCW 35.02.202, are authorized to be established as provided in this title.

(2) In addition to other services authorized under this section, fire protection districts that share a common border with Canada and are surrounded on three sides by water or are bounded on the north by Bremerton, on the west by Mason county, on the south by Pierce county, and on the east by the Puget Sound, may also establish or participate in the provision of health clinic services. [2005 c 281 § 1; 2003 c 309 § 1; 1991 c 360 § 10; 1984 c 230 § 1; 1979 ex.s. c 179 § 5; 1959 c 237 § 1; 1947 c 254 § 1; 1945 c 162 § 1; 1943 c 121 § 1; 1941 c 70 § 1; 1939 c 34 § 1; Rem. Supp. 5654-101. Formerly RCW 52.04.020.]

**Construction—Severability—1939 c 34:** "The provisions of this act and proceedings thereunder shall be liberally construed with a view to effect their objects. If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or any section, provision or part thereof not adjudged to be invalid or unconstitutional." [1939 c 34 § 51.]

**Validating—Saving—1939 c 34:** "Any petition heretofore drawn, signed and filed with the county auditor in compliance with the provisions of section 1 to section 6, inclusive, of the Laws of 1933, Extraordinary Session, shall be valid and the various steps required by this act for the creation of a fire-protection district may be continued, if the further steps to be taken are begun within ninety (90) days after the taking effect of this act [March 1, 1939], and it shall not be necessary to prepare, sign and file with the county auditor a new petition, and any district so created shall not be invalid by reason of the failure to draw, sign and file a new petition under the provisions of this act." [1939 c 34 § 49.]

### Chapter 52.14 RCW COMMISSIONERS

## Sections

52.14.100 Meetings—Powers and duties of board. (*Effective July 1, 2006.*)

**52.14.100 Meetings—Powers and duties of board. (*Effective July 1, 2006.*)** All meetings of the board of fire commissioners shall be conducted in accordance with chapter 42.30 RCW and a majority constitutes a quorum for the transaction of business. All records of the board shall be open to inspection in accordance with chapter 42.56 RCW. The board has the power and duty to adopt a seal of the district, to manage and conduct the business affairs of the district, to make and execute all necessary contracts, to employ any necessary services, and to adopt reasonable rules to govern the district and to perform its functions, and generally to perform all such acts as may be necessary to carry out the objects of the creation of the district. [2005 c 274 § 326; 1984 c 230 §

[2005 RCW Supp—page 708]

37; 1939 c 34 § 32; RRS § 5654-132. Formerly RCW 52.12.100.]

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

*Open public meetings: Chapters 42.30, 42.32 RCW.*

### Chapter 52.33 RCW FIRE DEPARTMENTS— PERFORMANCE MEASURES

## Sections

52.33.010 Intent.  
52.33.020 Definitions.  
52.33.030 Policy statement—Service delivery objectives.  
52.33.040 Annual evaluations—Annual report.  
52.33.900 Part headings not law—2005 c 376.

**52.33.010 Intent.** The legislature intends for fire protection districts and regional fire [protection] service authorities to set standards for addressing the reporting and accountability of substantially career fire departments, and to specify performance measures applicable to response time objectives for certain major services. The legislature acknowledges the efforts of the international city/county management association, the international association of fire chiefs, and the national fire protection association for the organization and deployment of resources for fire departments. The arrival of first responders with automatic external defibrillator capability before the onset of brain death, and the arrival of adequate fire suppression resources before flash-over is a critical event during the mitigation of an emergency, and is in the public's best interest. For these reasons, this chapter contains performance measures, comparable to that research, relating to the organization and deployment of fire suppression operations, emergency medical operations, and special operations by substantially career fire departments. This chapter does not, and is not intended to, in any way modify or limit the authority of fire protection districts and regional fire protection service authorities to set levels of service. [2005 c 376 § 301.]

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

(1) "Advanced life support" means functional provision of advanced airway management, including intubation, advanced cardiac monitoring, manual defibrillation, establishment and maintenance of intravenous access, and drug therapy.

(2) "Aircraft rescue and fire fighting" means the fire fighting actions taken to rescue persons and to control or extinguish fire involving or adjacent to aircraft on the ground.

(3) "Brain death" as defined by the American heart association means the irreversible death of brain cells that begins four to six minutes after cardiac arrest.

(4) "Fire department" means a fire protection district or a regional fire protection service authority responsible for fire fighting actions, emergency medical services, and other special operations in a specified geographic area. The department must be a substantially career fire department, and not a substantially volunteer fire department.



(5) "Fire suppression" means the activities involved in controlling and extinguishing fires.

(6) "First responder" means provision of initial assessment and basic first-aid intervention, including cardiac pulmonary resuscitation and automatic external defibrillator capability.

(7) "Flash-over" as defined by national institute of standards and technology means when all combustibles in a room burst into flame and the fire spreads rapidly.

(8) "Marine rescue and fire fighting" means the fire fighting actions taken to prevent, control, or extinguish fire involved in or adjacent to a marine vessel and the rescue actions for occupants using normal and emergency routes for egress.

(9) "Response time" means the time immediately following the turnout time that begins when units are en route to the emergency incident and ends when units arrive at the scene.

(10) "Special operations" means those emergency incidents to which the fire department responds that require specific and advanced training and specialized tools and equipment.

(11) "Turnout time" means the time beginning when units receive notification of the emergency to the beginning point of response time. [2005 c 376 § 302.]

**52.33.030 Policy statement—Service delivery objectives.** (1) Every fire protection district and regional fire protection service authority shall maintain a written statement or policy that establishes the following:

- (a) The existence of a fire department;
- (b) Services that the fire department is required to provide;
- (c) The basic organizational structure of the fire department;
- (d) The expected number of fire department employees; and
- (e) Functions that fire department employees are expected to perform.

(2) Every fire protection district and regional fire protection service authority shall include service delivery objectives in the written statement or policy required under subsection (1) of this section. These objectives shall include specific response time objectives for the following major service components, if appropriate:

- (a) Fire suppression;
- (b) Emergency medical services;
- (c) Special operations;
- (d) Aircraft rescue and fire fighting;
- (e) Marine rescue and fire fighting; and
- (f) Wild land fire fighting.

(3) Every fire protection district and regional fire protection service authority, in order to measure the ability to arrive and begin mitigation operations before the critical events of brain death or flash-over, shall establish time objectives for the following measurements:

- (a) Turnout time;
- (b) Response time for the arrival of the first arriving engine company at a fire suppression incident and response time for the deployment of a full first alarm assignment at a fire suppression incident;

(c) Response time for the arrival of a unit with first responder or higher level capability at an emergency medical incident; and

(d) Response time for the arrival of an advanced life support unit at an emergency medical incident, where this service is provided by the fire department.

(4) Every fire protection district and regional fire protection service authority shall also establish a performance objective of not less than ninety percent for the achievement of each response time objective established under subsection (3) of this section. [2005 c 376 § 303.]

**52.33.040 Annual evaluations—Annual report.** (1) Every fire protection district and regional fire protection service authority shall evaluate its level of service and deployment delivery and response time objectives on an annual basis. The evaluations shall be based on data relating to level of service, deployment, and the achievement of each response time objective in each geographic area within the jurisdiction of the fire protection district and regional fire protection service authority.

(2) Beginning in 2007, every fire protection district and regional fire protection service authority shall issue an annual written report which shall be based on the annual evaluations required by subsection (1) of this section.

(a) The annual report shall define the geographic areas and circumstances in which the requirements of this standard are not being met.

(b) The annual report shall explain the predictable consequences of any deficiencies and address the steps that are necessary to achieve compliance. [2005 c 376 § 304.]

**52.33.900 Part headings not law—2005 c 376.** See RCW 35.103.900.

## Title 53

### PORT DISTRICTS

#### Chapters

**53.08 Powers.**

**53.56 Fire departments—Performance measures.**

#### Chapter 53.08 RCW

#### POWERS

##### Sections

53.08.145 Repealed.

53.08.350 Repealed.

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

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

**Chapter 53.56 RCW**  
**FIRE DEPARTMENTS—**  
**PERFORMANCE MEASURES**

## Sections

53.56.010	Intent.
53.56.020	Definitions.
53.56.030	Policy statement—Service delivery objectives.
53.56.040	Annual evaluations—Annual report.
53.56.900	Part headings not law—2005 c 376.

**53.56.010 Intent.** The legislature intends for port districts to set standards for addressing the reporting and accountability of substantially career fire departments, and to specify performance measures applicable to response time objectives for certain major services. The legislature acknowledges the efforts of the international city/county management association, the international association of fire chiefs, and the national fire protection association for the organization and deployment of resources for fire departments. The arrival of first responders with automatic external defibrillator capability before the onset of brain death, and the arrival of adequate fire suppression resources before flash-over is a critical event during the mitigation of an emergency, and is in the public's best interest. For these reasons, this chapter contains performance measures, comparable to that research, relating to the organization and deployment of fire suppression operations, emergency medical operations, and special operations by substantially career fire departments. This chapter does not, and is not intended to, in any way modify or limit the authority of port districts to set levels of service. [2005 c 376 § 401.]

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

(1) "Advanced life support" means functional provision of advanced airway management, including intubation, advanced cardiac monitoring, manual defibrillation, establishment and maintenance of intravenous access, and drug therapy.

(2) "Aircraft rescue and fire fighting" means the fire fighting actions taken to rescue persons and to control or extinguish fire involving or adjacent to aircraft on the ground.

(3) "Brain death" as defined by the American heart association means the irreversible death of brain cells that begins four to six minutes after cardiac arrest.

(4) "Fire department" means a port district fire department responsible for fire fighting actions, emergency medical services, and other special operations in a specified geographic area. The department must be a substantially career fire department, and not a substantially volunteer fire department.

(5) "Fire suppression" means the activities involved in controlling and extinguishing fires.

(6) "First responder" means provision of initial assessment and basic first-aid intervention, including cardiac pulmonary resuscitation and automatic external defibrillator capability.

(7) "Flash-over" as defined by national institute of standards and technology means when all combustibles in a room burst into flame and the fire spreads rapidly.

(8) "Marine rescue and fire fighting" means the fire fighting actions taken to prevent, control, or extinguish fire involved in or adjacent to a marine vessel and the rescue actions for occupants using normal and emergency routes for egress.

(9) "Port" means a port district that provides fire protection services, which may include fire fighting actions, emergency medical services, and other special operations, in a specified geographic area.

(10) "Response time" means the time immediately following the turnout time that begins when units are en route to the emergency incident and ends when units arrive at the scene.

(11) "Special operations" means those emergency incidents to which the fire department responds that require specific and advanced training and specialized tools and equipment.

(12) "Turnout time" means the time beginning when units receive notification of the emergency to the beginning point of response time. [2005 c 376 § 402.]

**53.56.030 Policy statement—Service delivery objectives.** (1) Every port shall maintain a written statement or policy that establishes the following:

- (a) The existence of a fire department;
- (b) Services that the fire department is required to provide;
- (c) The basic organizational structure of the fire department;
- (d) The expected number of fire department employees; and
- (e) Functions that fire department employees are expected to perform.

(2) Every port shall include service delivery objectives in the written statement or policy required under subsection (1) of this section. These objectives shall include specific response time objectives for the following major service components, if appropriate:

- (a) Fire suppression;
- (b) Emergency medical services;
- (c) Special operations;
- (d) Aircraft rescue and fire fighting;
- (e) Marine rescue and fire fighting; and
- (f) Wild land fire fighting.

(3) Every port, in order to measure the ability to arrive and begin mitigation operations before the critical events of brain death or flash-over, shall establish time objectives for the following measurements:

- (a) Turnout time;
- (b) Response time for the arrival of the first arriving engine company at a fire suppression incident and response time for the deployment of a full first alarm assignment at a fire suppression incident;
- (c) Response time for the arrival of a unit with first responder or higher level capability at an emergency medical incident; and
- (d) Response time for the arrival of an advanced life support unit at an emergency medical incident, where this service is provided by the fire department.

(4) Every port shall also establish a performance objective of not less than ninety percent for the achievement of

each response time objective established under subsection (3) of this section.

(5) An annual part 139 inspection and certification by the federal aviation administration shall be considered to meet the requirements of this section. [2005 c 376 § 403.]

**53.56.040 Annual evaluations—Annual report.** (1) Every port shall evaluate its level of service and deployment delivery and response time objectives on an annual basis. The evaluations shall be based on data relating to level of service, deployment, and the achievement of each response time objective in each geographic area within the port's jurisdiction.

(2) Beginning in 2007, every port shall issue an annual written report which shall be based on the annual evaluations required by subsection (1) of this section.

(a) The annual report shall define the geographic areas and circumstances in which the requirements of this standard are not being met.

(b) The annual report shall explain the predictable consequences of any deficiencies and address the steps that are necessary to achieve compliance.

(3) An annual part 139 inspection and certification by the federal aviation administration shall be considered to meet the requirements of this section. [2005 c 376 § 404.]

**53.56.900 Part headings not law—2005 c 376.** See RCW 35.103.900.

## Title 54

### PUBLIC UTILITY DISTRICTS

#### Chapters

#### 54.16 Powers.

#### Chapter 54.16 RCW

#### POWERS

##### Sections

- 54.16.380 Appliance repair service—Operation by district.  
54.16.385 Appliance repair service—Requirements.

**54.16.380 Appliance repair service—Operation by district.** Any public utility district that has operated an electrical appliance repair service for at least ten years prior to July 24, 2005, may continue to operate an electrical appliance repair service within its service territory. [2005 c 175 § 2.]

**Intent—2005 c 175:** "It is the intent of the legislature to avoid unnecessary hardships on the citizens of a community by recognizing the traditional appliance repair services that have been offered for many years by any public utility district described in section 2 of this act.

The legislature understands that some of these services improve the energy efficiency of the appliance repaired, which helps citizens save money and energy as well as extending the life of the appliance.

The legislature recognizes these historic services coexist with the private sector without creating aggressive competition between public and private enterprises.

It is the intent of the legislature to have these services be financially self-supporting and not be subsidized by any other customer rate structures.

Public utility districts affected by this act are encouraged to continue to work collaboratively with the private sector in providing these services." [2005 c 175 § 1.]

**54.16.385 Appliance repair service—Requirements.** When a public utility district provides electrical appliance repair services under RCW 54.16.380, the public utility district shall:

(1) Charge customers the true and fair cost for the services;

(2) Keep records documenting the revenues and expenditures for the services and make those records available to the public; and

(3) Develop measures or benchmarks to track and evaluate the performance of the services. [2005 c 175 § 3.]

**Intent—2005 c 175:** See note following RCW 54.16.380.

## Title 59

### LANDLORD AND TENANT

#### Chapters

#### 59.12 Forcible entry and forcible and unlawful detainer.

#### 59.18 Residential landlord-tenant act.

#### 59.20 Manufactured/mobile home landlord-tenant act.

#### 59.21 Mobile home relocation assistance.

#### 59.22 Office of mobile home affairs—Resident-owned mobile home parks.

#### Chapter 59.12 RCW

#### FORCIBLE ENTRY AND FORCIBLE AND UNLAWFUL DETAINER

##### Sections

- 59.12.070 Complaint—Summons.

**59.12.070 Complaint—Summons.** The plaintiff in his or her complaint, which shall be in writing, must set forth the facts on which he or she seeks to recover, and describe the premises with reasonable certainty, and may set forth therein any circumstances of fraud, force or violence, which may have accompanied the forcible entry or forcible or unlawful detainer, and claim damages therefor, or compensation for the occupation of the premises, or both; in case the unlawful detainer charged be after default in the payment of rent, the complaint must state the amount of such rent. A summons must be issued as in other cases, returnable at a day designated therein, which shall not be less than seven nor more than thirty days from the date of service, except in cases where the publication of summons is necessary, in which case the court or judge thereof may order that the summons be made returnable at such time as may be deemed proper, and the summons shall specify the return day so fixed. [2005 c 130 § 1; 1927 c 123 § 1; 1891 c 96 § 8; RRS § 817. Prior: 1890 p 75 § 7.]

#### Chapter 59.18 RCW

#### RESIDENTIAL LANDLORD-TENANT ACT

##### Sections

- 59.18.060 Landlord—Duties.  
59.18.085 Rental of condemned or unlawful dwelling—Tenant's remedies—Relocation assistance—Penalties.  
59.18.320 Arbitration—Authorized—Exceptions—Notice—Procedure. (Effective January 1, 2006.)

- 59.18.330 Arbitration—Application—Hearings—Decisions. (*Effective January 1, 2006.*)
- 59.18.365 Unlawful detainer action—Summons—Form.
- 59.18.370 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Application—Order—Hearing.

**59.18.060 Landlord—Duties.** The landlord will at all times during the tenancy keep the premises fit for human habitation, and shall in particular:

(1) Maintain the premises to substantially comply with any applicable code, statute, ordinance, or regulation governing their maintenance or operation, which the legislative body enacting the applicable code, statute, ordinance or regulation could enforce as to the premises rented if such condition substantially endangers or impairs the health or safety of the tenant;

(2) Maintain the roofs, floors, walls, chimneys, fireplaces, foundations, and all other structural components in reasonably good repair so as to be usable and capable of resisting any and all normal forces and loads to which they may be subjected;

(3) Keep any shared or common areas reasonably clean, sanitary, and safe from defects increasing the hazards of fire or accident;

(4) Provide a reasonable program for the control of infestation by insects, rodents, and other pests at the initiation of the tenancy and, except in the case of a single family residence, control infestation during tenancy except where such infestation is caused by the tenant;

(5) Except where the condition is attributable to normal wear and tear, make repairs and arrangements necessary to put and keep the premises in as good condition as it by law or rental agreement should have been, at the commencement of the tenancy;

(6) Provide reasonably adequate locks and furnish keys to the tenant;

(7) Maintain all electrical, plumbing, heating, and other facilities and appliances supplied by him in reasonably good working order;

(8) Maintain the dwelling unit in reasonably weather-tight condition;

(9) Except in the case of a single family residence, provide and maintain appropriate receptacles in common areas for the removal of ashes, rubbish, and garbage, incidental to the occupancy and arrange for the reasonable and regular removal of such waste;

(10) Except where the building is not equipped for the purpose, provide facilities adequate to supply heat and water and hot water as reasonably required by the tenant;

(11)(a) Provide a written notice to all tenants disclosing fire safety and protection information. The landlord or his or her authorized agent must provide a written notice to the tenant that the dwelling unit is equipped with a smoke detection device as required in RCW 48.48.140. The notice shall inform the tenant of the tenant's responsibility to maintain the smoke detection device in proper operating condition and of penalties for failure to comply with the provisions of RCW 48.48.140(3). The notice must be signed by the landlord or the landlord's authorized agent and tenant with copies provided to both parties. Further, except with respect to a single-family residence, the written notice must also disclose the following:

(i) Whether the smoke detection device is hard-wired or battery operated;

(ii) Whether the building has a fire sprinkler system;

(iii) Whether the building has a fire alarm system;

(iv) Whether the building has a smoking policy, and what that policy is;

(v) Whether the building has an emergency notification plan for the occupants and, if so, provide a copy to the occupants;

(vi) Whether the building has an emergency relocation plan for the occupants and, if so, provide a copy to the occupants; and

(vii) Whether the building has an emergency evacuation plan for the occupants and, if so, provide a copy to the occupants.

(b) The information required under this subsection may be provided to a tenant in a multifamily residential building either as a written notice or as a checklist that discloses whether the building has fire safety and protection devices and systems. The checklist shall include a diagram showing the emergency evacuation routes for the occupants.

(c) The written notice or checklist must be provided to new tenants at the time the lease or rental agreement is signed, and must be provided to current tenants as soon as possible, but not later than January 1, 2004;

(12) Provide tenants with information provided or approved by the department of health about the health hazards associated with exposure to indoor mold. Information may be provided in written format individually to each tenant, or may be posted in a visible, public location at the dwelling unit property. The information must detail how tenants can control mold growth in their dwelling units to minimize the health risks associated with indoor mold. Landlords may obtain the information from the department's web site or, if requested by the landlord, the department must mail the information to the landlord in a printed format. When developing or changing the information, the department of health must include representatives of landlords in the development process. The information must be provided by the landlord to new tenants at the time the lease or rental agreement is signed, and must be provided to current tenants no later than January 1, 2006, or must be posted in a visible, public location at the dwelling unit property beginning July 24, 2005;

(13) The landlord and his or her agents and employees are immune from civil liability for failure to comply with subsection (12) of this section except where the landlord and his or her agents and employees knowingly and intentionally do not comply with subsection (12) of this section; and

(14) Designate to the tenant the name and address of the person who is the landlord by a statement on the rental agreement or by a notice conspicuously posted on the premises. The tenant shall be notified immediately of any changes by certified mail or by an updated posting. If the person designated in this section does not reside in the state where the premises are located, there shall also be designated a person who resides in the county who is authorized to act as an agent for the purposes of service of notices and process, and if no designation is made of a person to act as agent, then the person to whom rental payments are to be made shall be considered such agent;

No duty shall devolve upon the landlord to repair a defective condition under this section, nor shall any defense or remedy be available to the tenant under this chapter, where the defective condition complained of was caused by the conduct of such tenant, his family, invitee, or other person acting under his control, or where a tenant unreasonably fails to allow the landlord access to the property for purposes of repair. When the duty imposed by subsection (1) of this section is incompatible with and greater than the duty imposed by any other provisions of this section, the landlord's duty shall be determined pursuant to subsection (1) of this section. [2005 c 465 § 2; 2002 c 259 § 1; 1991 c 154 § 2; 1973 1st ex.s. c 207 § 6.]

**Finding—2005 c 465:** "The legislature finds that residents of the state face preventable exposures to mold in their homes, apartments, and schools. Exposure to mold, and the toxins they produce, have been found to have adverse health effects, including loss of memory and impairment of the ability to think coherently and function in a job, and may cause fatigue, nausea, and headaches.

As steps can be taken by landlords and tenants to minimize exposure to indoor mold, and as the reduction of exposure to mold in buildings could reduce the rising number of mold-related claims submitted to insurance companies and increase the availability of coverage, the legislature supports providing tenants and landlords with information designed to minimize the public's exposure to mold." [2005 c 465 § 1.]

**59.18.085 Rental of condemned or unlawful dwelling—Tenant's remedies—Relocation assistance—Penalties.** (1) If a governmental agency responsible for the enforcement of a building, housing, or other appropriate code has notified the landlord that a dwelling is condemned or unlawful to occupy due to the existence of conditions that violate applicable codes, statutes, ordinances, or regulations, a landlord shall not enter into a rental agreement for the dwelling unit until the conditions are corrected.

(2) If a landlord knowingly violates subsection (1) of this section, the tenant shall recover either three months' periodic rent or up to treble the actual damages sustained as a result of the violation, whichever is greater, costs of suit, or arbitration and reasonable attorneys' fees. If the tenant elects to terminate the tenancy as a result of the conditions leading to the posting, or if the appropriate governmental agency requires that the tenant vacate the premises, the tenant also shall recover:

(a) The entire amount of any deposit prepaid by the tenant; and

(b) All prepaid rent.

(3)(a) If a governmental agency responsible for the enforcement of a building, housing, or other appropriate code has notified the landlord that a dwelling will be condemned or will be unlawful to occupy due to the existence of conditions that violate applicable codes, statutes, ordinances, or regulations, a landlord, who knew or should have known of the existence of these conditions, shall be required to pay relocation assistance to the displaced tenants except that:

(i) A landlord shall not be required to pay relocation assistance to any displaced tenant in a case in which the condemnation or no occupancy order affects one or more dwelling units and directly results from conditions caused by a tenant's or any third party's illegal conduct without the landlord's prior knowledge;

(ii) A landlord shall not be required to pay relocation assistance to any displaced tenant in a case in which the con-

demnation or no occupancy order affects one or more dwelling units and results from conditions arising from a natural disaster such as, but not exclusively, an earthquake, tsunami, wind storm, or hurricane; and

(iii) A landlord shall not be required to pay relocation assistance to any displaced tenant in a case in which a condemnation affects one or more dwelling units and the tenant's displacement is a direct result of the acquisition of the property by eminent domain.

(b) Relocation assistance provided to displaced tenants under this subsection shall be the greater amount of two thousand dollars per dwelling unit or three times the monthly rent. In addition to relocation assistance, the landlord shall be required to pay to the displaced tenants the entire amount of any deposit prepaid by the tenant and all prepaid rent.

(c) The landlord shall pay relocation assistance and any prepaid deposit and prepaid rent to displaced tenants within seven days of the governmental agency sending notice of the condemnation, eviction, or displacement order to the landlord. The landlord shall pay relocation assistance and any prepaid deposit and prepaid rent either by making individual payments by certified check to displaced tenants or by providing a certified check to the governmental agency ordering condemnation, eviction, or displacement, for distribution to the displaced tenants. If the landlord fails to complete payment of relocation assistance within the period required under this subsection, the city, town, county, or municipal corporation may advance the cost of the relocation assistance payments to the displaced tenants.

(d) During the period from the date that a governmental agency responsible for the enforcement of a building, housing, or other appropriate code first notifies the landlord of conditions that violate applicable codes, statutes, ordinances, or regulations to the time that relocation assistance payments are paid to eligible tenants, or the conditions leading to the notification are corrected, the landlord may not:

(i) Evict, harass, or intimidate tenants into vacating their units for the purpose of avoiding or diminishing application of this section;

(ii) Reduce services to any tenant; or

(iii) Materially increase or change the obligations of any tenant, including but not limited to any rent increase.

(e) Displaced tenants shall be entitled to recover any relocation assistance, prepaid deposits, and prepaid rent required by (b) of this subsection. In addition, displaced tenants shall be entitled to recover any actual damages sustained by them as a result of the condemnation, eviction, or displacement that exceed the amount of relocation assistance that is payable. In any action brought by displaced tenants to recover any payments or damages required or authorized by this subsection (3)(e) or (c) of this subsection that are not paid by the landlord or advanced by the city, town, county, or municipal corporation, the displaced tenants shall also be entitled to recover their costs of suit or arbitration and reasonable attorneys' fees.

(f) If, after sixty days from the date that the city, town, county, or municipal corporation first advanced relocation assistance funds to the displaced tenants, a landlord has failed to repay the amount of relocation assistance advanced by the city, town, county, or municipal corporation under (c) of this subsection, then the city, town, county, or municipal corpora-

tion shall assess civil penalties in the amount of fifty dollars per day for each tenant to whom the city, town, county, or municipal corporation has advanced a relocation assistance payment.

(g) In addition to the penalties set forth in (f) of this subsection, interest will accrue on the amount of relocation assistance paid by the city, town, county, or municipal corporation for which the property owner has not reimbursed the city, town, county, or municipal corporation. The rate of interest shall be the maximum legal rate of interest permitted under RCW 19.52.020, commencing thirty days after the date that the city first advanced relocation assistance funds to the displaced tenants.

(h) If the city, town, county, or municipal corporation must initiate legal action in order to recover the amount of relocation assistance payments that it has advanced to low-income tenants, including any interest and penalties under (f) and (g) of this subsection, the city, town, county, or municipal corporation shall be entitled to attorneys' fees and costs arising from its legal action.

(4) The government agency that has notified the landlord that a dwelling will be condemned or will be unlawful to occupy shall notify the displaced tenants that they may be entitled to relocation assistance under this section.

(5) No payment received by a displaced tenant under this section may be considered as income for the purpose of determining the eligibility or extent of eligibility of any person for assistance under any state law or for the purposes of any tax imposed under Title 82 RCW, and the payments shall not be deducted from any amount to which any recipient would otherwise be entitled under Title 74 RCW. [2005 c 364 § 2; 1989 c 342 § 13.]

**Purpose—2005 c 364:** "The people of the state of Washington deserve decent, safe, and sanitary housing. Certain tenants in the state of Washington have remained in rental housing that does not meet the state's minimum standards for health and safety because they cannot afford to pay the costs of relocation in advance of occupying new, safe, and habitable housing. In egregious cases, authorities have been forced to condemn property when landlords have failed to remedy building code or health code violations after repeated notice, and, as a result, families with limited financial resources have been displaced and left with nowhere to go.

The purpose of this act is to establish a process by which displaced tenants would receive funds for relocation from landlords who fail to provide safe and sanitary housing after due notice of building code or health code violations. It is also the purpose of this act to provide enforcement mechanisms to cities, towns, counties, or municipal corporations including the ability to advance relocation funds to tenants who are displaced as a result of a landlord's failure to remedy building code or health code violations and later to collect the full amounts of these relocation funds, along with interest and penalties, from landlords." [2005 c 364 § 1.]

**Construction—2005 c 364:** "The powers and authority conferred by this act are in addition and supplemental to powers or authority conferred by any other law or authority, and nothing contained herein shall be construed to preempt any local ordinance requiring relocation assistance to tenants displaced by a landlord's failure to remedy building code or health code violations." [2005 c 364 § 4.]

**59.18.320 Arbitration—Authorized—Exceptions—Notice—Procedure. (Effective January 1, 2006.)** (1) The landlord and tenant may agree, in writing, except as provided in RCW 59.18.230(2)(e), to submit to arbitration, in conformity with the provisions of this section, any controversy arising under the provisions of this chapter, except the following:

(a) Controversies regarding the existence of defects covered in subsections (1) and (2) of RCW 59.18.070: PRO-

VIDED, That this exception shall apply only before the implementation of any remedy by the tenant;

(b) Any situation where court action has been started by either landlord or tenant to enforce rights under this chapter; when the court action substantially affects the controversy, including but not limited to:

(i) Court action pursuant to subsections (2) and (3) of RCW 59.18.090 and subsections (1) and (2) of RCW 59.18.160; and

(ii) Any unlawful detainer action filed by the landlord pursuant to chapter 59.12 RCW.

(2) The party initiating arbitration under subsection (1) of this section shall give reasonable notice to the other party or parties.

(3) Except as otherwise provided in this section, the arbitration process shall be administered by any arbitrator agreed upon by the parties at the time the dispute arises: PROVIDED, That the procedures shall comply with the requirements of chapter 7.04A RCW (relating to arbitration) and of this chapter. [2005 c 433 § 45; 1973 1st ex.s. c 207 § 32.]

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

**59.18.330 Arbitration—Application—Hearings—Decisions. (Effective January 1, 2006.)** (1) Unless otherwise mutually agreed to, in the event a controversy arises under RCW 59.18.320 the landlord or tenant, or both, shall complete an application for arbitration and deliver it to the selected arbitrator.

(2) The arbitrator so designated shall schedule a hearing to be held no later than ten days following receipt of notice of the controversy, except as provided in RCW 59.18.350.

(3) The arbitrator shall conduct public or private hearings. Reasonable notice of such hearings shall be given to the parties, who shall appear and be heard either in person or by counsel or other representative. Hearings shall be informal and the rules of evidence prevailing in judicial proceedings shall not be binding. A recording of the proceedings may be taken. Any oral or documentary evidence and other data deemed relevant by the arbitrator may be received in evidence. The arbitrator shall have the power to administer oaths, to issue subpoenas, to require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as may be deemed by the arbitrator material to a just determination of the issues in dispute. If any person refuses to obey such subpoena or refuses to be sworn to testify, or any witness, party, or attorney is guilty of any contempt while in attendance at any hearing held hereunder, the arbitrator may invoke the jurisdiction of any superior court, and such court shall have jurisdiction to issue an appropriate order. A failure to obey such order may be punished by the court as a contempt thereof.

(4) Within five days after conclusion of the hearing, the arbitrator shall make a written decision upon the issues presented, a copy of which shall be mailed by certified mail or otherwise delivered to the parties or their designated representatives. The determination of the dispute made by the arbitrator shall be final and binding upon both parties.

(5) If a defective condition exists which affects more than one dwelling unit in a similar manner, the arbitrator may

consolidate the issues of fact common to those dwelling units in a single proceeding.

(6) Decisions of the arbitrator shall be enforced or appealed according to the provisions of chapter 7.04A RCW. [2005 c 433 § 46; 1973 1st ex.s. c 207 § 33.]

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

59.18.365 Unlawful detainer action—Summons—

Form. (1) The summons must contain the names of the parties to the proceeding, the attorney or attorneys if any, the court in which the same is brought, the nature of the action, in concise terms, and the relief sought, and also the return day; and must notify the defendant to appear and answer within the time designated or that the relief sought will be taken against him or her. The summons must contain a street address for service of the notice of appearance or answer and, if available, a facsimile number for the plaintiff or the plaintiff's attorney, if represented. The summons must be served and returned in the same manner as a summons in other actions is served and returned.

(2) A defendant may serve a copy of an answer or notice of appearance, and if required by the summons, the sworn statement regarding nonpayment of rent described in RCW 59.18.375, by any of the following methods:

(a) By delivering a copy of the answer or notice of appearance to the person who signed the summons at the street address listed on the summons;

(b) By mailing a copy of the answer or notice of appearance addressed to the person who signed the summons to the street address listed on the summons;

(c) By facsimile to the facsimile number listed on the summons. Service by facsimile is complete upon successful transmission to the facsimile number listed upon the summons;

(d) As otherwise authorized by the superior court civil rules.

(3) The summons for unlawful detainer actions for tenancies covered by this chapter shall be substantially in the following form. In unlawful detainer actions based on non-payment of rent, the summons may contain the provisions authorized by RCW 59.18.375.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR . . . . . COUNTY

Plaintiff, } NO.
vs. } EVICTION SUMMONS
Defendant. } (Residential)

THIS IS NOTICE OF A LAWSUIT TO EVICT YOU. PLEASE READ IT CAREFULLY. THE DEADLINE FOR YOUR WRITTEN RESPONSE IS: 5:00 p.m., on . . . . .

TO: . . . . . (Name)
. . . . . (Address)

This is notice of a lawsuit to evict you from the property which you are renting. Your landlord is asking the court to terminate your tenancy, direct the sheriff to remove you and

your belongings from the property, enter a money judgment against you for unpaid rent and/or damages for your use of the property, and for court costs and attorneys' fees.

If you want to defend yourself in this lawsuit, you must respond to the eviction complaint in writing on or before the deadline stated above. You must respond in writing even if no case number has been assigned by the court yet.

You can respond to the complaint in writing by delivering a copy of a notice of appearance or answer, and if required by this summons, a sworn statement regarding non-payment of rent, to your landlord's attorney (or your landlord if there is no attorney) by personal delivery, mailing, or facsimile to the address or facsimile number stated below TO BE RECEIVED NO LATER THAN THE DEADLINE STATED ABOVE. Service by facsimile is complete upon successful transmission to the facsimile number, if any, listed in the summons.

The notice of appearance or answer must include the name of this case (plaintiff(s) and defendant(s)), your name, the street address where further legal papers may be sent, your telephone number (if any), and your signature.

If there is a number on the upper right side of the eviction summons and complaint, you must also file your original notice of appearance or answer with the court clerk by the deadline for your written response.

You may demand that the plaintiff file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the person signing the summons. Within fourteen days after you serve the demand, the plaintiff must file this lawsuit with the court, or the service on you of this summons and complaint will be void.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

You may also be instructed in a separate order to appear for a court hearing on your eviction. If you receive an order to show cause you must personally appear at the hearing on the date indicated in the order to show cause IN ADDITION to delivering and filing your notice of appearance or answer by the deadline stated above.

IF YOU DO NOT RESPOND TO THE COMPLAINT IN WRITING BY THE DEADLINE STATED ABOVE YOU WILL LOSE BY DEFAULT. YOUR LANDLORD MAY PROCEED WITH THE LAWSUIT, EVEN IF YOU HAVE MOVED OUT OF THE PROPERTY.

The notice of appearance or answer must be delivered to:

Name
Street Address
Telephone Number
Facsimile Number (Required if Available)

[2005 c 130 § 3; 1989 c 342 § 15.]

**59.18.370 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Application—Order—Hearing.** The plaintiff, at the time of commencing an action of forcible entry or detainer or unlawful detainer, or at any time afterwards, upon filing the complaint, may apply to the superior court in which the action is pending for an order directing the defendant to appear and show cause, if any he or she has, why a writ of restitution should not issue restoring to the plaintiff possession of the property in the complaint described, and the judge shall by order fix a time and place for a hearing of the motion, which shall not be less than seven nor more than thirty days from the date of service of the order upon defendant. A copy of the order, together with a copy of the summons and complaint if not previously served upon the defendant, shall be served upon the defendant. The order shall notify the defendant that if he or she fails to appear and show cause at the time and place specified by the order the court may order the sheriff to restore possession of the property to the plaintiff and may grant such other relief as may be prayed for in the complaint and provided by this chapter. [2005 c 130 § 2; 1973 1st ex.s. c 207 § 38.]

### Chapter 59.20 RCW

#### MANUFACTURED/MOBILE HOME LANDLORD-TENANT ACT

(Formerly: Mobile Home Landlord-Tenant Act)

##### Sections

- 59.20.260 Arbitration—Authorized—Selection of arbitrator—Procedure. (*Effective January 1, 2006.*)  
59.20.270 Arbitration—Application—Hearings—Decisions. (*Effective January 1, 2006.*)

**59.20.260 Arbitration—Authorized—Selection of arbitrator—Procedure.** (*Effective January 1, 2006.*) (1) The landlord and tenant may agree in writing to submit a controversy arising under this chapter to arbitration. The agreement shall contain the name of the arbitrator agreed upon by the parties or the process for selecting the arbitrator.

(2) The arbitration shall be administered under this chapter and chapter 7.04A RCW. [2005 c 433 § 47; 1984 c 58 § 13.]

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

**Severability—1984 c 58:** See note following RCW 59.20.200.

**59.20.270 Arbitration—Application—Hearings—Decisions.** (*Effective January 1, 2006.*) (1) If the landlord and tenant agree to submit the matter to arbitration, the parties shall complete an application for arbitration and deliver it to the selected arbitrator.

(2) The arbitrator shall schedule a hearing to be held no later than ten days following receipt of the application.

(3) Reasonable notice of the hearings shall be given to the parties, who shall appear and be heard either in person, by counsel, or by other representative. Hearings shall be informal and the rules of evidence prevailing in judicial proceedings shall not be binding. Hearings may be public or private. The proceedings may be recorded. Any oral or documentary evidence and other data deemed relevant by the arbitrator may be received in evidence. The arbitrator may administer oaths, issue subpoenas, and require the attendance of wit-

nesses and the production of books, papers, contracts, agreements, and documents deemed by the arbitrator to be material to a just determination of the issues in dispute. If a person refuses to obey a subpoena or refuses to be sworn to testify, or any witness, party, or attorney is guilty of any contempt while in attendance at any hearing held under this section, the arbitrator may invoke the jurisdiction of any district or superior court, and the court shall have jurisdiction to issue an appropriate order. Failure to obey the order may be punished by the court as contempt.

(4) Within five days after the hearing, the arbitrator shall make a written decision upon the issues presented. A copy of the decision shall be mailed by certified mail or otherwise delivered to the parties or their designated representatives. The decision of the arbitrator shall be final and binding upon all parties.

(5) If a dispute exists affecting more than one tenant in a similar manner, the arbitrator may with the consent of the parties consolidate the cases into a single proceeding.

(6) Decisions of the arbitrator shall be enforced or appealed under chapter 7.04A RCW. [2005 c 433 § 48; 1984 c 58 § 14.]

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

**Severability—1984 c 58:** See note following RCW 59.20.200.

### Chapter 59.21 RCW

#### MOBILE HOME RELOCATION ASSISTANCE

##### Sections

- 59.21.021 Relocation assistance—Eligibility after December 31, 1995—Amounts of assistance—Priority for distribution of assistance.

**59.21.021 Relocation assistance—Eligibility after December 31, 1995—Amounts of assistance—Priority for distribution of assistance.** (1) If a mobile home park is closed or converted to another use after December 31, 1995, eligible tenants shall be entitled to assistance on a first-come, first-serve basis. The department shall give priority for distribution of relocation assistance to tenants residing in parks that are closed as a result of park-owner fraud or as a result of health and safety concerns as determined by the local board of health. Payments shall be made upon the department's verification of eligibility, subject to the availability of remaining funds. Eligibility for relocation assistance funds is limited to low-income households. As used in this section, "low-income household" means a single person, family, or unrelated persons living together whose adjusted income is less than eighty percent of the median family income, adjusted for household size, for the county where the mobile or manufactured home is located.

(2) Assistance for closures occurring after December 31, 1995, is limited to persons who maintain ownership of and relocate their mobile home or who dispose of a home not relocatable to a new site.

(3) Persons who removed and disposed of their mobile home or maintained ownership of and relocated their mobile homes are entitled to reimbursement of actual relocation expenses up to twelve thousand dollars for a double-wide



home and up to seven thousand five hundred dollars for a single-wide home.

(4) Any individual or organization may apply to receive funds from the mobile home park relocation fund, for use in combination with funds from public or private sources, toward relocation of tenants eligible under this section. Funds received from the mobile home park relocation fund shall only be used for relocation assistance expenses or other mobile/manufactured home ownership expenses, that include down payment assistance, if the owners are not planning to relocate their mobile home as long as their original home is removed from the park. [2005 c 399 § 5; 2002 c 257 § 2; 1998 c 124 § 2; 1995 c 122 § 5.]

**Effective date—2002 c 257:** See note following RCW 59.21.010.

### Chapter 59.22 RCW

#### OFFICE OF MOBILE HOME AFFAIRS— RESIDENT-OWNED MOBILE HOME PARKS

##### Sections

59.22.050 Office of mobile home affairs—Duties. (*Expires December 31, 2005.*)

**59.22.050 Office of mobile home affairs—Duties. (*Expires December 31, 2005.*)** (1) In order to provide general assistance to mobile home resident organizations, park owners, and landlords and tenants, the department shall establish an office of mobile home affairs which will serve as the coordinating office within state government for matters relating to mobile homes or manufactured housing.

This office will provide an ombudsman service to mobile home park owners and mobile home tenants with respect to problems and disputes between park owners and park residents and to provide technical assistance to resident organizations or persons in the process of forming a resident organization pursuant to chapter 59.22 RCW. The office will keep records of its activities in this area.

(2) The office shall perform all the consumer complaint and related functions of the state administrative agency that are required for purposes of complying with this chapter and the regulations established by the federal department of housing and urban development for manufactured housing, including the preparation and submission of the state administrative plan.

(3) The office shall administer the mobile/manufactured home community registration program including the collection of assessments, associated late fees, and the compilation of data related to the number of communities and number of lots within the community that are subject to chapter 59.20 RCW.

(4) The office shall administer the mobile home relocation assistance program established in chapter 59.21 RCW, including verifying the eligibility of tenants for relocation assistance. [2005 c 429 § 9; 1991 c 327 § 3; 1989 c 294 § 1; 1988 c 280 § 2.]

**Registration assessments—2005 c 429:** "Any amount assessed under section 7(2), chapter 429, Laws of 2005 that remains uncollected on December 31, 2005, shall be collected under the terms of section 7, chapter 429, Laws of 2005 as it existed before December 31, 2005." [2005 c 429 § 10.]

**Effective date—2005 c 429:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and takes effect immediately [May 13, 2005]." [2005 c 429 § 11.]

**Expiration date—2005 c 429:** "Except for sections 10 and 13 of this act, this act expires December 31, 2005." [2005 c 429 § 12.]

**Registration assessments—2005 c 429:** "Beginning in January 2006, the state treasurer shall transfer any funds remaining in the manufactured/mobile home investigations account under section 8, chapter 429, Laws of 2005 to the mobile home affairs account under RCW 59.22.070 for the purposes under RCW 59.22.050. All funds collected by the department under section 10, chapter 429, Laws of 2005 shall be transferred to the state treasurer for deposit into the mobile home affairs account." [2005 c 429 § 13.]

## Title 62A

### UNIFORM COMMERCIAL CODE

#### Articles

#### 3 Negotiable instruments.

##### Article 3

#### NEGOTIABLE INSTRUMENTS

(Formerly: Commercial paper)

##### Sections

- 62A.3-530 Collection agencies—Checks dishonored by nonacceptance or nonpayment; liability for interest; rate; collection costs and attorneys' fees; satisfaction of claim.
- 62A.3-540 Collection agencies—Statutory form for notice of dishonor.
- 62A.3-550 Collection agencies—Consequences for failing to comply with requirements.

**62A.3-530 Collection agencies—Checks dishonored by nonacceptance or nonpayment; liability for interest; rate; collection costs and attorneys' fees; satisfaction of claim.** (1) If a check as defined in RCW 62A.3-104 is dishonored by nonacceptance or nonpayment and the check is assigned or written to a collection agency as defined in RCW 19.16.100, the collection agency may collect a reasonable handling fee for each instrument. If the collection agency or its agent provides a notice of dishonor in the form provided in RCW 62A.3-540 to the drawer and the check amount plus the reasonable handling fee are not paid within thirty-three days after providing the notice of dishonor, then, unless the instrument otherwise provides, the drawer of the instrument is liable for payment of interest at the rate of twelve percent per annum from the date of dishonor, and a cost of collection of forty dollars or the face amount of the check, whichever is less, payable to the collection agency. In addition, in the event of court action on the check and after notice and the expiration of the thirty-three days, the court shall award reasonable attorneys' fees, and three times the face amount of the check or three hundred dollars, whichever is less, as part of the damages payable to the collection agency. This section does not apply to an instrument that is dishonored by reason of a justifiable stop payment order.

(2) Subsequent to the commencement of an action on the check under subsection (1) of this section but prior to the hearing, the defendant may tender to the plaintiff as satisfaction of the claim, an amount of money equal to the face amount of the check, a reasonable handling fee, accrued interest, collection costs equal to the face amount of the check not to exceed forty dollars, and the incurred court costs, service costs, and statutory attorneys' fees.

(3) Nothing in this section precludes the right to commence action in a court under chapter 12.40 RCW for small claims. [2005 c 277 § 3.]

Intent—2005 c 277: See note following RCW 28A.300.455.

**62A.3-540 Collection agencies—Statutory form for notice of dishonor.** (1) If a check is assigned or written to a collection agency as defined in RCW 19.16.100 and the collection agency or its agent provides a notice of dishonor, the notice of dishonor may be sent by mail to the drawer at the drawer's last known address. The collection agency may, as an alternative to providing a notice in the form described in RCW 62A.3-520, provide a notice in substantially the following form:

NOTICE OF DISHONOR OF CHECK

A check drawn by you and made payable by you to . . . . . in the amount of . . . . . has not been accepted for payment by . . . . ., which is the drawee bank designated on your check. This check is dated . . . . ., and it is numbered, No. . . . .

You are CAUTIONED that unless you pay the amount of this check and a handling fee of . . . . . within thirty-three days after the date this letter is postmarked or personally delivered, you may very well have to pay the following additional amounts:

- (a) Costs of collecting the amount of the check in the lesser of the check amount or forty dollars, plus, in the event of legal action, court costs and attorneys' fees, which will be set by the court;
(b) Interest on the amount of the check which shall accrue at the rate of twelve percent per annum from the date of dishonor; and
(c) Three hundred dollars or three times the face amount of the check, whichever is less, by award of the court.

You are also CAUTIONED that law enforcement agencies may be provided with a copy of this notice of dishonor and the check drawn by you for the possibility of proceeding with criminal charges if you do not pay the amount of this check within thirty-three days after the date this letter is post-marked.

You are advised to make your payment of \$. . . . . to . . . . . at the following address: . . . . .

(2) The cautionary statement regarding law enforcement in subsection (1) of this section need not be included in a notice of dishonor sent by a collection agency. However, if included and whether or not the collection agency regularly refers dishonored checks to law enforcement, the cautionary statement in subsection (1) of this section shall not be construed as a threat to take any action not intended to be taken or that cannot legally be taken; nor shall it be construed to be harassing, oppressive, or abusive conduct; nor shall it be construed to be a false, deceptive, or misleading representation; nor shall it be construed to be unfair or unconscionable; nor shall it otherwise be construed to violate any law.

(3) In addition to sending a notice of dishonor to the drawer of the check under this section, the person sending notice shall execute an affidavit certifying service of the notice by mail. The affidavit of service by mail must be substantially in the following form:

AFFIDAVIT OF SERVICE BY MAIL

I, . . . . ., hereby certify that on the . . . . . day of . . . . ., 20. . . . ., a copy of the foregoing Notice was served on . . . . . by mailing via the United States Postal Service, postage prepaid, at . . . . ., Washington.

Dated: . . . . .
(Signature)

(4) The person enforcing a check under this section shall file the affidavit and check, or a true copy thereof, with the clerk of the court in which an action on the check is commenced as permitted by court rule or practice. [2005 c 277 § 4.]

Intent—2005 c 277: See note following RCW 28A.300.455.

**62A.3-550 Collection agencies—Consequences for failing to comply with requirements.** No interest, collection costs, and attorneys' fees, except handling fees, are recoverable on any dishonored check under the provisions of RCW 62A.3-530 where a collection agency or its agent, employee, or assign has demanded:

- (1) Interest or collection costs in excess of that provided by RCW 62A.3-530; or
(2) Interest or collection costs prior to the expiration of thirty-three days after the serving or mailing of the notice of dishonor, as provided by RCW 62A.3-530 or 62A.3-540; or
(3) Attorneys' fees other than statutory attorneys' fees without having the fees set by the court, or any attorneys' fees prior to thirty-three days after the serving or mailing of the notice of dishonor, as provided by RCW 62A.3-530 or 62A.3-540. [2005 c 277 § 5.]

Intent—2005 c 277: See note following RCW 28A.300.455.

Title 63

PERSONAL PROPERTY

Chapters

63.29 Uniform unclaimed property act.

Chapter 63.29 RCW

UNIFORM UNCLAIMED PROPERTY ACT

Sections

63.29.010 Definitions and use of terms.
63.29.020 Property presumed abandoned—General rule—Exceptions.
63.29.033 Repealed.
63.29.180 Notice and publication of information about unclaimed property.
63.29.190 Payment or delivery of abandoned property.
63.29.220 Public sale of abandoned property.
63.29.280 Destruction or disposition of property having insubstantial commercial value—Immunity from liability.

**63.29.010 Definitions and use of terms.** As used in this chapter, unless the context otherwise requires:

- (1) "Department" means the department of revenue established under RCW 82.01.050.
(2) "Apparent owner" means the person whose name appears on the records of the holder as the person entitled to property held, issued, or owing by the holder.

(3) "Attorney general" means the chief legal officer of this state referred to in chapter 43.10 RCW.

(4) "Banking organization" means a bank, trust company, savings bank, land bank, safe deposit company, private banker, or any organization defined by other law as a bank or banking organization.

(5) "Business association" means a nonpublic corporation, joint stock company, investment company, business trust, partnership, or association for business purposes of two or more individuals, whether or not for profit, including a banking organization, financial organization, insurance company, or utility.

(6) "Domicile" means the state of incorporation of a corporation and the state of the principal place of business of an unincorporated person.

(7) "Fare card" means any pass or instrument, and value contained therein, purchased to utilize public transportation facilities or services. "Fare card" does not include "gift card" or "gift certificate" as those terms are defined in RCW 19.240.010.

(8) "Financial organization" means a savings and loan association, cooperative bank, building and loan association, or credit union.

(9) "Gift certificate" has the same meaning as in RCW 19.240.010.

(10) "Holder" means a person, wherever organized or domiciled, who is:

- (a) In possession of property belonging to another,
- (b) A trustee, or
- (c) Indebted to another on an obligation.

(11) "Insurance company" means an association, corporation, fraternal or mutual benefit organization, whether or not for profit, which is engaged in providing insurance coverage, including accident, burial, casualty, credit life, contract performance, dental, fidelity, fire, health, hospitalization, illness, life (including endowments and annuities), malpractice, marine, mortgage, surety, and wage protection insurance.

(12) "Intangible property" does not include contract claims which are unliquidated but does include:

- (a) Moneys, checks, drafts, deposits, interest, dividends, and income;
- (b) Credit balances, customer overpayments, gift certificates, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances, but does not include discounts which represent credit balances for which no consideration was given;
- (c) Stocks, and other intangible ownership interests in business associations;
- (d) Moneys deposited to redeem stocks, bonds, coupons, and other securities, or to make distributions;
- (e) Liquidated amounts due and payable under the terms of insurance policies; and
- (f) Amounts distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(13) "Last known address" means a description of the location of the apparent owner sufficient for the purpose of the delivery of mail.

(14) "Owner" means a depositor in the case of a deposit, a beneficiary in case of a trust other than a deposit in trust, a creditor, claimant, or payee in the case of other intangible property, or a person having a legal or equitable interest in property subject to this chapter or his legal representative.

(15) "Person" means an individual, business association, state or other government, governmental subdivision or agency, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(16) "State" means any state, district, commonwealth, territory, insular possession, or any other area subject to the legislative authority of the United States.

(17) "Third party bank check" means any instrument drawn against a customer's account with a banking organization or financial organization on which the banking organization or financial organization is only secondarily liable.

(18) "Utility" means a person who owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas. [2005 c 285 § 1; 2004 c 168 § 13; 1983 c 179 § 1.]

**Effective date—2004 c 168 §§ 13 and 14:** "Sections 13 and 14 of this act take effect July 1, 2004." [2004 c 168 § 19.]

**63.29.020 Property presumed abandoned—General rule—Exceptions.** (1) Except as otherwise provided by this chapter, all intangible property, including any income or increment derived therefrom, less any lawful charges, that is held, issued, or owing in the ordinary course of the holder's business and has remained unclaimed by the owner for more than three years after it became payable or distributable is presumed abandoned.

(2) Property, with the exception of unredeemed Washington state lottery tickets and unrepresented winning parimutuel tickets, is payable and distributable for the purpose of this chapter notwithstanding the owner's failure to make demand or to present any instrument or document required to receive payment.

(3) This chapter does not apply to claims drafts issued by insurance companies representing offers to settle claims unliquidated in amount or settled by subsequent drafts or other means.

(4) This chapter does not apply to property covered by chapter 63.26 RCW.

(5) This chapter does not apply to used clothing, umbrellas, bags, luggage, or other used personal effects if such property is disposed of by the holder as follows:

- (a) In the case of personal effects of negligible value, the property is destroyed; or
- (b) The property is donated to a bona fide charity.

(6) This chapter does not apply to a gift certificate subject to the prohibition against expiration dates under RCW 19.240.020 or to a gift certificate subject to RCW 19.240.030 through 19.240.060. However, this chapter applies to gift certificates presumed abandoned under RCW 63.29.110.

(7) This chapter does not apply to excess proceeds held by counties, cities, towns, and other municipal or quasi-municipal corporations from foreclosures for delinquent property taxes, assessments, or other liens. [2005 c 502 § 3;

2005 c 367 § 1; 2004 c 168 § 14; 2003 1st sp.s. c 13 § 1; 1992 c 122 § 1; 1988 c 226 § 2; 1983 c 179 § 2.]

**Effective date—2005 c 502:** See note following RCW 1.12.070.

**Effective date—2004 c 168 §§ 13 and 14:** See note following RCW 63.29.010.

**Effective dates—2003 1st sp.s. c 13:** "(1) Sections 8 through 10 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect August 1, 2003.

(2) Sections 11 through 16 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2003.

(3) Sections 1 through 7 of this act take effect January 1, 2004." [2003 1st sp.s. c 13 § 17.]

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

**63.29.180 Notice and publication of information about unclaimed property.** (1) The department shall cause a notice to be published not later than November 1st, immediately following the report required by RCW 63.29.170 in a newspaper of general circulation within this state, which the department determines is most likely to give notice to the apparent owner of the property.

(2) The published notice must be entitled "Notice to Owners of Unclaimed Property" and contain a summary explanation of how owners may obtain information about unclaimed property reported to the department.

(3) Not later than September 1st, immediately following the report required by RCW 63.29.170, the department shall mail a notice to each person whose last known address is listed in the report and who appears to be entitled to property with a value of more than seventy-five dollars presumed abandoned under this chapter and any beneficiary of a life or endowment insurance policy or annuity contract for whom the department has a last known address.

(4) The mailed notice must contain:

(a) A statement that, according to a report filed with the department, property is being held to which the addressee appears entitled; and

(b) The name of the person reporting the property and the type of property described in the report.

(5) This section is not applicable to sums payable on travelers checks, money orders, and other written instruments presumed abandoned under RCW 63.29.040. [2005 c 367 § 2; 2003 c 237 § 2; 1993 c 498 § 9; 1986 c 84 § 1; 1983 c 179 § 18.]

**63.29.190 Payment or delivery of abandoned property.** (1) Except as otherwise provided in subsections (2) and (3) of this section, a person who is required to file a report under RCW 63.29.170 shall pay or deliver to the department all abandoned property required to be reported at the time of filing the report.

(2)(a) Counties, cities, towns, and other municipal and quasi-municipal corporations that hold funds representing warrants canceled pursuant to RCW 36.22.100 and 39.56.040, uncashed checks, and property tax overpayments or refunds may retain the funds until the owner notifies them and establishes ownership as provided in RCW 63.29.135. Counties, cities, towns, or other municipal or quasi-municipal

corporations shall provide to the department a report of property it is holding pursuant to this section. The report shall identify the property and owner in the manner provided in RCW 63.29.170 and the department shall publish the information as provided in RCW 63.29.180.

(b)(i) A public transportation authority that holds funds representing value on abandoned fare cards may retain the funds until the owner notifies the authority and establishes ownership as provided in RCW 63.29.135.

(ii) For the purposes of this subsection (2)(b), "public transportation authority" means a municipality, as defined in RCW 35.58.272, a regional transit authority authorized by chapter 81.112 RCW, a public mass transportation system authorized by chapter 47.60 RCW, or a city transportation authority authorized by chapter 35.95A RCW.

(3) The contents of a safe deposit box or other safekeeping repository presumed abandoned under RCW 63.29.160 and reported under RCW 63.29.170 shall be paid or delivered to the department within six months after the final date for filing the report required by RCW 63.29.170.

If the owner establishes the right to receive the abandoned property to the satisfaction of the holder before the property has been delivered or it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property to the department, and the property will no longer be presumed abandoned. In that case, the holder shall file with the department a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

(4) The holder of an interest under RCW 63.29.100 shall deliver a duplicate certificate or other evidence of ownership if the holder does not issue certificates of ownership to the department. Upon delivery of a duplicate certificate to the department, the holder and any transfer agent, registrar, or other person acting for or on behalf of a holder in executing or delivering the duplicate certificate is relieved of all liability of every kind in accordance with RCW 63.29.200 to every person, including any person acquiring the original certificate or the duplicate of the certificate issued to the department, for any losses or damages resulting to any person by the issuance and delivery to the department of the duplicate certificate. [2005 c 502 § 4; 2005 c 367 § 3; 2005 c 285 § 2; 1993 c 498 § 8; 1991 c 311 § 7; 1990 2nd ex.s. c 1 § 302; 1983 c 179 § 19.]

**Reviser's note:** This section was amended by 2005 c 285 § 2, 2005 c 367 § 3, and by 2005 c 502 § 4, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2005 c 502:** See note following RCW 1.12.070.

**Severability—1991 c 311:** See note following RCW 82.14.310.

**Applicability—1990 2nd ex.s. c 1:** See note following RCW 63.29.135.

**Severability—1990 2nd ex.s. c 1:** See note following RCW 82.14.300.

**63.29.220 Public sale of abandoned property.** (1) Except as provided in subsections (2) and (3) of this section the department, within five years after the receipt of abandoned property, shall sell it to the highest bidder at public sale in whatever city in the state affords in the judgment of the department the most favorable market for the property involved. The department may decline the highest bid and

reoffer the property for sale if in the judgment of the department the bid is insufficient. If in the judgment of the department the probable cost of sale exceeds the value of the property, it need not be offered for sale. Any sale held under this section must be preceded by a single publication of notice, at least three weeks in advance of sale, in a newspaper of general circulation in the county in which the property is to be sold.

(2) Securities listed on an established stock exchange must be sold at prices prevailing at the time of sale on the exchange. Other securities may be sold over the counter at prices prevailing at the time of sale or by any other method the department considers advisable. All securities may be sold over the counter at prices prevailing at the time of the sale, or by any other method the department deems advisable.

(3) Unless the department considers it to be in the best interest of the state to do otherwise, all securities, other than those presumed abandoned under RCW 63.29.100, delivered to the department must be held for at least one year before being sold.

(4) Unless the department considers it to be in the best interest of the state to do otherwise, all securities presumed abandoned under RCW 63.29.100 and delivered to the department must be held for at least three years before being sold. If the department sells any securities delivered pursuant to RCW 63.29.100 before the expiration of the three-year period, any person making a claim pursuant to this chapter before the end of the three-year period is entitled to either the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever amount is greater, less any deduction for fees pursuant to RCW 63.29.230(2). A person making a claim under this chapter after the expiration of this period is entitled to receive either the securities delivered to the department by the holder, if they still remain in the hands of the department, or the proceeds received from sale, less any amounts deducted pursuant to RCW 63.29.230(2), but no person has any claim under this chapter against the state, the holder, any transfer agent, registrar, or other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the department.

(5) The purchaser of property at any sale conducted by the department pursuant to this chapter takes the property free of all claims of the owner or previous holder thereof and of all persons claiming through or under them. The department shall execute all documents necessary to complete the transfer of ownership. [2005 c 367 § 4; 1996 c 45 § 3; 1993 c 498 § 10; 1983 c 179 § 22.]

**63.29.280 Destruction or disposition of property having insubstantial commercial value—Immunity from liability.** If the department determines after investigation that any property delivered under this chapter has insubstantial commercial value, the department may destroy or otherwise dispose of the property at any time. No action or proceeding may be maintained against the state or any officer or against the holder for or on account of any action taken by the department pursuant to this section. Original documents which the department has identified to be destroyed and which have legal significance or historical interest may be surrendered to

the state historical museum or to the state library. [2005 c 367 § 5; 1983 c 179 § 28.]

## Title 64

### REAL PROPERTY AND CONVEYANCES

#### Chapters

- 64.04 Conveyances.**
- 64.06 Residential real property transfers—Seller's disclosures.**
- 64.34 Condominium act.**
- 64.36 Timeshare regulation.**
- 64.38 Homeowners' associations.**
- 64.55 Construction defect disputes—Multiunit residential buildings.**

#### Chapter 64.04 RCW CONVEYANCES

#### Sections

- 64.04.005 Liquidated damages—Earnest money deposit—Exclusive remedy—Definition.
- 64.04.210 Requests for notice of transfer or encumbrance—Disclosure—Notice to department of social and health services.

**64.04.005 Liquidated damages—Earnest money deposit—Exclusive remedy—Definition.** (1) A provision in a written agreement for the purchase and sale of real estate which provides for liquidated damages or the forfeiture of an earnest money deposit to the seller as the seller's sole and exclusive remedy if a party fails, without legal excuse, to complete the purchase, is valid and enforceable, regardless of whether the other party incurs any actual damages. However, the amount of liquidated damages or amount of earnest money to be forfeited under this subsection may not exceed five percent of the purchase price.

(2) For purposes of this section:

(a) "Earnest money deposit" means any deposit, deposits, payment, or payments of a part of the purchase price for the property, made in the form of cash, check, promissory note, or other things of value for the purpose of binding the purchaser to the agreement and identified in the agreement as an earnest money deposit, and does not include other deposits or payments made by the purchaser; and

(b) "Liquidated damages" means an amount agreed by the parties as the amount of damages to be recovered for a breach of the agreement by the other and identified in the agreement as liquidated damages, and does not include other deposits or payments made by the purchaser.

(3) This section does not prohibit, or supersede the common law with respect to, liquidated damages or earnest money forfeiture provisions in excess of five percent of the purchase price. A liquidated damages or earnest money forfeiture provision not meeting the requirements of subsection (1) of this section shall be interpreted and enforced without regard to this statute. [2005 c 186 § 1; 1991 c 210 § 1.]

**Application—2005 c 186:** "This act applies to all contracts executed after April 26, 2005." [2005 c 186 § 2.]

**Effective date—2005 c 186:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and takes effect immediately [April 26, 2005]." [2005 c 186 § 3.]

**Application—1991 c 210:** "The provisions of this act apply only to written agreements entered on or after July 28, 1991." [1991 c 210 § 2.]

**64.04.210 Requests for notice of transfer or encumbrance—Disclosure—Notice to department of social and health services.** (1) If the department of social and health services has filed a request for notice of transfer or encumbrance under RCW 43.20B.750:

(a) A title insurance company or agent that discovers the presence of a request for notice of transfer or encumbrance when performing a title search on real property shall disclose the presence of the request for notice of transfer or encumbrance in any report preliminary to, or any commitment to offer, a certificate of title insurance for the real property; and

(b) Any individual who transfers or encumbers real property shall provide the department of social and health services with a notice of transfer or encumbrance. The department of social and health services shall adopt by rule a model form for notice of transfer or encumbrance to be used by a purchaser or lender when notifying the department.

(2) If the department of social and health services has caused to be recorded a termination of request for notice of transfer or encumbrance in the deed and mortgage records under RCW 43.20B.750, an individual transferring or encumbering the real property is not required to provide the notice of transfer or encumbrance required by subsection (1)(b) of this section. [2005 c 292 § 2.]

#### Chapter 64.06 RCW

### RESIDENTIAL REAL PROPERTY TRANSFERS— SELLER'S DISCLOSURES

#### Sections

64.06.022 Disclosure of proximity to farm or farm operation.

**64.06.022 Disclosure of proximity to farm or farm operation.** A seller of real property located within one mile of the property boundary of a farm or farm operation shall make available to the buyer the following statement: "This notice is to inform prospective residents that the real property they are about to acquire lies within one mile of the property boundary of a farm. The farm may generate usual and ordinary noise, dust, odors, and other associated conditions, and these practices are protected by the Washington right to farm act." [2005 c 511 § 3.]

#### Chapter 64.34 RCW CONDOMINIUM ACT

#### Sections

64.34.073 Application of chapter 64.55 RCW.  
64.34.100 Remedies liberally administered.  
64.34.410 Public offering statement—General provisions.  
64.34.415 Public offering statement—Conversion condominiums.

**64.34.073 Application of chapter 64.55 RCW.** Chapter 64.55 RCW includes requirements for: The inspection of the building enclosures of multiunit residential buildings, as defined in RCW 64.55.010, which includes condominiums

[2005 RCW Supp—page 722]

and conversion condominiums; for provision of inspection and repair reports; and for the resolution of implied or express warranty disputes under chapter 64.34 RCW. [2005 c 456 § 21.]

**Captions not law—Effective date—2005 c 456:** See RCW 64.55.900 and 64.55.901.

**64.34.100 Remedies liberally administered.** (1) The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special, or punitive damages may not be awarded except as specifically provided in this chapter or by other rule of law.

(2) Except as otherwise provided in RCW 64.55.100 through 64.55.160 or chapter 64.35 RCW, any right or obligation declared by this chapter is enforceable by judicial proceeding. The arbitration proceedings provided for in RCW 64.55.100 through 64.55.160 shall be considered judicial proceedings for the purposes of this chapter. [2005 c 456 § 20; 2004 c 201 § 2; 1989 c 43 § 1-113.]

**Captions not law—Effective date—2005 c 456:** See RCW 64.55.900 and 64.55.901.

**64.34.410 Public offering statement—General provisions.** (1) A public offering statement shall contain the following information:

- (a) The name and address of the condominium;
- (b) The name and address of the declarant;
- (c) The name and address of the management company, if any;
- (d) The relationship of the management company to the declarant, if any;
- (e) A list of up to the five most recent condominium projects completed by the declarant or an affiliate of the declarant within the past five years, including the names of the condominiums, their addresses, and the number of existing units in each. For the purpose of this section, a condominium is "completed" when any one unit therein has been rented or sold;
- (f) The nature of the interest being offered for sale;
- (g) A brief description of the permitted uses and use restrictions pertaining to the units and the common elements;
- (h) A brief description of the restrictions, if any, on the renting or leasing of units by the declarant or other unit owners, together with the rights, if any, of the declarant to rent or lease at least a majority of units;
- (i) The number of existing units in the condominium and the maximum number of units that may be added to the condominium;
- (j) A list of the principal common amenities in the condominium which materially affect the value of the condominium and those that will or may be added to the condominium;
- (k) A list of the limited common elements assigned to the units being offered for sale;
- (l) The identification of any real property not in the condominium, the owner of which has access to any of the common elements, and a description of the terms of such access;
- (m) The identification of any real property not in the condominium to which unit owners have access and a description of the terms of such access;

(n) The status of construction of the units and common elements, including estimated dates of completion if not completed;

(o) The estimated current common expense liability for the units being offered;

(p) An estimate of any payment with respect to the common expense liability for the units being offered which will be due at closing;

(q) The estimated current amount and purpose of any fees not included in the common expenses and charged by the declarant or the association for the use of any of the common elements;

(r) Any assessments which have been agreed to or are known to the declarant and which, if not paid, may constitute a lien against any units or common elements in favor of any governmental agency;

(s) The identification of any parts of the condominium, other than the units, which any individual owner will have the responsibility for maintaining;

(t) If the condominium involves a conversion condominium, the information required by RCW 64.34.415;

(u) Whether timesharing is restricted or prohibited, and if restricted, a general description of such restrictions;

(v) A list of all development rights reserved to the declarant and all special declarant rights reserved to the declarant, together with the dates such rights must terminate, and a copy of or reference by recording number to any recorded transfer of a special declarant right;

(w) A description of any material differences in terms of furnishings, fixtures, finishes, and equipment between any model unit available to the purchaser at the time the agreement for sale is executed and the unit being offered;

(x) Any liens on real property to be conveyed to the association required to be disclosed pursuant to RCW 64.34.435(2)(b);

(y) A list of any physical hazards known to the declarant which particularly affect the condominium or the immediate vicinity in which the condominium is located and which are not readily ascertainable by the purchaser;

(z) A brief description of any construction warranties to be provided to the purchaser;

(aa) Any building code violation citations received by the declarant in connection with the condominium which have not been corrected;

(bb) A statement of any unsatisfied judgments or pending suits against the association, a statement of the status of any pending suits material to the condominium of which the declarant has actual knowledge, and a statement of any litigation brought by an owners' association, unit owner, or governmental entity in which the declarant or any affiliate of the declarant has been a defendant, arising out of the construction, sale, or administration of any condominium within the previous five years, together with the results thereof, if known;

(cc) Any rights of first refusal to lease or purchase any unit or any of the common elements;

(dd) The extent to which the insurance provided by the association covers furnishings, fixtures, and equipment located in the unit;

(ee) A notice which describes a purchaser's right to cancel the purchase agreement or extend the closing under RCW 64.34.420, including applicable time frames and procedures;

(ff) Any reports or statements required by RCW 64.34.415 or 64.34.440(6)(a). RCW 64.34.415 shall apply to the public offering statement of a condominium in connection with which a final certificate of occupancy was issued more than sixty calendar months prior to the preparation of the public offering statement whether or not the condominium is a conversion condominium as defined in RCW 64.34.020(10);

(gg) A list of the documents which the prospective purchaser is entitled to receive from the declarant before the rescission period commences;

(hh) A notice which states: A purchaser may not rely on any representation or express warranty unless it is contained in the public offering statement or made in writing signed by the declarant or by any person identified in the public offering statement as the declarant's agent;

(ii) A notice which states: This public offering statement is only a summary of some of the significant aspects of purchasing a unit in this condominium and the condominium documents are complex, contain other important information, and create binding legal obligations. You should consider seeking the assistance of legal counsel;

(jj) Any other information and cross-references which the declarant believes will be helpful in describing the condominium to the recipients of the public offering statement, all of which may be included or not included at the option of the declarant;

(kk) A notice that addresses compliance or noncompliance with the housing for older persons act of 1995, P.L. 104-76, as enacted on December 28, 1995;

(ll) A notice that is substantially in the form required by RCW 64.50.050;

(mm) A statement, as required by RCW 64.35.210, as to whether the units or common elements of the condominium are covered by a qualified warranty, and a history of claims under any such warranty; and

(nn) A statement that the building enclosure has been designed and inspected as required by RCW 64.55.010 through 64.55.090, and, if required, repaired in accordance with the requirements of RCW 64.55.090.

(2) The public offering statement shall include copies of each of the following documents: The declaration, the survey map and plans, the articles of incorporation of the association, bylaws of the association, rules and regulations, if any, current or proposed budget for the association, the balance sheet of the association current within ninety days if assessments have been collected for ninety days or more, and the inspection and repair report or reports prepared in accordance with the requirements of RCW 64.55.090.

If any of the foregoing documents listed in this subsection are not available because they have not been executed, adopted, or recorded, drafts of such documents shall be provided with the public offering statement, and, before closing the sale of a unit, the purchaser shall be given copies of any material changes between the draft of the proposed documents and the final documents.

(3) The disclosures required by subsection (1)(g), (k), (s), (u), (v), and (cc) of this section shall also contain a refer-

ence to specific sections in the condominium documents which further explain the information disclosed.

(4) The disclosures required by subsection (1)(ee), (hh), (ii), and (ll) of this section shall be located at the top of the first page of the public offering statement and be typed or printed in ten-point bold face type size.

(5) A declarant shall promptly amend the public offering statement to reflect any material change in the information required by this section. [2005 c 456 § 19; 2004 c 201 § 11; 2002 c 323 § 10; 1997 c 400 § 1; 1992 c 220 § 21; 1989 c 43 § 4-103.]

**Captions not law—Effective date—2005 c 456:** See RCW 64.55.900 and 64.55.901.

**64.34.415 Public offering statement—Conversion condominiums.** (1) The public offering statement of a conversion condominium shall contain, in addition to the information required by RCW 64.34.410:

(a) Either a copy of a report prepared by an independent, licensed architect or engineer, or a statement by the declarant based on such report, which report or statement describes, to the extent reasonably ascertainable, the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the condominium;

(b) A copy of the inspection and repair report prepared by an independent, licensed architect, engineer, or qualified building inspector in accordance with the requirements of RCW 64.55.090;

(c) A statement by the declarant of the expected useful life of each item reported on in (a) of this subsection or a statement that no representations are made in that regard; and

(d) A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing those violations. Unless the purchaser waives in writing the curing of specific violations, the extent to which the declarant will cure such violations prior to the closing of the sale of a unit in the condominium shall be included.

(2) This section applies only to condominiums containing units that may be occupied for residential use. [2005 c 456 § 18; 1992 c 220 § 22; 1990 c 166 § 10; 1989 c 43 § 4-104.]

**Captions not law—Effective date—2005 c 456:** See RCW 64.55.900 and 64.55.901.

**Effective date—1990 c 166:** See note following RCW 64.34.020.

### Chapter 64.36 RCW

#### TIMESHARE REGULATION

##### Sections

64.36.225 Liability of registrant or applicant for costs of proceedings.

**64.36.225 Liability of registrant or applicant for costs of proceedings.** A registrant or applicant against whom an administrative or legal proceeding authorized under this chapter has been filed, shall be liable for and reimburse to the state of Washington by payment into the business and professions account created in RCW 43.24.150, all administrative and legal costs, including attorneys' fees, incurred by

[2005 RCW Supp—page 724]

the department in issuing and conducting administrative or legal proceedings that result in a final legal or administrative determination of any type or degree, in favor of the department or the state of Washington. [2005 c 25 § 4; 1987 c 370 § 8.]

**Effective date—2005 c 25:** See note following RCW 43.24.150.

### Chapter 64.38 RCW

#### HOMEOWNERS' ASSOCIATIONS

##### Sections

64.38.034 Political yard signs—Governing documents.

**64.38.034 Political yard signs—Governing documents.** (1) The governing documents may not prohibit the outdoor display of political yard signs by an owner or resident on the owner's or resident's property before any primary or general election. The governing documents may include reasonable rules and regulations regarding the placement and manner of display of political yard signs.

(2) This section applies retroactively to any governing documents in effect on July 24, 2005. Any provision in a governing document in effect on July 24, 2005, that is inconsistent with this section is void and unenforceable. [2005 c 179 § 1.]

### Chapter 64.55 RCW

#### CONSTRUCTION DEFECT DISPUTES—MULTIUNIT RESIDENTIAL BUILDINGS

##### Sections

64.55.005 Application.  
64.55.010 Definitions.  
64.55.020 Building permit application—Submission of design documents.  
64.55.030 Inspection required.  
64.55.040 Inspectors—Qualifications.  
64.55.050 Scope of inspection—Definition.  
64.55.060 Certification—Certificate of occupancy.  
64.55.070 Inspector, architect, and engineer—No private right of action or basis for liability against.  
64.55.080 Inspector's report or testimony—No evidentiary presumption—Admissibility.  
64.55.090 Sale of condominium unit subject to compliance—Inspection alternative.  
64.55.100 Arbitration—Election—Number of arbitrators—Qualifications—Trial de novo.  
64.55.110 Case schedule plan—Deadlines.  
64.55.120 Mandatory mediation.  
64.55.130 Appointment of neutral expert—Qualifications—Duties—Admissibility of report or testimony.  
64.55.140 Payment of arbitrators, mediators, and neutral experts.  
64.55.150 Subcontractors and suppliers—When party to arbitration.  
64.55.160 Offers of judgment—Costs and fees.  
64.55.900 Captions not law—2005 c 456.  
64.55.901 Effective date—2005 c 456.

**64.55.005 Application.** (1)(a) RCW 64.55.010 through 64.55.090 apply to any multiunit residential building for which the permit for construction or rehabilitative construction of such building was issued on or after August 1, 2005.

(b) RCW 64.55.010 through 64.55.090 apply to conversion condominiums as defined in RCW 64.34.020, provided that RCW 64.55.090 shall not apply to a condominium conversion for which a public offering statement had been delivered pursuant to chapter 64.34 RCW prior to August 1, 2005.



(2) RCW 64.55.010 and 64.55.100 through 64.55.170 apply to any action that alleges breach of an implied or express warranty under chapter 64.34 RCW or that seeks relief that could be awarded for such breach, regardless of the legal theory pled, except that RCW 64.55.100 through 64.55.170 shall not apply to:

- (a) Actions filed or served prior to August 1, 2005;
- (b) Actions for which a notice of claim was served pursuant to chapter 64.50 RCW prior to August 1, 2005;
- (c) Actions asserting any claim regarding a building that is not a multiunit residential building;
- (d) Actions asserting any claim regarding a multiunit residential building that was permitted on or after August 1, 2005, unless the letter required by RCW 64.55.060 has been submitted to the appropriate building department or the requirements of RCW 64.55.090 have been satisfied.

(3) Other than the requirements imposed by RCW 64.55.010 through 64.55.090, nothing in this chapter amends or modifies the provisions of RCW 64.34.050. [2005 c 456 § 1.]

**64.55.010 Definitions.** Unless the context clearly requires otherwise, the definitions in RCW 64.34.020 and in this section apply throughout this chapter.

(1) "Attached dwelling unit" means any dwelling unit that is attached to another dwelling unit by a wall, floor, or ceiling that separates heated living spaces. A garage is not a heated living space.

(2) "Building enclosure" means that part of any building, above or below grade, that physically separates the outside or exterior environment from interior environments and which weatherproofs, waterproofs, or otherwise protects the building or its components from water or moisture intrusion. Interior environments consist of both heated and unheated enclosed spaces. The building enclosure includes, but is not limited to, that portion of roofs, walls, balcony support columns, decks, windows, doors, vents, and other penetrations through exterior walls, which waterproof, weatherproof, or otherwise protect the building or its components from water or moisture intrusion.

(3) "Building enclosure design documents" means plans, details, and specifications for the building enclosure that have been stamped by a licensed engineer or architect. The building enclosure design documents shall include details and specifications that are appropriate for the building in the professional judgment of the architect or engineer which prepared the same to waterproof, weatherproof, and otherwise protect the building or its components from water or moisture intrusion, including details of flashing, intersections at roof, eaves or parapets, means of drainage, water-resistive membrane, and details around openings.

(4) "Developer" means:

- (a) With respect to a condominium or a conversion condominium, the declarant; and
- (b) With respect to all other buildings, an individual, group of individuals, partnership, corporation, association, municipal corporation, state agency, or other entity or person that obtains a building permit for the construction or rehabilitative reconstruction of a multiunit residential building. If a permit is obtained by service providers such as architects, contractors, and consultants who obtain permits for others as

part of services rendered for a fee, the person for whom the permit is obtained shall be the developer, not the service provider.

(5) "Dwelling unit" has the meaning given to that phrase or similar phrases in the ordinances of the jurisdiction issuing the permit for construction of the building enclosure but if such ordinances do not provide a definition, then "dwelling unit" means a residence containing living, cooking, sleeping, and sanitary facilities.

(6) "Multiunit residential building" means:

(a) A building containing more than two attached dwelling units, including a building containing nonresidential units if the building also contains more than two attached dwelling units, but excluding the following classes of buildings:

- (i) Hotels and motels;
- (ii) Dormitories;
- (iii) Care facilities;
- (iv) Floating homes;

(v) A building that contains attached dwelling units that are each located on a single platted lot, except as provided in (b) of this subsection;

(vi) A building in which all of the dwelling units are held under one ownership and is subject to a recorded irrevocable sale prohibition covenant.

(b) If the developer submits to the appropriate building department when applying for the building permit described in RCW 64.55.020 a statement that the developer elects to treat the improvement for which a permit is sought as a multiunit residential building for all purposes under this chapter, then "multiunit residential building" also means the following buildings for which such election has been made:

- (i) A building containing only two attached dwelling units;
- (ii) A building that does not contain attached dwelling units; and
- (iii) Any building that contains attached dwelling units each of which is located on a single platted lot.

(7) "Party unit owner" means a unit owner who is a named party to an action subject to this chapter and does not include any unit owners whose involvement with the action stems solely from their membership in the association.

(8) "Qualified building inspector" means a person satisfying the requirements of RCW 64.55.040.

(9) "Rehabilitative construction" means construction work on the building enclosure of a multiunit residential building if the cost of such construction work is more than five percent of the assessed value of the building.

(10) "Sale prohibition covenant" means a recorded covenant that prohibits the sale or other disposition of individual dwelling units as or as part of a condominium for five years or more from the date of first occupancy except as otherwise provided in RCW 64.55.090, a certified copy of which the developer shall submit to the appropriate building department; provided such covenant shall not apply to sales or dispositions listed in RCW 64.34.400(2). The covenant must be recorded in the county in which the building is located and must be in substantially the following form:

This covenant has been recorded in the real property records of . . . . County, Washington, in satisfaction of the requirements of RCW 64.55.010 through

64.55.090. The undersigned is the owner of the property described on Exhibit A (the "Property"). Until termination of this covenant, no dwelling unit in or on the Property may be sold as a condominium unit except for sales listed in RCW 64.34.400(2).

This covenant terminates on the earlier of either: (a) Compliance with the requirements of RCW 64.55.090, as certified by the owner of the Property in a recorded supplement hereto; or (b) the fifth anniversary of the date of first occupancy of a dwelling unit as certified by the Owner in a recorded supplement hereto.

All title insurance companies and persons acquiring an interest in the Property may rely on the forgoing certifications without further inquiry in issuing any policy of title insurance or in acquiring an interest in the Property.

(11) "Stamped" means bearing the stamp and signature of the responsible licensed architect or engineer on the title page, and on every sheet of the documents, drawings, or specifications, including modifications to the documents, drawings, and specifications that become part of change orders or addenda to alter those documents, drawings, or specifications. [2005 c 456 § 2.]

**64.55.020 Building permit application—Submission of design documents.** (1) Any person applying for a building permit for construction of a multiunit residential building or rehabilitative construction shall submit building enclosure design documents to the appropriate building department prior to the start of construction or rehabilitative construction of the building enclosure. If construction work on a building enclosure is not rehabilitative construction because the cost thereof is not more than five percent of the assessed value of the building, then the person applying for a building permit shall submit to the building department a letter so certifying. Any changes to the building enclosure design documents that alter the manner in which the building or its components is waterproofed, weatherproofed, and otherwise protected from water or moisture intrusion shall be stamped by the architect or engineer and shall be provided to the building department and to the person conducting the course of construction inspection in a timely manner to permit such person to inspect for compliance therewith, and may be provided through individual updates, cumulative updates, or as-built updates.

(2) The building department shall not issue a building permit for construction of the building enclosure of a multiunit residential building or for rehabilitative construction unless the building enclosure design documents contain a stamped statement by the person stamping the building enclosure design documents in substantially the following form: "The undersigned has provided building enclosure documents that in my professional judgment are appropriate to satisfy the requirements of RCW 64.55.005 through 64.55.090."

(3) The building department is not charged with determining whether the building enclosure design documents are adequate or appropriate to satisfy the requirements of RCW 64.55.005 through 64.55.090. Nothing in RCW 64.55.005

through 64.55.090 requires a building department to review, approve, or disapprove enclosure design documents. [2005 c 456 § 3.]

**64.55.030 Inspection required.** All multiunit residential buildings shall have the building enclosure inspected by a qualified inspector during the course of initial construction and during rehabilitative construction. [2005 c 456 § 4.]

**64.55.040 Inspectors—Qualifications.** (1) A qualified building enclosure inspector:

(a) Must be a person with substantial and verifiable training and experience in building enclosure design and construction;

(b) Shall be free from improper interference or influence relating to the inspections; and

(c) May not be an employee, officer, or director of, nor have any pecuniary interest in, the declarant, developer, association, or any party providing services or materials for the project, or any of their respective affiliates, except that the qualified inspector may be the architect or engineer who approved the building enclosure design documents or the architect or engineer of record. The qualified inspector may, but is not required to, assist with the preparation of such design documents.

(2) Nothing in this section alters requirements for licensure of any architect, engineer, or other professional, or alters the jurisdiction, authority, or scope of practice of architects, engineers, other professionals, or general contractors. [2005 c 456 § 5.]

**64.55.050 Scope of inspection—Definition.** (1) Any inspection required by this chapter shall include, at a minimum, the following:

(a) Water penetration resistance testing of a representative sample of windows and window installations. Such tests shall be conducted according to industry standards. Where appropriate, tests shall be conducted with an induced air pressure difference across the window and window installation. Additional testing is not required if the same assembly has previously been tested in situ within the previous two years in the project under construction by the builder, by another member of the construction team such as an architect or engineer, or by an independent testing laboratory; and

(b) An independent periodic review of the building enclosure during the course of construction or rehabilitative construction to ascertain whether the multiunit residential building has been constructed, or the rehabilitative construction has been performed, in substantial compliance with the building enclosure design documents.

(2) Subsection (1)(a) of this section shall not apply to rehabilitative construction if the windows and adjacent cladding are not altered in the rehabilitative construction.

(3) "Project" means one or more parcels of land in a single ownership, which are under development pursuant to a single land use approval or building permit, where window installation is performed by the owner with its own forces, or by the same general contractor, or, if the owner is contracting directly with trade contractors, is performed by the same trade contractor. [2005 c 456 § 6.]

**64.55.060 Certification—Certificate of occupancy.**

Upon completion of an inspection required by this chapter, the qualified inspector shall prepare and submit to the appropriate building department a signed letter certifying that the building enclosure has been inspected during the course of construction or rehabilitative construction and that it has been constructed or reconstructed in substantial compliance with the building enclosure design documents, as updated pursuant to RCW 64.55.020. The building department shall not issue a final certificate of occupancy or other equivalent final acceptance until the letter required by this section has been submitted. The building department is not charged with and has no responsibility for determining whether the building enclosure inspection is adequate or appropriate to satisfy the requirements of this chapter. [2005 c 456 § 7.]

**64.55.070 Inspector, architect, and engineer—No private right of action or basis for liability against.** (1) Nothing in this chapter and RCW 64.34.073, 64.34.100(2), 64.34.410 (1)(nn) and (2), and 64.34.415(1)(b) is intended to, or does:

(a) Create a private right of action against any inspector, architect, or engineer based upon compliance or noncompliance with its provisions; or

(b) Create any independent basis for liability against an inspector, architect, or engineer.

(2) The qualified inspector, architect, or engineer and the developer that retained the inspector, architect, or engineer may contractually agree to the amount of their liability to the developer. [2005 c 456 § 8.]

**64.55.080 Inspector's report or testimony—No evidentiary presumption—Admissibility.** A qualified inspector's report or testimony regarding an inspection conducted pursuant to this chapter is not entitled to any evidentiary presumption in any arbitration or court proceeding. Nothing in this chapter restricts the admissibility of such a report or testimony, and questions of the admissibility of such a report or testimony shall be determined under the rules of evidence. [2005 c 456 § 9.]

**64.55.090 Sale of condominium unit subject to compliance—Inspection alternative.** (1) Except for sales or other dispositions listed in RCW 64.34.400(2), no declarant may convey a condominium unit that may be occupied for residential use in a multiunit residential building without first complying with the requirements of RCW 64.55.005 through 64.55.080 unless the building enclosure of the building in which such unit is included is inspected by a qualified building enclosure inspector, and:

(a) The inspection includes such intrusive or other testing, such as the removal of siding or other building enclosure materials, that the inspector believes, in his or her professional judgment, is necessary to ascertain the manner in which the building enclosure was constructed;

(b) The inspection evaluates, to the extent reasonably ascertainable and in the professional judgment of the inspector, the present condition of the building enclosure including whether such condition has adversely affected or will adversely affect the performance of the building enclosure to waterproof, weatherproof, or otherwise protect the building

or its components from water or moisture intrusion. "Adversely affect" has the same meaning as provided in RCW 64.34.445(7);

(c) The inspection report includes recommendations for repairs to the building enclosure that, in the professional judgment of the qualified building inspector, are necessary to: (i) Repair a design or construction defect in the building enclosure that results in the failure of the building enclosure to perform its intended function and allows unintended water penetration not caused by flooding; and (ii) repair damage caused by such a defect that has an adverse effect as provided in RCW 64.34.445(7);

(d) With respect to a building that would be a multiunit residential building but for the recording of a sale prohibition covenant and unless more than five years have elapsed since the date such covenant was recorded, all repairs to the building enclosure recommended pursuant to (c) of this subsection have been made; and

(e) The declarant provides as part of the public offering statement, consistent with RCW 64.34.410 (1)(nn) and (2) and 64.34.415(1)(b), an inspection and repair report signed by the qualified building enclosure inspector that identifies:

(i) The extent of the inspection performed pursuant to this section;

(ii) The information obtained as a result of that inspection; and

(iii) The manner in which any repairs required by this section were performed, the scope of those repairs, and the names of the persons performing those repairs.

(2) Failure to deliver the inspection and repair report in violation of this section constitutes a failure to deliver a public offering statement for purposes of chapter 64.34 RCW. [2005 c 456 § 10.]

**64.55.100 Arbitration—Election—Number of arbitrators—Qualifications—Trial de novo.** (1) If the declarant, an association, or a party unit owner demands an arbitration by filing such demand with the court not less than thirty and not more than ninety days after filing or service of the complaint, whichever is later, the parties shall participate in a private arbitration hearing. The declarant, the association, and the party unit owner do not have the right to compel arbitration without giving timely notice in compliance with this subsection. Unless otherwise agreed by the parties, the arbitration hearing shall commence no more than fourteen months from the later of the filing or service of the complaint.

(2) Unless otherwise agreed by the parties, claims that in aggregate are for less than one million dollars shall be heard by a single arbitrator and all other claims shall be heard by three arbitrators. As used in this chapter, arbitrator also means arbitrators where applicable.

(3) Unless otherwise agreed by the parties, the court shall appoint the arbitrator, who shall be a current or former attorney with experience as an attorney, judge, arbitrator, or mediator in construction defect disputes involving the application of Washington law.

(4) Upon conclusion of the arbitration hearing, the arbitrator shall file the decision and award with the clerk of the superior court, together with proof of service thereof on the parties. Within twenty days after the filing of the decision and award, any aggrieved party may file with the clerk a writ-

ten notice of appeal and demand for a trial de novo in the superior court on all claims between the appealing party and an adverse party. As used in this section, "adverse party" means the party who either directly asserted or defended claims against the appealing party. The demand shall identify the adverse party or parties and all claims between those parties shall be included in the trial de novo. The right to a trial de novo includes the right to a jury, if demanded. The court shall give priority to the trial date for the trial de novo.

(5) If the judgment for damages, not including awards of fees and costs, in the trial de novo is not more favorable to the appealing party than the damages awarded by the arbitrator, not including awards of fees and costs, the appealing party shall pay the nonappealing adverse party's costs and fees incurred after the filing of the appeal, including reasonable attorneys' fees so incurred.

(6) If the judgment for damages, not including awards of fees and costs, in the trial de novo is more favorable to the appealing party than the damages awarded by the arbitrator, not including awards of fees and costs, then the court may award costs and fees, including reasonable attorneys' fees, incurred after the filing of the request for trial de novo in accordance with applicable law; provided if such a judgment is not more favorable to the appealing party than the most recent offer of judgment, if any, made pursuant to RCW 64.55.160, the court shall not make an award of fees and costs to the appealing party.

(7) If a party is entitled to an award with respect to the same fees and costs pursuant to this section and RCW 64.55.160, then the party shall only receive an award of fees and costs as provided in and limited by RCW 64.55.160. Any award of fees and costs pursuant to subsections (5) or (6) of this section is subject to review in the event of any appeal thereof otherwise permitted by applicable law or court rule. [2005 c 456 § 11.]

**64.55.110 Case schedule plan—Deadlines.** (1) Not less than sixty days after the later of filing or service of the complaint, the parties shall confer to create a proposed case schedule plan for submission to the court that includes the following deadlines:

- (a) Selection of a mediator;
- (b) Commencement of the mandatory mediation and submission of mediation materials required by this chapter;
- (c) Selection of the arbitrator by the parties, where applicable;
- (d) Joinder of additional parties in the action;
- (e) Completion of each party's investigation;
- (f) Disclosure of each party's proposed repair plan;
- (g) Disclosure of each party's estimated costs of repair;
- (h) Meeting of parties and experts to confer in accordance with RCW 64.55.120; and
- (i) Disclosure of each party's settlement demand or response.

(2) If the parties agree upon a proposed case schedule plan, they shall move the court for the entry of the proposed case schedule plan. If the parties cannot agree, either party may move the court for entry of a case schedule plan that includes the above deadlines. [2005 c 456 § 12.]

**64.55.120 Mandatory mediation.** (1) The parties to an action subject to this chapter and RCW 64.34.073, 64.34.100(2), 64.34.410 (1)(nn) and (2), and 64.34.415(1)(b) shall engage in mediation. Unless the parties agree otherwise, the mediation required by this section shall commence within seven months of the later of the filing or service of the complaint. If the parties cannot agree upon a mediator, the court shall appoint a mediator.

(2) Prior to the mediation required by this section, the parties and their experts shall meet and confer in good faith to attempt to resolve or narrow the scope of the disputed issues, including issues related to the parties' repair plans.

(3) Prior to the mandatory mediation, the parties or their attorneys shall file and serve a declaration that:

(a) A decision maker with authority to settle will be available for the duration of the mandatory mediation; and

(b) The decision maker has been provided with and has reviewed the mediation materials provided by the party to which the decision maker is affiliated as well as the materials submitted by the opposing parties.

(4) Completion of the mediation required by this section occurs upon written notice of termination by any party. The provisions of RCW 64.55.160 shall not apply to any later mediation conducted following such notice. [2005 c 456 § 13.]

**64.55.130 Appointment of neutral expert—Qualifications—Duties—Admissibility of report or testimony.**

(1) If, after meeting and conferring as required by RCW 64.55.120(2), disputed issues remain, a party may file a motion with the court, or arbitrator if an arbitrator has been appointed, requesting the appointment of a neutral expert to address any or all of the disputed issues. Unless otherwise agreed to by the parties or upon a showing of exceptional circumstances, including a material adverse change in a party's litigation risks due to a change in allegations, claims, or defenses by an adverse party following the appointment of the neutral expert, any such motion shall be filed no later than sixty days after the first day of the meeting required by RCW 64.55.120(2). Upon such a request, the court or arbitrator shall decide whether or not to appoint a neutral expert or experts. A party may only request more than one neutral expert if the particular expertise of the additional neutral expert or experts is necessary to address disputed issues.

(2) The neutral expert shall be a licensed architect or engineer, or any other person, with substantial experience relevant to the issue or issues in dispute. The neutral expert shall not have been employed as an expert by a party to the present action within three years before the commencement of the present action, unless the parties agree otherwise.

(3) All parties shall be given an opportunity to recommend neutral experts to the court or arbitrator and shall have input regarding the appointment of a neutral expert.

(4) Unless the parties agree otherwise on the following matters, the court, or arbitrator if then appointed, shall determine:

- (a) Who shall serve as the neutral expert;
- (b) Subject to the requirements of this section, the scope of the neutral expert's duties;
- (c) The number and timing of inspections of the property;

(d) Coordination of inspection activities with the parties' experts;

(e) The neutral expert's access to the work product of the parties' experts;

(f) The product to be prepared by the neutral expert;

(g) Whether the neutral expert may participate personally in the mediation required by RCW 64.55.120; and

(h) Other matters relevant to the neutral expert's assignment.

(5) Unless the parties agree otherwise, the neutral expert shall not make findings or render opinions regarding the amount of damages to be awarded, or the cost of repairs, or absent exceptional circumstances any matters that are not in dispute as determined in the meeting described in RCW 64.55.120(2) or otherwise.

(6) A party may, by motion to the court, or to the arbitrator if then appointed, object to the individual appointed to serve as the neutral expert and to determinations regarding the neutral expert's assignment.

(7) The neutral expert shall have no liability to the parties for the performance of his or her duties as the neutral expert.

(8) Except as otherwise agreed by the parties, the parties have a right to review and comment on the neutral expert's report before it is made final.

(9) A neutral expert's report or testimony is not entitled to any evidentiary presumption in any arbitration or court proceeding. Nothing in this chapter and RCW 64.34.073, 64.34.100(2), 64.34.410 (1)(nn) and (2), and 64.34.415(1)(b) restricts the admissibility of such a report or testimony, provided it is within the scope of the neutral expert's assigned duties, and questions of the admissibility of such a report or testimony shall be determined under the rules of evidence.

(10) The court, or arbitrator if then appointed, shall determine the significance of the neutral expert's report and testimony with respect to parties joined after the neutral expert's appointment and shall determine whether additional neutral experts should be appointed or other measures should be taken to protect such joined parties from undue prejudice. [2005 c 456 § 14.]

**64.55.140 Payment of arbitrators, mediators, and neutral experts.** (1) Where the building permit that authorized commencement of construction of a building was issued on or after August 1, 2005:

(a)(i) If the action is referred to arbitration under RCW 64.55.100, the party who demands arbitration shall advance the fees of any arbitrator and any mediator appointed under RCW 64.55.120; and

(ii) A party who requests the appointment of a neutral expert pursuant to RCW 64.55.130 shall advance any appointed neutral expert's fees incurred up to the issuance of a final report.

(b) If the action has not been referred to arbitration, the court shall determine liability for the fees of any mediator appointed under RCW 64.55.120, unless the parties agree otherwise.

(c) Ultimate liability for any fees or costs advanced pursuant to this subsection (1) is subject to the fee- and cost-shifting provisions of RCW 64.55.160.

(2) Where the building permit that authorized commencement of construction of a building was issued before August 1, 2005:

(a)(i) If the action is referred to arbitration under RCW 64.55.100, the party who demands arbitration is liable for and shall pay the fees of any appointed arbitrator and any mediator appointed under RCW 64.55.120; and

(ii) A party who requests the appointment of a neutral expert pursuant to RCW 64.55.130 is liable for and shall pay any appointed neutral expert's fees incurred up to the issuance of a final report.

(b) If the action has not been referred to arbitration, the court shall determine liability for the fees of any mediator appointed under RCW 64.55.120, unless the parties agree otherwise.

(c) Fees and costs paid under this subsection (2) are not subject to the fee- and cost-shifting provisions of RCW 64.55.160. [2005 c 456 § 15.]

**64.55.150 Subcontractors and suppliers—When party to arbitration.** Upon the demand of a party to an arbitration demanded under RCW 64.55.100, any subcontractor or supplier against whom such party has a legal claim and whose work or performance on the building in question becomes an issue in the arbitration may be joined in and become a party to the arbitration. However, joinder of such parties shall not be allowed if such joinder would require the arbitration hearing date to be continued beyond the date established pursuant to RCW 64.55.100, unless the existing parties to the arbitration agree otherwise. Nothing in RCW 64.55.010 through 64.55.090 shall be construed to release, modify, or otherwise alleviate the liabilities or responsibilities that any party may have towards any other party, contractor, or subcontractor. [2005 c 456 § 16.]

**64.55.160 Offers of judgment—Costs and fees.** (1) On or before the sixtieth day following completion of the mediation pursuant to RCW 64.55.120(4), the declarant, association, or party unit owner may serve on an adverse party an offer to allow judgment to be entered. The offer of judgment shall specify the amount of damages, not including costs or fees, that the declarant, association, or party unit owner is offering to pay or receive. A declarant's offer shall also include its commitment to pay costs and fees that may be awarded as provided in this section. The declarant, association, or party unit owner may make more than one offer of judgment so long as each offer is timely made. Each subsequent offer supersedes and replaces the previous offer. Any offer not accepted within twenty-one days of the service of that offer is deemed rejected and withdrawn and evidence thereof is not admissible and may not be provided to the court or arbitrator except in a proceeding to determine costs and fees or as part of the motion identified in subsection (2) of this section.

(2) A declarant's offer must include a demonstration of ability to pay damages, costs, and fees, including reasonable attorneys' fees, within thirty days of acceptance of the offer of judgment. The demonstration of ability to pay shall include a sworn statement signed by the declarant, the attorney representing the declarant, and, if any insurance proceeds will be

used to fund any portion of the offer, an authorized representative of the insurance company. If the association or party unit owner disputes the adequacy of the declarant's demonstration of ability to pay, the association or party unit owner may file a motion with the court requesting a ruling on the adequacy of the declarant's demonstration of ability to pay. Upon filing of such motion, the deadline for a response to the offer shall be tolled from the date the motion is filed until the court has ruled.

(3) An association or party unit owner that accepts the declarant's offer of judgment shall be deemed the prevailing party and, in addition to recovery of the amount of the offer, shall be entitled to a costs and fees award, including reasonable attorneys' fees, in an amount to be determined by the court in accordance with applicable law.

(4) If the amount of the final nonappealable or nonappealed judgment, exclusive of costs or fees, is not more favorable to the offeree than the offer of judgment, then the offeror is deemed the prevailing party for purposes of this section only and is entitled to an award of costs and fees, including reasonable attorneys' fees, incurred after the date the last offer of judgment was rejected and through the date of entry of a final nonappealable or nonappealed judgment, in an amount to be determined by the court in accordance with applicable law. The nonprevailing party shall not be entitled to receive any award of costs and fees.

(5) If the final nonappealable or nonappealed judgment on damages, not including costs or fees, is more favorable to the offeree than the last offer of judgment, then the court shall determine which party is the prevailing party and shall determine the amount of the costs and fees award, including reasonable attorneys' fees, in accordance with applicable law.

(6) Notwithstanding any other provision in this section, with respect to claims brought by an association or unit owner, the liability for declarant's costs and fees, including reasonable attorneys' fees, shall:

(a) With respect to claims brought by an association, not exceed five percent of the assessed value of the condominium as a whole, which is determined by the aggregate tax-assessed value of all units at the time of the award; and

(b) With respect to claims brought by a party unit owner, not exceed five percent of the assessed value of the unit at the time of the award. [2005 c 456 § 17.]

**64.55.900 Captions not law—2005 c 456.** Captions used in this act are not any part of the law. [2005 c 456 § 22.]

**64.55.901 Effective date—2005 c 456.** This act takes effect August 1, 2005. [2005 c 456 § 24.]

## Title 65

### RECORDING, REGISTRATION, AND LEGAL PUBLICATION

#### Chapters

#### 65.04 Duties of county auditor.

[2005 RCW Supp—page 730]

## Chapter 65.04 RCW

### DUTIES OF COUNTY AUDITOR

#### Sections

65.04.045	Recorded instruments—Requirements—Content restrictions—Form.
65.04.050	Index of instruments, how made and kept—Recording of plat names.
65.04.080	Entries when instruments offered for record—Content restrictions.

**65.04.045 Recorded instruments—Requirements—Content restrictions—Form.** (1) When any instrument is presented to a county auditor or recording officer for recording, the first page of the instrument shall contain:

(a) A top margin of at least three inches and a one-inch margin on the bottom and sides, except that an instrument may be recorded if a minor portion of a notary seal, incidental writing, or minor portion of a signature extends beyond the margins;

(b) The top left-hand side of the page shall contain the name and address to whom the instrument will be returned;

(c) The title or titles, or type or types, of the instrument to be recorded indicating the kind or kinds of documents or transactions contained therein immediately below the three-inch margin at the top of the page. The auditor or recording officer shall be required to index only the title or titles captioned on the document;

(d) Reference numbers of documents assigned or released with reference to the document page number where additional references can be found, if applicable;

(e) The names of the grantor(s) and grantee(s), as defined under RCW 65.04.015, with reference to the document page number where additional names are located, if applicable;

(f) An abbreviated legal description of the property, and for purposes of this subsection, "abbreviated legal description of the property" means lot, block, plat, or section, township, range, and quarter/quarter section, and reference to the document page number where the full legal description is included, if applicable;

(g) The assessor's property tax parcel or account number set forth separately from the legal description or other text.

(2) All pages of the document shall be on sheets of paper of a weight and color capable of producing a legible image that are not larger than fourteen inches long and eight and one-half inches wide with text printed or written in eight point type or larger. All text within the document must be of sufficient color and clarity to ensure that when the text is imaged all text is readable. Further, all pages presented for recording must have at minimum a one-inch margin on the top, bottom, and sides for all pages except page one, except that an instrument may be recorded if a minor portion of a notary seal, incidental writing, or minor portion of a signature extends beyond the margins, be prepared in ink color capable of being imaged, and have all seals legible and capable of being imaged. No attachments, except firmly attached bar code or address labels, may be affixed to the pages.

(3) When any instrument, except those generated by governmental agencies, is presented to a county auditor or recording officer for recording, the document may not contain the following information: (a) A social security number; (b) a date of birth identified with a particular person; or (c)

the maiden name of a person's parent so as to be identified with a particular person.

The information provided on the instrument must be in substantially the following form:

This Space Provided for Recorder's Use

When Recorded Return to:

.....  
Document Title(s)

Grantor(s)

Grantee(s)

Legal Description

Assessor's Property Tax Parcel or Account Number

Reference Numbers of Documents Assigned or Released

[2005 c 134 § 1; 1999 c 233 § 12; 1998 c 27 § 1; 1996 c 143 § 2.]

Effective date—1999 c 233: See note following RCW 4.28.320.

Effective date—1996 c 143: See note following RCW 36.18.010.

**65.04.050 Index of instruments, how made and kept—Recording of plat names.** Every auditor or recording officer must keep a general index, direct and inverted. The index may be either printed on paper or produced on microfilm or microfiche, or it can be created from a computerized data base and displayed on a video display terminal. Any reference to a prior \*record location number may be entered in the remarks column. Any property legal description contained in the instrument must be entered in the description of property column of the general index. The direct index shall be divided into eight columns, and with heads to the respective columns, as follows: Date of reception, grantor, grantee, nature of instrument, volume and page where recorded and/or the auditor's file number, remarks, description of property, assessor's property tax parcel or account number. The auditor or recording officer shall correctly enter in such index every instrument concerning or affecting real estate which by law is required to be recorded, the names of grantors being in alphabetical order. The inverted index shall also be divided into eight columns, precisely similar, except that "grantee" shall occupy the second column and "grantor" the third, the names of grantees being in alphabetical order. The auditor or recording officer may combine the direct and indirect indexes into a single index if it contains all the information required to be contained in the separate direct and indirect indexes and the names of all grantors and grantees can be found by a person searching the combined index. For the purposes of this chapter, the term "grantor" means any person conveying or encumbering the title to any property, or any person against whom any lis pendens, judgment, notice of lien, order of sale, execution, writ of attachment, claims of separate or community property, or notice for request of transfer or encumbrance under RCW 43.20B.750 shall be placed on record. The auditor or recording officer shall also enter in the general index, the name of the party or parties platting a town, village, or addition in the column prescribed for "grantors,"

describing the grantee in such case as "the public." However, the auditor or recording officer shall not receive or record any such plat or map until it has been approved by the mayor and common council of the municipality in which the property so platted is situated, or if the property be not situated within any municipal corporation, then the plat must be first approved by the county legislative authority. The auditor or recording officer shall not receive for record any plat, map, or subdivision of land bearing a name the same or similar to the name of any map or plat already on record in the office. The auditor or recording officer may establish a name reservation system to preclude the possibility of duplication of names. [2005 c 292 § 3; 1996 c 143 § 4; 1991 c 26 § 6; 1893 c 119 § 12; Code 1881 § 2728; 1869 p 314 § 24; RRS § 10603.]

\*Reviser's note: The definition "record location number" was changed to "recording number" by 1999 c 233 § 10.

Effective date—1996 c 143: See note following RCW 36.18.010.

**65.04.080 Entries when instruments offered for record—Content restrictions.** (1) When any instrument, paper, or notice, authorized or required by law to be filed or recorded, is deposited in or electronically transmitted to the county auditor's office for filing or record, that officer must indorse upon the same the time when it was received, noting the year, month, day, hour and minute of its reception, and note that the document was received by electronic transmission, and must file, or file and record the same without delay, together with the acknowledgments, proofs, and certificates written or printed upon or annexed to the same, with the plats, surveys, schedules and other papers thereto annexed, in the order and as of the time when the same was received for filing or record, and must note on the instrument filed, or at the foot of the record the exact time of its reception, and the name of the person at whose request it was filed or filed and recorded. However, the county auditor shall not be required to accept for filing, or filing and recording, any instrument unless there appear upon the face thereof, the name and nature of the instrument offered for filing, or filing and recording, as the case may be.

(2) When any instrument, except those generated by governmental agencies, is presented to a county auditor or recording officer for recording, the document may not contain the following information: (a) A social security number; (b) a date of birth identified with a particular person; or (c) the maiden name of a person's parent so as to be identified with a particular person. [2005 c 134 § 2; 1996 c 229 § 4; 1985 c 44 § 18; 1927 c 187 § 1; Code 1881 § 2731; 1869 p 313 § 19; RRS § 10606.]

Title 66

ALCOHOLIC BEVERAGE CONTROL

Chapters

- 66.04 Definitions.
- 66.08 Liquor control board—General provisions.
- 66.16 State liquor stores.
- 66.20 Liquor permits.
- 66.24 Licenses—Stamp taxes.
- 66.28 Miscellaneous regulatory provisions.
- 66.44 Enforcement—Penalties.

## Chapter 66.04 RCW

## DEFINITIONS

## Sections

## 66.04.010 Definitions.

**66.04.010 Definitions.** In this title, unless the context otherwise requires:

(1) "Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance. The term "alcohol" does not include alcohol in the possession of a manufacturer or distiller of alcohol fuel, as described in RCW 66.12.130, which is intended to be denatured and used as a fuel for use in motor vehicles, farm implements, and machines or implements of husbandry.

(2) "Authorized representative" means a person who:

(a) Is required to have a federal basic permit issued pursuant to the federal alcohol administration act, 27 U.S.C. Sec. 204;

(b) Has its business located in the United States outside of the state of Washington;

(c) Acquires ownership of beer or wine for transportation into and resale in the state of Washington; and which beer or wine is produced anywhere outside Washington by a brewery or winery which does not hold a certificate of approval issued by the board; and

(d) Is appointed by the brewery or winery referenced in (c) of this subsection as its exclusive authorized representative for marketing and selling its products within the United States in accordance with a written agreement between the authorized representative and such brewery or winery pursuant to this title. The board may waive the requirement for the written agreement of exclusivity in situations consistent with the normal marketing practices of certain products, such as classified growths.

(3) "Beer" means any malt beverage or malt liquor as these terms are defined in this chapter.

(4) "Beer distributor" means a person who buys beer from a domestic brewery, microbrewery, beer certificate of approval holder, or beer importers, or who acquires foreign produced beer from a source outside of the United States, for the purpose of selling the same pursuant to this title, or who represents such brewer or brewery as agent.

(5) "Beer importer" means a person or business within Washington who purchases beer from a beer certificate of approval holder or who acquires foreign produced beer from a source outside of the United States for the purpose of selling the same pursuant to this title.

(6) "Brewer" or "brewery" means any person engaged in the business of manufacturing beer and malt liquor. Brewer includes a brand owner of malt beverages who holds a brewer's notice with the federal bureau of alcohol, tobacco, and firearms at a location outside the state and whose malt beverage is contract-produced by a licensed in-state brewery, and who may exercise within the state, under a domestic brewery license, only the privileges of storing, selling to licensed beer distributors, and exporting beer from the state.

(7) "Board" means the liquor control board, constituted under this title.

(8) "Club" means an organization of persons, incorporated or unincorporated, operated solely for fraternal, benevolent, educational, athletic or social purposes, and not for pecuniary gain.

(9) "Consume" includes the putting of liquor to any use, whether by drinking or otherwise.

(10) "Contract liquor store" means a business that sells liquor on behalf of the board through a contract with a contract liquor store manager.

(11) "Dentist" means a practitioner of dentistry duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.32 RCW.

(12) "Distiller" means a person engaged in the business of distilling spirits.

(13) "Domestic brewery" means a place where beer and malt liquor are manufactured or produced by a brewer within the state.

(14) "Domestic winery" means a place where wines are manufactured or produced within the state of Washington.

(15) "Druggist" means any person who holds a valid certificate and is a registered pharmacist and is duly and regularly engaged in carrying on the business of pharmaceutical chemistry pursuant to chapter 18.64 RCW.

(16) "Drug store" means a place whose principal business is, the sale of drugs, medicines and pharmaceutical preparations and maintains a regular prescription department and employs a registered pharmacist during all hours the drug store is open.

(17) "Employee" means any person employed by the board.

(18) "Fund" means 'liquor revolving fund.'

(19) "Hotel" means every building or other structure kept, used, maintained, advertised or held out to the public to be a place where food is served and sleeping accommodations are offered for pay to transient guests, in which twenty or more rooms are used for the sleeping accommodation of such transient guests and having one or more dining rooms where meals are served to such transient guests, such sleeping accommodations and dining rooms being conducted in the same building and buildings, in connection therewith, and such structure or structures being provided, in the judgment of the board, with adequate and sanitary kitchen and dining room equipment and capacity, for preparing, cooking and serving suitable food for its guests: PROVIDED FURTHER, That in cities and towns of less than five thousand population, the board shall have authority to waive the provisions requiring twenty or more rooms.

(20) "Importer" means a person who buys distilled spirits from a distillery outside the state of Washington and imports such spirituous liquor into the state for sale to the board or for export.

(21) "Imprisonment" means confinement in the county jail.

(22) "Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and every liquid or solid or semisolid or other substance, patented or



not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating. Liquor does not include confections or food products that contain one percent or less of alcohol by weight.

(23) "Manufacturer" means a person engaged in the preparation of liquor for sale, in any form whatsoever.

(24) "Malt beverage" or "malt liquor" means any beverage such as beer, ale, lager beer, stout, and porter obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than eight percent of alcohol by weight, and not less than one-half of one percent of alcohol by volume. For the purposes of this title, any such beverage containing more than eight percent of alcohol by weight shall be referred to as "strong beer."

(25) "Package" means any container or receptacle used for holding liquor.

(26) "Permit" means a permit for the purchase of liquor under this title.

(27) "Person" means an individual, copartnership, association, or corporation.

(28) "Physician" means a medical practitioner duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.71 RCW.

(29) "Prescription" means a memorandum signed by a physician and given by him to a patient for the obtaining of liquor pursuant to this title for medicinal purposes.

(30) "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; those parts of establishments where beer may be sold under this title, soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, and other public conveyances of all kinds and character, and the depots and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, and/or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

(31) "Regulations" means regulations made by the board under the powers conferred by this title.

(32) "Restaurant" means any establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains.

(33) "Sale" and "sell" include exchange, barter, and traffic; and also include the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or of wine, by any person to any person; and also include a sale or selling within the state to a foreign consignee or his agent in the state. "Sale"

and "sell" shall not include the giving, at no charge, of a reasonable amount of liquor by a person not licensed by the board to a person not licensed by the board, for personal use only. "Sale" and "sell" also does not include a raffle authorized under RCW 9.46.0315: PROVIDED, That the non-profit organization conducting the raffle has obtained the appropriate permit from the board.

(34) "Soda fountain" means a place especially equipped with apparatus for the purpose of dispensing soft drinks, whether mixed or otherwise.

(35) "Spirits" means any beverage which contains alcohol obtained by distillation, including wines exceeding twenty-four percent of alcohol by volume.

(36) "Store" means a state liquor store established under this title.

(37) "Tavern" means any establishment with special space and accommodation for sale by the glass and for consumption on the premises, of beer, as herein defined.

(38) "Winery" means a business conducted by any person for the manufacture of wine for sale, other than a domestic winery.

(39) "Wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, et cetera) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than twenty-four percent of alcohol by volume, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding twenty-four percent of alcohol by volume and not less than one-half of one percent of alcohol by volume. For purposes of this title, any beverage containing no more than fourteen percent of alcohol by volume when bottled or packaged by the manufacturer shall be referred to as "table wine," and any beverage containing alcohol in an amount more than fourteen percent by volume when bottled or packaged by the manufacturer shall be referred to as "fortified wine." However, "fortified wine" shall not include: (a) Wines that are both sealed or capped by cork closure and aged two years or more; and (b) wines that contain more than fourteen percent alcohol by volume solely as a result of the natural fermentation process and that have not been produced with the addition of wine spirits, brandy, or alcohol.

This subsection shall not be interpreted to require that any wine be labeled with the designation "table wine" or "fortified wine."

(40) "Wine distributor" means a person who buys wine from a domestic winery, wine certificate of approval holder, or wine importer, or who acquires foreign produced wine from a source outside of the United States, for the purpose of selling the same not in violation of this title, or who represents such vintner or winery as agent.

(41) "Wine importer" means a person or business within Washington who purchases wine from a wine certificate of approval holder or who acquires foreign produced wine from a source outside of the United States for the purpose of selling the same pursuant to this title. [2005 c 151 § 1; 2004 c 160 § 1; 2000 c 142 § 1; 1997 c 321 § 37; 1991 c 192 § 1; 1987 c 386 § 3; 1984 c 78 § 5; 1982 c 39 § 1; 1981 1st ex.s. c 5 § 1; 1980 c 140 § 3; 1969 ex.s. c 21 § 13; 1935 c 158 § 1; 1933 ex.s. c 62 § 3; RRS § 7306-3. Formerly RCW 66.04.010 through 66.04.380.]

**Effective date—2004 c 160:** "This act takes effect January 1, 2005." [2004 c 160 § 20.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Finding and declaration—Severability—1984 c 78:** See notes following RCW 66.12.160.

**Severability—1982 c 39:** "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 39 § 3.]

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

**Effective date—1969 ex.s. c 21:** "The effective date of this 1969 amendatory act is July 1, 1969." [1969 ex.s. c 21 § 15.]

## Chapter 66.08 RCW

### LIQUOR CONTROL BOARD— GENERAL PROVISIONS

#### Sections

66.08.026	Appropriation and payment of administrative expenses from liquor revolving fund—"Administrative expenses" defined.
66.08.050	Powers of board in general.
66.08.060	Board cannot advertise liquor, exception—Advertising regulations.
66.08.165	Strategies to improve operational efficiency and revenue.
66.08.166	Sunday sales authorized—Store selection and other requirements.
66.08.167	Sunday sales—Store selection.
66.08.235	Liquor control board construction and maintenance account.

**66.08.026 Appropriation and payment of administrative expenses from liquor revolving fund—"Administrative expenses" defined.** All administrative expenses of the board incurred on and after April 1, 1963, shall be appropriated and paid from the liquor revolving fund. These administrative expenses shall include, but not be limited to: The salaries and expenses of the board and its employees, the cost of establishing, leasing, maintaining, and operating state liquor stores and warehouses, legal services, pilot projects, annual or other audits, and other general costs of conducting the business of the board, and the costs of supplying, installing, and maintaining equipment used in state liquor stores and contract liquor stores for the purchase of liquor using debit or credit cards. The administrative expenses shall not, however, be deemed to include costs of liquor and lottery tickets purchased, the cost of transportation and delivery to the point of distribution, other costs pertaining to the acquisition and receipt of liquor and lottery tickets, packaging and repackaging of liquor, agency commissions for contract liquor stores, transaction fees associated with credit or debit card purchases for liquor in state liquor stores and in contract liquor stores pursuant to RCW 66.16.040 and 66.16.041, sales tax, and those amounts distributed pursuant to RCW 66.08.180, 66.08.190, 66.08.200, 66.08.210 and 66.08.220. Agency commissions for contract liquor stores shall be established by the liquor control board after consultation with and approval by the director of the office of financial management. All expenditures and payment of obligations authorized by this section are subject to the allotment requirements of chapter 43.88 RCW. [2005 c 151 § 2; 2004 c 63 § 1; 2001 c 313 § 1; 1998 c 265 § 2; 1997 c 148 § 1; 1996 c 291 § 3; 1983 c 160 § 2; 1963 c 239 § 1; 1961 ex.s. c 6 § 4. Formerly RCW 43.66.161.]

**Intent—1998 c 265:** See note following RCW 66.16.041.

**Severability—1963 c 239:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1963 c 239 § 2.]

**Effective date—Transfer of liquor revolving fund to state treasurer—Outstanding obligations—1961 ex.s. c 6:** See notes following RCW 66.08.170.

**66.08.050 Powers of board in general.** The board, subject to the provisions of this title and the rules, shall:

(1) Determine the localities within which state liquor stores shall be established throughout the state, and the number and situation of the stores within each locality;

(2) Appoint in cities and towns and other communities, in which no state liquor store is located, contract liquor stores. In addition, the board may appoint, in its discretion, a manufacturer that also manufactures liquor products other than wine under a license under this title, as a contract liquor store for the purpose of sale of liquor products of its own manufacture on the licensed premises only. Such contract liquor stores shall be authorized to sell liquor under the guidelines provided by law, rule, or contract, and such contract liquor stores shall be subject to such additional rules and regulations consistent with this title as the board may require;

(3) Establish all necessary warehouses for the storing and bottling, diluting and rectifying of stocks of liquors for the purposes of this title;

(4) Provide for the leasing for periods not to exceed ten years of all premises required for the conduct of the business; and for remodeling the same, and the procuring of their furnishings, fixtures, and supplies; and for obtaining options of renewal of such leases by the lessee. The terms of such leases in all other respects shall be subject to the direction of the board;

(5) Determine the nature, form and capacity of all packages to be used for containing liquor kept for sale under this title;

(6) Execute or cause to be executed, all contracts, papers, and documents in the name of the board, under such regulations as the board may fix;

(7) Pay all customs, duties, excises, charges and obligations whatsoever relating to the business of the board;

(8) Require bonds from all employees in the discretion of the board, and to determine the amount of fidelity bond of each such employee;

(9) Perform services for the state lottery commission to such extent, and for such compensation, as may be mutually agreed upon between the board and the commission;

(10) Accept and deposit into the general fund-local account and disburse, subject to appropriation, federal grants or other funds or donations from any source for the purpose of improving public awareness of the health risks associated with alcohol consumption by youth and the abuse of alcohol by adults in Washington state. The board's alcohol awareness program shall cooperate with federal and state agencies, interested organizations, and individuals to effect an active public beverage alcohol awareness program;

(11) Perform all other matters and things, whether similar to the foregoing or not, to carry out the provisions of this title, and shall have full power to do each and every act necessary to the conduct of its business, including all buying, selling, preparation and approval of forms, and every other

function of the business whatsoever, subject only to audit by the state auditor: PROVIDED, That the board shall have no authority to regulate the content of spoken language on licensed premises where wine and other liquors are served and where there is not a clear and present danger of disorderly conduct being provoked by such language. [2005 c 151 § 3; 1997 c 228 § 1; 1993 c 25 § 1; 1986 c 214 § 2; 1983 c 160 § 1; 1975 1st ex.s. c 173 § 1; 1969 ex.s. c 178 § 1; 1963 c 239 § 3; 1935 c 174 § 10; 1933 ex.s. c 62 § 69; RRS § 7306-69.]

**Severability—1975 1st ex.s. c 173:** "If any phrase, clause, subsection, or section of this 1975 amendatory act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this 1975 amendatory act without the phrase, clause, subsection, or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid." [1975 1st ex.s. c 173 § 13.]

**Effective date—1975 1st ex.s. c 173:** "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975." [1975 1st ex.s. c 173 § 14.]

**Severability—1963 c 239:** See note following RCW 66.08.026.

*Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.*

**66.08.060 Board cannot advertise liquor, exception—Advertising regulations.** (1) The board shall not advertise liquor in any form or through any medium whatsoever.

(2) In-store liquor merchandising is not advertising for the purposes of this section.

(3) The board shall have power to adopt any and all reasonable rules as to the kind, character, and location of advertising of liquor. [2005 c 231 § 3; 1933 ex.s. c 62 § 43; RRS § 7306-43.]

**Severability—2005 c 231:** See note following RCW 66.08.165.

**66.08.165 Strategies to improve operational efficiency and revenue.** The board shall, consistent with, and in addition to, the existing retail business plan, implement strategies to improve the efficiency of retail sales operations and maximize revenue-generating opportunities. Strategies to be implemented shall include, but are not limited to:

(1) Expanding store operations to include Sunday sales in selected liquor stores. Sunday sales are optional for liquor vendors operating agency stores;

(2) Implementing a plan of in-store liquor merchandising, including point-of-sale advertising, and product specific point-of-sale promotional displays and carousels, including displays designed and provided by vendors; and

(3) Implementing a plan for in-store liquor merchandising of brands. The plan may not include provisions for selling liquor-related items other than those items previously authorized. [2005 c 231 § 1.]

**Severability—2005 c 231:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 231 § 7.]

**66.08.166 Sunday sales authorized—Store selection and other requirements.** By September 1, 2005, the board shall expand operations in at least twenty state-operated retail stores to include Sundays. The board shall select the stores that are expected to gross the most revenues on Sunday by

considering factors including, but not limited to, population density, proximity to shopping centers, and proximity to other businesses that are open on Sunday. The selected stores shall be open for retail business a minimum of five hours on Sunday. In implementing this program, if the board determines it would be beneficial to retain a consultant to assist the board in determining appropriate stores for the program and monitoring the results of the program, the agency is authorized to do so. The board shall track gross sales and expenses of the selected stores and compare them to previous years' sales and projected sales and expenses before opening on Sunday. The board shall also examine the sales of state and contract liquor stores in proximity to those stores opened on Sundays to determine whether Sunday openings has [have] reduced the sales of other state and contract liquor stores that are not open on Sundays. The board shall present this information to the appropriate policy and fiscal committees of the legislature by January 31, 2007. [2005 c 231 § 2.]

**Severability—2005 c 231:** See note following RCW 66.08.165.

**66.08.167 Sunday sales—Store selection.** (1) Before the board determines which state liquor stores will be open on Sundays, it shall give: (a) Due consideration to the location of the liquor store with respect to the proximity of places of worship, schools, and public institutions; (b) due consideration to motor vehicle accident data in the proximity of the liquor store; and (c) written notice by certified mail of the proposed Sunday opening, including proposed Sunday opening hours, to places of worship, schools, and public institutions within five hundred feet of the liquor store proposed to be open on Sunday.

(2) Before permitting an agency vendor liquor store to open for business on Sunday, the board must meet the due consideration and written notice requirements established in subsection (1) of this section.

(3) For the purpose of this section, "place of worship" means a building erected for and used exclusively for religious worship and schooling or other related religious activity. [2005 c 231 § 4.]

**Severability—2005 c 231:** See note following RCW 66.08.165.

**66.08.235 Liquor control board construction and maintenance account.** The liquor control board construction and maintenance account is created within the state treasury. The liquor control board shall deposit into this account a portion of the board's markup, as authorized by chapter 66.16 RCW, placed upon liquor as determined by the board. Moneys in the account may be spent only after appropriation. The liquor control board shall use deposits to this account to fund construction and maintenance of a centralized distribution center for liquor products intended for sale through the board's liquor store and contract liquor store system. During the 2001-2003 fiscal biennium, the legislature may transfer from the liquor control board construction and maintenance account to the state general fund such amounts as reflect the appropriations reductions made by the 2002 supplemental appropriations act for administrative efficiencies and savings. [2005 c 151 § 4; 2002 c 371 § 918; 1997 c 75 § 1.]

**Severability—Effective date—2002 c 371:** See notes following RCW 9.46.100.

**Effective date—1997 c 75:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 19, 1997]." [1997 c 75 § 3.]

## Chapter 66.16 RCW STATE LIQUOR STORES

### Sections

66.16.010	Board may establish—Price standards—Prices in special instances.
66.16.030	Repealed.
66.16.040	Sales of liquor by employees—Identification cards—Permit holders—Sales for cash—Exception.
66.16.041	Credit and debit card purchases—Rules—Provision, installation, maintenance of equipment by board—Consideration of offsetting liquor revolving fund balance reduction.
66.16.080	Sunday closing.
66.16.120	Employees working on Sabbath.

**66.16.010 Board may establish—Price standards—Prices in special instances.** (1) There shall be established at such places throughout the state as the liquor control board, constituted under this title, shall deem advisable, stores to be known as "state liquor stores," for the sale of liquor in accordance with the provisions of this title and the regulations: PROVIDED, That the prices of all liquor shall be fixed by the board from time to time so that the net annual revenue received by the board therefrom shall not exceed thirty-five percent. Effective no later than July 1, 2005, the liquor control board shall add an equivalent surcharge of \$0.42 per liter on all retail sales of spirits, excluding licensee, military, and tribal sales. The intent of this surcharge is to raise revenue for the general fund-state for the 2003-2005 and 2005-2007 bienniums. The board shall remove the surcharge June 30, 2007.

(2) The liquor control board may, from time to time, fix the special price at which pure ethyl alcohol may be sold to physicians and dentists and institutions regularly conducted as hospitals, for use or consumption only in such hospitals; and may also fix the special price at which pure ethyl alcohol may be sold to schools, colleges and universities within the state for use for scientific purposes. Regularly conducted hospitals may have right to purchase pure ethyl alcohol on a federal permit.

(3) The liquor control board may also fix the special price at which pure ethyl alcohol may be sold to any department, branch or institution of the state of Washington, federal government, or to any person engaged in a manufacturing or industrial business or in scientific pursuits requiring alcohol for use therein.

(4) The liquor control board may also fix a special price at which pure ethyl alcohol may be sold to any private individual, and shall make regulations governing such sale of alcohol to private individuals as shall promote, as nearly as may be, the minimum purchase of such alcohol by such persons. [2005 c 518 § 935; 2003 1st sp.s. c 25 § 928; 1939 c 172 § 10; 1937 c 62 § 1; 1933 ex.s. c 62 § 4; RRS § 7306-4. Formerly RCW 66.16.010 and 66.16.020.]

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

[2005 RCW Supp—page 736]

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

**66.16.040 Sales of liquor by employees—Identification cards—Permit holders—Sales for cash—Exception.** Except as otherwise provided by law, an employee in a state liquor store or contract liquor store may sell liquor to any person of legal age to purchase alcoholic beverages and may also sell to holders of permits such liquor as may be purchased under such permits.

Where there may be a question of a person's right to purchase liquor by reason of age, such person shall be required to present any one of the following officially issued cards of identification which shows his/her correct age and bears his/her signature and photograph:

(1) Driver's license, instruction permit or identification card of any state or province of Canada, or "identocard" issued by the Washington state department of licensing pursuant to RCW 46.20.117.

(2) United States armed forces identification card issued to active duty, reserve, and retired personnel and the personnel's dependents, which may include an imbedded, digital signature in lieu of a visible signature.

(3) Passport.

(4) Merchant Marine identification card issued by the United States Coast Guard.

(5) Enrollment card issued by the governing authority of a federally recognized Indian tribe located in Washington, if the enrollment card incorporates security features comparable to those implemented by the department of licensing for Washington drivers' licenses. At least ninety days prior to implementation of an enrollment card under this subsection, the appropriate tribal authority shall give notice to the board. The board shall publish and communicate to licensees regarding the implementation of each new enrollment card.

The board may adopt such regulations as it deems proper covering the cards of identification listed in this section.

No liquor sold under this section shall be delivered until the purchaser has paid for the liquor in cash, except as allowed under RCW 66.16.041. The use of a personal credit card does not rely upon the credit of the state as prohibited by Article VIII, section 5 of the state Constitution. [2005 c 206 § 1; 2005 c 151 § 5; 2005 c 102 § 1; 2004 c 61 § 1; 1996 c 291 § 1; 1995 c 16 § 1; 1981 1st ex.s. c 5 § 8; 1979 c 158 § 217; 1973 1st ex.s. c 209 § 3; 1971 ex.s. c 15 § 1; 1959 c 111 § 1; 1933 ex.s. c 62 § 7; RRS § 7306-7.]

**Reviser's note:** This section was amended by 2005 c 102 § 1, 2005 c 151 § 5, and by 2005 c 206 § 1, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

**Severability—Effective date—1973 1st ex.s. c 209:** See notes following RCW 66.08.070.

**Effective date—1971 ex.s. c 15:** "The effective date of this 1971 amendatory act is July 1, 1971." [1971 ex.s. c 15 § 8.]

*Renewal driver's license accepted as proper identification: RCW 46.20.185.*

**66.16.041 Credit and debit card purchases—Rules—Provision, installation, maintenance of equipment by board—Consideration of offsetting liquor revolving fund**

**balance reduction.** (1) The state liquor control board shall accept bank credit card and debit cards for purchases in state liquor stores, under such rules as the board may adopt. The board shall authorize contract liquor stores appointed under RCW 66.08.050 to accept bank credit cards and debit cards for liquor purchases under this title, under such rules as the board may adopt.

(2) If a contract liquor store chooses to use credit or debit cards for liquor purchases, the board shall provide equipment and installation and maintenance of the equipment necessary to implement the use of credit and debit cards. Any equipment provided by the board to a contract liquor store for this purpose may be used only for the purchase of liquor. [2005 c 151 § 6; 2004 c 63 § 2; 1998 c 265 § 3; 1997 c 148 § 2; 1996 c 291 § 2.]

**Intent—1998 c 265:** "It is the intent of the legislature that expenditures associated with the implementation of using credit and debit cards in state liquor stores and agency liquor vendor stores not have a negative impact to the liquor revolving fund balance and that transfers to the state general fund, the cities, and the counties not be reduced because of these costs." [1998 c 265 § 1.]

### 66.16.080 Sunday closing.

**Reviser's note:** RCW 66.16.080 was amended by 2005 c 151 § 7 with-out reference to its repeal by 2005 c 231 § 6. It has been decodified for publication purposes under RCW 1.12.025.

**66.16.120 Employees working on Sabbath.** Employees in state liquor stores, including agency vendor liquor stores, may not be required to work on their Sabbath for the purpose of selling liquor if doing so would violate their religious beliefs. [2005 c 231 § 5.]

**Severability—2005 c 231:** See note following RCW 66.08.165.

## Chapter 66.20 RCW LIQUOR PERMITS

### Sections

66.20.160 "Card of identification," "licensee," "store employee" defined for certain purposes.  
66.20.180 Card of identification to be presented on request of licensee.

**66.20.160 "Card of identification," "licensee," "store employee" defined for certain purposes.** Words and phrases as used in RCW 66.20.160 to 66.20.210, inclusive, shall have the following meaning:

"Card of identification" means any one of those cards described in RCW 66.16.040.

"Licensee" means the holder of a retail liquor license issued by the board, and includes any employee or agent of the licensee.

"Store employee" means a person employed in a state liquor store to sell liquor. [2005 c 151 § 8; 1973 1st ex.s. c 209 § 4; 1971 ex.s. c 15 § 2; 1959 c 111 § 4; 1949 c 67 § 1; Rem. Supp. 1949 § 7306-19A.]

**Severability—Effective date—1973 1st ex.s. c 209:** See notes following RCW 66.08.070.

**Effective date—1971 ex.s. c 15:** See note following RCW 66.16.040.

**66.20.180 Card of identification to be presented on request of licensee.** A card of identification shall be presented by the holder thereof upon request of any licensee,

store employee, contract liquor store manager, contract liquor store employee, peace officer, or enforcement officer of the board for the purpose of aiding the licensee, store employee, contract liquor store manager, contract liquor store employee, peace officer, or enforcement officer of the board to determine whether or not such person is of legal age to purchase liquor when such person desires to procure liquor from a licensed establishment or state liquor store or contract liquor store. [2005 c 151 § 9; 1973 1st ex.s. c 209 § 6; 1971 ex.s. c 15 § 4; 1959 c 111 § 6; 1949 c 67 § 3; Rem. Supp. 1949 § 7306-19C.]

**Severability—Effective date—1973 1st ex.s. c 209:** See notes following RCW 66.08.070.

**Effective date—1971 ex.s. c 15:** See note following RCW 66.16.040.

## Chapter 66.24 RCW LICENSES—STAMP TAXES

### Sections

66.24.320 Beer and/or wine restaurant license—Containers—Fee—Caterer's endorsement.  
66.24.380 Special occasion license—Fee—Penalty.  
66.24.400 Liquor by the drink, spirits, beer, and wine restaurant license—Liquor by the bottle for hotel or club guests—Removing unconsumed liquor, when.

**66.24.320 Beer and/or wine restaurant license—Containers—Fee—Caterer's endorsement.** There shall be a beer and/or wine restaurant license to sell beer, including strong beer, or wine, or both, at retail, for consumption on the premises. A patron of the licensee may remove from the premises, recorked or recapped in its original container, any portion of wine that was purchased for consumption with a meal.

(1) The annual fee shall be two hundred dollars for the beer license, two hundred dollars for the wine license, or four hundred dollars for a combination beer and wine license.

(2)(a) The board may issue a caterer's endorsement to this license to allow the licensee to remove from the liquor stocks at the licensed premises, only those types of liquor that are authorized under the on-premises license privileges for sale and service at event locations at a specified date and, except as provided in subsection (3) of this section, place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived. Cost of the endorsement is three hundred fifty dollars.

(b) The holder of this license with catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(3) Licensees under this section that hold a caterer's endorsement are allowed to use this endorsement on a domestic winery premises under the following conditions:

(a) Agreements between the domestic winery and the retail licensee shall be in writing, contain no exclusivity

clauses regarding the alcohol beverages to be served, and be filed with the board; and

(b) The domestic winery and the retail licensee shall be separately contracted and compensated by the persons sponsoring the event for their respective services.

(4) The holder of this license or its manager may furnish beer or wine to the licensee's employees free of charge as may be required for use in connection with instruction on beer and wine. The instruction may include the history, nature, values, and characteristics of beer or wine, the use of wine lists, and the methods of presenting, serving, storing, and handling beer or wine. The beer and/or wine licensee must use the beer or wine it obtains under its license for the sampling as part of the instruction. The instruction must be given on the premises of the beer and/or wine licensee. [2005 c 152 § 1; 2004 c 62 § 2. Prior: 2003 c 345 § 1; 2003 c 167 § 6; 1998 c 126 § 4; 1997 c 321 § 18; 1995 c 232 § 6; 1991 c 42 § 1; 1987 c 458 § 11; 1981 1st ex.s. c 5 § 37; 1977 ex.s. c 9 § 1; 1969 c 117 § 1; 1967 ex.s. c 75 § 2; 1941 c 220 § 1; 1937 c 217 § 1 (23M) (adding new section 23-M to 1933 ex.s. c 62); Rem. Supp. 1941 § 7306-23M.]

**Effective date—2003 c 167:** See note following RCW 66.24.244.

**Report to legislature—2003 c 167:** See note following RCW 66.24.250.

**Effective date—1998 c 126:** See note following RCW 66.20.010.

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Severability—1987 c 458:** See note following RCW 48.21.160.

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

**Effective date—1967 ex.s. c 75:** See note following RCW 66.08.180.

#### **66.24.380 Special occasion license—Fee—Penalty.**

There shall be a retailer's license to be designated as a special occasion license to be issued to a not-for-profit society or organization to sell spirits, beer, and wine by the individual serving for on-premises consumption at a specified event, such as at picnics or other special occasions, at a specified date and place; fee sixty dollars per day.

(1) The not-for-profit society or organization is limited to sales of no more than twelve calendar days per year. For the purposes of this subsection, special occasion licensees that are "agricultural area fairs" or "agricultural county, district, and area fairs," as defined by RCW 15.76.120, that receive a special occasion license may, once per calendar year, count as one event fairs that last multiple days, so long as alcohol sales are at set dates, times, and locations, and the board receives prior notification of the dates, times, and locations. The special occasion license applicant will pay the sixty dollars per day for this event.

(2) The licensee may sell beer and/or wine in original, unopened containers for off-premises consumption if permission is obtained from the board prior to the event.

(3) Sale, service, and consumption of spirits, beer, and wine is to be confined to specified premises or designated areas only.

(4) Spirituous liquor sold under this special occasion license must be purchased at a state liquor store or contract liquor store without discount at retail prices, including all taxes.

(5) Any violation of this section is a class 1 civil infraction having a maximum penalty of two hundred fifty dollars as provided for in chapter 7.80 RCW. [2005 c 151 § 10; 2004 c 133 § 2; 1997 c 321 § 24; 1988 c 200 § 2; 1981 1st ex.s. c 5 § 43; 1973 1st ex.s. c 209 § 17; 1969 ex.s. c 178 § 5; 1937 c 217 § 1 (23S) (adding new section 23-S to 1933 ex.s. c 62); RRS § 7306-23S.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

**Severability—Effective date—1973 1st ex.s. c 209:** See notes following RCW 66.08.070.

*"Society or organization" defined for certain purposes: RCW 66.24.375.*

**66.24.400 Liquor by the drink, spirits, beer, and wine restaurant license—Liquor by the bottle for hotel or club guests—Removing unconsumed liquor, when.** (1) There shall be a retailer's license, to be known and designated as a spirits, beer, and wine restaurant license, to sell spirituous liquor by the individual glass, beer, and wine, at retail, for consumption on the premises, including mixed drinks and cocktails compounded or mixed on the premises only: PROVIDED, That a hotel, or club licensed under chapter 70.62 RCW with overnight sleeping accommodations, that is licensed under this section may sell liquor by the bottle to registered guests of the hotel or club for consumption in guest rooms, hospitality rooms, or at banquets in the hotel or club: PROVIDED FURTHER, That a patron of a bona fide hotel, restaurant, or club licensed under this section may remove from the premises recorked or recapped in its original container any portion of wine which was purchased for consumption with a meal, and registered guests who have purchased liquor from the hotel or club by the bottle may remove from the premises any unused portion of such liquor in its original container. Such license may be issued only to bona fide restaurants, hotels and clubs, and to dining, club and buffet cars on passenger trains, and to dining places on passenger boats and airplanes, and to dining places at civic centers with facilities for sports, entertainment, and conventions, and to such other establishments operated and maintained primarily for the benefit of tourists, vacationers and travelers as the board shall determine are qualified to have, and in the discretion of the board should have, a spirits, beer, and wine restaurant license under the provisions and limitations of this title.

(2) The board may issue an endorsement to the spirits, beer, and wine restaurant license that allows the holder of a spirits, beer, and wine restaurant license to sell for off-premises consumption wine vinted and bottled in the state of Washington and carrying a label exclusive to the license holder selling the wine. Spirits and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this subsection is one hundred twenty dollars.

(3) The holder of a spirits, beer, and wine license or its manager may furnish beer, wine, or spirituous liquor to the licensee's employees free of charge as may be required for use in connection with instruction on beer, wine, or spirituous liquor. The instruction may include the history, nature, values, and characteristics of beer, wine, or spirituous liquor, the use of wine lists, and the methods of presenting, serving, storing, and handling beer, wine, and spirituous liquor. The spirit-

its, beer, and wine restaurant licensee must use the beer, wine, or spirituous liquor it obtains under its license for the sampling as part of the instruction. The instruction must be given on the premises of the spirits, beer, and wine restaurant licensee. [2005 c 152 § 2; 2001 c 199 § 4; 1998 c 126 § 5; 1997 c 321 § 26; 1987 c 196 § 1; 1986 c 208 § 1; 1981 c 94 § 2; 1977 ex.s. c 9 § 4; 1971 ex.s. c 208 § 1; 1949 c 5 § 1 (adding new section 23-S-1 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-1.]

**Effective date—1998 c 126:** See note following RCW 66.20.010.

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Effective date—1986 c 208:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of state government and its existing public institutions, and shall take effect on May 1, 1986." [1986 c 208 § 2.]

**Severability—1949 c 5:** See RCW 66.98.080.

## Chapter 66.28 RCW

### MISCELLANEOUS REGULATORY PROVISIONS

#### Sections

66.28.180 Price modification by certain persons, firms, or corporations—Board notification and approval—Intent—Price posting—Price filing, contracts, memoranda. (*Effective July 1, 2006.*)

**66.28.180 Price modification by certain persons, firms, or corporations—Board notification and approval—Intent—Price posting—Price filing, contracts, memoranda. (*Effective July 1, 2006.*)** It is unlawful for a person, firm, or corporation holding a certificate of approval issued under RCW 66.24.270 or 66.24.206, a beer distributor's license, a domestic brewery license, a microbrewery license, a beer importer's license, a beer distributor's license, a domestic winery license, a wine importer's license, or a wine distributor's license within the state of Washington to modify any prices without prior notification to and approval of the board.

(1) Intent. This section is enacted, pursuant to the authority of this state under the twenty-first amendment to the United States Constitution, to promote the public's interest in fostering the orderly and responsible distribution of malt beverages and wine towards effective control of consumption; to promote the fair and efficient three-tier system of distribution of such beverages; and to confirm existing board rules as the clear expression of state policy to regulate the manner of selling and pricing of wine and malt beverages by licensed suppliers and distributors.

(2) Beer and wine distributor price posting.

(a) Every beer or wine distributor shall file with the board at its office in Olympia a price posting showing the wholesale prices at which any and all brands of beer and wine sold by such beer and/or wine distributor shall be sold to retailers within the state.

(b) Each price posting shall be made on a form prepared and furnished by the board, or a reasonable facsimile thereof, and shall set forth:

(i) All brands, types, packages, and containers of beer offered for sale by such beer and/or wine distributor;

(ii) The wholesale prices thereof to retail licensees, including allowances, if any, for returned empty containers.

(c) No beer and/or wine distributor may sell or offer to sell any package or container of beer or wine to any retail licensee at a price differing from the price for such package or container as shown in the price posting filed by the beer and/or wine distributor and then in effect, according to rules adopted by the board.

(d) Quantity discounts are prohibited. No price may be posted that is below acquisition cost plus ten percent of acquisition cost. However, the board is empowered to review periodically, as it may deem appropriate, the amount of the percentage of acquisition cost as a minimum mark-up over cost and to modify such percentage by rule of the board, except such percentage shall be not less than ten percent.

(e) Distributor prices on a "close-out" item shall be accepted by the board if the item to be discontinued has been listed on the state market for a period of at least six months, and upon the further condition that the distributor who posts such a close-out price shall not restock the item for a period of one year following the first effective date of such close-out price.

(f) The board may reject any price posting that it deems to be in violation of this section or any rule, or portion thereof, or that would tend to disrupt the orderly sale and distribution of beer and wine. Whenever the board rejects any posting, the licensee submitting the posting may be heard by the board and shall have the burden of showing that the posting is not in violation of this section or a rule or does not tend to disrupt the orderly sale and distribution of beer and wine. If the posting is accepted, it shall become effective at the time fixed by the board. If the posting is rejected, the last effective posting shall remain in effect until such time as an amended posting is filed and approved, in accordance with the provisions of this section.

(g) Prior to the effective date of the posted prices, all price postings filed as required by this section constitute investigative information and shall not be subject to disclosure, pursuant to RCW 42.56.240(1).

(h) Any beer and/or wine distributor or employee authorized by the distributor-employer may sell beer and/or wine at the distributor's posted prices to any annual or special occasion retail licensee upon presentation to the distributor or employee at the time of purchase of a special permit issued by the board to such licensee.

(i) Every annual or special occasion retail licensee, upon purchasing any beer and/or wine from a distributor, shall immediately cause such beer or wine to be delivered to the licensed premises, and the licensee shall not thereafter permit such beer to be disposed of in any manner except as authorized by the license.

(ii) Beer and wine sold as provided in this section shall be delivered by the distributor or an authorized employee either to the retailer's licensed premises or directly to the retailer at the distributor's licensed premises. A distributor's prices to retail licensees shall be the same at both such places of delivery.

(3) Beer and wine suppliers' price filings, contracts, and memoranda.

(a) Every domestic brewery, microbrewery, and domestic winery offering beer and/or wine for sale within the state shall file with the board at its office in Olympia a copy of every written contract and a memorandum of every oral

agreement which such brewery or winery may have with any beer or wine distributor, which contracts or memoranda shall contain a schedule of prices charged to distributors for all items and all terms of sale, including all regular and special discounts; all advertising, sales and trade allowances, and incentive programs; and all commissions, bonuses or gifts, and any and all other discounts or allowances. Whenever changed or modified, such revised contracts or memoranda shall forthwith be filed with the board as provided for by rule. The provisions of this section also apply to certificate of approval holders, beer and/or wine importers, and beer and/or wine distributors who sell to other beer and/or wine distributors.

Each price schedule shall be made on a form prepared and furnished by the board, or a reasonable facsimile thereof, and shall set forth all brands, types, packages, and containers of beer or wine offered for sale by such licensed brewery or winery; all additional information required may be filed as a supplement to the price schedule forms.

(b) Prices filed by a domestic brewery, microbrewery, domestic winery, or certificate of approval holder shall be uniform prices to all distributors on a statewide basis less bona fide allowances for freight differentials. Quantity discounts are prohibited. No price shall be filed that is below acquisition/production cost plus ten percent of that cost, except that acquisition cost plus ten percent of acquisition cost does not apply to sales of beer or wine between a beer or wine importer who sells beer or wine to another beer or wine importer or to a beer or wine distributor, or to a beer or wine distributor who sells beer or wine to another beer or wine distributor. However, the board is empowered to review periodically, as it may deem appropriate, the amount of the percentage of acquisition/production cost as a minimum mark-up over cost and to modify such percentage by rule of the board, except such percentage shall be not less than ten percent.

(c) No domestic brewery, microbrewery, domestic winery, certificate of approval holder, beer or wine importer, or beer or wine distributor may sell or offer to sell any beer or wine to any persons whatsoever in this state until copies of such written contracts or memoranda of such oral agreements are on file with the board.

(d) No domestic brewery, microbrewery, domestic winery, or certificate of approval holder may sell or offer to sell any package or container of beer or wine to any distributor at a price differing from the price for such package or container as shown in the schedule of prices filed by the domestic brewery, microbrewery, domestic winery, or certificate of approval holder and then in effect, according to rules adopted by the board.

(e) The board may reject any supplier's price filing, contract, or memorandum of oral agreement, or portion thereof that it deems to be in violation of this section or any rule or that would tend to disrupt the orderly sale and distribution of beer or wine. Whenever the board rejects any such price filing, contract, or memorandum, the licensee submitting the price filing, contract, or memorandum may be heard by the board and shall have the burden of showing that the price filing, contract, or memorandum is not in violation of this section or a rule or does not tend to disrupt the orderly sale and distribution of beer or wine. If the price filing, contract, or memorandum is accepted, it shall become effective at a time

fixed by the board. If the price filing, contract, or memorandum, or portion thereof, is rejected, the last effective price filing, contract, or memorandum shall remain in effect until such time as an amended price filing, contract, or memorandum is filed and approved, in accordance with the provisions of this section.

(f) Prior to the effective date of the posted prices, all prices, contracts, and memoranda filed as required by this section constitute investigative information and shall not be subject to disclosure, pursuant to RCW 42.56.240(1). [2005 c 274 § 327. Prior: 2004 c 269 § 1; 2004 c 160 § 18; 1997 c 321 § 51; 1995 c 232 § 10; 1985 c 226 § 4.]

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

**Effective date—2004 c 269:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2004]." [2004 c 269 § 2.]

**Effective date—2004 c 160:** See note following RCW 66.04.010.

**Effective date—1997 c 321:** See note following RCW 66.24.010.

## Chapter 66.44 RCW

### ENFORCEMENT—PENALTIES

#### Sections

66.44.120 Unlawful use of seal.

**66.44.120 Unlawful use of seal.** (1) No person other than an employee of the board shall keep or have in his or her possession any official seal prescribed under this title, unless the same is attached to a package which has been purchased from a liquor store or contract liquor store; nor shall any person keep or have in his or her possession any design in imitation of any official seal prescribed under this title, or calculated to deceive by its resemblance thereto, or any paper upon which any design in imitation thereof, or calculated to deceive as aforesaid, is stamped, engraved, lithographed, printed, or otherwise marked.

(2)(a) Except as provided in (b) of this subsection, every person who willfully violates this section is guilty of a gross misdemeanor and shall be liable on conviction thereof for a first offense to imprisonment in the county jail for a period of not less than three months nor more than six months, without the option of the payment of a fine, and for a second offense, to imprisonment in the county jail for not less than six months nor more than one year, without the option of the payment of a fine.

(b) A third or subsequent offense is a class C felony, punishable by imprisonment in a state correctional facility for not less than one year nor more than two years. [2005 c 151 § 11; 2003 c 53 § 299; 1992 c 7 § 42; 1933 ex.s. c 62 § 47; RRS § 7306-47.]

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



## Title 67

SPORTS AND RECREATION—  
CONVENTION FACILITIES

## Chapters

- 67.16 Horse racing.  
67.40 Convention and trade facilities.  
67.70 State lottery.

Chapter 67.16 RCW  
HORSE RACING

## Sections

- 67.16.251 Handicapping contests.

**67.16.251 Handicapping contests.** Class 1 racing associations may conduct horse race handicapping contests. The commission shall establish rules for the conduct of handicapping contests involving the outcome of multiple horse races. [2005 c 351 § 2.]

Chapter 67.40 RCW  
CONVENTION AND TRADE FACILITIES

## Sections

- 67.40.040 Deposit of proceeds in state convention and trade center account and appropriate subaccounts—Credit against future borrowings—Use.  
67.40.060 Retirement of bonds from nondebt-limit proprietary appropriated bond retirement account—Transfer from accounts—Pledge and promise—Remedies of bondholders.

**67.40.040 Deposit of proceeds in state convention and trade center account and appropriate subaccounts—Credit against future borrowings—Use.** (1) The proceeds from the sale of the bonds authorized in RCW 67.40.030, proceeds of the taxes imposed under RCW 67.40.090 and 67.40.130, and all other moneys received by the state convention and trade center from any public or private source which are intended to fund the acquisition, design, construction, expansion, exterior cleanup and repair of the Eagles building, conversion of various retail and other space to meeting rooms, purchase of the land and building known as the McKay Parcel, development of low-income housing, or renovation of the center, and those expenditures authorized under RCW 67.40.170 shall be deposited in the state convention and trade center account hereby created in the state treasury and in such subaccounts as are deemed appropriate by the directors of the corporation.

(2) Moneys in the account, including unanticipated revenues under RCW 43.79.270, shall be used exclusively for the following purposes in the following priority:

- (a) For reimbursement of the state general fund under RCW 67.40.060;  
(b) After appropriation by statute:  
(i) For payment of expenses incurred in the issuance and sale of the bonds issued under RCW 67.40.030;  
(ii) For expenditures authorized in RCW 67.40.170;  
(iii) For acquisition, design, and construction of the state convention and trade center; and

(iv) For reimbursement of any expenditures from the state general fund in support of the state convention and trade center; and

(c) For transfer to the state convention and trade center operations account.

(3) The corporation shall identify with specificity those facilities of the state convention and trade center that are to be financed with proceeds of general obligation bonds, the interest on which is intended to be excluded from gross income for federal income tax purposes. The corporation shall not permit the extent or manner of private business use of those bond-financed facilities to be inconsistent with treatment of such bonds as governmental bonds under applicable provisions of the Internal Revenue Code of 1986, as amended.

(4) In order to ensure consistent treatment of bonds authorized under RCW 67.40.030 with applicable provisions of the Internal Revenue Code of 1986, as amended, and notwithstanding RCW 43.84.092, investment earnings on bond proceeds deposited in the state convention and trade center account in the state treasury shall be retained in the account, and shall be expended by the corporation for the purposes authorized under chapter 386, Laws of 1995 and in a manner consistent with applicable provisions of the Internal Revenue Code of 1986, as amended.

(5) During the 2005-2007 fiscal biennium, the legislature may transfer from the state convention and trade center account to the state general fund such amounts as reflect the excess fund balance of the account. [2005 c 518 § 936; 2003 1st sp.s. c 25 § 929; 1995 c 386 § 13; 1991 sp.s. c 13 § 11; 1990 c 181 § 2; 1988 ex.s. c 1 § 4; 1987 1st ex.s. c 8 § 4; 1985 c 57 § 66; 1983 2nd ex.s. c 1 § 4; 1982 c 34 § 4.]

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Severability—Effective date—1995 c 386:** See notes following RCW 67.40.130.

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

**Severability—1987 1st ex.s. c 8:** See note following RCW 67.40.020.

**Effective date—1985 c 57:** See note following RCW 18.04.105.

**67.40.060 Retirement of bonds from nondebt-limit proprietary appropriated bond retirement account—Transfer from accounts—Pledge and promise—Remedies of bondholders.** The nondebt-limit proprietary appropriated bond retirement account shall be used for the payment of the principal of and interest on the bonds authorized in RCW 67.40.030.

The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet the bond retirement and interest requirements. On each date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the nondebt-limit proprietary appropriated bond retirement account an amount equal to the amount certified by the state finance committee to be due on that payment date. On each date on which any interest or principal and interest is due, the state treasurer shall cause an identical amount to be paid out of the state convention and

trade center account, or state convention and trade center operations account, from the proceeds of the special excise tax imposed under RCW 67.40.090, operating revenues of the state convention and trade center, and bond proceeds and earnings on the investment of bond proceeds, for deposit in the general fund of the state treasury. Any deficiency in such transfer shall be made up as soon as special excise taxes are available for transfer and shall constitute a continuing obligation of the state convention and trade center account until all deficiencies are fully paid.

Bonds issued under RCW 67.40.030 shall state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay the principal and interest as the same shall become due.

The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section. [2005 c 487 § 9; 1997 c 456 § 25; 1987 1st ex.s. c 8 § 5; 1983 2nd ex.s. c 1 § 5; 1982 c 34 § 6.]

**Severability—Effective date—2005 c 487:** See RCW 43.99S.900 and 43.99S.901.

**Severability—1997 c 456:** See RCW 43.99L.900.

**Effective date—1997 c 456 §§ 9-43:** See RCW 43.99M.901.

**Severability—1987 1st ex.s. c 8:** See note following RCW 67.40.020.

## Chapter 67.70 RCW STATE LOTTERY

### Sections

67.70.190	Unclaimed prizes.
67.70.340	Transfer of shared game lottery proceeds.

**67.70.190 Unclaimed prizes.** Unclaimed prizes shall be retained in the state lottery account for the person entitled thereto for one hundred eighty days after the drawing in which the prize is won, or after the official end of the game for instant prizes. If no claim is made for the prize within this time, all rights to the prize shall be extinguished, and the prize shall be retained in the state lottery fund for further use as prizes, except that one-third of all unclaimed prize money shall be deposited in the economic development strategic reserve account created in RCW 43.330.250. [2005 c 427 § 2; 1994 c 218 § 5; 1988 c 289 § 802; 1987 c 511 § 8; 1982 2nd ex.s. c 7 § 19.]

**Effective date—1994 c 218:** See note following RCW 9.46.010.

**Severability—1988 c 289:** See note following RCW 50.16.070.

### **67.70.340 Transfer of shared game lottery proceeds.**

(1) The legislature recognizes that creating a shared game lottery could result in less revenue being raised by the existing state lottery ticket sales. The legislature further recognizes that the two funds most impacted by this potential event are the student achievement fund and the education construction account. Therefore, it is the intent of the legislature to use some of the proceeds from the shared game lottery to make up the difference that the potential state lottery revenue loss would have on the student achievement fund and the educa-

tion construction account. The legislature further intends to use some of the proceeds from the shared game lottery to fund programs and services related to problem and pathological gambling.

(2) The student achievement fund and the education construction account are expected to collectively receive one hundred two million dollars annually from state lottery games other than the shared game lottery. For fiscal year 2003 and thereafter, if the amount of lottery revenues earmarked for the student achievement fund and the education construction account is less than one hundred two million dollars, the commission, after making the transfer required under subsection (3) of this section, must transfer sufficient moneys from revenues derived from the shared game lottery into the student achievement fund and the education construction account to bring the total revenue up to one hundred two million dollars. The funds transferred from the shared game lottery account under this subsection must be divided between the student achievement fund and the education construction account in a manner consistent with RCW 67.70.240(3).

(3)(a) The commission shall transfer, from revenue derived from the shared game lottery, to the problem gambling account created in RCW 43.20A.892, an amount equal to the percentage specified in (b) of this subsection of net receipts. For purposes of this subsection, "net receipts" means the difference between (i) revenue received from the sale of lottery tickets or shares and revenue received from the sale of shared game lottery tickets or shares; and (ii) the sum of payments made to winners.

(b) In fiscal year 2006, the percentage to be transferred to the problem gambling account is one-tenth of one percent. In fiscal year 2007 and subsequent fiscal years, the percentage to be transferred to the problem gambling account is thirteen one-hundredths of one percent.

(4) The remaining net revenues, if any, in the shared game lottery account after the transfers pursuant to this section shall be deposited into the general fund. [2005 c 369 § 4; 2002 c 349 § 3.]

**Findings—Intent—Severability—Effective date—2005 c 369:** See notes following RCW 43.20A.890.

## Title 68

### CEMETERIES, MORGUES, AND HUMAN REMAINS

#### Chapters

- 68.04 Definitions.**
- 68.05 Cemetery board.**
- 68.20 Private cemeteries.**
- 68.24 Cemetery property.**
- 68.28 Mausoleums and columbariums.**
- 68.32 Title and rights to cemetery plots.**
- 68.36 Abandoned lots.**
- 68.40 Endowment and nonendowment care.**
- 68.44 Endowment care fund.**
- 68.46 Prearrangement contracts.**
- 68.50 Human remains.**
- 68.56 Penal and miscellaneous provisions.**
- 68.60 Abandoned and historic cemeteries and historic graves.**

## Chapter 68.04 RCW

## DEFINITIONS

## Sections

68.04.020	"Human remains," "remains."
68.04.030	"Cremated human remains."
68.04.040	"Cemetery."
68.04.070	"Crematory."
68.04.080	"Columbarium."
68.04.090	Repealed.
68.04.100	"Interment."
68.04.110	"Cremation."
68.04.120	"Inurnment."
68.04.130	"Entombment."
68.04.160	"Crypt."
68.04.165	"Outer burial container."
68.04.170	"Niche."
68.04.180	Repealed.
68.04.190	"Cemetery authority."
68.04.200	Repealed.
68.04.210	"Cemetery business."
68.04.220	Repealed.
68.04.230	"Lot" or "plot."
68.04.240	"Owner of interment rights."
68.04.250	"Interment right."
68.04.260	"Scattering garden."
68.04.270	"Scattering."
68.04.280	"Multiple interment."

**68.04.020 "Human remains," "remains."** "Human remains" or "remains" means the body of a deceased person, includes the body in any stage of decomposition, and includes cremated human remains. [2005 c 365 § 27; 1977 c 47 § 1; 1943 c 247 § 2; Rem. Supp. 1943 § 3778-2.]

**Short title—1943 c 247:** "This act shall be known as the 'General Cemetery Act.'" [1943 c 247 § 1.]

**Severability—1943 c 247:** "If any section, subdivision, sentence or clause of this act shall be held invalid or unconstitutional, such holding shall not affect the validity of the remaining portions of this act." [1943 c 247 § 147.]

The annotations apply to 1943 c 247, the general cemetery act, which was codified as RCW 68.04.020 through 68.04.240, 68.08.010 through 68.08.030, 68.08.120 through 68.08.220, 68.08.240, 68.20.010 through 68.20.100, 68.24.010 through 68.24.180, 68.28.010 through 68.28.070, 68.32.010 through 68.32.170, 68.36.010 through 68.36.100, 68.40.010 through 68.40.090, 68.44.010 through 68.44.170, and 68.48.040 through 68.48.090.

**68.04.030 "Cremated human remains."** "Cremated human remains" means the end products of cremation. [2005 c 365 § 28; 1977 c 47 § 2; 1943 c 247 § 3; Rem. Supp. 1943 § 3778-3.]

**68.04.040 "Cemetery."** "Cemetery" means: (1) Any one, or a combination of more than one, of the following, in a place used, or intended to be used for the placement of human remains and dedicated, for cemetery purposes:

- (a) A burial park, for earth interments.
- (b) A mausoleum, for crypt interments.
- (c) A columbarium, for permanent niche interments; or

(2) For the purposes of chapter 68.60 RCW only, "cemetery" means any burial site, burial grounds, or place where five or more human remains are buried. Unless a cemetery is designated as a parcel of land identifiable and unique as a cemetery within the records of the county assessor, a cemetery's boundaries shall be a minimum of ten feet in any direction from any burials therein. [2005 c 365 § 29; 1990 c 92 § 7; 1979 c 21 § 1; 1943 c 247 § 4; Rem. Supp. § 3778-4.]

**68.04.070 "Crematory."** "Crematory" means a building or area of a building that houses one or more cremation chambers, to be used for the cremation of human remains. [2005 c 365 § 30; 1943 c 247 § 7; Rem. Supp. 1943 § 3778-7.]

**68.04.080 "Columbarium."** "Columbarium" means a structure, room, or other space in a building or structure containing niches for permanent placement of cremated human remains in a place used, or intended to be used, and dedicated, for cemetery purposes. [2005 c 365 § 31; 1943 c 247 § 8; Rem. Supp. 1943 § 3778-8.]

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

**68.04.100 "Interment."** "Interment" means the placement of human remains in a cemetery. [2005 c 365 § 32; 1943 c 247 § 10; Rem. Supp. 1943 § 3778-10.]

**68.04.110 "Cremation."** "Cremation" means the reduction of human remains to bone fragments in a crematory by means of incineration. [2005 c 365 § 33; 1987 c 331 § 1; 1977 c 47 § 3; 1943 c 247 § 11; Rem. Supp. 1943 § 3778-11.]

**Effective date—1987 c 331:** See RCW 68.05.900.

**68.04.120 "Inurnment."** "Inurnment" means placing cremated human remains in a cemetery. [2005 c 365 § 34; 1943 c 247 § 12; Rem. Supp. 1943 § 3778-12.]

**68.04.130 "Entombment."** "Entombment" means the placement of human remains in a crypt. [2005 c 365 § 35; 1943 c 247 § 13; Rem. Supp. 1943 § 3778-13.]

**68.04.160 "Crypt."** "Crypt" means a space in a mausoleum for the placement of human remains. [2005 c 365 § 36; 1979 c 21 § 3; 1943 c 247 § 16; Rem. Supp. 1943 § 3778-16.]

**68.04.165 "Outer burial container."** "Outer burial container" means any container which is buried in the ground for the placement of human remains in the burial process. Outer burial containers include, but are not limited to vaults, lawn crypts, and liners. [2005 c 365 § 37; 1979 c 21 § 4.]

**68.04.170 "Niche."** "Niche" means a space in a columbarium for placement of cremated human remains. [2005 c 365 § 38; 1943 c 247 § 17; Rem. Supp. 1943 § 3778-17.]

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

**68.04.190 "Cemetery authority."** "Cemetery authority" means an entity that has obtained a certificate of authority to operate a cemetery from the cemetery board, or any other entity that operates a cemetery that is not under the jurisdiction of the cemetery board. [2005 c 365 § 39; 1943 c 247 § 19; Rem. Supp. 1943 § 3778-19.]

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

**68.04.210 "Cemetery business."** "Cemetery business" includes establishing, maintaining, operating, and improving a cemetery for the placement of human remains, and the care and preservation of the cemetery property. [2005 c 365 § 40; 1943 c 247 § 21; Rem. Supp. 1943 § 3778-21.]

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

**68.04.230 "Lot" or "plot."** "Lot" or "plot" means space in a cemetery, used or intended to be used for the interment of human remains. [2005 c 365 § 41; 1943 c 247 § 23; Rem. Supp. 1943 § 3778-23.]

**68.04.240 "Owner of interment rights."** "Owner of interment rights" means any person who is listed as the owner of record of a right or rights of interment in the office of a cemetery authority. [2005 c 365 § 45; 1943 c 247 § 24; Rem. Supp. 1943 § 3778-24.]

**68.04.250 "Interment right."** "Interment right" means the right to inter human remains in a particular space in a cemetery. [2005 c 365 § 42.]

**68.04.260 "Scattering garden."** "Scattering garden" means a designated area in a cemetery for the scattering of cremated human remains. [2005 c 365 § 43.]

**68.04.270 "Scattering."** "Scattering" means the removal of cremated human remains from their container for the purpose of scattering the cremated human remains in any lawful manner. [2005 c 365 § 44.]

**68.04.280 "Multiple interment."** "Multiple interment" means two or more human remains are buried in the ground, in outer burial enclosures or chambers, placed one on top of another, with a ground level surface the same size as a single grave or right of interment. [2005 c 359 § 1.]

## Chapter 68.05 RCW CEMETERY BOARD

### Sections

68.05.010	Definitions.
68.05.030	"Endowment care," "endowed care" defined.
68.05.040	Cemetery board created—Appointments—Terms.
68.05.050	Qualifications of members.
68.05.080	Meetings.
68.05.090	Administration and enforcement of title.
68.05.100	Rules.
68.05.105	Authority of the board.
68.05.115	Sale or transfer of cemetery authority or creation of a new cemetery—Penalty for noncompliance.
68.05.150	Examination of funds—Powers, duties.
68.05.170	Order requiring reinvestment in compliance with title—Actions for preservation and protection.
68.05.173	Revocation, suspension of certificate or license.
68.05.185	Repealed.
68.05.195	Burial or scatter of cremated remains—Permit.
68.05.210	Proof of applicant's compliance with laws and financial responsibility.
68.05.215	Certificates—Regulatory charges—Expiration.
68.05.225	Sales licenses—Terms—Fees.
68.05.235	Reports—Failure to file.
68.05.240	Interment, certificate of authority required—Penalty.
68.05.245	Crematory permits or endorsements—Terms—Fees.

68.05.254	Examination of endowment funds and prearrangement trust funds.
68.05.259	Payment of examination expenses.
68.05.285	"Cemetery account."
68.05.290	Board members' immunity from suits.
68.05.330	Violation—Penalty—Unfair practice—Other laws applicable.
68.05.340	Board action against authorities—Cease and desist orders.

**68.05.010 Definitions.** The definitions in chapter 68.04 RCW are applicable to this chapter and govern the meaning of terms used in this chapter, except as otherwise provided. [2005 c 365 § 46; 1953 c 290 § 26.]

**Short title—1953 c 290:** "This act shall be known as 'The Cemetery Act.'" [1953 c 290 § 55.]

**68.05.030 "Endowment care," "endowed care" defined.** The terms "endowment care" or "endowed care" used in this chapter shall include special care funds and all funds held for or represented as maintenance funds. [2005 c 365 § 47; 1987 c 331 § 4; 1953 c 290 § 28.]

**68.05.040 Cemetery board created—Appointments—Terms.** A cemetery board is created to consist of five members to be appointed by the governor. Appointments shall be for four-year terms. Each member shall hold office until the expiration of the term for which the member is appointed or until a successor has been appointed and qualified. [2005 c 365 § 48; 1987 c 331 § 5; 1977 ex.s. c 351 § 1; 1953 c 290 § 31.]

**Severability—1977 ex.s. c 351:** "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 351 § 7.]

**68.05.050 Qualifications of members.** Four members of the board shall be persons who have had experience in this state in the active administrative management of a cemetery authority or as a member of a cemetery's board of directors. One member of the board shall represent the general public and shall not have a financial interest in the cemetery business. [2005 c 365 § 49; 1979 c 21 § 5; 1977 ex.s. c 351 § 2; 1953 c 290 § 32.]

**Severability—1977 ex.s. c 351:** See note following RCW 68.05.040.

**68.05.080 Meetings.** The board shall meet at least once a year in order to conduct its business. The board may meet at other designated times as determined by the chair, the director, or a majority of board members. The board may meet at any place within this state. [2005 c 365 § 50; 1987 c 331 § 6; 1953 c 290 § 35.]

**68.05.090 Administration and enforcement of title.** The board shall enforce and administer the provisions of chapters 68.04 through 68.50 RCW, subject to provisions of RCW 68.05.400. The board may adopt and amend bylaws establishing its organization and method of operation. The board may refer such evidence as may be available concerning violations of chapters 68.04 through 68.50 RCW to the attorney general or the proper prosecuting attorney, who may in his or her discretion, with or without such a reference, in addition to any other action the board might commence, bring an action against any person to restrain or prevent the doing of any act or practice prohibited or declared unlawful in chap-

ters 68.04 through 68.50 RCW and shall have standing to seek enforcement of said provisions in the superior court of the state of Washington for the county in which the principal office of the cemetery authority is located. [2005 c 365 § 51; 1987 c 331 § 7; 1979 c 21 § 6; 1953 c 290 § 39.]

**68.05.100 Rules.** The board may establish necessary rules for the enforcement of this title and the laws subject to its jurisdiction. The board shall prescribe the application forms and reports provided for in this title. Rules regulating the cremation of human remains and establishing requirements shall be adopted in consultation with the state board of funeral directors and embalmers. [2005 c 365 § 52; 1993 c 43 § 3; 1987 c 331 § 9; 1985 c 402 § 8; 1953 c 290 § 36.]

**Effective date of 1993 c 43—1993 sp.s. c 24:** See note following RCW 18.39.290.

**Legislative finding—1985 c 402:** See note following RCW 68.50.165.

**68.05.105 Authority of the board.** In addition to the authority in RCW 18.235.030, the board has the following authority:

- (1) To adopt, amend, and rescind rules necessary to carry out this title; and
- (2) To adopt standards of professional conduct or practice. [2005 c 365 § 53; 2002 c 86 § 316; 1987 c 331 § 10.]

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**68.05.115 Sale or transfer of cemetery authority or creation of a new cemetery—Penalty for noncompliance.** Prior to the sale or transfer of ownership or control of any cemetery authority or the creation of a new cemetery, any person or entity desiring to acquire such ownership or control or to create a new cemetery shall apply in writing to the board for a new certificate of authority to operate a cemetery. The board shall enter any order deemed necessary for the protection of all endowment care funds and/or prearrangement trust fund during such transfer. As a condition of applying for a new certificate of authority, the entity desiring to acquire such ownership or control must agree to be bound by all then existing prearrangement contracts. Persons and business entities selling and persons and business entities purchasing ownership or control of a cemetery authority shall each verify and attest to an endowment care fund report and/or a prearrangement trust fund report showing the status of such funds on the date of the sale on a written report form prescribed by the board. Such reports shall be considered part of the application for authority to operate. Failure to comply with this section shall be a gross misdemeanor and any sale or transfer in violation of this section shall be void. [2005 c 365 § 54; 1987 c 331 § 11; 1979 c 21 § 11; 1973 1st ex.s. c 68 § 17; 1969 ex.s. c 99 § 5. Formerly RCW 68.05.255.]

**68.05.150 Examination of funds—Powers, duties.** In making such examination the board:

- (1) Shall have free access to the books and records relating to the endowment care funds and prearrangement trust funds;

- (2) Shall inspect and examine the endowment care funds and prearrangement trust funds to determine their condition and the status of the investments; and

- (3) Shall verify that the cemetery authority has complied with all the laws applicable to endowment care funds and prearrangement trust funds. [2005 c 365 § 55; 1979 c 21 § 8; 1973 1st ex.s. c 68 § 14; 1953 c 290 § 44.]

**68.05.170 Order requiring reinvestment in compliance with title—Actions for preservation and protection.**

(1) Whenever the board finds, after notice and hearing, that any endowment care funds have been invested in violation of this title, it may by written order mailed to the person or body in charge of the fund require the reinvestment of the funds in conformity with this title within the period specified by it which shall be not more than six months. Such period may be extended by the board in its discretion.

(2) The board may bring actions for the preservation and protection of endowment care funds in the superior court of the county in which the cemetery is located. The court shall appoint substitute trustees and make any other order which may be necessary for the preservation, protection, and recovery of endowment care funds, whenever a cemetery authority or the trustees of its fund have:

- (a) Transferred or attempted to transfer any property to, or made any loan from, the endowment care funds for the benefit of the cemetery authority or any director, officer, agent or employee of the cemetery authority or trustee of any endowment care funds; or,

- (b) Failed to reinvest endowment care funds in accordance with a board order issued under subsection (1) of this section; or,

- (c) Invested endowment care funds in violation of this title; or,

- (d) Taken action or failed to take action to preserve and protect the endowment care funds; or,

- (e) Become financially irresponsible or transferred control of the cemetery authority to any person who, or business entity which, is financially irresponsible; or,

- (f) Is in danger of becoming insolvent or has gone into bankruptcy or receivership; or,

- (g) Taken any action in violation of Title 68 RCW or failed to take action required by Title 68 RCW or has failed to comply with lawful rules and orders of the board.

(3) Whenever the board or its representative has reason to believe that endowment care funds or prearrangement trust funds are in danger of being lost or diminished during the time required for notice and hearing, it may immediately impound or seize documents, financial instruments, or other trust fund assets, or take other actions deemed necessary under the circumstances for the preservation and protection of endowment care funds or prearrangement trust funds, including, but not limited to, immediate substitutions of trustees. [2005 c 365 § 56; 2002 c 86 § 317; 1987 c 331 § 23; 1969 ex.s. c 99 § 1; 1953 c 290 § 46.]

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**68.05.173 Revocation, suspension of certificate or license.** Upon violation of any of the provisions of this title,

the board may revoke or suspend the certificate of authority or any other license issued by the board. [2005 c 365 § 57; 1987 c 331 § 24; 1953 c 290 § 49. Formerly RCW 68.05.250.]

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

**68.05.195 Burial or scatter of cremated remains—Permit.** Any person other than persons defined in RCW 68.50.160 who buries or scatters cremated remains by land, air, or sea or performs any other disposition of cremated human remains outside of a cemetery shall have a permit issued in accordance with RCW 68.05.100 and shall be subject to that section. [2005 c 365 § 58; 1987 c 331 § 15.]

**68.05.210 Proof of applicant's compliance with laws and financial responsibility.** The board may require such proof as it deems advisable concerning the compliance by such applicant to all the laws, rules, regulations, ordinances and orders applicable to it. The board shall also require proof that the applicant and its officers and directors are financially responsible, in order that only cemeteries of permanent benefit to the community in which they are located will be established in this state. [2005 c 365 § 59; 1969 ex.s. c 99 § 2; 1953 c 290 § 48.]

**68.05.215 Certificates—Regulatory charges—Expiration.** The regulatory charges for cemetery certificates at all periods of the year are the same as provided in this chapter. All regulatory charges are payable at the time of the filing of the application and in advance of the issuance of the certificates. All certificates shall be issued for the year and shall expire at midnight, the thirty-first day of January of each year, or at whatever time during any year that ownership or control of any cemetery authority is transferred or sold. Cemetery certificates shall not be transferable. [2005 c 365 § 60; 1987 c 331 § 17; 1969 ex.s. c 99 § 3; 1953 c 290 § 50. Formerly RCW 68.05.220.]

**68.05.225 Sales licenses—Terms—Fees.** All prearrangement sales licenses issued under this chapter shall be issued for the year and shall expire at midnight, the thirty-first day of January of each year, or at whatever time during any year that ownership or control of any cemetery authority is transferred or sold.

The director, in accordance with RCW 43.24.086, shall set and the department shall collect in advance the fees required for licensing. [2005 c 365 § 61; 1987 c 331 § 18; 1979 c 21 § 29. Formerly RCW 68.46.180.]

**68.05.235 Reports—Failure to file.** (1) Each authorized cemetery authority shall, within ninety days after the close of its accounting year, file with the board an endowment care trust fund report and a prearrangement trust fund report for the preceding year. The reports shall be on such forms and shall contain such information as required by this chapter and by the board.

(2) The failure to file a report as required under subsection (1) of this section constitutes unprofessional conduct for

which the board may take disciplinary action against the prearrangement sales license of the cemetery authority. In addition, the board may take disciplinary action against any other license held by the cemetery authority. [2005 c 365 § 62; 2002 c 86 § 318; 1987 c 331 § 19; 1979 c 21 § 37. Formerly RCW 68.46.095.]

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**68.05.240 Interment, certificate of authority required—Penalty.** It shall be a misdemeanor for any cemetery authority to make any interment without a valid, unsuspended certificate of authority. Each interment shall be a separate violation. [2005 c 365 § 63; 1953 c 290 § 52.]

**68.05.245 Crematory permits or endorsements—Terms—Fees.** All crematory permits or endorsements issued under this chapter shall be issued for the year and shall expire at midnight, the thirty-first day of January of each year, or at whatever time during any year that ownership or control of any cemetery authority which operates such crematory is transferred or sold.

The director shall set and the department shall collect in advance the fees required for licensing. [2005 c 365 § 64; 1987 c 331 § 20.]

**68.05.254 Examination of endowment funds and prearrangement trust funds.** (1) The board shall examine the endowment care and prearrangement trust fund or funds of a cemetery authority:

(a) Whenever it deems necessary, but at least once every three years after the original examination except where the cemetery authority is either required by the board to, or voluntarily files an annual financial report for the fund certified by a certified public accountant or a licensed public accountant in accordance with generally accepted auditing standards;

(b) One year following the issuance of a new certificate of authority;

(c) Whenever the cemetery authority in charge of endowment care or prearrangement trust fund or funds fails after reasonable notice from the board to file the reports required by this chapter; or

(d) Whenever it is requested by verified petition signed by twenty-five lot owners alleging that the endowment care funds are not in compliance with this title, or whenever it is requested by verified petition signed by twenty-five purchasers or beneficiaries of prearrangement merchandise or services alleging that the prearrangement trust funds are not in compliance with this title, in either of which cases, the examination shall be at the expense of the petitioners.

(2) The expense of the endowment care and prearrangement trust fund examination as provided in subsection (1)(a) and (b) of this section shall be paid by the cemetery authority. Such examination shall be privately conducted in the principal office of the cemetery authority.

(3) The requirements that examinations be conducted once every three years and that they be conducted in the principal office of the cemetery authority do not apply to any

endowment care or prearrangement fund that is less than twenty-five thousand dollars. The board shall, at its discretion, decide when and where the examinations shall take place.

(4) Examination expenses incurred in conjunction with a transfer of ownership of a cemetery must be paid by the selling entity.

(5) All examination expense moneys collected by the department must be paid to the cemetery account created in RCW 68.05.285. [2005 c 365 § 65; 1987 c 331 § 21; 1979 c 21 § 7; 1973 1st ex.s. c 68 § 12; 1953 c 290 § 42. Formerly RCW 68.05.130.]

**68.05.259 Payment of examination expenses.** If any cemetery authority refuses to pay any examination expenses within thirty days of completion of the examination or refuses to pay certain examination expenses in advance as required by the department for cause, the board may take disciplinary action against any existing certificate of authority. [2005 c 365 § 66; 2002 c 86 § 319; 1987 c 331 § 22; 1973 1st ex.s. c 68 § 13; 1953 c 290 § 43. Formerly RCW 68.05.140.]

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**68.05.285 "Cemetery account."** The cemetery account is created in the custody of the state treasurer. All moneys received under this chapter must be deposited in the account. Expenditures from the account may be used only for the purposes of this chapter. Only the cemetery board may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2005 c 365 § 67; 1953 c 290 § 29. Formerly RCW 68.05.270.]

*Cemetery fund abolished and moneys transferred to cemetery account in state treasury: RCW 43.79.330 through 43.79.334.*

**68.05.290 Board members' immunity from suits.** Members of the board shall be immune from suit in any action, civil or criminal, based upon any official acts performed in good faith as members of the board. The state shall defend, indemnify, and hold the members of the board harmless from all claims or suits arising in any manner from such acts. Expenses incurred by the state under this section shall be paid from the general fund. [2005 c 365 § 68; 1979 c 21 § 12.]

**68.05.330 Violation—Penalty—Unfair practice—Other laws applicable.** Unless specified otherwise in this title, any person who violates or aids or abets any person in the violation of any of the provisions of this title shall be guilty of a class C felony punishable under chapter 9A.20 RCW. A violation shall constitute an unfair practice under chapter 19.86 RCW and shall be grounds for disciplinary action against the certificate of authority or any other license issued by the board under this chapter and chapter 18.235 RCW. Retail installment transactions under this chapter shall be governed by chapter 63.14 RCW. The provisions of this chapter shall not affect any other remedy available at law.

[2005 c 365 § 69; 2002 c 86 § 323; 1987 c 331 § 27; 1984 c 53 § 6; 1979 c 21 § 39. Formerly RCW 68.46.210.]

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**68.05.340 Board action against authorities—Cease and desist orders.** Whenever the board or its authorized representative determines that a cemetery authority is in violation of this title or that the continuation of acts or practices of the cemetery authority is likely to cause insolvency or substantial loss of assets or earnings of the cemetery authority's endowment care or prearrangement trust fund, the board, or its authorized representative, may issue a temporary order requiring the cemetery authority to cease and desist from the violation or practice. The order shall become effective upon service on the cemetery authority. The order shall remain effective unless set aside, limited, or suspended by a court in proceedings under RCW 68.05.350, until the board dismisses the charges specified in the notice, or until the effective date of a cease and desist order issued against the cemetery authority under RCW 68.05.320. Actions for unlicensed activity must be conducted under RCW 18.235.150. [2005 c 365 § 70; 2002 c 86 § 324; 1987 c 331 § 28; 1979 c 21 § 33. Formerly RCW 68.46.230.]

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

## Chapter 68.20 RCW PRIVATE CEMETERIES

### Sections

68.20.061	Specific powers—Control of property.
68.20.090	Repealed.
68.20.110	Nonprofit cemetery association—Tax exempt land.
68.20.130	Repealed.

**68.20.061 Specific powers—Control of property.** It may restrict and limit the use of all property within its cemetery, including interment rights. [2005 c 365 § 71; 1943 c 247 § 47; Rem. Supp. 1943 § 3778-47. Formerly RCW 68.20.060, part.]

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

**68.20.110 Nonprofit cemetery association—Tax exempt land.** Nonprofit cemetery associations shall be authorized to purchase or take by gift or devise, and hold land exempt from execution and from any appropriation to public purposes for the sole purpose of a cemetery not exceeding eighty acres, which shall be exempt from taxation if intended to be used exclusively for burial purposes without discrimination as to race, color, national origin or ancestry, and in nowise with a view to profit of the members of such association: PROVIDED, That when the land already held by the association is all practically used then the amount thereof may be increased by adding thereto not exceeding twenty acres at a time. [2005 c 365 § 72; 1961 c 103 § 2; 1899 c 33 § 3; RRS § 3766. Formerly RCW 68.20.110 and 68.24.200.]

**Construction—1961 c 103:** See note following RCW 49.60.040.

*Property taxes, exemptions:* RCW 84.36.020.

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

### Chapter 68.24 RCW CEMETERY PROPERTY

#### Sections

68.24.010	Right to acquire property.
68.24.080	Rule against perpetuities, etc., inapplicable.
68.24.090	Removal of dedication—Procedure.
68.24.100	Notice of hearing.
68.24.110	Sale of plots or rights of interment.
68.24.120	Plots or rights of interment indivisible.
68.24.130	Sale for resale prohibited—Penalty.
68.24.140	Commission on sales prohibited—Penalty.
68.24.150	Unlawful employment of others to dispose of human remains.
68.24.160	Liens subordinate to dedication.
68.24.170	Record of ownership and transfers.
68.24.175	Repealed.
68.24.180	Opening of roads, railroads through cemetery—Consent required.
68.24.190	Opening road through cemetery—Penalty.
68.24.220	Burying place exempt from execution.
68.24.250	Cemetery arrangements, notice requirements—Disclosure of multiple interment.

**68.24.010 Right to acquire property.** Cemetery authorities may take by purchase, donation, or devise, property consisting of lands, mausoleums, crematories, and columbariums, or other property within which the placement of human remains may be authorized by law. [2005 c 365 § 73; 1943 c 247 § 61; Rem. Supp. 1943 § 3778-61.]

**68.24.080 Rule against perpetuities, etc., inapplicable.** Dedication to cemetery purposes pursuant to \*this act is not invalid as violating any laws against perpetuities or the suspension of the power of alienation of title to or use of property, but is expressly permitted and shall be deemed to be in respect for the dead, a provision for the placement of human remains, and a duty to, and for the benefit of, the general public. [2005 c 365 § 74; 1943 c 247 § 68; Rem. Supp. 1943 § 3778-68.]

\*Reviser's note: For "this act," see note following RCW 68.04.020.

**68.24.090 Removal of dedication—Procedure.** Property dedicated to cemetery purposes shall be held and used exclusively for cemetery purposes, unless and until the dedication is removed from all or any part of it by an order and decree of the superior court of the county in which the property is situated, in a proceeding brought by the cemetery authority for that purpose and upon notice of hearing and proof satisfactory to the court:

(1) That no placements of human remains were made in or that all placements of human remains have been removed from that portion of the property from which dedication is sought to be removed.

(2) That the portion of the property from which dedication is sought to be removed is not being used for placement of human remains.

(3) That notice of the proposed removal of dedication has been given in writing to both the cemetery board and the office of archaeology and historic preservation. This notice

[2005 RCW Supp—page 748]

must be given at least sixty days before filing the proceedings in superior court. The notice of the proposed removal of dedication shall be recorded with the auditor or recording officer of the county where the cemetery is located at least sixty days before filing the proceedings in superior court. [2005 c 365 § 75; 1999 c 367 § 2; 1987 c 331 § 34; 1943 c 247 § 76; Rem. Supp. 1943 § 3778-76.]

Effective date—1987 c 331: See RCW 68.05.900.

**68.24.100 Notice of hearing.** The notice of hearing provided in RCW 68.24.090 shall be given by publication once a week for at least three consecutive weeks in a newspaper of general circulation in the county where said cemetery is located, and the posting of copies of the notice in three conspicuous places on that portion of the property from which the dedication is to be removed. The notice shall:

(1) Describe the portion of the cemetery property sought to be removed from dedication.

(2) State that all human remains have been removed or that no interments have been made in the portion of the cemetery property sought to be removed from dedication.

(3) Specify the time and place of the hearing. [2005 c 365 § 76; 1943 c 247 § 77; Rem. Supp. 1943 § 3778-77.]

**68.24.110 Sale of plots or rights of interment.** After filing the map or plat and recording the declaration of dedication, a cemetery authority may sell and convey plots or rights of interment subject to the rules in effect or thereafter adopted by the cemetery authority. Plots or rights of interment may be subject to other limitations, conditions, and restrictions as may be part of the declaration of dedication by reference, or included in the instrument of conveyance of the plot or rights of interment. [2005 c 365 § 77; 1943 c 247 § 70; Rem. Supp. 1943 § 3778-70. FORMER PART OF SECTION: 1943 c 247 § 72 now codified as RCW 68.24.115.]

**68.24.120 Plots or rights of interment indivisible.** All plots or rights of interment, the use of which has been conveyed by deed or certificate of ownership as a separate plot or right of interment, are indivisible except with the consent of the cemetery authority, or as provided by law. [2005 c 365 § 78; 1943 c 247 § 71; Rem. Supp. 1943 § 3778-71.]

**68.24.130 Sale for resale prohibited—Penalty.** It shall be unlawful for any person, firm, or corporation to sell or offer to sell a cemetery plot or right of interment upon the promise, representation, or inducement of resale at a financial profit. Each person violating this section shall be guilty of a misdemeanor and each violation shall constitute a separate offense. [2005 c 365 § 79; 1943 c 247 § 73; Rem. Supp. 1943 § 3778-73.]

**68.24.140 Commission on sales prohibited—Penalty.** It shall be unlawful for a cemetery authority to pay or offer to pay to any person, firm, or corporation, directly or indirectly, a commission or bonus or rebate or other thing of value for the sale of a plot, right of interment, or services. This shall not apply to an owner or a person regularly employed by the cemetery authority for such purpose. Each person violating this section shall be guilty of a misdemeanor and each viola-



tion shall constitute a separate offense. [2005 c 365 § 80; 1943 c 247 § 74; Rem. Supp. 1943 § 3778-74.]

**68.24.150 Unlawful employment of others to dispose of human remains.** Every person who pays, causes to be paid, or offers to pay to any other person, firm, or corporation, directly or indirectly, except as provided in RCW 68.24.140, any commission, bonus, or rebate, or other thing of value in consideration of recommending or causing the disposition of human remains in any crematory or cemetery, is guilty of a misdemeanor. Each violation shall constitute a separate offense. [2005 c 365 § 81; 1943 c 247 § 75; Rem. Supp. 1943 § 3778-75.]

**68.24.160 Liens subordinate to dedication.** All mortgages, deeds of trust, and other liens placed upon property which has been dedicated as a cemetery, or which is afterwards dedicated to cemetery purposes pursuant to this section, shall not affect or defeat the dedication. The mortgage, deed of trust, or other lien is subject and subordinate to the dedication. Any and all sales made upon foreclosure are subject and subordinate to the dedication for cemetery purposes. [2005 c 365 § 82; 1943 c 247 § 60; Rem. Supp. 1943 § 3778-60.]

**Effective date—1943 c 247:** See note following RCW 68.20.040.

**68.24.170 Record of ownership and transfers.** A record shall be kept of the ownership of all plots or rights of interment in the cemetery, which have been conveyed by the cemetery authority and of all transfers of plots and rights of interment in the cemetery. No transfer of any plot or right of interment, shall be complete or effective until recorded on the books of the cemetery authority. [2005 c 365 § 83; 1943 c 247 § 40; Rem. Supp. 1943 § 3778-40. FORMER PART OF SECTION: 1943 c 247 § 41 now codified as RCW 68.24.175.]

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

**68.24.180 Opening of roads, railroads through cemetery—Consent required.** After dedication under this title, and as long as the property remains dedicated to cemetery purposes, a railroad, street, road, alley, pipe line, pole line, or other public thoroughfare or utility shall not be laid out, through, over, or across any part of it without the consent of the cemetery authority or of not less than two-thirds of the owners of plots or rights of interment. [2005 c 365 § 84; 1994 c 273 § 20; 1984 c 7 § 369; 1959 c 217 § 1; 1947 c 69 § 1; 1943 c 247 § 69; Rem. Supp. 1947 § 3778-69.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

**68.24.190 Opening road through cemetery—Penalty.** Every person who shall make or open any road, or construct any railway, turnpike, canal, or other public easement over, through, in, or upon any property used for the burial of human remains, without authority of law or the consent of the owner, shall be guilty of a misdemeanor. [2005 c 365 § 85; 1909 c 249 § 241; RRS § 2493.]

**68.24.220 Burying place exempt from execution.**

Whenever any part of such burying ground shall have been designated and appropriated by the owners as the burying place of any particular person or family, the same shall not be liable to be taken or disposed of by any warrant, execution, tax, or debt whatever; nor shall the same be liable to be sold to satisfy the demands of creditors whenever the estate of the owner shall be insolvent. [2005 c 365 § 86; 1857 p 28 § 2; RRS § 3760.]

*Cemetery property exempt from taxation: RCW 84.36.020.*

**68.24.250 Cemetery arrangements, notice requirements—Disclosure of multiple interment.**

(1) Every cemetery shall disclose and give to the person making cemetery arrangements a written statement, contract, or other document that indicates all the items of property, merchandise, and service that the customer is purchasing, and the price of those items.

(2) Any cemetery offering single burial use of multiple interment space must include the following disclosure on the written statement, contract, or other document in conspicuous bold face type no smaller than other text provisions in the written statement, contract, or other document, to be initiated by the person making the cemetery arrangements in immediate proximity to the space reserved for the signature lines:

"DISCLOSURE OF MULTIPLE INTERMENT

State law provides that "multiple interment" means two or more noncremated human remains are buried in the ground, in outer burial enclosures or chambers, placed one on top of another, with a ground level surface the same size as a single grave or right of interment." [2005 c 359 § 2.]

**Chapter 68.28 RCW**

**MAUSOLEUMS AND COLUMBARIUMS**

Sections

- 68.28.010 Sections applicable to mausoleums, columbariums, etc.
- 68.28.020 Building converted to use for human remains placement.
- 68.28.030 Standards of construction.
- 68.28.060 Improper construction a nuisance—Penalty.

**68.28.010 Sections applicable to mausoleums, columbariums, etc.** RCW 68.28.020 through 68.28.070, 68.20.080, \*68.20.090, 68.56.040, and 68.56.050, apply to all buildings, mausoleums, and columbariums used or intended to be used for the placement of the human remains of fifteen or more persons, whether erected under or above the surface of the earth, where any portion of the building is exposed to view or, when interment is completed, is less than three feet below the surface of the earth and covered by earth. [2005 c 365 § 87; 1943 c 247 § 134; Rem. Supp. 1943 § 3778-134.]

\*Reviser's note: RCW 68.20.090 was repealed by 2005 c 365 § 161.

**68.28.020 Building converted to use for human remains placement.** A building not erected for, or which is not used as, a place for placement of human remains which is converted or altered for such use is subject to \*this act. [2005 c 365 § 88; 1943 c 247 § 135; Rem. Supp. 1943 § 3778-135.]

\*Reviser's note: For "this act," see note following RCW 68.04.020.

**68.28.030 Standards of construction.** No building or structure intended to be used for the placement of human remains shall be constructed, and a building not used for the placement of human remains shall not be altered for use or used for interment purposes, unless constructed of such material and workmanship as will ensure its durability and permanence as dictated and determined at the time by modern mausoleum construction and engineering science. [2005 c 365 § 89; 1943 c 247 § 136; Rem. Supp. 1943 § 3778-136.]

**68.28.060 Improper construction a nuisance—Penalty.** Every owner or operator of a mausoleum or columbarium erected in violation of \*this act is guilty of maintaining a public nuisance. A violation of this section is a gross misdemeanor. [2005 c 365 § 90; 2003 c 53 § 306; 1943 c 247 § 140; Rem. Supp. 1943 § 3778-140.]

\*Reviser's note: For "this act," see note following RCW 68.04.020.

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

## Chapter 68.32 RCW

### TITLE AND RIGHTS TO CEMETERY PLOTS

#### Sections

68.32.010	Presumption as to title.
68.32.020	Vested right of spouse.
68.32.030	Vested right—Termination.
68.32.040	Descent of title to plot or right of interment.
68.32.050	Affidavit as authorization.
68.32.060	Family plot—Sale.
68.32.070	Joint tenants—Vested rights.
68.32.080	Joint tenants—Survivorship.
68.32.090	Joint tenants—Identification.
68.32.100	Co-owners may designate representative.
68.32.110	Order of interment—General.
68.32.120	Repealed.
68.32.130	Waiver of right of placement.
68.32.140	Termination of vested right by waiver.
68.32.150	Limitations on vested rights.
68.32.160	Conveyance of plot or right of interment to cemetery authority, effect.

**68.32.010 Presumption as to title.** All plots or rights of interment conveyed to individuals are presumed to be the sole and separate property rights of the owner named in the instrument of conveyance. [2005 c 365 § 91; 1943 c 247 § 88; Rem. Supp. 1943 § 3778-88.]

**68.32.020 Vested right of spouse.** The spouse of an owner of any plot or right of interment containing more than one placement space has a vested right of placement in the plot and any person thereafter becoming the spouse of the owner has a vested right of placement in the plot if more than one space is unoccupied at the time the person becomes the spouse of the owner. [2005 c 365 § 92; 1943 c 247 § 89; Rem. Supp. 1943 § 3778-89.]

**68.32.030 Vested right—Termination.** No conveyance or other action of the owner without the written consent of the spouse of the owner divests the spouse of a vested right of placement. A final decree of divorce between them terminates the vested right of placement unless otherwise provided in the decree. [2005 c 365 § 93; 1943 c 247 § 90; Rem. Supp. 1943 § 3778-90.]

**68.32.040 Descent of title to plot or right of interment.** If no placement is made in a plot or right of interment, which has been transferred by deed or certificate of ownership to an individual owner, the title descends to the surviving spouse. If there is no surviving spouse, the title descends to the heirs at law of the owner. Following death of the owner, if all remains previously placed are lawfully removed and the owner did not dispose of the plot or right of interment by specific devise or by a written declaration filed and recorded in the office of the cemetery authority, the title descends to the surviving spouse. If there is no surviving spouse, the title descends to the heirs at law of the owner. [2005 c 365 § 94; 1979 c 21 § 15; 1943 c 247 § 91; Rem. Supp. 1943 § 3778-91.]

**68.32.050 Affidavit as authorization.** An affidavit by a person having knowledge of the facts setting forth the fact of the death of the owner and the name of the person or persons entitled to the use of the plot or right of interment pursuant to RCW 68.32.010 through 68.32.040, is complete authorization to the cemetery authority to permit the use of the unoccupied portions of the plot or interment right by the person entitled to the use of it. [2005 c 365 § 95; 1943 c 247 § 93; Rem. Supp. 1943 § 3778-93.]

**68.32.060 Family plot—Sale.** Whenever an interment of the human remains of a member or of a relative of a member of the family of the record owner or of the remains of the record owner is made in a plot transferred by deed or certificate of ownership to an individual owner and both the owner and the surviving spouse, if any, die with children then living without making disposition of the plot either by a specific devise, or by a written declaration filed and recorded in the office of the cemetery authority, the plot shall thereafter be held as a family plot and shall be subject to sale only upon agreement of the children of the owner living at the time of sale. [2005 c 365 § 96; 1979 c 21 § 16; 1943 c 247 § 98; Rem. Supp. 1943 § 3778-98.]

**68.32.070 Joint tenants—Vested rights.** In a conveyance to two or more persons as joint tenants each joint tenant has a vested right of placement in the plot or right of interment conveyed. [2005 c 365 § 97; 1943 c 247 § 94; Rem. Supp. 1943 § 3778-94.]

**68.32.080 Joint tenants—Survivorship.** Upon the death of a joint tenant, the title to the plot or right of interment held in joint tenancy immediately vests in the survivors, subject to the vested right of interment of the deceased joint tenant. [2005 c 365 § 98; 1943 c 247 § 95; Rem. Supp. 1943 § 3778-95.]

*Joint tenants, simultaneous death: RCW 11.05.030.*

**68.32.090 Joint tenants—Identification.** An affidavit by any person having knowledge of the fact of the death of one joint tenant and establishing the identity of the surviving joint tenants named in the deed to any plot or right of interment, when filed with the cemetery authority, is complete authorization to the cemetery authority to permit the use of the unoccupied portion of the plot or right of interment in

accordance with the directions of the surviving joint tenants. [2005 c 365 § 99; 1943 c 247 § 96; Rem. Supp. 1943 § 3778-96.]

**68.32.100 Co-owners may designate representative.**

When there are several owners of a plot or right of interment, they may designate one or more persons to represent the plot or interment right and file written notice of designation with the cemetery authority. In the absence of such notice or of written objection to its so doing, the cemetery authority is not liable to any owner for permitting the placement in the plot or right of interment upon the request or direction of any co-owner of the plot or right of interment. [2005 c 365 § 100; 1943 c 247 § 97; Rem. Supp. 1943 § 3778-97.]

**68.32.110 Order of interment—General.** In a family plot one right of interment may be used for the owner's interment and one for the owner's surviving spouse, if any. Any unoccupied spaces may then be used by the remaining parents and children of the deceased owner, if any, then to the spouse of any child of the owner, then to the heirs at law of the owner, in the order of death. [2005 c 365 § 101; 1943 c 247 § 99; Rem. Supp. 1943 § 3778-99.]

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

**68.32.130 Waiver of right of placement.** Any surviving spouse, parent, child, or heir having a right of placement in a family plot may waive such right in favor of any other relative or spouse of a relative of the deceased owner. Upon such a waiver, the remains of the person in whose favor the waiver is made may be placed in the plot. [2005 c 365 § 102; 1943 c 247 § 101; Rem. Supp. 1943 § 3778-101.]

**68.32.140 Termination of vested right by waiver.** A vested right of placement may be waived and is terminated upon the placement elsewhere of the remains of the person in whom vested. [2005 c 365 § 103; 1943 c 247 § 102; Rem. Supp. 1943 § 3778-102.]

**68.32.150 Limitations on vested rights.** No vested right of interment gives any person the right to have his or her remains interred in any interment space in which the remains of any deceased person having a prior vested right of interment have been interred. No vested right of interment gives any person the right to have the remains of more than one deceased person placed in a single space in violation of the rules and regulations of the cemetery in which the space is located. [2005 c 365 § 104; 1943 c 247 § 103; Rem. Supp. 1943 § 3778-103.]

**68.32.160 Conveyance of plot or right of interment to cemetery authority, effect.** A cemetery authority may take and hold any plot or right of interment conveyed to it by the plot owner so that it will be nontransferable. Placements shall be restricted to the persons designated in the conveyance. [2005 c 365 § 105; 1943 c 247 § 104; Rem. Supp. 1943 § 3778-104.]

**Chapter 68.36 RCW**

**ABANDONED LOTS**

Sections

68.36.010	Sale of abandoned space—Presumption of abandonment.
68.36.020	Notice—Requirements—Limitation on placing.
68.36.030	Petition for order of abandonment—Notice and hearing.
68.36.040	Service of notice.
68.36.050	Hearing—Order—Attorneys' fees.
68.36.090	Repealed.

**68.36.010 Sale of abandoned space—Presumption of abandonment.** The ownership or right to unoccupied cemetery space in this state shall, upon abandonment, be subject to forfeiture and sale by the person or entity having ownership or management of the cemetery. Unoccupied cemetery space is presumed to be abandoned if it has been neglected and in a state of disrepair for a period of five years. [2005 c 365 § 106; 1943 c 247 § 78; Rem. Supp. 1943 § 3778-78.]

**68.36.020 Notice—Requirements—Limitation on placing.** Cemetery management shall place a suitable notice on each unoccupied space, setting forth the date the notice is placed and that the unoccupied space is subject to forfeiture and sale by the cemetery. If the owner of the unoccupied space fails during the next three years following the date of the notice to maintain or care for the unoccupied space, the cemetery may reclaim the unoccupied space. However, such a notice cannot be placed on the unoccupied space in any cemetery lot until twenty years have elapsed since the last interment in any such lot of a member of the immediate family of the record owner. [2005 c 365 § 107; 1943 c 247 § 79; Rem. Supp. 1943 § 3778-79.]

**68.36.030 Petition for order of abandonment—Notice and hearing.** After a three-year period, the owner or manager of the cemetery may file a verified petition in the office of the county clerk, setting forth the facts relating to the abandonment. The petition may ask for an order of the superior court for abandonment.

At the time of filing the petition, the cemetery authority shall request a hearing of the petition. The superior court will fix the time for the hearing. Not less than sixty days before the time fixed for the hearing of the petition, notice and nature of the hearing shall be given to the owner of such unoccupied space. [2005 c 365 § 108; 1943 c 247 § 80; Rem. Supp. 1943 § 3778-80.]

**68.36.040 Service of notice.** The notice may be served personally upon the owner, or may be given by the mailing of the notice by registered mail to the owner to his or her last known address and by publishing the notice three times in a legal newspaper published in the county in which the cemetery is located. In the event that the whereabouts of the owner is unknown, then the notice may be given by publishing the notice three times in a legal newspaper as required by this section. The cemetery authority may file an affidavit in the proceeding to the effect that the owner is unknown and that the cemetery exercised diligence in attempting to locate the unknown parties. The affidavit shall be conclusive to that effect. [2005 c 365 § 109; 1943 c 247 § 81; Rem. Supp. 1943 § 3778-81.]

**68.36.050 Hearing—Order—Attorneys' fees.** An owner or claimant may appear and answer the allegations of the petition. If an owner fails to do so prior to the day fixed for hearing, a default shall be entered and it shall then be the duty of the superior court to immediately enter an order adjudging the unoccupied space to have been abandoned and subject to sale. In the event the owner or claimant shall appear and file his or her answer prior to the day fixed for the hearing, the presumption of abandonment shall no longer exist, and on the day fixed for the hearing of the petition or on any subsequent day to which the hearing of the cause is adjourned, the allegations and proof of the parties shall be presented to the court and if the court shall determine that there has been a continued failure to maintain or care for the unoccupied space for a period of three consecutive years preceding the filing of the petition, an order shall be entered accordingly adjudging the unoccupied space to have been abandoned and subject to sale at the expiration of one year by the person, association, corporation, or municipality having ownership of the cemetery containing the same. Upon any adjudication of abandonment, the court shall fix such sum as it shall deem reasonable as attorneys' fees for petitioner's attorney for rights of interment adjudged to have been abandoned in such proceedings. [2005 c 365 § 110; 1943 c 247 § 82; Rem. Supp. 1943 § 3778-82.]

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

### Chapter 68.40 RCW

#### ENDOWMENT AND NONENDOWMENT CARE

##### Sections

68.40.010	Cemetery authorities—Deposit in endowment care fund required.
68.40.025	Nonendowed sections—Identification.
68.40.060	May accept property in trust—Application of income.

**68.40.010 Cemetery authorities—Deposit in endowment care fund required.** A cemetery authority not exempt under this chapter shall deposit in an endowment care fund not less than the following amounts for plots or interment rights sold: Ten percent of the gross sales price for each grave, niche, or crypt.

In the event that a cemetery authority sells an interment right at a price that is less than its current list price, or gives away, bequeaths, or otherwise gives title to an interment right, the interment right shall be endowed at the rate at which it would normally be endowed.

The deposits shall be made not later than the twentieth day of the month following the final payment on the sale price. If a contract for interment rights is sold, pledged, or otherwise encumbered as security for a loan by the cemetery authority, the cemetery authority shall pay into the endowment care fund ten percent of the gross sales price of the interment right within twenty days of receipt of payment of the proceeds from such sale or loan.

Any cemetery hereafter established shall have deposited in an endowment care fund the sum of twenty-five thousand dollars before selling any interment right. [2005 c 365 § 111;

[2005 RCW Supp.—page 752]

1987 c 331 § 35; 1984 c 53 § 1; 1961 c 133 § 2; 1953 c 290 § 4; 1943 c 247 § 118; Rem. Supp. 1943 § 3778-118.]

**68.40.025 Nonendowed sections—Identification.** Cemeteries with nonendowed sections opened before July 1, 1987, shall only be required to endow sections opened after July 1, 1987. On the face of any contract, receipt, or deed used for sales of nonendowed interment rights shall be prominently displayed the words "Nonendowment section." All nonendowed sections shall be identified as such by posting of a legible sign containing the following phrase: "Nonendowment section." [2005 c 365 § 112; 1987 c 331 § 36.]

**68.40.060 May accept property in trust—Application of income.** The cemetery authority of an endowment care cemetery may accept any property bequeathed, granted, or given to it in trust and may apply the income from such property to any or all of the following purposes:

- (1) Improvement or embellishment of all or any part of the cemetery;
- (2) Erection, renewal, repair, or preservation of any monument, fence, building, or other structure in the cemetery;
- (3) Planting or cultivation of trees, shrubs, or plants in or around any part of the cemetery;
- (4) Special care or ornamenting of any part of any interment right, section, or building in the cemetery; and
- (5) Any purpose or use consistent with the purpose for which the cemetery was established or is maintained. [2005 c 365 § 113; 1987 c 331 § 38; 1953 c 290 § 8; 1943 c 247 § 129; Rem. Supp. 1943 § 3778-129.]

### Chapter 68.44 RCW

#### ENDOWMENT CARE FUND

##### Sections

68.44.020	Use and care of funds.
68.44.070	Use of contributions to funds.
68.44.080	Plans for care—Financing.
68.44.090	Covenant to care for cemetery.
68.44.100	Agreement by owner to care for plot.
68.44.110	Trustees of fund.
68.44.120	Directors as trustees—Secretary.
68.44.130	Bank or trust company as trustee.
68.44.140	Compensation of trustees.
68.44.150	Annual report.
68.44.160	Contributions.

**68.44.020 Use and care of funds.** Endowment care funds shall not be used for any purpose other than to provide, through income only, for the endowment care stipulated in the instrument by which the fund was established. Endowment care funds shall be kept separate and distinct from all assets of the cemetery authority. Endowment care principal shall remain inviolable and may not be reduced in any way not found within RCW 11.100.020. [2005 c 365 § 114; 1987 c 331 § 42; 1953 c 290 § 12. Prior: (i) 1943 c 247 § 106; Rem. Supp. 1943 § 3778-106. (ii) 1943 c 247 § 126; Rem. Supp. 1943 § 3778-126.]

**68.44.070 Use of contributions to funds.** Contributions to endowment care and special care funds are permitted for charitable purposes. Endowment care and such contribu-

tions are provisions for the discharge of a duty from the persons contributing to the persons interred or to be interred in the cemetery. This provision is for the benefit and protection of the public by preserving and keeping cemeteries from becoming neglected places of disgrace in the communities they serve. [2005 c 365 § 115; 1953 c 290 § 16. Prior: (i) 1943 c 247 § 130; Rem. Supp. 1943 § 3778-130. (ii) 1943 c 247 § 117; Rem. Supp. 1943 § 3778-117.]

**68.44.080 Plans for care—Financing.** The cemetery authority may adopt plans for the care, maintenance, and embellishment of its cemetery. A cemetery authority may charge and collect from all purchasers of plots or rights of interment a reasonable sum that will generate a fund, and the income from the fund will provide care, maintenance, and embellishment on an endowment basis. [2005 c 365 § 116; 1953 c 290 § 17; 1943 c 247 § 108; Rem. Supp. 1943 § 3778-108.]

**68.44.090 Covenant to care for cemetery.** Upon payment of the purchase price and the contribution for endowment care, a deed of conveyance or other instrument may include an agreement to care for the cemetery, on an endowment basis to the extent the income will permit. [2005 c 365 § 117; 1953 c 290 § 18; 1943 c 247 § 109; Rem. Supp. 1943 § 3778-109.]

**68.44.100 Agreement by owner to care for plot.** Upon the application of an owner of a plot, and upon the payment by the owner of the amount fixed as a reasonable and proportionate contribution for endowment care, a cemetery authority may enter into an agreement with the owner for the special care of his or her plot and its appurtenances. [2005 c 365 § 118; 1953 c 290 § 19; 1943 c 247 § 110; Rem. Supp. 1943 § 3778-110.]

**68.44.110 Trustees of fund.** Unless an association of lot owners has been created for the purpose of appointing trustees, the cemetery authority shall appoint a minimum of three trustees for its endowment care fund, who shall hold office subject to the direction of the cemetery authority. [2005 c 365 § 119; 1987 c 331 § 43; 1953 c 290 § 20; 1943 c 247 § 111; Rem. Supp. 1943 § 3778-111.]

**68.44.120 Directors as trustees—Secretary.** The directors of a cemetery authority may be the trustees of its endowment care fund. When the fund is in the care of the directors, the secretary of the cemetery authority shall keep a true record of all of its proceedings. [2005 c 365 § 120; 1987 c 331 § 45; 1953 c 290 § 21; 1943 c 247 § 112; Rem. Supp. 1943 § 3778-112.]

**68.44.130 Bank or trust company as trustee.** In lieu of the appointment of a board of trustees of its endowment care fund, a cemetery authority may appoint, as sole trustee of its endowment care fund, any bank or trust company qualified to engage in the trust business. The bank or trust company shall be authorized to receive and accept the endowment care fund at the time of its appointment. [2005 c 365 § 121;

1987 c 331 § 46; 1943 c 247 § 113; Rem. Supp. 1943 § 3778-113.]

**68.44.140 Compensation of trustees.** Compensation to the board of trustees or trustee for services as trustee and other compensation for administration of trust funds shall not exceed the customary fees charged by banks and trust companies for like services. Such fees may not be paid from the fund principal. [2005 c 365 § 122; 1987 c 331 § 47; 1979 c 21 § 20; 1943 c 247 § 114; Rem. Supp. 1943 § 3778-114.]

**68.44.150 Annual report.** The cemetery authority or the trustees in whose names the funds are held shall, annually, and within ninety days after the end of the calendar or fiscal year of the cemetery authority, file in its office and with the cemetery board endowment care trust fund, a report showing the actual financial condition of the funds. The report must be signed by an officer of the cemetery authority or one or more of the trustees. The report must be maintained for a period of seven years. [2005 c 365 § 123; 1987 c 331 § 48; 1979 c 21 § 21; 1943 c 247 § 115; Rem. Supp. 1943 § 3778-115.]

**68.44.160 Contributions.** A cemetery authority which has established an endowment care fund may take and hold, as a part of the fund, any property, real, personal, or mixed, bequeathed, devised, granted, given, or otherwise contributed to it for its endowment care fund. [2005 c 365 § 124; 1953 c 290 § 22; 1943 c 247 § 116; Rem. Supp. 1943 § 3778-116.]

## Chapter 68.46 RCW

### PREARRANGEMENT CONTRACTS

#### Sections

68.46.010	Definitions.
68.46.020	Prearrangement trust funds—Required.
68.46.030	Prearrangement trust funds—Deposits—Bond requirements.
68.46.040	Prearrangement trust funds—Deposit of funds.
68.46.050	Withdrawals from trust funds—Notice of department of social and health services' claim.
68.46.055	Indebtedness limitations.
68.46.060	Termination of contract by purchaser or beneficiary.
68.46.075	Inactive contracts—Funds transfer—Obligations.
68.46.080	Other use of trust funds prohibited.
68.46.090	Financial reports—Filing—Verification.
68.46.100	Prearrangement contract requirements.
68.46.110	Compliance required.
68.46.150	Repealed.
68.46.175	Unconstructed crypts, etc., as part of contract—Requirements.

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

(1) "Prearrangement contract" means a contract for purchase of cemetery merchandise or services, unconstructed crypts or niches, or undeveloped graves to be furnished at a future date for a specific consideration which is paid in advance by one or more payments in one sum or by installment payments.

(2) "Cemetery merchandise or services" and "merchandise or services" mean those services normally performed by cemetery authorities, including the sale of monuments, markers, memorials, nameplates, liners, vaults, boxes, urns, vases, interment services, or any one or more of them.

(3) "Prearrangement trust fund" means all funds required to be maintained in one or more funds for the benefit of beneficiaries by either this chapter or by the terms of a prearrangement contract, as herein defined.

(4) "Board" means the cemetery board established under chapter 68.05 RCW or its authorized representative.

(5) "Undeveloped grave" means any grave in an area which a cemetery authority has not landscaped, groomed, or developed to the extent customary in the cemetery industry. [2005 c 365 § 125; 1979 c 21 § 22; 1975 1st ex.s. c 55 § 1; 1973 1st ex.s. c 68 § 1.]

#### **68.46.020 Prearrangement trust funds—Required.**

Any cemetery authority selling by prearrangement contracts any merchandise or services shall establish and maintain one or more prearrangement trust funds for the benefit of beneficiaries of prearrangement contracts. [2005 c 365 § 126; 1973 1st ex.s. c 68 § 2.]

#### **68.46.030 Prearrangement trust funds—Deposits—**

**Bond requirements.** (1) For each prearrangement contract, a cemetery authority shall deposit the greater of the following amounts in its prearrangement trust fund:

(a) For merchandise:

- (i) Fifty percent of the contract price; or
- (ii) The wholesale cost of the item.

(b) For services:

- (i) Fifty percent of the contract price; or
- (ii) The direct cost of providing the service.

(2) Any cemetery authority which does not file and maintain with the board a bond as provided in subsection (4) of this section shall deposit in its prearrangement trust fund an amount as determined under subsection (1) of this section, excluding sales tax and endowment care if such charge is made.

(3) Any cemetery authority which files and maintains with the board a bond as provided in subsection (4) of this section may retain the nontrustable portion of the contract before depositing the balance of payments into its prearrangement trust fund, as determined under subsection (1) of this section, excluding sales tax and endowment care, if such charge is made.

(4) Each cemetery authority electing to make payments to its prearrangement trust fund pursuant to subsection (3) of this section shall file and maintain with the board a bond, issued by a surety company authorized to do business in the state, in the amount by which the cemetery authority's contingent liability for refunds pursuant to RCW 68.46.060 exceeds the amount deposited in its prearrangement trust fund. The bond shall be conditioned that it is for the use and benefit of any person requesting a refund pursuant to RCW 68.46.060 if the cemetery authority does not promptly pay to the person the refund due pursuant to RCW 68.46.060. In addition to any other remedy, every person not promptly receiving the refund due pursuant to RCW 68.46.060 may sue the surety for the refund. The liability of the surety shall not exceed the amount of the bond. Termination or cancellation shall not be effective unless notice is delivered by the surety to the board at least thirty days prior to the date of termination or cancellation. The board shall immediately notify the cemetery

authority affected by the termination or cancellation by certified mail, return receipt requested. The cemetery authority shall thereupon obtain another bond or make such other arrangement as may be satisfactory to the board to ensure its ability to make refunds pursuant to RCW 68.46.060.

(5) Deposits to the prearrangement trust fund shall be made not later than the twentieth day of each month following receipt of each payment required to be deposited. If a prearrangement contract is sold, pledged, or otherwise encumbered as security for a loan by the cemetery authority, the cemetery authority shall pay into the prearrangement trust fund fifty percent of the total sale price of the prearrangement contract within twenty days of receipt of payment of the proceeds from the sale or loan.

(6) Any failure to fund a prearrangement contract as required by this section shall be grounds for disciplinary action against the cemetery authority and the cemetery authority's prearrangement sales license. [2005 c 365 § 127; 1984 c 53 § 3; 1979 c 21 § 24; 1973 1st ex.s. c 68 § 3.]

#### **68.46.040 Prearrangement trust funds—Deposit of**

**funds.** All prearrangement trust funds shall be deposited in a public depository as defined by RCW 39.58.010, in a state or federally chartered credit union, or in instruments issued or insured by any agency of the federal government. Such accounts shall be designated as the "prearrangement trust fund" by name and the particular cemetery authority for the benefit of the beneficiaries named in any prearrangement contract. [2005 c 365 § 128; 1987 c 331 § 50; 1973 1st ex.s. c 68 § 4.]

#### **68.46.050 Withdrawals from trust funds—Notice of**

**department of social and health services' claim.** (1) A depository of prearrangement funds shall permit a cemetery authority to withdraw all funds deposited under any specific prearrangement contract plus interest accrued thereon, under the following circumstances and conditions:

(a) If the cemetery authority files a verified statement with the depository that the prearrangement merchandise and services covered by a contract have been furnished and delivered; or

(b) If the cemetery authority files a verified statement that a specific prearrangement contract has been canceled in accordance with its terms.

(2) The department of social and health services shall notify the cemetery authority maintaining a prearrangement trust fund regulated by this chapter that the department has a claim on the estate of a beneficiary for long-term care services. Such notice shall be renewed at least every three years. The cemetery authority, upon becoming aware of the death of a beneficiary, shall give notice to the department of social and health services, office of financial recovery, who shall file any claim there may be within thirty days of the notice. [2005 c 365 § 129; 1995 1st sp.s. c 18 § 65; 1973 1st ex.s. c 68 § 5.]

**Conflict with federal requirements—Severability—Effective date—**1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

**68.46.055 Indebtedness limitations.** No cemetery authority may enter into a retail contract for the purchase of

debentures, shares, scrip, bonds, notes, or any instrument or evidence of indebtedness that requires the cemetery authority to furnish cemetery merchandise, services, or interment rights to the holder at a future date. This section does not include retail installment sales transactions governed by chapter 63.14 RCW. [2005 c 365 § 130; 1984 c 53 § 8.]

**68.46.060 Termination of contract by purchaser or beneficiary.** Any purchaser or beneficiary may, upon written demand of any cemetery authority, demand that any prearrangement contract with such cemetery authority be terminated. In such event, the cemetery authority shall, within thirty days, refund to the purchaser or beneficiary fifty percent of the moneys received less the contractual price of any merchandise delivered or services performed before the termination plus interest earned. In any case, where, under a prearrangement contract there is more than one beneficiary, no written demand as provided in this section shall be honored by any cemetery authority unless the written demand provided for in this section shall bear the signatures of all of such beneficiaries. [2005 c 365 § 132; 1987 c 331 § 51; 1984 c 53 § 4; 1979 c 21 § 25; 1973 1st ex.s. c 68 § 6.]

**68.46.075 Inactive contracts—Funds transfer—Obligations.** In the event the beneficiary of a prearrangement contract make[s] no claim within fifty years of the date of the contract for the merchandise and services provided in the prearrangement contract, the funds deposited in the prearrangement trust for that contract, plus interest, shall be transferred to the cemetery authority's endowment fund, to be used for the purposes for which the endowment fund was established. However, the cemetery authority shall remain obligated for merchandise and services, unconstructed crypts, niches, and undeveloped property under the terms of the prearrangement contract. Claims may be made for merchandise and services, unconstructed crypts, niches, and undeveloped property on a prearrangement contract after the funds have been transferred to the endowment fund. These claims shall be paid for from the endowment fund income on a contract by contract basis. [2005 c 365 § 133; 1979 c 21 § 27.]

**68.46.080 Other use of trust funds prohibited.** Prearrangement trust funds shall not be used in any way for the benefit of the cemetery authority or any director, officer, agent, or employee of any cemetery authority, including, but not limited to any encumbrance, pledge, or other utilization or prearrangement trust funds as collateral or other security. [2005 c 365 § 134; 1973 1st ex.s. c 68 § 8.]

**68.46.090 Financial reports—Filing—Verification.** Any cemetery authority selling prearrangement merchandise or other prearrangement services shall file in its office and with the cemetery board a written report upon forms prepared by the cemetery board which shall state the amount of the principle of the prearrangement trust fund, the depository of such fund, and cash on hand which is or may be due to the fund as well as other information the board may deem appropriate. All information appearing on such written reports shall be revised at least annually. These reports shall be verified by the president, or the vice-president, and one other

officer of the cemetery authority, the accountant or auditor who prepared the report, and, if required by the board for good cause, a certified public accountant in accordance with generally accepted auditing standards. [2005 c 365 § 135; 1983 c 190 § 1; 1977 ex.s. c 351 § 5; 1973 1st ex.s. c 68 § 9.]

**Severability—1977 ex.s. c 351:** See note following RCW 68.05.040.

**68.46.100 Prearrangement contract requirements.** Every prearrangement contract shall contain language which informs the purchaser of the prearrangement trust fund and the amount to be deposited in the prearrangement trust fund. The amount deposited to the prearrangement trust fund must meet the requirements of RCW 68.46.030.

Every prearrangement contract shall contain language prominently featured on the face of the contract disclosing to the purchaser what items will be delivered before need, either stored or installed, and thus not subject to funding or refund.

Every prearrangement contract for the sale of unconstructed crypts, niches, or undeveloped property shall contain language which informs the purchaser that sales of unconstructed or undeveloped property are subject to the provisions of RCW 68.46.030. [2005 c 365 § 136; 1987 c 331 § 53; 1984 c 53 § 5; 1973 1st ex.s. c 68 § 10.]

**68.46.110 Compliance required.** No cemetery authority shall sell, offer to sell, or authorize the sale of cemetery merchandise or services or accept funds in payment of any prearrangement contract unless such acts are performed in compliance with this title and under the authority of a valid and unsuspended certificate of authority to operate a cemetery in this state. [2005 c 365 § 137; 1973 1st ex.s. c 68 § 11.]

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

**68.46.175 Unconstructed crypts, etc., as part of contract—Requirements.** (1) A cemetery authority that enters into prearrangement contracts for the sale of unconstructed crypts, niches, or undeveloped property, or that conveys undeveloped property by gift, shall maintain an adequate inventory of constructed crypts or niches and developed property. The inventory shall be a minimum of ten percent of the unconstructed or undeveloped property sales. The inventory shall be equal or better in quality than the unconstructed crypts or niches, or undeveloped property if they were constructed or developed.

(2) If the death of a purchaser or owner of an unconstructed crypt, niche, or undeveloped property occurs before the property is constructed or developed, the cemetery authority shall provide a constructed crypt, niche, or developed property of equal or better quality without additional cost or charge.

(3) If two or more unconstructed crypts, niches, or undeveloped properties are conveyed with the intention that the crypts, niches, or properties shall be contiguous to each other or maintained together as a group and the death of any one purchaser or owner in such group occurs before the unconstructed crypts, niches, or undeveloped property is developed, the cemetery authority shall provide additional constructed crypts, niches, or developed property of equal or bet-

ter quality, contiguous to each other or together as a group, as originally intended, to other purchasers or owners in the group without additional cost or charge.

(4) The representative of the deceased purchaser may agree to the placement of the decedent in a temporary crypt, niche, or grave until the construction is completed and the decedent is placed in the new crypt, niche, or grave.

(5) Prearrangement sales of unconstructed crypts, niches, or undeveloped property must meet the requirements of RCW 68.46.030. [2005 c 365 § 131.]

### Chapter 68.50 RCW HUMAN REMAINS

#### Sections

68.50.110	Burial or cremating.
68.50.130	Unlawful disposal of remains.
68.50.135	Repealed.
68.50.140	Unlawful disturbance, removal, or sale of human remains—Penalty.
68.50.145	Repealed.
68.50.150	Repealed.
68.50.160	Right to control disposition of remains—Liability of funeral establishment or cemetery authority—Liability for cost.
68.50.165	Repealed.
68.50.170	Effect of authorization.
68.50.180	Repealed.
68.50.185	Individual cremation—Exception—Penalty.
68.50.190	Repealed.
68.50.200	Permission to remove human remains.
68.50.220	Exceptions.
68.50.230	Undisposed human remains—Rules.
68.50.240	Record of human remains to be kept.
68.50.250	Repealed.
68.50.270	Possession of cremated human remains.

**68.50.110 Burial or cremating.** Except in cases of dissection provided for in RCW 68.50.100, and where human remains shall rightfully be carried through or removed from the state for the purpose of burial elsewhere, human remains lying within this state, and the remains of any dissected body, after dissection, shall be decently buried, or cremated within a reasonable time after death. [2005 c 365 § 138; 1987 c 331 § 60; 1909 c 249 § 238; RRS § 2490. Formerly RCW 68.08.110.]

**68.50.130 Unlawful disposal of remains.** Every person who performs a disposition of any human remains, except as otherwise provided by law, in any place, except in a cemetery or a building dedicated exclusively for religious purposes, is guilty of a misdemeanor. Disposition of cremated human remains may also occur on private property, with the consent of the property owner; and on public or government lands or waters with the approval of the government agency that has either jurisdiction or control, or both, of the lands or waters. [2005 c 365 § 139; 1943 c 247 § 28; Rem. Supp. 1943 § 3778-28. Formerly RCW 68.08.130.]

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

**68.50.140 Unlawful disturbance, removal, or sale of human remains—Penalty.** (1) Every person who shall remove human remains, or any part thereof, from a grave, vault, or other place where the same has been buried or

deposited awaiting burial or cremation, without authority of law, with intent to sell the same, or for the purpose of securing a reward for its return, or for dissection, or from malice or wantonness, is guilty of a class C felony.

(2) Every person who shall purchase or receive, except for burial or cremation, human remains or any part thereof, knowing that the same has been removed contrary to the foregoing provisions, is guilty of a class C felony.

(3) Every person who shall open a grave or other place of interment, temporary or otherwise, or a building where human remains are placed, with intent to sell or remove the casket, urn, or of any part thereof, or anything attached thereto, or any vestment, or other article interred, or intended to be interred with the human remains, is guilty of a class C felony.

(4) Every person who removes, disinters, or mutilates human remains from a place of interment, without authority of law, is guilty of a class C felony. [2005 c 365 § 140; 2003 c 53 § 308; 1992 c 7 § 44; 1909 c 249 § 239; RRS § 2491. FORMER PART OF SECTION: 1943 c 247 § 25 now codified as RCW 68.50.145. Formerly RCW 68.08.140.]

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

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

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

**68.50.160 Right to control disposition of remains—Liability of funeral establishment or cemetery authority—Liability for cost.** (1) A person has the right to control the disposition of his or her own remains without the predeath or postdeath consent of another person. A valid written document expressing the decedent's wishes regarding the place or method of disposition of his or her remains, signed by the decedent in the presence of a witness, is sufficient legal authorization for the procedures to be accomplished.

(2) Prearrangements that are prepaid, or filed with a licensed funeral establishment or cemetery authority, under RCW 18.39.280 through 18.39.345 and chapter 68.46 RCW are not subject to cancellation or substantial revision by survivors. Absent actual knowledge of contrary legal authorization under this section, a licensed funeral establishment or cemetery authority shall not be held criminally nor civilly liable for acting upon such prearrangements.

(3) If the decedent has not made a prearrangement as set forth in subsection (2) of this section or the costs of executing the decedent's wishes regarding the disposition of the decedent's remains exceeds a reasonable amount or directions have not been given by the decedent, the right to control the disposition of the remains of a deceased person vests in, and the duty of disposition and the liability for the reasonable cost of preparation, care, and disposition of such remains devolves upon the following in the order named:

- The surviving spouse.
- The surviving adult children of the decedent.
- The surviving parents of the decedent.
- The surviving siblings of the decedent.



(e) A person acting as a representative of the decedent under the signed authorization of the decedent.

(4) If a cemetery authority as defined in RCW 68.04.190 or a funeral establishment licensed under chapter 18.39 RCW has made a good faith effort to locate the person cited in subsection (3)(a) through (e) of this section or the legal representative of the decedent's estate, the cemetery authority or funeral establishment shall have the right to rely on an authority to bury or cremate the human remains, executed by the most responsible party available, and the cemetery authority or funeral establishment may not be held criminally or civilly liable for burying or cremating the human remains. In the event any government agency provides the funds for the disposition of any human remains and the government agency elects to provide funds for cremation only, the cemetery authority or funeral establishment may not be held criminally or civilly liable for cremating the human remains.

(5) The liability for the reasonable cost of preparation, care, and disposition devolves jointly and severally upon all kin of the decedent in the same degree of kindred, in the order listed in subsection (3) of this section, and upon the estate of the decedent. [2005 c 365 § 141; 1993 c 297 § 1; 1992 c 108 § 1; 1943 c 247 § 29; Rem. Supp. 1943 § 3778-29. Formerly RCW 68.08.160.]

*Disposal of remains of indigent persons: RCW 36.39.030.*

*Order of payment of debts of estate: RCW 11.76.110.*

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

**68.50.170 Effect of authorization.** Any person signing any authorization for the interment or cremation of any human remains warrants the truthfulness of any fact set forth in the authorization, the identity of the person whose human remains are sought to be interred or cremated, and his or her authority to order interments or cremation. That person is personally liable for all damage occasioned by or resulting from breach of such warranty. [2005 c 365 § 142; 1943 c 247 § 30; Rem. Supp. 1943 § 3778-30. Formerly RCW 68.08.170.]

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

**68.50.185 Individual cremation—Exception—Penalty.** (1) A person authorized to dispose of human remains shall not cremate or cause to be cremated more than one human remains at a time unless written permission, after full and adequate disclosure regarding the manner of cremation, has been received from the person or persons under RCW 68.50.160 having the authority to order cremation. This restriction shall not apply when equipment, techniques, or devices are employed that keep human remains separate and distinct before, during, and after the cremation process.

(2) Violation of this section is a gross misdemeanor. [2005 c 365 § 143; 1987 c 331 § 61; 1985 c 402 § 3. Formerly RCW 68.08.185.]

**Legislative finding—1985 c 402:** See note following RCW 68.50.165.

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

**68.50.200 Permission to remove human remains.** Human remains may be removed from a plot in a cemetery with the consent of the cemetery authority and the written consent of one of the following in the order named:

- (1) The surviving spouse.
- (2) The surviving children of the decedent.
- (3) The surviving parents of the decedent.
- (4) The surviving brothers or sisters of the decedent.

If the required consent cannot be obtained, permission by the superior court of the county where the cemetery is situated is sufficient: PROVIDED, That the permission shall not violate the terms of a written contract or the rules and regulations of the cemetery authority. [2005 c 365 § 144; 1943 c 247 § 33; Rem. Supp. 1943 § 3778-33. Formerly RCW 68.08.200.]

**68.50.220 Exceptions.** RCW 68.50.200 and 68.50.210 do not apply to or prohibit the removal of any human remains from one plot to another in the same cemetery or the removal of [human] remains by a cemetery authority from a plot for which the purchase price is past due and unpaid, to some other suitable place; nor do they apply to the disinterment of human remains upon order of court or coroner. However, a cemetery authority shall provide notification to the person cited in RCW 68.50.200 before moving human remains. [2005 c 365 § 145; 1987 c 331 § 62; 1943 c 247 § 35; Rem. Supp. 1943 § 3778-35. Formerly RCW 68.08.220.]

**68.50.230 Undisposed human remains—Rules.** Whenever any human remains shall have been in the lawful possession of any person, firm, corporation, or association for a period of ninety days or more, and the relatives of, or persons interested in, the deceased person shall fail, neglect, or refuse to direct the disposition, the human remains may be disposed of by the person, firm, corporation, or association having such lawful possession thereof, under and in accordance with rules adopted by the cemetery board and the board of funeral directors and embalmers, not inconsistent with any statute of the state of Washington or rule adopted by the state board of health. [2005 c 365 § 146; 1985 c 402 § 9; 1979 c 158 § 218; 1937 c 108 § 14; RRS § 8323-3. Formerly RCW 68.08.230.]

**Legislative finding—1985 c 402:** See note following RCW 68.50.165.

**68.50.240 Record of human remains to be kept.** The person in charge of any premises on which interments or cremations are made shall keep a record of all human remains interred or cremated on the premises under his or her charge, in each case stating the name of each deceased person, date of cremation or interment, and name and address of the funeral establishment. [2005 c 365 § 147; 1943 c 247 § 39; Rem. Supp. 1943 § 3778-39. Formerly RCW 68.08.240.]

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

**68.50.270 Possession of cremated human remains.**

The person or persons determined under RCW 68.50.160 as having authority to order cremation shall be entitled to possession of the cremated human remains without further intervention by the state or its political subdivisions. [2005 c 365 § 148; 1987 c 331 § 63; 1977 c 47 § 4. Formerly RCW 68.08.245.]

**Chapter 68.56 RCW****PENAL AND MISCELLANEOUS PROVISIONS**

## Sections

68.56.040 Nonconforming cemetery a nuisance—Penalty.

**68.56.040 Nonconforming cemetery a nuisance—**

**Penalty.** Every person, firm, or corporation who is the owner or operator of a cemetery established in violation of \*this act is guilty of maintaining a public nuisance, which is a gross misdemeanor. [2005 c 365 § 149; 2003 c 53 § 313; 1943 c 247 § 145; Rem. Supp. 1943 § 3778-145. Formerly RCW 68.48.040.]

\*Reviser's note: For "this act," see note following RCW 68.04.020.

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

*Section applies to certain mausoleums, columbariums, etc.: RCW 68.28.010.*

**Chapter 68.60 RCW****ABANDONED AND HISTORIC CEMETERIES AND HISTORIC GRAVES**

## Sections

68.60.030 Preservation and maintenance corporations—Authorization of other corporations to restore, maintain, and protect abandoned cemeteries.

**68.60.030 Preservation and maintenance corporations—Authorization of other corporations to restore, maintain, and protect abandoned cemeteries.** (1)(a) The archaeological and historical division of the department of community, trade, and economic development may grant by nontransferable certificate authority to maintain and protect an abandoned cemetery upon application made by a preservation organization which has been incorporated for the purpose of restoring, maintaining, and protecting an abandoned cemetery. Such authority shall be limited to the care, maintenance, restoration, protection, and historical preservation of the abandoned cemetery, and shall not include authority to make burials. In order to activate a historical cemetery for burials, an applicant must apply for a certificate of authority to operate a cemetery from the state cemetery board.

(b) Those preservation and maintenance corporations that are granted authority to maintain and protect an abandoned cemetery shall be entitled to hold and possess burial records, maps, and other historical documents as may exist. Maintenance and preservation corporations that are granted authority to maintain and protect an abandoned cemetery shall not be liable to those claiming burial rights, ancestral ownership, or to any other person or organization alleging to have control by any form of conveyance not previously recorded at the county auditor's office within the county in

[2005 RCW Supp—page 758]

which the abandoned cemetery exists. Such organizations shall not be liable for any reasonable alterations made during restoration work on memorials, roadways, walkways, features, plantings, or any other detail of the abandoned cemetery.

(c) Should the maintenance and preservation corporation be dissolved, the archaeological and historical division of the department of community, trade, and economic development shall revoke the certificate of authority.

(d) Maintenance and preservation corporations that are granted authority to maintain and protect an abandoned cemetery may establish care funds.

(2) Except as provided in subsection (1) of this section, the department of community, trade, and economic development may, in its sole discretion, authorize any Washington nonprofit corporation that is not expressly incorporated for the purpose of restoring, maintaining, and protecting an abandoned cemetery, to restore, maintain, and protect one or more abandoned cemeteries. The authorization may include the right of access to any burial records, maps, and other historical documents, but shall not include the right to be the permanent custodian of original records, maps, or documents. This authorization shall be granted by a nontransferable certificate of authority. Any nonprofit corporation authorized and acting under this subsection is immune from liability to the same extent as if it were a preservation organization holding a certificate of authority under subsection (1) of this section.

(3) The department of community, trade, and economic development shall establish standards and guidelines for granting certificates of authority under subsections (1) and (2) of this section to assure that any restoration, maintenance, and protection activities authorized under this subsection are conducted and supervised in an appropriate manner. [2005 c 365 § 150; 1995 c 399 § 168; 1993 c 67 § 1; 1990 c 92 § 3.]

**Title 69****FOOD, DRUGS, COSMETICS, AND POISONS****Chapters**

- 69.06** Food and beverage establishment workers' permits.
- 69.41** Legend drugs—Prescription drugs.
- 69.43** Precursor drugs.
- 69.45** Drug samples.
- 69.50** Uniform controlled substances act.

**Chapter 69.06 RCW****FOOD AND BEVERAGE ESTABLISHMENT WORKERS' PERMITS**

## Sections

69.06.080 Chapter not applicable to persons who meet requirements of RCW 70.128.250.

**69.06.080 Chapter not applicable to persons who meet requirements of RCW 70.128.250.** Except for the food safety training standards adopted by the state board of health under RCW 69.06.010, the provisions of this chapter do not apply to persons who work in adult family homes and

successfully complete training and continuing education as required by RCW 70.128.250. [2005 c 505 § 7.]

### Chapter 69.41 RCW

#### LEGEND DRUGS—PRESCRIPTION DRUGS

##### Sections

- 69.41.044 Confidentiality. (Effective July 1, 2006.)  
69.41.280 Confidentiality. (Effective July 1, 2006.)

#### 69.41.044 Confidentiality. (Effective July 1, 2006.)

All records, reports, and information obtained by the board or its authorized representatives from or on behalf of a pharmaceutical manufacturer, representative of a manufacturer, wholesaler, pharmacy, or practitioner who purchases, dispenses, or distributes legend drugs under this chapter are confidential and exempt from public inspection and copying under chapter 42.56 RCW. Nothing in this section restricts the investigations or the proceedings of the board so long as the board and its authorized representatives comply with the provisions of chapter 42.56 RCW. [2005 c 274 § 328; 1989 1st ex.s. c 9 § 406.]

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

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

#### 69.41.280 Confidentiality. (Effective July 1, 2006.)

All records, reports, and information obtained by the board or its authorized representatives from or on behalf of a pharmaceutical manufacturer, representative of a manufacturer, wholesaler, pharmacy, or practitioner who purchases, dispenses, or distributes legend drugs under this chapter are confidential and exempt from public inspection and copying under chapter 42.56 RCW. Nothing in this section restricts the investigations or the proceedings of the board so long as the board and its authorized representatives comply with the provisions of chapter 42.56 RCW. [2005 c 274 § 329; 1989 c 352 § 6.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

### Chapter 69.43 RCW

#### PRECURSOR DRUGS

##### Sections

- 69.43.105 Ephedrine, pseudoephedrine, phenylpropanolamine—Sales restrictions—Exceptions—Penalty. (Effective October 1, 2005.)  
69.43.110 Ephedrine, pseudoephedrine, phenylpropanolamine—Sales restrictions—Penalty. (Effective January 1, 2006.)  
69.43.170 Ephedrine, pseudoephedrine, phenylpropanolamine—Pilot project to record retail transactions—Penalty.  
69.43.180 Expansion of log requirements—Petition by law enforcement. (Effective January 1, 2006.)  
69.43.190 Products found at methamphetamine sites—Report. (Effective January 1, 2006.)

**69.43.105 Ephedrine, pseudoephedrine, phenylpropanolamine—Sales restrictions—Exceptions—Penalty. (Effective October 1, 2005.)** (1) For purposes of this section, "traditional Chinese herbal practitioner" means a person who is certified as a diplomate in Chinese herbology from the

national certification commission for acupuncture and oriental medicine or who has received a certificate in Chinese herbology from a school accredited by the accreditation council on acupuncture and oriental medicine.

(2) A pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW, or an employee thereof, a practitioner as defined in RCW 18.64.011, or a traditional Chinese herbal practitioner may not knowingly sell, transfer, or otherwise furnish to any person a product at retail that he or she knows to contain any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, without first obtaining photo identification of the person that shows the date of birth of the person.

(3) A person buying or receiving a product at retail containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, from a pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW, or an employee thereof, a practitioner as defined in RCW 18.64.011, or a traditional Chinese herbal practitioner must first produce photo identification of the person that shows the date of birth of the person.

(4) Any product containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, shall be kept in a central location that is not accessible by customers without assistance of an employee of the merchant.

(5) No pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW, or an employee thereof, a practitioner as defined in RCW 18.64.011, or a traditional Chinese herbal practitioner may sell any product containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, to a person that is not at least eighteen years old.

(6) The board of pharmacy, by rule, may exempt products containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, in combination with another active ingredient from the requirements of this section if they are found not to be used in the illegal manufacture of methamphetamine or other controlled dangerous substances. A manufacturer of a drug product may apply for removal of the product from the requirements of this section if the product is determined by the board to have been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine. The burden of proof for exemption is upon the person requesting the exemption. The petitioner shall provide the board with evidence that the product has been formulated in such a way as to serve as an effective general deterrent to the conversion of pseudoephedrine into methamphetamine. The evidence must include the furnishing of a valid scientific study, conducted by an independent, professional laboratory and evincing professional quality chemical analysis. Factors to be considered in whether a product should be excluded from this section include but are not limited to:

(a) Ease with which the product can be converted to methamphetamine;

(b) Ease with which ephedrine, pseudoephedrine, or phenylpropanolamine is extracted from the substance and whether it forms an emulsion, salt, or other form;

(c) Whether the product contains a "molecular lock" that renders it incapable of being converted into methamphetamine;

(d) Presence of other ingredients that render the product less likely to be used in the manufacture of methamphetamine; and

(e) Any pertinent data that can be used to determine the risk of the substance being used in the illegal manufacture of methamphetamine or any other controlled substance.

(7) Nothing in this section applies:

(a) To any product containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers that is not the only active ingredient and that is in liquid, liquid capsule, or gel capsule form;

(b) To the sale of a product that may only be sold upon the presentation of a prescription;

(c) To the sale of a product by a traditional Chinese herbal practitioner to a patient; or

(d) When the details of the transaction are recorded in a pharmacy profile individually identified with the recipient and maintained by a licensed pharmacy.

(8)(a) No pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW, a practitioner as defined in RCW 18.64.011, or a traditional Chinese herbal practitioner may retaliate against any employee that has made a good faith attempt to comply with the requirements of this section by requesting that a customer present photo identification, making a reasonable effort to determine the customer's age.

(b) No pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW, a practitioner as defined in RCW 18.64.011, or a traditional Chinese herbal practitioner is subject to prosecution under subsection (9) of this section if they made a good faith attempt to comply with the requirements of this section by requesting that a customer present photo identification, making a reasonable effort to determine the customer's age.

(9) A violation of this section is a gross misdemeanor. [2005 c 388 § 2.]

**Finding—2005 c 388:** "Restricting access to certain precursor drugs used to manufacture methamphetamine to ensure that they are only sold at retail to individuals who will use them for legitimate purposes upon production of proper identification is an essential step to controlling the manufacture of methamphetamine." [2005 c 388 § 1.]

**Effective dates—2005 c 388:** "(1) Section 2 of this act takes effect October 1, 2005.

(2) Sections 1, 3 through 7, 9, and 10 of this act take effect January 1, 2006.

(3) Section 8 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 11, 2005]." [2005 c 388 § 11.]

**Severability—2005 c 388:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 388 § 10.]

**69.43.110 Ephedrine, pseudoephedrine, phenylpropanolamine—Sales restrictions—Penalty. (Effective Jan-**

**[2005 RCW Supp—page 760]**

**uary 1, 2006.)** (1) It is unlawful for a pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW, or an employee thereof, or a practitioner as defined in RCW 18.64.011, knowingly to sell, transfer, or to otherwise furnish, in a single transaction:

(a) More than two packages of one or more products that he or she knows to contain ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers; or

(b) A single package of any product that he or she knows to contain more than three grams of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of these substances.

(2) It is unlawful for a person who is not a manufacturer, wholesaler, pharmacy, practitioner, shopkeeper, or itinerant vendor licensed by or registered with the department of health under chapter 18.64 RCW to purchase or acquire, in any twenty-four hour period, more than the quantities of the substances specified in subsection (1) of this section.

(3) It is unlawful for any person to sell or distribute any of the substances specified in subsection (1) of this section unless the person is licensed by or registered with the department of health under chapter 18.64 RCW, or is a practitioner as defined in RCW 18.64.011.

(4) A violation of this section is a gross misdemeanor. [2005 c 388 § 4; 2004 c 52 § 5; 2001 c 96 § 9.]

**Finding—Effective dates—Severability—2005 c 388:** See notes following RCW 69.43.105.

**Finding—Severability—Effective date—2004 c 52:** See notes following RCW 18.64.044.

**Intent—Severability—2001 c 96:** See notes following RCW 69.43.010.

**69.43.170 Ephedrine, pseudoephedrine, phenylpropanolamine—Pilot project to record retail transactions—**

**Penalty.** (1) The state board of pharmacy, using procedures under chapter 34.05 RCW, shall implement and conduct a statewide pilot project requiring the collection and maintenance of written or electronic logs or other alternative means of recording retail transactions involving ephedrine, pseudoephedrine, or phenylpropanolamine. The rules implementing the pilot project shall be in place by January 1, 2006.

(2) The pilot project shall be designed to address:

(a) Whether a log or other means of recording a transaction is an effective law enforcement tool;

(b) What information is needed to make logs or other means of recording a transaction useful as a deterrent to criminal activity;

(c) The most effective method of obtaining, recording, and storing log or other electronic data in the least intrusive manner available;

(d) How long the information recorded in the logs or other means of recording a transaction should be maintained; and

(e) How logs or other means of recording a transaction can be most effectively transmitted to law enforcement and the state board of pharmacy.

(3) The board shall convene a work group to evaluate the data collected during the pilot project. The work group shall consist of:

(a) One representative from law enforcement appointed by the Washington association of sheriffs and police chiefs;

(b) One representative from the Washington state patrol;

(c) One representative appointed by the Washington association of prosecuting attorneys;

(d) One representative appointed by the office of the attorney general;

(e) One representative appointed by the state board of pharmacy; and

(f) Two representatives from the retail industry.

(4) The state board of pharmacy shall begin data collection for the pilot project no later than January 1, 2006, and report to the legislature no later than November 1, 2007, regarding the findings of the work group along with any recommendations or proposed legislation.

(5) Any orders and rules adopted under this section not in conflict with state law continue in effect until modified, superseded, or repealed. The board may implement rule changes based upon the results of the pilot project and recommendations of the work group.

(6)(a) The records required by this section are for the confidential use of the pharmacy, shopkeeper, or itinerant vendor, except that:

(i) Every pharmacy, shopkeeper, or itinerant vendor shall produce the records in court whenever lawfully required to do so;

(ii) The records shall be open for inspection by the board of pharmacy; and

(iii) The records shall be open for inspection by any general or limited authority Washington peace officer to enforce the provisions of this chapter.

(b) A person violating this subsection is guilty of a misdemeanor. [2005 c 388 § 8.]

**Finding—Effective dates—Severability—2005 c 388:** See notes following RCW 69.43.105.

**69.43.180 Expansion of log requirements—Petition by law enforcement. (Effective January 1, 2006.)** (1) The Washington association of sheriffs and police chiefs or the Washington state patrol may petition the state board of pharmacy to apply the log requirements in RCW 69.43.170 to one or more products that contain ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, that is not the only active ingredient and that is in liquid, liquid capsule, or gel capsule form. The petition shall establish that:

(a) Ephedrine, pseudoephedrine, or phenylpropanolamine can be effectively extracted from the product and converted into methamphetamine or another controlled dangerous substance; and

(b) Law enforcement, the Washington state patrol, or the department of ecology are finding substantial evidence that the product is being used for the illegal manufacture of methamphetamine or another controlled dangerous substance.

(2) The board of pharmacy shall adopt rules when a petition establishes that requiring the application of the log requirements in RCW 69.43.170 to the sale of the product at retail is warranted based upon the effectiveness and extent of use of the product for the illegal manufacture of methamphetamine or other controlled dangerous substances and the extent of the burden of any restrictions upon consumers. The

board of pharmacy may adopt emergency rules to apply the log requirements to the sale of a product when the petition establishes that the immediate restriction of the product is necessary in order to protect public health and safety. [2005 c 388 § 3.]

**Finding—Effective dates—Severability—2005 c 388:** See notes following RCW 69.43.105.

**69.43.190 Products found at methamphetamine sites—Report. (Effective January 1, 2006.)** Each county sheriff shall compile and maintain a record of commercial products containing ephedrine, pseudoephedrine, or phenylpropanolamine and packaging found at methamphetamine laboratory sites. The data shall be forwarded to the Washington association of sheriffs and police chiefs and shall be reported to the legislature by November 1, 2007, and annually thereafter. [2005 c 388 § 9.]

**Finding—Effective dates—Severability—2005 c 388:** See notes following RCW 69.43.105.

## Chapter 69.45 RCW DRUG SAMPLES

### Sections

69.45.090 Confidentiality. (Effective July 1, 2006.)

### 69.45.090 Confidentiality. (Effective July 1, 2006.)

All records, reports, and information obtained by the board from or on behalf of a manufacturer or manufacturer's representative under this chapter are confidential and exempt from public inspection and copying under chapter 42.56 RCW. This section does not apply to public disclosure of the identity of persons found by the board to have violated state or federal law, rules, or regulations. This section is not intended to restrict the investigations and proceedings of the board so long as the board maintains the confidentiality required by this section. [2005 c 274 § 330; 1987 c 411 § 9.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

## Chapter 69.50 RCW

### UNIFORM CONTROLLED SUBSTANCES ACT

### Sections

69.50.401 Prohibited acts: A—Penalties.  
69.50.406 Distribution to persons under age eighteen.  
69.50.440 Possession with intent to manufacture—Penalty.  
69.50.520 Violence reduction and drug enforcement account.

**69.50.401 Prohibited acts: A—Penalties.** (1) Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

(2) Any person who violates this section with respect to:

(a) A controlled substance classified in Schedule I or II which is a narcotic drug or flunitrazepam, including its salts, isomers, and salts of isomers, classified in Schedule IV, is guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, or (i) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and

fine; or (ii) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine;

(b) Amphetamine, including its salts, isomers, and salts of isomers, or methamphetamine, including its salts, isomers, and salts of isomers, is guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, or (i) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or (ii) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine. Three thousand dollars of the fine may not be suspended. As collected, the first three thousand dollars of the fine must be deposited with the law enforcement agency having responsibility for cleanup of laboratories, sites, or substances used in the manufacture of the methamphetamine, including its salts, isomers, and salts of isomers. The fine moneys deposited with that law enforcement agency must be used for such clean-up cost;

(c) Any other controlled substance classified in Schedule I, II, or III, is guilty of a class C felony punishable according to chapter 9A.20 RCW;

(d) A substance classified in Schedule IV, except flunitrazepam, including its salts, isomers, and salts of isomers, is guilty of a class C felony punishable according to chapter 9A.20 RCW; or

(e) A substance classified in Schedule V, is guilty of a class C felony punishable according to chapter 9A.20 RCW. [2005 c 218 § 1; 2003 c 53 § 331. Prior: 1998 c 290 § 1; 1998 c 82 § 2; 1997 c 71 § 2; 1996 c 205 § 2; 1989 c 271 § 104; 1987 c 458 § 4; 1979 c 67 § 1; 1973 2nd ex.s. c 2 § 1; 1971 ex.s. c 308 § 69.50.401.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**Application—1998 c 290:** "This act applies to crimes committed on or after July 1, 1998." [1998 c 290 § 9.]

**Effective date—1998 c 290:** "This act takes effect July 1, 1998." [1998 c 290 § 10.]

**Severability—1998 c 290:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 290 § 11.]

**Application—1989 c 271 §§ 101-111:** See note following RCW 9.94A.510.

**Severability—1989 c 271:** See note following RCW 9.94A.510.

**Severability—1987 c 458:** See note following RCW 48.21.160.

*Serious drug offenders, notice of release or escape: RCW 9.94A.610.*

#### **69.50.406 Distribution to persons under age eighteen.**

(1) Any person eighteen years of age or over who violates RCW 69.50.401 by distributing a controlled substance listed in Schedules I or II which is a narcotic drug or methamphetamine, including its salts, isomers, and salts of isomers, or flunitrazepam, including its salts, isomers, and salts of isomers, listed in Schedule IV, to a person under eighteen years of age is guilty of a class A felony punishable by the fine authorized by RCW 69.50.401(2) (a) or (b), by a term of

imprisonment of up to twice that authorized by RCW 69.50.401(2) (a) or (b), or by both.

(2) Any person eighteen years of age or over who violates RCW 69.50.401 by distributing any other controlled substance listed in Schedules I, II, III, IV, and V to a person under eighteen years of age who is at least three years his or her junior is guilty of a class B felony punishable by the fine authorized by RCW 69.50.401(2) (c), (d), or (e), by a term of imprisonment up to twice that authorized by RCW 69.50.401(2) (c), (d), or (e), or both. [2005 c 218 § 2; 2003 c 53 § 340; 1998 c 290 § 2; 1996 c 205 § 7; 1987 c 458 § 5; 1971 ex.s. c 308 § 69.50.406.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**Application—Effective date—Severability—1998 c 290:** See notes following RCW 69.50.401.

**Severability—1987 c 458:** See note following RCW 48.21.160.

**69.50.440 Possession with intent to manufacture—Penalty.** (1) It is unlawful for any person to possess ephedrine or any of its salts or isomers or salts of isomers, pseudoephedrine or any of its salts or isomers or salts of isomers, pressurized ammonia gas, or pressurized ammonia gas solution with intent to manufacture methamphetamine, including its salts, isomers, and salts of isomers.

(2) Any person who violates this section is guilty of a class B felony and may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both. Three thousand dollars of the fine may not be suspended. As collected, the first three thousand dollars of the fine must be deposited with the law enforcement agency having responsibility for cleanup of laboratories, sites, or substances used in the manufacture of the methamphetamine, including its salts, isomers, and salts of isomers. The fine moneys deposited with that law enforcement agency must be used for such clean-up cost. [2005 c 218 § 3; 2003 c 53 § 347; 2002 c 134 § 1; 2000 c 225 § 4; 1997 c 71 § 3; 1996 c 205 § 1.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**Effective date—2002 c 134:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 26, 2002]." [2002 c 134 § 5.]

**Severability—2000 c 225:** See note following RCW 69.55.010.

**69.50.520 Violence reduction and drug enforcement account.** The violence reduction and drug enforcement account is created in the state treasury. All designated receipts from RCW 9.41.110(8), 66.24.210(4), 66.24.290(2), 69.50.505(9)(a), 82.08.150 (5) and (7)(b)(iii), 82.24.020(2), 82.24.026(2)(c), 82.64.020, and section 420, chapter 271, Laws of 1989 shall be deposited into the account. Expenditures from the account may be used only for funding services and programs under chapter 271, Laws of 1989 and chapter 7, Laws of 1994 sp. sess., including state incarceration costs. Funds from the account may also be appropriated to reimburse local governments for costs associated with implementing criminal justice legislation including chapter 338, Laws of 1997. During the 2003-2005 and 2005-2007 bienniums, funds from the account may also be used for costs associated

with providing grants to local governments in accordance with chapter 338, Laws of 1997, funding drug offender treatment services in accordance with RCW 70.96A.350, maintenance and operating costs of the Washington association of sheriffs and police chiefs jail reporting system, maintenance and operating costs of the juvenile rehabilitation administration's client activity tracking system, civil indigent legal representation, multijurisdictional narcotics task forces, transfers to the health services account, and grants to community networks under chapter 70.190 RCW by the family policy council. [2005 c 518 § 937; 2005 c 514 § 1107; 2005 c 514 § 202; 2004 c 276 § 912; 2003 1st sp.s. c 25 § 930; 2002 c 371 § 920. Prior: 2001 2nd sp.s. c 7 § 920; 2001 c 168 § 3; 2000 2nd sp.s. c 1 § 917; 1999 c 309 § 922; 1998 c 346 § 909; prior: 1997 c 451 § 2; 1997 c 338 § 69; 1997 c 149 § 912; 1995 2nd sp.s. c 18 § 919; 1994 sp.s. c 7 § 910; 1989 c 271 § 401.]

**Reviser's note:** This section was amended by 2005 c 514 § 202, 2005 c 514 § 1107, and by 2005 c 518 § 937, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Severability—Effective date—2004 c 276:** See notes following RCW 43.330.167.

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Severability—Effective date—2002 c 371:** See notes following RCW 9.46.100.

**Severability—Effective date—2001 2nd sp.s. c 7:** See notes following RCW 43.320.110.

**Severability—2001 c 168:** See note following RCW 69.50.505.

**Severability—Effective date—2000 2nd sp.s. c 1:** See notes following RCW 41.05.143.

**Severability—Effective date—1999 c 309:** See notes following RCW 41.06.152.

**Construction—Severability—Effective date—1998 c 346:** See notes following RCW 50.24.014.

**Effective date—1997 c 451:** See note following RCW 66.24.290.

**Finding—Evaluation—Report—1997 c 338:** See note following RCW 13.40.0357.

**Severability—Effective dates—1997 c 338:** See notes following RCW 5.60.060.

**Severability—Effective date—1997 c 149:** See notes following RCW 43.08.250.

**Severability—Effective date—1995 2nd sp.s. c 18:** See notes following RCW 19.118.110.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Captions not law—1989 c 271:** "Part, subpart, and section headings and the index as used in this act do not constitute any part of the law." [1989 c 271 § 605.]

**Severability—1989 c 271:** See note following RCW 9.94A.510.

## Title 70

### PUBLIC HEALTH AND SAFETY

#### Chapters

- 70.02** Medical records—Health care information access and disclosure.
- 70.14** Health care services purchased by state agencies.
- 70.38** Health planning and development.
- 70.41** Hospital licensing and regulation.
- 70.44** Public hospital districts.
- 70.45** Acquisition of nonprofit hospitals.
- 70.47** Basic health plan—Health care access act.
- 70.58** Vital statistics.
- 70.77** State fireworks law.
- 70.79** Boilers and unfired pressure vessels.
- 70.83** Phenylketonuria and other preventable heritable disorders.
- 70.87** Elevators, lifting devices, and moving walks.
- 70.93** Waste reduction, recycling, and model litter control act.
- 70.94** Washington clean air act.
- 70.95** Solid waste management—Reduction and recycling.
- 70.95C** Waste reduction.
- 70.96A** Treatment for alcoholism, intoxication, and drug addiction.
- 70.96B** Integrated crisis response and involuntary treatment—Pilot programs.
- 70.96C** Screening and assessment of chemical dependency and mental disorders.
- 70.97** Enhanced services facilities.
- 70.102** Hazardous substance information.
- 70.105D** Hazardous waste cleanup—Model toxics control act.
- 70.105E** Mixed radioactive and hazardous waste.
- 70.120** Motor vehicle emission control.
- 70.120A** Motor vehicle emission standards.
- 70.123** Shelters for victims of domestic violence.
- 70.128** Adult family homes.
- 70.140** Area-wide soil contamination.
- 70.146** Water pollution control facilities financing.
- 70.148** Underground petroleum storage tanks.
- 70.149** Heating oil pollution liability protection act.
- 70.150** Water quality joint development act.
- 70.155** Tobacco—Access to minors.
- 70.168** Statewide trauma care system.
- 70.190** Family policy council.
- 70.220** Washington academy of sciences.

#### Chapter 70.02 RCW

#### MEDICAL RECORDS—HEALTH CARE INFORMATION ACCESS AND DISCLOSURE

#### Sections

- 70.02.010 Definitions.
- 70.02.020 Disclosure by health care provider.
- 70.02.030 Patient authorization of disclosure.
- 70.02.050 Disclosure without patient's authorization.
- 70.02.090 Patient's request—Denial of examination and copying. (*Effective July 1, 2006.*)

**70.02.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Audit" means an assessment, evaluation, determination, or investigation of a health care provider by a person not employed by or affiliated with the provider to determine compliance with:

(a) Statutory, regulatory, fiscal, medical, or scientific standards;

(b) A private or public program of payments to a health care provider; or

(c) Requirements for licensing, accreditation, or certification.

(2) "Directory information" means information disclosing the presence, and for the purpose of identification, the name, location within a health care facility, and the general health condition of a particular patient who is a patient in a health care facility or who is currently receiving emergency health care in a health care facility.

(3) "General health condition" means the patient's health status described in terms of "critical," "poor," "fair," "good," "excellent," or terms denoting similar conditions.

(4) "Health care" means any care, service, or procedure provided by a health care provider:

(a) To diagnose, treat, or maintain a patient's physical or mental condition; or

(b) That affects the structure or any function of the human body.

(5) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

(6) "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care, including a patient's deoxyribonucleic acid and identified sequence of chemical base pairs. The term includes any required accounting of disclosures of health care information.

(7) "Health care operations" means any of the following activities of a health care provider, health care facility, or third-party payor to the extent that the activities are related to functions that make an entity a health care provider, a health care facility, or a third-party payor:

(a) Conducting: Quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, if the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from such activities; population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment;

(b) Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance and third-party payor performance, conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers, training of non-health care professionals, accreditation, certification, licensing, or credentialing activities;

(c) Underwriting, premium rating, and other activities relating to the creation, renewal, or replacement of a contract of health insurance or health benefits, and ceding, securing,

or placing a contract for reinsurance of risk relating to claims for health care, including stop-loss insurance and excess of loss insurance, if any applicable legal requirements are met;

(d) Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs;

(e) Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the health care facility or third-party payor, including formulary development and administration, development, or improvement of methods of payment or coverage policies; and

(f) Business management and general administrative activities of the health care facility, health care provider, or third-party payor including, but not limited to:

(i) Management activities relating to implementation of and compliance with the requirements of this chapter;

(ii) Customer service, including the provision of data analyses for policy holders, plan sponsors, or other customers, provided that health care information is not disclosed to such policy holder, plan sponsor, or customer;

(iii) Resolution of internal grievances;

(iv) The sale, transfer, merger, or consolidation of all or part of a health care provider, health care facility, or third-party payor with another health care provider, health care facility, or third-party payor or an entity that following such activity will become a health care provider, health care facility, or third-party payor, and due diligence related to such activity; and

(v) Consistent with applicable legal requirements, creating deidentified health care information or a limited dataset and fund-raising for the benefit of the health care provider, health care facility, or third-party payor.

(8) "Health care provider" means a person who is licensed, certified, registered, or otherwise authorized by the law of this state to provide health care in the ordinary course of business or practice of a profession.

(9) "Institutional review board" means any board, committee, or other group formally designated by an institution, or authorized under federal or state law, to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

(10) "Maintain," as related to health care information, means to hold, possess, preserve, retain, store, or control that information.

(11) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(12) "Payment" means:

(a) The activities undertaken by:

(i) A third-party payor to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits by the third-party payor; or

(ii) A health care provider, health care facility, or third-party payor, to obtain or provide reimbursement for the provision of health care; and

(b) The activities in (a) of this subsection that relate to the patient to whom health care is provided and that include, but are not limited to:



(i) Determinations of eligibility or coverage, including coordination of benefits or the determination of cost-sharing amounts, and adjudication or subrogation of health benefit claims;

(ii) Risk adjusting amounts due based on enrollee health status and demographic characteristics;

(iii) Billing, claims management, collection activities, obtaining payment under a contract for reinsurance, including stop-loss insurance and excess of loss insurance, and related health care data processing;

(iv) Review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges;

(v) Utilization review activities, including precertification and preauthorization of services, and concurrent and retrospective review of services; and

(vi) Disclosure to consumer reporting agencies of any of the following health care information relating to collection of premiums or reimbursement:

(A) Name and address;

(B) Date of birth;

(C) Social security number;

(D) Payment history;

(E) Account number; and

(F) Name and address of the health care provider, health care facility, and/or third-party payor.

(13) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(14) "Reasonable fee" means the charges for duplicating or searching the record, but shall not exceed sixty-five cents per page for the first thirty pages and fifty cents per page for all other pages. In addition, a clerical fee for searching and handling may be charged not to exceed fifteen dollars. These amounts shall be adjusted biennially in accordance with changes in the consumer price index, all consumers, for Seattle-Tacoma metropolitan statistical area as determined by the secretary of health. However, where editing of records by a health care provider is required by statute and is done by the provider personally, the fee may be the usual and customary charge for a basic office visit.

(15) "Third-party payor" means an insurer regulated under Title 48 RCW authorized to transact business in this state or other jurisdiction, including a health care service contractor, and health maintenance organization; or an employee welfare benefit plan; or a state or federal health benefit program.

(16) "Treatment" means the provision, coordination, or management of health care and related services by one or more health care providers or health care facilities, including the coordination or management of health care by a health care provider or health care facility with a third party; consultation between health care providers or health care facilities relating to a patient; or the referral of a patient for health care from one health care provider or health care facility to another. [2005 c 468 § 1; 2002 c 318 § 1; 1993 c 448 § 1; 1991 c 335 § 102.]

**Reviser's note:** For charges or fees under subsection (14) of this section as adjusted by the secretary of health, see chapter 246-08 WAC.

**Effective date—1993 c 448:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 448 § 9.]

**70.02.020 Disclosure by health care provider.** (1)

Except as authorized in RCW 70.02.050, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent and employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

(2) A patient has a right to receive an accounting of disclosures of health care information made by a health care provider or a health care facility in the six years before the date on which the accounting is requested, except for disclosures:

(a) To carry out treatment, payment, and health care operations;

(b) To the patient of health care information about him or her;

(c) Incident to a use or disclosure that is otherwise permitted or required;

(d) Pursuant to an authorization where the patient authorized the disclosure of health care information about himself or herself;

(e) Of directory information;

(f) To persons involved in the patient's care;

(g) For national security or intelligence purposes if an accounting of disclosures is not permitted by law;

(h) To correctional institutions or law enforcement officials if an accounting of disclosures is not permitted by law; and

(i) Of a limited data set that excludes direct identifiers of the patient or of relatives, employers, or household members of the patient. [2005 c 468 § 2; 1993 c 448 § 2; 1991 c 335 § 201.]

**Effective date—1993 c 448:** See note following RCW 70.02.010.

**70.02.030 Patient authorization of disclosure.** (1) A patient may authorize a health care provider or health care facility to disclose the patient's health care information. A health care provider or health care facility shall honor an authorization and, if requested, provide a copy of the recorded health care information unless the health care provider or health care facility denies the patient access to health care information under RCW 70.02.090.

(2) A health care provider or health care facility may charge a reasonable fee for providing the health care information and is not required to honor an authorization until the fee is paid.

(3) To be valid, a disclosure authorization to a health care provider or health care facility shall:

(a) Be in writing, dated, and signed by the patient;

(b) Identify the nature of the information to be disclosed;

(c) Identify the name and institutional affiliation of the person or class of persons to whom the information is to be disclosed;

(d) Identify the provider or class of providers who are to make the disclosure;

(e) Identify the patient; and

(f) Contain an expiration date or an expiration event that relates to the patient or the purpose of the use or disclosure.

(4) Unless disclosure without authorization is otherwise permitted under RCW 70.02.050 or the federal health insurance portability and accountability act of 1996 and its implementing regulations, an authorization may permit the disclosure of health care information to a class of persons that includes:

(a) Researchers if the health care provider or health care facility obtains the informed consent for the use of the patient's health care information for research purposes; or

(b) Third-party payors if the information is only disclosed for payment purposes.

(5) Except as provided by this chapter, the signing of an authorization by a patient is not a waiver of any rights a patient has under other statutes, the rules of evidence, or common law.

(6) When an authorization permits the disclosure of health care information to a financial institution or an employer of the patient for purposes other than payment, the authorization as it pertains to those disclosures shall expire ninety days after the signing of the authorization, unless the authorization is renewed by the patient.

(7) A health care provider or health care facility shall retain the original or a copy of each authorization or revocation in conjunction with any health care information from which disclosures are made.

(8) Where the patient is under the supervision of the department of corrections, an authorization signed pursuant to this section for health care information related to mental health or drug or alcohol treatment expires at the end of the term of supervision, unless the patient is part of a treatment program that requires the continued exchange of information until the end of the period of treatment. [2005 c 468 § 3; 2004 c 166 § 19; 1994 sp.s. c 9 § 741; 1993 c 448 § 3; 1991 c 335 § 202.]

**Severability—Effective dates—2004 c 166:** See notes following RCW 71.05.040.

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**Effective date—1993 c 448:** See note following RCW 70.02.010.

#### **70.02.050 Disclosure without patient's authorization.**

(1) A health care provider or health care facility may disclose health care information about a patient without the patient's authorization to the extent a recipient needs to know the information, if the disclosure is:

(a) To a person who the provider or facility reasonably believes is providing health care to the patient;

(b) To any other person who requires health care information for health care education, or to provide planning, quality assurance, peer review, or administrative, legal, financial, actuarial services to, or other health care operations for or on behalf of the health care provider or health care facility; or for assisting the health care provider or health care facility in the delivery of health care and the health care provider or health care facility reasonably believes that the person:

(i) Will not use or disclose the health care information for any other purpose; and

(ii) Will take appropriate steps to protect the health care information;

(c) To any other health care provider or health care facility reasonably believed to have previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider or health care facility in writing not to make the disclosure;

(d) To any person if the health care provider or health care facility reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the patient or any other individual, however there is no obligation under this chapter on the part of the provider or facility to so disclose;

(e) To immediate family members of the patient, or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with good medical or other professional practice, unless the patient has instructed the health care provider or health care facility in writing not to make the disclosure;

(f) To a health care provider or health care facility who is the successor in interest to the health care provider or health care facility maintaining the health care information;

(g) For use in a research project that an institutional review board has determined:

(i) Is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

(ii) Is impracticable without the use or disclosure of the health care information in individually identifiable form;

(iii) Contains reasonable safeguards to protect the information from redisclosure;

(iv) Contains reasonable safeguards to protect against identifying, directly or indirectly, any patient in any report of the research project; and

(v) Contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;

(h) To a person who obtains information for purposes of an audit, if that person agrees in writing to:

(i) Remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(ii) Not to disclose the information further, except to accomplish the audit or report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient, or other unlawful conduct by the health care provider;

(i) To an official of a penal or other custodial institution in which the patient is detained;

(j) To provide directory information, unless the patient has instructed the health care provider or health care facility not to make the disclosure;

(k) To fire, police, sheriff, or another public authority, that brought, or caused to be brought, the patient to the health care facility or health care provider if the disclosure is limited to the patient's name, residence, sex, age, occupation, condition, diagnosis, estimated or actual discharge date, or extent

and location of injuries as determined by a physician, and whether the patient was conscious when admitted;

(l) To federal, state, or local law enforcement authorities and the health care provider, health care facility, or third-party payor believes in good faith that the health care information disclosed constitutes evidence of criminal conduct that occurred on the premises of the health care provider, health care facility, or third-party payor;

(m) To another health care provider, health care facility, or third-party payor for the health care operations of the health care provider, health care facility, or third-party payor that receives the information, if each entity has or had a relationship with the patient who is the subject of the health care information being requested, the health care information pertains to such relationship, and the disclosure is for the purposes described in RCW 70.02.010(7) (a) and (b); or

(n) For payment.

(2) A health care provider shall disclose health care information about a patient without the patient's authorization if the disclosure is:

(a) To federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information; when needed to determine compliance with state or federal licensure, certification or registration rules or laws; or when needed to protect the public health;

(b) To federal, state, or local law enforcement authorities to the extent the health care provider is required by law;

(c) To county coroners and medical examiners for the investigations of deaths;

(d) Pursuant to compulsory process in accordance with RCW 70.02.060.

(3) All state or local agencies obtaining patient health care information pursuant to this section shall adopt rules establishing their record acquisition, retention, and security policies that are consistent with this chapter. [2005 c 468 § 4; 1998 c 158 § 1; 1993 c 448 § 4; 1991 c 335 § 204.]

**Effective date—1993 c 448:** See note following RCW 70.02.010.

**70.02.090 Patient's request—Denial of examination and copying. (Effective July 1, 2006.)** (1) Subject to any conflicting requirement in the public records act, chapter 42.56 RCW, a health care provider may deny access to health care information by a patient if the health care provider reasonably concludes that:

(a) Knowledge of the health care information would be injurious to the health of the patient;

(b) Knowledge of the health care information could reasonably be expected to lead to the patient's identification of an individual who provided the information in confidence and under circumstances in which confidentiality was appropriate;

(c) Knowledge of the health care information could reasonably be expected to cause danger to the life or safety of any individual;

(d) The health care information was compiled and is used solely for litigation, quality assurance, peer review, or administrative purposes; or

(e) Access to the health care information is otherwise prohibited by law.

(2) If a health care provider denies a request for examination and copying under this section, the provider, to the extent possible, shall segregate health care information for which access has been denied under subsection (1) of this section from information for which access cannot be denied and permit the patient to examine or copy the disclosable information.

(3) If a health care provider denies a patient's request for examination and copying, in whole or in part, under subsection (1)(a) or (c) of this section, the provider shall permit examination and copying of the record by another health care provider, selected by the patient, who is licensed, certified, registered, or otherwise authorized under the laws of this state to treat the patient for the same condition as the health care provider denying the request. The health care provider denying the request shall inform the patient of the patient's right to select another health care provider under this subsection. The patient shall be responsible for arranging for compensation of the other health care provider so selected. [2005 c 274 § 331; 1991 c 335 § 302.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

## Chapter 70.14 RCW

### HEALTH CARE SERVICES PURCHASED BY STATE AGENCIES

#### Sections

70.14.060	Prescription drug purchasing consortium—Participation—Prescription drug consortium advisory committee—Exceptions—Rules.
70.14.070	Prescription drug consortium account.

**70.14.060 Prescription drug purchasing consortium—Participation—Prescription drug consortium advisory committee—Exceptions—Rules.** (1) The administrator of the state health care authority shall, directly or by contract, adopt policies necessary for establishment of a prescription drug purchasing consortium. The consortium's purchasing activities shall be based upon the evidence-based prescription drug program established under RCW 70.14.050. State purchased health care programs as defined in RCW 41.05.011 shall purchase prescription drugs through the consortium for those prescription drugs that are purchased directly by the state and those that are purchased through reimbursement of pharmacies, unless exempted under this section. The administrator shall not require any supplemental rebate offered to the department of social and health services by a pharmaceutical manufacturer for prescription drugs purchased for medical assistance program clients under chapter 74.09 RCW be extended to any other state purchased health care program, or to any other individuals or entities participating in the consortium. The administrator shall explore joint purchasing opportunities with other states.

(2) Participation in the purchasing consortium shall be offered as an option beginning January 1, 2006. Participation in the consortium is purely voluntary for units of local government, private entities, labor organizations, and for individuals who lack or are underinsured for prescription drug coverage. The administrator may set reasonable fees, including

enrollment fees, to cover administrative costs attributable to participation in the prescription drug consortium.

(3) The prescription drug consortium advisory committee is created within the authority. The function of the prescription drug advisory committee is to advise the administrator of the state health care authority on the implementation of the prescription drug purchasing consortium.

(4) The prescription drug consortium advisory committee shall be composed of eleven members selected as provided in this subsection.

(a) The administrator shall select one member of the prescription drug consortium advisory committee from each list of three nominees submitted by statewide organizations representing the following:

(i) One representative of state employees, who represents an employee union certified as exclusive representative of at least one bargaining unit of classified employees;

(ii) One member who is a licensed physician;

(iii) One member who is a licensed pharmacist;

(iv) One member who is a licensed advanced registered nurse practitioner;

(v) One member representing a health carrier licensed under Title 48 RCW; and

(vi) One member representing unions that represent private sector employees;

(b) The administrator shall select two members of the advisory committee from a list of nominees submitted by statewide organizations representing consumers. One of the consumer members shall have knowledge or experience regarding senior citizen prescription drug cost and utilization issues;

(c) The administrator shall select two members of the advisory committee from a list of nominees submitted by statewide organizations representing business, one of whom shall represent small businesses who employ fifty or fewer employees and one of whom shall represent large businesses; and

(d) The administrator shall select one member who is versed in biologic medicine through research or academia from the University of Washington or Washington State University.

(5) The administrator shall consult with the advisory committee on at least a quarterly basis on significant policy decisions related to implementation of the purchasing consortium.

(6) This section does not apply to state purchased health care services that are purchased from or through health carriers as defined in RCW 48.43.005, or group model health maintenance organizations that are accredited by the national committee for quality assurance.

(7) The state health care authority is authorized to adopt rules implementing chapter 129, Laws of 2005.

(8) State purchased health care programs are exempt from the requirements of this section if they can demonstrate to the administrator that, as a result of the availability of federal programs or other purchasing arrangements, their other purchasing mechanisms will result in greater discounts and aggregate cost savings than would be realized through participation in the consortium. [2005 c 129 § 1.]

**Performance audit—2005 c 129 § 1:** "By December 1, 2008, the joint legislative audit and review committee shall conduct a performance audit on

[2005 RCW Supp—page 768]

the operation of the consortium created in section 1 of this act. The audit shall review the operations and outcomes associated with the implementation of this consortium and identify the net savings, if any, to the members of the consortium, the percentage of targeted populations participating, and changes in the health outcomes of participants." [2005 c 129 § 3.]

**Severability—2005 c 129:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 129 § 4.]

**Conflict with federal requirements—2005 c 129:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2005 c 129 § 5.]

#### 70.14.070 Prescription drug consortium account.

The prescription drug consortium account is created in the custody of the state treasurer. All receipts from activities related to administration of the state drug purchasing consortium on behalf of participating individuals and organizations, other than state purchased health care programs, shall be deposited into the account. The receipts include but are not limited to rebates from manufacturers, and the fees established under RCW 70.14.060(2). Expenditures from the account may be used only for the purposes of RCW 70.14.060. Only the administrator of the state health care authority or the administrator's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2005 c 129 § 2.]

**Severability—Conflict with federal requirements—2005 c 129:** See notes following RCW 70.14.060.

### Chapter 70.38 RCW

#### HEALTH PLANNING AND DEVELOPMENT

##### Sections

70.38.095 Public disclosure. (*Effective July 1, 2006.*)

#### 70.38.095 Public disclosure. (*Effective July 1, 2006.*)

Public accessibility to records shall be accorded by health systems agencies pursuant to Public Law 93-641 and chapter 42.56 RCW. A health systems agency shall be considered a "public agency" for the sole purpose of complying with the public records act, chapter 42.56 RCW. [2005 c 274 § 332; 1979 ex.s. c 161 § 9.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

### Chapter 70.41 RCW

#### HOSPITAL LICENSING AND REGULATION

##### Sections

70.41.120 Inspection of hospitals—Alterations or additions, new facilities—Coordination with state and local agencies—Notice of inspection.

70.41.122 Exemption from RCW 70.41.120 for hospitals accredited by the joint commission on the accreditation of health care organizations or the American osteopathic association.

- 70.41.150 Denial, suspension, revocation of license—Disclosure of information. (*Effective July 1, 2006.*)
- 70.41.200 Quality improvement and medical malpractice prevention program—Quality improvement committee—Sanction and grievance procedures—Information collection, reporting, and sharing.
- 70.41.210 Duty to report restrictions on health care practitioners' privileges based on unprofessional conduct—Penalty.
- 70.41.380 Notice of unanticipated outcomes.

**70.41.120 Inspection of hospitals—Alterations or additions, new facilities—Coordination with state and local agencies—Notice of inspection.** The department shall make or cause to be made an inspection of all hospitals on average at least every eighteen months. Every inspection of a hospital may include an inspection of every part of the premises. The department may make an examination of all phases of the hospital operation necessary to determine compliance with the law and the standards, rules and regulations adopted thereunder. Any licensee or applicant desiring to make alterations or additions to its facilities or to construct new facilities shall, before commencing such alteration, addition or new construction, comply with the regulations prescribed by the department.

No hospital licensed pursuant to the provisions of this chapter shall be required to be inspected or licensed under other state laws or rules and regulations promulgated thereunder, or local ordinances, relative to hotels, restaurants, lodging houses, boarding houses, places of refreshment, nursing homes, maternity homes, or psychiatric hospitals.

To avoid unnecessary duplication in inspections, the department shall coordinate with the department of social and health services, the office of the state fire marshal, and local agencies when inspecting facilities over which each agency has jurisdiction, the facilities including but not necessarily being limited to hospitals with both acute care and skilled nursing or psychiatric nursing functions. The department shall notify the office of the state fire marshal and the relevant local agency at least four weeks prior to any inspection conducted under this section and invite their attendance at the inspection, and shall provide a copy of its inspection report to each agency upon completion. [2005 c 447 § 1; 2004 c 261 § 4; 1995 c 282 § 4; 1985 c 213 § 21; 1955 c 267 § 12.]

**Savings—Effective date—1985 c 213:** See notes following RCW 43.20.050.

**70.41.122 Exemption from RCW 70.41.120 for hospitals accredited by the joint commission on the accreditation of health care organizations or the American osteopathic association.** Surveys conducted by the joint commission on the accreditation of health care organizations or the American osteopathic association on hospitals accredited by those bodies shall be deemed equivalent to a department survey for purposes of meeting the requirements for the survey specified in RCW 70.41.120 if the department determines that the applicable survey standards of the joint commission on the accreditation of health care organizations or the American osteopathic association are substantially equivalent to its own.

(1) Hospitals so surveyed shall provide to the department within thirty days of learning the result of a survey documentary evidence that the hospital has been certified as a result of a survey and the date of the survey.

(2) Hospitals shall make available to department surveyors the written reports of such surveys during department surveys, upon request. [2005 c 447 § 2; 1999 c 41 § 1; 1995 c 282 § 6.]

**70.41.150 Denial, suspension, revocation of license—Disclosure of information. (*Effective July 1, 2006.*)** Information received by the department through filed reports, inspection, or as otherwise authorized under this chapter, may be disclosed publicly, as permitted under chapter 42.56 RCW, subject to the following provisions:

(1) Licensing inspections, or complaint investigations regardless of findings, shall, as requested, be disclosed no sooner than three business days after the hospital has received the resulting assessment report;

(2) Information regarding administrative action against the license shall, as requested, be disclosed after the hospital has received the documents initiating the administrative action;

(3) Information about complaints that did not warrant an investigation shall not be disclosed except to notify the hospital and the complainant that the complaint did not warrant an investigation. If requested, the individual complainant shall receive information on other like complaints that have been reported against the hospital; and

(4) Information disclosed pursuant to this section shall not disclose individual names. [2005 c 274 § 333; 2000 c 6 § 1; 1985 c 213 § 24; 1955 c 267 § 15.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Savings—Effective date—1985 c 213:** See notes following RCW 43.20.050.

**70.41.200 Quality improvement and medical malpractice prevention program—Quality improvement committee—Sanction and grievance procedures—Information collection, reporting, and sharing.** (1) Every hospital shall maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The program shall include at least the following:

(a) The establishment of a quality improvement committee with the responsibility to review the services rendered in the hospital, both retrospectively and prospectively, in order to improve the quality of medical care of patients and to prevent medical malpractice. The committee shall oversee and coordinate the quality improvement and medical malpractice prevention program and shall ensure that information gathered pursuant to the program is used to review and to revise hospital policies and procedures;

(b) A medical staff privileges sanction procedure through which credentials, physical and mental capacity, and competence in delivering health care services are periodically reviewed as part of an evaluation of staff privileges;

(c) The periodic review of the credentials, physical and mental capacity, and competence in delivering health care services of all persons who are employed or associated with the hospital;

(d) A procedure for the prompt resolution of grievances by patients or their representatives related to accidents, inju-

ries, treatment, and other events that may result in claims of medical malpractice;

(e) The maintenance and continuous collection of information concerning the hospital's experience with negative health care outcomes and incidents injurious to patients, patient grievances, professional liability premiums, settlements, awards, costs incurred by the hospital for patient injury prevention, and safety improvement activities;

(f) The maintenance of relevant and appropriate information gathered pursuant to (a) through (e) of this subsection concerning individual physicians within the physician's personnel or credential file maintained by the hospital;

(g) Education programs dealing with quality improvement, patient safety, medication errors, injury prevention, staff responsibility to report professional misconduct, the legal aspects of patient care, improved communication with patients, and causes of malpractice claims for staff personnel engaged in patient care activities; and

(h) Policies to ensure compliance with the reporting requirements of this section.

(2) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee shall not be subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or boards under subsection (8) of this section is not subject to an action for civil damages or other relief as a result of the activity. For the purposes of this section, sharing information is presumed to be in substantial good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(3) Information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee are not subject to review or disclosure, except as provided in this section, or discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, includ-

ing the specific restrictions imposed, if any and the reasons for the restrictions; or (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by regulation of the department of health to be made regarding the care and treatment received.

(4) Each quality improvement committee shall, on at least a semiannual basis, report to the governing board of the hospital in which the committee is located. The report shall review the quality improvement activities conducted by the committee, and any actions taken as a result of those activities.

(5) The department of health shall adopt such rules as are deemed appropriate to effectuate the purposes of this section.

(6) The medical quality assurance commission or the board of osteopathic medicine and surgery, as appropriate, may review and audit the records of committee decisions in which a physician's privileges are terminated or restricted. Each hospital shall produce and make accessible to the commission or board the appropriate records and otherwise facilitate the review and audit. Information so gained shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section. Failure of a hospital to comply with this subsection is punishable by a civil penalty not to exceed two hundred fifty dollars.

(7) The department, the joint commission on accreditation of health care organizations, and any other accrediting organization may review and audit the records of a quality improvement committee or peer review committee in connection with their inspection and review of hospitals. Information so obtained shall not be subject to the discovery process, and confidentiality shall be respected as required by subsection (3) of this section. Each hospital shall produce and make accessible to the department the appropriate records and otherwise facilitate the review and audit.

(8) A coordinated quality improvement program may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee or a peer review committee under RCW 4.24.250 with one or more other coordinated quality improvement programs maintained in accordance with this section or RCW 43.70.510, a quality assurance committee maintained in accordance with RCW 18.20.390 or 74.42.640, or a peer review committee under RCW 4.24.250, for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under RCW 4.24.250 and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section, RCW 18.20.390 (6) and (8), 74.42.640 (7) and (9), and 4.24.250.

(9) A hospital that operates a nursing home as defined in RCW 18.51.010 may conduct quality improvement activities for both the hospital and the nursing home through a quality improvement committee under this section, and such activities shall be subject to the provisions of subsections (2) through (8) of this section.

(10) Violation of this section shall not be considered negligence per se. [2005 c 291 § 3; 2005 c 33 § 7; 2004 c 145 § 3; 2000 c 6 § 3; 1994 sp.s. c 9 § 742; 1993 c 492 § 415; 1991 c 3 § 336; 1987 c 269 § 5; 1986 c 300 § 4.]

**Reviser's note:** This section was amended by 2005 c 33 § 7 and by 2005 c 291 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—2005 c 33:** See note following RCW 18.20.390.

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

**Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492:** See RCW 43.72.910 through 43.72.915.

**Legislative findings—Severability—1986 c 300:** See notes following RCW 18.57.174.

*Board of osteopathic medicine and surgery: Chapter 18.57 RCW.*

*Medical quality assurance commission: Chapter 18.71 RCW.*

**70.41.210 Duty to report restrictions on health care practitioners' privileges based on unprofessional conduct—Penalty.** (1) The chief administrator or executive officer of a hospital shall report to the department when the practice of a health care practitioner as defined in subsection (2) of this section is restricted, suspended, limited, or terminated based upon a conviction, determination, or finding by the hospital that the health care practitioner has committed an action defined as unprofessional conduct under RCW 18.130.180. The chief administrator or executive officer shall also report any voluntary restriction or termination of the practice of a health care practitioner as defined in subsection (2) of this section while the practitioner is under investigation or the subject of a proceeding by the hospital regarding unprofessional conduct, or in return for the hospital not conducting such an investigation or proceeding or not taking action. The department will forward the report to the appropriate disciplining authority.

(2) The reporting requirements apply to the following health care practitioners: Pharmacists as defined in chapter 18.64 RCW; advanced registered nurse practitioners as defined in chapter 18.79 RCW; dentists as defined in chapter 18.32 RCW; naturopaths as defined in chapter 18.36A RCW; optometrists as defined in chapter 18.53 RCW; osteopathic physicians and surgeons as defined in chapter 18.57 RCW; osteopathic physician [physician's] assistants as defined in chapter 18.57A RCW; physicians as defined in chapter 18.71 RCW; physician assistants as defined in chapter 18.71A RCW; podiatric physicians and surgeons as defined in chapter 18.22 RCW; and psychologists as defined in chapter 18.83 RCW.

(3) Reports made under subsection (1) of this section shall be made within fifteen days of the date: (a) A conviction, determination, or finding is made by the hospital that the health care practitioner has committed an action defined as

unprofessional conduct under RCW 18.130.180; or (b) the voluntary restriction or termination of the practice of a health care practitioner, including his or her voluntary resignation, while under investigation or the subject of proceedings regarding unprofessional conduct under RCW 18.130.180 is accepted by the hospital.

(4) Failure of a hospital to comply with this section is punishable by a civil penalty not to exceed two hundred fifty dollars.

(5) A hospital, its chief administrator, or its executive officer who files a report under this section is immune from suit, whether direct or derivative, in any civil action related to the filing or contents of the report, unless the conviction, determination, or finding on which the report and its content are based is proven to not have been made in good faith. The prevailing party in any action brought alleging the conviction, determination, finding, or report was not made in good faith, shall be entitled to recover the costs of litigation, including reasonable attorneys' fees.

(6) The department shall forward reports made under subsection (1) of this section to the appropriate disciplining authority designated under Title 18 RCW within fifteen days of the date the report is received by the department. The department shall notify a hospital that has made a report under subsection (1) of this section of the results of the disciplining authority's case disposition decision within fifteen days after the case disposition. Case disposition is the decision whether to issue a statement of charges, take informal action, or close the complaint without action against a practitioner. In its biennial report to the legislature under RCW 18.130.310, the department shall specifically identify the case dispositions of reports made by hospitals under subsection (1) of this section.

(7) The department shall not increase hospital license fees to carry out this section before July 1, 2007. [2005 c 470 § 1; 1994 sp.s. c 9 § 743; 1986 c 300 § 7.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**Legislative findings—Severability—1986 c 300:** See notes following RCW 18.57.174.

*Medical quality assurance commission: Chapter 18.71 RCW.*

**70.41.380 Notice of unanticipated outcomes.** Hospitals shall have in place policies to assure that, when appropriate, information about unanticipated outcomes is provided to patients or their families or any surrogate decision makers identified pursuant to RCW 7.70.065. Notifications of unanticipated outcomes under this section do not constitute an acknowledgement or admission of liability, nor can the fact of notification, the content disclosed, or any and all statements, affirmations, gestures, or conduct expressing apology be introduced as evidence in a civil action. [2005 c 118 § 1.]

**Policy to be in place beginning January 1, 2006—2005 c 118:** "Beginning January 1, 2006, the department shall, during the survey of a hospital, ensure that the policy required in RCW 70.41.380 is in place." [2005 c 118 § 2.]

## Chapter 70.44 RCW

## PUBLIC HOSPITAL DISTRICTS

## Sections

- 70.44.062 Commissioners' meetings, proceedings, and deliberations concerning health care providers' clinical or staff privileges to be confidential—Final action in public session.
- 70.44.315 Evaluation criteria and requirements for acquisition of district hospitals. (*Effective July 1, 2006.*)

**70.44.062 Commissioners' meetings, proceedings, and deliberations concerning health care providers' clinical or staff privileges to be confidential—Final action in public session.** (1) All meetings, proceedings, and deliberations of the board of commissioners, its staff or agents, concerning the granting, denial, revocation, restriction, or other consideration of the status of the clinical or staff privileges of a physician or other health care provider as that term is defined in RCW 7.70.020, if such other providers at the discretion of the district's commissioners are considered for such privileges, shall be confidential and may be conducted in executive session: PROVIDED, That the final action of the board as to the denial, revocation, or restriction of clinical or staff privileges of a physician or other health care provider as defined in RCW 7.70.020 shall be done in public session.

(2) All meetings, proceedings, and deliberations of a quality improvement committee established under RCW 4.24.250, 43.70.510, or 70.41.200 and all meetings, proceedings, and deliberations of the board of commissioners, its staff or agents, to review the report or the activities of a quality improvement committee established under RCW 4.24.250, 43.70.510, or 70.41.200 may, at the discretion of the quality improvement committee or the board of commissioners, be confidential and may be conducted in executive session. Any review conducted by the board of commissioners or quality improvement committee, or their staffs or agents, shall be subject to the same protections, limitations, and exemptions that apply to quality improvement committee activities under RCW 4.24.240, 4.24.250, 43.70.510, and 70.41.200. However, any final action of the board of commissioners on the report of the quality improvement committee shall be done in public session. [2005 c 169 § 1; 1985 c 166 § 1.]

**70.44.315 Evaluation criteria and requirements for acquisition of district hospitals.** (*Effective July 1, 2006.*)

(1) When evaluating a potential acquisition, the commissioners shall determine their compliance with the following requirements:

(a) That the acquisition is authorized under chapter 70.44 RCW and other laws governing public hospital districts;

(b) That the procedures used in the decision-making process allowed district officials to thoroughly fulfill their due diligence responsibilities as municipal officers, including those covered under chapter 42.23 RCW governing conflicts of interest and chapter 42.20 RCW prohibiting malfeasance of public officials;

(c) That the acquisition will not result in the revocation of hospital privileges;

(d) That sufficient safeguards are included to maintain appropriate capacity for health science research and health care provider education;

(e) That the acquisition is allowed under Article VIII, section 7 of the state Constitution, which prohibits gifts of public funds or lending of credit and Article XI, section 14, prohibiting private use of public funds;

(f) That the public hospital district will retain control over district functions as required under chapter 70.44 RCW and other laws governing hospital districts;

(g) That the activities related to the acquisition process complied with chapters 42.56 and 42.32 RCW, governing disclosure of public records, and chapter 42.30 RCW, governing public meetings;

(h) That the acquisition complies with the requirements of RCW 70.44.300 relating to fair market value; and

(i) Other state laws affecting the proposed acquisition.

(2) The commissioners shall also determine whether the public hospital district should retain a right of first refusal to repurchase the assets by the public hospital district if the hospital is subsequently sold to, acquired by, or merged with another entity.

(3)(a) Prior to approving the acquisition of a district hospital, the board of commissioners of the hospital district shall obtain a written opinion from a qualified independent expert or the Washington state department of health as to whether or not the acquisition meets the standards set forth in RCW 70.45.080.

(b) Upon request, the hospital district and the person seeking to acquire its hospital shall provide the department or independent expert with any needed information and documents. The department shall charge the hospital district for any costs the department incurs in preparing an opinion under this section. The hospital district may recover from the acquiring person any costs it incurs in obtaining the opinion from either the department or the independent expert. The opinion shall be delivered to the board of commissioners no later than ninety days after it is requested.

(c) Within ten working days after it receives the opinion, the board of commissioners shall publish notice of the opinion in at least one newspaper of general circulation within the hospital district, stating how a person may obtain a copy, and giving the time and location of the hearing required under (d) of this subsection. It shall make a copy of the report and the opinion available to anyone upon request.

(d) Within thirty days after it received the opinion, the board of commissioners shall hold a public hearing regarding the proposed acquisition. The board of commissioners may vote to approve the acquisition no sooner than thirty days following the public hearing.

(4)(a) For purposes of this section, "acquisition" means an acquisition by a person of any interest in a hospital owned by a public hospital district, whether by purchase, merger, lease, or otherwise, that results in a change of ownership or control of twenty percent or more of the assets of a hospital currently licensed and operating under RCW 70.41.090. Acquisition does not include an acquisition where the other party or parties to the acquisition are nonprofit corporations having a substantially similar charitable health care purpose, organizations exempt from federal income tax under section 501(c)(3) of the internal revenue code, or governmental entities. Acquisition does not include an acquisition where the other party is an organization that is a limited liability corporation, a partnership, or any other legal entity and the mem-



bers, partners, or otherwise designated controlling parties of the organization are all nonprofit corporations having a charitable health care purpose, organizations exempt from federal income tax under section 501(c)(3) of the internal revenue code, or governmental entities. Acquisition does not include activities between two or more governmental organizations, including organizations acting pursuant to chapter 39.34 RCW, regardless of the type of organizational structure used by the governmental entities.

(b) For purposes of this subsection (4), "person" means an individual, a trust or estate, a partnership, a corporation including associations, a limited liability company, a joint stock company, or an insurance company. [2005 c 274 § 334; 1997 c 332 § 18.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Severability—1997 c 332:** See RCW 70.45.900.

### Chapter 70.45 RCW

#### ACQUISITION OF NONPROFIT HOSPITALS

##### Sections

70.45.030 Department approval required—Application—Fees. (*Effective July 1, 2006.*)

**70.45.030 Department approval required—Application—Fees. (*Effective July 1, 2006.*)** (1) A person may not engage in the acquisition of a nonprofit hospital without first having applied for and received the approval of the department under this chapter.

(2) An application must be submitted to the department on forms provided by the department, and at a minimum must include: The name of the hospital being acquired, the name of the acquiring person or other parties to the acquisition, the acquisition price, a copy of the acquisition agreement, a financial and economic analysis and report from an independent expert or consultant of the effect of the acquisition under the criteria in RCW 70.45.070, and all other related documents. The applications and all related documents are considered public records for purposes of chapter 42.56 RCW.

(3) The department shall charge an applicant fees sufficient to cover the costs of implementing this chapter. The fees must include the cost of the attorney general's opinion under RCW 70.45.060. The department shall transfer this portion of the fee, upon receipt, to the attorney general. [2005 c 274 § 335; 1997 c 332 § 3.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

### Chapter 70.47 RCW

#### BASIC HEALTH PLAN—HEALTH CARE ACCESS ACT

##### Sections

70.47.020 Definitions.  
70.47.150 Confidentiality. (*Effective July 1, 2006.*)  
70.47.200 Mental health services—Definition—Coverage required, when.  
70.47.201 Mental health services—Rules.

**70.47.020 Definitions.** As used in this chapter:

(1) "Washington basic health plan" or "plan" means the system of enrollment and payment for basic health care services, administered by the plan administrator through participating managed health care systems, created by this chapter.

(2) "Administrator" means the Washington basic health plan administrator, who also holds the position of administrator of the Washington state health care authority.

(3) "Health coverage tax credit program" means the program created by the Trade Act of 2002 (P.L. 107-210) that provides a federal tax credit that subsidizes private health insurance coverage for displaced workers certified to receive certain trade adjustment assistance benefits and for individuals receiving benefits from the pension benefit guaranty corporation.

(4) "Health coverage tax credit eligible enrollee" means individual workers and their qualified family members who lose their jobs due to the effects of international trade and are eligible for certain trade adjustment assistance benefits; or are eligible for benefits under the alternative trade adjustment assistance program; or are people who receive benefits from the pension benefit guaranty corporation and are at least fifty-five years old.

(5) "Managed health care system" means: (a) Any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof, that provides directly or by contract basic health care services, as defined by the administrator and rendered by duly licensed providers, to a defined patient population enrolled in the plan and in the managed health care system; or (b) a self-funded or self-insured method of providing insurance coverage to subsidized enrollees provided under RCW 41.05.140 and subject to the limitations under RCW 70.47.100(7).

(6) "Subsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children: (a) Who is not eligible for medicare; (b) who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator; (c) who is not a full-time student who has received a temporary visa to study in the United States; (d) who resides in an area of the state served by a managed health care system participating in the plan; (e) whose gross family income at the time of enrollment does not exceed two hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services; and (f) who chooses to obtain basic health care coverage from a particular managed health care system in return for periodic payments to the plan. To the extent that state funds are specifically appropriated for this purpose, with a corresponding federal match, "subsidized enrollee" also means an individual, or an individual's spouse or dependent children, who meets the requirements in (a) through (d) and (f) of this subsection and whose gross family income at the time of enrollment is more than two hundred percent, but less than two hundred fifty-one percent, of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services.

(7) "Nonsubsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children: (a) Who is not eligible for medicare; (b) who is not confined or residing in a government-operated institution, unless he or

she meets eligibility criteria adopted by the administrator; (c) who resides in an area of the state served by a managed health care system participating in the plan; (d) who chooses to obtain basic health care coverage from a particular managed health care system; and (e) who pays or on whose behalf is paid the full costs for participation in the plan, without any subsidy from the plan.

(8) "Subsidy" means the difference between the amount of periodic payment the administrator makes to a managed health care system on behalf of a subsidized enrollee plus the administrative cost to the plan of providing the plan to that subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

(9) "Premium" means a periodic payment, based upon gross family income which an individual, their employer or another financial sponsor makes to the plan as consideration for enrollment in the plan as a subsidized enrollee, a nonsubsidized enrollee, or a health coverage tax credit eligible enrollee.

(10) "Rate" means the amount, negotiated by the administrator with and paid to a participating managed health care system, that is based upon the enrollment of subsidized, nonsubsidized, and health coverage tax credit eligible enrollees in the plan and in that system. [2005 c 188 § 2; 2004 c 192 § 1; 2000 c 79 § 43; 1997 c 335 § 1; 1997 c 245 § 5. Prior: 1995 c 266 § 2; 1995 c 2 § 3; 1994 c 309 § 4; 1993 c 492 § 209; 1987 1st ex.s. c 5 § 4.]

**Findings—2005 c 188:** "The legislature finds that the basic health plan is a valuable means of providing access to affordable health insurance coverage for low-income families and individuals in Washington state. The legislature further finds that persons studying in the United States as full-time students under temporary visas must show, as a condition of receiving their temporary visa, that they have sufficient funds available for self-support during their entire proposed course of study. For this reason, the legislature finds that it is not appropriate to provide subsidized basic health plan coverage to this group of students." [2005 c 188 § 1.]

**Effective date—2004 c 192:** "This act takes effect January 1, 2005." [2004 c 192 § 6.]

**Effective date—Severability—2000 c 79:** See notes following RCW 48.04.010.

**Effective date—1995 c 266:** See note following RCW 70.47.060.

**Effective date—1995 c 2:** See note following RCW 43.72.090.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

**Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492:** See RCW 43.72.910 through 43.72.915.

### **70.47.150 Confidentiality. (Effective July 1, 2006.)**

Notwithstanding the provisions of chapter 42.56 RCW, (1) records obtained, reviewed by, or on file with the plan containing information concerning medical treatment of individuals shall be exempt from public inspection and copying; and (2) actuarial formulas, statistics, and assumptions submitted in support of a rate filing by a managed health care system or submitted to the administrator upon his or her request shall be exempt from public inspection and copying in order to preserve trade secrets or prevent unfair competition. [2005 c 274 § 336; 1990 c 54 § 1.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

[2005 RCW Supp—page 774]

**70.47.200 Mental health services—Definition—Coverage required, when.** (1) For the purposes of this section, "mental health services" means medically necessary outpatient and inpatient services provided to treat mental disorders covered by the diagnostic categories listed in the most current version of the diagnostic and statistical manual of mental disorders, published by the American psychiatric association, on July 24, 2005, or such subsequent date as may be determined by the administrator, by rule, consistent with the purposes of chapter 6, Laws of 2005, with the exception of the following categories, codes, and services: (a) Substance related disorders; (b) life transition problems, currently referred to as "V" codes, and diagnostic codes 302 through 302.9 as found in the diagnostic and statistical manual of mental disorders, 4th edition, published by the American psychiatric association; (c) skilled nursing facility services, home health care, residential treatment, and custodial care; and (d) court ordered treatment, unless the Washington basic health plan's or contracted managed health care system's medical director or designee determines the treatment to be medically necessary.

(2)(a) Any schedule of benefits established or renewed by the Washington basic health plan on or after January 1, 2006, shall provide coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the schedule of benefits. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered under the schedule of benefits.

(b) Any schedule of benefits established or renewed by the Washington basic health plan on or after January 1, 2008, shall provide coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the schedule of benefits. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the schedule of benefits imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered under the schedule of benefits.

(c) Any schedule of benefits established or renewed by the Washington basic health plan on or after July 1, 2010, shall include coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the schedule of benefits. Wellness and preventive services that are provided or reimbursed at a

lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the schedule of benefits imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services. If the schedule of benefits imposes any deductible, mental health services shall be included with medical and surgical services for the purpose of meeting the deductible requirement. Treatment limitations or any other financial requirements on coverage for mental health services are only allowed if the same limitations or requirements are imposed on coverage for medical and surgical services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered under the schedule of benefits.

(3) In meeting the requirements of subsection (2)(a) and (b) of this section, the Washington basic health plan may not reduce the number of mental health outpatient visits or mental health inpatient days below the level in effect on July 1, 2002.

(4) This section does not prohibit a requirement that mental health services be medically necessary as determined by the medical director or designee, if a comparable requirement is applicable to medical and surgical services.

(5) Nothing in this section shall be construed to prevent the management of mental health services. [2005 c 6 § 6.]

**Findings—Intent—Severability—2005 c 6:** See notes following RCW 41.05.600.

**70.47.201 Mental health services—Rules.** The administrator may adopt rules to implement RCW 70.47.200. [2005 c 6 § 11.]

**Findings—Intent—Severability—2005 c 6:** See notes following RCW 41.05.600.

## Chapter 70.58 RCW VITAL STATISTICS

### Sections

70.58.005	Definitions.
70.58.082	Vital records—Rules—Release of copies.
70.58.160	Certificate of death or fetal death required.
70.58.170	Certificate of death or fetal death—By whom filed.
70.58.180	Certificate when no physician, physician's assistant, or advanced registered nurse practitioner in attendance—Legally accepted cause of death.
70.58.190	Permit to dispose of human remains when cause of death undetermined.
70.58.230	Permits for burial, removal, etc., required—Removal to another district without permit, notice to registrar, fee.
70.58.240	Duties of funeral directors.
70.58.260	Burial grounds—Duties of sexton.
70.58.390	Certificates of presumed death.

**70.58.005 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Business days" means Monday through Friday except official state holidays.

(2) "Department" means the department of health.

(3) "Embalmer" means a person licensed as required in chapter 18.39 RCW and defined in RCW 18.39.010.

(4) "Funeral director" means a person licensed as required in chapter 18.39 RCW and defined in RCW 18.39.010.

(5) "Vital records" means records of birth, death, fetal death, marriage, dissolution, annulment, and legal separation, as maintained under the supervision of the state registrar of vital statistics. [2005 c 365 § 151; 1991 c 3 § 342; 1987 c 223 § 1.]

### **70.58.082 Vital records—Rules—Release of copies.**

No person may prepare or issue any vital record that purports to be an original, certified copy, or copy of a vital record except as authorized in this chapter.

The department shall adopt rules providing for the release of paper or electronic copies of vital records that include adequate standards for security and confidentiality, ensure the proper record is identified, and prevent fraudulent use of records. All certified copies of vital records in the state must be on paper and in a format provided and approved by the department and must include security features to deter the alteration, counterfeiting, duplication, or simulation without ready detection.

Federal, state, and local governmental agencies may, upon request and with submission of the appropriate fee, be furnished copies of vital records if the vital record will be used for the agencies' official duties. The department may enter into agreements with offices of vital statistics outside the state for the transmission of copies of vital records to those offices when the vital records relate to residents of those jurisdictions and receipt of copies of vital records from those offices. The agreement must specify the statistical and administrative purposes for which the vital records may be used and must provide instructions for the proper retention and disposition of the copies. Copies of vital records that are received by the department from other offices of vital statistics outside the state must be handled as provided under the agreements.

The department may disclose information that may identify any person named in any birth certificate [vital] record for research purposes as provided under chapter 42.48 RCW. [2005 c 365 § 152; 1997 c 108 § 1.]

**70.58.160 Certificate of death or fetal death required.** A certificate of every death or fetal death shall be filed with the local registrar of the district in which the death or fetal death occurred within three business days after the occurrence is known, or if the place of death or fetal death is not known, then with the local registrar of the district in which the human remains are found within one business day thereafter. In every instance a certificate shall be filed prior to the interment or other disposition of the human remains. However, a certificate of fetal death shall not be required if the period of gestation is less than twenty weeks. [2005 c 365 § 153; 1961 ex.s. c 5 § 12; 1945 c 159 § 1; Rem. Supp. 1945 § 6024-1. Prior: 1915 c 180 § 4; 1907 c 83 § 5.]

**70.58.170 Certificate of death or fetal death—By whom filed.** The funeral director or person having the right to control the disposition of the human remains under RCW 68.50.160 shall file the certificate of death or fetal death. In

preparing such certificate, the funeral director or person having the right to control the disposition of the human remains under RCW 68.50.160 shall obtain and enter on the certificate such personal data as the certificate requires from the person or persons best qualified to supply them. He or she shall present the certificate of death to the physician, physician's assistant, or advanced registered nurse practitioner last in attendance upon the deceased, or, if the deceased died without medical attendance, to the health officer, coroner, or prosecuting attorney having jurisdiction, who shall thereupon certify the cause of death according to his or her best knowledge and belief and shall sign the certificate of death or fetal death within two business days after being presented with the certificate unless good cause for not signing the certificate within the two business days can be established. He or she shall present the certificate of fetal death to the physician, physician's assistant, advanced registered nurse practitioner, midwife, or other person in attendance at the fetal death, who shall certify the fetal death and such medical data pertaining thereto as he or she can furnish. [2005 c 365 § 154; 2000 c 133 § 1; 1979 ex.s. c 162 § 1; 1961 ex.s. c 5 § 13; 1945 c 159 § 2; Rem. Supp. 1945 § 6024-2.]

**70.58.180 Certificate when no physician, physician's assistant, or advanced registered nurse practitioner in attendance—Legally accepted cause of death.** If the death occurred without medical attendance, the funeral director or person having the right to control the disposition of the human remains under RCW 68.50.160 shall notify the coroner, or prosecuting attorney if there is no coroner in the county. If the circumstances suggest that the death or fetal death was caused by unlawful or unnatural causes or if there is no local health officer with jurisdiction, the coroner, or if none, the prosecuting attorney shall complete and sign the certification, noting upon the certificate that no physician, physician's assistant, or advanced registered nurse practitioner was in attendance at the time of death. In case of any death without medical attendance in which there is no suspicion of death from unlawful or unnatural causes, the local health officer or his or her deputy, the coroner and if none, the prosecuting attorney, shall complete and sign the certification, noting upon the certificate that no physician, physician's assistant, or advanced registered nurse practitioner was in attendance at the time of death, and noting the cause of death without the holding of an inquest or performing of an autopsy or post mortem, but from statements of relatives, persons in attendance during the last sickness, persons present at the time of death or other persons having adequate knowledge of the facts.

The cause of death, the manner and mode in which death occurred, as noted by the coroner or if none, the prosecuting attorney or the health officer and incorporated in the death certificate filed with the bureau of vital statistics of the board of health shall be the legally accepted manner and mode by which the deceased came to his or her death and shall be the legally accepted cause of death. [2005 c 365 § 155; 2000 c 133 § 2; 1961 ex.s. c 5 § 14; 1953 c 188 § 5; 1945 c 159 § 3; Rem. Supp. 1945 § 6024-3. Prior: 1915 c 180 § 5; 1907 c 83 § 7.]

[2005 RCW Supp—page 776]

**70.58.190 Permit to dispose of human remains when cause of death undetermined.** If the cause of death cannot be determined within three business days, the certification of its cause may be filed after the prescribed period, but the attending physician, coroner, or prosecuting attorney shall give the local registrar of the district in which the death occurred written notice of the reason for the delay, in order that a permit for the disposition of the human remains may be issued if required. [2005 c 365 § 156; 1945 c 159 § 4; Rem. Supp. 1945 § 6024-4.]

**70.58.230 Permits for burial, removal, etc., required—Removal to another district without permit, notice to registrar, fee.** It shall be unlawful for any person to inter, deposit in a vault, grave, or tomb, cremate, or otherwise dispose of, or disinter or remove from one registration district to another, or hold for more than three business days after death, the human remains of any person whose death occurred in this state or any human remains which shall be found in this state, without obtaining, from the local registrar of the district in which the death occurred or in which the human remains were found, a permit for the burial, disinterment, or removal of the human remains. However, a licensed funeral director or embalmer of this state or a funeral establishment licensed in another state contiguous to Washington, with a current certificate of removal registration issued by the director of the department of licensing, may remove human remains from the district where the death occurred to another registration district or Oregon or Idaho without having obtained a permit but in such cases the funeral director or embalmer shall at the time of removing human remains file with or mail to the local registrar of the district where the death occurred a notice of removal upon a blank to be furnished by the state registrar. The notice of removal shall be signed by the funeral director or embalmer and shall contain the name and address of the local registrar with whom the certificate of death will be filed and the burial-transit permit secured. Every local registrar, accepting a death certificate and issuing a burial-transit permit for a death that occurred outside his or her district, shall be entitled to a fee of one dollar to be paid by the funeral director or embalmer at the time the death certificate is accepted and the permit is secured. It shall be unlawful for any person to bring into or transport within the state or inter, deposit in a vault, grave, or tomb, or cremate or otherwise dispose of human remains of any person whose death occurred outside this state unless the human remains are accompanied by a removal or transit permit issued in accordance with the law and health regulations in force where the death occurred, or unless a special permit for bringing the human remains into this state shall be obtained from the state registrar. [2005 c 365 § 157; 1961 ex.s. c 5 § 16; 1915 c 180 § 3; 1907 c 83 § 4; RRS § 6021.]

*Cemeteries and human remains: Title 68 RCW.*

**70.58.240 Duties of funeral directors.** Each funeral director or person having the right to control the disposition of the human remains under RCW 68.50.160 shall obtain a certificate of death, sign and file the certificate with the local registrar, and secure a burial-transit permit, prior to any permanent disposition of the human remains. He or she shall obtain the personal and statistical particulars required, from

the person best qualified to supply them. He or she shall present the certificate to the attending physician or in case the death occurred without any medical attendance, to the proper official for certification for the medical certificate of the cause of death and other particulars necessary to complete the record. He or she shall supply the information required relative to the date and place of disposition and he or she shall sign and present the completed certificate to the local registrar, for the issuance of a burial-transit permit. He or she shall deliver the burial permit to the sexton, or person in charge of the place of burial, before interring the human remains; or shall attach the transit permit to the box containing the corpse, when shipped by any transportation company, and the permit shall accompany the corpse to its destination. [2005 c 365 § 158; 1961 ex.s. c 5 § 17; 1915 c 180 § 6; 1907 c 83 § 8; RRS § 6025.]

**70.58.260 Burial grounds—Duties of sexton.** It shall be unlawful for any person in charge of any premises in which bodies of deceased persons are interred, cremated, or otherwise permanently disposed of, to permit the interment, cremation, or other disposition of any body upon such premises unless it is accompanied by a burial, removal, or transit permit as provided in this chapter. It shall be the duty of the person in charge of any such premises to, in case of the interment, cremation, or other disposition of human remains therein, endorse upon the permit the date and character of such disposition, over his or her signature, to return all permits so endorsed to the local registrar of the district in which the death occurred within ten days from the date of such disposition, and to keep a record of all human remains disposed of on the premises under his or her charge, stating, in each case, the name of the deceased person, if known, the place of death, the date of burial or other disposition, and the name and address of the undertaker, which record shall at all times be open to public inspection, and it shall be the duty of every undertaker, or person acting as such, when burying human remains in a cemetery or burial grounds having no person in charge, to sign the burial, removal, or transit permit, giving the date of burial, write across the face of the permit the words "no person in charge", and file the burial, removal, or transit permit within ten days with the registrar of the district in which the death occurred. [2005 c 365 § 159; 1915 c 180 § 7; 1907 c 83 § 10; RRS § 6027.]

**70.58.390 Certificates of presumed death.** A county coroner, medical examiner, or the prosecuting attorney having jurisdiction may file a certificate of presumed death when the official filing the certificate determines to the best of the official's knowledge and belief that there is sufficient circumstantial evidence to indicate that a person has in fact died in the county or in waters contiguous to the county and that it is unlikely that the body will be recovered. The certificate shall recite, to the extent possible, the date, circumstances, and place of the death, and shall be the legally accepted fact of death.

In the event that the county in which the death occurred cannot be determined with certainty, the county coroner, medical examiner, or prosecuting attorney in the county in which the events occurred and in which the decedent was last

known to be alive may file a certificate of presumed death under this section.

The official filing the certificate of presumed death shall file the certificate with the local registrar of the county where the death was presumed to have occurred, and thereafter all persons and parties acting in good faith may rely thereon with acquittance. [2005 c 365 § 160; 1981 c 176 § 1.]

## Chapter 70.77 RCW STATE FIREWORKS LAW

### Sections

70.77.455 Licensees to maintain and make available complete records—Exemption from public records act. (*Effective July 1, 2006.*)

**70.77.455 Licensees to maintain and make available complete records—Exemption from public records act. (*Effective July 1, 2006.*)** (1) All licensees shall maintain and make available to the chief of the Washington state patrol, through the director of fire protection, full and complete records showing all production, imports, exports, purchases, and sales of fireworks items by class.

(2) All records obtained and all reports produced, as required by this chapter, are not subject to disclosure through the public records act under chapter 42.56 RCW. [2005 c 274 § 337; 1997 c 182 § 23. Prior: 1995 c 369 § 54; 1995 c 61 § 25; 1986 c 266 § 114; 1982 c 230 § 38; 1961 c 228 § 68.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Severability—Effective date—1997 c 182:** See notes following RCW 70.77.160.

**Effective date—1995 c 369:** See note following RCW 43.43.930.

**Severability—Effective date—1995 c 61:** See notes following RCW 70.77.111.

**Severability—1986 c 266:** See note following RCW 38.52.005.

## Chapter 70.79 RCW BOILERS AND UNFIRED PRESSURE VESSELS

### Sections

70.79.080 Exemptions from chapter.  
70.79.090 Exemptions from certain provisions.  
70.79.160 Report of inspection by special inspector—Filing.  
70.79.170 Examinations for inspector's appointment or commission—Reexamination.  
70.79.190 Suspension, revocation of commission—Appeal.  
70.79.320 Operating without inspection certificate prohibited—Penalty.  
70.79.360 Repealed.  
70.79.361 Board determinations—Appeals.

**70.79.080 Exemptions from chapter.** This chapter shall not apply to the following boilers, unfired pressure vessels and domestic hot water tanks:

(1) Boilers and unfired pressure vessels under federal regulation or operated by any railroad subject to the provisions of the interstate commerce act;

(2) Unfired pressure vessels meeting the requirements of the interstate commerce commission for shipment of liquids or gases under pressure;

(3) Air tanks located on vehicles operating under the rules of other state authorities and used for carrying passengers, or freight;

(4) Air tanks installed on the right of way of railroads and used directly in the operation of trains;

(5) Unfired pressure vessels having a volume of five cubic feet or less when not located in places of public assembly;

(6) Unfired pressure vessels designed for a pressure not exceeding fifteen pounds per square inch gauge;

(7) Tanks used in connection with heating water for domestic and/or residential purposes;

(8) Boilers and unfired pressure vessels in cities having ordinances which are enforced and which have requirements equal to or higher than those provided for under this chapter, covering the installation, operation, maintenance and inspection of boilers and unfired pressure vessels;

(9) Tanks containing water with no air cushion and no direct source of energy that operate at a temperature of one hundred thirty degrees Fahrenheit or less;

(10) Electric boilers:

(a) Having a tank volume of not more than one and one-half cubic feet;

(b) Having a maximum allowable working pressure of one hundred pounds per square inch or less, with a pressure relief system to prevent excess pressure; and

(c) If constructed after June 10, 1994, constructed to American society of mechanical engineers code, or approved or otherwise certified by a nationally recognized or recognized foreign testing laboratory or construction code, including but not limited to Underwriters Laboratories, Edison Testing Laboratory, or Instituto Superiore Per La Prevenzione E La Sicurezza Del Lavoro;

(11) Electrical switchgear and control apparatus that have no external source of energy to maintain pressure and are located in restricted access areas under the control of an electric utility;

(12) Regardless of location, unfired pressure vessels and hot water heaters less than one and one-half cubic feet (11.25 gallons) in volume with a safety valve setting of one hundred fifty pounds per square inch gauge (psig) or less, or less than six inches in diameter and less than five cubic feet (37.5 gallons) in volume with a safety valve set at any pressure, or less than fifteen psig containing substances other than steam, lethal substances, or liquids with low flash points. [2005 c 22 § 1; 1999 c 183 § 3; 1996 c 72 § 1; 1994 c 64 § 2; 1986 c 97 § 1; 1951 c 32 § 8.]

**Finding—Intent—1994 c 64:** See note following RCW 70.79.095.

**70.79.090 Exemptions from certain provisions.** The following boilers and unfired pressure vessels shall be exempt from the requirements of RCW 70.79.220 and 70.79.240 through 70.79.330:

(1) Boilers or unfired pressure vessels located on farms and used solely for agricultural purposes;

(2) Unfired pressure vessels that are part of fertilizer applicator rigs designed and used exclusively for fertilization in the conduct of agricultural operations;

(3) Steam boilers used exclusively for heating purposes carrying a pressure of not more than fifteen pounds per square inch gauge and which are located in private residences or in apartment houses of less than six families;

(4) Hot water heating boilers carrying a pressure of not more than thirty pounds per square inch and which are located in private residences or in apartment houses of less than six families;

(5) Approved pressure vessels (hot water heaters, hot water storage tanks, hot water supply boilers, and hot water heating boilers listed by a nationally recognized testing agency), with approved safety devices including a pressure relief valve, with a nominal water containing capacity of one hundred twenty gallons or less having a heat input of two hundred thousand b.t.u.'s per hour or less, used for hot water supply at pressure of one hundred sixty pounds per square inch or less, and at temperatures of two hundred ten degrees Fahrenheit or less: PROVIDED, HOWEVER, That such pressure vessels are not installed in schools, child care centers, public and private hospitals, nursing and boarding homes, churches, public buildings owned or leased and maintained by the state or any political subdivision thereof, and assembly halls;

(6) Unfired pressure vessels containing only water under pressure for domestic supply purposes, including those containing air, the compression of which serves only as a cushion or airlift pumping systems, when located in private residences or in apartment houses of less than six families, or in public water systems as defined in RCW 70.119.020;

(7) Unfired pressure vessels containing liquified petroleum gases. [2005 c 22 § 2; 1999 c 183 § 4; 1988 c 254 § 20; 1983 c 3 § 174; 1972 ex.s. c 86 § 2; 1951 c 32 § 9.]

**70.79.160 Report of inspection by special inspector—**

**Filing.** Each company employing special inspectors shall, within thirty days following each internal or external boiler or unfired pressure vessel inspection made by such inspectors, file a report of such inspection with the chief inspector upon appropriate forms. [2005 c 22 § 3; 1999 c 183 § 8; 1951 c 32 § 16.]

**70.79.170 Examinations for inspector's appointment or commission—Reexamination.**

Examinations for deputy or special inspectors shall be in writing and shall be held by the chief and a member of the board, or by at least two national board commissioned inspectors. Such examinations shall be confined to questions the answers to which will aid in determining the fitness and competency of the applicant for the intended service. In case an applicant for an inspector's appointment or commission fails to pass the examination, he may appeal to the board for another examination which shall be given by the chief within ninety days. The record of an applicant's examination shall be accessible to said applicant and his employer. [2005 c 22 § 7; 1951 c 32 § 18.]

**70.79.190 Suspension, revocation of commission—**

**Appeal.** A person whose commission has been suspended or revoked shall be entitled to an appeal as provided in RCW 70.79.361 and to be present in person and/or represented by counsel on the hearing of the appeal. [2005 c 22 § 5; 1951 c 32 § 20.]

**70.79.320 Operating without inspection certificate prohibited—Penalty.** (1) It shall be unlawful for any per-

son, firm, partnership, or corporation to operate under pressure in this state a boiler or unfired pressure vessel, to which this chapter applies, without a valid inspection certificate as provided for in this chapter.

(2) The department may assess a penalty against a person violating a provision of this chapter. The penalty shall be not more than five hundred dollars. Each day that the violation continues is a separate violation and is subject to a separate penalty.

(3) The department may not assess a penalty until it adopts rules describing the method it will use to calculate penalties for various violations.

(4) The department shall notify the violator of its action, and the reasons for its action, in writing. The department shall send the notice by certified mail to the violator that a hearing may be requested under RCW 70.79.361. The hearing shall not stay the effect of the penalty. [2005 c 22 § 6; 1986 c 97 § 2; 1951 c 32 § 31.]

**70.79.360 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**70.79.361 Board determinations—Appeals.** (1) No person, firm, partnership, corporation, or other entity may install or maintain any standards that violate this chapter. In cases where the interpretation and application of the installation or maintenance standards prescribed in this chapter is in dispute, the board shall determine the methods of installation or maintenance to be used in the particular case submitted for its decision. To appeal the board's decision, a person, firm, partnership, corporation, or other entity shall, in writing, notify the chief boiler inspector. The notice shall specify the ruling or interpretation desired and the contention of the person, firm, partnership, corporation, or other entity as to the proper interpretation or application on the question on which a decision is desired.

(2) Any person, firm, partnership, corporation, or other entity wishing to appeal a penalty issued under this chapter may appeal to the board. The appeal shall be filed within twenty days after service of the notice of the penalty to the assessed party by filing a written notice of appeal with the chief boiler inspector. The hearing and review procedures shall be conducted by the board in accordance with chapter 34.05 RCW. [2005 c 22 § 4.]

### Chapter 70.83 RCW

#### PHENYLKETONURIA AND OTHER PREVENTABLE HERITABLE DISORDERS

##### Sections

70.83.040 Services and facilities of state agencies made available to families and physicians—Fees.

**70.83.040 Services and facilities of state agencies made available to families and physicians—Fees.** When notified of positive screening tests, the state department of health shall offer the use of its services and facilities, designed to prevent mental retardation or physical defects in such children, to the attending physician, or the parents of the newborn child if no attending physician can be identified.

The services and facilities of the department, and other state and local agencies cooperating with the department in carrying out programs of detection and prevention of mental retardation and physical defects shall be made available to the family and physician to the extent required in order to carry out the intent of this chapter and within the availability of funds. The department has the authority to collect a reasonable fee, from the parents or other responsible party of each infant screened to fund specialty clinics that provide treatment services for hemoglobin diseases, phenylketonuria, congenital adrenal hyperplasia, congenital hypothyroidism, and, during the 2005-07 fiscal biennium, other disorders defined by the board of health under RCW 70.83.020. The fee may be collected through the facility where the screening specimen is obtained. [2005 c 518 § 938; 1999 c 76 § 1; 1991 c 3 § 350; 1979 c 141 § 114; 1967 c 82 § 4.]

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

### Chapter 70.87 RCW

#### ELEVATORS, LIFTING DEVICES, AND MOVING WALKS

##### Sections

70.87.205 Resolution of disputes by arbitration—Appointment of arbitrators—Procedure—Decision—Enforcement. (*Effective January 1, 2006.*)

**70.87.205 Resolution of disputes by arbitration—Appointment of arbitrators—Procedure—Decision—Enforcement.** (*Effective January 1, 2006.*) (1) Disputes arising under RCW 70.87.200(2) shall be resolved by arbitration. The request shall be sent by certified mail.

(2) The department shall appoint one arbitrator; the municipality shall appoint one arbitrator; and the arbitrators chosen by the department and the municipality shall appoint the third arbitrator. If the two arbitrators cannot agree on the third arbitrator, the presiding judge of the Thurston county superior court, or his or her designee, shall appoint the third arbitrator.

(3) The arbitration shall be held pursuant to the procedures in chapter 7.04A RCW, except that RCW 7.04A.280(1)(f) shall not apply. The decision of the arbitrators is final and binding on the parties. Neither party may appeal a decision to any court.

(4) A party may petition the Thurston county superior court to enforce a decision of the arbitrators. [2005 c 433 § 49; 1983 c 123 § 23.]

**Application—Captions not law—Savings—Effective date—2005 c 433:** See RCW 7.04A.290 through 7.04A.310 and 7.04A.900.

### Chapter 70.93 RCW

#### WASTE REDUCTION, RECYCLING, AND MODEL LITTER CONTROL ACT

(Formerly: Model litter control and recycling act)

##### Sections

70.93.180 Waste reduction, recycling, and litter control account—Distribution.

**70.93.180 Waste reduction, recycling, and litter control account—Distribution.** (1) There is hereby created an account within the state treasury to be known as the "waste reduction, recycling, and litter control account". Moneys in the account may be spent only after appropriation. Expenditures from the waste reduction, recycling, and litter control account shall be used as follows:

(a) Fifty percent to the department of ecology, for use by the departments of ecology, natural resources, revenue, transportation, and corrections, and the parks and recreation commission, for use in litter collection programs, to be distributed under RCW 70.93.220. The amount to the department of ecology shall also be used for a central coordination function for litter control efforts statewide, for the biennial litter survey under RCW 70.93.200(8), and for statewide public awareness programs under RCW 70.93.200(7). The amount to the department shall also be used to defray the costs of administering the funding, coordination, and oversight of local government programs for waste reduction, litter control, and recycling, so that local governments can apply one hundred percent of their funding to achieving program goals. The amount to the department of revenue shall be used to enforce compliance with the litter tax imposed in chapter 82.19 RCW;

(b) Twenty percent to the department for local government funding programs for waste reduction, litter control, and recycling activities by cities and counties under RCW 70.93.250, to be administered by the department of ecology; and

(c) Thirty percent to the department of ecology for waste reduction and recycling efforts.

(2) All taxes imposed in RCW 82.19.010 and fines and bail forfeitures collected or received pursuant to this chapter shall be deposited in the waste reduction, recycling, and litter control account and used for the programs under subsection (1) of this section.

(3) Not less than five percent and no more than ten percent of the amount appropriated into the waste reduction, recycling, and litter control account every biennium shall be reserved for capital needs, including the purchase of vehicles for transporting crews and for collecting litter and solid waste. Capital funds shall be distributed among state agencies and local governments according to the same criteria provided in RCW 70.93.220 for the remainder of the funds, so that the most effective waste reduction, litter control, and recycling programs receive the most funding. The intent of this subsection is to provide funds for the purchase of equipment that will enable the department to account for the greatest return on investment in terms of reaching a zero litter goal.

(4) During the 2005-2007 fiscal biennium, the legislature may transfer from the waste reduction, recycling, and litter control account to the state general fund such amounts as reflect the excess fund balance of the account. [2005 c 518 § 939; 1998 c 257 § 5; 1992 c 175 § 8; 1991 sp.s. c 13 § 40; 1985 c 57 § 68; 1983 c 277 § 3; 1971 ex.s. c 307 § 18.]

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

**Effective date—1992 c 175:** See RCW 82.19.900.

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

[2005 RCW Supp—page 780]

**Effective date—1985 c 57:** See note following RCW 18.04.105.

## Chapter 70.94 RCW

### WASHINGTON CLEAN AIR ACT

#### Sections

70.94.017	Air pollution control account—Subaccount distribution. ( <i>Expires July 1, 2020.</i> )
70.94.030	Definitions.
70.94.151	Classification of air contaminant sources—Registration—Fee—Registration program defined.
70.94.473	Limitations on burning wood for heat.
70.94.640	Odors or fugitive dust caused by agricultural activities consistent with good agricultural practices exempt from chapter.

**70.94.017 Air pollution control account—Subaccount distribution. (*Expires July 1, 2020.*)** (1) Money deposited in the segregated subaccount of the air pollution control account under RCW 46.68.020(2) shall be distributed as follows:

(a) Eighty-five percent shall be distributed to air pollution control authorities created under this chapter. The money must be distributed in direct proportion with the amount of fees imposed under RCW 46.12.080, 46.12.170, and 46.12.181 that are collected within the boundaries of each authority. However, an amount in direct proportion with those fees collected in counties for which no air pollution control authority exists must be distributed to the department.

(b) The remaining fifteen percent shall be distributed to the department.

(2) Money distributed to air pollution control authorities and the department under subsection (1) of this section must be used as follows:

(a) Eighty-five percent of the money received by an air pollution control authority or the department is available on a priority basis to retrofit school buses with exhaust emission control devices or to provide funding for fueling infrastructure necessary to allow school bus fleets to use alternative, cleaner fuels. In addition, the director of ecology or the air pollution control officer may direct funding under this section for other publicly owned diesel equipment if the director of ecology or the air pollution control officer finds that funding for other publicly owned diesel equipment will provide public health benefits and further the purposes of this chapter.

(b) The remaining fifteen percent may be used by the air pollution control authority or department to reduce transportation-related air contaminant emissions and clean up air pollution, or reduce and monitor toxic air contaminants.

(3) Money in the air pollution control account may be spent by the department only after appropriation.

(4) This section expires July 1, 2020. [2005 c 295 § 5; 2003 c 264 § 1.]

**Effective date—2005 c 295 §§ 5, 6, and 10:** "Sections 5, 6, and 10 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2005." [2005 c 295 § 14.]

**Findings—2005 c 295:** See note following RCW 70.120A.010.

**70.94.030 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.



(1) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof.

(2) "Air pollution" is presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interfere with enjoyment of life and property. For the purpose of this chapter, air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW.

(3) "Air quality standard" means an established concentration, exposure time, and frequency of occurrence of an air contaminant or multiple contaminants in the ambient air which shall not be exceeded.

(4) "Ambient air" means the surrounding outside air.

(5) "Authority" means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

(6) "Best available control technology" (BACT) means an emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation under this chapter emitted from or that results from any new or modified stationary source, that the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such a source or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such a pollutant. In no event shall application of "best available control technology" result in emissions of any pollutants that will exceed the emissions allowed by any applicable standard under 40 C.F.R. Part 60 and Part 61, as they exist on July 25, 1993, or their later enactments as adopted by reference by the director by rule. Emissions from any source utilizing clean fuels, or any other means, to comply with this subsection shall not be allowed to increase above levels that would have been required under the definition of BACT as it existed prior to enactment of the federal clean air act amendments of 1990.

(7) "Best available retrofit technology" (BART) means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant that is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility that might reasonably be anticipated to result from the use of the technology.

(8) "Board" means the board of directors of an authority.

(9) "Control officer" means the air pollution control officer of any authority.

(10) "Department" or "ecology" means the department of ecology.

(11) "Emission" means a release of air contaminants into the ambient air.

(12) "Emission standard" and "emission limitation" mean a requirement established under the federal clean air act or this chapter that limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice, or operational standard adopted under the federal clean air act or this chapter.

(13) "Fine particulate" means particulates with a diameter of two and one-half microns and smaller.

(14) "Lowest achievable emission rate" (LAER) means for any source that rate of emissions that reflects:

(a) The most stringent emission limitation that is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or

(b) The most stringent emission limitation that is achieved in practice by such class or category of source, whichever is more stringent.

In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source performance standards.

(15) "Modification" means any physical change in, or change in the method of operation of, a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted. The term modification shall be construed consistent with the definition of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.

(16) "Multicounty authority" means an authority which consists of two or more counties.

(17) "New source" means (a) the construction or modification of a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted, and (b) any other project that constitutes a new source under the federal clean air act.

(18) "Permit program source" means a source required to apply for or to maintain an operating permit under RCW 70.94.161.

(19) "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision of the state, municipality, or governmental agency.

(20) "Reasonably available control technology" (RACT) means the lowest emission limit that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual source or source category taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for a source or source category shall be adopted only after notice and opportunity for comment are afforded.

(21) "Silvicultural burning" means burning of wood fiber on forest land consistent with the provisions of RCW 70.94.660.

(22) "Source" means all of the emissions units including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are under the control of the same person, or persons under common control, whose activities are ancillary to the production of a single product or functionally related group of products.

(23) "Stationary source" means any building, structure, facility, or installation that emits or may emit any air contaminant.

(24) "Trigger level" means the ambient level of fine particulates, measured in micrograms per cubic meter, that must be detected prior to initiating a first or second stage of impaired air quality under RCW 70.94.473. [2005 c 197 § 2; 1993 c 252 § 2; 1991 c 199 § 103; 1987 c 109 § 33; 1979 c 141 § 119; 1969 ex.s. c 168 § 2; 1967 ex.s. c 61 § 1; 1967 c 238 § 2; 1957 c 232 § 3.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**70.94.151 Classification of air contaminant sources—Registration—Fee—Registration program defined.** (1) The board of any activated authority or the department, may classify air contaminant sources, by ordinance, resolution, rule or regulation, which in its judgment may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which cause or contribute to air pollution, and may require registration or reporting or both for any such class or classes. Classifications made pursuant to this section may be for application to the area of jurisdiction of such authority, or the state as a whole or to any designated area within the jurisdiction, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

(2) Except as provided in subsection (3) of this section, any person operating or responsible for the operation of air contaminant sources of any class for which the ordinances, resolutions, rules or regulations of the department or board of the authority, require registration and reporting shall register therewith and make reports containing information as may be required by such department or board concerning location, size and height of contaminant outlets, processes employed, nature of the contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled. The department or board may require that such registration be accompanied by a fee and may determine the amount of such fee for such class or classes: PROVIDED, That the amount of the fee shall only be to compensate for the costs of administering such registration program which shall be defined as initial registration and annual or other periodic reports from the source owner providing information directly related to air pollution registration, on-site inspections necessary to verify compliance with registration requirements, data storage and retrieval systems necessary for support of the registration program, emission inventory reports and emission reduction credits computed from information provided by sources pursuant to registration program requirements, staff review, including engineer-

ing analysis for accuracy and currentness, of information provided by sources pursuant to registration program requirements, clerical and other office support provided in direct furtherance of the registration program, and administrative support provided in directly carrying out the registration program: PROVIDED FURTHER, That any such registration made with either the board or the department shall preclude a further registration with any other board or the department.

All registration program fees collected by the department shall be deposited in the air pollution control account. All registration program fees collected by the local air authorities shall be deposited in their respective treasuries.

(3) If a registration or report has been filed for a grain warehouse or grain elevator as required under this section, registration, reporting, or a registration program fee shall not, after January 1, 1997, again be required under this section for the warehouse or elevator unless the capacity of the warehouse or elevator as listed as part of the license issued for the facility has been increased since the date the registration or reporting was last made. If the capacity of the warehouse or elevator listed as part of the license is increased, any registration or reporting required for the warehouse or elevator under this section must be made by the date the warehouse or elevator receives grain from the first harvest season that occurs after the increase in its capacity is listed in the license.

This subsection does not apply to a grain warehouse or grain elevator if the warehouse or elevator handles more than ten million bushels of grain annually.

(4) For the purposes of subsection (3) of this section:

(a) A "grain warehouse" or "grain elevator" is an establishment classified in standard industrial classification (SIC) code 5153 for wholesale trade for which a license is required and includes, but is not limited to, such a licensed facility that also conducts cleaning operations for grain;

(b) A "license" is a license issued by the department of agriculture licensing a facility as a grain warehouse or grain elevator under chapter 22.09 RCW or a license issued by the federal government licensing a facility as a grain warehouse or grain elevator for purposes similar to those of licensure for the facility under chapter 22.09 RCW; and

(c) "Grain" means a grain or a pulse. [2005 c 138 § 1; 1997 c 410 § 1; 1993 c 252 § 3; 1987 c 109 § 37; 1984 c 88 § 2; 1969 ex.s. c 168 § 19; 1967 c 238 § 28.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**70.94.473 Limitations on burning wood for heat.** (1) Any person in a residence or commercial establishment which has an adequate source of heat without burning wood shall:

(a) Not burn wood in any solid fuel burning device whenever the department has determined under RCW 70.94.715 that any air pollution episode exists in that area;

(b) Not burn wood in any solid fuel burning device except those which are either Oregon department of environmental quality phase II or United States environmental protection agency certified or certified by the department under RCW 70.94.457(1) or a pellet stove either certified or issued an exemption by the United States environmental protection agency in accordance with Title 40, Part 60 of the code of federal regulations, in the geographical area and for the

period of time that a first stage of impaired air quality has been determined, by the department or any authority, for that area. A first stage of impaired air quality is reached when:

(i) Fine particulates are at an ambient level of thirty-five micrograms per cubic meter measured on a twenty-four hour average; and

(ii) Forecasted meteorological conditions are not expected to allow levels of fine particulates to decline below thirty-five micrograms per cubic meter for a period of forty-eight hours or more from the time that the fine particulates are measured at the trigger level; and

(c) Not burn wood in any solid fuel burning device in a geographical area and for the period of time that a second stage of impaired air quality has been determined by the department or any authority, for that area. A second stage of impaired air quality is reached when:

(i) A first stage of impaired air quality has been in force and not been sufficient to reduce the increasing fine particle [particulate] pollution trend;

(ii) Fine particulates are at an ambient level of sixty micrograms per cubic meter measured on a twenty-four hour average; and

(iii) Forecasted meteorological conditions are not expected to allow levels of fine particulates to decline below sixty micrograms per cubic meter for a period of forty-eight hours or more from the time that the fine particulates are measured at the trigger level.

(2) Actions of the department and local air pollution control authorities under this section shall preempt actions of other state agencies and local governments for the purposes of controlling air pollution from solid fuel burning devices, except where authorized by chapter 199, Laws of 1991. [2005 c 197 § 1; 1998 c 342 § 8; 1995 c 205 § 1; 1991 c 199 § 504; 1990 c 128 § 2; 1987 c 405 § 6.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

**Severability—1987 c 405:** See note following RCW 70.94.450.

**70.94.640 Odors or fugitive dust caused by agricultural activities consistent with good agricultural practices exempt from chapter.** (1) Odors or fugitive dust caused by agricultural activity consistent with good agricultural practices on agricultural land are exempt from the requirements of this chapter unless they have a substantial adverse effect on public health. In determining whether agricultural activity is consistent with good agricultural practices, the department of ecology or board of any authority shall consult with a recognized third-party expert in the activity prior to issuing any notice of violation.

(2) Any notice of violation issued under this chapter pertaining to odors or fugitive dust caused by agricultural activity shall include a statement as to why the activity is inconsistent with good agricultural practices, or a statement that the odors or fugitive dust have substantial adverse effect on public health.

(3) In any appeal to the pollution control hearings board or any judicial appeal, the agency issuing a final order pertaining to odors or fugitive dust caused by agricultural activity shall prove the activity is inconsistent with good agricultural practices or that the odors or fugitive dust have a substantial adverse impact on public health.

(4) If a person engaged in agricultural activity on a contiguous piece of agricultural land sells or has sold a portion of that land for residential purposes, the exemption of this section shall not apply.

(5) As used in this section:

(a) "Agricultural activity" means the growing, raising, or production of horticultural or viticultural crops, berries, poultry, livestock, shellfish, grain, mint, hay, and dairy products.

(b) "Good agricultural practices" means economically feasible practices which are customary among or appropriate to farms and ranches of a similar nature in the local area.

(c) "Agricultural land" means at least five acres of land devoted primarily to the commercial production of livestock, agricultural commodities, or cultured aquatic products.

(d) "Fugitive dust" means a particulate emission made airborne by human activity, forces of wind, or both, and which do not pass through a stack, chimney, vent, or other functionally equivalent opening.

(6) The exemption for fugitive dust provided in subsection (1) of this section does not apply to facilities subject to RCW 70.94.151 as specified in WAC 173-400-100 as of July 24, 2005, 70.94.152, or 70.94.161. [2005 c 511 § 4; 1981 c 297 § 30.]

**Legislative finding, intent—1981 c 297:** "The legislature finds that agricultural land is essential to providing citizens with food and fiber and to insuring aesthetic values through the preservation of open spaces in our state. The legislature further finds that government regulations can cause agricultural land to be converted to nonagricultural uses. The legislature intends that agricultural activity consistent with good practices be protected from government over-regulation." [1981 c 297 § 29.]

**Reviser's note:** The above legislative finding and intent section apparently applies to sections 30 and 31 of chapter 297, Laws of 1981, which sections have been codified pursuant to legislative direction as RCW 70.94.640 and 90.48.450, respectively.

**Severability—1981 c 297:** See note following RCW 15.36.201.

## Chapter 70.95 RCW

### SOLID WASTE MANAGEMENT—REDUCTION AND RECYCLING

Sections	
70.95.020	Purpose.
70.95.305	Solid waste handling permit—Exemption from requirements—Application of section—Rules.
70.95.306	Composting of bovine and equine carcasses—Guidelines—Exemption from solid waste handling rules.
70.95.315	Penalty.
70.95.400	Transporters—Definition—Registration required—Penalties.
70.95.410	Transporters—Delivery of recyclable materials to transfer station or landfill prohibited—Records—Penalty.
70.95.420	Damages.
70.95.430	Solid waste recyclers—Notice—Report—Penalty.
70.95.440	Financial assurance requirements.
70.95.510	Fee on the retail sale of new replacement vehicle tires.
70.95.515	Fee on the retail sale of new replacement vehicle tires—Failure to collect, pay to department—Penalties.
70.95.521	Waste tire removal account.
70.95.530	Waste tire removal account—Use.
70.95.555	Waste tires—License for transport or storage business—Requirements.
70.95.560	Waste tires—Violation of RCW 70.95.555—Penalty.
70.95.570	Limitations on liability.

**70.95.020 Purpose.** The purpose of this chapter is to establish a comprehensive statewide program for solid waste handling, and solid waste recovery and/or recycling which will prevent land, air, and water pollution and conserve the

natural, economic, and energy resources of this state. To this end it is the purpose of this chapter:

(1) To assign primary responsibility for adequate solid waste handling to local government, reserving to the state, however, those functions necessary to assure effective programs throughout the state;

(2) To provide for adequate planning for solid waste handling by local government;

(3) To provide for the adoption and enforcement of basic minimum performance standards for solid waste handling, including that all sites where recyclable materials are generated and transported from shall provide a separate container for solid waste;

(4) To encourage the development and operation of waste recycling facilities needed to accomplish the management priority of waste recycling, to promote consistency in the requirements for such facilities throughout the state, and to ensure that recyclable materials diverted from the waste stream for recycling are routed to facilities in which recycling occurs;

(5) To provide technical and financial assistance to local governments in the planning, development, and conduct of solid waste handling programs;

(6) To encourage storage, proper disposal, and recycling of discarded vehicle tires and to stimulate private recycling programs throughout the state; and

(7) To encourage the development and operation of waste recycling facilities and activities needed to accomplish the management priority of waste recycling and to promote consistency in the permitting requirements for such facilities and activities throughout the state.

It is the intent of the legislature that local governments be encouraged to use the expertise of private industry and to contract with private industry to the fullest extent possible to carry out solid waste recovery and/or recycling programs. [2005 c 394 § 2. Prior: 1998 c 156 § 1; 1998 c 90 § 1; 1985 c 345 § 2; 1975-'76 2nd ex.s. c 41 § 2; 1969 ex.s. c 134 § 2.]

**Intent—Severability—2005 c 394:** See notes following RCW 70.95.400.

**70.95.305 Solid waste handling permit—Exemption from requirements—Application of section—Rules.** (1) Notwithstanding any other provision of this chapter, the department may by rule exempt from the requirements to obtain a solid waste handling permit any category of solid waste handling facility that it determines to:

(a) Present little or no environmental risk; and

(b) Meet the environmental protection and performance requirements required for other similar solid waste facilities.

(2) This section does not apply to any facility or category of facilities that:

(a) Receives municipal solid waste destined for final disposal, including but not limited to transfer stations, landfills, and incinerators;

(b) Applies putrescible solid waste on land for final disposal purposes;

(c) Handles mixed solid wastes that have not been processed to segregate solid waste materials destined for disposal from other solid waste materials destined for a beneficial use or recycling;

(d) Receives or processes organic waste materials into compost in volumes that generally far exceed those handled by municipal park departments, master gardening programs, and households; or

(e) Receives solid waste destined for recycling or reuse, the operation of which is determined by the department to present risks to human health and the environment.

(3) Rules adopted under this section shall contain such terms and conditions as the department deems necessary to ensure compliance with applicable statutes and rules. If a facility does not operate in compliance with the terms and conditions established for an exemption under subsection (1) of this section, the facility is subject to the permitting requirements for solid waste handling under this chapter.

(4) This section shall not be deemed to invalidate the exemptions or determinations of nonapplicability in the department's solid waste rules as they exist on June 11, 1998, which exemptions and determinations are recognized and confirmed subject to the department's continuing authority to modify or revoke those exemptions or determinations by rule. [2005 c 394 § 3; 1998 c 156 § 5.]

**Intent—Severability—2005 c 394:** See notes following RCW 70.95.400.

**70.95.306 Composting of bovine and equine carcasses—Guidelines—Exemption from solid waste handling rules.** (1) By July 1, 2005, the department of ecology and the department of agriculture, in consultation with the department of health, shall make available to livestock producers clearly written guidelines for the composting of bovine and equine carcasses for routine animal disposal.

(2) Composters of bovine and equine carcasses are exempt from the metals testing and permit requirements under the solid waste handling rules for compost that is distributed off-site if the following conditions are met:

(a) The carcasses to be composted are not known or suspected to be affected with a prion-protein disease such as bovine spongiform encephalopathy, a spore-forming disease such as anthrax or other diseases designated by the state veterinarian;

(b) The composter follows the written guidelines provided for in subsection (1) of this section;

(c) The composter does not accept for composting animal mortalities from other sources not directly affiliated with the composter's operation;

(d) The composter provides information to the end-user that includes the source of the material; the quality of the compost as to its nutrient content, pathogens, and stability; and the restrictions on use of the compost as stated in (f) of this subsection;

(e) The composter reports annually to the department the number of bovines and equines and the amounts of other material composted, including the composter's best estimate of the tonnage or yardage involved; and

(f) The end-user applies the compost only to agricultural lands that are not used for the production of root crops except as prescribed in the guidelines and ensures no compost comes into contact with the crops harvested from the lands where the compost is applied.

(3) If a compost production facility does not operate in compliance with the terms and conditions established for an

exemption in this section, the facility shall be subject to the permitting requirements for solid waste handling under this chapter. [2005 c 510 § 6.]

**70.95.315 Penalty.** The department may assess a civil penalty in an amount not to exceed one thousand dollars per day per violation to any person exempt from solid waste permitting in accordance with RCW 70.95.300, 70.95.305, or 70.95.306 who fails to comply with the terms and conditions of the exemption. Each such violation shall be a separate and distinct offense, and in the case of a continuing violation, each day's continuance shall be a separate and distinct violation. [2005 c 510 § 7; 1998 c 156 § 7.]

**70.95.400 Transporters—Definition—Registration required—Penalties.** (1) For the purposes of this section and RCW 70.95.410, "transporter" means any person or entity that transports recyclable materials from commercial or industrial generators over the public highways of the state of Washington for compensation, and who are required to possess a permit to operate from the Washington utilities and transportation commission under chapter 81.80 RCW. "Transporter" includes commercial recycling operations of certificated solid waste collection companies as provided in chapter 81.77 RCW. "Transporter" does not include:

(a) Carriers of commercial recyclable materials, when such materials are owned or being bought or sold by the entity or person, and being carried in their own vehicle, when such activity is incidental to the conduct of an entity or person's primary business;

(b) Entities or persons hauling their own recyclables or hauling recyclables they generated or purchased and transported in their own vehicles;

(c) Nonprofit or charitable organizations collecting and transporting recyclable materials from a buyback center, drop box, or from a commercial or industrial generator of recyclable materials;

(d) City municipal solid waste departments or city solid waste contractors; or

(e) Common carriers under chapter 81.80 RCW whose primary business is not the transportation of recyclable materials.

(2) All transporters shall register with the department prior to the transportation of recyclable materials. The department shall supply forms for registration.

(3) A transporter who transports recyclable materials within the state without a transporter registration required by this section is subject to a civil penalty in an amount up to one thousand dollars per violation. [2005 c 394 § 4.]

**Intent—2005 c 394:** "It is the intent of the legislature to improve recycling, eliminate illegal disposal of recyclable materials, protect consumers from sham recycling, and to further the purposes of RCW 70.95.020 and the goal of consistency in jurisdictional treatment of the statewide solid waste management plan adopted by the department of ecology." [2005 c 394 § 1.]

**Severability—2005 c 394:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 394 § 9.]

**70.95.410 Transporters—Delivery of recyclable materials to transfer station or landfill prohibited—Records—Penalty.** (1) A transporter may not deliver any

recyclable materials for disposal to a transfer station or landfill.

(2) A transporter shall keep records of locations and quantities specifically identified in relation to a generator's name, service date, address, and invoice, documenting where recyclables have been sold, delivered for processing, or otherwise marketed. These records must be retained for two years from the date of collection, and must be made accessible for inspection by the department and the local health department.

(3) A transporter who violates the provisions of this section is subject to a civil penalty of up to one thousand dollars per violation. [2005 c 394 § 5.]

**Intent—Severability—2005 c 394:** See notes following RCW 70.95.400.

**70.95.420 Damages.** Any person damaged by a violation of RCW 70.95.400 through 70.95.440 may bring a civil action for such a violation by seeking either injunctive relief or damages, or both, in the superior court of the county in which the violation took place or in Thurston county. The prevailing party in such an action is entitled to reasonable costs and attorneys' fees, including those on appeal. [2005 c 394 § 6.]

**Intent—Severability—2005 c 394:** See notes following RCW 70.95.400.

**70.95.430 Solid waste recyclers—Notice—Report—Penalty.** (1) All facilities that recycle solid waste, except for those facilities with a current solid waste handling permit issued under RCW 70.95.170, must notify the department in writing within thirty days prior to operation, or ninety days from July 24, 2005, for existing recycling operations, of the intent to conduct recycling in accordance with this section. Notification must be in writing, and include:

(a) Contact information for the person conducting the recycling activity;

(b) A general description of the recycling activity;

(c) A description of the types of solid waste being recycled; and

(d) A general explanation of the recycling processes and methods.

(2) Each facility that recycles solid waste, except those facilities with a current solid waste handling permit issued under RCW 70.95.170, shall prepare and submit an annual report to the department by April 1st on forms supplied by the department. The annual report must detail recycling activities during the previous calendar year and include the following information:

(a) The name and address of the recycling operation;

(b) The calendar year covered by the report;

(c) The annual quantities and types of waste received, recycled, and disposed, in tons, for purposes of determining progress towards achieving the goals of waste reduction, waste recycling, and treatment in accordance with RCW 70.95.010(4); and

(d) Any additional information required by written notification of the department that is needed to determine progress towards achieving the goals of waste reduction, waste recycling, and treatment in accordance with RCW 70.95.010(4).

(3) Any facility, except for product take-back centers, that recycles solid waste materials within the state without first obtaining a solid waste handling permit under RCW 70.95.170 or completing a notification under this section is subject to a civil penalty of up to one thousand dollars per violation. [2005 c 394 § 7.]

**Intent—Severability—2005 c 394:** See notes following RCW 70.95.400.

**70.95.440 Financial assurance requirements.** (1) The department may adopt rules that establish financial assurance requirements for recycling facilities that do not already have financial assurance requirements under this chapter, or are not already specifically exempted from financial assurance requirements under this chapter. The financial assurance requirements must take into consideration the amounts and types of recyclable materials recycled at the facility, and the potential closure and postclosure costs associated with the recycling facility; which assurance may consist of posting of a surety bond in an amount sufficient to meet these requirements or other financial instrument, but in no case less than ten thousand dollars.

(2) A recycling facility is required to meet financial assurance requirements adopted by the department by rule, unless the facility is already required to provide financial assurance under other provisions of this chapter.

(3) Facilities that collect, recover, process, or otherwise recycle scrap metal, processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal are exempt from the requirements of this section. [2005 c 394 § 8.]

**Intent—Severability—2005 c 394:** See notes following RCW 70.95.400.

**70.95.510 Fee on the retail sale of new replacement vehicle tires.** (1) There is levied a one dollar per tire fee on the retail sale of new replacement vehicle tires for a period of five years, beginning July 1, 2005. The fee imposed in this section shall be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the fee. The fee collected from the buyer by the seller less the ten percent amount retained by the seller as provided in RCW 70.95.535(1) shall be paid to the department of revenue in accordance with RCW 82.32.045.

(2) The department of revenue shall incorporate into the agency's regular audit cycle a reconciliation of the number of tires sold and the amount of revenue collected by the businesses selling new replacement vehicle tires at retail. The department of revenue shall collect on the business excise tax return from the businesses selling new replacement vehicle tires at retail:

- (a) The number of tires sold; and
- (b) The fee levied in this section.

(3) All other applicable provisions of chapter 82.32 RCW have full force and application with respect to the fee imposed under this section. The department of revenue shall administer this section.

(4) For the purposes of this section, "new replacement vehicle tires" means tires that are newly manufactured for vehicle purposes and does not include retreaded vehicle tires. [2005 c 354 § 2; 1989 c 431 § 92; 1985 c 345 § 5.]

[2005 RCW Supp—page 786]

**Finding—Intent—2005 c 354:** "The legislature finds that discarded tires in unauthorized dump sites pose a health and safety risk to the public. Many of these tire piles have been in existence for a significant amount of time and are a continuing challenge to state and local officials responsible for cleaning up unauthorized dump sites and preventing further accumulation of waste tires. Therefore it is the intent of the legislature to document the extent of the problem, create and fund an effective program to eliminate unauthorized tire piles, and minimize potential future problems and costs." [2005 c 354 § 1.]

**Severability—2005 c 354:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 354 § 11.]

**Effective date—2005 c 354:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 354 § 12.]

**70.95.515 Fee on the retail sale of new replacement vehicle tires—Failure to collect, pay to department—Penalties.** (1) The fee required by this chapter, to be collected by the seller, shall be deemed to be held in trust by the seller until paid to the department of revenue, and any seller who appropriates or converts the fee collected to his or her own use or to any use other than the payment of the fee to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

(2) In case any seller fails to collect the fee imposed in this chapter or, having collected the fee, fails to pay it to the department of revenue in the manner prescribed by this chapter, whether such failure is the result of his or her own acts or the result of acts or conditions beyond his or her control, he or she shall, nevertheless, be personally liable to the state for the amount of the fee.

(3) The amount of the fee, until paid by the buyer to the seller or to the department of revenue, shall constitute a debt from the buyer to the seller and any seller who fails or refuses to collect the fee as required with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any buyer who refuses to pay any fee due under this chapter is guilty of a misdemeanor. [2005 c 354 § 4.]

**Finding—Intent—Severability—Effective date—2005 c 354:** See notes following RCW 70.95.510.

**70.95.521 Waste tire removal account.** The waste tire removal account is created in the state treasury. All receipts from tire fees imposed under RCW 70.95.510 must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used for the cleanup of unauthorized waste tire piles and measures that prevent future accumulation of unauthorized waste tire piles. [2005 c 354 § 3.]

**Finding—Intent—Severability—Effective date—2005 c 354:** See notes following RCW 70.95.510.

**70.95.530 Waste tire removal account—Use.** (1) Moneys in the waste tire removal account may be appropriated to the department of ecology:

(a) To provide for funding to state and local governments for the removal of discarded vehicle tires from unauthorized tire dump sites;

(b) To accomplish the other purposes of RCW 70.95.020 as they relate to waste tire cleanup under this chapter; and

(c) To conduct a study of existing tire cleanup sites. The office of financial management shall oversee the study process and approve the completed study. The completed study shall be delivered to the house of representatives and senate transportation committees by November 15, 2005. In conducting the study, the department shall consult on a regular basis with interested parties. The following identified elements at a minimum shall be included in the completed study:

(i) Identification of existing tire cleanup sites in the state of Washington;

(ii) The estimated number of tires in each tire cleanup site;

(iii) A map identifying the location of each one of the tire cleanup sites;

(iv) A photograph of each one of the tire cleanup sites;

(v) The estimated cost for cleanup of each tire [cleanup] site by cost component;

(vi) The estimated reimbursement of costs to be recovered from persons or entities that created or have responsibility for the tire cleanup site;

(vii) Identification of the type of reimbursements for recovery by each of the tire cleanup sites;

(viii) The estimated time frame to begin the cleanup project and the estimated completion date for each tire cleanup site;

(ix) An assessment of local government functions relating to unauthorized tire piles, including cleanup, enforcement, and public health;

(x) Identification of needs in the areas in (c)(ix) of this subsection for each one of the counties; and

(xi) A statewide cleanup plan based on multiple funding options between twenty cents and sixty cents for each new tire sold at retail in the state starting on July 1, 2005. The plan shall include the estimated time frame to begin each of the tire cleanup sites and the estimated completion date for each one of the sites. In addition, the plan must include a process to be followed in selecting entities to perform the tire site cleanups. The 2006 legislature shall determine the final distribution of the tire cleanup fee and the appropriations for this statewide tire cleanup plan.

(2) In spending funds in the account under this section, the department of ecology shall identify communities with the most severe problems with waste tires and provide funds first to those communities to remove accumulations of waste tires.

(3) Immediately after July 1, 2005, the department of ecology shall initiate a pilot project in a city with a population between three and four thousand within a county with a population less than twenty thousand to contract to clean up a formerly licensed tire pile in existence for ten or more years. To begin the project, the department shall seek to use financial assurance funds set aside for clean up of the tire pile. For purposes of this subsection, population figures are the official 2004 population as estimated by the office of financial management for purposes of state revenue allocation. [2005 c 354 § 5; 1988 c 250 § 1; 1985 c 345 § 7.]

**Finding—Intent—Severability—Effective date—2005 c 354:** See notes following RCW 70.95.510.

**70.95.555 Waste tires—License for transport or storage business—Requirements.** Any person engaged in the business of transporting or storing waste tires shall be licensed by the department. To obtain a license, each applicant must:

(1) Provide assurances that the applicant is in compliance with this chapter and the rules regarding waste tire storage and transportation;

(2) Accept liability for and authorize the department to recover any costs incurred in any cleanup of waste tires transported or newly stored by the applicant in violation of this section, or RCW 70.95.560, 70.95.515, or 70.95.570, or rules adopted thereunder, after July 1, 2005;

(3) Until January 1, 2006, post a bond in the sum of ten thousand dollars in favor of the state of Washington for waste tires transported or stored before July 1, 2005. In lieu of the bond, the applicant may submit financial assurances acceptable to the department;

(4) After January 1, 2006, for waste tires transported or stored before July 1, 2005, or for waste tires transported or stored after July 1, 2005, post a bond in an amount to be determined by the department sufficient to cover the liability for the cost of cleanup of the transported or stored waste tires, in favor of the state of Washington. In lieu of the bond, the applicant may submit financial assurances acceptable to the department;

(5) Be registered in the state of Washington as a business and be in compliance with all state laws, rules, and local ordinances;

(6) Have a federal tax identification number and be in compliance with all applicable federal codes and regulations; and

(7) Report annually to the department the amount of tires transported and their disposition. Failure to report shall result in revocation of the license. [2005 c 354 § 6; 1988 c 250 § 4.]

**Finding—Intent—Severability—Effective date—2005 c 354:** See notes following RCW 70.95.510.

**70.95.560 Waste tires—Violation of RCW 70.95.555—Penalty.** (1) Any person who transports or stores waste tires without a license in violation of RCW 70.95.555 shall be guilty of a gross misdemeanor and upon conviction shall be punished under RCW 9A.20.021(2).

(2) Any person who transports or stores waste tires without a license in violation of RCW 70.95.555 is liable for the costs of cleanup of any and all waste tires transported or stored. This subsection does not apply to the storage of waste tires when the storage of the tires occurred before July 1, 2005, and the storage was licensed in accordance with RCW 70.95.555 at the time the tires were stored. [2005 c 354 § 7; 1989 c 431 § 95; 1988 c 250 § 5.]

**Finding—Intent—Severability—Effective date—2005 c 354:** See notes following RCW 70.95.510.

**70.95.570 Limitations on liability.** No person or business, having documented proof that it legally transferred possession of waste tires to a validly licensed transporter or storer of waste tires or to a validly permitted recycler, has any further liability related to the waste tires legally transferred. [2005 c 354 § 8.]

**Finding—Intent—Severability—Effective date—2005 c 354:** See notes following RCW 70.95.510.

## Chapter 70.95C RCW WASTE REDUCTION

### Sections

70.95C.220 Voluntary reduction plan, executive summary, or progress report—Department review. (*Effective July 1, 2006.*)

**70.95C.220 Voluntary reduction plan, executive summary, or progress report—Department review. (*Effective July 1, 2006.*)** (1) The department may review a plan, executive summary, or an annual progress report to determine whether the plan, executive summary, or annual progress report is adequate pursuant to the rules developed under this section and with the provisions of RCW 70.95C.200. In determining the adequacy of any plan, executive summary, or annual progress report, the department shall base its determination solely on whether the plan, executive summary, or annual progress report is complete and prepared in accordance with the provisions of RCW 70.95C.200.

(2) Plans developed under RCW 70.95C.200 shall be retained at the facility of the hazardous substance user or hazardous waste generator preparing a plan. The plan is not a public record under the public records act, chapter 42.56 RCW. A user or generator required to prepare a plan shall permit the director or a representative of the director to review the plan to determine its adequacy. No visit made by the director or a representative of the director to a facility for the purposes of this subsection may be regarded as an inspection or investigation, and no notices or citations may be issued, nor any civil penalty assessed, upon such a visit.

(3) If a hazardous substance user or hazardous waste generator fails to complete an adequate plan, executive summary, or annual progress report, the department shall notify the user or generator of the inadequacy, identifying specific deficiencies. For the purposes of this section, a deficiency may include failure to develop a plan, failure to submit an executive summary pursuant to the schedule provided in RCW 70.95C.200(5), and failure to submit an annual progress report pursuant to the rules developed under RCW 70.95C.200(6). The department shall specify a reasonable time frame, of not less than ninety days, within which the user or generator shall complete a modified plan, executive summary, or annual progress report addressing the specified deficiencies.

(4) If the department determines that a modified plan, executive summary, or annual progress report is inadequate, the department may, within its discretion, either require further modification or enter an order pursuant to subsection (5)(a) of this section.

(5)(a) If, after having received a list of specified deficiencies from the department, a hazardous substance user or hazardous waste generator required to prepare a plan fails to complete modification of a plan, executive summary, or annual progress report within the time period specified by the department, the department may enter an order pursuant to chapter 34.05 RCW finding the user or generator not in compliance with the requirements of RCW 70.95C.200. When

the order is final, the department shall notify the department of revenue to charge a penalty fee. The penalty fee shall be the greater of one thousand dollars or three times the amount of the user's or generator's previous year's fee, in addition to the current year's fee. If no fee was assessed the previous year, the penalty shall be the greater of one thousand dollars or three times the amount of the current year's fee. The penalty assessed under this subsection shall be collected each year after the year for which the penalty was assessed until an adequate plan or executive summary is completed.

(b) If a hazardous substance user or hazardous waste generator required to prepare a plan fails to complete an adequate plan, executive summary, or annual progress report after the department has levied against the user or generator the penalty provided in (a) of this subsection, the user or generator shall be required to pay a surcharge to the department whenever the user or generator disposes of a hazardous waste at any hazardous waste incinerator or hazardous waste landfill facility located in Washington state, until a plan, executive summary, or annual progress report is completed and determined to be adequate by the department. The surcharge shall be equal to three times the fee charged for disposal. The department shall furnish the incinerator and landfill facilities in this state with a list of environmental protection agency/state identification numbers of the hazardous waste generators that are not in compliance with the requirements of RCW 70.95C.200. [2005 c 274 § 338; 1990 c 114 § 8.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Severability—1990 c 114:** See RCW 70.95E.900.

## Chapter 70.96A RCW

### TREATMENT FOR ALCOHOLISM, INTOXICATION, AND DRUG ADDICTION

(Formerly: Uniform alcoholism and intoxication treatment)

#### Sections

- 70.96A.035 Integrated comprehensive screening and assessment process—Implementation.
- 70.96A.037 Chemical dependency specialist services—To be available at children and family services offices—Training in uniform screening.
- 70.96A.090 Standards for treatment programs—Enforcement procedures—Penalties—Evaluation of treatment of children—Treatment during pregnancy.
- 70.96A.141 Joinder of petitions for commitment.
- 70.96A.157 Persons subject to court-ordered treatment or supervision—Documentation.
- 70.96A.800 Chemically dependent persons—Intensive case management pilot projects. (*Expires June 30, 2008.*)

**70.96A.035 Integrated comprehensive screening and assessment process—Implementation.** (1) Not later than January 1, 2007, all persons providing treatment under this chapter shall also implement the integrated comprehensive screening and assessment process for chemical dependency and mental disorders adopted pursuant to RCW 70.96C.010 and shall document the numbers of clients with co-occurring mental and substance abuse disorders based on a quadrant system of low and high needs.

(2) Treatment providers contracted to provide treatment under this chapter who fail to implement the integrated comprehensive screening and assessment process for chemical dependency and mental disorders by July 1, 2007, are subject



to contractual penalties established under RCW 70.96C.010. [2005 c 504 § 302.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96A.037 Chemical dependency specialist services—To be available at children and family services offices—Training in uniform screening.** (1) The department of social and health services shall contract for chemical dependency specialist services at each division of children and family services office to enhance the timeliness and quality of child protective services assessments and to better connect families to needed treatment services.

(2) The chemical dependency specialist's duties may include, but are not limited to: Conducting on-site chemical dependency screening and assessment, facilitating progress reports to department social workers, in-service training of department social workers and staff on substance abuse issues, referring clients from the department to treatment providers, and providing consultation on cases to department social workers.

(3) The department of social and health services shall provide training in and ensure that each case-carrying social worker is trained in uniform screening for mental health and chemical dependency. [2005 c 504 § 305.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96A.090 Standards for treatment programs—Enforcement procedures—Penalties—Evaluation of treatment of children—Treatment during pregnancy.** (1) The department shall adopt rules establishing standards for approved treatment programs, the process for the review and inspection program applying to the department for certification as an approved treatment program, and fixing the fees to be charged by the department for the required inspections. The standards may concern the health standards to be met and standards of services and treatment to be afforded patients.

(2) The department may suspend, revoke, limit, restrict, or modify an approval, or refuse to grant approval, for failure to meet the provisions of this chapter, or the standards adopted under this chapter. RCW 43.20A.205 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

(3) No treatment program may advertise or represent itself as an approved treatment program if approval has not been granted, has been denied, suspended, revoked, or canceled.

(4) Certification as an approved treatment program is effective for one calendar year from the date of issuance of the certificate. The certification shall specify the types of services provided by the approved treatment program that meet the standards adopted under this chapter. Renewal of certification shall be made in accordance with this section for initial

approval and in accordance with the standards set forth in rules adopted by the secretary.

(5) Approved treatment programs shall not provide alcoholism or other drug addiction treatment services for which the approved treatment program has not been certified. Approved treatment programs may provide services for which approval has been sought and is pending, if approval for the services has not been previously revoked or denied.

(6) The department periodically shall inspect approved public and private treatment programs at reasonable times and in a reasonable manner.

(7) The department shall maintain and periodically publish a current list of approved treatment programs.

(8) Each approved treatment program shall file with the department on request, data, statistics, schedules, and information the department reasonably requires. An approved treatment program that without good cause fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent returns thereof, may be removed from the list of approved treatment programs, and its certification revoked or suspended.

(9) The department shall use the data provided in subsection (8) of this section to evaluate each program that admits children to inpatient treatment upon application of their parents. The evaluation shall be done at least once every twelve months. In addition, the department shall randomly select and review the information on individual children who are admitted on application of the child's parent for the purpose of determining whether the child was appropriately placed into treatment based on an objective evaluation of the child's condition and the outcome of the child's treatment.

(10) Upon petition of the department and after a hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the department authorizing him or her to enter and inspect at reasonable times, and examine the books and accounts of, any approved public or private treatment program refusing to consent to inspection or examination by the department or which the department has reasonable cause to believe is operating in violation of this chapter.

(11)(a) All approved opiate substitution treatment programs that provide services to women who are pregnant are required to disseminate up-to-date and accurate health education information to all their pregnant clients concerning the possible addiction and health risks that their opiate substitution treatment may have on their baby. All pregnant clients must also be advised of the risks to both them and their baby associated with not remaining on the opiate substitute program. The information must be provided to these clients both verbally and in writing. The health education information provided to the pregnant clients must include referral options for the addicted baby.

(b) The department shall adopt rules that require all opiate treatment programs to educate all pregnant women in their program on the benefits and risks of methadone treatment to their fetus before they are provided these medications, as part of their addiction treatment. The department shall meet the requirements under this subsection within the appropriations provided for opiate treatment programs. The department, working with treatment providers and medical experts, shall develop and disseminate the educational mate-

rials to all certified opiate treatment programs. [2005 c 70 § 2; 1995 c 312 § 46; 1990 c 151 § 5. Prior: 1989 c 270 § 19; 1989 c 175 § 131; 1972 ex.s. c 122 § 9.]

**Findings—Intent—2005 c 70:** "The legislature finds that drug use among pregnant women is a significant and growing concern statewide. The legislature further finds that methadone, although an effective alternative to other substance use treatments, can result in babies who are exposed to methadone while in utero being born addicted and facing the painful effects of withdrawal.

It is the intent of the legislature to notify all pregnant mothers who are receiving methadone treatment of the risks and benefits methadone could have on their baby during pregnancy through birth and to inform them of the potential need for the newborn baby to be taken care of in a hospital setting or in a specialized supportive environment designed specifically to address newborn addiction problems." [2005 c 70 § 1.]

**Short title—1995 c 312:** See note following RCW 13.32A.010.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**70.96A.141 Joinder of petitions for commitment.** A petition for commitment under this chapter may be joined with a petition for commitment under chapter 71.05 RCW. [2005 c 504 § 304.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96A.157 Persons subject to court-ordered treatment or supervision—Documentation.** (1) Treatment providers shall inquire of each person seeking treatment, at intake, whether the person is subject to court ordered mental health or chemical dependency treatment, whether civil or criminal, and document the person's response in his or her record. If the person is in treatment on July 1, 2005, and the treatment provider has not inquired whether the person is subject to court ordered mental health or chemical dependency treatment, the treatment provider shall inquire on the person's next treatment session and document the person's response in his or her record.

(2) Treatment providers shall inquire of each person seeking treatment, at intake, whether the person is subject to supervision of any kind by the department of corrections and document the person's response in his or her record. If the person is in treatment on July 1, 2005, and the treatment provider has not inquired whether the person is subject to supervision of any kind by the department of corrections, the treatment provider shall inquire on the person's next treatment session and document the person's response in his or her record.

(3) For all persons who are subject to both court ordered mental health or chemical dependency treatment and supervision by the department of corrections, the treatment provider shall request an authorization to release records and notify the person that, unless expressly excluded by the court order the law requires treatment providers to share information with the department of corrections and the person's mental health treatment provider.

(4) If the treatment provider has reason to believe that a person is subject to supervision by the department of corrections but the person's record does not indicate that he or she is, the treatment provider may call any department of corrections office and provide the person's name and birth date. If

the person is subject to supervision, the treatment provider shall request, and the department of corrections shall provide, the name and contact information for the person's community corrections officer. [2005 c 504 § 508.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96A.800 Chemically dependent persons—Intensive case management pilot projects. (Expires June 30, 2008.)** (1) The secretary shall select and contract with counties to provide intensive case management for chemically dependent persons with histories of high utilization of crisis services at two sites. In selecting the two sites, the secretary shall endeavor to site one in an urban county, and one in a rural county; and to site them in counties other than those selected pursuant to RCW 70.96B.020, to the extent necessary to facilitate evaluation of pilot project results.

(2) The contracted sites shall implement the pilot programs by providing intensive case management to persons with a primary chemical dependency diagnosis or dual primary chemical dependency and mental health diagnoses, through the employment of chemical dependency case managers. The chemical dependency case managers shall:

(a) Be trained in and use the integrated, comprehensive screening and assessment process adopted under RCW 70.96C.010;

(b) Reduce the use of crisis medical, chemical dependency and mental health services, including but not limited to, emergency room admissions, hospitalizations, detoxification programs, inpatient psychiatric admissions, involuntary treatment petitions, emergency medical services, and ambulance services;

(c) Reduce the use of emergency first responder services including police, fire, emergency medical, and ambulance services;

(d) Reduce the number of criminal justice interventions including arrests, violations of conditions of supervision, bookings, jail days, prison sanction day for violations, court appearances, and prosecutor and defense costs;

(e) Where appropriate and available, work with therapeutic courts including drug courts and mental health courts to maximize the outcomes for the individual and reduce the likelihood of reoffense;

(f) Coordinate with local offices of the economic services administration to assist the person in accessing and remaining enrolled in those programs to which the person may be entitled;

(g) Where appropriate and available, coordinate with primary care and other programs operated through the federal government including federally qualified health centers, Indian health programs, and veterans' health programs for which the person is eligible to reduce duplication of services and conflicts in case approach;

(h) Where appropriate, advocate for the client's needs to assist the person in achieving and maintaining stability and progress toward recovery;

(i) Document the numbers of persons with co-occurring mental and substance abuse disorders and the point of deter-

mination of the co-occurring disorder by quadrant of intensity of need; and

(j) Where a program participant is under supervision by the department of corrections, collaborate with the department of corrections to maximize treatment outcomes and reduce the likelihood of reoffense.

(3) The pilot programs established by this section shall begin providing services by March 1, 2006.

(4) This section expires June 30, 2008. [2005 c 504 § 220.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

### Chapter 70.96B RCW

## INTEGRATED CRISIS RESPONSE AND INVOLUNTARY TREATMENT—PILOT PROGRAMS

### Sections

70.96B.010	Definitions. <i>(Expires July 1, 2008.)</i>
70.96B.020	Selection of areas for pilot programs—Pilot program requirements. <i>(Expires July 1, 2008.)</i>
70.96B.030	Designated crisis responder—Qualifications. <i>(Expires July 1, 2008.)</i>
70.96B.040	Powers of designated crisis responder. <i>(Expires July 1, 2008.)</i>
70.96B.050	Petition for initial detention—Evaluation and treatment period—Procedure. <i>(Expires July 1, 2008.)</i>
70.96B.060	Exemption from liability. <i>(Expires July 1, 2008.)</i>
70.96B.070	Detention period for evaluation and treatment. <i>(Expires July 1, 2008.)</i>
70.96B.080	Detention for evaluation and treatment of mental disorder—Chapter 71.05 RCW applies. <i>(Expires July 1, 2008.)</i>
70.96B.090	Procedures for additional chemical dependency treatment. <i>(Expires July 1, 2008.)</i>
70.96B.100	Petition for additional treatment under RCW 70.96A.140. <i>(Expires July 1, 2008.)</i>
70.96B.110	Involuntary chemical dependency treatment proceedings—Prosecuting attorney shall represent petitioner. <i>(Expires July 1, 2008.)</i>
70.96B.120	Rights of involuntarily detained persons. <i>(Expires July 1, 2008.)</i>
70.96B.130	Evaluation by designated crisis responder—When required—Required notifications. <i>(Expires July 1, 2008.)</i>
70.96B.140	Secretary may adopt rules. <i>(Expires July 1, 2008.)</i>
70.96B.150	Application of RCW 71.05.550. <i>(Expires July 1, 2008.)</i>
70.96B.800	Evaluation of pilot programs.
70.96B.900	Expiration date—2005 c 504 §§ 202-216.

**70.96B.010 Definitions. *(Expires July 1, 2008.)*** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Admission" or "admit" means a decision by a physician that a person should be examined or treated as a patient in a hospital, an evaluation and treatment facility, or other inpatient facility, or a decision by a professional person in charge or his or her designee that a person should be detained as a patient for evaluation and treatment in a secure detoxification facility or other certified chemical dependency provider.

(2) "Antipsychotic medications" means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes but is not limited to atypical antipsychotic medications.

(3) "Approved treatment program" means a discrete program of chemical dependency treatment provided by a treat-

ment program certified by the department as meeting standards adopted under chapter 70.96A RCW.

(4) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient.

(5) "Chemical dependency" means:

(a) Alcoholism;

(b) Drug addiction; or

(c) Dependence on alcohol and one or more other psychoactive chemicals, as the context requires.

(6) "Chemical dependency professional" means a person certified as a chemical dependency professional by the department of health under chapter 18.205 RCW.

(7) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting.

(8) "Conditional release" means a revocable modification of a commitment that may be revoked upon violation of any of its terms.

(9) "Custody" means involuntary detention under either chapter 71.05 or 70.96A RCW or this chapter, uninterrupted by any period of unconditional release from commitment from a facility providing involuntary care and treatment.

(10) "Department" means the department of social and health services.

(11) "Designated chemical dependency specialist" or "specialist" means a person designated by the county alcoholism and other drug addiction program coordinator designated under RCW 70.96A.310 to perform the commitment duties described in RCW 70.96A.140 and this chapter, and qualified to do so by meeting standards adopted by the department.

(12) "Designated crisis responder" means a person designated by the county or regional support network to perform the duties specified in this chapter.

(13) "Designated mental health professional" means a mental health professional designated by the county or other authority authorized in rule to perform the duties specified in this chapter.

(14) "Detention" or "detain" means the lawful confinement of a person under this chapter, or chapter 70.96A or 71.05 RCW.

(15) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with individuals with developmental disabilities and is a psychiatrist, psychologist, or social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary.

(16) "Developmental disability" means that condition defined in RCW 71A.10.020.

(17) "Discharge" means the termination of facility authority. The commitment may remain in place, be terminated, or be amended by court order.

(18) "Evaluation and treatment facility" means any facility that can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and that is certified as such by the department. A physically separate and separately operated portion of a state hospital may

be designated as an evaluation and treatment facility. A facility that is part of, or operated by, the department or any federal agency does not require certification. No correctional institution or facility, or jail, may be an evaluation and treatment facility within the meaning of this chapter.

(19) "Facility" means either an evaluation and treatment facility or a secure detoxification facility.

(20) "Gravely disabled" means a condition in which a person, as a result of a mental disorder, or as a result of the use of alcohol or other psychoactive chemicals:

(a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or

(b) Manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety.

(21) "History of one or more violent acts" refers to the period of time ten years before the filing of a petition under this chapter, or chapter 70.96A or 71.05 RCW, excluding any time spent, but not any violent acts committed, in a mental health facility or a long-term alcoholism or drug treatment facility, or in confinement as a result of a criminal conviction.

(22) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or other psychoactive chemicals.

(23) "Judicial commitment" means a commitment by a court under this chapter.

(24) "Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington.

(25) "Likelihood of serious harm" means:

(a) A substantial risk that:

(i) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself;

(ii) Physical harm will be inflicted by a person upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or

(iii) Physical harm will be inflicted by a person upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or

(b) The person has threatened the physical safety of another and has a history of one or more violent acts.

(26) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on a person's cognitive or volitional functions.

(27) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary under the authority of chapter 71.05 RCW.

(28) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment.

(29) "Person in charge" means a physician or chemical dependency counselor as defined in rule by the department, who is empowered by a certified treatment program with

authority to make assessment, admission, continuing care, and discharge decisions on behalf of the certified program.

(30) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, that constitutes an evaluation and treatment facility or private institution, or hospital, or approved treatment program, that is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill and/or chemically dependent.

(31) "Professional person" means a mental health professional or chemical dependency professional and shall also mean a physician, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter.

(32) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology.

(33) "Psychologist" means a person who has been licensed as a psychologist under chapter 18.83 RCW.

(34) "Public agency" means any evaluation and treatment facility or institution, or hospital, or approved treatment program that is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill and/or chemically dependent, if the agency is operated directly by federal, state, county, or municipal government, or a combination of such governments.

(35) "Registration records" means all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify persons who are receiving or who at any time have received services for mental illness.

(36) "Release" means legal termination of the commitment under chapter 70.96A or 71.05 RCW or this chapter.

(37) "Secretary" means the secretary of the department or the secretary's designee.

(38) "Secure detoxification facility" means a facility operated by either a public or private agency or by the program of an agency that serves the purpose of providing evaluation and assessment, and acute and/or subacute detoxification services for intoxicated persons and includes security measures sufficient to protect the patients, staff, and community.

(39) "Social worker" means a person with a master's or further advanced degree from an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary.

(40) "Treatment records" means registration records and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others.

(41) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property. [2005 c 504 § 202.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96B.020 Selection of areas for pilot programs—Pilot program requirements. (Expires July 1, 2008.)** (1) The secretary, after consulting with the Washington state association of counties, shall select and contract with regional support networks or counties to provide two integrated crisis response and involuntary treatment pilot programs for adults and shall allocate resources for both integrated services and secure detoxification services in the pilot areas. In selecting the two regional support networks or counties, the secretary shall endeavor to site one in an urban and one in a rural regional support network or county; and to site them in counties other than those selected pursuant to RCW 70.96A.800, to the extent necessary to facilitate evaluation of pilot project results.

(2) The regional support networks or counties shall implement the pilot programs by providing integrated crisis response and involuntary treatment to persons with a chemical dependency, a mental disorder, or both, consistent with this chapter. The pilot programs shall:

(a) Combine the crisis responder functions of a designated mental health professional under chapter 71.05 RCW and a designated chemical dependency specialist under chapter 70.96A RCW by establishing a new designated crisis responder who is authorized to conduct investigations and detain persons up to seventy-two hours to the proper facility;

(b) Provide training to the crisis responders as required by the department;

(c) Provide sufficient staff and resources to ensure availability of an adequate number of crisis responders twenty-four hours a day, seven days a week;

(d) Provide the administrative and court-related staff, resources, and processes necessary to facilitate the legal requirements of the initial detention and the commitment hearings for persons with a chemical dependency;

(e) Participate in the evaluation and report to assess the outcomes of the pilot programs including providing data and information as requested;

(f) Provide the other services necessary to the implementation of the pilot programs, consistent with this chapter as determined by the secretary in contract; and

(g) Collaborate with the department of corrections where persons detained or committed are also subject to supervision by the department of corrections.

(3) The pilot programs established by this section shall begin providing services by March 1, 2006. [2005 c 504 § 203.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96B.030 Designated crisis responder—Qualifications. (Expires July 1, 2008.)** To qualify as a designated crisis responder, a person must have received chemical dependency training as determined by the department and be a:

(1) Psychiatrist, psychologist, psychiatric nurse, or social worker;

(2) Person with a master's degree or further advanced degree in counseling or one of the social sciences from an accredited college or university and who have, in addition, at least two years of experience in direct treatment of persons with mental illness or emotional disturbance, such experience gained under the direction of a mental health professional;

(3) Person who meets the waiver criteria of RCW 71.24.260, which waiver was granted before 1986;

(4) Person who had an approved waiver to perform the duties of a mental health professional that was requested by the regional support network and granted by the department before July 1, 2001; or

(5) Person who has been granted a time-limited exception of the minimum requirements of a mental health professional by the department consistent with rules adopted by the secretary. [2005 c 504 § 204.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96B.040 Powers of designated crisis responder. (Expires July 1, 2008.)** In addition to the provisions of this chapter, a designated crisis responder has all the powers and duties of a designated mental health professional as well as the powers and duties of a designated chemical dependency specialist under RCW 70.96A.120. [2005 c 504 § 205.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96B.050 Petition for initial detention—Evaluation and treatment period—Procedure. (Expires July 1, 2008.)**

(1)(a) When a designated crisis responder receives information alleging that a person, as a result of a mental disorder, chemical dependency disorder, or both, presents a likelihood of serious harm or is gravely disabled, the designated crisis responder may, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of any person providing information to initiate detention, if satisfied that the allegations are true and that the person will not voluntarily seek appropriate treatment, file a petition for initial detention. Before filing the petition, the designated crisis responder must personally interview the person, unless the person refuses an interview, and determine whether the person will voluntarily receive appropriate evaluation and treatment at either an evaluation and treatment facility, a detoxification facility, or other certified chemical dependency provider.

(b)(i)(A) Whenever it appears, by petition for initial detention, to the satisfaction of a judge of the superior court that a person presents as a result of a mental disorder, a likelihood of serious harm, or is gravely disabled, and that the

person has refused or failed to accept appropriate evaluation and treatment voluntarily, the judge may issue an order requiring the person to appear within twenty-four hours after service of the order at a designated evaluation and treatment facility for not more than a seventy-two hour evaluation and treatment period; or

(B) Whenever it appears, by petition for initial detention, to the satisfaction of a judge of the superior court, district court, or other court permitted by court rule, that a person presents as a result of a chemical dependency, a likelihood of serious harm, or is gravely disabled, and that the person has refused or failed to accept appropriate evaluation and treatment voluntarily, the judge may issue an order requiring the person to appear within twenty-four hours after service of the order at a secure detoxification facility or other certified chemical dependency provider for not more than a seventy-two hour evaluation and treatment period.

(ii) The order issued under this subsection (1)(b) shall state the address of the evaluation and treatment facility, secure detoxification facility, or other certified chemical dependency provider to which the person is to report; whether the required seventy-two hour evaluation and treatment services may be delivered on an outpatient or inpatient basis; and that if the person named in the order fails to appear at the evaluation and treatment facility, secure detoxification facility, or other certified chemical dependency provider at or before the date and time stated in the order, the person may be involuntarily taken into custody for evaluation and treatment. The order shall also designate retained counsel or, if counsel is appointed from a list provided by the court, the name, business address, and telephone number of the attorney appointed to represent the person.

(c) The designated crisis responder shall then serve or cause to be served on such person, his or her guardian, and conservator, if any, a copy of the order to appear, together with a notice of rights and a petition for initial detention. After service on the person, the designated crisis responder shall file the return of service in court and provide copies of all papers in the court file to the evaluation and treatment facility or secure detoxification facility and the designated attorney. The designated crisis responder shall notify the court and the prosecuting attorney that a probable cause hearing will be held within seventy-two hours of the date and time of outpatient evaluation or admission to the evaluation and treatment facility, secure detoxification facility, or other certified chemical dependency provider. The person shall be permitted to remain in his or her home or other place of his or her choosing before the time of evaluation and shall be permitted to be accompanied by one or more of his or her relatives, friends, an attorney, a personal physician, or other professional or religious advisor to the place of evaluation. An attorney accompanying the person to the place of evaluation shall be permitted to be present during the admission evaluation. Any other person accompanying the person may be present during the admission evaluation. The facility may exclude the person if his or her presence would present a safety risk, delay the proceedings, or otherwise interfere with the evaluation.

(d) If the person ordered to appear does appear on or before the date and time specified, the evaluation and treatment facility, secure detoxification facility, or other certified

chemical dependency provider may admit the person as required by subsection (3) of this section or may provide treatment on an outpatient basis. If the person ordered to appear fails to appear on or before the date and time specified, the evaluation and treatment facility, secure detoxification facility, or other certified chemical dependency provider shall immediately notify the designated crisis responder who may notify a peace officer to take the person or cause the person to be taken into custody and placed in an evaluation and treatment facility, a secure detoxification facility, or other certified chemical dependency provider. Should the designated crisis responder notify a peace officer authorizing the officer to take a person into custody under this subsection, the designated crisis responder shall file with the court a copy of the authorization and a notice of detention. At the time the person is taken into custody there shall commence to be served on the person, his or her guardian, and conservator, if any, a copy of the original order together with a notice of detention, a notice of rights, and a petition for initial detention.

(2) If a designated crisis responder receives information alleging that a person, as the result of:

(a) A mental disorder, presents an imminent likelihood of serious harm, or is in imminent danger because of being gravely disabled, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the person or persons providing the information if any, the designated crisis responder may take the person, or cause by oral or written order the person to be taken into emergency custody in an evaluation and treatment facility for not more than seventy-two hours as described in this chapter; or

(b) Chemical dependency, presents an imminent likelihood of serious harm, or is in imminent danger because of being gravely disabled, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the person or persons providing the information if any, the designated crisis responder may take the person, or cause by oral or written order the person to be taken into emergency custody in a secure detoxification facility for not more than seventy-two hours as described in this chapter.

(3) If the designated crisis responder petitions for detention of a person whose actions constitute a likelihood of serious harm, or who is gravely disabled, the evaluation and treatment facility, the secure detoxification facility, or other certified chemical dependency provider providing seventy-two hour evaluation and treatment must immediately accept on a provisional basis the petition and the person. The evaluation and treatment facility, the secure detoxification facility, or other certified chemical dependency provider shall then evaluate the person's condition and admit, detain, transfer, or discharge such person in accordance with this chapter. The facility shall notify in writing the court and the designated crisis responder of the date and time of the initial detention of each person involuntarily detained so that a probable cause hearing will be held no later than seventy-two hours after detention.

(4) A peace officer may, without prior notice of the proceedings provided for in subsection (1) of this section, take or cause the person to be taken into custody and immediately delivered to an evaluation and treatment facility, secure detoxification facility, other certified chemical dependency

treatment provider only pursuant to subsections (1)(d) and (2) of this section.

(5) Nothing in this chapter limits the power of a peace officer to take a person into custody and immediately deliver the person to the emergency department of a local hospital or to a detoxification facility. [2005 c 504 § 206.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96B.060 Exemption from liability. (Expires July 1, 2008.)** (1) A person or public or private entity employing a person is not civilly or criminally liable for performing duties under this chapter if the duties were performed in good faith and without gross negligence.

(2) This section does not relieve a person from giving the required notices under RCW 71.05.330(2) or 71.05.340(1)(b), or the duty to warn or to take reasonable precautions to provide protection from violent behavior where the patient has communicated an actual threat of physical violence against a reasonably identifiable victim or victims. The duty to warn or to take reasonable precautions to provide protection from violent behavior is discharged if reasonable efforts are made to communicate the threat to the victim or victims and to law enforcement personnel. [2005 c 504 § 207.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96B.070 Detention period for evaluation and treatment. (Expires July 1, 2008.)** If the evaluation and treatment facility, secure detoxification facility, or other certified chemical dependency provider admits the person, it may detain the person for evaluation and treatment for a period not to exceed seventy-two hours from the time of acceptance. The computation of the seventy-two hour period excludes Saturdays, Sundays, and holidays. [2005 c 504 § 208.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96B.080 Detention for evaluation and treatment of mental disorder—Chapter 71.05 RCW applies. (Expires July 1, 2008.)** Whenever any person is detained for evaluation and treatment for a mental disorder under RCW 70.96B.050, chapter 71.05 RCW applies. [2005 c 504 § 209.]

**70.96B.090 Procedures for additional chemical dependency treatment. (Expires July 1, 2008.)** (1) A person detained for seventy-two hour evaluation and treatment under RCW 70.96B.050 or 70.96A.120 may be detained for not more than fourteen additional days of involuntary chemical dependency treatment if there are beds available at the

secure detoxification facility and the following conditions are met:

(a) The professional person in charge of the agency or facility or the person's designee providing evaluation and treatment services in a secure detoxification facility has assessed the person's condition and finds that the condition is caused by chemical dependency and either results in a likelihood of serious harm or in the detained person being gravely disabled, and the professional person or his or her designee is prepared to testify those conditions are met;

(b) The person has been advised of the need for voluntary treatment and the professional person in charge of the agency or facility or his or her designee has evidence that he or she has not in good faith volunteered for treatment; and

(c) The professional person in charge of the agency or facility or the person's designee has filed a petition for fourteen-day involuntary detention with the superior court, district court, or other court permitted by court rule. The petition must be signed by the chemical dependency professional who has examined the person.

(2) The petition under subsection (1)(c) of this section shall be accompanied by a certificate of a licensed physician who has examined the person, unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal shall be alleged in the petition. The certificate shall set forth the licensed physician's findings in support of the allegations of the petition. A physician employed by the petitioning program or the department is eligible to be the certifying physician.

(3) The petition shall state facts that support the finding that the person, as a result of chemical dependency, presents a likelihood of serious harm or is gravely disabled, and that there are no less restrictive alternatives to detention in the best interest of the person or others. The petition shall state specifically that less restrictive alternative treatment was considered and specify why treatment less restrictive than detention is not appropriate.

(4) A copy of the petition shall be served on the detained person, his or her attorney, and his or her guardian or conservator, if any, before the probable cause hearing.

(5)(a) The court shall inform the person whose commitment is sought of his or her right to contest the petition, be represented by counsel at every stage of any proceedings relating to his or her commitment, and have counsel appointed by the court or provided by the court, if he or she wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for him or her regardless of his or her wishes. The person shall, if he or she is financially able, bear the costs of such legal service; otherwise such legal service shall be at public expense. The person whose commitment is sought shall be informed of his or her right to be examined by a licensed physician of his or her choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall appoint a reasonably available licensed physician designated by the person.

(b) At the conclusion of the probable cause hearing, if the court finds by a preponderance of the evidence that the person, as the result of chemical dependency, presents a likelihood of serious harm or is gravely disabled and, after con-

sidering less restrictive alternatives to involuntary detention and treatment, finds that no such alternatives are in the best interest of such person or others, the court shall order that the person be detained for involuntary chemical dependency treatment not to exceed fourteen days in a secure detoxification facility. [2005 c 504 § 210.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96B.100 Petition for additional treatment under RCW 70.96A.140. (Expires July 1, 2008.)** If a person is detained for additional treatment beyond fourteen days under RCW 70.96B.090, the professional staff of the agency or facility may petition for additional treatment under RCW 70.96A.140. [2005 c 504 § 211.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96B.110 Involuntary chemical dependency treatment proceedings—Prosecuting attorney shall represent petitioner. (Expires July 1, 2008.)** The prosecuting attorney of the county in which an action under this chapter is taken must represent the petitioner in judicial proceedings under this chapter for the involuntary chemical dependency treatment of a person, including any judicial proceeding where the person sought to be treated for chemical dependency challenges the action. [2005 c 504 § 212.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96B.120 Rights of involuntarily detained persons. (Expires July 1, 2008.)** (1) Every person involuntarily detained or committed under this chapter as a result of a mental disorder is entitled to all the rights set forth in this chapter and in chapter 71.05 RCW, and retains all rights not denied him or her under this chapter or chapter 71.05 RCW.

(2) Every person involuntarily detained or committed under this chapter as a result of a chemical dependency is entitled to all the rights set forth in this chapter and chapter 70.96A RCW, and retains all rights not denied him or her under this chapter or chapter 70.96A RCW. [2005 c 504 § 213.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96B.130 Evaluation by designated crisis responder—When required—Required notifications. (Expires July 1, 2008.)** (1) When a designated crisis responder is notified by a jail that a defendant or offender who was subject to a discharge review under RCW 71.05.232

is to be released to the community, the designated crisis responder shall evaluate the person within seventy-two hours of release.

(2) When an offender is under court-ordered treatment in the community and the supervision of the department of corrections, and the treatment provider becomes aware that the person is in violation of the terms of the court order, the treatment provider shall notify the designated crisis responder of the violation and request an evaluation for purposes of revocation of the less restrictive alternative.

(3) When a designated crisis responder becomes aware that an offender who is under court-ordered treatment in the community and the supervision of the department of corrections is in violation of a treatment order or a condition of supervision that relates to public safety, or the designated crisis responder detains a person under this chapter, the designated crisis responder shall notify the person's treatment provider and the department of corrections.

(4) When an offender who is confined in a state correctional facility or is under supervision of the department of corrections in the community is subject to a petition for involuntary treatment under this chapter, the petitioner shall notify the department of corrections and the department of corrections shall provide documentation of its risk assessment or other concerns to the petitioner and the court if the department of corrections classified the offender as a high risk or high needs offender.

(5) Nothing in this section creates a duty on any treatment provider or designated crisis responder to provide offender supervision. [2005 c 504 § 214.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96B.140 Secretary may adopt rules. (Expires July 1, 2008.)** The secretary may adopt rules to implement this chapter. [2005 c 504 § 215.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96B.150 Application of RCW 71.05.550. (Expires July 1, 2008.)** The provisions of RCW 71.05.550 apply to this chapter. [2005 c 504 § 216.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96B.800 Evaluation of pilot programs.** (1) The Washington state institute for public policy shall evaluate the pilot programs and make a preliminary report to appropriate committees of the legislature by December 1, 2007, and a final report by September 30, 2008.

(2) The evaluation of the pilot programs shall include:

(a) Whether the designated crisis responder pilot program:



- (i) Has increased efficiency of evaluation and treatment of persons involuntarily detained for seventy-two hours;
  - (ii) Is cost-effective;
  - (iii) Results in better outcomes for persons involuntarily detained;
  - (iv) Increased the effectiveness of the crisis response system in the pilot catchment areas;
- (b) The effectiveness of providing a single chapter in the Revised Code of Washington to address initial detention of persons with mental disorders or chemical dependency, in crisis response situations and the likelihood of effectiveness of providing a single, comprehensive involuntary treatment act.

(3) The reports shall consider the impact of the pilot programs on the existing mental health system and on the persons served by the system. [2005 c 504 § 217.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96B.900 Expiration date—2005 c 504 §§ 202-216.** Sections 202 through 216 of this act expire July 1, 2008. [2005 c 504 § 219.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Chapter 70.96C RCW**

**SCREENING AND ASSESSMENT OF CHEMICAL DEPENDENCY AND MENTAL DISORDERS**

Sections

- 70.96C.010 Integrated, comprehensive screening and assessment process for chemical dependency and mental disorders.
- 70.96C.020 Department of corrections—Use of screening and assessment process.

**70.96C.010 Integrated, comprehensive screening and assessment process for chemical dependency and mental disorders.** (1) The department of social and health services, in consultation with the members of the team charged with developing the state plan for co-occurring mental and substance abuse disorders, shall adopt, not later than January 1, 2006, an integrated and comprehensive screening and assessment process for chemical dependency and mental disorders and co-occurring chemical dependency and mental disorders.

- (a) The process adopted shall include, at a minimum:
  - (i) An initial screening tool that can be used by intake personnel system-wide and which will identify the most common types of co-occurring disorders;
  - (ii) An assessment process for those cases in which assessment is indicated that provides an appropriate degree of assessment for most situations, which can be expanded for complex situations;
  - (iii) Identification of triggers in the screening that indicate the need to begin an assessment;
  - (iv) Identification of triggers after or outside the screening that indicate a need to begin or resume an assessment;

(v) The components of an assessment process and a protocol for determining whether part or all of the assessment is necessary, and at what point; and

(vi) Emphasis that the process adopted under this section is to replace and not to duplicate existing intake, screening, and assessment tools and processes.

(b) The department shall consider existing models, including those already adopted by other states, and to the extent possible, adopt an established, proven model.

(c) The integrated, comprehensive screening and assessment process shall be implemented statewide by all chemical dependency and mental health treatment providers as well as all designated mental health professionals, designated chemical dependency specialists, and designated crisis responders not later than January 1, 2007.

(2) The department shall provide adequate training to effect statewide implementation by the dates designated in this section and shall report the rates of co-occurring disorders and the stage of screening or assessment at which the co-occurring disorder was identified to the appropriate committees of the legislature.

(3) The department shall establish contractual penalties to contracted treatment providers, the regional support networks, and their contracted providers for failure to implement the integrated screening and assessment process by July 1, 2007. [2005 c 504 § 601.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96C.020 Department of corrections—Use of screening and assessment process.** The department of corrections shall, to the extent that resources are available for this purpose, utilize the integrated, comprehensive screening and assessment process for chemical dependency and mental disorders developed under RCW 70.96C.010. [2005 c 504 § 602.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Chapter 70.97 RCW**

**ENHANCED SERVICES FACILITIES**

Sections

- 70.97.010 Definitions.
- 70.97.020 Advance directives.
- 70.97.030 Admission criteria.
- 70.97.040 Rights of residents.
- 70.97.050 Right to refuse antipsychotic medication.
- 70.97.060 Capacity—Security—Licensing—Application of state and local rules.
- 70.97.070 Comprehensive assessments—Individualized treatment plan.
- 70.97.080 Staffing levels—Staff credentials and training—Background checks.
- 70.97.090 Facilities exempted.
- 70.97.100 Licensing requirements—Information available to public, residents, families.
- 70.97.110 Enforcement authority—Penalties, sanctions.
- 70.97.120 Enforcement orders—Hearings.
- 70.97.130 Unlicensed operation—Application of consumer protection act.

70.97.140	Unlicensed operation—Criminal penalty.
70.97.150	Unlicensed operation—Injunction or other remedies.
70.97.160	Inspections.
70.97.170	Persons eligible for admittance.
70.97.180	Services of qualified professional.
70.97.190	Notice of change of ownership or management.
70.97.200	Recordkeeping—Compliance with state, federal regulations—Health care information releases.
70.97.210	Standards for fire protection.
70.97.220	Exemption from liability.
70.97.230	Rules for implementation of chapter.

**70.97.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Antipsychotic medications" means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes but is not limited to atypical antipsychotic medications.

(2) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient.

(3) "Chemical dependency" means alcoholism, drug addiction, or dependence on alcohol and one or more other psychoactive chemicals, as the context requires and as those terms are defined in chapter 70.96A RCW.

(4) "Chemical dependency professional" means a person certified as a chemical dependency professional by the department of health under chapter 18.205 RCW.

(5) "Commitment" means the determination by a court that an individual should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting.

(6) "Conditional release" means a modification of a commitment that may be revoked upon violation of any of its terms.

(7) "Custody" means involuntary detention under chapter 71.05 or 70.96A RCW, uninterrupted by any period of unconditional release from commitment from a facility providing involuntary care and treatment.

(8) "Department" means the department of social and health services.

(9) "Designated responder" means a designated mental health professional, a designated chemical dependency specialist, or a designated crisis responder as those terms are defined in chapter 70.96A, 71.05, or 70.96B RCW.

(10) "Detention" or "detain" means the lawful confinement of an individual under chapter 70.96A or 71.05 RCW.

(11) "Discharge" means the termination of facility authority. The commitment may remain in place, be terminated, or be amended by court order.

(12) "Enhanced services facility" means a facility that provides treatment and services to persons for whom acute inpatient treatment is not medically necessary and who have been determined by the department to be inappropriate for placement in other licensed facilities due to the complex needs that result in behavioral and security issues.

(13) "Expanded community services program" means a nonsecure program of enhanced behavioral and residential support provided to long-term and residential care providers serving specifically eligible clients who would otherwise be at risk for hospitalization at state hospital geriatric units.

(14) "Facility" means an enhanced services facility.

(15) "Gravely disabled" means a condition in which an individual, as a result of a mental disorder, as a result of the use of alcohol or other psychoactive chemicals, or both:

(a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or

(b) Manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety.

(16) "History of one or more violent acts" refers to the period of time ten years before the filing of a petition under this chapter, or chapter 70.96A or 71.05 RCW, excluding any time spent, but not any violent acts committed, in a mental health facility or a long-term alcoholism or drug treatment facility, or in confinement as a result of a criminal conviction.

(17) "Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington.

(18) "Likelihood of serious harm" means:

(a) A substantial risk that:

(i) Physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself;

(ii) Physical harm will be inflicted by an individual upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or

(iii) Physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or

(b) The individual has threatened the physical safety of another and has a history of one or more violent acts.

(19) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(20) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary under the authority of chapter 71.05 RCW.

(21) "Professional person" means a mental health professional and also means a physician, registered nurse, and such others as may be defined in rules adopted by the secretary pursuant to the provisions of this chapter.

(22) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology.

(23) "Psychologist" means a person who has been licensed as a psychologist under chapter 18.83 RCW.

(24) "Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify individuals who are receiving or who at any time have received services for mental illness.

(25) "Release" means legal termination of the commitment under chapter 70.96A or 71.05 RCW.

(26) "Resident" means a person admitted to an enhanced services facility.

(27) "Secretary" means the secretary of the department or the secretary's designee.

(28) "Significant change" means:

(a) A deterioration in a resident's physical, mental, or psychosocial condition that has caused or is likely to cause clinical complications or life-threatening conditions; or

(b) An improvement in the resident's physical, mental, or psychosocial condition that may make the resident eligible for release or for treatment in a less intensive or less secure setting.

(29) "Social worker" means a person with a master's or further advanced degree from an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary.

(30) "Treatment" means the broad range of emergency, detoxification, residential, inpatient, and outpatient services and care, including diagnostic evaluation, mental health or chemical dependency education and counseling, medical, psychiatric, psychological, and social service care, vocational rehabilitation, and career counseling, which may be extended to persons with mental disorders, chemical dependency disorders, or both, and their families.

(31) "Treatment records" include registration and all other records concerning individuals who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. "Treatment records" do not include notes or records maintained for personal use by an individual providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others.

(32) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property. [2005 c 504 § 403.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.020 Advance directives.** A facility shall honor an advance directive that was validly executed pursuant to chapter 70.122 RCW and a mental health advance directive that was validly executed pursuant to chapter 71.32 RCW. [2005 c 504 § 404.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.030 Admission criteria.** A person, eighteen years old or older, may be admitted to an enhanced services facility if he or she meets the criteria in subsections (1) through (3) of this section:

(1) The person requires: (a) Daily care by or under the supervision of a mental health professional, chemical depen-

gency professional, or nurse; or (b) assistance with three or more activities of daily living; and

(2) The person has: (a) A mental disorder, chemical dependency disorder, or both; (b) an organic or traumatic brain injury; or (c) a cognitive impairment that results in symptoms or behaviors requiring supervision and facility services; [and]

(3) The person has two or more of the following:

(a) Self-endangering behaviors that are frequent or difficult to manage;

(b) Aggressive, threatening, or assaultive behaviors that create a risk to the health or safety of other residents or staff, or a significant risk to property and these behaviors are frequent or difficult to manage;

(c) Intrusive behaviors that put residents or staff at risk;

(d) Complex medication needs and those needs include psychotropic medications;

(e) A history of or likelihood of unsuccessful placements in either a licensed facility or other state facility or a history of rejected applications for admission to other licensed facilities based on the person's behaviors, history, or security needs;

(f) A history of frequent or protracted mental health hospitalizations;

(g) A history of offenses against a person or felony offenses that created substantial damage to property. [2005 c 504 § 405.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.040 Rights of residents.** (1)(a) Every person who is a resident of an enhanced services facility shall be entitled to all the rights set forth in this chapter, and chapters 71.05 and 70.96A RCW, and shall retain all rights not denied him or her under these chapters.

(b) No person shall be presumed incompetent as a consequence of receiving an evaluation or voluntary or involuntary treatment for a mental disorder, chemical dependency disorder, or both, under this chapter, or chapter 71.05 or 70.96A RCW, or any prior laws of this state dealing with mental illness. Competency shall not be determined or withdrawn except under the provisions of chapter 10.77 or 11.88 RCW.

(c) At the time of his or her treatment planning meeting, every resident of an enhanced services facility shall be given a written statement setting forth the substance of this section. The department shall by rule develop a statement and process for informing residents of their rights in a manner that is likely to be understood by the resident.

(2) Every resident of an enhanced services facility shall have the right to adequate care and individualized treatment.

(3) The provisions of this chapter shall not be construed to deny to any person treatment by spiritual means through prayer in accordance with the tenets and practices of a church or religious denomination.

(4) Persons receiving evaluation or treatment under this chapter shall be given a reasonable choice of an available physician or other professional person qualified to provide such services.

(5) The physician-patient privilege or the psychologist-client privilege shall be deemed waived in proceedings under this chapter relating to the administration of antipsychotic medications. As to other proceedings under chapter 10.77, 70.96A, or 71.05 RCW, the privileges shall be waived when a court of competent jurisdiction in its discretion determines that such waiver is necessary to protect either the detained person or the public.

(6) Insofar as danger to the person or others is not created, each resident of an enhanced services facility shall have, in addition to other rights not specifically withheld by law, the following rights, a list of which shall be prominently posted in all facilities, institutions, and hospitals providing such services:

(a) To wear his or her own clothes and to keep and use his or her own personal possessions, except when deprivation of same is essential to protect the safety of the resident or other persons;

(b) To keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases;

(c) To have access to individual storage space for his or her private use;

(d) To have visitors at reasonable times;

(e) To have reasonable access to a telephone, both to make and receive confidential calls, consistent with an effective treatment program;

(f) To have ready access to letter writing materials, including stamps, and to send and receive uncensored correspondence through the mails;

(g) Not to consent to the administration of antipsychotic medications beyond the hearing conducted pursuant to RCW 71.05.215 or 71.05.217, or the performance of electroconvulsant therapy, or surgery, except emergency life-saving surgery, unless ordered by a court under RCW 71.05.217;

(h) To discuss and actively participate in treatment plans and decisions with professional persons;

(i) Not to have psychosurgery performed on him or her under any circumstances;

(j) To dispose of property and sign contracts unless such person has been adjudicated an incompetent in a court proceeding directed to that particular issue; and

(k) To complain about rights violations or conditions and request the assistance of a mental health ombudsman or representative of Washington protection and advocacy. The facility may not prohibit or interfere with a resident's decision to consult with an advocate of his or her choice.

(7) Nothing contained in this chapter shall prohibit a resident from petitioning by writ of habeas corpus for release.

(8) Nothing in this section permits any person to knowingly violate a no-contact order or a condition of an active judgment and sentence or active supervision by the department of corrections.

(9) A person has a right to refuse placement, except where subject to commitment, in an enhanced services facility. No person shall be denied other department services solely on the grounds that he or she has made such a refusal.

(10) A person has a right to appeal the decision of the department that he or she is eligible for placement at an enhanced services facility, and shall be given notice of the right to appeal in a format that is accessible to the person with

instructions regarding what to do if the person wants to appeal. [2005 c 504 § 406.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

#### **70.97.050 Right to refuse antipsychotic medication.**

A person who is gravely disabled or presents a likelihood of serious harm as a result of a mental or chemical dependency disorder or co-occurring mental and chemical dependency disorders has a right to refuse antipsychotic medication. Antipsychotic medication may be administered over the person's objections only pursuant to RCW 71.05.215 or 71.05.217. [2005 c 504 § 407.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

#### **70.97.060 Capacity—Security—Licensing—Application of state and local rules.**

(1)(a) The department shall not license an enhanced services facility that serves any residents under sixty-five years of age for a capacity to exceed sixteen residents.

(b) The department may contract for services for the operation of enhanced services facilities only to the extent that funds are specifically provided for that purpose.

(2) The facility shall provide an appropriate level of security for the characteristics, behaviors, and legal status of the residents.

(3) An enhanced services facility may hold only one license but, to the extent permitted under state and federal law and medicaid requirements, a facility may be located in the same building as another licensed facility, provided that:

(a) The enhanced services facility is in a location that is totally separate and discrete from the other licensed facility; and

(b) The two facilities maintain separate staffing, unless an exception to this is permitted by the department in rule.

(4) Nursing homes under chapter 18.51 RCW, boarding homes under chapter 18.20 RCW, or adult family homes under chapter 70.128 RCW, that become licensed as facilities under this chapter shall be deemed to meet the applicable state and local rules, regulations, permits, and code requirements. All other facilities are required to meet all applicable state and local rules, regulations, permits, and code requirements. [2005 c 504 § 408.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

#### **70.97.070 Comprehensive assessments—Individualized treatment plan.**

(1) The enhanced services facility shall complete a comprehensive assessment for each resident within fourteen days of admission, and the assessments shall be repeated upon a significant change in the resident's condi-

tion or, at a minimum, every one hundred eighty days if there is no significant change in condition.

(2) The enhanced services facility shall develop an individualized treatment plan for each resident based on the comprehensive assessment and any other information in the person's record. The plan shall be updated as necessary, and shall include a plan for appropriate transfer or discharge and reintegration into the community. Where the person is under the supervision of the department of corrections, the facility shall collaborate with the department of corrections to maximize treatment outcomes and reduce the likelihood of reoffense.

(3) The plan shall maximize the opportunities for independence, recovery, employment, the resident's participation in treatment decisions, and collaboration with peer-supported services, and provide for care and treatment in the least restrictive manner appropriate to the individual resident, and, where relevant, to any court orders with which the resident must comply. [2005 c 504 § 409.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.080 Staffing levels—Staff credentials and training—Background checks.** (1) An enhanced services facility must have sufficient numbers of staff with the appropriate credentials and training to provide residents with the appropriate care and treatment:

- (a) Mental health treatment;
- (b) Medication services;
- (c) Assistance with the activities of daily living;
- (d) Medical or habilitative treatment;
- (e) Dietary services;
- (f) Security; and
- (g) Chemical dependency treatment.

(2) Where an enhanced services facility specializes in medically fragile persons with mental disorders, the on-site staff must include at least one licensed nurse twenty-four hours per day. The nurse must be a registered nurse for at least sixteen hours per day. If the nurse is not a registered nurse, a registered nurse or a doctor must be on-call during the remaining eight hours.

(3) Any employee or other individual who will have unsupervised access to vulnerable adults must successfully pass a background inquiry check. [2005 c 504 § 410.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.090 Facilities exempted.** This chapter does not apply to the following residential facilities:

- (1) Nursing homes licensed under chapter 18.51 RCW;
- (2) Boarding homes licensed under chapter 18.20 RCW;
- (3) Adult family homes licensed under chapter 70.128 RCW;
- (4) Facilities approved and certified under chapter 71A.22 RCW;

(5) Residential treatment facilities licensed under chapter 71.12 RCW; and

(6) Hospitals licensed under chapter 70.41 RCW. [2005 c 504 § 411.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.100 Licensing requirements—Information available to public, residents, families.** (1) The department shall establish licensing rules for enhanced services facilities to serve the populations defined in this chapter.

(2) No person or public or private agency may operate or maintain an enhanced services facility without a license, which must be renewed annually.

(3) A licensee shall have the following readily accessible and available for review by the department, residents, families of residents, and the public:

(a) Its license to operate and a copy of the department's most recent inspection report and any recent complaint investigation reports issued by the department;

(b) Its written policies and procedures for all treatment, care, and services provided directly or indirectly by the facility; and

(c) The department's toll-free complaint number, which shall also be posted in a clearly visible place and manner.

(4) Enhanced services facilities shall maintain a grievance procedure that meets the requirements of rules established by the department.

(5) No facility shall discriminate or retaliate in any manner against a resident or employee because the resident, employee, or any other person made a complaint or provided information to the department, the long-term care ombudsman, Washington protection and advocacy system, or a mental health ombudsperson.

(6) Each enhanced services facility will post in a prominent place in a common area a notice by the Washington protection and advocacy system providing contact information. [2005 c 504 § 412.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.110 Enforcement authority—Penalties, sanctions.** (1) In any case in which the department finds that a licensee of a facility, or any partner, officer, director, owner of five percent or more of the assets of the facility, or managing employee failed or refused to comply with the requirements of this chapter or the rules established under them, the department may take any or all of the following actions:

(a) Suspend, revoke, or refuse to issue or renew a license;

(b) Order stop placement; or

(c) Assess civil monetary penalties.

(2) The department may suspend, revoke, or refuse to renew a license, assess civil monetary penalties, or both, in any case in which it finds that the licensee of a facility, or any

partner, officer, director, owner of five percent or more of the assets of the facility, or managing employee:

(a) Operated a facility without a license or under a revoked or suspended license;

(b) Knowingly or with reason to know made a false statement of a material fact in the license application or any data attached thereto, or in any matter under investigation by the department;

(c) Refused to allow representatives or agents of the department to inspect all books, records, and files required to be maintained or any portion of the premises of the facility;

(d) Willfully prevented, interfered with, or attempted to impede in any way the work of any duly authorized representative of the department and the lawful enforcement of any provision of this chapter;

(e) Willfully prevented or interfered with any representative of the department in the preservation of evidence of any violation of any of the provisions of this chapter or of the rules adopted under it; or

(f) Failed to pay any civil monetary penalty assessed by the department under this chapter within ten days after the assessment becomes final.

(3)(a) Civil penalties collected under this chapter shall be deposited into a special fund administered by the department.

(b) Civil monetary penalties, if imposed, may be assessed and collected, with interest, for each day the facility is or was out of compliance. Civil monetary penalties shall not exceed three thousand dollars per day. Each day upon which the same or a substantially similar action occurs is a separate violation subject to the assessment of a separate penalty.

(4) The department may use the civil penalty monetary fund for the protection of the health or property of residents of facilities found to be deficient including:

(a) Payment for the cost of relocation of residents to other facilities;

(b) Payment to maintain operation of a facility pending correction of deficiencies or closure; and

(c) Reimbursement of a resident for personal funds or property loss.

(5)(a) The department may issue a stop placement order on a facility, effective upon oral or written notice, when the department determines:

(i) The facility no longer substantially meets the requirements of this chapter; and

(ii) The deficiency or deficiencies in the facility:

(A) Jeopardizes the health and safety of the residents; or

(B) Seriously limits the facility's capacity to provide adequate care.

(b) When the department has ordered a stop placement, the department may approve a readmission to the facility from a hospital, residential treatment facility, or crisis intervention facility when the department determines the readmission would be in the best interest of the individual seeking readmission.

(6) If the department determines that an emergency exists and resident health and safety is immediately jeopardized as a result of a facility's failure or refusal to comply with this chapter, the department may summarily suspend the

facility's license and order the immediate closure of the facility, or the immediate transfer of residents, or both.

(7) If the department determines that the health or safety of the residents is immediately jeopardized as a result of a facility's failure or refusal to comply with requirements of this chapter, the department may appoint temporary management to:

(a) Oversee the operation of the facility; and

(b) Ensure the health and safety of the facility's residents while:

(i) Orderly closure of the facility occurs; or

(ii) The deficiencies necessitating temporary management are corrected. [2005 c 504 § 413.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.120 Enforcement orders—Hearings.** (1) All orders of the department denying, suspending, or revoking the license or assessing a monetary penalty shall become final twenty days after the same has been served upon the applicant or licensee unless a hearing is requested.

(2) All orders of the department imposing stop placement, temporary management, emergency closure, emergency transfer, or summary license suspension shall be effective immediately upon notice, pending any hearing.

(3) Subject to the requirements of subsection (2) of this section, all hearings under this chapter and judicial review of such determinations shall be in accordance with the administrative procedure act, chapter 34.05 RCW. [2005 c 504 § 414.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.130 Unlicensed operation—Application of consumer protection act.** Operation of a facility without a license in violation of this chapter and discrimination against medicaid recipients is a matter vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Operation of an enhanced services facility without a license in violation of this chapter is not reasonable in relation to the development and preservation of business. Such a violation is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. [2005 c 504 § 415.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.140 Unlicensed operation—Criminal penalty.** A person operating or maintaining a facility without a license under this chapter is guilty of a misdemeanor and each day of a continuing violation after conviction shall be considered a separate offense. [2005 c 504 § 416.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.150 Unlicensed operation—Injunction or other remedies.** Notwithstanding the existence or use of any other remedy, the department may, in the manner provided by law, maintain an action in the name of the state for an injunction, civil penalty, or other process against a person to restrain or prevent the operation or maintenance of a facility without a license issued under this chapter. [2005 c 504 § 417.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.160 Inspections.** (1) The department shall make or cause to be made at least one inspection of each facility prior to licensure and an unannounced full inspection of facilities at least once every eighteen months. The statewide average interval between full facility inspections must be fifteen months.

(2) Any duly authorized officer, employee, or agent of the department may enter and inspect any facility at any time to determine that the facility is in compliance with this chapter and applicable rules, and to enforce any provision of this chapter. Complaint inspections shall be unannounced and conducted in such a manner as to ensure maximum effectiveness. No advance notice shall be given of any inspection unless authorized or required by federal law.

(3) During inspections, the facility must give the department access to areas, materials, and equipment used to provide care or support to residents, including resident and staff records, accounts, and the physical premises, including the buildings, grounds, and equipment. The department has the authority to privately interview the provider, staff, residents, and other individuals familiar with resident care and treatment.

(4) Any public employee giving advance notice of an inspection in violation of this section shall be suspended from all duties without pay for a period of not less than five nor more than fifteen days.

(5) The department shall prepare a written report describing the violations found during an inspection, and shall provide a copy of the inspection report to the facility.

(6) The facility shall develop a written plan of correction for any violations identified by the department and provide a plan of correction to the department within ten working days from the receipt of the inspection report. [2005 c 504 § 418.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.170 Persons eligible for admittance.** The facility shall only admit individuals:

- (1) Who are over the age of eighteen;

(2) Who meet the resident eligibility requirements described in RCW 70.97.030; and

(3) Whose needs the facility can safely and appropriately meet through qualified and trained staff, services, equipment, security, and building design. [2005 c 504 § 419.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.180 Services of qualified professional.** If the facility does not employ a qualified professional able to furnish needed services, the facility must have a written contract with a qualified professional or agency outside the facility to furnish the needed services. [2005 c 504 § 420.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.190 Notice of change of ownership or management.** At least sixty days before the effective date of any change of ownership, or change of management of a facility, the current operating entity must provide written notification about the proposed change separately and in writing, to the department, each resident of the facility, or the resident's guardian or representative. [2005 c 504 § 421.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.200 Recordkeeping—Compliance with state, federal regulations—Health care information releases.** The facility shall:

(1) Maintain adequate resident records to enable the provision of necessary treatment, care, and services and to respond appropriately in emergency situations;

(2) Comply with all state and federal requirements related to documentation, confidentiality, and information sharing, including chapters 10.77, 70.02, 70.24, 70.96A, and 71.05 RCW; and

(3) Where possible, obtain signed releases of information designating the department, the facility, and the department of corrections where the person is under its supervision, as recipients of health care information. [2005 c 504 § 422.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.210 Standards for fire protection.** (1) Standards for fire protection and the enforcement thereof, with respect to all facilities licensed under this chapter, are the responsibility of the chief of the Washington state patrol, through the director of fire protection, who must adopt recognized standards as applicable to facilities for the protection of life against the cause and spread of fire and fire hazards. If the

facility to be licensed meets with the approval of the chief of the Washington state patrol, through the director of fire protection, the director of fire protection must submit to the department a written report approving the facility with respect to fire protection before a full license can be issued. The chief of the Washington state patrol, through the director of fire protection, shall conduct an unannounced full inspection of facilities at least once every eighteen months. The statewide average interval between full facility inspections must be fifteen months.

(2) Inspections of facilities by local authorities must be consistent with the requirements adopted by the chief of the Washington state patrol, through the director of fire protection. Findings of a serious nature must be coordinated with the department and the chief of the Washington state patrol, through the director of fire protection, for determination of appropriate actions to ensure a safe environment for residents. The chief of the Washington state patrol, through the director of fire protection, has exclusive authority to determine appropriate corrective action under this section. [2005 c 504 § 423.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.220 Exemption from liability.** No facility providing care and treatment for individuals placed in a facility, or agency licensing or placing residents in a facility, acting in the course of its duties, shall be civilly or criminally liable for performing its duties under this chapter, provided that such duties were performed in good faith and without gross negligence. [2005 c 504 § 424.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.230 Rules for implementation of chapter.** (1) The secretary shall adopt rules to implement this chapter.

(2) Such rules shall at the minimum: (a) Promote safe treatment and necessary care of individuals residing in the facility and provide for safe and clean conditions; (b) establish licensee qualifications, licensing and enforcement, and license fees sufficient to cover the cost of licensing and enforcement. [2005 c 504 § 425.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

## Chapter 70.102 RCW

### HAZARDOUS SUBSTANCE INFORMATION

#### Sections

70.102.020 Hazardous substance information and education office—Duties. (*Effective July 1, 2006.*)

[2005 RCW Supp—page 804]

**70.102.020 Hazardous substance information and education office—Duties.** (*Effective July 1, 2006.*) There is hereby created the hazardous substance information and education office. Through this office the department shall:

(1) Facilitate access to existing information on hazardous substances within a community;

(2) Request and obtain information about hazardous substances at specified locations and facilities from agencies that regulate those locations and facilities. The department shall review, approve, and provide confidentiality as provided by statute. Upon request of the department, each agency shall provide the information within forty-five days;

(3) At the request of citizens or public health or public safety organizations, compile existing information about hazardous substance use at specified locations and facilities. This information shall include but not be limited to:

(a) Point and nonpoint air and water emissions;

(b) Extremely hazardous, moderate risk wastes and dangerous wastes as defined in chapter 70.105 RCW produced, used, stored, transported from, or disposed of by any facility;

(c) A list of the hazardous substances present at a given site and data on their acute and chronic health and environmental effects;

(d) Data on governmental pesticide use at a given site;

(e) Data on commercial pesticide use at a given site if such data is only given to individuals who are chemically sensitive; and

(f) Compliance history of any facility.

(4) Provide education to the public on the proper production, use, storage, and disposal of hazardous substances, including but not limited to:

(a) A technical resource center on hazardous substance management for industry and the public;

(b) Programs, in cooperation with local government, to educate generators of moderate risk waste, and provide information regarding the potential hazards to human health and the environment resulting from improper use and disposal of the waste and proper methods of handling, reducing, recycling, and disposing of the waste;

(c) Public information and education relating to the safe handling and disposal of hazardous household substances; and

(d) Guidelines to aid counties in developing and implementing a hazardous household substances program.

Requests for information from the hazardous substance information and education office may be made by letter or by a toll-free telephone line, if one is established by the department. Requests shall be responded to in accordance with chapter 42.56 RCW.

This section shall not require any agency to compile information that is not required by existing laws or rules. [2005 c 274 § 339; 1985 c 410 § 1.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

*Worker and community right to know fund, use to provide hazardous substance information under chapter 70.102 RCW: RCW 49.70.175.*



## Chapter 70.105D RCW

## HAZARDOUS WASTE CLEANUP—MODEL TOXICS CONTROL ACT

## Sections

70.105D.020	Definitions.
70.105D.050	Enforcement.
70.105D.055	Lien authority.
70.105D.060	Timing of review.
70.105D.070	Toxics control accounts.

**70.105D.020 Definitions.** (1) "Agreed order" means an order issued by the department under this chapter with which the potentially liable person receiving the order agrees to comply. An agreed order may be used to require or approve any cleanup or other remedial actions but it is not a settlement under RCW 70.105D.040(4) and shall not contain a covenant not to sue, or provide protection from claims for contribution, or provide eligibility for public funding of remedial actions under RCW 70.105D.070(2)(d)(xi).

(2) "Department" means the department of ecology.

(3) "Director" means the director of ecology or the director's designee.

(4) "Facility" means (a) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft, or (b) any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(5) "Federal cleanup law" means the federal comprehensive environmental response, compensation, and liability act of 1980, 42 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

(6) "Foreclosure and its equivalents" means purchase at a foreclosure sale, acquisition, or assignment of title in lieu of foreclosure, termination of a lease, or other repossession, acquisition of a right to title or possession, an agreement in satisfaction of the obligation, or any other comparable formal or informal manner, whether pursuant to law or under warranties, covenants, conditions, representations, or promises from the borrower, by which the holder acquires title to or possession of a facility securing a loan or other obligation.

(7) "Hazardous substance" means:

(a) Any dangerous or extremely hazardous waste as defined in RCW 70.105.010 (5) and (6), or any dangerous or extremely dangerous waste designated by rule pursuant to chapter 70.105 RCW;

(b) Any hazardous substance as defined in RCW 70.105.010(14) or any hazardous substance as defined by rule pursuant to chapter 70.105 RCW;

(c) Any substance that, on March 1, 1989, is a hazardous substance under section 101(14) of the federal cleanup law, 42 U.S.C. Sec. 9601(14);

(d) Petroleum or petroleum products; and

(e) Any substance or category of substances, including solid waste decomposition products, determined by the director by rule to present a threat to human health or the environment if released into the environment.

The term hazardous substance does not include any of the following when contained in an underground storage tank

from which there is not a release: Crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local law.

(8) "Independent remedial actions" means remedial actions conducted without department oversight or approval, and not under an order, agreed order, or consent decree.

(9) "Holder" means a person who holds indicia of ownership primarily to protect a security interest. A holder includes the initial holder such as the loan originator, any subsequent holder such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market, a guarantor of an obligation, surety, or any other person who holds indicia of ownership primarily to protect a security interest, or a receiver, court-appointed trustee, or other person who acts on behalf or for the benefit of a holder. A holder can be a public or privately owned financial institution, receiver, conservator, loan guarantor, or other similar persons that loan money or guarantee repayment of a loan. Holders typically are banks or savings and loan institutions but may also include others such as insurance companies, pension funds, or private individuals that engage in loaning of money or credit.

(10) "Indicia of ownership" means evidence of a security interest, evidence of an interest in a security interest, or evidence of an interest in a facility securing a loan or other obligation, including any legal or equitable title to a facility acquired incident to foreclosure and its equivalents. Evidence of such interests includes, mortgages, deeds of trust, sellers interest in a real estate contract, liens, surety bonds, and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased facility, or legal or equitable title obtained pursuant to foreclosure and their equivalents. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against the facility that are held primarily to protect a security interest.

(11) "Operating a facility primarily to protect a security interest" occurs when all of the following are met: (a) Operating the facility where the borrower has defaulted on the loan or otherwise breached the security agreement; (b) operating the facility to preserve the value of the facility as an ongoing business; (c) the operation is being done in anticipation of a sale, transfer, or assignment of the facility; and (d) the operation is being done primarily to protect a security interest. Operating a facility for longer than one year prior to foreclosure or its equivalents shall be presumed to be operating the facility for other than to protect a security interest.

(12) "Owner or operator" means:

(a) Any person with any ownership interest in the facility or who exercises any control over the facility; or

(b) In the case of an abandoned facility, any person who had owned, or operated, or exercised control over the facility any time before its abandonment;

The term does not include:

(i) An agency of the state or unit of local government which acquired ownership or control through a drug forfeiture action under RCW 69.50.505, or involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title. This exclusion does not apply to an agency of the state or unit of local government which has caused or contributed to the

release or threatened release of a hazardous substance from the facility;

(ii) A person who, without participating in the management of a facility, holds indicia of ownership primarily to protect the person's security interest in the facility. Holders after foreclosure and its equivalent and holders who engage in any of the activities identified in subsection (13)(e) through (g) of this section shall not lose this exemption provided the holder complies with all of the following:

(A) The holder properly maintains the environmental compliance measures already in place at the facility;

(B) The holder complies with the reporting requirements in the rules adopted under this chapter;

(C) The holder complies with any order issued to the holder by the department to abate an imminent or substantial endangerment;

(D) The holder allows the department or potentially liable persons under an order, agreed order, or settlement agreement under this chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;

(E) Any remedial actions conducted by the holder are in compliance with any preexisting requirements identified by the department, or, if the department has not identified such requirements for the facility, the remedial actions are conducted consistent with the rules adopted under this chapter; and

(F) The holder does not exacerbate an existing release. The exemption in this subsection (12)(b)(ii) does not apply to holders who cause or contribute to a new release or threatened release or who are otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e); provided, however, that a holder shall not lose this exemption if it establishes that any such new release has been remediated according to the requirements of this chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release;

(iii) A fiduciary in his, her, or its personal or individual capacity. This exemption does not preclude a claim against the assets of the estate or trust administered by the fiduciary or against a nonemployee agent or independent contractor retained by a fiduciary. This exemption also does not apply to the extent that a person is liable under this chapter independently of the person's ownership as a fiduciary or for actions taken in a fiduciary capacity which cause or contribute to a new release or exacerbate an existing release of hazardous substances. This exemption applies provided that, to the extent of the fiduciary's powers granted by law or by the applicable governing instrument granting fiduciary powers, the fiduciary complies with all of the following:

(A) The fiduciary properly maintains the environmental compliance measures already in place at the facility;

(B) The fiduciary complies with the reporting requirements in the rules adopted under this chapter;

(C) The fiduciary complies with any order issued to the fiduciary by the department to abate an imminent or substantial endangerment;

(D) The fiduciary allows the department or potentially liable persons under an order, agreed order, or settlement agreement under this chapter access to the facility to conduct

remedial actions and does not impede the conduct of such remedial actions;

(E) Any remedial actions conducted by the fiduciary are in compliance with any preexisting requirements identified by the department, or, if the department has not identified such requirements for the facility, the remedial actions are conducted consistent with the rules adopted under this chapter; and

(F) The fiduciary does not exacerbate an existing release.

The exemption in this subsection (12)(b)(iii) does not apply to fiduciaries who cause or contribute to a new release or threatened release or who are otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e); provided however, that a fiduciary shall not lose this exemption if it establishes that any such new release has been remediated according to the requirements of this chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release. The exemption in this subsection (12)(b)(iii) also does not apply where the fiduciary's powers to comply with this subsection (12)(b)(iii) are limited by a governing instrument created with the objective purpose of avoiding liability under this chapter or of avoiding compliance with this chapter; or

(iv) Any person who has any ownership interest in, operates, or exercises control over real property where a hazardous substance has come to be located solely as a result of migration of the hazardous substance to the real property through the ground water from a source off the property, if:

(A) The person can demonstrate that the hazardous substance has not been used, placed, managed, or otherwise handled on the property in a manner likely to cause or contribute to a release of the hazardous substance that has migrated onto the property;

(B) The person has not caused or contributed to the release of the hazardous substance;

(C) The person does not engage in activities that damage or interfere with the operation of remedial actions installed on the person's property or engage in activities that result in exposure of humans or the environment to the contaminated ground water that has migrated onto the property;

(D) If requested, the person allows the department, potentially liable persons who are subject to an order, agreed order, or consent decree, and the authorized employees, agents, or contractors of each, access to the property to conduct remedial actions required by the department. The person may attempt to negotiate an access agreement before allowing access; and

(E) Legal withdrawal of ground water does not disqualify a person from the exemption in this subsection (12)(b)(iv).

(13) "Participation in management" means exercising decision-making control over the borrower's operation of the facility, environmental compliance, or assuming or manifesting responsibility for the overall management of the enterprise encompassing the day-to-day decision making of the enterprise.

The term does not include any of the following: (a) A holder with the mere capacity or ability to influence, or the unexercised right to control facility operations; (b) a holder who conducts or requires a borrower to conduct an environmental audit or an environmental site assessment at the facil-

ity for which indicia of ownership is held; (c) a holder who requires a borrower to come into compliance with any applicable laws or regulations at the facility for which indicia of ownership is held; (d) a holder who requires a borrower to conduct remedial actions including setting minimum requirements, but does not otherwise control or manage the borrower's remedial actions or the scope of the borrower's remedial actions except to prepare a facility for sale, transfer, or assignment; (e) a holder who engages in workout or policing activities primarily to protect the holder's security interest in the facility; (f) a holder who prepares a facility for sale, transfer, or assignment or requires a borrower to prepare a facility for sale, transfer, or assignment; (g) a holder who operates a facility primarily to protect a security interest, or requires a borrower to continue to operate, a facility primarily to protect a security interest; and (h) a prospective holder who, as a condition of becoming a holder, requires an owner or operator to conduct an environmental audit, conduct an environmental site assessment, come into compliance with any applicable laws or regulations, or conduct remedial actions prior to holding a security interest is not participating in the management of the facility.

(14) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, federal government agency, or Indian tribe.

(15) "Policing activities" means actions the holder takes to insure that the borrower complies with the terms of the loan or security interest or actions the holder takes or requires the borrower to take to maintain the value of the security. Policing activities include: Requiring the borrower to conduct remedial actions at the facility during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, regulations, and permits during the term of the security interest; securing or exercising authority to monitor or inspect the facility including on-site inspections, or to monitor or inspect the borrower's business or financial condition during the term of the security interest; or taking other actions necessary to adequately police the loan or security interest such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower.

(16) "Potentially liable person" means any person whom the department finds, based on credible evidence, to be liable under RCW 70.105D.040. The department shall give notice to any such person and allow an opportunity for comment before making the finding, unless an emergency requires otherwise.

(17) "Prepare a facility for sale, transfer, or assignment" means to secure access to the facility; perform routine maintenance on the facility; remove inventory, equipment, or structures; properly maintain environmental compliance measures already in place at the facility; conduct remedial actions to clean up releases at the facility; or to perform other similar activities intended to preserve the value of the facility where the borrower has defaulted on the loan or otherwise breached the security agreement or after foreclosure and its equivalents and in anticipation of a pending sale, transfer, or assignment, primarily to protect the holder's security interest in the facility. A holder can prepare a facility for sale, trans-

fer, or assignment for up to one year prior to foreclosure and its equivalents and still stay within the security interest exemption in subsection (12)(b)(ii) of this section.

(18) "Primarily to protect a security interest" means the indicia of ownership is held primarily for the purpose of securing payment or performance of an obligation. The term does not include indicia of ownership held primarily for investment purposes nor indicia of ownership held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons, for maintaining indicia of ownership, but the primary reason must be for protection of a security interest. Holding indicia of ownership after foreclosure or its equivalents for longer than five years shall be considered to be holding the indicia of ownership for purposes other than primarily to protect a security interest. For facilities that have been acquired through foreclosure or its equivalents prior to July 23, 1995, this five-year period shall begin as of July 23, 1995.

(19) "Public notice" means, at a minimum, adequate notice mailed to all persons who have made timely request of the department and to persons residing in the potentially affected vicinity of the proposed action; mailed to appropriate news media; published in the newspaper of largest circulation in the city or county of the proposed action; and opportunity for interested persons to comment.

(20) "Release" means any intentional or unintentional entry of any hazardous substance into the environment, including but not limited to the abandonment or disposal of containers of hazardous substances.

(21) "Remedy" or "remedial action" means any action or expenditure consistent with the purposes of this chapter to identify, eliminate, or minimize any threat or potential threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

(22) "Security interest" means an interest in a facility created or established for the purpose of securing a loan or other obligation. Security interests include deeds of trusts, sellers interest in a real estate contract, liens, legal, or equitable title to a facility acquired incident to foreclosure and its equivalents, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, easements, and consignments, if the transaction creates or establishes an interest in a facility for the purpose of securing a loan or other obligation.

(23) "Industrial properties" means properties that are or have been characterized by, or are to be committed to, traditional industrial uses such as processing or manufacturing of materials, marine terminal and transportation areas and facilities, fabrication, assembly, treatment, or distribution of manufactured products, or storage of bulk materials, that are either:

(a) Zoned for industrial use by a city or county conducting land use planning under chapter 36.70A RCW; or

(b) For counties not planning under chapter 36.70A RCW and the cities within them, zoned for industrial use and adjacent to properties currently used or designated for industrial purposes.

(24) "Workout activities" means those actions by which a holder, at any time prior to foreclosure and its equivalents, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Workout activities include: Restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owed to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owed to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

(25)(a) "Fiduciary" means a person acting for the benefit of another party as a bona fide trustee; executor; administrator; custodian; guardian of estates or guardian ad litem; receiver; conservator; committee of estates of incapacitated persons; trustee in bankruptcy; trustee, under an indenture agreement, trust agreement, lease, or similar financing agreement, for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender. Except as provided in subsection (12)(b)(iii) of this section, the liability of a fiduciary under this chapter shall not exceed the assets held in the fiduciary capacity.

(b) "Fiduciary" does not mean:

(i) A person acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, one or more estate plans or because of the incapacity of a natural person;

(ii) A person who acquires ownership or control of a facility with the objective purpose of avoiding liability of the person or any other person. It is prima facie evidence that the fiduciary acquired ownership or control of the facility to avoid liability if the facility is the only substantial asset in the fiduciary estate at the time the facility became subject to the fiduciary estate;

(iii) A person who acts in a capacity other than that of a fiduciary or in a beneficiary capacity and in that capacity directly or indirectly benefits from a trust or fiduciary relationship;

(iv) A person who is a beneficiary and fiduciary with respect to the same fiduciary estate, and who while acting as a fiduciary receives benefits that exceed customary or reasonable compensation, and incidental benefits permitted under applicable law;

(v) A person who is a fiduciary and receives benefits that substantially exceed customary or reasonable compensation, and incidental benefits permitted under applicable law; or

(vi) A person who acts in the capacity of trustee of state or federal lands or resources.

(26) "Fiduciary capacity" means the capacity of a person holding title to a facility, or otherwise having control of an

interest in the facility pursuant to the exercise of the responsibilities of the person as a fiduciary. [2005 c 191 § 1; 1998 c 6 § 1; 1997 c 406 § 2; 1995 c 70 § 1; 1994 c 254 § 2; 1989 c 2 § 2 (Initiative Measure No. 97, approved November 8, 1988).]

**Findings—Intent—1997 c 406:** "The legislature finds that:

(1) Engrossed Substitute House Bill No. 1810 enacted during the 1995 legislative session [1995 c 359] authorized establishment of the model toxics control act policy advisory committee, a twenty-two member committee representing a broad range of interests including the legislature, agriculture, large and small business, environmental organizations, and local and state government. The committee was charged with the task of providing advice to the legislature and the department of ecology to more effectively implement the model toxics control act, chapter 70.105D RCW.

(2) The committee members committed considerable time and effort to their charge, meeting twenty-six times during 1995 and 1996 to discuss and decide issues. In addition, the committee created four subcommittees that met over sixty times during this same period. There were also numerous working subgroups and drafting committees formed on an ad hoc basis to support the committee's work. Many members of the public also attended these meetings and were provided opportunities to contribute to the committee deliberations.

(3) The policy advisory committee completed its work and submitted a final report to the department of ecology and the legislature on December 15, 1996. That report contains numerous recommendations for statutory changes that were agreed to by consensus of the committee members or obtained broad support of most of the committee members. Chapter 406, Laws of 1997 is intended to implement those recommended statutory changes." [1997 c 406 § 1.]

**70.105D.050 Enforcement.** (1) With respect to any release, or threatened release, for which the department does not conduct or contract for conducting remedial action and for which the department believes remedial action is in the public interest, the director shall issue orders or agreed orders requiring potentially liable persons to provide the remedial action. Any liable person who refuses, without sufficient cause, to comply with an order or agreed order of the director is liable in an action brought by the attorney general for:

(a) Up to three times the amount of any costs incurred by the state as a result of the party's refusal to comply; and

(b) A civil penalty of up to twenty-five thousand dollars for each day the party refuses to comply.

The treble damages and civil penalty under this subsection apply to all recovery actions filed on or after March 1, 1989.

(2) Any person who incurs costs complying with an order issued under subsection (1) of this section may petition the department for reimbursement of those costs. If the department refuses to grant reimbursement, the person may within thirty days thereafter file suit and recover costs by proving that he or she was not a liable person under RCW 70.105D.040 and that the costs incurred were reasonable.

(3) The attorney general shall seek, by filing an action if necessary, to recover the amounts spent by the department for investigative and remedial actions and orders, and agreed orders, including amounts spent prior to March 1, 1989.

(4) The attorney general may bring an action to secure such relief as is necessary to protect human health and the environment under this chapter.

(5)(a) Any person may commence a civil action to compel the department to perform any nondiscretionary duty under this chapter. At least thirty days before commencing the action, the person must give notice of intent to sue, unless a substantial endangerment exists. The court may award

attorneys' fees and other costs to the prevailing party in the action.

(b) Civil actions under this section and RCW 70.105D.060 may be brought in the superior court of Thurston county or of the county in which the release or threatened release exists.

(6) Any person who fails to provide notification of releases consistent with RCW 70.105D.110 or who submits false information is liable in an action brought by the attorney general for a civil penalty of up to five thousand dollars per day for each day the party refuses to comply.

(7) Any person who owns real property or lender holding a mortgage on real property that is subject to a lien filed under RCW 70.105D.055 may petition the department to have the lien removed or the amount of the lien reduced. If, after consideration of the petition and the information supporting the petition, the department decides to deny the request, the person may, within ninety days after receipt of the department's denial, file suit for removal or reduction of the lien. The person is entitled to removal of a lien filed under RCW 70.105D.055(2)(a) if they can prove by a preponderance of the evidence that the person is not a liable party under RCW 70.105D.040. The person is entitled to a reduction of the amount of the lien if they can prove by a preponderance of the evidence:

(a) For liens filed under RCW 70.105D.055(2)(a), the amount of the lien exceeds the remedial action costs the department incurred related to cleanup of the real property; and

(b) For liens filed under RCW 70.105D.055(2)(c), the amount of the lien exceeds the remedial action costs the department incurred related to cleanup of the real property or exceeds the increase of the fair market value of the real property solely attributable to the remedial action conducted by the department. [2005 c 211 § 2; 2002 c 288 § 4; 1994 c 257 § 12; 1989 c 2 § 5 (Initiative Measure No. 97, approved November 8, 1988).]

**Effective date—2002 c 288 §§ 2-4:** See note following RCW 70.105D.110.

**Severability—2002 c 288:** See note following RCW 70.105D.010.

**Severability—1994 c 257:** See note following RCW 36.70A.270.

**70.105D.055 Lien authority.** (1) It is in the public interest for the department to recover remedial action costs incurred in discharging its responsibility under this chapter, as these recovered funds can then be applied to the cleanup of other facilities. Thus, in addition to other cost-recovery mechanisms provided under this chapter, this section is intended to facilitate the recovery of state funds spent on remedial actions by providing the department with lien authority. This will also prevent a facility owner or mortgagee from gaining a financial windfall from increased land value resulting from department-conducted remedial actions at the expense of the state taxpayers.

(2) If the state of Washington incurs remedial action costs relating to a remedial action of real property, and those remedial action costs are unrecovered by the state of Washington, the department may file a lien against that real property.

(a) Except as provided in (c) of this subsection, liens filed under this section shall have priority in rank over all

other privileges, liens, monetary encumbrances, or other security interests affecting the real property, whenever incurred, filed, or recorded, except for the following liens:

(i) Local and special district property tax assessments; and

(ii) Mortgage liens recorded before liens or notices of intent to conduct remedial actions are recorded under this section.

(b) Liens filed pursuant to (a) and (c) of this subsection shall not exceed the remedial action costs incurred by the state.

(c)(i) If the real property for which the department has incurred remedial action costs is abandoned, the department may choose to limit the amount of the lien to the increase in the fair market value of the real property that is attributable to a remedial action conducted by the department. The increase in fair market value shall be determined by subtracting the county assessor's value of the real property for the most recent year prior to remedial action being initiated from the value of the real property after remedial action. The value of the real property after remedial action shall be determined by the bona fide purchase price of the real property or by a real estate appraiser retained by the department. Liens limited in this way have priority in rank over all other privileges, liens, monetary encumbrances, or other security interests affecting the real property, whenever incurred, filed, or recorded.

(ii) For the purposes of this subsection, "abandoned" means there has not been significant business activity on the real property for three years or property taxes owed on the real property are three years in arrears prior to the department incurring costs attributable to this lien.

(d) The department shall, when notifying potentially liable persons of their potential liability under RCW 70.105D.040, include a notice stating that if the department incurs remedial action costs relating to the remediation of real property and the costs are not recovered by the department, the department may file a lien against that real property under this section.

(e) Except for emergency remedial actions, the department must provide notice to the following persons before initiating remedial actions conducted by persons under contract to the department on real property on which a lien may be filed under this section:

(i) The real property owner;

(ii) Mortgagees;

(iii) Lienholders of record;

(iv) Persons known to the department to be conducting remedial actions at the facility at the time of such notice; and

(v) Persons known to the department to be under contract to conduct remedial actions at the facility at the time of such notice.

For emergency remedial actions, this notice shall be provided within thirty days after initiation of the emergency remedial actions.

(f) The department may record a copy of the notice in (e) of this subsection, along with a legal description of the property on which the remedial action will take place, with the county auditor in the county where the real property is located. If the department subsequently files a lien, the effective date of the lien will be the date this notice was recorded.

(3) Before filing a lien under this section, the department shall give the owner of real property on which the lien is to be filed and mortgagees and lienholders of record a notice of its intent to file a lien:

(a) The notice required under this subsection (3) must be sent by certified mail to the real property owner and mortgagees of record at the addresses listed in the recorded documents. If the real property owner is unknown or if a mailed notice is returned as undeliverable, the department shall provide notice by posting a legal notice in the newspaper of largest circulation in the county [in which] the site is located. The notice shall provide:

- (i) A statement of the purpose of the lien;
- (ii) A brief description of the real property to be affected by the lien;
- (iii) A statement of the remedial action costs incurred by the state related to the real property affected by the lien;
- (iv) A brief statement of facts showing probable cause that the real property is the subject of the remedial action costs incurred by the department; and
- (v) The time period following service or other notice during which any recipient of the notice whose legal rights may be affected by the lien may comment on the notice.

(b) Any comments on the notice must be received by the department on or before thirty days following service or other provision of the notice of intent to file a lien.

(c) If no comments are received by the department, the lien may be filed on the real property immediately.

(d) If the department receives any comments on the lien, the department shall determine if there is probable cause for filing the certificate of lien. If the department determines there is probable cause, the department may file the lien. Any further challenge to the lien may only occur at the times specified under RCW 70.105D.060.

(e) If the department has reason to believe that exigent circumstances require the filing of a lien prior to giving notice under this subsection (3), or prior to the expiration of the time period for comments, the department may file the lien immediately. For the purposes of this subsection (3), exigent circumstances include, but are not limited to, an imminent bankruptcy filing by the real property owner, or the imminent transfer or sale of the real property subject to lien by the real property owner, or both.

(4) A lien filed under this section is effective when a statement of lien is filed with the county auditor in the county where the real property is located. The statement of lien must include a description of the real property subject to lien and the amount of the lien.

(5) Unless the department determines it is in the public interest to remove the lien, the lien continues until the liability for the remedial action costs have been satisfied through sale of the real property, foreclosure, or other means agreed to by the department. Any action for foreclosure of the lien shall be brought by the attorney general in a civil action in the court having jurisdiction and in the manner prescribed for the judicial foreclosure of a mortgage.

(6)(a) This section does not apply to real property owned by a local government or special purpose district or real property used solely for residential purposes and consisting of four residential units or less at the time the lien is recorded.

This limitation does not apply to illegal drug manufacturing and storage sites under chapter 64.44 RCW.

(b) If the real property owner has consented to the department filing a lien on the real property, then only subsection (3)(a)(i) through (iii) of this section requiring notice to mortgagees and lienholders of record apply. [2005 c 211 § 1.]

**70.105D.060 Timing of review.** The department's investigative and remedial decisions under RCW 70.105D.030 and 70.105D.050, its decisions regarding filing a lien under RCW 70.105D.055, and its decisions regarding liable persons under RCW 70.105D.020(16), 70.105D.040, 70.105D.050, and 70.105D.055 shall be reviewable exclusively in superior court and only at the following times: (1) In a cost recovery suit under RCW 70.105D.050(3); (2) in a suit by the department to enforce an order or an agreed order, or seek a civil penalty under this chapter; (3) in a suit for reimbursement under RCW 70.105D.050(2); (4) in a suit by the department to compel investigative or remedial action; (5) in a citizen's suit under RCW 70.105D.050(5); and (6) in a suit for removal or reduction of a lien under RCW 70.105D.050(7). Except in suits for reduction or removal of a lien under RCW 70.105D.050(7), the court shall uphold the department's actions unless they were arbitrary and capricious. In suits for reduction or removal of a lien under RCW 70.105D.050(7), the court shall review such suits pursuant to the standards set forth in RCW 70.105D.050(7). [2005 c 211 § 3; 1994 c 257 § 13; 1989 c 2 § 6 (Initiative Measure No. 97, approved November 8, 1988).]

**Severability—1994 c 257:** See note following RCW 36.70A.270.

**70.105D.070 Toxics control accounts.** (1) The state toxics control account and the local toxics control account are hereby created in the state treasury.

(2) The following moneys shall be deposited into the state toxics control account: (a) Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-three one-hundredths of one percent; (b) the costs of remedial actions recovered under this chapter or chapter 70.105A RCW; (c) penalties collected or recovered under this chapter; and (d) any other money appropriated or transferred to the account by the legislature. Moneys in the account may be used only to carry out the purposes of this chapter, including but not limited to the following activities:

(i) The state's responsibility for hazardous waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.105 RCW;

(ii) The state's responsibility for solid waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.95 RCW;

(iii) The hazardous waste cleanup program required under this chapter;

(iv) State matching funds required under the federal cleanup law;

(v) Financial assistance for local programs in accordance with chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

(vi) State government programs for the safe reduction, recycling, or disposal of hazardous wastes from households, small businesses, and agriculture;

(vii) Hazardous materials emergency response training;

(viii) Water and environmental health protection and monitoring programs;

(ix) Programs authorized under chapter 70.146 RCW;

(x) A public participation program, including regional citizen advisory committees;

(xi) Public funding to assist potentially liable persons to pay for the costs of remedial action in compliance with cleanup standards under RCW 70.105D.030(2)(e) but only when the amount and terms of such funding are established under a settlement agreement under RCW 70.105D.040(4) and when the director has found that the funding will achieve both (A) a substantially more expeditious or enhanced cleanup than would otherwise occur, and (B) the prevention or mitigation of unfair economic hardship; and

(xii) Development and demonstration of alternative management technologies designed to carry out the top two hazardous waste management priorities of RCW 70.105.150.

(3) The following moneys shall be deposited into the local toxics control account: Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-seven one-hundredths of one percent.

(a) Moneys deposited in the local toxics control account shall be used by the department for grants or loans to local governments for the following purposes in descending order of priority: (i) Remedial actions; (ii) hazardous waste plans and programs under chapter 70.105 RCW; (iii) solid waste plans and programs under chapters 70.95, 70.95C, 70.95I, and 70.105 RCW; (iv) funds for a program to assist in the assessment and cleanup of sites of methamphetamine production, but not to be used for the initial containment of such sites, consistent with the responsibilities and intent of RCW 69.50.511; and (v) cleanup and disposal of hazardous substances from abandoned or derelict vessels that pose a threat to human health or the environment. For purposes of this subsection (3)(a)(v), "abandoned or derelict vessels" means vessels that have little or no value and either have no identified owner or have an identified owner lacking financial resources to clean up and dispose of the vessel. Funds for plans and programs shall be allocated consistent with the priorities and matching requirements established in chapters 70.105, 70.95C, 70.95I, and 70.95 RCW. During the 1999-2001 fiscal biennium, moneys in the account may also be used for the following activities: Conducting a study of whether dioxins occur in fertilizers, soil amendments, and soils; reviewing applications for registration of fertilizers; and conducting a study of plant uptake of metals. During the 2005-2007 fiscal biennium, the legislature may transfer from the local toxics control account to the state toxics control account such amounts as specified in the omnibus capital budget bill. During the 2005-2007 fiscal biennium, moneys in the account may also be used for grants to local governments to retrofit public sector diesel equipment and for storm water planning and implementation activities.

(b) Funds may also be appropriated to the department of health to implement programs to reduce testing requirements under the federal safe drinking water act for public water sys-

tems. The department of health shall reimburse the account from fees assessed under RCW 70.119A.115 by June 30, 1995.

(4) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in the state and local toxics control accounts may be spent only after appropriation by statute.

(5) One percent of the moneys deposited into the state and local toxics control accounts shall be allocated only for public participation grants to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest organizations. The primary purpose of these grants is to facilitate the participation by persons and organizations in the investigation and remedying of releases or threatened releases of hazardous substances and to implement the state's solid and hazardous waste management priorities. However, during the 1999-2001 fiscal biennium, funding may not be granted to entities engaged in lobbying activities, and applicants may not be awarded grants if their cumulative grant awards under this section exceed two hundred thousand dollars. No grant may exceed sixty thousand dollars. Grants may be renewed annually. Moneys appropriated for public participation from either account which are not expended at the close of any biennium shall revert to the state toxics control account.

(6) No moneys deposited into either the state or local toxics control account may be used for solid waste incinerator feasibility studies, construction, maintenance, or operation.

(7) The department shall adopt rules for grant or loan issuance and performance.

(8) During the 2005-2007 fiscal biennium, the legislature may transfer from the state toxics control account to the water quality account such amounts as reflect the excess fund balance of the fund. [2005 c 488 § 926; 2003 1st sp.s. c 25 § 933; 2001 c 27 § 2; 2000 2nd sp.s. c 1 § 912; 1999 c 309 § 923. Prior: 1998 c 346 § 905; 1998 c 81 § 2; 1997 c 406 § 5; 1994 c 252 § 5; 1991 sp.s. c 13 § 69; 1989 c 2 § 7 (Initiative Measure No. 97, approved November 8, 1988).]

**Part headings not law—Severability—Effective dates—2005 c 488:** See notes following RCW 28B.50.360.

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Finding—2001 c 27:** "The legislature finds that there is an increasing number of derelict vessels that have been abandoned in the waters along the shorelines of the state. These vessels pose hazards to navigation and threaten the environment with the potential release of hazardous materials. There is no current federal program that comprehensively addresses this problem, and the legislature recognizes that the state must assist in providing a solution to this increasing hazard." [2001 c 27 § 1.]

**Severability—Effective date—2000 2nd sp.s. c 1:** See notes following RCW 41.05.143.

**Severability—Effective date—1999 c 309:** See notes following RCW 41.06.152.

**Construction—Severability—Effective date—1998 c 346:** See notes following RCW 50.24.014.

**Local governments—Increased service—1998 c 81:** "If this act mandates an increased level of service by local governments, the local government may, under RCW 43.135.060 and chapter 4.92 RCW, submit claims for reimbursement by the legislature. The claims shall be subject to verification by the office of financial management." [1998 c 81 § 3.]

**Findings—Intent—1997 c 406:** See note following RCW 70.105D.020.

**Finding—Effective date—1994 c 252:** See notes following RCW 70.119A.020.

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

### Chapter 70.105E RCW

#### MIXED RADIOACTIVE AND HAZARDOUS WASTE

##### Sections

70.105E.010	Purpose.
70.105E.020	Policy.
70.105E.030	Definitions.
70.105E.040	Duties of the department of ecology to regulate mixed wastes.
70.105E.050	Releases of radioactive substances—Clean-up standards.
70.105E.060	Disposal of waste in unlined trenches—Investigation and cleanup of unlined trenches—Closure of mixed waste tank systems.
70.105E.070	Disclosure of costs and clean-up budgets.
70.105E.080	Exemptions: Naval reactor disposal at Hanford—Low-level waste compact.
70.105E.090	Advisory board—Public involvement—Funding.
70.105E.100	Enforcement and appeals.
70.105E.900	Construction—2005 c 1 (Initiative Measure No. 297).
70.105E.901	Short title—2005 c 1 (Initiative Measure No. 297).
70.105E.902	Captions not law—2005 c 1 (Initiative Measure No. 297).

**70.105E.010 Purpose.** The purpose of chapter 1, Laws of 2005 is to prohibit sites at which mixed radioactive and hazardous wastes have contaminated or threaten to contaminate the environment, such as at the Hanford nuclear reservation, from adding more waste that is not generated from the cleanup of the site until such waste on-site has been cleaned up and is stored, treated, or disposed of in compliance with all state and federal environment laws. [2005 c 1 § 1 (Initiative Measure No. 297, approved November 2, 2004).]

**70.105E.020 Policy.** (1) The Hanford nuclear reservation, through which the Columbia river flows for fifty miles, is the most contaminated area in North America. Use of Hanford as a national waste dump for radioactive and/or hazardous or toxic wastes will increase contamination and risks.

(2) Cleanup is the state of Washington's top priority at sites with hazardous waste contamination that threatens our rivers, ground water, environment, and health. Adding more waste to contaminated sites undermines the cleanup of those sites. Cleanup is delayed and funds and resources diverted if facilities needed to treat or clean up existing waste are used for imported waste, and if larger facilities must be built to accommodate off-site wastes.

(3) The fundamental and inalienable right of each person residing in Washington state to a healthy environment has been jeopardized by pollution of air and water spreading from Hanford.

(4) The economy of Washington state, from agriculture to tourism, to fisheries, could be irreparably harmed from any accident releasing radiation or mixed radioactive and hazardous wastes.

(5) It is Washington state policy to prohibit adding more waste to a site where mixed radioactive and hazardous wastes (a) are not stored or monitored in compliance with state and federal hazardous waste laws and (b) have been dumped in unlined soil trenches which threaten to contaminate our state's resources.

(6) It is state policy to protect Washington's current and future residents, particularly children and other sensitive individuals, from the cumulative risks of cancer caused by all cancer-causing hazardous substances, including radionuclides, by ensuring that hazardous substance release and disposal sites meet the standards established pursuant to chapter 70.105D RCW.

(7) Effective public and tribal involvement is necessary for government agencies to make sound decisions that will protect human health and the environment for thousands of years. It is Washington state policy to encourage and enhance effective public and tribal involvement in the complex decisions relating to cleanup, closure, permitting, and transportation of mixed waste; and to provide effective assistance to the public and local governments in reviewing and commenting upon complex decision documents. It is appropriate that the polluter pay for necessary public participation for decisions relating to waste releases and risks from mixed waste sites.

(8) The transport of mixed radioactive and hazardous wastes is inherently dangerous, and should be minimized. Decisions involving transportation of these wastes must be made with full involvement of the potentially affected public through whose communities these wastes will pass. [2005 c 1 § 2 (Initiative Measure No. 297, approved November 2, 2004).]

**70.105E.030 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Dangerous waste" has the same meaning as the term is defined in RCW 70.105.010.

(2) "Department" means the department of ecology.

(3) "Dispose" or "disposal" have the same meanings as the terms are defined in RCW 70.105.010.

(4) "Facility" has the same meaning as the term is defined in RCW 70.105.010.

(5) "Hanford" means the geographic area comprising the Hanford nuclear reservation, owned and operated by the United States department of energy, or any successor federal agency.

(6) "Hazardous substance" has the same meaning as the term is defined in RCW 70.105D.020.

(7) "Hazardous waste" means and includes all dangerous and extremely hazardous waste, as those terms are defined in RCW 70.105.010.

(8) "Local government" means a city, town, or county.

(9) "Mixed waste" or "mixed radioactive and hazardous waste" means any hazardous substance or dangerous or extremely hazardous waste that contains both a nonradioactive hazardous component and a radioactive component, including any such substances that have been released to the environment, or pose a threat of future release, in a manner that may expose persons or the environment to either the non-radioactive or radioactive hazardous substances.

(10) "Mixed waste surcharge" means an additional charge for the purposes of local government and public participation in decisions relating to mixed waste facilities: Added to the service charge assessed under RCW 70.105.280 against those facilities that store, treat, incinerate, or dispose of mixed wastes; or against facilities at which mixed wastes



have been released, or which are undergoing closure pursuant to chapter 70.105 RCW or remedial action pursuant to chapter 70.105D RCW.

(11) "Person" has the same meaning as the term is defined in RCW 70.105D.020.

(12) "Release" has the same meaning as the term is defined in RCW 70.105D.020.

(13) "Remedy or remedial action" have the same meanings as the terms are defined in RCW 70.105D.020.

(14) "Site" means the contiguous geographic area under the same ownership, lease, or operation where a facility is located, or where there has been a release of hazardous substances. In the event of a release of hazardous substances, "site" includes any area, or body of surface or ground water, where a hazardous substance has been deposited, stored, disposed of, placed, migrated to, or otherwise come to be located.

(15) Unless otherwise defined, or the context indicates otherwise, terms not defined in this section have the same meaning as defined in chapter 70.105 RCW, when used in this chapter. [2005 c 1 § 3 (Initiative Measure No. 297, approved November 2, 2004).]

**70.105E.040 Duties of the department of ecology to regulate mixed wastes.** (1) The department of ecology shall regulate mixed wastes to the fullest extent it is not preempted by federal law, pursuant to chapter 70.105 RCW and the further provisions of this chapter.

(2) Any facility owner or operator of a site storing, managing, processing, transferring, treating, or disposing of mixed wastes shall apply for and obtain a final facility permit under chapter 70.105 RCW, this chapter, and the federal resource, conservation, and recovery act (RCRA), 42 U.S.C. Sec. 6901 et seq., as amended, before transporting to, storing or disposing at, the facility any additional mixed wastes not generated at the facility. At any facility granted a sitewide permit, under which permits for individual units are appended or become individual chapters, final facility permits must be applied for and obtained, for each unit or facility within the site where mixed wastes are, or will be, stored or disposed, prior to transporting to, storing or disposing at, the facility any additional mixed wastes not generated at the facility.

(3) The department shall not issue any permit requested under subsection (2) of this section unless the facility owner or operator is in compliance with the requirements of chapter 70.105 RCW, this chapter, and RCRA, 42 U.S.C. Sec. 6901 et seq., as amended, for obtaining and maintaining a final facility permit for existing mixed wastes stored, treated, or disposed of at the facility.

(4) If any sites, units, or facilities have interim status or an interim status permit, but fail to meet requirements for maintaining interim status under chapter 70.105 RCW, this chapter, or RCRA, 42 U.S.C. Sec. 6901 et seq., as amended, including but not limited to ground water monitoring and compliance requirements, the department shall find that the applicant for a final facility permit for mixed wastes under this section has failed to demonstrate compliance for purposes of obtaining such a permit pursuant to subsection (2) or (3) of this section.

(5) The addition of new trenches or cells, or widening or deepening of trenches, at a site with existing trenches containing mixed wastes shall be considered an expansion of the existing facilities for purposes of compliance with chapter 70.105 RCW or this chapter, and any permit or permit modification for such expansion shall be subject to the requirements of this section.

(6)(a) The department shall not issue a permit, or modify any existing permit, allowing for the treatment, storage, or disposal of any additional mixed wastes not generated at the site or facility as part of a remedial or corrective action, until:

(i) The site or facility is in full compliance with the requirements of chapter 70.105 RCW, this chapter, and RCRA, 42 U.S.C. Sec. 6901 et seq., as amended, for obtaining and maintaining a closure permit for any facility or unit from which a release of hazardous substances has occurred or is threatened to occur, after characterization and corrective action; or

(ii) The department has issued a formal determination that no further remedial action is necessary to remedy such a release pursuant to chapter 70.105D RCW.

(b) The prohibitions of this subsection (6) against granting or modifying a permit apply whenever a release of a hazardous substance, including but not limited to releases of radionuclides and any other carcinogenic substances, has occurred at a site or facility, and such release, or the cumulative impact of all releases at the site, are projected by the department to have the potential to exceed the following standards:

(i) Surface or ground water standards established pursuant to federal or state laws, including but not limited to maximum concentration limits, drinking water, or other standards; or

(ii) Cleanup or other standards adopted to protect human health or the environment pursuant to RCW 70.105D.030.

(7) Until all the requirements of subsection (6) [of this section] have been met, the department shall, by permit condition, limit any new construction of, expansion of, or final facility permit for, a facility for treating, storing or disposing of mixed waste to the capacity or size necessary for investigation, characterization, remediation, or corrective action of facilities or units undergoing closure, or remedial or corrective action at the site.

(8) The department may grant or modify permits pursuant to chapter 70.105 RCW solely for the purpose of remediation or closing existing facilities or units where there has been a release or threatened release of mixed wastes, if the permit expressly bars the storage or disposal of wastes that are not generated on-site pursuant to a remedial action, closure or corrective action approved by the department pursuant to this chapter or chapter 70.105D RCW.

(9) The department may permit specific treatment capacity at sites subject to the limitations of this section to be utilized for remediation or clean-up wastes from other sites, consistent with a site treatment plan approved by the department pursuant to RCRA, 42 U.S.C. [Sec.] 6901 et seq., as amended; provided that the department determines, after public notice and comment and consideration of impacts and alternatives in an environmental impact statement prepared pursuant to chapter 43.21C RCW, that use of such capacity will not: (i) Significantly increase any emissions, discharges,

risks or consequences of potential accidents; (ii) result in permanent disposal of imported off-site wastes in the soil at the site; (iii) be stored in excess of any applicable time limits, or any applicable requirement; or, (iv) impact funding for cleanup and corrective actions at the site or, result in delay of treatment or remediation of wastes at the site. [2005 c 1 § 4 (Initiative Measure No. 297, approved November 2, 2004).]

**70.105E.050 Releases of radioactive substances—Clean-up standards.** (1) The department shall consider releases, or potential releases, of radioactive substances or radionuclides as hazardous substances if the radioactive substance poses a risk of a carcinogenic, toxic, or any other adverse health or environmental effect. The department shall require corrective action for, or remediation of, such releases to meet the same health risk based minimum clean-up standards as adopted for other carcinogenic, toxic, or other hazardous substances posing similar health risks pursuant to RCW 70.105D.030.

(2) The department shall include all known or suspected human carcinogens, including radionuclides and radioactive substances, in calculating the applicable clean-up standard, corrective action level, or maximum allowable projected release from a landfill or other facility or unit at which mixed wastes are stored, disposed, or are reasonably believed by the department to be present, for purposes of chapter 70.105 RCW, this chapter, or chapter 70.105D RCW. In making any permit decision pursuant to chapter 70.105 RCW or this chapter, or in reviewing the adequacy of any environmental document prepared by another state, local, or federal agency, relating to mixed waste sites or facilities, the department shall ensure that the cumulative risk from all such carcinogens does not exceed the maximum acceptable carcinogen risk established by the department for purposes of determining clean-up standards pursuant to RCW 70.105D.030, or one additional cancer caused from exposure to all potential releases of hazardous substances at the site per one hundred thousand exposed individuals, whichever is more protective. [2005 c 1 § 5 (Initiative Measure No. 297, approved November 2, 2004).]

**70.105E.060 Disposal of waste in unlined trenches—Investigation and cleanup of unlined trenches—Closure of mixed waste tank systems.** (1)(a) The department, within sixty days after December 2, 2004, shall order any site owner or operator utilizing landfills or burial grounds containing unlined soil trenches in which mixed wastes are reasonably believed by the department to have been disposed to:

(i) Cease disposal of all further wastes in unlined soil trenches or facilities within thirty days of the order;

(ii) Initiate an investigation to provide the department with an inventory based on actual characterization of all hazardous substances potentially disposed in unlined trenches;

(iii) Initiate an investigation of releases or potential releases of any hazardous substances that were potentially disposed in unlined trenches;

(iv) Prepare, or pay the costs of the department to prepare, pursuant to the provisions of chapters 70.105 and 70.105D RCW, a plan for waste retrieval, treatment, closure, and monitoring for the unlined soil trenches, which may

include temporary caps pending full characterization and remediation, the schedule for which shall be based upon determination of requirements to prevent migration of wastes; and

(v) Install and maintain a ground water and soil column monitoring system, within two years, which is in compliance with all requirements of chapter 70.105 RCW, this chapter, and RCRA, 42 U.S.C. Sec. 6901 et seq., as amended.

(b) The department shall provide, by rule, for public notice, hearings, and comment on the scope of investigations and all actions necessary to fulfill the purposes of this section. Notice to the public for purposes of this section shall include a description of potential impacts to health or the environment from the facilities, and the potential for any state resources, or land areas, to be restricted from future use due to potential releases of hazardous substances from the site or facility.

(2) At any site with one or more land disposal facilities or units containing unlined trenches or pits, at which mixed wastes are stored or were disposed, any proposed expansion of such land disposal facility or unit, or application to permit new land disposal facilities at the same site, shall be considered to be an impermissible expansion of the existing units or facilities where:

(a) There is a reasonable basis to believe mixed or hazardous wastes are buried or stored that have not been fully characterized to conclusively determine that no mixed or hazardous wastes are present;

(b) A release of a hazardous substance has occurred, including but not limited to releases of radioactive or mixed wastes; or

(c) The department has information to indicate that there is a significant potential for a release of hazardous substances.

(3) Determinations and permit actions, pursuant to chapter 70.105 RCW or this chapter, relating to the closure of tank systems consisting of one or more interconnected tanks in which mixed wastes are currently, or were, stored, shall be made by the department only after consideration of the cumulative impacts of all tank residuals and leaks from such systems at the site pursuant to chapter 43.21C RCW. Actions may not be taken to close individual tanks, or which may prevent the retrieval of residual mixed wastes remaining in a tank, in any element of the tank system, or in the soil due to leaks from the tank system, prior to compliance with this section and determination of the quantity, nature, and potential impacts from such residuals or releases. In no event may the department allow the use of a landfill closure for mixed waste tank systems prior to all potentially effective and practicable actions having been taken to characterize, and remediate, releases and potential releases. The department may require research and development of technologies for characterization or retrieval pursuant to this section. [2005 c 1 § 6 (Initiative Measure No. 297, approved November 2, 2004).]

**70.105E.070 Disclosure of costs and clean-up budgets.** The department shall require, as a condition for any permit issued pursuant to the provisions of chapter 70.105 RCW or this chapter for facilities storing, treating, or disposing of mixed wastes, and at which hazardous substance releases to the environment have occurred, and remedial or

corrective action has not been completed, that the site owner or operator disclose annually to the department the projected total and annual cost of each project or action required to meet the provisions of each applicable federal or state law governing investigation, cleanup, corrective action, closure, or health and safety of facilities at the site; and, if the owner or operator is a state or federal agency, the budgets or budget requests for such purposes for the owner's current fiscal year and each of the upcoming three fiscal years. Where the owner of the site is a federal agency, the annual disclosure shall be provided to the department within fourteen days of: Submission of the agency's budget request to congress; final appropriation of funds; and at the time any field request is submitted to the agency's headquarters for funding in fiscal years beyond the current fiscal year. The disclosures to the department required by this section shall include, at a minimum, a comparison of the cost estimate for all activity required by compliance orders, decrees, schedules, or agreements, with the funds requested and with the funds appropriated. The owner or operator shall provide additional detail on projected costs and budgets, at the request of the department. Every year, the department shall hold public hearings, and seek advice from the site advisory board, on the disclosures required by this section and funding priorities. [2005 c 1 § 7 (Initiative Measure No. 297, approved November 2, 2004).]

**70.105E.080 Exemptions: Naval reactor disposal at Hanford—Low-level waste compact.** (1) Intent. The state of Washington has previously permitted, and committed to assist in the national need for, disposal of sealed nuclear reactor vessels and compartments from submarines and other vessels of the United States navy; and to operate a regional disposal site for low-level waste with no hazardous waste pursuant to an interstate compact. The United States navy reactor vessels or compartments are sealed in a manner estimated to prevent release of hazardous or radioactive wastes for hundreds of years, exceeding the performance of a liner system while disposal trenches are operating. Therefore, the state of Washington accepts the burden and risks of continued disposal of retired United States navy reactor vessels and low-level waste pursuant to the compact, recognizing that this disposal will cause future impacts to the soil, environment, and ground water.

(2) Nothing in chapter 1, Laws of 2005 shall affect existing permits for, or in any manner prohibit, the storage or disposal of sealed nuclear reactor vessels or compartments from retired United States navy submarines or surface ships at the existing disposal facility at Hanford, or affect existing permits for the operation of any facility by the federal government at which United States navy reactors are decommissioned or refueled.

(3) Obligations of the state pursuant to the Northwest interstate compact on low-level radioactive waste management and agreements made by the compact shall not be interfered with or affected by any provision of chapter 1, Laws of 2005. If hazardous or mixed wastes have been disposed or released at any facility operated pursuant to the compact, the relevant provisions of this chapter apply. [2005 c 1 § 8 (Initiative Measure No. 297, approved November 2, 2004).]

**70.105E.090 Advisory board—Public involvement—Funding.** (1) At any site or facility at which there has been a release of mixed wastes, permits issued under chapter 70.105 RCW for mixed waste facilities shall provide for the operation and funding of a broadly representative advisory board. The board shall be composed of representatives chosen by: Potentially affected tribes; regional and statewide citizen groups with an established record of concern regarding human health or the environment impacted or potentially impacted by releases from the site; local groups concerned with health and resource impacts; local governments; and the state of Oregon if that state may be, or has been, impacted by the release or threatened release of waste. Such permits shall specify that the advisory board be continued with adequate funding, provided by the owner or operator of the site, to perform its chartered functions until final closure or certification of the completion of remedial or corrective action.

(2) The department shall request the advisory board created or maintained at a facility pursuant to this section to advise it on procedural and substantive matters necessary for informed public comment. The department shall formally consider and respond to any comments from the advisory board regarding exposure scenarios prior to issuing any decision on a remedial, corrective, or closure action.

(3) The department shall base planning for its own oversight and permitting functions utilizing an assumption that mixed waste facility service charges established pursuant to RCW 70.105.280 should not be less than one percent of the first two hundred million dollars of the estimated annual site clean-up budget for the coming year, and one-half of one percent of the estimated annual site clean-up budget above that level. If the department determines that a lower or higher level of service charges is necessary to support its oversight and public involvement functions, then it shall seek comment from any advisory committee established for the site, and from the public, regarding the appropriate level of support.

(4)(a) Due to the complexity of issues involving mixed waste storage, treatment and disposal facilities, at such facilities, the department shall make available annual local government and public participation grants for both: (i) Assistance in public review of mixed waste permit, closure, and clean-up decisions; and, (ii) review of, and public comment on, site budgets, compliance costs and funding priorities. Public participation grants pursuant to this section shall be provided as determined by the criteria adopted by the department pursuant to RCW 70.105D.070(5). Local government grants pursuant to this section shall be made available to either a local government or a coalition of local governments. Grants under this section may be renewed annually at a level two times that permitted under RCW 70.105D.070(5), and shall not be subject to annual appropriation by the legislature.

(b) Local government and public participation grants established under this chapter shall be funded through the state toxics control account, by charging an applicant or permit holder a mixed waste surcharge added to the service charge established by RCW 70.105.280. This surcharge shall be collected and administered consistent with the procedures and requirements established in this section and RCW 70.105.280 to ensure adequate public and local government involvement. This mixed waste surcharge shall be no less than fifteen one-hundredths of one percent of the first two

hundred million dollars of annual site budget for all related clean-up activities, of which five one-hundredths of one percent shall be available for grants to local government. The mixed waste surcharge for public and local government participation grants shall be five one-hundredths of one percent of the portion of any estimated annual site clean-up budget exceeding two hundred million dollars. Any unused mixed waste surcharges assessed under this section shall remain in the state toxics control account established pursuant to chapter 70.105D RCW, and shall be utilized to reduce the mixed waste surcharge assessed the owner or operator of the facility in future years.

(5) For federal facilities with releases of mixed wastes or hazardous substances owned or operated [by] a federal agency, such as Hanford, the annual site clean-up budget shall be determined by the department, for purposes of this section, based upon the greater of the congressional budget request or appropriations of the federal government for activities at the site related to cleanup or waste management. If the appropriation amount for a fiscal year exceeds the congressional budget request, the department shall adjust the assessment of the mixed waste surcharge within thirty days of final enactment of the appropriation. [2005 c 1 § 9 (Initiative Measure No. 297, approved November 2, 2004).]

**70.105E.100 Enforcement and appeals.** (1) Any person may bring a civil action to compel the owner or operator of a mixed waste facility to comply with the requirements of this chapter or any permit or order issued by the department pursuant to this chapter; or to compel the department to perform any nondiscretionary duty under this chapter. At least thirty days before commencing the action, the person must give written notice to the department of intent to sue, unless a substantial endangerment exists. The court may award attorney fees and other costs to a prevailing plaintiff in the action.

(2) Orders of the department relating to mixed waste facilities under this chapter may be appealed to the pollution control hearings board, by any person whose interests in natural resources or health may be adversely affected by the action or inaction of the department.

(3) Civil actions under this section may be brought in superior court of Thurston county or of the county in which the release or threatened release of a hazardous substance occurs, or where mixed wastes that are the subject of the action may be transported, stored, treated, or disposed.

(4) Any violation of this chapter shall be considered a violation of chapter 70.105 RCW, and subject to all enforcement actions by the department or attorney general for violations of that chapter, including imposition of civil or criminal penalties. [2005 c 1 § 10 (Initiative Measure No. 297, approved November 2, 2004).]

**70.105E.900 Construction—2005 c 1 (Initiative Measure No. 297).** The provisions of this act are to be liberally construed to effectuate the policies and purposes of this act. In the event of conflict between the provisions of this act and any other act, the provisions of this act shall govern. [2005 c 1 § 11 (Initiative Measure No. 297, approved November 2, 2004).]

**70.105E.901 Short title—2005 c 1 (Initiative Measure No. 297).** This act shall be known as the Cleanup Priority Act. [2005 c 1 § 12 (Initiative Measure No. 297, approved November 2, 2004).]

**70.105E.902 Captions not law—2005 c 1 (Initiative Measure No. 297).** Captions used in this act are not any part of the law. [2005 c 1 § 13 (Initiative Measure No. 297, approved November 2, 2004).]

## Chapter 70.120 RCW

### MOTOR VEHICLE EMISSION CONTROL

#### Sections

- 70.120.100 Vehicle inspections—Complaints. (*Effective July 1, 2006.*)  
 70.120.170 Motor vehicle emission inspections—Fees—Certificate of compliance—State and local agency vehicles. (*Expires January 1, 2020.*)  
 70.120.200 Repealed.

**70.120.100 Vehicle inspections—Complaints.** (*Effective July 1, 2006.*) The department shall investigate complaints received regarding the operation of emission testing stations and shall require corrections or modifications in those operations when deemed necessary.

The department shall also review complaints received regarding the maintenance or repairs secured by owners of motor vehicles for the purpose of complying with the requirements of this chapter. When possible, the department shall assist such owners in determining the merits of the complaints.

The department shall keep a copy of all complaints received, and on request, make copies available to the public. This is not intended to require disclosure of any information that is exempt from public disclosure under chapter 42.56 RCW. [2005 c 274 § 340; 1998 c 342 § 3; 1979 ex.s. c 163 § 10.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Severability—1979 ex.s. c 163:** See note following RCW 70.120.010.

**70.120.170 Motor vehicle emission inspections—Fees—Certificate of compliance—State and local agency vehicles.** (*Expires January 1, 2020.*) (1) The department shall administer a system for emission inspections of all motor vehicles, except those described in RCW 46.16.015(2), that are registered within the boundaries of each emission contributing area. Under such system a motor vehicle shall be inspected biennially except where an annual program would be required to meet federal law and prevent federal sanctions. In addition, motor vehicles shall be inspected at each change of registered owner of a licensed vehicle as provided under RCW 46.16.015.

(2) The director shall:

(a) Adopt procedures for conducting emission inspections of motor vehicles. The inspections may include idle and high revolution per minute emission tests. The emission test for diesel vehicles shall consist solely of a smoke opacity test.

(b) Adopt criteria for calibrating emission testing equipment. Electronic equipment used to test for emissions stan-

dards provided for in this chapter shall be properly calibrated. The department shall examine frequently the calibration of the emission testing equipment used at the stations.

(c) Authorize, through contracts, the establishment and operation of inspection stations for conducting vehicle emission inspections authorized in this chapter. No person contracted to inspect motor vehicles may perform for compensation repairs on any vehicles. No public body may establish or operate contracted inspection stations. Any contracts [must] comply with the procedures established for competitive bids in chapter 43.19 RCW.

(d) Beginning in 2012, authorize businesses other than those contracted to operate inspection stations under (c) of this subsection to conduct vehicle emission inspections. Businesses authorized under this subsection may also inspect and perform, for compensation, repairs on vehicles. The fee limitations under subsection (4) of this section do not apply to the fee charged for a vehicle emissions inspection by a business authorized to conduct vehicle emission inspections under this subsection. The director may establish by rule a fee to be paid to the department for the oversight costs for each vehicle emission inspection performed by a business authorized under this subsection (2)(d).

(3) Subsection (2)(c) of this section does not apply to volunteer motor vehicle inspections under RCW 70.120.020(1) if the inspections are conducted for the following purposes:

- (a) Auditing;
- (b) Contractor evaluation;
- (c) Collection of data for establishing calibration and performance standards; or
- (d) Public information and education.

(4)(a) The director shall establish by rule the fee to be charged for emission inspections. The inspection fee shall be a standard fee applicable statewide or throughout an emission contributing area and shall be no greater than fifteen dollars. Surplus moneys collected from fees over the amount due the contractor shall be paid to the state and deposited in the general fund. Fees shall be set at the minimum whole dollar amount required to (i) compensate the contractor or inspection facility owner, and (ii) offset the general fund appropriation to the department to cover the administrative costs of the motor vehicle emission inspection program.

(b) Before each inspection, a person whose motor vehicle is to be inspected shall pay to the inspection station the fee established under this section. The person whose motor vehicle is inspected shall receive the results of the inspection. If the inspected vehicle complies with the standards established by the director, the person shall receive a dated certificate of compliance. If the inspected vehicle does not comply with those standards, one reinspection of the vehicle shall be afforded without charge.

(5) All units of local government and agencies of the state with motor vehicles garaged or regularly operated in an emissions contributing area shall test the emissions of those vehicles annually to ensure that the vehicle's emissions comply with the emission standards established by the director. All state agencies outside of emission contributing areas with more than twenty motor vehicles housed at a single facility or contiguous facilities shall test the emissions of those vehicles annually to ensure that the vehicles' emissions comply with

standards established by the director. A report of the results of the tests shall be submitted to the department.

(6) This section expires January 1, 2020. [2005 c 295 § 6; 1998 c 342 § 4; 1991 c 199 § 208; 1989 c 240 § 4.]

**Findings—2005 c 295:** See note following RCW 70.120A.010.

**Effective date—2005 c 295 §§ 5, 6, and 10:** See note following RCW 70.94.017.

**Finding—1991 c 199:** See note following RCW 70.94.011.

**Effective dates—Severability—Captions not law—1991 c 199:** See RCW 70.94.904 through 70.94.906.

**70.120.200 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Chapter 70.120A RCW

### MOTOR VEHICLE EMISSION STANDARDS

#### Sections

- 70.120A.010 Department of ecology to adopt rules to implement California motor vehicle emission standards—Limitations—Advisory group—Exemptions.
- 70.120A.020 Early credits and banking—Alternative means of compliance.
- 70.120A.030 Warranty repair service—Manufacturers, repair shops.
- 70.120A.040 Reports.

**70.120A.010 Department of ecology to adopt rules to implement California motor vehicle emission standards—Limitations—Advisory group—Exemptions.** (1) Pursuant to the federal clean air act, the legislature adopts the California motor vehicle emission standards in Title 13 of the California Code of Regulations, effective January 1, 2005, except as provided in this chapter. The department of ecology shall adopt rules to implement the emission standards of the state of California for passenger cars, light duty trucks, and medium duty passenger vehicles, and shall amend the rules from time to time, to maintain consistency with the California motor vehicle emission standards and 42 U.S.C. Sec. 7507 (section 177 of the federal clean air act). Notwithstanding other provisions of this chapter, the department of ecology shall not adopt the zero emission vehicle program regulations contained in Title 13 section 1962 of the California Code of Regulations effective January 1, 2005. During rule development, the department of ecology shall convene an advisory group composed of industry and consumer group representatives. Any proposed rules or changes to rules shall be subject to review and comment by the advisory group, prior to rule adoption. The order of adoption for the rules required in this section shall include the signature of the governor. The rules shall be effective only for those model years for which the state of Oregon has adopted the California motor vehicle emission standards. This section does not limit the department of ecology's authority to regulate motor vehicle emissions for any other class of vehicle.

(2) Motor vehicles with a model year equal to or later than the first model year for which new vehicles sold to Washington state residents are required to comply with California motor vehicle emission standards are exempt from emission inspections under chapter 70.120 RCW. [2005 c 295 § 2.]

**Findings—2005 c 295:** "The legislature finds that:

- (1) Motor vehicles are the largest source of air pollution in the state of

Washington, and motor vehicles contribute approximately fifty-seven percent of criteria air pollutant emissions, eighty percent of air toxics emissions, and fifty-five percent of greenhouse gas emissions;

(2) Air pollution levels routinely measured in the state of Washington continue to harm public health, the environment, and the economy. Air pollution causes or contributes to premature death, cancer, asthma, and heart and lung disease. Over half of the state's population suffers from one or more medical conditions that make them very vulnerable to air pollution. Air pollution increases pain and suffering for vulnerable individuals. Air pollution imposes several hundred million dollars annually in added health care costs for air pollution-associated death and illness, reducing the quality of life and economic security of the citizens of Washington;

(3) Reductions of greenhouse gas emissions from transportation sources are necessary, and it is equitable to seek such reductions because reductions in greenhouse gas emissions have already been initiated in other sectors such as power generation;

(4) Reductions in greenhouse gas emissions made under this act should be credited toward any future federal, state, or regional comprehensive regulatory structure enacted to address reducing greenhouse gas emissions;

(5) Under the federal clean air act, the state of Washington has the option to implement either federal motor vehicle emission standards or California motor vehicle emission standards for passenger cars, light duty trucks, and medium duty passenger vehicles;

(6) Opting into the California motor vehicle standards will provide significant and necessary air quality benefits to residents of the state of Washington; and

(7) Adoption of the California motor vehicle standards will increase consumer choices of cleaner vehicles, provide better warranties to consumers, and provide sufficient air quality benefit to allow additional business and economic growth in the key airsheds of the state while maintaining conformance with federal air quality standards." [2005 c 295 § 1.]

**Effective date—2005 c 295 §§ 1, 2, 7, and 11-13:** "Sections 1, 2, 7, and 11 through 13 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [May 6, 2005]." [2005 c 295 § 15.]

**70.120A.020 Early credits and banking—Alternative means of compliance.** (1) In recognition of the provisions of the federal clean air act which require a minimum phase-in period of three model years for adoption of California motor vehicle emission standards, the implementing rules shall include a system of early credits and banking for manufacturers for zero emission vehicles produced and sold earlier than the implementation date for the standards in Washington. Beginning with the model year in which the new standards become effective, each manufacturer's fleet of passenger cars and light duty trucks delivered for sale in the state of Washington shall proportionately conform to the zero emission vehicle requirements of Title 13 of the California Code of Regulations, including early credit and banking provisions set forth in Title 13 of the Code of California Regulations using Washington specific vehicle numbers. A manufacturer shall be given early Washington zero emission vehicle credits proportionally equivalent to the zero emission vehicle credits possessed by the requesting manufacturer for use in the state of California on January 1st of the model year the California standards become effective in Washington.

(2) In addition, an alternative means of compliance with the requirements of subsection (1) of this section shall be created in the implementing rules provided for in RCW 70.120A.010. The alternative means of compliance shall allow a manufacturer to earn Washington zero emission vehicle credits beginning with the 2005 model year. The alternative means of compliance shall be developed to be consistent in concept with the alternative compliance systems developed for the states of Connecticut, New York, and Maine as

[2005 RCW Supp—page 818]

they adopted the zero emission vehicle provisions of the California motor vehicle standards and shall contain a Washington multiplier consistent with the multipliers in those systems. The implementing rules shall require timely notification by the manufacturer to the department of ecology of an election to use the alternative means of compliance. [2005 c 295 § 3.]

**Findings—2005 c 295:** See note following RCW 70.120A.010.

**70.120A.030 Warranty repair service—Manufacturers, repair shops.** Individual automobile manufacturers may certify independent automobile repair shops to perform warranty service on the manufacturers' vehicles. Upon certification of the independent automobile repair shops, the manufacturers shall compensate the repair shops at the same rate as franchised dealers for covered warranty repair services. [2005 c 295 § 4.]

**Findings—2005 c 295:** See note following RCW 70.120A.010.

**70.120A.040 Reports.** The office of financial management shall provide an annual progress report to the appropriate committees of the legislature. The office of financial management, in conjunction with the departments of licensing, revenue, and ecology, shall report on the availability of vehicles meeting the standards, the progress of automobile industries in meeting the requirements of the standards, and any other matters relevant to the success of auto-related industries in implementing these requirements. [2005 c 295 § 9.]

**Findings—2005 c 295:** See note following RCW 70.120A.010.

## Chapter 70.123 RCW SHELTERS FOR VICTIMS OF DOMESTIC VIOLENCE

### Sections

- 70.123.030 Departmental duties and responsibilities.  
70.123.150 Domestic violence prevention account.

**70.123.030 Departmental duties and responsibilities.** The department of social and health services, in consultation with the state department of health, and individuals or groups having experience and knowledge of the problems of victims of domestic violence, shall:

(1) Establish minimum standards for shelters applying for grants from the department under this chapter. Classifications may be made dependent upon size, geographic location, and population needs;

(2) Receive grant applications for the development and establishment of shelters for victims of domestic violence;

(3) Distribute funds, within forty-five days after approval, to those shelters meeting departmental standards;

(4) Evaluate biennially each shelter receiving departmental funds for compliance with the established minimum standards;

(5) Review the minimum standards each biennium to ensure applicability to community and client needs; and

(6) Administer funds available from the domestic violence prevention account under RCW 70.123.150 and establish minimum standards for preventive, nonshelter commu-

nity-based services receiving funds administered by the department. Preventive, nonshelter community-based services include services for victims of domestic violence from communities that have been traditionally underserved or unserved and services for children who have witnessed domestic violence. [2005 c 374 § 4; 1989 1st ex.s. c 9 § 235; 1979 ex.s. c 245 § 3.]

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

**70.123.150 Domestic violence prevention account.**

The domestic violence prevention account is created in the state treasury. All receipts from fees imposed for deposit in the domestic violence prevention account under RCW 36.18.016 must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for funding nonshelter community-based services for victims of domestic violence. [2005 c 374 § 3.]

**Chapter 70.128 RCW  
ADULT FAMILY HOMES**

Sections

70.128.250 Required training and continuing education—Food safety training and testing.

**70.128.250 Required training and continuing education—Food safety training and testing.** The department shall implement, as part of the required training and continuing education, food safety training and testing integrated into the curriculum that meets the standards established by the state board of health pursuant to chapter 69.06 RCW. Individual food handler permits are not required for persons who begin working in an adult family home after June 30, 2005, and successfully complete the basic and modified-basic caregiver training, provided they receive information or training regarding safe food handling practices from the employer prior to providing food handling or service for the clients. Documentation that the information or training has been provided to the individual must be kept on file by the employer.

Licensed adult family home providers or employees who hold individual food handler permits prior to June 30, 2005, will be required to maintain continuing education of .5 hours per year in order to maintain food handling and safety training. Licensed adult family home providers or employees who hold individual food handler permits prior to June 30, 2005, will not be required to renew the permit provided the continuing education requirement as stated above is met. [2005 c 505 § 6.]

**Chapter 70.140 RCW  
AREA-WIDE SOIL CONTAMINATION**

Sections

70.140.010 Findings.  
70.140.020 Definitions.  
70.140.030 Children in schools and child care facilities—Department duties—School and child care facility duties.  
70.140.040 Department assistance—Best management practice guidelines—Grants—Interagency agreements authorized—Reports.

70.140.050 Department of health to provide assistance.  
70.140.060 Department of social and health services to provide assistance.  
70.140.070 Livestock, agricultural land exempt from chapter.  
70.140.080 Existing authority of department not affected.

**70.140.010 Findings.** The legislature finds that state and local agencies are currently implementing actions to reduce children's exposure to soils that contain hazardous substances. The legislature further finds that it is in the public interest to enhance those efforts in western Washington in areas located within the central Puget Sound smelter plume. [2005 c 306 § 1.]

**70.140.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Area-wide soil contamination" means low to moderate arsenic and lead soil contamination dispersed over a large geographic area.

(2) "Child care facility" means a child day-care center or a family day-care provider as those terms are defined under RCW 74.15.020.

(3) "Department" means the department of ecology.

(4) "Director" means the director of the department of ecology.

(5) "Low to moderate soil contamination" means low level arsenic or lead concentrations where a child's exposure to soil contamination at a school or a child care facility may be reduced through best management practices.

(6) "School" means a public or private kindergarten, elementary, or secondary school. [2005 c 306 § 2.]

**70.140.030 Children in schools and child care facilities—Department duties—School and child care facility duties.** (1) The department, in cooperation with the department of social and health services, the department of health, the office of the superintendent of public instruction, and local health districts, shall assist schools and child care facilities west of the crest of the Cascade mountains to reduce the potential for children's exposure to area-wide soil contamination.

(2) The department shall:

(a) Identify schools and child care facilities that are located within the central Puget Sound smelter plume based on available information;

(b) Conduct qualitative evaluations to determine the potential for children's exposure to area-wide soil contamination;

(c) If the qualitative evaluation determines that children may be routinely exposed to area-wide soil contamination at a property, conduct soil samples at that property by December 31, 2009; and

(d) If soil sample results confirm the presence of area-wide soil contamination, notify schools and child care facilities regarding the test results and the steps necessary for implementing best management practices.

(3) If a school or a child care facility with area-wide soil contamination does not implement best management practices within six months of receiving written notification from the department, the superintendent or board of directors of a school or the owner or operator of a child care facility must

notify parents and guardians in writing of the results of soil tests. The written notice shall be prepared by the department.

(4) The department shall recognize schools and child care facilities that successfully implement best management practices with a voluntary certification letter confirming that the facility has successfully implemented best management practices.

(5) Schools and child care facilities must work with the department to provide the department with site access for soil sampling at times that are the most convenient for all parties. [2005 c 306 § 3.]

**70.140.040 Department assistance—Best management practice guidelines—Grants—Interagency agreements authorized—Reports.** (1) The department shall assist schools and owners and operators of child care facilities located within the central Puget Sound smelter plume. Such assistance may include the following:

(a) Technical assistance in conducting qualitative evaluations to determine where area-wide soil contamination exposures could occur;

(b) Technical and financial assistance in testing soils where evaluations indicate potential for contamination; and

(c) Technical and financial assistance to implement best management practices.

(2) The department shall develop best management practice guidelines for schools and day care facilities with area-wide soil contamination. The guidelines shall recommend a range of methods for reducing exposure to contaminated soil, considering the concentration, extent, and location of contamination and the nature and frequency of child use of the area.

(3) The department shall develop a grant program to assist schools and child care facilities with implementing best management practices.

(4) The department, within available funds, may provide grants to schools and child care facilities for the purpose of implementing best management practices.

(5) The department, within available funds, may provide financial assistance to the department of health and the department of social and health services to implement this chapter.

(6) The department may, through an interagency agreement, authorize a local health jurisdiction to administer any activity in this chapter that is otherwise not assigned to a local health jurisdiction by this chapter.

(7) The department shall evaluate actions to reduce child exposure to contaminated soils and submit progress reports to the governor and to the appropriate committees of the legislature by December 31, 2006, and December 31, 2008. [2005 c 306 § 4.]

**70.140.050 Department of health to provide assistance.** The department of health shall assist the department in implementing this chapter, including but not limited to developing best management practices and guidelines. [2005 c 306 § 5.]

**70.140.060 Department of social and health services to provide assistance.** The department of social and health [2005 RCW Supp—page 820]

services shall assist the department by providing information on the location of child care facilities and contacts for these facilities. [2005 c 306 § 6.]

**70.140.070 Livestock, agricultural land exempt from chapter.** This chapter does not apply to land devoted primarily to the commercial production of livestock or agricultural commodities. [2005 c 306 § 7.]

**70.140.080 Existing authority of department not affected.** Nothing in this chapter is intended to change ongoing actions or the authority of the department or other agencies to require actions to address soil contamination under existing laws. [2005 c 306 § 8.]

## Chapter 70.146 RCW WATER POLLUTION CONTROL FACILITIES FINANCING

### Sections

70.146.030 Water quality account—Progress report.

70.146.080 Determination of tax receipts in water quality account—Transfer of sufficient moneys from general revenues.

### **70.146.030 Water quality account—Progress report.**

(1) The water quality account is hereby created in the state treasury. Moneys in the account may be used only in a manner consistent with this chapter. Moneys deposited in the account shall be administered by the department of ecology and shall be subject to legislative appropriation. Moneys placed in the account shall include tax receipts as provided in RCW 82.24.027, 82.24.026(2)(d), \*82.26.025, and 82.32.390, principal and interest from the repayment of any loans granted pursuant to this chapter, and any other moneys appropriated to the account by the legislature.

(2) The department may use or permit the use of any moneys in the account to make grants or loans to public bodies, including grants to public bodies as cost-sharing moneys in any case where federal, local, or other funds are made available on a cost-sharing basis, for water pollution control facilities and activities, or for purposes of assisting a public body to obtain an ownership interest in water pollution control facilities and/or to defray a part of the payments made by a public body to a service provider under a service agreement entered into pursuant to RCW 70.150.060, within the purposes of this chapter and for related administrative expenses. For the period July 1, 2005, to June 30, 2007, moneys in the account may be used to process applications received by the department that seek to make changes to or transfer existing water rights, for water conveyance projects, and for grants and technical assistance to public bodies for watershed planning under chapter 90.82 RCW. No more than three percent of the moneys deposited in the account may be used by the department to pay for the administration of the grant and loan program authorized by this chapter.

(3) Beginning with the biennium ending June 30, 1997, the department shall present a biennial progress report on the use of moneys from the account to the chairs of the senate committee on ways and means and the house of representatives committee on appropriations. The first report is due June 30, 1996, and the report for each succeeding biennium is



due December 31st of the odd-numbered year. The report shall consist of a list of each recipient, project description, and amount of the grant, loan, or both. [2005 c 518 § 940; 2005 c 514 § 1108; 2004 c 277 § 909; 2003 1st sp.s. c 25 § 934; 2002 c 371 § 921; 2001 2nd sp.s. c 7 § 922; 1996 c 37 § 2; 1995 2nd sp.s. c 18 § 921; 1991 sp.s. c 13 § 61. Prior: 1987 c 505 § 64; 1987 c 436 § 6; 1986 c 3 § 3.]

**Reviser's note:** \*(1) RCW 82.26.025 was repealed by 2005 c 180 § 23, effective July 1, 2005.

(2) This section was amended by 2005 c 514 § 1108 and by 2005 c 518 § 940, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Severability—Effective dates—2004 c 277:** See notes following RCW 89.08.550.

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Severability—Effective date—2002 c 371:** See notes following RCW 9.46.100.

**Severability—Effective date—2001 2nd sp.s. c 7:** See notes following RCW 43.320.110.

**Severability—Effective date—1995 2nd sp.s. c 18:** See notes following RCW 19.118.110.

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**Effective dates—1986 c 3:** See note following RCW 82.24.027.

**70.146.080 Determination of tax receipts in water quality account—Transfer of sufficient moneys from general revenues.** Within thirty days after June 30, 1987, and within thirty days after each succeeding fiscal year thereafter, the state treasurer shall determine the tax receipts deposited into the water quality account for the preceding fiscal year. If the tax receipts deposited into the account in each of the fiscal years 1988 and 1989 are less than forty million dollars, the state treasurer shall transfer sufficient moneys from general state revenues into the water quality account to bring the total receipts in each fiscal year up to forty million dollars.

For the biennium ending June 30, 1991, if the tax receipts deposited into the water quality account and the earnings on investment of balances credited to the account are less than ninety million dollars, the treasurer shall transfer sufficient moneys from general state revenues into the water quality account to bring the total revenue up to ninety million dollars. The determination and transfer shall be made by July 31, 1991.

For fiscal year 1992 and for fiscal years 1995 and 1996 and thereafter, if the tax receipts deposited into the water quality account for each fiscal year are less than forty-five million dollars, the treasurer shall transfer sufficient moneys from general state revenues into the water quality account to bring the total revenue up to forty-five million dollars. However, during the 2005-2007 fiscal biennium, the legislature may specify the transfer of a different amount in the operating budget bill. Determinations and transfers shall be made by July 31 for the preceding fiscal year. [2005 c 518 § 941;

2003 1st sp.s. c 25 § 935; 1994 sp.s. c 6 § 902; 1993 sp.s. c 24 § 924; 1991 sp.s. c 16 § 923; 1986 c 3 § 11.]

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Severability—Effective date—1994 sp.s. c 6:** See notes following RCW 28A.310.020.

**Severability—Effective dates—1993 sp.s. c 24:** See notes following RCW 28A.310.020.

**Severability—Effective date—1991 sp.s. c 16:** See notes following RCW 9.46.100.

**Effective dates—1986 c 3:** See note following RCW 82.24.027.

## Chapter 70.148 RCW

### UNDERGROUND PETROLEUM STORAGE TANKS

#### Sections

- 70.148.020 Pollution liability insurance program trust account. (*Expires June 1, 2007.*)
- 70.148.060 Disclosure of reports and information—Penalty. (*Effective July 1, 2006, until June 1, 2007.*)
- 70.148.120 Financial assistance for corrective actions in small communities—Intent. (*Expires June 1, 2007.*)
- 70.148.130 Financial assistance—Criteria. (*Expires June 1, 2007.*)

**70.148.020 Pollution liability insurance program trust account. (*Expires June 1, 2007.*)** (1) The pollution liability insurance program trust account is established in the custody of the state treasurer. All funds appropriated for this chapter and all premiums collected for reinsurance shall be deposited in the account. Expenditures from the account shall be used exclusively for the purposes of this chapter including payment of costs of administering the pollution liability insurance and underground storage tank community assistance programs. Expenditures for payment of administrative and operating costs of the agency are subject to the allotment procedures under chapter 43.88 RCW and may be made only after appropriation by statute. No appropriation is required for other expenditures from the account.

(2) Each calendar quarter, the director shall report to the insurance commissioner the loss and surplus reserves required for the calendar quarter. The director shall notify the department of revenue of this amount by the fifteenth day of each calendar quarter.

(3) Each calendar quarter the director shall determine the amount of reserves necessary to fund commitments made to provide financial assistance under RCW 70.148.130 to the extent that the financial assistance reserves do not jeopardize the operations and liabilities of the pollution liability insurance program. The director shall notify the department of revenue of this amount by the fifteenth day of each calendar quarter. The director may immediately establish an initial financial assistance reserve of five million dollars from available revenues. The director may not expend more than fifteen million dollars for the financial assistance program.

(4) During the 2005-2007 fiscal biennium, the legislature may transfer from the pollution liability insurance program trust account to the state general fund such amounts as reflect the excess fund balance of the account.

(5) This section expires June 1, 2007. [2005 c 518 § 942; 1999 c 73 § 1; 1998 c 245 § 114; 1991 sp.s. c 13 § 90; 1991 c 4 § 7; 1990 c 64 § 3; 1989 c 383 § 3.]

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

**Expiration date—1998 c 245 §§ 114 and 115:** "Sections 114 and 115 of this act expire June 1, 2007." [2000 c 16 § 4; 1998 c 245 § 178.]

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**Severability—1991 c 4:** See note following RCW 70.148.120.

**70.148.060 Disclosure of reports and information—Penalty. (Effective July 1, 2006, until June 1, 2007.)** (1) All examination and proprietary reports and information obtained by the director and the director's staff in soliciting bids from insurers and in monitoring the insurer selected by the director shall not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) Subsection (1) of this section notwithstanding, the director may furnish all or part of examination reports prepared by the director or by any person, firm, corporation, association, or other entity preparing the reports on behalf of the director to:

- (a) The Washington state insurance commissioner;
- (b) A person or organization officially connected with the insurer as officer, director, attorney, auditor, or independent attorney or independent auditor; and
- (c) The attorney general in his or her role as legal advisor to the director.

(3) Subsection (1) of this section notwithstanding, the director may furnish all or part of the examination or proprietary reports or information obtained by the director to:

- (a) The Washington state insurance commissioner; and
- (b) A person, firm, corporation, association, governmental body, or other entity with whom the director has contracted for services necessary to perform his or her official duties.

(4) Examination reports and proprietary information obtained by the director and the director's staff are not subject to public disclosure under chapter 42.56 RCW.

(5) A person who violates any provision of this section is guilty of a gross misdemeanor. [2005 c 274 § 341; 1990 c 64 § 7; 1989 c 383 § 7.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**70.148.120 Financial assistance for corrective actions in small communities—Intent. (Expires June 1, 2007.)**

The legislature recognizes as a fundamental government purpose the need to protect the environment and human health and safety. To that end the state has enacted laws designed to limit and prevent environmental damage and risk to public health and safety caused by underground petroleum storage tank leaks. Because of the costs associated with compliance with such laws and the high costs associated with correcting past environmental damage, many owners and operators of underground petroleum storage tanks have discontinued the use of or have planned to discontinue the use of such tanks. As a consequence, isolated communities face the loss of their source of motor vehicle fuel and face the risk that the owner

or operator will have insufficient funds to take corrective action for pollution caused by past leaks from the tanks. In particular, rural communities face the risk that essential emergency, medical, fire and police services may be disrupted through the diminution or elimination of local sellers of petroleum products and by the closure of underground storage tanks owned by local government entities serving these communities.

The legislature also recognizes as a fundamental government purpose the need to preserve a minimum level of economic viability in rural communities so that public revenues generated from economic activity are sufficient to sustain necessary governmental functions. The closing of local service stations adversely affects local economies by reducing or eliminating reasonable access to fuel for agricultural, commercial, recreational, and transportation needs.

The legislature intends to assist small communities within this state by authorizing:

(1) Cities, towns, and counties to certify that a local private owner or operator of an underground petroleum storage tank meets a vital local government, public health or safety need thereby qualifying the owner or operator for state financial assistance in complying with environmental regulations and assistance in taking needed corrective action for existing tank leaks; and

(2) Local government entities to obtain state financial assistance to bring local government underground petroleum storage tanks into compliance with environmental regulations and to take needed corrective action for existing tank leaks. [2005 c 428 § 1; 1991 c 4 § 1.]

**Expiration date—2005 c 428 §§ 1 and 2:** "Sections 1 and 2 of this act expire June 1, 2007." [2005 c 428 § 4.]

**Severability—1991 c 4:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 4 § 10.]

**70.148.130 Financial assistance—Criteria. (Expires June 1, 2007.)**

(1) Subject to the conditions and limitations of RCW 70.148.120 through 70.148.170, the director shall establish and manage a program for providing financial assistance to public and private owners and operators of underground storage tanks who have been certified by the governing body of the county, city, or town in which the tanks are located as meeting a vital local government, public health or safety need. In providing such financial assistance the director shall:

(a) Require owners and operators, including local government owners and operators, to demonstrate serious financial hardship;

(b) Limit assistance to only that amount necessary to supplement applicant financial resources;

(c) Limit assistance to no more than two hundred thousand dollars in value for any one underground storage tank site of which amount no more than seventy-five thousand dollars in value may be provided for corrective action; and

(d) Whenever practicable, provide assistance through the direct payment of contractors and other professionals for labor, materials, and other services.

(2)(a) Except as otherwise provided in RCW 70.148.120 through 70.148.170, no grant of financial assistance may be

used for any purpose other than for corrective action and repair, replacement, reconstruction, and improvement of underground storage tanks and tank sites. If at any time prior to providing financial assistance or in the course of providing such assistance, it appears to the director that corrective action costs may exceed seventy-five thousand dollars, the director may not provide further financial assistance until the owner or operator has developed and implemented a corrective action plan with the department of ecology.

(b) A grant of financial assistance may also be made to an owner or operator that has discontinued using underground petroleum storage tanks due to economic hardship. An owner or operator may receive a grant up to two hundred thousand dollars per retailing location if:

- (i) The property is located in an underserved rural area;
- (ii) The property was previously used by a private owner or operator to provide motor vehicle fuel; and
- (iii) The property is at least ten miles from the nearest motor vehicle fuel service station.

(3) When requests for financial assistance exceed available funds, the director shall give preference to providing assistance first to those underground storage tank sites which constitute the sole source of petroleum products in remote rural communities.

(4) The director shall consult with the department of ecology in approving financial assistance for corrective action to ensure compliance with regulations governing underground petroleum storage tanks and corrective action.

(5) The director shall approve or disapprove applications for financial assistance within sixty days of receipt of a completed application meeting the requirements of RCW 70.148.120 through 70.148.170. The certification by local government of an owner or operator shall not preclude the director from disapproving an application for financial assistance if the director finds that such assistance would not meet the purposes of RCW 70.148.120 through 70.148.170.

(6) The director may adopt all rules necessary to implement the financial assistance program and shall consult with the technical advisory committee established under RCW 70.148.030 in developing such rules and in reviewing applications for financial assistance. [2005 c 428 § 2; 1991 c 4 § 2.]

**Expiration date—2005 c 428 §§ 1 and 2:** See note following RCW 70.148.120.

**Severability—1991 c 4:** See note following RCW 70.148.120.

### Chapter 70.149 RCW

#### HEATING OIL POLLUTION LIABILITY PROTECTION ACT

Sections

70.149.090 Confidentiality. (Effective July 1, 2006, until June 1, 2007.)

**70.149.090 Confidentiality.** (Effective July 1, 2006, until June 1, 2007.) The following shall be confidential and exempt under chapter 42.56 RCW, subject to the conditions set forth in this section:

(1) All examination and proprietary reports and information obtained by the director and the director's staff in soliciting bids from insurers and in monitoring the insurer selected

by the director may not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) All information obtained by the director or the director's staff related to registration of heating oil tanks to be insured may not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(3) The director may furnish all or part of examination reports prepared by the director or by any person, firm, corporation, association, or other entity preparing the reports on behalf of the director to:

- (a) The Washington state insurance commissioner;
- (b) A person or organization officially connected with the insurer as officer, director, attorney, auditor, or independent attorney or independent auditor; and
- (c) The attorney general in his or her role as legal advisor to the director. [2005 c 274 § 342; 1995 c 20 § 9.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

### Chapter 70.150 RCW

#### WATER QUALITY JOINT DEVELOPMENT ACT

Sections

70.150.040 Service agreements and related agreements—Procedural requirements.

70.150.070 RCW 70.150.030 through 70.150.060 to be additional method of providing services.

**70.150.040 Service agreements and related agreements—Procedural requirements.** The legislative authority of a public body may secure services by means of an agreement with a service provider. Such an agreement may obligate a service provider to perform one or more of the following services: Design, finance, construct, own, operate, or maintain water pollution control facilities by which services are provided to the public body. Service agreements and related agreements under this chapter shall be entered into in accordance with the following procedure:

(1) The legislative authority of the public body shall publish notice that it is seeking to secure certain specified services by means of entering into an agreement with a service provider. The notice shall be published in the official newspaper of the public body, or if there is no official newspaper then in a newspaper in general circulation within the boundaries of the public body, at least once each week for two consecutive weeks. The final notice shall appear not less than thirty days before the date for submission of proposals. The notice shall state (a) the nature of the services needed, (b) the location in the public body's offices where the requirements and standards for construction, operation, or maintenance of projects needed as part of the services are available for inspection, and (c) the final date for the submission of proposals. The legislative authority may undertake a prequalification process by the same procedure set forth in this subsection.

(2) The request for proposals shall (a) indicate the time and place responses are due, (b) include evaluation criteria to be considered in selecting a service provider, (c) specify minimum requirements or other limitations applying to selection,

(d) insofar as practicable, set forth terms and provisions to be included in the service agreement, and (e) require the service provider to demonstrate in its proposal to the public body's satisfaction that it is in the public interest to enter into the service agreement and that the service agreement is financially sound and advantageous to the public body from the standpoint of annual costs, quality of services, experience of the provider, reduction of risk, and other factors.

(3) The criteria set forth in the request for proposals shall be those determined to be relevant by the legislative authority of the public body, which may include but shall not be limited to: The respondent's prior experience, including design, construction, or operation of other similar facilities; respondent's management capability, schedule availability, and financial resources; cost of the service; nature of facility design proposed by respondents; system reliability; performance standards required for the facilities; compatibility with existing service facilities operated by the public body or other providers of service to the public body; project performance warranties; penalty and other enforcement provisions; environmental protection measures to be used; and allocation of project risks. The legislative authority may designate persons or entities within or outside the public body (a) to assist it in issuing the request for proposals to ensure that proposals will be responsive to its needs, and (b) to assist it in evaluating the proposals received.

(4) After proposals under subsections (1) through (3) of this section have been received, the legislative authority or its designee shall determine, on the basis of its review of the proposals, whether one or more proposals have been received from respondents which are (a) determined to be qualified to provide the requested services, and (b) responsive to the notice and evaluation criteria, which shall include, but not be limited to, cost of services. These chosen respondents may, at the discretion of the public body, be aggregated into a short list of qualified respondents, who shall be referred to as the selected respondents in this section. The legislative authority or its designee shall conduct a bidder's conference to include all these selected respondents to assure a full understanding of the proposals. The bidder's conference shall make these selected respondents aware of any changes in the request for proposal. Any information related to revisions in the request for proposal shall be made available to all these selected respondents. Any selected respondent shall be accorded a reasonable opportunity for revision of its proposal prior to commencement of the negotiation provided in subsection (5) of this section, for the purpose of obtaining best and final proposals.

(5) After such conference is held, the legislative authority or its designee may negotiate with the selected respondent whose proposal it determines to be the most advantageous to the public body, considering the criteria set forth in the request for proposals. If negotiations are conducted by the designee, the legislative authority shall continue to oversee the negotiations and provide direction to its designee. If the negotiation is unsuccessful, the legislative authority may commence negotiations with any other selected respondent. On completion of this process, and after the department of ecology review and comments as provided for in subsection (9) of this section, and after public hearing as provided for in

subsection (10) of this section, the legislative authority may approve a contract with its chosen respondent.

(6) Any person aggrieved by the legislative authority's approval of a contract may appeal the determination to an appeals board selected by the public body, which shall consist of not less than three persons determined by the legislative authority to be qualified for such purposes. Such board shall promptly hear and determine whether the public body entered into the agreement in accordance with this chapter and other applicable law. The board shall have the power only to affirm or void the agreement.

(7) Notwithstanding the foregoing, where contracting for design services by the public body is done separately from contracting for other services permitted under this chapter, the contracting for design services shall be done in accordance with chapter 39.80 RCW.

(8) If a public body elects to enter into an agreement whereby the service provider will own all or a portion of the water pollution control facilities it constructs, the service agreement shall include provision for an option by which a public body may acquire at fair market value facilities dedicated to such service.

(9) Before any service agreement is entered into by the public body, it shall be reviewed by the department of ecology to ensure consistency with the purposes of chapters 90.46 and 90.48 RCW.

The department of ecology has thirty days from receipt of the proposed service agreement to complete its review and provide the public body with comments. A review under this section is not intended to replace any additional permitting or regulatory reviews and approvals that may be required under other applicable laws.

(10) Prior to entering into any service agreement under this chapter, the public body must have made written findings, after holding a public hearing on the proposal, that it is in the public interest to enter into the service agreement and that the service agreement is financially sound and advantageous compared to other methods.

(11) Each service agreement shall include project performance bonds or other security by the service provider which in the judgment of the public body is sufficient to secure adequate performance by the service provider. [2005 c 469 § 1; 1989 c 175 § 136; 1986 c 244 § 4.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

*Competitive bids—Inapplicability to certain agreements:* RCW 35.22.625 and 36.32.265.

**70.150.070 RCW 70.150.030 through 70.150.060 to be additional method of providing services.** RCW 70.150.030 through 70.150.060 shall be deemed to provide an additional method for the provision of services from and in connection with facilities and shall be regarded as supplemental and additional to powers conferred by other state laws and by federal laws. A public body that is also eligible to enter into agreements with service providers under the alternative public works contracting procedures in chapter 39.10 RCW may elect to use either RCW 39.10.051 and 39.10.061 or this chapter as its method of procurement for such services. [2005 c 469 § 2; 1986 c 244 § 7.]

## Chapter 70.155 RCW

## TOBACCO—ACCESS TO MINORS

## Sections

70.155.090 Age identification requirement.

**70.155.090 Age identification requirement.** (1) Where there may be a question of a person's right to purchase or obtain tobacco products by reason of age, the retailer, sampler, or agent thereof, shall require the purchaser to present any one of the following officially issued identification that shows the purchaser's age and bears his or her signature and photograph: (a) Liquor control authority card of identification of a state or province of Canada; (b) driver's license, instruction permit, or identification card of a state or province of Canada; (c) "identocard" issued by the Washington state department of licensing under chapter 46.20 RCW; (d) United States military identification; (e) passport; (f) enrollment card, issued by the governing authority of a federally recognized Indian tribe located in Washington, that incorporates security features comparable to those implemented by the department of licensing for Washington drivers' licenses. At least ninety days prior to implementation of an enrollment card under this subsection, the appropriate tribal authority shall give notice to the board. The board shall publish and communicate to licensees regarding the implementation of each new enrollment card; or (g) merchant marine identification card issued by the United States coast guard.

(2) It is a defense to a prosecution under RCW 26.28.080 that the person making a sale reasonably relied on any of the officially issued identification as defined in subsection (1) of this section. The liquor control board shall waive the suspension or revocation of a license if the licensee clearly establishes that he or she acted in good faith to prevent violations and a violation occurred despite the licensee's exercise of due diligence. [2005 c 206 § 2; 1993 c 507 § 10.]

## Chapter 70.168 RCW

## STATEWIDE TRAUMA CARE SYSTEM

## Sections

70.168.070 Provision of trauma care service—Designation. (*Effective July 1, 2006.*)70.168.090 Statewide data registry—Quality assurance program—Confidentiality. (*Effective July 1, 2006.*)

**70.168.070 Provision of trauma care service—Designation.** (*Effective July 1, 2006.*) Any hospital or health care facility that desires to be authorized to provide a designated trauma care service shall request designation from the department. Designation involves a contractual relationship between the state and a hospital or health care facility whereby each agrees to maintain a level of commitment and resources sufficient to meet responsibilities and standards required by the statewide emergency medical services and trauma care system plan. By January 1992, the department shall determine by rule the manner and form of such requests. Upon receiving a request, the department shall review the request to determine whether the hospital or health care facility is in compliance with standards for the trauma care service or services for which designation is desired. If requests are

received from more than one hospital or health care facility within the same emergency medical planning and trauma care planning and service region, the department shall select the most qualified applicant or applicants to be selected through a competitive process. Any applicant not designated may request a hearing to review the decision.

Designations are valid for a period of three years and are renewable upon receipt of a request for renewal prior to expiration from the hospital or health care facility. When an authorization for designation is due for renewal other hospitals and health care facilities in the area may also apply and compete for designation. Regional emergency medical and trauma care councils shall be notified promptly of designated hospitals and health care facilities in their region so they may incorporate them into the regional plan as required by this chapter. The department may revoke or suspend the designation should it determine that the hospital or health care facility is substantially out of compliance with the standards and has refused or been unable to comply after a reasonable period of time has elapsed. The department shall promptly notify the regional emergency medical and trauma care planning and service region of suspensions or revocations. Any facility whose designation has been revoked or suspended may request a hearing to review the action by the department as provided for in chapter 34.05 RCW.

As a part of the process to designate and renew the designation of hospitals authorized to provide level I, II, or III trauma care services or level I, II, and III pediatric trauma care services, the department shall contract for on-site reviews of such hospitals to determine compliance with required standards. The department may contract for on-site reviews of hospitals and health care facilities authorized to provide level IV or V trauma care services or level I, I-pediatric, II, or III trauma-related rehabilitative services to determine compliance with required standards. Members of on-site review teams and staff included in site visits are exempt from chapter 42.56 RCW. They may not divulge and cannot be subpoenaed to divulge information obtained or reports written pursuant to this section in any civil action, except, after in camera review, pursuant to a court order which provides for the protection of sensitive information of interested parties including the department: (1) In actions arising out of the department's designation of a hospital or health care facility pursuant to this section; (2) in actions arising out of the department's revocation or suspension of designation status of a hospital or health care facility under this section; or (3) in actions arising out of the restriction or revocation of the clinical or staff privileges of a health care provider as defined in RCW 7.70.020 (1) and (2), subject to any further restrictions on disclosure in RCW 4.24.250 that may apply. Information that identifies individual patients shall not be publicly disclosed without the patient's consent. When a facility requests designation for more than one service, the department may coordinate the joint consideration of such requests.

The department may establish fees to help defray the costs of this section, though such fees shall not be assessed to health care facilities authorized to provide level IV and V trauma care services.

This section shall not restrict the authority of a hospital or a health care provider licensed under Title 18 RCW to pro-

vide services which it has been authorized to provide by state law. [2005 c 274 § 343; 1990 c 269 § 9.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**70.168.090 Statewide data registry—Quality assurance program—Confidentiality. (Effective July 1, 2006.)** (1) By July 1991, the department shall establish a statewide data registry to collect and analyze data on the incidence, severity, and causes of trauma, including traumatic brain injury. The department shall collect additional data on traumatic brain injury should additional data requirements be enacted by the legislature. The registry shall be used to improve the availability and delivery of prehospital and hospital trauma care services. Specific data elements of the registry shall be defined by rule by the department. To the extent possible, the department shall coordinate data collection from hospitals for the trauma registry with the health care data system authorized in chapter 70.170 RCW. Every hospital, facility, or health care provider authorized to provide level I, II, III, IV, or V trauma care services, level I, II, or III pediatric trauma care services, level I, level I-pediatric, II, or III trauma-related rehabilitative services, and prehospital trauma-related services in the state shall furnish data to the registry. All other hospitals and prehospital providers shall furnish trauma data as required by the department by rule.

The department may respond to requests for data and other information from the registry for special studies and analysis consistent with requirements for confidentiality of patient and quality assurance records. The department may require requestors to pay any or all of the reasonable costs associated with such requests that might be approved.

(2) By January 1994, in each emergency medical services and trauma care planning and service region, a regional emergency medical services and trauma care systems quality assurance program shall be established by those facilities authorized to provide levels I, II, and III trauma care services. The systems quality assurance program shall evaluate trauma care delivery, patient care outcomes, and compliance with the requirements of this chapter. The emergency medical services medical program director and all other health care providers and facilities who provide trauma care services within the region shall be invited to participate in the regional emergency medical services and trauma care quality assurance program.

(3) Data elements related to the identification of individual patient's, provider's and facility's care outcomes shall be confidential, shall be exempt from RCW 42.56.030 through 42.56.570 and 42.17.350 through 42.17.450, and shall not be subject to discovery by subpoena or admissible as evidence.

(4) Patient care quality assurance proceedings, records, and reports developed pursuant to this section are confidential, exempt from chapter 42.56 RCW, and are not subject to discovery by subpoena or admissible as evidence. In any civil action, except, after in camera review, pursuant to a court order which provides for the protection of sensitive information of interested parties including the department: (a) In actions arising out of the department's designation of a hospital or health care facility pursuant to RCW 70.168.070; (b) in actions arising out of the department's revocation or suspension of designation status of a hospital or health care

facility under RCW 70.168.070; or (c) in actions arising out of the restriction or revocation of the clinical or staff privileges of a health care provider as defined in RCW 7.70.020 (1) and (2), subject to any further restrictions on disclosure in RCW 4.24.250 that may apply. Information that identifies individual patients shall not be publicly disclosed without the patient's consent. [2005 c 274 § 344; 1990 c 269 § 11.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

## Chapter 70.190 RCW FAMILY POLICY COUNCIL

### Sections

70.190.060 Community networks—Legislative intent—Membership—Open meetings. (*Effective July 1, 2006.*)

**70.190.060 Community networks—Legislative intent—Membership—Open meetings. (Effective July 1, 2006.)** (1) The legislature authorizes community public health and safety networks to reconnect parents and other citizens with children, youth, families, and community institutions which support health and safety. The networks have only those powers and duties expressly authorized under this chapter. The networks should empower parents and other citizens by being a means of expressing their attitudes, spirit, and perspectives regarding safe and healthy family and community life. The legislature intends that parent and other citizen perspectives exercise a controlling influence over policy and program operations of professional organizations concerned with children and family issues within networks in a manner consistent with the Constitution and state law. It is not the intent of the legislature that health, social service, or educational professionals dominate community public health and safety network processes or programs, but rather that these professionals use their skills to lend support to parents and other citizens in expressing their values as parents and other citizens identify community needs and establish community priorities. To this end, the legislature intends full participation of parents and other citizens in community public health and safety networks. The intent is that local community values are reflected in the operations of the network.

(2) A group of persons described in subsection (3) of this section may apply to be a community public health and safety network.

(3) Each community public health and safety network shall be composed of twenty-three people, thirteen of whom shall be citizens who live within the network boundary with no fiduciary interest. In selecting these members, first priority shall be given to members of community mobilization advisory boards, city or county children's services commissions, human services advisory boards, or other such organizations. The thirteen persons shall be selected as follows: Three by chambers of commerce, three by school board members, three by county legislative authorities, three by city legislative authorities, and one high school student, selected by student organizations. The remaining ten members shall live or work within the network boundary and shall include local representation selected by the following groups and entities: Cities; counties; federally recognized Indian tribes; parks and recreation programs; law enforcement agencies;

state children's service workers; employment assistance workers; private social service providers, broad-based non-secular organizations, or health service providers; and public education.

(4) Each of the twenty-three people who are members of each community public health and safety network must sign an annual declaration under penalty of perjury or a notarized statement that clearly, in plain and understandable language, states whether or not he or she has a fiduciary interest. If a member has a fiduciary interest, the nature of that interest must be made clear, in plain understandable language, on the signed statement.

(5) Members of the network shall serve terms of three years.

The terms of the initial members of each network shall be as follows: (a) One-third shall serve for one year; (b) one-third shall serve for two years; and (c) one-third shall serve for three years. Initial members may agree which shall serve fewer than three years or the decision may be made by lot. Any vacancy occurring during the term may be filled by the chair for the balance of the unexpired term.

(6) Not less than sixty days before the expiration of a network member's term, the chair shall submit the name of a nominee to the network for its approval. The network shall comply with subsection (3) of this section.

(7) Networks are subject to the open public meetings act under chapter 42.30 RCW and the public records provisions of chapter 42.56 RCW. [2005 c 274 § 345; 1998 c 314 § 12; 1996 c 132 § 3; 1994 sp.s. c 7 § 303.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Application—1996 c 132 § 3:** "The amendments to RCW 70.190.060 in 1996 c 132 § 3 shall apply prospectively only and are not intended to affect the composition of any community public health and safety network's membership that has been approved by the family policy council prior to June 6, 1996." [1996 c 132 § 11.]

**Intent—Construction—Severability—1996 c 132:** See notes following RCW 70.190.010.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

## Chapter 70.220 RCW

### WASHINGTON ACADEMY OF SCIENCES

#### Sections

70.220.010	Finding—Purpose.
70.220.020	Washington academy of sciences to assist governor, legislature—Duty of state scientists not diminished.
70.220.030	Organizing committee, staff support—Organizational structure.
70.220.040	Duties—Review panels—Funding.
70.220.050	Additional services permitted.
70.220.060	Funding report required by April 30, 2007.

**70.220.010 Finding—Purpose.** The legislature finds that public policies and programs will be improved when informed by independent scientific analysis and communication with state and local policymakers. Throughout the state there are highly qualified persons in a wide range of scientific disciplines who are willing to contribute their time and expertise in such reviews, but that presently there is lacking an organizational structure in which the entire scientific community may most effectively respond to requests for assessments

of complex public policy questions. Therefore it is the purpose of chapter 305, Laws of 2005 to authorize the creation of the Washington academy of sciences as a nonprofit entity independent of government, whose principal mission will be the provision of scientific analysis and recommendations on questions referred to the academy by the governor, the governor's designee, or the legislature. [2005 c 305 § 1.]

**70.220.020 Washington academy of sciences to assist governor, legislature—Duty of state scientists not diminished.** The Washington academy of sciences authorized to be formed under RCW 70.220.030 shall serve as a principal source of scientific investigation, examination, and reporting on scientific questions referred to the academy by the governor or the legislature under the provisions of RCW 70.220.040. Nothing in this section or this chapter supercedes or diminishes the responsibilities performed by scientists employed by the state or its political subdivisions. [2005 c 305 § 2.]

**70.220.030 Organizing committee, staff support—Organizational structure.** (1) The presidents of the University of Washington and Washington State University shall jointly form and serve as the cochairs of an organizing committee for the purpose of creating the Washington academy of sciences as an independent entity to carry out the purposes of this chapter. The committee should be representative of appropriate disciplines from the academic, private, governmental, and research sectors.

(2) Staff from the University of Washington and Washington State University, and from other available entities, shall provide support to the organizing committee under the direction of the cochairs.

(3)(a) The committee shall investigate organizational structures that will ensure the participation or membership in the academy of scientists and experts with distinction in their fields, and that will ensure broad participation among the several disciplines that may be called upon in the investigation, examination, and reporting upon questions referred to the academy by the governor or the legislature.

(b) The organizational structure shall include a process by which the academy responds to inquiries from the governor or the legislature, including but not limited to the identification of research projects, past or present, at Washington or other research institutions and the findings of such research projects.

(4) The committee cochairs shall use their best efforts to form the committee by January 1, 2006, and to complete the committee's review by April 30, 2007. By April 30, 2007, the committee, or such individuals as the committee selects, shall file articles of incorporation to create the academy as a Washington independent organizational entity. The articles shall expressly recognize the power and responsibility of the academy to provide services as described in RCW 70.220.040 upon request of the governor, the governor's designee, or the legislature. The articles shall also provide for a board of directors of the academy that includes distinguished scientists from the range of disciplines that may be called upon to provide such services to the state and its political subdivisions,

and provide a balance of representation from the academic, private, governmental, and research sectors.

(5) The articles shall provide for all such powers as may be appropriate or necessary to carry out the academy's purposes under this chapter, to the full extent allowable under the proposed organizational structure. [2005 c 305 § 3.]

**70.220.040 Duties—Review panels—Funding.** (1) The academy shall investigate, examine, and report on any subject of science requested by the governor, the governor's designee, or the legislature. The procedures for selecting panels of experts to respond to such requests shall be set forth in the bylaws or other appropriate operating guidelines. In forming review panels, the academy shall endeavor to assure that the panel members have no conflicts of interest and that proposed panelists first disclose any advocacy positions or financial interest related to the questions to be addressed by the panel that the candidate has held within the past ten years.

(2) The governor shall provide funding to the academy for the actual expense of such investigation, examination, and reports. Such funding shall be in addition to state funding assistance to the academy in its initial years of operation as described in RCW 70.220.060. [2005 c 305 § 4.]

**70.220.050 Additional services permitted.** The academy may carry out functions or provide services to its members and the public in addition to the services provided under RCW 70.220.040, such as public education programs, newsletters, web sites, science fairs, and research assistance. [2005 c 305 § 5.]

**70.220.060 Funding report required by April 30, 2007.** The organizational committee shall recommend procedures and funding requirements for receiving and disbursing funding in support of the academy's programs and services in a report to the governor and the appropriate committees of the senate and house of representatives no later than April 30, 2007. [2005 c 305 § 6.]

## Title 71

### MENTAL ILLNESS

#### Chapters

- 71.05** Mental illness.
- 71.09** Sexually violent predators.
- 71.24** Community mental health services act.
- 71.34** Mental health services for minors.

#### Chapter 71.05 RCW MENTAL ILLNESS

#### Sections

71.05.020	Definitions.
71.05.027	Integrated comprehensive screening and assessment for chemical dependency and mental disorders.
71.05.032	Joinder of petitions for commitment.
71.05.035	Recodified as RCW 71A.12.025.
71.05.060	Repealed.
71.05.070	Repealed.
71.05.090	Repealed.
71.05.155	Repealed.

71.05.157	Evaluation by designated mental health professional—When required—Required notifications.
71.05.200	Repealed.
71.05.217	Rights—Posting of list.
71.05.235	Examination, evaluation of criminal defendant—Hearing.
71.05.250	Repealed.
71.05.310	Time for hearing—Due process—Jury trial—Continuation of treatment.
71.05.360	Rights of involuntarily detained persons.
71.05.370	Recodified as RCW 71.05.217.
71.05.390	Confidential information and records—Disclosure. ( <i>Effective until July 1, 2006.</i> )
71.05.390	Confidential information and records—Disclosure. ( <i>Effective July 1, 2006.</i> )
71.05.395	through 71.05.410 Repealed.
71.05.420	Records of disclosure.
71.05.425	Persons committed following dismissal of sex, violent, or felony harassment offense—Notification of conditional release, final release, leave, transfer, or escape—To whom given—Definitions.
71.05.430	Repealed.
71.05.445	Mental health services information—Release to department of corrections—Initial assessment inquiry—Required notifications—Rules.
71.05.450	through 71.05.490 Repealed.
71.05.550	Recognition of county financial necessities.
71.05.610	Repealed.
71.05.620	Court files and records closed—Exceptions.
71.05.630	Treatment records—Confidential—Release.
71.05.640	Treatment records—Access procedures.
71.05.650	Repealed.
71.05.660	Treatment records—Privileged communications unaffected.
71.05.670	Repealed.
71.05.680	Treatment records—Access under false pretenses, penalty.
71.05.690	Treatment records—Rules.

**71.05.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Admission" or "admit" means a decision by a physician that a person should be examined or treated as a patient in a hospital;

(2) "Antipsychotic medications" means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes, but is not limited to atypical antipsychotic medications;

(3) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient;

(4) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting;

(5) "Conditional release" means a revocable modification of a commitment, which may be revoked upon violation of any of its terms;

(6) "Custody" means involuntary detention under the provisions of this chapter or chapter 10.77 RCW, uninterrupted by any period of unconditional release from commitment from a facility providing involuntary care and treatment;

(7) "Department" means the department of social and health services;

(8) "Designated chemical dependency specialist" means a person designated by the county alcoholism and other drug addiction program coordinator designated under RCW 70.96A.310 to perform the commitment duties described in chapters 70.96A and 70.96B RCW;



(9) "Designated crisis responder" means a mental health professional appointed by the county or the regional support network to perform the duties specified in this chapter;

(10) "Designated mental health professional" means a mental health professional designated by the county or other authority authorized in rule to perform the duties specified in this chapter;

(11) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter;

(12) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist, psychologist, or social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary;

(13) "Developmental disability" means that condition defined in RCW 71A.10.020(3);

(14) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order;

(15) "Evaluation and treatment facility" means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and which is certified as such by the department. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility. A facility which is part of, or operated by, the department or any federal agency will not require certification. No correctional institution or facility, or jail, shall be an evaluation and treatment facility within the meaning of this chapter;

(16) "Gravely disabled" means a condition in which a person, as a result of a mental disorder: (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety;

(17) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and in raising their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy. The habilitative process shall be undertaken with recognition of the risk to the public safety presented by the person being assisted as manifested by prior charged criminal conduct;

(18) "History of one or more violent acts" refers to the period of time ten years prior to the filing of a petition under this chapter, excluding any time spent, but not any violent acts committed, in a mental health facility or in confinement as a result of a criminal conviction;

(19) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for a person with developmental disabilities, which shall state:

(a) The nature of the person's specific problems, prior charged criminal behavior, and habilitation needs;

(b) The conditions and strategies necessary to achieve the purposes of habilitation;

(c) The intermediate and long-range goals of the habilitation program, with a projected timetable for the attainment;

(d) The rationale for using this plan of habilitation to achieve those intermediate and long-range goals;

(e) The staff responsible for carrying out the plan;

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual discharge or release, and a projected possible date for discharge or release; and

(g) The type of residence immediately anticipated for the person and possible future types of residences;

(20) "Judicial commitment" means a commitment by a court pursuant to the provisions of this chapter;

(21) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) physical harm will be inflicted by a person upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or (iii) physical harm will be inflicted by a person upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or

(b) The person has threatened the physical safety of another and has a history of one or more violent acts;

(22) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on a person's cognitive or volitional functions;

(23) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(24) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment;

(25) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, which constitutes an evaluation and treatment facility or private institution, or hospital, which is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill;

(26) "Professional person" means a mental health professional and shall also mean a physician, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(27) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology;

(28) "Psychologist" means a person who has been licensed as a psychologist pursuant to chapter 18.83 RCW;

(29) "Public agency" means any evaluation and treatment facility or institution, or hospital which is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill, if the agency is operated directly by, federal, state, county, or municipal government, or a combination of such governments;

(30) "Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify persons who are receiving or who at any time have received services for mental illness;

(31) "Release" means legal termination of the commitment under the provisions of this chapter;

(32) "Resource management services" has the meaning given in chapter 71.24 RCW;

(33) "Secretary" means the secretary of the department of social and health services, or his or her designee;

(34) "Social worker" means a person with a master's or further advanced degree from an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary;

(35) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others;

(36) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property. [2005 c 504 § 104; 2000 c 94 § 1; 1999 c 13 § 5; 1998 c 297 § 3; 1997 c 112 § 3. Prior: 1989 c 420 § 13; 1989 c 205 § 8; 1989 c 120 § 2; 1979 ex.s. c 215 § 5; 1973 1st ex.s. c 142 § 7.]

**Alphabetization—Correction of references—2005 c 504:** "(1) The code reviser shall alphabetize and renumber the definitions, and correct any internal references affected by this act.

(2) The code reviser shall replace all references to "county designated mental health professional" with "designated mental health professional" in the Revised Code of Washington." [2005 c 504 § 811.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Purpose—Construction—1999 c 13:** See note following RCW 10.77.010.

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.027 Integrated comprehensive screening and assessment for chemical dependency and mental disorders.** (1) Not later than January 1, 2007, all persons providing treatment under this chapter shall also implement the integrated comprehensive screening and assessment process for chemical dependency and mental disorders adopted pursuant to RCW 70.96C.010 and shall document the numbers of clients with co-occurring mental and substance abuse disorders based on a quadrant system of low and high needs.

(2) Treatment providers and regional support networks who fail to implement the integrated comprehensive screen-

ing and assessment process for chemical dependency and mental disorders by July 1, 2007, shall be subject to contractual penalties established under RCW 70.96C.010. [2005 c 504 § 103.]

**Findings—Intent—2005 c 504:** "The legislature finds that persons with mental disorders, chemical dependency disorders, or co-occurring mental and substance abuse disorders are disproportionately more likely to be confined in a correctional institution, become homeless, become involved with child protective services or involved in a dependency proceeding, or lose those state and federal benefits to which they may be entitled as a result of their disorders. The legislature finds that prior state policy of addressing mental health and chemical dependency in isolation from each other has not been cost-effective and has often resulted in longer-term, more costly treatment that may be less effective over time. The legislature finds that a substantial number of persons have co-occurring mental and substance abuse disorders and that identification and integrated treatment of co-occurring disorders is critical to successful outcomes and recovery. Consequently, the legislature intends, to the extent of available funding, to:

(1) Establish a process for determining which persons with mental disorders and substance abuse disorders have co-occurring disorders;

(2) Reduce the gap between available chemical dependency treatment and the documented need for treatment;

(3) Improve treatment outcomes by shifting treatment, where possible, to evidence-based, research-based, and consensus-based treatment practices and by removing barriers to the use of those practices;

(4) Expand the authority for and use of therapeutic courts including drug courts, mental health courts, and therapeutic courts for dependency proceedings;

(5) Improve access to treatment for persons who are not enrolled in medicaid by improving and creating consistency in the application processes, and by minimizing the numbers of eligible confined persons who leave confinement without medical assistance;

(6) Improve access to inpatient treatment by creating expanded services facilities for persons needing intensive treatment in a secure setting who do not need inpatient care, but are unable to access treatment under current licensing restrictions in other settings;

(7) Establish secure detoxification centers for persons involuntarily detained as gravely disabled or presenting a likelihood of serious harm due to chemical dependency and authorize combined crisis responders for both mental disorders and chemical dependency disorders on a pilot basis and study the outcomes;

(8) Slow or stop the loss of inpatient and intensive residential beds and children's long-term inpatient placements and refine the balance of state hospital and community inpatient and residential beds;

(9) Improve cross-system collaboration including collaboration with first responders and hospital emergency rooms, schools, primary care, developmental disabilities, law enforcement and corrections, and federally funded and licensed programs;

(10) Following the receipt of outcomes from the pilot programs in Part II of this act, if directed by future legislative enactment, implement a single, comprehensive, involuntary treatment act with a unified set of standards, rights, obligations, and procedures for adults and children with mental disorders, chemical dependency disorders, and co-occurring disorders; and

(11) Amend existing state law to address organizational and structural barriers to effective use of state funds for treating persons with mental and substance abuse disorders, minimize internal inconsistencies, clarify policy and requirements, and maximize the opportunity for effective and cost-effective outcomes." [2005 c 504 § 101.]

**Severability—2005 c 504:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 504 § 807.]

**Application—Construction—2005 c 504:** "This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it." [2005 c 504 § 808.]

**Captions, part headings, subheadings not law—2005 c 504:** "Captions, part headings, and subheadings used in this act are not part of the law." [2005 c 504 § 809.]

**Adoption of rules—2005 c 504:** "(1) The secretary of the department of social and health services may adopt rules as necessary to implement the provisions of this act.

(2) The secretary of corrections may adopt rules as necessary to implement the provisions of this act." [2005 c 504 § 812.]

**Effective dates—2005 c 504:** "(1) Except for section 503 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005.

(2) Section 503 of this act takes effect July 1, 2006." [2005 c 504 § 813.]

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**71.05.032 Joinder of petitions for commitment.** A petition for commitment under this chapter may be joined with a petition for commitment under chapter 70.96A RCW. [2005 c 504 § 115.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**71.05.035 Recodified as RCW 71A.12.025.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.05.060 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.05.070 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.05.090 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.05.155 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.05.157 Evaluation by designated mental health professional—When required—Required notifications.**

(1) When a designated mental health professional is notified by a jail that a defendant or offender who was subject to a discharge review under RCW 71.05.232 is to be released to the community, the designated mental health professional shall evaluate the person within seventy-two hours of release.

(2) When an offender is under court-ordered treatment in the community and the supervision of the department of corrections, and the treatment provider becomes aware that the person is in violation of the terms of the court order, the treatment provider shall notify the designated mental health professional and the department of corrections of the violation and request an evaluation for purposes of revocation of the less restrictive alternative.

(3) When a designated mental health professional becomes aware that an offender who is under court-ordered treatment in the community and the supervision of the department of corrections is in violation of a treatment order or a condition of supervision that relates to public safety, or the designated mental health professional detains a person under this chapter, the designated mental health professional shall notify the person's treatment provider and the department of corrections.

(4) When an offender who is confined in a state correctional facility or is under supervision of the department of corrections in the community is subject to a petition for involuntary treatment under this chapter, the petitioner shall notify the department of corrections and the department of corrections shall provide documentation of its risk assessment or other concerns to the petitioner and the court if the department of corrections classified the offender as a high risk or high needs offender.

(5) Nothing in this section creates a duty on any treatment provider or designated mental health professional to provide offender supervision. [2005 c 504 § 507; 2004 c 166 § 16.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Severability—Effective dates—2004 c 166:** See notes following RCW 71.05.040.

**71.05.200 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.05.217 Rights—Posting of list.** Insofar as danger to the individual or others is not created, each person involuntarily detained, treated in a less restrictive alternative course of treatment, or committed for treatment and evaluation pursuant to this chapter shall have, in addition to other rights not specifically withheld by law, the following rights, a list of which shall be prominently posted in all facilities, institutions, and hospitals providing such services:

(1) To wear his or her own clothes and to keep and use his or her own personal possessions, except when deprivation of same is essential to protect the safety of the resident or other persons;

(2) To keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases;

(3) To have access to individual storage space for his or her private use;

(4) To have visitors at reasonable times;

(5) To have reasonable access to a telephone, both to make and receive confidential calls;

(6) To have ready access to letter writing materials, including stamps, and to send and receive uncensored correspondence through the mails;

(7) Not to consent to the administration of antipsychotic medications beyond the hearing conducted pursuant to RCW 71.05.320(2) or the performance of electroconvulsant therapy or surgery, except emergency life-saving surgery, unless ordered by a court of competent jurisdiction pursuant to the following standards and procedures:

(a) The administration of antipsychotic medication or electroconvulsant therapy shall not be ordered unless the petitioning party proves by clear, cogent, and convincing evidence that there exists a compelling state interest that justifies overriding the patient's lack of consent to the administration of antipsychotic medications or electroconvulsant therapy, that the proposed treatment is necessary and effective, and that medically acceptable alternative forms of treatment are

not available, have not been successful, or are not likely to be effective.

(b) The court shall make specific findings of fact concerning: (i) The existence of one or more compelling state interests; (ii) the necessity and effectiveness of the treatment; and (iii) the person's desires regarding the proposed treatment. If the patient is unable to make a rational and informed decision about consenting to or refusing the proposed treatment, the court shall make a substituted judgment for the patient as if he or she were competent to make such a determination.

(c) The person shall be present at any hearing on a request to administer antipsychotic medication or electroconvulsant therapy filed pursuant to this subsection. The person has the right: (i) To be represented by an attorney; (ii) to present evidence; (iii) to cross-examine witnesses; (iv) to have the rules of evidence enforced; (v) to remain silent; (vi) to view and copy all petitions and reports in the court file; and (vii) to be given reasonable notice and an opportunity to prepare for the hearing. The court may appoint a psychiatrist, psychologist within their scope of practice, or physician to examine and testify on behalf of such person. The court shall appoint a psychiatrist, psychologist within their scope of practice, or physician designated by such person or the person's counsel to testify on behalf of the person in cases where an order for electroconvulsant therapy is sought.

(d) An order for the administration of antipsychotic medications entered following a hearing conducted pursuant to this section shall be effective for the period of the current involuntary treatment order, and any interim period during which the person is awaiting trial or hearing on a new petition for involuntary treatment or involuntary medication.

(e) Any person detained pursuant to RCW 71.05.320(2), who subsequently refuses antipsychotic medication, shall be entitled to the procedures set forth in RCW 71.05.217(7).

(f) Antipsychotic medication may be administered to a nonconsenting person detained or committed pursuant to this chapter without a court order pursuant to RCW 71.05.215(2) or under the following circumstances:

(i) A person presents an imminent likelihood of serious harm;

(ii) Medically acceptable alternatives to administration of antipsychotic medications are not available, have not been successful, or are not likely to be effective; and

(iii) In the opinion of the physician with responsibility for treatment of the person, or his or her designee, the person's condition constitutes an emergency requiring the treatment be instituted before a judicial hearing as authorized pursuant to this section can be held.

If antipsychotic medications are administered over a person's lack of consent pursuant to this subsection, a petition for an order authorizing the administration of antipsychotic medications shall be filed on the next judicial day. The hearing shall be held within two judicial days. If deemed necessary by the physician with responsibility for the treatment of the person, administration of antipsychotic medications may continue until the hearing is held;

(8) To dispose of property and sign contracts unless such person has been adjudicated an incompetent in a court proceeding directed to that particular issue;

(9) Not to have psychosurgery performed on him or her under any circumstances. [1997 c 112 § 31; 1991 c 105 § 5; 1989 c 120 § 8; 1974 ex.s. c 145 § 26; 1973 1st ex.s. c 142 § 42. Formerly RCW 71.05.370.]

**Severability—1991 c 105:** See note following RCW 71.05.215.

**71.05.235 Examination, evaluation of criminal defendant—Hearing.** (1) If an individual is referred to a designated mental health professional under RCW 10.77.090(1)(d)(iii)(A), the designated mental health professional shall examine the individual within forty-eight hours. If the designated mental health professional determines it is not appropriate to detain the individual or petition for a ninety-day less restrictive alternative under RCW 71.05.230(4), that decision shall be immediately presented to the superior court for hearing. The court shall hold a hearing to consider the decision of the designated mental health professional not later than the next judicial day. At the hearing the superior court shall review the determination of the designated mental health professional and determine whether an order should be entered requiring the person to be evaluated at an evaluation and treatment facility. No person referred to an evaluation and treatment facility may be held at the facility longer than seventy-two hours.

(2) If an individual is placed in an evaluation and treatment facility under RCW 10.77.090(1)(d)(iii)(B), a professional person shall evaluate the individual for purposes of determining whether to file a ninety-day inpatient or outpatient petition under chapter 71.05 RCW. Before expiration of the seventy-two hour evaluation period authorized under RCW 10.77.090(1)(d)(iii)(B), the professional person shall file a petition or, if the recommendation of the professional person is to release the individual, present his or her recommendation to the superior court of the county in which the criminal charge was dismissed. The superior court shall review the recommendation not later than forty-eight hours, excluding Saturdays, Sundays, and holidays, after the recommendation is presented. If the court rejects the recommendation to unconditionally release the individual, the court may order the individual detained at a designated evaluation and treatment facility for not more than a seventy-two hour evaluation and treatment period and direct the individual to appear at a surety hearing before that court within seventy-two hours, or the court may release the individual but direct the individual to appear at a surety hearing set before that court within eleven days, at which time the prosecutor may file a petition under this chapter for ninety-day inpatient or outpatient treatment. If a petition is filed by the prosecutor, the court may order that the person named in the petition be detained at the evaluation and treatment facility that performed the evaluation under this subsection or order the respondent to be in outpatient treatment. If a petition is filed but the individual fails to appear in court for the surety hearing, the court shall order that a mental health professional or peace officer shall take such person or cause such person to be taken into custody and placed in an evaluation and treatment facility to be brought before the court the next judicial day after detention. Upon the individual's first appearance in court after a petition has been filed, proceedings under RCW 71.05.310 and 71.05.320 shall commence. For an individual

subject to this subsection, the prosecutor or professional person may directly file a petition for ninety-day inpatient or outpatient treatment and no petition for initial detention or fourteen-day detention is required before such a petition may be filed.

The court shall conduct the hearing on the petition filed under this subsection within five judicial days of the date the petition is filed. The court may continue the hearing upon the written request of the person named in the petition or the person's attorney, for good cause shown, which continuance shall not exceed five additional judicial days. If the person named in the petition requests a jury trial, the trial shall commence within ten judicial days of the date of the filing of the petition. The burden of proof shall be by clear, cogent, and convincing evidence and shall be upon the petitioner. The person shall be present at such proceeding, which shall in all respects accord with the constitutional guarantees of due process of law and the rules of evidence pursuant to RCW 71.05.360 (8) and (9).

During the proceeding the person named in the petition shall continue to be detained and treated until released by order of the court. If no order has been made within thirty days after the filing of the petition, not including any extensions of time requested by the detained person or his or her attorney, the detained person shall be released.

(3) If a designated mental health professional or the professional person and prosecuting attorney for the county in which the criminal charge was dismissed or attorney general, as appropriate, stipulate that the individual does not present a likelihood of serious harm or is not gravely disabled, the hearing under this section is not required and the individual, if in custody, shall be released.

(4) The individual shall have the rights specified in RCW 71.05.360 (8) and (9). [2005 c 504 § 708; 2000 c 74 § 6; 1999 c 11 § 1; 1998 c 297 § 18.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Severability—2000 c 74:** See note following RCW 10.77.060.

**Effective date—1999 c 11:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect March 1, 1999, or upon approval by the governor, whichever occurs later [April 15, 1999]." [1999 c 11 § 2.]

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.250 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.05.310 Time for hearing—Due process—Jury trial—Continuation of treatment.** The court shall conduct a hearing on the petition for ninety day treatment within five judicial days of the first court appearance after the probable cause hearing. The court may continue the hearing upon the written request of the person named in the petition or the person's attorney, for good cause shown, which continuance shall not exceed five additional judicial days. If the person named in the petition requests a jury trial, the trial shall commence within ten judicial days of the first court appearance

after the probable cause hearing. The burden of proof shall be by clear, cogent, and convincing evidence and shall be upon the petitioner. The person shall be present at such proceeding, which shall in all respects accord with the constitutional guarantees of due process of law and the rules of evidence pursuant to RCW 71.05.360 (8) and (9).

During the proceeding, the person named in the petition shall continue to be treated until released by order of the superior court. If no order has been made within thirty days after the filing of the petition, not including extensions of time requested by the detained person or his or her attorney, the detained person shall be released. [2005 c 504 § 709; 1987 c 439 § 9; 1975 1st ex.s. c 199 § 8; 1974 ex.s. c 145 § 22; 1973 1st ex.s. c 142 § 36.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

### **71.05.360 Rights of involuntarily detained persons.**

(1)(a) Every person involuntarily detained or committed under the provisions of this chapter shall be entitled to all the rights set forth in this chapter, which shall be prominently posted in the facility, and shall retain all rights not denied him or her under this chapter except as chapter 9.41 RCW may limit the right of a person to purchase or possess a firearm or to qualify for a concealed pistol license.

(b) No person shall be presumed incompetent as a consequence of receiving an evaluation or voluntary or involuntary treatment for a mental disorder, under this chapter or any prior laws of this state dealing with mental illness. Competency shall not be determined or withdrawn except under the provisions of chapter 10.97 or 11.88 RCW.

(c) Any person who leaves a public or private agency following evaluation or treatment for mental disorder shall be given a written statement setting forth the substance of this section.

(2) Each person involuntarily detained or committed pursuant to this chapter shall have the right to adequate care and individualized treatment.

(3) The provisions of this chapter shall not be construed to deny to any person treatment by spiritual means through prayer in accordance with the tenets and practices of a church or religious denomination.

(4) Persons receiving evaluation or treatment under this chapter shall be given a reasonable choice of an available physician or other professional person qualified to provide such services.

(5) Whenever any person is detained for evaluation and treatment pursuant to this chapter, both the person and, if possible, a responsible member of his or her immediate family, personal representative, guardian, or conservator, if any, shall be advised as soon as possible in writing or orally, by the officer or person taking him or her into custody or by personnel of the evaluation and treatment facility where the person is detained that unless the person is released or voluntarily admits himself or herself for treatment within seventy-two hours of the initial detention:

(a) A judicial hearing in a superior court, either by a judge or court commissioner thereof, shall be held not more

than seventy-two hours after the initial detention to determine whether there is probable cause to detain the person after the seventy-two hours have expired for up to an additional fourteen days without further automatic hearing for the reason that the person is a person whose mental disorder presents a likelihood of serious harm or that the person is gravely disabled;

(b) The person has a right to communicate immediately with an attorney; has a right to have an attorney appointed to represent him or her before and at the probable cause hearing if he or she is indigent; and has the right to be told the name and address of the attorney that the mental health professional has designated pursuant to this chapter;

(c) The person has the right to remain silent and that any statement he or she makes may be used against him or her;

(d) The person has the right to present evidence and to cross-examine witnesses who testify against him or her at the probable cause hearing; and

(e) The person has the right to refuse psychiatric medications, including antipsychotic medication beginning twenty-four hours prior to the probable cause hearing.

(6) When proceedings are initiated under RCW 71.05.150 (2), (3), or (4)(b), no later than twelve hours after such person is admitted to the evaluation and treatment facility the personnel of the evaluation and treatment facility or the designated mental health professional shall serve on such person a copy of the petition for initial detention and the name, business address, and phone number of the designated attorney and shall forthwith commence service of a copy of the petition for initial detention on the designated attorney.

(7) The judicial hearing described in subsection (5) of this section is hereby authorized, and shall be held according to the provisions of subsection (5) of this section and rules promulgated by the supreme court.

(8) At the probable cause hearing the detained person shall have the following rights in addition to the rights previously specified:

(a) To present evidence on his or her behalf;

(b) To cross-examine witnesses who testify against him or her;

(c) To be proceeded against by the rules of evidence;

(d) To remain silent;

(e) To view and copy all petitions and reports in the court file.

(9) The physician-patient privilege or the psychologist-client privilege shall be deemed waived in proceedings under this chapter relating to the administration of antipsychotic medications. As to other proceedings under this chapter, the privileges shall be waived when a court of competent jurisdiction in its discretion determines that such waiver is necessary to protect either the detained person or the public.

The waiver of a privilege under this section is limited to records or testimony relevant to evaluation of the detained person for purposes of a proceeding under this chapter. Upon motion by the detained person or on its own motion, the court shall examine a record or testimony sought by a petitioner to determine whether it is within the scope of the waiver.

The record maker shall not be required to testify in order to introduce medical or psychological records of the detained person so long as the requirements of RCW 5.45.020 are met except that portions of the record which contain opinions as

to the detained person's mental state must be deleted from such records unless the person making such conclusions is available for cross-examination.

(10) Insofar as danger to the person or others is not created, each person involuntarily detained, treated in a less restrictive alternative course of treatment, or committed for treatment and evaluation pursuant to this chapter shall have, in addition to other rights not specifically withheld by law, the following rights:

(a) To wear his or her own clothes and to keep and use his or her own personal possessions, except when deprivation of same is essential to protect the safety of the resident or other persons;

(b) To keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases;

(c) To have access to individual storage space for his or her private use;

(d) To have visitors at reasonable times;

(e) To have reasonable access to a telephone, both to make and receive confidential calls, consistent with an effective treatment program;

(f) To have ready access to letter writing materials, including stamps, and to send and receive uncensored correspondence through the mails;

(g) To discuss treatment plans and decisions with professional persons;

(h) Not to consent to the administration of antipsychotic medications and not to thereafter be administered antipsychotic medications unless ordered by a court under RCW 71.05.217 or pursuant to an administrative hearing under RCW 71.05.215;

(i) Not to consent to the performance of electroconvulsant therapy or surgery, except emergency life-saving surgery, unless ordered by a court under RCW 71.05.217;

(j) Not to have psychosurgery performed on him or her under any circumstances;

(k) To dispose of property and sign contracts unless such person has been adjudicated an incompetent in a court proceeding directed to that particular issue.

(11) Every person involuntarily detained shall immediately be informed of his or her right to a hearing to review the legality of his or her detention and of his or her right to counsel, by the professional person in charge of the facility providing evaluation and treatment, or his or her designee, and, when appropriate, by the court. If the person so elects, the court shall immediately appoint an attorney to assist him or her.

(12) A person challenging his or her detention or his or her attorney, shall have the right to designate and have the court appoint a reasonably available independent physician or licensed mental health professional to examine the person detained, the results of which examination may be used in the proceeding. The person shall, if he or she is financially able, bear the cost of such expert information [examination], otherwise such expert examination shall be at public expense.

(13) Nothing contained in this chapter shall prohibit the patient from petitioning by writ of habeas corpus for release.

(14) Nothing in this chapter shall prohibit a person committed on or prior to January 1, 1974, from exercising a right

available to him or her at or prior to January 1, 1974, for obtaining release from confinement.

(15) Nothing in this section permits any person to knowingly violate a no-contact order or a condition of an active judgment and sentence or an active condition of supervision by the department of corrections. [2005 c 504 § 107; 1997 c 112 § 30; 1974 ex.s. c 145 § 25; 1973 1st ex.s. c 142 § 41.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**71.05.370 Recodified as RCW 71.05.217.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.05.390 Confidential information and records—Disclosure. (Effective until July 1, 2006.)** Except as provided in this section, RCW 71.05.445, 71.05.630, 70.96A.150, or pursuant to a valid release under RCW 70.02.030, the fact of admission and all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services at public or private agencies shall be confidential.

Information and records may be disclosed only:

(1) In communications between qualified professional persons to meet the requirements of this chapter, in the provision of services or appropriate referrals, or in the course of guardianship proceedings. The consent of the person, or his or her personal representative or guardian, shall be obtained before information or records may be disclosed by a professional person employed by a facility unless provided to a professional person:

- (a) Employed by the facility;
- (b) Who has medical responsibility for the patient's care;
- (c) Who is a designated mental health professional;
- (d) Who is providing services under chapter 71.24 RCW;
- (e) Who is employed by a state or local correctional facility where the person is confined or supervised; or
- (f) Who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW.

(2) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing services to the operator of a facility in which the patient resides or will reside.

(3)(a) When the person receiving services, or his or her guardian, designates persons to whom information or records may be released, or if the person is a minor, when his or her parents make such designation.

(b) A public or private agency shall release to a person's next of kin, attorney, personal representative, guardian, or conservator, if any:

- (i) The information that the person is presently a patient in the facility or that the person is seriously physically ill;
- (ii) A statement evaluating the mental and physical condition of the patient, and a statement of the probable duration of the patient's confinement, if such information is requested

by the next of kin, attorney, personal representative, guardian, or conservator; and

(iii) Such other information requested by the next of kin or attorney as may be necessary to decide whether or not proceedings should be instituted to appoint a guardian or conservator.

(4) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(5)(a) For either program evaluation or research, or both: PROVIDED, That the secretary adopts rules for the conduct of the evaluation or research, or both. Such rules shall include, but need not be limited to, the requirement that all evaluators and researchers must sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I, . . . . ., agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/ . . . . . "

(b) Nothing in this chapter shall be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary.

(6)(a) To the courts as necessary to the administration of this chapter or to a court ordering an evaluation or treatment under chapter 10.77 RCW solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered under this chapter.

(b) To a court or its designee in which a motion under chapter 10.77 RCW has been made for involuntary medication of a defendant for the purpose of competency restoration.

(c) Disclosure under this subsection is mandatory for the purpose of the health insurance portability and accountability act.

(7)(a) When a mental health professional is requested by a representative of a law enforcement or corrections agency, including a police officer, sheriff, community corrections officer, a municipal attorney, or prosecuting attorney to undertake an investigation under RCW 71.05.150, the mental health professional shall, if requested to do so, advise the representative in writing of the results of the investigation including a statement of reasons for the decision to detain or release the person investigated. Such written report shall be submitted within seventy-two hours of the completion of the investigation or the request from the law enforcement or corrections representative, whichever occurs later.

(b) To law enforcement officers, public health officers, or personnel of the department of corrections or the indeter-

minate sentence review board for persons who are the subject of the records and who are committed to the custody or supervision of the department of corrections or indeterminate sentence review board which information or records are necessary to carry out the responsibilities of their office. Except for dissemination of information released pursuant to RCW 71.05.425 and 4.24.550, regarding persons committed under this chapter under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, the extent of information that may be released is limited as follows:

(i) Only the fact, place, and date of involuntary commitment, the fact and date of discharge or release, and the last known address shall be disclosed upon request;

(ii) The law enforcement and public health officers or personnel of the department of corrections or indeterminate sentence review board shall be obligated to keep such information confidential in accordance with this chapter;

(iii) Additional information shall be disclosed only after giving notice to said person and his or her counsel and upon a showing of clear, cogent, and convincing evidence that such information is necessary and that appropriate safeguards for strict confidentiality are and will be maintained. However, in the event the said person has escaped from custody, said notice prior to disclosure is not necessary and that the facility from which the person escaped shall include an evaluation as to whether the person is of danger to persons or property and has a propensity toward violence;

(iv) Information and records shall be disclosed to the department of corrections pursuant to and in compliance with the provisions of RCW 71.05.445 for the purposes of completing presentence investigations or risk assessment reports, supervision of an incarcerated offender or offender under supervision in the community, planning for and provision of supervision of an offender, or assessment of an offender's risk to the community; and

(v) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

(8) To the attorney of the detained person.

(9) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2) and 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information shall be disclosed only after giving notice to the committed person and the person's counsel.

(10) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure shall be made by the professional person in charge of the public or private agency or his or her designee and shall include the dates of commitment, admission, discharge, or release, authorized or unauthorized absence from the agency's facility, and only such other information that is pertinent to the threat or harassment.

The decision to disclose or not shall not result in civil liability for the agency or its employees so long as the decision was reached in good faith and without gross negligence.

(11) To appropriate corrections and law enforcement agencies all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The decision to disclose or not shall not result in civil liability for the mental health service provider or its employees so long as the decision was reached in good faith and without gross negligence.

(12) To the persons designated in RCW 71.05.425 for the purposes described in that section.

(13) Civil liability and immunity for the release of information about a particular person who is committed to the department under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

(14) Upon the death of a person, his or her next of kin, personal representative, guardian, or conservator, if any, shall be notified.

Next of kin who are of legal age and competent shall be notified under this section in the following order: Spouse, parents, children, brothers and sisters, and other relatives according to the degree of relation. Access to all records and information compiled, obtained, or maintained in the course of providing services to a deceased patient shall be governed by RCW 70.02.140.

(15) To the department of health for the purposes of determining compliance with state or federal licensure, certification, or registration rules or laws. However, the information and records obtained under this subsection are exempt from public inspection and copying pursuant to chapter 42.17 RCW.

(16) To mark headstones or otherwise memorialize patients interred at state hospital cemeteries. The department of social and health services shall make available the name, date of birth, and date of death of patients buried in state hospital cemeteries fifty years after the death of a patient.

(17) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)(ii). The extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW 9.41.047(1), shall be disclosed upon request;

(b) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating RCW 9.41.040(2)(a)(ii);

(c) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

(18) When a patient would otherwise be subject to the provisions of RCW 71.05.390 and disclosure is necessary for the protection of the patient or others due to his or her unauthorized disappearance from the facility, and his or her whereabouts is unknown, notice of such disappearance, along with relevant information, may be made to relatives, the



department of corrections when the person is under the supervision of the department, and governmental law enforcement agencies designated by the physician in charge of the patient or the professional person in charge of the facility, or his or her professional designee.

Except as otherwise provided in this chapter, the uniform health care information act, chapter 70.02 RCW, applies to all records and information compiled, obtained, or maintained in the course of providing services.

(19) The fact of admission, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to this chapter shall not be admissible as evidence in any legal proceeding outside this chapter without the written consent of the person who was the subject of the proceeding except in a subsequent criminal prosecution of a person committed pursuant to RCW 71.05.280(3) or 71.05.320(2)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial, in a civil commitment proceeding pursuant to chapter 71.09 RCW, or, in the case of a minor, a guardianship or dependency proceeding. The records and files maintained in any court proceeding pursuant to this chapter shall be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained. [2005 c 504 § 109; 2005 c 453 § 5. Prior: 2004 c 166 § 6; 2004 c 157 § 5; 2004 c 33 § 2; prior: 2000 c 94 § 9; 2000 c 75 § 6; 2000 c 74 § 7; 1999 c 12 § 1; 1998 c 297 § 22; 1993 c 448 § 6; 1990 c 3 § 112; 1986 c 67 § 8; 1985 c 207 § 1; 1983 c 196 § 4; 1979 ex.s. c 215 § 17; 1975 1st ex.s. c 199 § 10; 1974 ex.s. c 145 § 27; 1973 1st ex.s. c 142 § 44.]

**Reviser's note:** This section was amended by 2005 c 453 § 5 and by 2005 c 504 § 109, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Severability—2005 c 453:** See note following RCW 9.41.040.

**Severability—Effective dates—2004 c 166:** See notes following RCW 71.05.040.

**Findings—Intent—Severability—Effective date—2004 c 157:** See notes following RCW 10.77.010.

**Finding—Intent—2004 c 33:** "The legislature finds that social stigmas surrounding mental illness have prevented patients buried in the state hospital cemeteries from being properly memorialized. From 1887 to 1953, the state buried many of the patients who died while in residence at the three state hospitals on hospital grounds. In order to honor these patients, the legislature intends that the state be allowed to release records necessary to appropriately mark their resting place." [2004 c 33 § 1.]

**Intent—2000 c 75:** See note following RCW 71.05.445.

**Severability—2000 c 74:** See note following RCW 10.77.060.

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**Effective date—1993 c 448:** See note following RCW 70.02.010.

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

**71.05.390 Confidential information and records—Disclosure. (Effective July 1, 2006.)** Except as provided in this section, RCW 71.05.445, 71.05.630, 70.96A.150, or pursuant to a valid release under RCW 70.02.030, the fact of admission and all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services at public or private agencies shall be confidential.

Information and records may be disclosed only:

(1) In communications between qualified professional persons to meet the requirements of this chapter, in the provision of services or appropriate referrals, or in the course of guardianship proceedings. The consent of the person, or his or her personal representative or guardian, shall be obtained before information or records may be disclosed by a professional person employed by a facility unless provided to a professional person:

- (a) Employed by the facility;
- (b) Who has medical responsibility for the patient's care;
- (c) Who is a designated mental health professional;
- (d) Who is providing services under chapter 71.24 RCW;
- (e) Who is employed by a state or local correctional facility where the person is confined or supervised; or
- (f) Who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW.

(2) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing services to the operator of a facility in which the patient resides or will reside.

(3)(a) When the person receiving services, or his or her guardian, designates persons to whom information or records may be released, or if the person is a minor, when his or her parents make such designation.

(b) A public or private agency shall release to a person's next of kin, attorney, personal representative, guardian, or conservator, if any:

(i) The information that the person is presently a patient in the facility or that the person is seriously physically ill;

(ii) A statement evaluating the mental and physical condition of the patient, and a statement of the probable duration of the patient's confinement, if such information is requested by the next of kin, attorney, personal representative, guardian, or conservator; and

(iii) Such other information requested by the next of kin or attorney as may be necessary to decide whether or not proceedings should be instituted to appoint a guardian or conservator.

(4) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(5)(a) For either program evaluation or research, or both: PROVIDED, That the secretary adopts rules for the conduct of the evaluation or research, or both. Such rules shall include, but need not be limited to, the requirement that all evaluators and researchers must sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in

the facility, agency, or person) I, . . . . ., agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/ . . . . . "

(b) Nothing in this chapter shall be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary.

(6)(a) To the courts as necessary to the administration of this chapter or to a court ordering an evaluation or treatment under chapter 10.77 RCW solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered under this chapter.

(b) To a court or its designee in which a motion under chapter 10.77 RCW has been made for involuntary medication of a defendant for the purpose of competency restoration.

(c) Disclosure under this subsection is mandatory for the purpose of the health insurance portability and accountability act.

(7)(a) When a mental health professional is requested by a representative of a law enforcement or corrections agency, including a police officer, sheriff, community corrections officer, a municipal attorney, or prosecuting attorney to undertake an investigation under RCW 71.05.150, the mental health professional shall, if requested to do so, advise the representative in writing of the results of the investigation including a statement of reasons for the decision to detain or release the person investigated. Such written report shall be submitted within seventy-two hours of the completion of the investigation or the request from the law enforcement or corrections representative, whichever occurs later.

(b) To law enforcement officers, public health officers, or personnel of the department of corrections or the indeterminate sentence review board for persons who are the subject of the records and who are committed to the custody or supervision of the department of corrections or indeterminate sentence review board which information or records are necessary to carry out the responsibilities of their office. Except for dissemination of information released pursuant to RCW 71.05.425 and 4.24.550, regarding persons committed under this chapter under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, the extent of information that may be released is limited as follows:

(i) Only the fact, place, and date of involuntary commitment, the fact and date of discharge or release, and the last known address shall be disclosed upon request;

(ii) The law enforcement and public health officers or personnel of the department of corrections or indeterminate sentence review board shall be obligated to keep such information confidential in accordance with this chapter;

(iii) Additional information shall be disclosed only after giving notice to said person and his or her counsel and upon a showing of clear, cogent, and convincing evidence that such information is necessary and that appropriate safeguards for strict confidentiality are and will be maintained. However, in the event the said person has escaped from custody, said notice prior to disclosure is not necessary and that the facility from which the person escaped shall include an evaluation as to whether the person is of danger to persons or property and has a propensity toward violence;

(iv) Information and records shall be disclosed to the department of corrections pursuant to and in compliance with the provisions of RCW 71.05.445 for the purposes of completing presentence investigations or risk assessment reports, supervision of an incarcerated offender or offender under supervision in the community, planning for and provision of supervision of an offender, or assessment of an offender's risk to the community; and

(v) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

(8) To the attorney of the detained person.

(9) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2) and 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information shall be disclosed only after giving notice to the committed person and the person's counsel.

(10) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure shall be made by the professional person in charge of the public or private agency or his or her designee and shall include the dates of commitment, admission, discharge, or release, authorized or unauthorized absence from the agency's facility, and only such other information that is pertinent to the threat or harassment. The decision to disclose or not shall not result in civil liability for the agency or its employees so long as the decision was reached in good faith and without gross negligence.

(11) To appropriate corrections and law enforcement agencies all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The decision to disclose or not shall not result in civil liability for the mental health service provider or its employees so long as the decision was reached in good faith and without gross negligence.

(12) To the persons designated in RCW 71.05.425 for the purposes described in that section.

(13) Civil liability and immunity for the release of information about a particular person who is committed to the department under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

(14) Upon the death of a person, his or her next of kin, personal representative, guardian, or conservator, if any, shall be notified.

Next of kin who are of legal age and competent shall be notified under this section in the following order: Spouse, parents, children, brothers and sisters, and other relatives according to the degree of relation. Access to all records and information compiled, obtained, or maintained in the course of providing services to a deceased patient shall be governed by RCW 70.02.140.

(15) To the department of health for the purposes of determining compliance with state or federal licensure, certification, or registration rules or laws. However, the information and records obtained under this subsection are exempt from public inspection and copying pursuant to chapter 42.56 RCW.

(16) To mark headstones or otherwise memorialize patients interred at state hospital cemeteries. The department of social and health services shall make available the name, date of birth, and date of death of patients buried in state hospital cemeteries fifty years after the death of a patient.

(17) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)(ii). The extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW 9.41.047(1), shall be disclosed upon request;

(b) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating RCW 9.41.040(2)(a)(ii);

(c) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

(18) When a patient would otherwise be subject to the provisions of RCW 71.05.390 and disclosure is necessary for the protection of the patient or others due to his or her unauthorized disappearance from the facility, and his or her whereabouts is unknown, notice of such disappearance, along with relevant information, may be made to relatives, the department of corrections when the person is under the supervision of the department, and governmental law enforcement agencies designated by the physician in charge of the patient or the professional person in charge of the facility, or his or her professional designee.

Except as otherwise provided in this chapter, the uniform health care information act, chapter 70.02 RCW, applies to all records and information compiled, obtained, or maintained in the course of providing services.

(19) The fact of admission, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to this chapter shall not be admissible as evidence in any legal proceeding outside this chapter without the written consent of the person who was the subject of the proceeding except in a subsequent criminal prosecution of a person committed pursuant to RCW 71.05.280(3) or 71.05.320(2)(c) on charges that were dismissed pursuant to

chapter 10.77 RCW due to incompetency to stand trial, in a civil commitment proceeding pursuant to chapter 71.09 RCW, or, in the case of a minor, a guardianship or dependency proceeding. The records and files maintained in any court proceeding pursuant to this chapter shall be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained. [2005 c 504 § 109; 2005 c 453 § 5; 2005 c 274 § 346. Prior: 2004 c 166 § 6; 2004 c 157 § 5; 2004 c 33 § 2; prior: 2000 c 94 § 9; 2000 c 75 § 6; 2000 c 74 § 7; 1999 c 12 § 1; 1998 c 297 § 22; 1993 c 448 § 6; 1990 c 3 § 112; 1986 c 67 § 8; 1985 c 207 § 1; 1983 c 196 § 4; 1979 ex.s. c 215 § 17; 1975 1st ex.s. c 199 § 10; 1974 ex.s. c 145 § 27; 1973 1st ex.s. c 142 § 44.]

**Reviser's note:** This section was amended by 2005 c 274 § 346, 2005 c 453 § 5, and by 2005 c 504 § 109, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Severability—2005 c 453:** See note following RCW 9.41.040.

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Severability—Effective dates—2004 c 166:** See notes following RCW 71.05.040.

**Findings—Intent—Severability—Effective date—2004 c 157:** See notes following RCW 10.77.010.

**Finding—Intent—2004 c 33:** "The legislature finds that social stigmas surrounding mental illness have prevented patients buried in the state hospital cemeteries from being properly memorialized. From 1887 to 1953, the state buried many of the patients who died while in residence at the three state hospitals on hospital grounds. In order to honor these patients, the legislature intends that the state be allowed to release records necessary to appropriately mark their resting place." [2004 c 33 § 1.]

**Intent—2000 c 75:** See note following RCW 71.05.445.

**Severability—2000 c 74:** See note following RCW 10.77.060.

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**Effective date—1993 c 448:** See note following RCW 70.02.010.

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

**71.05.395 through 71.05.410 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.05.420 Records of disclosure.** Except as provided in RCW 71.05.425, when any disclosure of information or records is made as authorized by RCW 71.05.390, the physician in charge of the patient or the professional person in charge of the facility shall promptly cause to be entered into the patient's medical record the date and circumstances under which said disclosure was made, the names and relationships to the patient, if any, of the persons or agencies to whom such disclosure was made, and the information disclosed. [2005 c 504 § 110; 1990 c 3 § 113; 1973 1st ex.s. c 142 § 47.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

**71.05.425 Persons committed following dismissal of sex, violent, or felony harassment offense—Notification of conditional release, final release, leave, transfer, or escape—To whom given—Definitions.** (1)(a) Except as provided in subsection (2) of this section, at the earliest possible date, and in no event later than thirty days before conditional release, final release, authorized leave under RCW 71.05.325(2), or transfer to a facility other than a state mental hospital, the superintendent shall send written notice of conditional release, release, authorized leave, or transfer of a person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.090(4) to the following:

- (i) The chief of police of the city, if any, in which the person will reside; and
- (ii) The sheriff of the county in which the person will reside.

(b) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has been requested in writing about a specific person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.090(4):

- (i) The victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.090(4) preceding commitment under RCW 71.05.280(3) or 71.05.320(2)(c) or the victim's next of kin if the crime was a homicide;
- (ii) Any witnesses who testified against the person in any court proceedings; and
- (iii) Any person specified in writing by the prosecuting attorney.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the person committed under this chapter.

(c) The thirty-day notice requirements contained in this subsection shall not apply to emergency medical transfers.

(d) The existence of the notice requirements in this subsection will not require any extension of the release date in the event the release plan changes after notification.

(2) If a person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.090(4) escapes, the superintendent shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the person resided immediately before the person's arrest. If previously requested, the superintendent shall also notify the witnesses and the victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.090(4) preceding commitment under RCW

71.05.280(3) or 71.05.320(2) or the victim's next of kin if the crime was a homicide. In addition, the secretary shall also notify appropriate parties pursuant to RCW 71.05.390(18). If the person is recaptured, the superintendent shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(3) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parent or legal guardian of the child.

(4) The superintendent shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Sex offense" means a sex offense under RCW 9.94A.030;

(c) "Next of kin" means a person's spouse, parents, siblings, and children;

(d) "Felony harassment offense" means a crime of harassment as defined in RCW 9A.46.060 that is a felony. [2005 c 504 § 710; 2000 c 94 § 10; 1999 c 13 § 8; 1994 c 129 § 9; 1992 c 186 § 9; 1990 c 3 § 109.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Purpose—Construction—1999 c 13:** See note following RCW 10.77.010.

**Findings—Intent—1994 c 129:** See note following RCW 4.24.550.

**Severability—1992 c 186:** See note following RCW 9A.46.110.

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

**71.05.430 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.05.445 Mental health services information—Release to department of corrections—Initial assessment inquiry—Required notifications—Rules.** (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Information related to mental health services" means all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services by a mental health service provider. This may include documents of legal proceedings under this chapter or chapter 71.34 or 10.77 RCW, or somatic health care information.

(b) "Mental health service provider" means a public or private agency that provides services to persons with mental disorders as defined under RCW 71.05.020 and receives funding from public sources. This includes evaluation and treatment facilities as defined in RCW 71.05.020, community mental health service delivery systems, or community mental health programs as defined in RCW 71.24.025, and facilities

conducting competency evaluations and restoration under chapter 10.77 RCW.

(2)(a) Information related to mental health services delivered to a person subject to chapter 9.94A or 9.95 RCW shall be released, upon request, by a mental health service provider to department of corrections personnel for whom the information is necessary to carry out the responsibilities of their office. The information must be provided only for the purposes of completing presentence investigations or risk assessment reports, supervision of an incarcerated offender or offender under supervision in the community, planning for and provision of supervision of an offender, or assessment of an offender's risk to the community. The request shall be in writing and shall not require the consent of the subject of the records.

(b) If an offender subject to chapter 9.94A or 9.95 RCW has failed to report for department of corrections supervision or in the event of an emergent situation that poses a significant risk to the public or the offender, information related to mental health services delivered to the offender and, if known, information regarding where the offender is likely to be found shall be released by the mental health services provider to the department of corrections upon request. The initial request may be written or oral. All oral requests must be subsequently confirmed in writing. Information released in response to an oral request is limited to a statement as to whether the offender is or is not being treated by the mental health services provider and the address or information about the location or whereabouts of the offender. Information released in response to a written request may include information identified by rule as provided in subsections (4) and (5) of this section. For purposes of this subsection a written request includes requests made by e-mail or facsimile so long as the requesting person at the department of corrections is clearly identified. The request must specify the information being requested. Disclosure of the information requested does not require the consent of the subject of the records unless the offender has received relief from disclosure under RCW 9.94A.562, 70.96A.155, or 71.05.132.

(3)(a) When a mental health service provider conducts its initial assessment for a person receiving court-ordered treatment, the service provider shall inquire and shall be told by the offender whether he or she is subject to supervision by the department of corrections.

(b) When a person receiving court-ordered treatment or treatment ordered by the department of corrections discloses to his or her mental health service provider that he or she is subject to supervision by the department of corrections, the mental health services provider shall notify the department of corrections that he or she is treating the offender and shall notify the offender that his or her community corrections officer will be notified of the treatment, provided that if the offender has received relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132 and the offender has provided the mental health services provider with a copy of the order granting relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132, the mental health services provider is not required to notify the department of corrections that the mental health services provider is treating the offender. The notification may be written or oral and shall not require the consent of the offender. If an oral notifi-

cation is made, it must be confirmed by a written notification. For purposes of this section, a written notification includes notification by e-mail or facsimile, so long as the notifying mental health service provider is clearly identified.

(4) The information to be released to the department of corrections shall include all relevant records and reports, as defined by rule, necessary for the department of corrections to carry out its duties, including those records and reports identified in subsection (2) of this section.

(5) The department and the department of corrections, in consultation with regional support networks, mental health service providers as defined in subsection (1) of this section, mental health consumers, and advocates for persons with mental illness, shall adopt rules to implement the provisions of this section related to the type and scope of information to be released. These rules shall:

(a) Enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A or 9.95 RCW, including accessing and releasing or disclosing information of persons who received mental health services as a minor; and

(b) Establish requirements for the notification of persons under the supervision of the department of corrections regarding the provisions of this section.

(6) The information received by the department of corrections under this section shall remain confidential and subject to the limitations on disclosure outlined in chapter 71.05 RCW, except as provided in RCW 72.09.585.

(7) No mental health service provider or individual employed by a mental health service provider shall be held responsible for information released to or used by the department of corrections under the provisions of this section or rules adopted under this section except under RCW 71.05.440.

(8) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

(9) This section does not modify the terms and conditions of disclosure of information related to sexually transmitted diseases under chapter 70.24 RCW.

(10) The department shall, subject to available resources, electronically, or by the most cost-effective means available, provide the department of corrections with the names, last dates of services, and addresses of specific regional support networks and mental health service providers that delivered mental health services to a person subject to chapter 9.94A or 9.95 RCW pursuant to an agreement between the departments. [2005 c 504 § 711; 2004 c 166 § 4; 2002 c 39 § 2; 2000 c 75 § 3.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Severability—Effective dates—2004 c 166:** See notes following RCW 71.05.040.

**Intent—2000 c 75:** "It is the intent of the legislature to enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to per-

sons subject to sentencing under chapter 9.94A RCW by authorizing access to, and release or disclosure of, necessary information related to mental health services. This includes accessing and releasing or disclosing information of persons who received mental health services as a minor. The legislature does not intend this act to readdress access to information and records regarding continuity of care.

The legislature recognizes that persons with mental illness have a right to the confidentiality of information related to mental health services, including the fact of their receiving such services, unless there is a state interest that supersedes this right. It is the intent of the legislature to balance that right of the individual with the state interest to enhance public safety." [2000 c 75 § 1.]

**71.05.450 through 71.05.490 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.05.550 Recognition of county financial necessities.** The department of social and health services, in planning and providing funding to counties pursuant to chapter 71.24 RCW, shall recognize the financial necessities imposed upon counties by implementation of this chapter and chapter 70.96B RCW, and shall consider needs, if any, for additional community mental health services and facilities and reduction in commitments to state hospitals for the mentally ill accomplished by individual counties, in planning and providing such funding. The state shall provide financial assistance to the counties to enable the counties to meet all increased costs, if any, to the counties resulting from their administration of the provisions of chapter 142, Laws of 1973 1st ex. sess. [2005 c 504 § 218; 1973 1st ex. s. c 142 § 60.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**71.05.610 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.05.620 Court files and records closed—Exceptions.** The files and records of court proceedings under this chapter and chapters 70.96A, 71.34, and 70.96B RCW shall be closed but shall be accessible to any person who is the subject of a petition and to the person's attorney, guardian ad litem, resource management services, or service providers authorized to receive such information by resource management services. [2005 c 504 § 111; 1989 c 205 § 12.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Contingent effective date—1989 c 205 §§ 11-19:** See note following RCW 71.05.610.

**71.05.630 Treatment records—Confidential—Release.** (1) Except as otherwise provided by law, all treatment records shall remain confidential and may be released only to the persons designated in this section, or to other persons designated in an informed written consent of the patient.

(2) Treatment records of a person may be released without informed written consent in the following circumstances:

(a) To a person, organization, or agency as necessary for management or financial audits, or program monitoring and evaluation. Information obtained under this subsection shall remain confidential and may not be used in a manner that discloses the name or other identifying information about the person whose records are being released.

(b) To the department, the director of regional support networks, or a qualified staff member designated by the director only when necessary to be used for billing or collection purposes. The information shall remain confidential.

(c) For purposes of research as permitted in chapter 42.48 RCW.

(d) Pursuant to lawful order of a court.

(e) To qualified staff members of the department, to the director of regional support networks, to resource management services responsible for serving a patient, or to service providers designated by resource management services as necessary to determine the progress and adequacy of treatment and to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility. The information shall remain confidential.

(f) Within the treatment facility where the patient is receiving treatment, confidential information may be disclosed to persons employed, serving in bona fide training programs, or participating in supervised volunteer programs, at the facility when it is necessary to perform their duties.

(g) Within the department as necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse of persons who are under the supervision of the department.

(h) To a licensed physician who has determined that the life or health of the person is in danger and that treatment without the information contained in the treatment records could be injurious to the patient's health. Disclosure shall be limited to the portions of the records necessary to meet the medical emergency.

(i) To a facility that is to receive a person who is involuntarily committed under chapter 71.05 RCW, or upon transfer of the person from one treatment facility to another. The release of records under this subsection shall be limited to the treatment records required by law, a record or summary of all somatic treatments, and a discharge summary. The discharge summary may include a statement of the patient's problem, the treatment goals, the type of treatment which has been provided, and recommendation for future treatment, but may not include the patient's complete treatment record.

(j) Notwithstanding the provisions of RCW 71.05.390(7), to a correctional facility or a corrections officer who is responsible for the supervision of a person who is receiving inpatient or outpatient evaluation or treatment. Except as provided in RCW 71.05.445 and \*71.34.225, release of records under this section is limited to:

(i) An evaluation report provided pursuant to a written supervision plan.

(ii) The discharge summary, including a record or summary of all somatic treatments, at the termination of any treatment provided as part of the supervision plan.

(iii) When a person is returned from a treatment facility to a correctional facility, the information provided under (j)(iv) of this subsection.

(iv) Any information necessary to establish or implement changes in the person's treatment plan or the level or kind of supervision as determined by resource management services. In cases involving a person transferred back to a correctional facility, disclosure shall be made to clinical staff only.

(k) To the person's counsel or guardian ad litem, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or patient's rights under chapter 71.05 RCW.

(l) To staff members of the protection and advocacy agency or to staff members of a private, nonprofit corporation for the purpose of protecting and advocating the rights of persons with mental disorders or developmental disabilities. Resource management services may limit the release of information to the name, birthdate, and county of residence of the patient, information regarding whether the patient was voluntarily admitted, or involuntarily committed, the date and place of admission, placement, or commitment, the name and address of a guardian of the patient, and the date and place of the guardian's appointment. Any staff member who wishes to obtain additional information shall notify the patient's resource management services in writing of the request and of the resource management services' right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within fifteen days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within fifteen days after the notice is mailed, the staff member may not obtain the additional information.

(3) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for chemical dependency, the department may restrict the release of the information as necessary to comply with federal law and regulations. [2005 c 504 § 112; 2000 c 75 § 5; 1989 c 205 § 13.]

**\*Reviser's note:** RCW 71.34.225 was recodified as RCW 71.34.345 pursuant to 2005 c 371 § 6.

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Intent—2000 c 75:** See note following RCW 71.05.445.

**Contingent effective date—1989 c 205 §§ 11-19:** See note following RCW 71.05.610.

#### **71.05.640 Treatment records—Access procedures.**

(1) Procedures shall be established by resource management services to provide reasonable and timely access to individual treatment records. However, access may not be denied at any time to records of all medications and somatic treatments received by the person.

(2) Following discharge, the person shall have a right to a complete record of all medications and somatic treatments prescribed during evaluation, admission, or commitment and to a copy of the discharge summary prepared at the time of his or her discharge. A reasonable and uniform charge for reproduction may be assessed.

(3) Treatment records may be modified prior to inspection to protect the confidentiality of other patients or the names of any other persons referred to in the record who gave information on the condition that his or her identity remain confidential. Entire documents may not be withheld to protect such confidentiality.

(4) At the time of discharge all persons shall be informed by resource management services of their rights as provided in RCW 71.05.390 and 71.05.620 through 71.05.690. [2005 c 504 § 712; 2005 c 504 § 113; 2000 c 94 § 11; 1999 c 13 § 9. Prior: 1989 c 205 § 14.]

**Reviser's note:** This section was amended by 2005 c 504 § 113 and by 2005 c 504 § 712, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Purpose—Construction—1999 c 13:** See note following RCW 10.77.010.

**Contingent effective date—1989 c 205 §§ 11-19:** See note following RCW 71.05.610.

**71.05.650 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.05.660 Treatment records—Privileged communications unaffected.** Nothing in this chapter or chapter 70.96A, 71.05, 71.34, or 70.96B RCW shall be construed to interfere with communications between physicians or psychologists and patients and attorneys and clients. [2005 c 504 § 114; 1989 c 205 § 16.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Contingent effective date—1989 c 205 §§ 11-19:** See note following RCW 71.05.610.

**71.05.670 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.05.680 Treatment records—Access under false pretenses, penalty.** Any person who requests or obtains confidential information pursuant to RCW 71.05.620 through 71.05.690 under false pretenses shall be guilty of a gross misdemeanor. [2005 c 504 § 713; 1999 c 13 § 11. Prior: 1989 c 205 § 18.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Purpose—Construction—1999 c 13:** See note following RCW 10.77.010.

**Contingent effective date—1989 c 205 §§ 11-19:** See note following RCW 71.05.610.

**71.05.690 Treatment records—Rules.** The department shall adopt rules to implement RCW 71.05.620 through

71.05.680. [2005 c 504 § 714; 1999 c 13 § 12. Prior: 1989 c 205 § 19.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Purpose—Construction—1999 c 13:** See note following RCW 10.77.010.

**Contingent effective date—1989 c 205 §§ 11-19:** See note following RCW 71.05.610.

## Chapter 71.09 RCW

### SEXUALLY VIOLENT PREDATORS

#### Sections

71.09.090 Petition for conditional release to less restrictive alternative or unconditional discharge—Procedures.

**71.09.090 Petition for conditional release to less restrictive alternative or unconditional discharge—Procedures.** (1) If the secretary determines that the person's condition has so changed that either: (a) The person no longer meets the definition of a sexually violent predator; or (b) conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that adequately protect the community, the secretary shall authorize the person to petition the court for conditional release to a less restrictive alternative or unconditional discharge. The petition shall be filed with the court and served upon the prosecuting agency responsible for the initial commitment. The court, upon receipt of the petition for conditional release to a less restrictive alternative or unconditional discharge, shall within forty-five days order a hearing.

(2)(a) Nothing contained in this chapter shall prohibit the person from otherwise petitioning the court for conditional release to a less restrictive alternative or unconditional discharge without the secretary's approval. The secretary shall provide the committed person with an annual written notice of the person's right to petition the court for conditional release to a less restrictive alternative or unconditional discharge over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall file the notice and waiver form and the annual report with the court. If the person does not affirmatively waive the right to petition, the court shall set a show cause hearing to determine whether probable cause exists to warrant a hearing on whether the person's condition has so changed that: (i) He or she no longer meets the definition of a sexually violent predator; or (ii) conditional release to a proposed less restrictive alternative would be in the best interest of the person and conditions can be imposed that would adequately protect the community.

(b) The committed person shall have a right to have an attorney represent him or her at the show cause hearing, which may be conducted solely on the basis of affidavits or declarations, but the person is not entitled to be present at the show cause hearing. At the show cause hearing, the prosecuting attorney or attorney general shall present prima facie evidence establishing that the committed person continues to meet the definition of a sexually violent predator and that a less restrictive alternative is not in the best interest of the per-

son and conditions cannot be imposed that adequately protect the community. In making this showing, the state may rely exclusively upon the annual report prepared pursuant to RCW 71.09.070. The committed person may present responsive affidavits or declarations to which the state may reply.

(c) If the court at the show cause hearing determines that either: (i) The state has failed to present prima facie evidence that the committed person continues to meet the definition of a sexually violent predator and that no proposed less restrictive alternative is in the best interest of the person and conditions cannot be imposed that would adequately protect the community; or (ii) probable cause exists to believe that the person's condition has so changed that: (A) The person no longer meets the definition of a sexually violent predator; or (B) release to a proposed less restrictive alternative would be in the best interest of the person and conditions can be imposed that would adequately protect the community, then the court shall set a hearing on either or both issues.

(d) If the court has not previously considered the issue of release to a less restrictive alternative, either through a trial on the merits or through the procedures set forth in RCW 71.09.094(1), the court shall consider whether release to a less restrictive alternative would be in the best interests of the person and conditions can be imposed that would adequately protect the community, without considering whether the person's condition has changed.

(3)(a) At the hearing resulting from subsection (1) or (2) of this section, the committed person shall be entitled to be present and to the benefit of all constitutional protections that were afforded to the person at the initial commitment proceeding. The prosecuting agency or the attorney general if requested by the county shall represent the state and shall have a right to a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person shall also have the right to a jury trial and the right to have experts evaluate him or her on his or her behalf and the court shall appoint an expert if the person is indigent and requests an appointment.

(b) If the issue at the hearing is whether the person should be unconditionally discharged, the burden of proof shall be upon the state to prove beyond a reasonable doubt that the committed person's condition remains such that the person continues to meet the definition of a sexually violent predator. Evidence of the prior commitment trial and disposition is admissible.

(c) If the issue at the hearing is whether the person should be conditionally released to a less restrictive alternative, the burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that conditional release to any proposed less restrictive alternative either: (i) Is not in the best interest of the committed person; or (ii) does not include conditions that would adequately protect the community. Evidence of the prior commitment trial and disposition is admissible.

(4)(a) Probable cause exists to believe that a person's condition has "so changed," under subsection (2) of this section, only when evidence exists, since the person's last commitment trial proceeding, of a substantial change in the person's physical or mental condition such that the person either no longer meets the definition of a sexually violent predator or that a conditional release to a less restrictive alternative is



in the person's best interest and conditions can be imposed to adequately protect the community.

(b) A new trial proceeding under subsection (3) of this section may be ordered, or held, only when there is current evidence from a licensed professional of one of the following and the evidence presents a change in condition since the person's last commitment trial proceeding:

(i) An identified physiological change to the person, such as paralysis, stroke, or dementia, that renders the committed person unable to commit a sexually violent act and this change is permanent; or

(ii) A change in the person's mental condition brought about through positive response to continuing participation in treatment which indicates that the person meets the standard for conditional release to a less restrictive alternative or that the person would be safe to be at large if unconditionally released from commitment.

(c) For purposes of this section, a change in a single demographic factor, without more, does not establish probable cause for a new trial proceeding under subsection (3) of this section. As used in this section, a single demographic factor includes, but is not limited to, a change in the chronological age, marital status, or gender of the committed person.

(5) The jurisdiction of the court over a person civilly committed pursuant to this chapter continues until such time as the person is unconditionally discharged. [2005 c 344 § 2; 2001 c 286 § 9; 1995 c 216 § 9; 1992 c 45 § 7; 1990 c 3 § 1009.]

**Findings—Intent—2005 c 344:** "The legislature finds that the decisions in *In re Young*, 120 Wn. App. 753, review denied, \_\_\_ Wn.2d \_\_\_ (2004) and *In re Ward*, \_\_\_ Wn. App. \_\_\_ (2005) illustrate an unintended consequence of language in chapter 71.09 RCW.

The *Young* and *Ward* decisions are contrary to the legislature's intent set forth in RCW 71.09.010 that civil commitment pursuant to chapter 71.09 RCW address the "very long-term" needs of the sexually violent predator population for treatment and the equally long-term needs of the community for protection from these offenders. The legislature finds that the mental abnormalities and personality disorders that make a person subject to commitment under chapter 71.09 RCW are severe and chronic and do not remit due solely to advancing age or changes in other demographic factors.

The legislature finds, although severe medical conditions like stroke, paralysis, and some types of dementia can leave a person unable to commit further sexually violent acts, that a mere advance in age or a change in gender or some other demographic factor after the time of commitment does not merit a new trial proceeding under RCW 71.09.090. To the contrary, the legislature finds that a new trial ordered under the circumstances set forth in *Young* and *Ward* subverts the statutory focus on treatment and reduces community safety by removing all incentive for successful treatment participation in favor of passive aging and distracting committed persons from fully engaging in sex offender treatment.

The *Young* and *Ward* decisions are contrary to the legislature's intent that the risk posed by persons committed under chapter 71.09 RCW will generally require prolonged treatment in a secure facility followed by intensive community supervision in the cases where positive treatment gains are sufficient for community safety. The legislature has, under the guidance of the federal court, provided avenues through which committed persons who successfully progress in treatment will be supported by the state in a conditional release to a less restrictive alternative that is in the best interest of the committed person and provides adequate safeguards to the community and is the appropriate next step in the person's treatment.

The legislature also finds that, in some cases, a committed person may appropriately challenge whether he or she continues to meet the criteria for commitment. Because of this, the legislature enacted RCW 71.09.070 and 71.09.090, requiring a regular review of a committed person's status and permitting the person the opportunity to present evidence of a relevant change in condition from the time of the last commitment trial proceeding. These provisions are intended only to provide a method of revisiting the indefinite commitment due to a relevant change in the person's condition, not an alternate method of collaterally attacking a person's indefinite commitment for

reasons unrelated to a change in condition. Where necessary, other existing statutes and court rules provide ample opportunity to resolve any concerns about prior commitment trials. Therefore, the legislature intends to clarify the "so changed" standard." [2005 c 344 § 1.]

**Severability—2005 c 344:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 344 § 3.]

**Effective date—2005 c 344:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 2005]." [2005 c 344 § 4.]

**Recommendations—Application—Effective date—2001 c 286:** See notes following RCW 71.09.015.

**Severability—Application—1992 c 45:** See notes following RCW 9.94A.840.

## Chapter 71.24 RCW

### COMMUNITY MENTAL HEALTH SERVICES ACT

#### Sections

71.24.015	Legislative intent and policy.
71.24.025	Definitions ( <i>as amended by 2005 c 503</i> ).
71.24.025	Definitions ( <i>as amended by 2005 c 504</i> ).
71.24.030	Grants, purchasing of services, for community mental health programs.
71.24.035	Secretary's powers and duties as state mental health authority—Secretary designated as regional support network, when.
71.24.045	Regional support network powers and duties.
71.24.100	Joint agreements of county authorities—Required provisions.
71.24.240	County program plans to be approved by secretary prior to submittal to federal agency.
71.24.300	Regional support networks—Inclusion of tribal authorities—Roles and responsibilities.
71.24.320	Regional support networks—Procurement process—Request for qualifications.
71.24.3201	Contracts for regional support network services. ( <i>Expires June 30, 2007.</i> )
71.24.330	Regional support networks—Contracts with department—Requirements.
71.24.340	Regional support networks—Eligibility for medical assistance upon release from confinement—Interlocal agreements.
71.24.350	Mental health ombudsman office.
71.24.360	Establishment of new regional support networks.

**71.24.015 Legislative intent and policy.** It is the intent of the legislature to establish a community mental health program which shall help people experiencing mental illness to retain a respected and productive position in the community. This will be accomplished through programs that focus on resilience and recovery, and practices that are evidence-based, research-based, consensus-based, or, where these do not exist, promising or emerging best practices, which provide for:

(1) Access to mental health services for adults of the state who are acutely mentally ill, chronically mentally ill, or seriously disturbed and children of the state who are acutely mentally ill, severely emotionally disturbed, or seriously disturbed, which services recognize the special needs of underserved populations, including minorities, children, the elderly, disabled, and low-income persons. Access to mental health services shall not be limited by a person's history of confinement in a state, federal, or local correctional facility. It is also the purpose of this chapter to promote the early identification of mentally ill children and to ensure that they receive the mental health care and treatment which is appropriate to their developmental level. This care should improve

home, school, and community functioning, maintain children in a safe and nurturing home environment, and should enable treatment decisions to be made in response to clinical needs in accordance with sound professional judgment while also recognizing parents' rights to participate in treatment decisions for their children;

(2) The involvement of persons with mental illness, their family members, and advocates in designing and implementing mental health services that reduce unnecessary hospitalization and incarceration and promote the recovery and employment of persons with mental illness. To improve the quality of services available and promote the rehabilitation, recovery, and reintegration of persons with mental illness, consumer and advocate participation in mental health services is an integral part of the community mental health system and shall be supported;

(3) Accountability of efficient and effective services through state of the art outcome and performance measures and statewide standards for monitoring client and system outcomes, performance, and reporting of client and system outcome information. These processes shall be designed so as to maximize the use of available resources for direct care of people with a mental illness and to assure uniform data collection across the state;

(4) Minimum service delivery standards;

(5) Priorities for the use of available resources for the care of the mentally ill consistent with the priorities defined in the statute;

(6) Coordination of services within the department, including those divisions within the department that provide services to children, between the department and the office of the superintendent of public instruction, and among state mental hospitals, county authorities, regional support networks, community mental health services, and other support services, which shall to the maximum extent feasible also include the families of the mentally ill, and other service providers; and

(7) Coordination of services aimed at reducing duplication in service delivery and promoting complementary services among all entities that provide mental health services to adults and children.

It is the policy of the state to encourage the provision of a full range of treatment and rehabilitation services in the state for mental disorders including services operated by consumers and advocates. The legislature intends to encourage the development of regional mental health services with adequate local flexibility to assure eligible people in need of care access to the least-restrictive treatment alternative appropriate to their needs, and the availability of treatment components to assure continuity of care. To this end, counties are encouraged to enter into joint operating agreements with other counties to form regional systems of care. Regional systems of care, whether operated by a county, group of counties, or another entity shall integrate planning, administration, and service delivery duties under chapters 71.05 and 71.24 RCW to consolidate administration, reduce administrative layering, and reduce administrative costs. The legislature hereby finds and declares that sound fiscal management requires vigilance to ensure that funds appropriated by the legislature for the provision of needed community mental health programs and services are ultimately expended solely

for the purpose for which they were appropriated, and not for any other purpose.

It is further the intent of the legislature to integrate the provision of services to provide continuity of care through all phases of treatment. To this end the legislature intends to promote active engagement with mentally ill persons and collaboration between families and service providers. [2005 c 503 § 1. Prior: 2001 c 334 § 6; 2001 c 323 § 1; 1999 c 214 § 7; 1991 c 306 § 1; 1989 c 205 § 1; 1986 c 274 § 1; 1982 c 204 § 2.]

**Correction of references—2005 c 503:** "The code reviser shall replace all references to "county designated mental health professional" with "designated mental health professional" in the Revised Code of Washington." [2005 c 503 § 16.]

**Savings—2005 c 503:** "This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections." [2005 c 503 § 17.]

**Severability—2005 c 503:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 503 § 18.]

**Effective date—2001 c 334:** See note following RCW 71.24.805.

**Intent—Effective date—1999 c 214:** See notes following RCW 72.09.370.

**Conflict with federal requirements—1991 c 306:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

However, if any part of this act conflicts with such federal requirements, the state appropriation for mental health services provided to children whose mental disorders are discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment program shall be provided through the division of medical assistance and no state funds appropriated to the division of mental health shall be expended or transferred for this purpose." [1991 c 306 § 7.]

**Effective date—1986 c 274 §§ 1, 2, 3, 5, and 9:** "Sections 1, 2, 3, 5, and 9 of this act shall take effect on July 1, 1987." [1986 c 274 § 11.]

**71.24.025 Definitions (as amended by 2005 c 503).** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Acutely mentally ill" means a condition which is limited to a short-term severe crisis episode of:

(a) A mental disorder as defined in RCW 71.05.020 or, in the case of a child, as defined in RCW 71.34.020;

(b) Being gravely disabled as defined in RCW 71.05.020 or, in the case of a child, a gravely disabled minor as defined in RCW 71.34.020; or

(c) Presenting a likelihood of serious harm as defined in RCW 71.05.020 or, in the case of a child, as defined in RCW 71.34.020.

(2) "Available resources" means funds appropriated for the purpose of providing community mental health programs (~~under RCW 71.24.045~~), federal funds, except those provided according to Title XIX of the Social Security Act, and state funds appropriated under this chapter or chapter 71.05 RCW by the legislature during any biennium for the purpose of providing residential services, resource management services, community support services, and other mental health services. This does not include funds appropriated for the purpose of operating and administering the state psychiatric hospitals, except as negotiated according to RCW 71.24.300(1)(~~e~~)(~~d~~).

(3) "Child" means a person under the age of eighteen years.

(4) "Chronically mentally ill adult" means an adult who has a mental disorder and meets at least one of the following criteria:

(a) Has undergone two or more episodes of hospital care for a mental disorder within the preceding two years; or

(b) Has experienced a continuous psychiatric hospitalization or residential treatment exceeding six months' duration within the preceding year; or

(c) Has been unable to engage in any substantial gainful activity by reason of any mental disorder which has lasted for a continuous period of not less than twelve months. "Substantial gainful activity" shall be defined by the department by rule consistent with Public Law 92-603, as amended.

(5) "Community mental health program" means all mental health services, activities, or programs using available resources.

(6) "Community mental health service delivery system" means public or private agencies that provide services specifically to persons with mental disorders as defined under RCW 71.05.020 and receive funding from public sources.

(7) "Community support services" means services authorized, planned, and coordinated through resource management services including, at a minimum, assessment, diagnosis, emergency crisis intervention available twenty-four hours, seven days a week, prescreening determinations for mentally ill persons being considered for placement in nursing homes as required by federal law, screening for patients being considered for admission to residential services, diagnosis and treatment for acutely mentally ill and severely emotionally disturbed children discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment program, investigation, legal, and other nonresidential services under chapter 71.05 RCW, case management services, psychiatric treatment including medication supervision, counseling, psychotherapy, assuring transfer of relevant patient information between service providers, recovery services, and other services determined by regional support networks.

(8) "Consensus-based" means a program or practice that has general support among treatment providers and experts, based on experience or professional literature, and may have anecdotal or case study support, or that is agreed but not possible to perform studies with random assignment and controlled groups.

(9) "County authority" means the board of county commissioners, county council, or county executive having authority to establish a community mental health program, or two or more of the county authorities specified in this subsection which have entered into an agreement to provide a community mental health program.

~~((9))~~ (10) "Department" means the department of social and health services.

~~((40))~~ (11) "Designated mental health professional" means a mental health professional designated by the county or other authority authorized in rule to perform the duties specified in this chapter.

(12) "Emerging best practice" or "promising practice" means a practice that presents, based on preliminary information, potential for becoming a research-based or consensus-based practice.

(13) "Evidence-based" means a program or practice that has had multiple site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective for the population.

(14) "Licensed service provider" means an entity licensed according to this chapter or chapter 71.05 RCW or an entity deemed to meet state minimum standards as a result of accreditation by a recognized behavioral health accrediting body recognized and having a current agreement with the department, that meets state minimum standards or individuals licensed under chapter 18.57, 18.71, 18.83, or 18.79 RCW, as it applies to registered nurses and advanced registered nurse practitioners.

~~((4))~~ (15) "Mental health services" means all services provided by regional support networks and other services provided by the state for the mentally ill.

~~((2))~~ (16) "Mentally ill persons" and "the mentally ill" mean persons and conditions defined in subsections (1), (4), ~~((7))~~ (24), and ~~((8))~~ (25) of this section.

~~((3))~~ (17) "Recovery" means the process in which people are able to live, work, learn, and participate fully in their communities.

(18) "Regional support network" means a county authority or group of county authorities or other entity recognized by the secretary ~~((that enter into joint operating agreements to contract with the secretary pursuant to this chapter))~~ in contract in a defined region.

~~((4))~~ (19) "Residential services" means a complete range of residences and supports authorized by resource management services and which may involve a facility, a distinct part thereof, or services which support community living, for acutely mentally ill persons, chronically mentally ill adults, severely emotionally disturbed children, or seriously disturbed adults determined by the regional support network to be at risk of becoming acutely or chronically mentally ill. The services shall include at least evaluation and treatment services as defined in chapter 71.05 RCW, acute crisis respite care, long-term adaptive and rehabilitative care, and supervised and supported liv-

ing services, and shall also include any residential services developed to service mentally ill persons in nursing homes, boarding homes, and adult family homes. Residential services for children in out-of-home placements related to their mental disorder shall not include the costs of food and shelter, except for children's long-term residential facilities existing prior to January 1, 1991.

~~((15))~~ (20) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(21) "Resilience" means the personal and community qualities that enable individuals to rebound from adversity, trauma, tragedy, threats, or other stresses, and to live productive lives.

(22) "Resource management services" mean the planning, coordination, and authorization of residential services and community support services administered pursuant to an individual service plan for: (a) Acutely mentally ill adults and children; (b) chronically mentally ill adults; (c) severely emotionally disturbed children; or (d) seriously disturbed adults determined solely by a regional support network to be at risk of becoming acutely or chronically mentally ill. Such planning, coordination, and authorization shall include mental health screening for children eligible under the federal Title XIX early and periodic screening, diagnosis, and treatment program. Resource management services include seven day a week, twenty-four hour a day availability of information regarding mentally ill adults' and children's enrollment in services and their individual service plan to county-designated mental health professionals, evaluation and treatment facilities, and others as determined by the regional support network.

~~((46))~~ (23) "Secretary" means the secretary of social and health services.

~~((47))~~ (24) "Seriously disturbed person" means a person who:

(a) Is gravely disabled or presents a likelihood of serious harm to himself or herself or others, or to the property of others, as a result of a mental disorder as defined in chapter 71.05 RCW;

(b) Has been on conditional release status, or under a less restrictive alternative order, at some time during the preceding two years from an evaluation and treatment facility or a state mental health hospital;

(c) Has a mental disorder which causes major impairment in several areas of daily living;

(d) Exhibits suicidal preoccupation or attempts; or

(e) Is a child diagnosed by a mental health professional, as defined in chapter 71.34 RCW, as experiencing a mental disorder which is clearly interfering with the child's functioning in family or school or with peers or is clearly interfering with the child's personality development and learning.

~~((48))~~ (25) "Severely emotionally disturbed child" means a child who has been determined by the regional support network to be experiencing a mental disorder as defined in chapter 71.34 RCW, including those mental disorders that result in a behavioral or conduct disorder, that is clearly interfering with the child's functioning in family or school or with peers and who meets at least one of the following criteria:

(a) Has undergone inpatient treatment or placement outside of the home related to a mental disorder within the last two years;

(b) Has undergone involuntary treatment under chapter 71.34 RCW within the last two years;

(c) Is currently served by at least one of the following child-serving systems: Juvenile justice, child-protection/welfare, special education, or developmental disabilities;

(d) Is at risk of escalating maladjustment due to:

(i) Chronic family dysfunction involving a mentally ill or inadequate caretaker;

(ii) Changes in custodial adult;

(iii) Going to, residing in, or returning from any placement outside of the home, for example, psychiatric hospital, short-term inpatient, residential treatment, group or foster home, or a correctional facility;

(iv) Subject to repeated physical abuse or neglect;

(v) Drug or alcohol abuse; or

(vi) Homelessness.

~~((49))~~ (26) "State minimum standards" means minimum requirements established by rules adopted by the secretary and necessary to implement this chapter for: (a) Delivery of mental health services; (b) licensed service providers for the provision of mental health services; (c) residential services; and (d) community support services and resource management services.

~~((20))~~ (27) "Tribal authority," for the purposes of this section and RCW 71.24.300 only, means: The federally recognized Indian tribes and the major Indian organizations recognized by the secretary insofar as these organizations do not have a financial relationship with any regional support network that would present a conflict of interest. [2005 c 503 § 2; 2001 c 323 §

8; 1999 c 10 § 2; 1997 c 112 § 38; 1995 c 96 § 4. Prior: 1994 sp.s. c 9 § 748; 1994 c 204 § 1; 1991 c 306 § 2; 1989 c 205 § 2; 1986 c 274 § 2; 1982 c 204 § 3.]

**Correction of references—Savings—Severability—2005 c 503:** See notes following RCW 71.24.015.

**71.24.025 Definitions (as amended by 2005 c 504).** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Acutely mentally ill" means a condition which is limited to a short-term severe crisis episode of:

(a) A mental disorder as defined in RCW 71.05.020 or, in the case of a child, as defined in RCW 71.34.020;

(b) Being gravely disabled as defined in RCW 71.05.020 or, in the case of a child, a gravely disabled minor as defined in RCW 71.34.020; or

(c) Presenting a likelihood of serious harm as defined in RCW 71.05.020 or, in the case of a child, as defined in RCW 71.34.020.

(2) "Available resources" means funds appropriated for the purpose of providing community mental health programs (~~under RCW 71.24.045~~), federal funds, except those provided according to Title XIX of the Social Security Act, and state funds appropriated under this chapter or chapter 71.05 RCW by the legislature during any biennium for the purpose of providing residential services, resource management services, community support services, and other mental health services. This does not include funds appropriated for the purpose of operating and administering the state psychiatric hospitals, except as negotiated according to RCW 71.24.300(1)(c).

(3) "Child" means a person under the age of eighteen years.

(4) "Chronically mentally ill adult" means an adult who has a mental disorder and meets at least one of the following criteria:

(a) Has undergone two or more episodes of hospital care for a mental disorder within the preceding two years; or

(b) Has experienced a continuous psychiatric hospitalization or residential treatment exceeding six months' duration within the preceding year; or

(c) Has been unable to engage in any substantial gainful activity by reason of any mental disorder which has lasted for a continuous period of not less than twelve months. "Substantial gainful activity" shall be defined by the department by rule consistent with Public Law 92-603, as amended.

(5) "Community mental health program" means all mental health services, activities, or programs using available resources.

(6) "Community mental health service delivery system" means public or private agencies that provide services specifically to persons with mental disorders as defined under RCW 71.05.020 and receive funding from public sources.

(7) "Community support services" means services authorized, planned, and coordinated through resource management services including, at a minimum, assessment, diagnosis, emergency crisis intervention available twenty-four hours, seven days a week, prescreening determinations for mentally ill persons being considered for placement in nursing homes as required by federal law, screening for patients being considered for admission to residential services, diagnosis and treatment for acutely mentally ill and severely emotionally disturbed children discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment program, investigation, legal, and other nonresidential services under chapter 71.05 RCW, case management services, psychiatric treatment including medication supervision, counseling, psychotherapy, assuring transfer of relevant patient information between service providers, recovery services, and other services determined by regional support networks.

(8) "County authority" means the board of county commissioners, county council, or county executive having authority to establish a community mental health program, or two or more of the county authorities specified in this subsection which have entered into an agreement to provide a community mental health program.

(9) "Department" means the department of social and health services.

(10) "Emerging best practice" or "promising practice" means a practice that presents, based on preliminary information, potential for becoming a research-based or consensus-based practice.

(11) "Evidence-based" means a program or practice that has had multiple site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective for the population.

(12) "Licensed service provider" means an entity licensed according to this chapter or chapter 71.05 RCW or an entity deemed to meet state minimum standards as a result of accreditation by a recognized behavioral health accrediting body recognized and having a current agreement with the department, that meets state minimum standards or (~~individuals~~) persons licensed

under chapter 18.57, 18.71, 18.83, or 18.79 RCW, as it applies to registered nurses and advanced registered nurse practitioners.

~~((+))~~ (13) "Mental health services" means all services provided by regional support networks and other services provided by the state for the mentally ill.

~~((+2))~~ (14) "Mentally ill persons" and "the mentally ill" mean persons and conditions defined in subsections (1), (4), ~~((+7))~~ (23), and ~~((+8))~~ (24) of this section.

~~((+3))~~ (15) "Recovery" means the process in which people are able to live, work, learn, and participate fully in their communities.

(16) "Regional support network" means a county authority or group of county authorities or other entity recognized by the secretary ~~((that enter into joint operating agreements to contract with the secretary pursuant to this chapter))~~ in contract in a defined area.

~~((+4))~~ (17) "Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify persons who are receiving or who at any time have received services for mental illness.

(18) "Residential services" means a complete range of residences and supports authorized by resource management services and which may involve a facility, a distinct part thereof, or services which support community living, for acutely mentally ill persons, chronically mentally ill adults, severely emotionally disturbed children, or seriously disturbed adults determined by the regional support network to be at risk of becoming acutely or chronically mentally ill. The services shall include at least evaluation and treatment services as defined in chapter 71.05 RCW, acute crisis respite care, long-term adaptive and rehabilitative care, and supervised and supported living services, and shall also include any residential services developed to service mentally ill persons in nursing homes, boarding homes, and adult family homes, and may include outpatient services provided as an element in a package of services in a supported housing model. Residential services for children in out-of-home placements related to their mental disorder shall not include the costs of food and shelter, except for children's long-term residential facilities existing prior to January 1, 1991.

~~((+5))~~ (19) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(20) "Resilience" means the personal and community qualities that enable individuals to rebound from adversity, trauma, tragedy, threats, or other stresses, and to live productive lives.

(21) "Resource management services" mean the planning, coordination, and authorization of residential services and community support services administered pursuant to an individual service plan for: (a) Acutely mentally ill adults and children; (b) chronically mentally ill adults; (c) severely emotionally disturbed children; or (d) seriously disturbed adults determined solely by a regional support network to be at risk of becoming acutely or chronically mentally ill. Such planning, coordination, and authorization shall include mental health screening for children eligible under the federal Title XIX early and periodic screening, diagnosis, and treatment program. Resource management services include seven day a week, twenty-four hour a day availability of information regarding mentally ill adults' and children's enrollment in services and their individual service plan to ~~((county-))~~ designated mental health professionals, evaluation and treatment facilities, and others as determined by the regional support network.

~~((+6))~~ (22) "Secretary" means the secretary of social and health services.

~~((+7))~~ (23) "Seriously disturbed person" means a person who:

(a) Is gravely disabled or presents a likelihood of serious harm to himself or herself or others, or to the property of others, as a result of a mental disorder as defined in chapter 71.05 RCW;

(b) Has been on conditional release status, or under a less restrictive alternative order, at some time during the preceding two years from an evaluation and treatment facility or a state mental health hospital;

(c) Has a mental disorder which causes major impairment in several areas of daily living;

(d) Exhibits suicidal preoccupation or attempts; or

(e) Is a child diagnosed by a mental health professional, as defined in chapter 71.34 RCW, as experiencing a mental disorder which is clearly interfering with the child's functioning in family or school or with peers or is clearly interfering with the child's personality development and learning.

~~((+8))~~ (24) "Severely emotionally disturbed child" means a child who has been determined by the regional support network to be experiencing a mental disorder as defined in chapter 71.34 RCW, including those mental disorders that result in a behavioral or conduct disorder, that is clearly inter-

fering with the child's functioning in family or school or with peers and who meets at least one of the following criteria:

(a) Has undergone inpatient treatment or placement outside of the home related to a mental disorder within the last two years;

(b) Has undergone involuntary treatment under chapter 71.34 RCW within the last two years;

(c) Is currently served by at least one of the following child-serving systems: Juvenile justice, child-protection/welfare, special education, or developmental disabilities;

(d) Is at risk of escalating maladjustment due to:

(i) Chronic family dysfunction involving a mentally ill or inadequate caretaker;

(ii) Changes in custodial adult;

(iii) Going to, residing in, or returning from any placement outside of the home, for example, psychiatric hospital, short-term inpatient, residential treatment, group or foster home, or a correctional facility;

(iv) Subject to repeated physical abuse or neglect;

(v) Drug or alcohol abuse; or

(vi) Homelessness.

~~((49))~~ (25) "State minimum standards" means minimum requirements established by rules adopted by the secretary and necessary to implement this chapter for: (a) Delivery of mental health services; (b) licensed service providers for the provision of mental health services; (c) residential services; and (d) community support services and resource management services.

~~((20))~~ (26) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others.

(27) "Tribal authority," for the purposes of this section and RCW 71.24.300 only, means: The federally recognized Indian tribes and the major Indian organizations recognized by the secretary insofar as these organizations do not have a financial relationship with any regional support network that would present a conflict of interest. [2005 c 504 § 105; 2001 c 323 § 8; 1999 c 10 § 2; 1997 c 112 § 38; 1995 c 96 § 4. Prior: 1994 sp.s. c 9 § 748; 1994 c 204 § 1; 1991 c 306 § 2; 1989 c 205 § 2; 1986 c 274 § 2; 1982 c 204 § 3.]

**Reviser's note:** RCW 71.24.025 was amended twice during the 2005 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Purpose—Intent—1999 c 10:** "The purpose of this act is to eliminate dates and provisions in chapter 71.24 RCW which are no longer needed. The legislature does not intend this act to make, and no provision of this act shall be construed as, a substantive change in the service delivery system or funding of the community mental health services law." [1999 c 10 § 1.]

**Alphabetization of section—1999 c 10 § 2:** "The code reviser shall alphabetize the definitions in RCW 71.24.025 and correct any cross-references." [1999 c 10 § 14.]

**Effective date—1995 c 96:** See note following RCW 71.24.400.

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**Conflict with federal requirements—1991 c 306:** See note following RCW 71.24.015.

**Effective date—1986 c 274 §§ 1, 2, 3, 5, and 9:** See note following RCW 71.24.015.

**71.24.030 Grants, purchasing of services, for community mental health programs.** The secretary is authorized to make grants and/or purchase services from counties, combinations of counties, or other entities, to establish and operate community mental health programs. [2005 c 503 § 3;

2001 c 323 § 9; 1999 c 10 § 3; 1982 c 204 § 6; 1973 1st ex.s. c 155 § 5; 1972 ex.s. c 122 § 30; 1971 ex.s. c 304 § 7; 1967 ex.s. c 111 § 3.]

**Correction of references—Savings—Severability—2005 c 503:** See notes following RCW 71.24.015.

**Purpose—Intent—1999 c 10:** See note following RCW 71.24.025.

**Effective date—1972 ex.s. c 122:** See note following RCW 70.96A.010.

**71.24.035 Secretary's powers and duties as state mental health authority—Secretary designated as regional support network, when.** (1) The department is designated as the state mental health authority.

(2) The secretary shall provide for public, client, and licensed service provider participation in developing the state mental health program, developing contracts with regional support networks, and any waiver request to the federal government under medicaid.

(3) The secretary shall provide for participation in developing the state mental health program for children and other underserved populations, by including representatives on any committee established to provide oversight to the state mental health program.

(4) The secretary shall be designated as the regional support network if the regional support network fails to meet state minimum standards or refuses to exercise responsibilities under RCW 71.24.045.

(5) The secretary shall:

(a) Develop a biennial state mental health program that incorporates regional biennial needs assessments and regional mental health service plans and state services for mentally ill adults and children. The secretary shall also develop a six-year state mental health plan;

(b) Assure that any regional or county community mental health program provides access to treatment for the region's residents in the following order of priority: (i) The acutely mentally ill; (ii) chronically mentally ill adults and severely emotionally disturbed children; and (iii) the seriously disturbed. Such programs shall provide:

(A) Outpatient services;

(B) Emergency care services for twenty-four hours per day;

(C) Day treatment for mentally ill persons which includes training in basic living and social skills, supported work, vocational rehabilitation, and day activities. Such services may include therapeutic treatment. In the case of a child, day treatment includes age-appropriate basic living and social skills, educational and prevocational services, day activities, and therapeutic treatment;

(D) Screening for patients being considered for admission to state mental health facilities to determine the appropriateness of admission;

(E) Employment services, which may include supported employment, transitional work, placement in competitive employment, and other work-related services, that result in mentally ill persons becoming engaged in meaningful and gainful full or part-time work. Other sources of funding such as the division of vocational rehabilitation may be utilized by the secretary to maximize federal funding and provide for integration of services;

(F) Consultation and education services; and

(G) Community support services;

(c) Develop and adopt rules establishing state minimum standards for the delivery of mental health services pursuant to RCW 71.24.037 including, but not limited to:

(i) Licensed service providers. These rules shall permit a county-operated mental health program to be licensed as a service provider subject to compliance with applicable statutes and rules. The secretary shall provide for deeming of compliance with state minimum standards for those entities accredited by recognized behavioral health accrediting bodies recognized and having a current agreement with the department;

(ii) Regional support networks; and

(iii) Inpatient services, evaluation and treatment services and facilities under chapter 71.05 RCW, resource management services, and community support services;

(d) Assure that the special needs of minorities, the elderly, disabled, children, and low-income persons are met within the priorities established in this section;

(e) Establish a standard contract or contracts, consistent with state minimum standards and RCW 71.24.320 and 71.24.330, which shall be used in contracting with regional support networks. The standard contract shall include a maximum fund balance, which shall be consistent with that required by federal regulations or waiver stipulations;

(f) Establish, to the extent possible, a standardized auditing procedure which minimizes paperwork requirements of regional support networks and licensed service providers. The audit procedure shall focus on the outcomes of service and not the processes for accomplishing them;

(g) Develop and maintain an information system to be used by the state and regional support networks that includes a tracking method which allows the department and regional support networks to identify mental health clients' participation in any mental health service or public program on an immediate basis. The information system shall not include individual patient's case history files. Confidentiality of client information and records shall be maintained as provided in this chapter and in RCW 71.05.390, 71.05.420, and 71.05.440;

(h) License service providers who meet state minimum standards;

(i) Certify regional support networks that meet state minimum standards;

(j) Periodically monitor the compliance of certified regional support networks and their network of licensed service providers for compliance with the contract between the department, the regional support network, and federal and state rules at reasonable times and in a reasonable manner;

(k) Fix fees to be paid by evaluation and treatment centers to the secretary for the required inspections;

(l) Monitor and audit regional support networks and licensed service providers as needed to assure compliance with contractual agreements authorized by this chapter;

(m) Adopt such rules as are necessary to implement the department's responsibilities under this chapter; and

(n) Assure the availability of an appropriate amount, as determined by the legislature in the operating budget by amounts appropriated for this specific purpose, of community-based, geographically distributed residential services.

(6) The secretary shall use available resources only for regional support networks, except to the extent authorized, and in accordance with any priorities or conditions specified, in the biennial appropriations act.

(7) Each certified regional support network and licensed service provider shall file with the secretary, on request, such data, statistics, schedules, and information as the secretary reasonably requires. A certified regional support network or licensed service provider which, without good cause, fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent reports thereof, may have its certification or license revoked or suspended.

(8) The secretary may suspend, revoke, limit, or restrict a certification or license, or refuse to grant a certification or license for failure to conform to: (a) The law; (b) applicable rules and regulations; (c) applicable standards; or (d) state minimum standards.

(9) The superior court may restrain any regional support network or service provider from operating without certification or a license or any other violation of this section. The court may also review, pursuant to procedures contained in chapter 34.05 RCW, any denial, suspension, limitation, restriction, or revocation of certification or license, and grant other relief required to enforce the provisions of this chapter.

(10) Upon petition by the secretary, and after hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the secretary authorizing him or her to enter at reasonable times, and examine the records, books, and accounts of any regional support network or service provider refusing to consent to inspection or examination by the authority.

(11) Notwithstanding the existence or pursuit of any other remedy, the secretary may file an action for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, or operation of a regional support network or service provider without certification or a license under this chapter.

(12) The standards for certification of evaluation and treatment facilities shall include standards relating to maintenance of good physical and mental health and other services to be afforded persons pursuant to this chapter and chapters 71.05 and 71.34 RCW, and shall otherwise assure the effectuation of the purposes of these chapters.

(13)(a) The department, in consultation with affected parties, shall establish a distribution formula that reflects regional needs assessments based on the number of persons who are acutely mentally ill, chronically mentally ill, severely emotionally disturbed children, and seriously disturbed. The formula shall take into consideration the impact on regions of demographic factors which result in concentrations of priority populations as set forth in subsection (5)(b) of this section. These factors shall include the population concentrations resulting from commitments under chapters 71.05 and 71.34 RCW to state psychiatric hospitals, as well as concentration in urban areas, at border crossings at state boundaries, and other significant demographic and workload factors.

(b) The formula shall also include a projection of the funding allocations that will result for each region, which specifies allocations according to priority populations,

including the allocation for services to children and other underserved populations.

(c) After July 1, 2003, the department may allocate up to two percent of total funds to be distributed to the regional support networks for incentive payments to reward the achievement of superior outcomes, or significantly improved outcomes, as measured by a statewide performance measurement system consistent with the framework recommended in the joint legislative audit and review committee's performance audit of the mental health system. The department shall annually report to the legislature on its criteria and allocation of the incentives provided under this subsection.

(14) The secretary shall assume all duties assigned to the nonparticipating regional support networks under chapters 71.05, 71.34, and 71.24 RCW. Such responsibilities shall include those which would have been assigned to the nonparticipating counties in regions where there are not participating regional support networks.

The regional support networks, or the secretary's assumption of all responsibilities under chapters 71.05, 71.34, and 71.24 RCW, shall be included in all state and federal plans affecting the state mental health program including at least those required by this chapter, the medicaid program, and P.L. 99-660. Nothing in these plans shall be inconsistent with the intent and requirements of this chapter.

(15) The secretary shall:

(a) Disburse funds for the regional support networks within sixty days of approval of the biennial contract. The department must either approve or reject the biennial contract within sixty days of receipt.

(b) Enter into biennial contracts with regional support networks. The contracts shall be consistent with available resources. No contract shall be approved that does not include progress toward meeting the goals of this chapter by taking responsibility for: (i) Short-term commitments; (ii) residential care; and (iii) emergency response systems.

(c) Notify regional support networks of their allocation of available resources at least sixty days prior to the start of a new biennial contract period.

(d) Deny funding allocations to regional support networks based solely upon formal findings of noncompliance with the terms of the regional support network's contract with the department. Written notice and at least thirty days for corrective action must precede any such action. In such cases, regional support networks shall have full rights to appeal under chapter 34.05 RCW.

(16) The department, in cooperation with the state congressional delegation, shall actively seek waivers of federal requirements and such modifications of federal regulations as are necessary to allow federal medicaid reimbursement for services provided by free-standing evaluation and treatment facilities certified under chapter 71.05 RCW. The department shall periodically report its efforts to the appropriate committees of the senate and the house of representatives. [2005 c 504 § 715; 2005 c 503 § 7. Prior: 2001 c 334 § 7; 2001 c 323 § 10; 1999 c 10 § 4; 1998 c 245 § 137; prior: 1991 c 306 § 3; 1991 c 262 § 1; 1991 c 29 § 1; 1990 1st ex.s. c 8 § 1; 1989 c 205 § 3; 1987 c 105 § 1; 1986 c 274 § 3; 1982 c 204 § 4.]

**Reviser's note:** This section was amended by 2005 c 503 § 7 and by 2005 c 504 § 715, each without reference to the other. Both amendments are

incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Correction of references—Savings—Severability—2005 c 503:** See notes following RCW 71.24.015.

**Effective date—2001 c 334:** See note following RCW 71.24.805.

**Purpose—Intent—1999 c 10:** See note following RCW 71.24.025.

**Conflict with federal requirements—1991 c 306:** See note following RCW 71.24.015.

**Effective date—1987 c 105:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 c 105 § 2.]

**Effective date—1986 c 274 §§ 1, 2, 3, 5, and 9:** See note following RCW 71.24.015.

**71.24.045 Regional support network powers and duties.** The regional support network shall:

(1) Contract as needed with licensed service providers. The regional support network may, in the absence of a licensed service provider entity, become a licensed service provider entity pursuant to minimum standards required for licensing by the department for the purpose of providing services not available from licensed service providers;

(2) Operate as a licensed service provider if it deems that doing so is more efficient and cost effective than contracting for services. When doing so, the regional support network shall comply with rules promulgated by the secretary that shall provide measurements to determine when a regional support network provided service is more efficient and cost effective;

(3) Monitor and perform biennial fiscal audits of licensed service providers who have contracted with the regional support network to provide services required by this chapter. The monitoring and audits shall be performed by means of a formal process which insures that the licensed service providers and professionals designated in this subsection meet the terms of their contracts;

(4) Assure that the special needs of minorities, the elderly, disabled, children, and low-income persons are met within the priorities established in this chapter;

(5) Maintain patient tracking information in a central location as required for resource management services and the department's information system;

(6) Use not more than two percent of state-appropriated community mental health funds, which shall not include federal funds, to administer community mental health programs under RCW 71.24.155: PROVIDED, That county authorities serving a county or combination of counties whose population is one hundred twenty-five thousand or more may be entitled to sufficient state-appropriated community mental health funds to employ up to one full-time employee or the equivalent thereof in addition to the two percent limit established in this subsection when such employee is providing staff services to a county mental health advisory board;

(7) Collaborate to ensure that policies do not result in an adverse shift of mentally ill persons into state and local correctional facilities;



(8) Work with the department to expedite the enrollment or re-enrollment of eligible persons leaving state or local correctional facilities and institutions for mental diseases;

(9) If a regional support network is not operated by the county, work closely with the county designated mental health professional or county designated crisis responder to maximize appropriate placement of persons into community services; and

(10) Coordinate services for individuals who have received services through the community mental health system and who become patients at a state mental hospital. [2005 c 503 § 8; 2001 c 323 § 12; 1992 c 230 § 5. Prior: 1991 c 363 § 147; 1991 c 306 § 5; 1991 c 29 § 2; 1989 c 205 § 4; 1986 c 274 § 5; 1982 c 204 § 5.]

**Correction of references—Savings—Severability—2005 c 503:** See notes following RCW 71.24.015.

**Effective date—1992 c 230 § 5:** "Section 5 of this act shall take effect July 1, 1995." [1992 c 230 § 8.]

**Intent—1992 c 230:** See note following RCW 72.23.025.

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Conflict with federal requirements—1991 c 306:** See note following RCW 71.24.015.

**Effective date—1986 c 274 §§ 1, 2, 3, 5, and 9:** See note following RCW 71.24.015.

**71.24.100 Joint agreements of county authorities—Required provisions.** A county authority or a group of county authorities may enter into a joint operating agreement to form a regional support network. Any agreement between two or more county authorities for the establishment of a regional support network shall provide:

(1) That each county shall bear a share of the cost of mental health services; and

(2) That the treasurer of one participating county shall be the custodian of funds made available for the purposes of such mental health services, and that the treasurer may make payments from such funds upon audit by the appropriate auditing officer of the county for which he is treasurer. [2005 c 503 § 9; 1982 c 204 § 7; 1967 ex.s. c 111 § 10.]

**Correction of references—Savings—Severability—2005 c 503:** See notes following RCW 71.24.015.

**71.24.240 County program plans to be approved by secretary prior to submittal to federal agency.** In order to establish eligibility for funding under this chapter, any regional support network seeking to obtain federal funds for the support of any aspect of a community mental health program as defined in this chapter shall submit program plans to the secretary for prior review and approval before such plans are submitted to any federal agency. [2005 c 503 § 10; 1982 c 204 § 13; 1967 ex.s. c 111 § 24.]

**Correction of references—Savings—Severability—2005 c 503:** See notes following RCW 71.24.015.

**71.24.300 Regional support networks—Inclusion of tribal authorities—Roles and responsibilities.** Upon the request of a tribal authority or authorities within a regional support network the joint operating agreement or the county authority shall allow for the inclusion of the tribal authority to be represented as a party to the regional support network.

The roles and responsibilities of the county and tribal authorities shall be determined by the terms of that agreement including a determination of membership on the governing board and advisory committees, the number of tribal representatives to be party to the agreement, and the provisions of law and shall assure the provision of culturally competent services to the tribes served. The state mental health authority may not determine the roles and responsibilities of county authorities as to each other under regional support networks by rule, except to assure that all duties required of regional support networks are assigned and that counties and the regional support network do not duplicate functions and that a single authority has final responsibility for all available resources and performance under the regional support network's contract with the secretary. If a regional support network is a private entity, the department shall allow for the inclusion of the tribal authority to be represented as a party to the regional support network. The roles and responsibilities of the private entity and the tribal authorities shall be determined by the department, through negotiation with the tribal authority.

(1) Regional support networks shall submit an overall six-year operating and capital plan, timeline, and budget and submit progress reports and an updated two-year plan biennially thereafter, to assume within available resources all of the following duties:

(a) Administer and provide for the availability of all resource management services, residential services, and community support services.

(b) Administer and provide for the availability of all investigation, transportation, court-related, and other services provided by the state or counties pursuant to chapter 71.05 RCW.

(c) Provide within the boundaries of each regional support network evaluation and treatment services for at least eighty-five percent of persons detained or committed for periods up to seventeen days according to chapter 71.05 RCW. Regional support networks with populations of less than one hundred fifty thousand may contract to purchase evaluation and treatment services from other networks. Insofar as the original intent of serving persons in the community is maintained, the secretary is authorized to approve exceptions on a case-by-case basis to the requirement to provide evaluation and treatment services within the boundaries of each regional support network. Such exceptions are limited to contracts with neighboring or contiguous regions.

(d) Administer a portion of funds appropriated by the legislature to house mentally ill persons in state institutions from counties within the boundaries of any regional support network, with the exception of persons currently confined at, or under the supervision of, a state mental hospital pursuant to chapter 10.77 RCW, and provide for the care of all persons needing evaluation and treatment services for periods up to seventeen days according to chapter 71.05 RCW in appropriate residential services, which may include state institutions. The regional support networks shall reimburse the state for use of state institutions at a rate equal to that assumed by the legislature when appropriating funds for such care at state institutions during the biennium when reimbursement occurs. The secretary shall submit a report to the appropriate committees of the senate and house of representatives on the



efforts to implement this section by October 1, 2002. The duty of a state hospital to accept persons for evaluation and treatment under chapter 71.05 RCW is limited by the responsibilities assigned to regional support networks under this section.

(e) Administer and provide for the availability of all other mental health services, which shall include patient counseling, day treatment, consultation, education services, employment services as defined in RCW 71.24.035, and mental health services to children.

(f) Establish standards and procedures for reviewing individual service plans and determining when that person may be discharged from resource management services.

(2) A regional support network may request that any state-owned land, building, facility, or other capital asset which was ever purchased, deeded, given, or placed in trust for the care of the mentally ill and which is within the boundaries of a regional support network be made available to support the operations of the regional support network. State agencies managing such capital assets shall give first priority to requests for their use pursuant to this chapter.

(3) Each regional support network shall appoint a mental health advisory board which shall review and provide comments on plans and policies developed under this chapter, provide local oversight regarding the activities of the regional support network, and work with the regional support network to resolve significant concerns regarding service delivery and outcomes. The department shall establish statewide procedures for the operation of regional advisory committees including mechanisms for advisory board feedback to the department regarding regional support network performance. The composition of the board shall be broadly representative of the demographic character of the region and shall include, but not be limited to, representatives of consumers and families, law enforcement, and where the county is not the regional support network, county elected officials. Composition and length of terms of board members may differ between regional support networks but shall be included in each regional support network's contract and approved by the secretary.

(4) Regional support networks shall assume all duties specified in their plans and joint operating agreements through biennial contractual agreements with the secretary.

(5) Regional support networks may receive technical assistance from the housing trust fund and may identify and submit projects for housing and housing support services to the housing trust fund established under chapter 43.185 RCW. Projects identified or submitted under this subsection must be fully integrated with the regional support network six-year operating and capital plan, timeline, and budget required by subsection (1) of this section. [2005 c 503 § 11; 2001 c 323 § 17. Prior: 1999 c 214 § 8; 1999 c 10 § 9; 1994 c 204 § 2; 1992 c 230 § 6; prior: 1991 c 295 § 3; 1991 c 262 § 2; 1991 c 29 § 3; 1989 c 205 § 5.]

**Correction of references—Savings—Severability—2005 c 503:** See notes following RCW 71.24.015.

**Intent—Effective date—1999 c 214:** See notes following RCW 72.09.370.

**Purpose—Intent—1999 c 10:** See note following RCW 71.24.025.

**Intent—1992 c 230:** See note following RCW 72.23.025.

**Evaluation of transition to regional systems—1989 c 205:** See note following RCW 71.24.015.

**71.24.320 Regional support networks—Procurement process—Request for qualifications.** (1) The secretary shall initiate a procurement process for regional support networks in 2005. In the first step of the procurement process, existing regional support networks may respond to a request for qualifications developed by the department. The secretary shall issue the request for qualifications not later than October 1, 2005. The request for qualifications shall be based on cost-effectiveness, adequate residential and service capabilities, effective collaboration with criminal justice agencies and the chemical dependency treatment system, and the ability to provide the full array of services as stated in the mental health state plan, and shall meet all applicable federal and state regulations and standards. An existing regional support network shall be awarded the contract with the department if it substantially meets the requirements of the request for qualifications developed by the department.

(2) If an existing regional support network chooses not to respond to the request for qualifications, or is unable to substantially meet the requirements of the request for qualifications, the department shall utilize a procurement process in which other entities recognized by the secretary may bid to serve as the regional support network in that region. The procurement process shall begin with a request for proposals issued March 1, 2006. [2005 c 503 § 4.]

**Effective date—2005 c 503 § 4:** "Section 4 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 17, 2005]." [2005 c 503 § 19.]

**Correction of references—Savings—Severability—2005 c 503:** See notes following RCW 71.24.015.

**71.24.3201 Contracts for regional support network services. (Expires June 30, 2007.)** (1) The department of social and health services shall enter into a contract with regional support networks for the period ending August 31, 2006. The department shall issue a request for proposal to the extent required by RCW 71.24.320 and the contract shall be effective September 1, 2006.

(2) This section expires June 30, 2007. [2005 c 503 § 15.]

**Correction of references—Savings—Severability—2005 c 503:** See notes following RCW 71.24.015.

**71.24.330 Regional support networks—Contracts with department—Requirements.** (1) Contracts between a regional support network and the department shall include mechanisms for monitoring performance under the contract and remedies for failure to substantially comply with the requirements of the contract including, but not limited to, financial penalties, termination of the contract, and reprocurement of the contract.

(2) The procurement process shall encourage the preservation of infrastructure previously purchased by the community mental health service delivery system, the maintenance of linkages between other services and delivery systems, and maximization of the use of available funds for services versus profits. The procurement process shall provide that public funds appropriated by the legislature shall not be used to pro-

mote or deter, encourage, or discourage employees from exercising their rights under Title 29, chapter 7, subchapter II, United States Code or chapter 41.56 RCW.

(3) In addition to the requirements of RCW 71.24.035, contracts shall:

(a) Define administrative costs and ensure that the regional support network does not exceed an administrative cost of ten percent of available funds;

(b) Require effective collaboration with law enforcement, criminal justice agencies, and the chemical dependency treatment system;

(c) Require substantial implementation of department adopted integrated screening and assessment process and matrix of best practices; and

(d) Maintain the decision-making independence of designated mental health professionals. [2005 c 503 § 6.]

**Correction of references—Savings—Severability—2005 c 503:** See notes following RCW 71.24.015.

**71.24.340 Regional support networks—Eligibility for medical assistance upon release from confinement—Interlocal agreements.** The secretary shall require the regional support networks to develop interlocal agreements pursuant to RCW 74.09.555. To this end, the regional support networks shall accept referrals for enrollment on behalf of a confined person, prior to the person's release. [2005 c 503 § 13.]

**Correction of references—Savings—Severability—2005 c 503:** See notes following RCW 71.24.015.

**71.24.350 Mental health ombudsman office.** The department shall require each regional support network to provide for a separately funded mental health ombudsman office in each regional support network that is independent of the regional support network. The ombudsman office shall maximize the use of consumer advocates. [2005 c 504 § 803.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**71.24.360 Establishment of new regional support networks.** The department may establish new regional support network boundaries in any part of the state where more than one network chooses not to respond to, or is unable to substantially meet the requirements of, the request for qualifications under section 4, chapter 503, Laws of 2005 or where a regional support network is subject to reprourement under section 6, chapter 503, Laws of 2005. The department may establish no fewer than eight and no more than fourteen regional support networks under this chapter. No entity shall be responsible for more than three regional support networks. [2005 c 504 § 805.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

[2005 RCW Supp—page 854]

## Chapter 71.34 RCW

### MENTAL HEALTH SERVICES FOR MINORS

#### Sections

71.34.015	Recodified as RCW 71.34.395.
71.34.025	Recodified as RCW 71.34.610.
71.34.027	Recodified as RCW 71.34.400.
71.34.030	Recodified as RCW 71.34.530.
71.34.032	Recodified as RCW 71.34.305.
71.34.035	Recodified as RCW 71.34.640.
71.34.040	Recodified as RCW 71.34.700.
71.34.042	Recodified as RCW 71.34.500.
71.34.044	Recodified as RCW 71.34.510.
71.34.046	Recodified as RCW 71.34.520.
71.34.050	Recodified as RCW 71.34.710.
71.34.052	Recodified as RCW 71.34.600.
71.34.054	Recodified as RCW 71.34.650.
71.34.056	Recodified as RCW 71.34.375.
71.34.060	Recodified as RCW 71.34.720.
71.34.070	Recodified as RCW 71.34.730.
71.34.080	Recodified as RCW 71.34.740.
71.34.090	Recodified as RCW 71.34.750.
71.34.100	Recodified as RCW 71.34.760.
71.34.110	Recodified as RCW 71.34.780.
71.34.120	Recodified as RCW 71.34.770.
71.34.130	Recodified as RCW 71.34.405.
71.34.140	Recodified as RCW 71.34.300.
71.34.150	Recodified as RCW 71.34.790.
71.34.160	Recodified as RCW 71.34.355.
71.34.162	Recodified as RCW 71.34.620.
71.34.164	Recodified as RCW 71.34.630.
71.34.170	Recodified as RCW 71.34.365.
71.34.180	Recodified as RCW 71.34.795.
71.34.190	Recodified as RCW 71.34.360.
71.34.200	Recodified as RCW 71.34.340.
71.34.210	Recodified as RCW 71.34.335.
71.34.220	Recodified as RCW 71.34.350.
71.34.225	Recodified as RCW 71.34.345.
71.34.230	Recodified as RCW 71.34.330.
71.34.240	Recodified as RCW 71.34.325.
71.34.250	Recodified as RCW 71.34.310.
71.34.260	Recodified as RCW 71.34.320.
71.34.270	Recodified as RCW 71.34.410.
71.34.280	Recodified as RCW 71.34.315.
71.34.290	Recodified as RCW 71.34.370.
GENERAL	
71.34.300	Responsibility of counties for evaluation and treatment services for minors.
71.34.305	Notice to parents, school contacts for referring students to inpatient treatment.
71.34.310	Jurisdiction over proceedings under chapter—Venue.
71.34.315	Mental health commissioners—Authority.
71.34.320	Transfer of superior court proceedings to juvenile department.
71.34.325	Court proceedings under chapter subject to rules of state supreme court.
71.34.330	Attorneys appointed for minors—Compensation.
71.34.335	Court records and files confidential—Availability.
71.34.340	Information concerning treatment of minors confidential—Disclosure—Admissible as evidence with written consent.
71.34.345	Mental health services information—Release to department of corrections—Rules.
71.34.350	Disclosure of information or records—Required entries in minor's clinical record.
71.34.355	Rights of minors undergoing treatment—Posting.
71.34.360	No detention of minors after eighteenth birthday—Exceptions.
71.34.365	Release of minor—Requirements.
71.34.370	Antipsychotic medication and shock treatment.
71.34.375	Parent-initiated treatment—Notice to parents of available treatment options.
71.34.380	Department to adopt rules to effectuate chapter.
71.34.385	Uniform application of chapter—Training for county-designated mental health professionals.
71.34.390	Redirection of Title XIX funds to fund placements within the state.
71.34.395	Availability of treatment does not create right to obtain public funds.
71.34.400	Eligibility for medical assistance under chapter 74.09 RCW—Payment by department.
71.34.405	Liability for costs of minor's treatment and care—Rules.
71.34.410	Liability for performance of duties under this chapter limited.

## MINOR-INITIATED TREATMENT

- 71.34.500 Minor thirteen or older may be admitted for inpatient mental treatment without parental consent—Professional person in charge must concur—Written renewal of consent required.
- 71.34.510 Notice to parents when minor admitted to inpatient treatment without parental consent.
- 71.34.520 Minor voluntarily admitted may give notice to leave at any time.
- 71.34.530 Age of consent—Outpatient treatment of minors.

## PARENT-INITIATED TREATMENT

- 71.34.600 Parent may request determination whether minor has mental disorder requiring inpatient treatment—Minor consent not required—Duties and obligations of professional person and facility.
- 71.34.610 Review of admission and inpatient treatment of minors—Determination of medical necessity—Department review—Minor declines necessary treatment—At-risk youth petition—Costs—Public funds.
- 71.34.620 Minor may petition court for release from facility.
- 71.34.630 Minor not released by petition under RCW 71.34.620—Release within thirty days—Professional may initiate proceedings to stop release.
- 71.34.640 Evaluation of treatment of minors.
- 71.34.650 Parent may request determination whether minor has mental disorder requiring outpatient treatment—Consent of minor not required—Discharge of minor.
- 71.34.660 Limitation on liability for admitting or accepting minor child.

## INVOLUNTARY COMMITMENT

- 71.34.700 Evaluation of minor thirteen or older brought for immediate mental health services—Temporary detention.
- 71.34.710 Minor thirteen or older who presents likelihood of serious harm or is gravely disabled—Transport to inpatient facility—Petition for initial detention—Notice of commitment hearing—Facility to evaluate and admit or release minor.
- 71.34.720 Examination and evaluation of minor approved for inpatient admission—Referral to chemical dependency treatment program—Right to communication, exception—Evaluation and treatment period.
- 71.34.730 Petition for fourteen-day commitment—Requirements.
- 71.34.740 Commitment hearing—Requirements—Findings by court—Commitment—Release.
- 71.34.750 Petition for one hundred eighty-day commitment—Hearing—Requirements—Findings by court—Commitment order—Release—Successive commitments.
- 71.34.760 Placement of minor in state evaluation and treatment facility—Placement committee—Facility to report to committee.
- 71.34.770 Release of minor—Conditional release—Discharge.
- 71.34.780 Minor's failure to adhere to outpatient conditions—Deterioration of minor's functioning—Transport to inpatient facility—Order of apprehension and detention—Revocation of alternative treatment or conditional release—Hearings.
- 71.34.790 Transportation for minors committed to state facility for one hundred eighty-day treatment.
- 71.34.795 Transferring or moving persons from juvenile correctional institutions or facilities to evaluation and treatment facilities.
- 71.34.800 Recodified as RCW 71.34.380.
- 71.34.805 Recodified as RCW 71.34.385.
- 71.34.810 Recodified as RCW 71.34.390.

**71.34.015 Recodified as RCW 71.34.395.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.025 Recodified as RCW 71.34.610.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.027 Recodified as RCW 71.34.400.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.030 Recodified as RCW 71.34.530.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.032 Recodified as RCW 71.34.305.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.035 Recodified as RCW 71.34.640.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.040 Recodified as RCW 71.34.700.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.042 Recodified as RCW 71.34.500.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.044 Recodified as RCW 71.34.510.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.046 Recodified as RCW 71.34.520.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.050 Recodified as RCW 71.34.710.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.052 Recodified as RCW 71.34.600.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.054 Recodified as RCW 71.34.650.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.056 Recodified as RCW 71.34.375.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.060 Recodified as RCW 71.34.720.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.070 Recodified as RCW 71.34.730.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.080 Recodified as RCW 71.34.740.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.090 Recodified as RCW 71.34.750.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.100 Recodified as RCW 71.34.760.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.110 Recodified as RCW 71.34.780.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.120 Recodified as RCW 71.34.770.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.130 Recodified as RCW 71.34.405.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.140 Recodified as RCW 71.34.300.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.150 Recodified as RCW 71.34.790.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.160 Recodified as RCW 71.34.355.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.162 Recodified as RCW 71.34.620.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.164 Recodified as RCW 71.34.630.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.170 Recodified as RCW 71.34.365.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.180 Recodified as RCW 71.34.795.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.190 Recodified as RCW 71.34.360.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.200 Recodified as RCW 71.34.340.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.210 Recodified as RCW 71.34.335.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.220 Recodified as RCW 71.34.350.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.225 Recodified as RCW 71.34.345.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.230 Recodified as RCW 71.34.330.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.240 Recodified as RCW 71.34.325.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.250 Recodified as RCW 71.34.310.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.260 Recodified as RCW 71.34.320.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.270 Recodified as RCW 71.34.410.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.280 Recodified as RCW 71.34.315.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.290 Recodified as RCW 71.34.370.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

#### GENERAL

**71.34.300 Responsibility of counties for evaluation and treatment services for minors.** (1) The county or combination of counties is responsible for development and coordination of the evaluation and treatment program for minors, for incorporating the program into the county mental health plan, and for coordination of evaluation and treatment services and resources with the community mental health program required under chapter 71.24 RCW.

(2) The county shall be responsible for maintaining its support of involuntary treatment services for minors at its 1984 level, adjusted for inflation, with the department responsible for additional costs to the county resulting from this chapter. [1985 c 354 § 14. Formerly RCW 71.34.140.]

**71.34.305 Notice to parents, school contacts for referring students to inpatient treatment.** School district personnel who contact a mental health inpatient treatment program or provider for the purpose of referring a student to inpatient treatment shall provide the parents with notice of the contact within forty-eight hours. [1996 c 133 § 6. Formerly RCW 71.34.032.]

**Findings—Short title—Intent—Construction—1996 c 133:** See notes following RCW 13.32A.197.

**71.34.310 Jurisdiction over proceedings under chapter—Venue.** (1) The superior court has jurisdiction over proceedings under this chapter.

(2) A record of all petitions and proceedings under this chapter shall be maintained by the clerk of the superior court

in the county in which the petition or proceedings was initiated.

(3) Petitions for commitment shall be filed and venue for hearings under this chapter shall be in the county in which the minor is being detained. The court may, for good cause, transfer the proceeding to the county of the minor's residence, or to the county in which the alleged conduct evidencing need for commitment occurred. If the county of detention is changed, subsequent petitions may be filed in the county in which the minor is detained without the necessity of a change of venue. [1985 c 354 § 26. Formerly RCW 71.34.250.]

**71.34.315 Mental health commissioners—Authority.** The judges of the superior court of the county by majority vote may authorize mental health commissioners, appointed pursuant to RCW 71.05.135, to perform any or all of the following duties:

(1) Receive all applications, petitions, and proceedings filed in the superior court for the purpose of disposing of them pursuant to this chapter;

(2) Investigate the facts upon which to base warrants, subpoenas, orders to directions in actions, or proceedings filed pursuant to this chapter;

(3) For the purpose of this chapter, exercise all powers and perform all the duties of a court commissioner appointed pursuant to RCW 2.24.010;

(4) Hold hearings in proceedings under this chapter and make written reports of all proceedings under this chapter which shall become a part of the record of superior court;

(5) Provide such supervision in connection with the exercise of its jurisdiction as may be ordered by the presiding judge; and

(6) Cause the orders and findings to be entered in the same manner as orders and findings are entered in cases in the superior court. [1989 c 174 § 3. Formerly RCW 71.34.280.]

**Severability—1989 c 174:** See note following RCW 71.05.135.

**71.34.320 Transfer of superior court proceedings to juvenile department.** For purposes of this chapter, a superior court may transfer proceedings under this chapter to its juvenile department. [1985 c 354 § 28. Formerly RCW 71.34.260.]

**71.34.325 Court proceedings under chapter subject to rules of state supreme court.** Court procedures and proceedings provided for in this chapter shall be in accordance with rules adopted by the supreme court of the state of Washington. [1985 c 354 § 24. Formerly RCW 71.34.240.]

**71.34.330 Attorneys appointed for minors—Compensation.** Attorneys appointed for minors under this chapter shall be compensated for their services as follows:

(1) Responsible others shall bear the costs of such legal services if financially able according to standards set by the court of the county in which the proceeding is held.

(2) If all responsible others are indigent as determined by these standards, the costs of these legal services shall be borne by the county in which the proceeding is held. [1985 c 354 § 23. Formerly RCW 71.34.230.]

**71.34.335 Court records and files confidential—Availability.** The records and files maintained in any court proceeding under this chapter are confidential and available only to the minor, the minor's parent, and the minor's attorney. In addition, the court may order the subsequent release or use of these records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality will be maintained. [1985 c 354 § 21. Formerly RCW 71.34.210.]

**71.34.340 Information concerning treatment of minors confidential—Disclosure—Admissible as evidence with written consent.** The fact of admission and all information obtained through treatment under this chapter is confidential. Confidential information may be disclosed only:

(1) In communications between mental health professionals to meet the requirements of this chapter, in the provision of services to the minor, or in making appropriate referrals;

(2) In the course of guardianship or dependency proceedings;

(3) To persons with medical responsibility for the minor's care;

(4) To the minor, the minor's parent, and the minor's attorney, subject to RCW 13.50.100;

(5) When the minor or the minor's parent designates in writing the persons to whom information or records may be released;

(6) To the extent necessary to make a claim for financial aid, insurance, or medical assistance to which the minor may be entitled or for the collection of fees or costs due to providers for services rendered under this chapter;

(7) To the courts as necessary to the administration of this chapter;

(8) To law enforcement officers or public health officers as necessary to carry out the responsibilities of their office. However, only the fact and date of admission, and the date of discharge, the name and address of the treatment provider, if any, and the last known address shall be disclosed upon request;

(9) To law enforcement officers, public health officers, relatives, and other governmental law enforcement agencies, if a minor has escaped from custody, disappeared from an evaluation and treatment facility, violated conditions of a less restrictive treatment order, or failed to return from an authorized leave, and then only such information as may be necessary to provide for public safety or to assist in the apprehension of the minor. The officers are obligated to keep the information confidential in accordance with this chapter;

(10) To the secretary for assistance in data collection and program evaluation or research, provided that the secretary adopts rules for the conduct of such evaluation and research. The rules shall include, but need not be limited to, the requirement that all evaluators and researchers sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I, . . . ., agree not to divulge, publish, or otherwise make known to unauthorized persons or

the public any information obtained in the course of such evaluation or research regarding minors who have received services in a manner such that the minor is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under state law.

/s/....."

(11) To appropriate law enforcement agencies, upon request, all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The decision to disclose or not shall not result in civil liability for the mental health service provider or its employees so long as the decision was reached in good faith and without gross negligence;

(12) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure shall be made by the professional person in charge of the public or private agency or his or her designee and shall include the dates of admission, discharge, authorized or unauthorized absence from the agency's facility, and only such other information that is pertinent to the threat or harassment. The decision to disclose or not shall not result in civil liability for the agency or its employees so long as the decision was reached in good faith and without gross negligence;

(13) To a minor's next of kin, attorney, guardian, or conservator, if any, the information that the minor is presently in the facility or that the minor is seriously physically ill and a statement evaluating the mental and physical condition of the minor as well as a statement of the probable duration of the minor's confinement;

(14) Upon the death of a minor, to the minor's next of kin;

(15) To a facility in which the minor resides or will reside;

(16) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)(ii). The extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW 9.41.047(1), shall be disclosed upon request;

(b) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating RCW 9.41.040(2)(a)(ii);

(c) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

This section shall not be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary. The fact of admission and all information obtained pur-

suant to this chapter are not admissible as evidence in any legal proceeding outside this chapter, except guardianship or dependency, without the written consent of the minor or the minor's parent. [2005 c 453 § 6; 2000 c 75 § 7; 1985 c 354 § 18. Formerly RCW 71.34.200.]

Severability—2005 c 453: See note following RCW 9.41.040.

Intent—2000 c 75: See note following RCW 71.05.445.

**71.34.345 Mental health services information—Release to department of corrections—Rules.** (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Information related to mental health services" means all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services by a mental health service provider. This may include documents of legal proceedings under this chapter or chapter 71.05 or 10.77 RCW, or somatic health care information.

(b) "Mental health service provider" means a public or private agency that provides services to persons with mental disorders as defined under RCW 71.34.020 and receives funding from public sources. This includes evaluation and treatment facilities as defined in RCW 71.34.020, community mental health service delivery systems, or community mental health programs, as defined in RCW 71.24.025, and facilities conducting competency evaluations and restoration under chapter 10.77 RCW.

(2) Information related to mental health services delivered to a person subject to chapter 9.94A or 9.95 RCW shall be released, upon request, by a mental health service provider to department of corrections personnel for whom the information is necessary to carry out the responsibilities of their office. The information must be provided only for the purpose of completing presentence investigations, supervision of an incarcerated person, planning for and provision of supervision of a person, or assessment of a person's risk to the community. The request shall be in writing and shall not require the consent of the subject of the records.

(3) The information to be released to the department of corrections shall include all relevant records and reports, as defined by rule, necessary for the department of corrections to carry out its duties, including those records and reports identified in subsection (2) of this section.

(4) The department shall, subject to available resources, electronically, or by the most cost-effective means available, provide the department of corrections with the names, last dates of services, and addresses of specific regional support networks and mental health service providers that delivered mental health services to a person subject to chapter 9.94A or 9.95 RCW pursuant to an agreement between the departments.

(5) The department and the department of corrections, in consultation with regional support networks, mental health service providers as defined in subsection (1) of this section, mental health consumers, and advocates for persons with mental illness, shall adopt rules to implement the provisions of this section related to the type and scope of information to be released. These rules shall:

(a) Enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A or 9.95 RCW, including accessing and releasing or disclosing information of persons who received mental health services as a minor; and

(b) Establish requirements for the notification of persons under the supervision of the department of corrections regarding the provisions of this section.

(6) The information received by the department of corrections under this section shall remain confidential and subject to the limitations on disclosure outlined in RCW 71.34.340, except as provided in RCW 72.09.585.

(7) No mental health service provider or individual employed by a mental health service provider shall be held responsible for information released to or used by the department of corrections under the provisions of this section or rules adopted under this section.

(8) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

(9) This section does not modify the terms and conditions of disclosure of information related to sexually transmitted diseases under chapter 70.24 RCW. [2004 c 166 § 8; 2002 c 39 § 1; 2000 c 75 § 2. Formerly RCW 71.34.225.]

**Severability—Effective dates—2004 c 166:** See notes following RCW 71.05.040.

**Intent—2000 c 75:** See note following RCW 71.05.445.

**71.34.350 Disclosure of information or records—Required entries in minor's clinical record.** When disclosure of information or records is made, the date and circumstances under which the disclosure was made, the name or names of the persons or agencies to whom such disclosure was made and their relationship if any, to the minor, and the information disclosed shall be entered promptly in the minor's clinical record. [1985 c 354 § 22. Formerly RCW 71.34.220.]

**71.34.355 Rights of minors undergoing treatment—Posting.** Absent a risk to self or others, minors treated under this chapter have the following rights, which shall be prominently posted in the evaluation and treatment facility:

(1) To wear their own clothes and to keep and use personal possessions;

(2) To keep and be allowed to spend a reasonable sum of their own money for canteen expenses and small purchases;

(3) To have individual storage space for private use;

(4) To have visitors at reasonable times;

(5) To have reasonable access to a telephone, both to make and receive confidential calls;

(6) To have ready access to letter-writing materials, including stamps, and to send and receive uncensored correspondence through the mails;

(7) To discuss treatment plans and decisions with mental health professionals;

(8) To have the right to adequate care and individualized treatment;

(9) Not to consent to the performance of electro-convulsive treatment or surgery, except emergency life-saving surgery, upon him or her, and not to have electro-convulsive treatment or nonemergency surgery in such circumstance unless ordered by a court pursuant to a judicial hearing in which the minor is present and represented by counsel, and the court shall appoint a psychiatrist, psychologist, or physician designated by the minor or the minor's counsel to testify on behalf of the minor. The minor's parent may exercise this right on the minor's behalf, and must be informed of any impending treatment;

(10) Not to have psychosurgery performed on him or her under any circumstances. [1985 c 354 § 16. Formerly RCW 71.34.160.]

**71.34.360 No detention of minors after eighteenth birthday—Exceptions.** No minor received as a voluntary patient or committed under this chapter may be detained after his or her eighteenth birthday unless the person, upon reaching eighteen years of age, has applied for admission to an appropriate evaluation and treatment facility or unless involuntary commitment proceedings under chapter 71.05 RCW have been initiated: PROVIDED, That a minor may be detained after his or her eighteenth birthday for purposes of completing the fourteen-day diagnosis, evaluation, and treatment. [1985 c 354 § 20. Formerly RCW 71.34.190.]

**71.34.365 Release of minor—Requirements.** (1) If a minor is not accepted for admission or is released by an inpatient evaluation and treatment facility, the facility shall release the minor to the custody of the minor's parent or other responsible person. If not otherwise available, the facility shall furnish transportation for the minor to the minor's residence or other appropriate place.

(2) If the minor is released to someone other than the minor's parent, the facility shall make every effort to notify the minor's parent of the release as soon as possible.

(3) No indigent minor may be released to less restrictive alternative treatment or setting or discharged from inpatient treatment without suitable clothing, and the department shall furnish this clothing. As funds are available, the secretary may provide necessary funds for the immediate welfare of indigent minors upon discharge or release to less restrictive alternative treatment. [1985 c 354 § 17. Formerly RCW 71.34.170.]

**71.34.370 Antipsychotic medication and shock treatment.** For the purposes of administration of antipsychotic medication and shock treatment, the provisions of chapter 120, Laws of 1989 apply to minors pursuant to chapter 71.34 RCW. [1989 c 120 § 9. Formerly RCW 71.34.290.]

**71.34.375 Parent-initiated treatment—Notice to parents of available treatment options.** (1) The evaluation and treatment facility is required to promptly provide written and verbal notice of all statutorily available treatment options contained in this chapter to every parent or guardian of a minor child when the parent or guardian seeks to have his or her minor child treated at an evaluation and treatment facility.

(2) The notice must contain the following information:

(a) All current statutorily available treatment options including but not limited to those provided in this chapter; and

(b) The procedures to be followed to utilize the treatment options described in this chapter.

(3) The department shall produce, and make available, the written notification that must include, at a minimum, the information contained in subsection (2) of this section. [2003 c 107 § 1. Formerly RCW 71.34.056.]

**71.34.380 Department to adopt rules to effectuate chapter.** The department shall adopt such rules pursuant to chapter 34.05 RCW as may be necessary to effectuate the intent and purposes of this chapter, which shall include but not be limited to evaluation of the quality, effectiveness, efficiency, and use of services and facilities operating under this chapter, procedures and standards for commitment, and other action relevant to evaluation and treatment facilities, and establishment of criteria and procedures for placement and transfer of committed minors. [1985 c 354 § 25. Formerly RCW 71.34.800.]

**71.34.385 Uniform application of chapter—Training for county-designated mental health professionals.** The department shall ensure that the provisions of this chapter are applied by the counties in a consistent and uniform manner. The department shall also ensure that, to the extent possible within available funds, the county-designated mental health professionals are specifically trained in adolescent mental health issues, the mental health civil commitment laws, and the criteria for civil commitment. [1992 c 205 § 304. Formerly RCW 71.34.805.]

**Part headings not law—Severability—1992 c 205:** See notes following RCW 13.40.010.

**71.34.390 Redirection of Title XIX funds to fund placements within the state.** For the purpose of encouraging the expansion of existing evaluation and treatment facilities and the creation of new facilities, the department shall endeavor to redirect federal Title XIX funds which are expended on out-of-state placements to fund placements within the state. [1992 c 205 § 303. Formerly RCW 71.34.810.]

**Part headings not law—Severability—1992 c 205:** See notes following RCW 13.40.010.

**71.34.395 Availability of treatment does not create right to obtain public funds.** The ability of a parent to bring his or her minor child to a certified evaluation and treatment program for evaluation and treatment does not create a right to obtain or benefit from any funds or resources of the state. The state may provide services for indigent minors to the extent that funds are available. [1998 c 296 § 21. Formerly RCW 71.34.015.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**71.34.400 Eligibility for medical assistance under chapter 74.09 RCW—Payment by department.** For purposes of eligibility for medical assistance under chapter 74.09 RCW, minors in inpatient mental health treatment shall be

[2005 RCW Supp—page 860]

considered to be part of their parent's or legal guardian's household, unless the minor has been assessed by the department or its designee as likely to require such treatment for at least ninety consecutive days, or is in out-of-home care in accordance with chapter 13.34 RCW, or the parents are found to not be exercising responsibility for care and control of the minor. Payment for such care by the department shall be made only in accordance with rules, guidelines, and clinical criteria applicable to inpatient treatment of minors established by the department. [1998 c 296 § 11. Formerly RCW 71.34.027.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**71.34.405 Liability for costs of minor's treatment and care—Rules.** (1) A minor receiving treatment under the provisions of this chapter and responsible others shall be liable for the costs of treatment, care, and transportation to the extent of available resources and ability to pay.

(2) The secretary shall establish rules to implement this section and to define income, resources, and exemptions to determine the responsible person's or persons' ability to pay. [1985 c 354 § 13. Formerly RCW 71.34.130.]

**71.34.410 Liability for performance of duties under this chapter limited.** No public or private agency or governmental entity, nor officer of a public or private agency, nor the superintendent, or professional person in charge, his or her professional designee or attending staff of any such agency, nor any public official performing functions necessary to the administration of this chapter, nor peace officer responsible for detaining a person under this chapter, nor any county designated mental health professional, nor professional person, nor evaluation and treatment facility, shall be civilly or criminally liable for performing actions authorized in this chapter with regard to the decision of whether to admit, release, or detain a person for evaluation and treatment: PROVIDED, That such duties were performed in good faith and without gross negligence. [2005 c 371 § 5; 1985 c 354 § 27. Formerly RCW 71.34.270.]

**Finding—Intent—Severability—2005 c 371:** See notes following RCW 71.34.600.

## MINOR-INITIATED TREATMENT

**71.34.500 Minor thirteen or older may be admitted for inpatient mental treatment without parental consent—Professional person in charge must concur—Written renewal of consent required.** (1) A minor thirteen years or older may admit himself or herself to an evaluation and treatment facility for inpatient mental treatment, without parental consent. The admission shall occur only if the professional person in charge of the facility concurs with the need for inpatient treatment. Parental authorization is required for inpatient treatment of a minor under the age of thirteen.

(2) When, in the judgment of the professional person in charge of an evaluation and treatment facility, there is reason to believe that a minor is in need of inpatient treatment because of a mental disorder, and the facility provides the type of evaluation and treatment needed by the minor, and it



is not feasible to treat the minor in any less restrictive setting or the minor's home, the minor may be admitted to an evaluation and treatment facility.

(3) Written renewal of voluntary consent must be obtained from the applicant no less than once every twelve months. The minor's need for continued inpatient treatments shall be reviewed and documented no less than every one hundred eighty days. [2005 c 371 § 2; 1998 c 296 § 14. Formerly RCW 71.34.042.]

**Finding—Intent—Severability—2005 c 371:** See notes following RCW 71.34.600.

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**71.34.510 Notice to parents when minor admitted to inpatient treatment without parental consent.** The administrator of the treatment facility shall provide notice to the parents of a minor when the minor is voluntarily admitted to inpatient treatment under RCW 71.34.500. The notice shall be in the form most likely to reach the parent within twenty-four hours of the minor's voluntary admission and shall advise the parent: (1) That the minor has been admitted to inpatient treatment; (2) of the location and telephone number of the facility providing such treatment; (3) of the name of a professional person on the staff of the facility providing treatment who is designated to discuss the minor's need for inpatient treatment with the parent; and (4) of the medical necessity for admission. [1998 c 296 § 15. Formerly RCW 71.34.044.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**71.34.520 Minor voluntarily admitted may give notice to leave at any time.** (1) Any minor thirteen years or older voluntarily admitted to an evaluation and treatment facility under RCW 71.34.500 may give notice of intent to leave at any time. The notice need not follow any specific form so long as it is written and the intent of the minor can be discerned.

(2) The staff member receiving the notice shall date it immediately, record its existence in the minor's clinical record, and send copies of it to the minor's attorney, if any, the county-designated mental health professional, and the parent.

(3) The professional person shall discharge the minor, thirteen years or older, from the facility by the second judicial day following receipt of the minor's notice of intent to leave. [2003 c 106 § 1; 1998 c 296 § 16. Formerly RCW 71.34.046.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**71.34.530 Age of consent—Outpatient treatment of minors.** Any minor thirteen years or older may request and receive outpatient treatment without the consent of the minor's parent. Parental authorization is required for outpatient treatment of a minor under the age of thirteen. [1998 c 296 § 12; 1995 c 312 § 52; 1985 c 354 § 3. Formerly RCW 71.34.030.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**Short title—1995 c 312:** See note following RCW 13.32A.010.

## PARENT-INITIATED TREATMENT

**71.34.600 Parent may request determination whether minor has mental disorder requiring inpatient treatment—Minor consent not required—Duties and obligations of professional person and facility.** (1) A parent may bring, or authorize the bringing of, his or her minor child to an evaluation and treatment facility or an inpatient facility licensed under chapter 70.41, 71.12, or 72.23 RCW and request that the professional person as defined in \*RCW 71.05.020(24) examine the minor to determine whether the minor has a mental disorder and is in need of inpatient treatment.

(2) The consent of the minor is not required for admission, evaluation, and treatment if the parent brings the minor to the facility.

(3) An appropriately trained professional person may evaluate whether the minor has a mental disorder. The evaluation shall be completed within twenty-four hours of the time the minor was brought to the facility, unless the professional person determines that the condition of the minor necessitates additional time for evaluation. In no event shall a minor be held longer than seventy-two hours for evaluation. If, in the judgment of the professional person, it is determined it is a medical necessity for the minor to receive inpatient treatment, the minor may be held for treatment. The facility shall limit treatment to that which the professional person determines is medically necessary to stabilize the minor's condition until the evaluation has been completed. Within twenty-four hours of completion of the evaluation, the professional person shall notify the department if the child is held for treatment and of the date of admission.

(4) No provider is obligated to provide treatment to a minor under the provisions of this section except that no provider may refuse to treat a minor under the provisions of this section solely on the basis that the minor has not consented to the treatment. No provider may admit a minor to treatment under this section unless it is medically necessary.

(5) No minor receiving inpatient treatment under this section may be discharged from the facility based solely on his or her request.

(6) Prior to the review conducted under RCW 71.34.610, the professional person shall notify the minor of his or her right to petition superior court for release from the facility.

(7) For the purposes of this section "professional person" means "professional person" as defined in RCW 71.05.020. [2005 c 371 § 4; 1998 c 296 § 17. Formerly RCW 71.34.052.]

**\*Reviser's note:** RCW 71.05.020 was amended by 2005 c 504 § 104, changing subsection (24) to subsection (26).

**Finding—Intent—2005 c 371:** "The legislature finds that, despite explicit statements in statute that the consent of a minor child is not required for a parent-initiated admission to inpatient or outpatient mental health treatment, treatment providers consistently refuse to accept a minor aged thirteen or over if the minor does not also consent to treatment. The legislature intends that the parent-initiated treatment provisions, with their accompanying due process provisions for the minor, be made fully available to parents." [2005 c 371 § 1.]

**Severability—2005 c 371:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or

the application of the provision to other persons or circumstances is not affected." [2005 c 371 § 7.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**71.34.610 Review of admission and inpatient treatment of minors—Determination of medical necessity—Department review—Minor declines necessary treatment—At-risk youth petition—Costs—Public funds.** (1) The department shall assure that, for any minor admitted to inpatient treatment under RCW 71.34.600, a review is conducted by a physician or other mental health professional who is employed by the department, or an agency under contract with the department, and who neither has a financial interest in continued inpatient treatment of the minor nor is affiliated with the facility providing the treatment. The physician or other mental health professional shall conduct the review not less than seven nor more than fourteen days following the date the minor was brought to the facility under RCW 71.34.600 to determine whether it is a medical necessity to continue the minor's treatment on an inpatient basis.

(2) In making a determination under subsection (1) of this section, the department shall consider the opinion of the treatment provider, the safety of the minor, and the likelihood the minor's mental health will deteriorate if released from inpatient treatment. The department shall consult with the parent in advance of making its determination.

(3) If, after any review conducted by the department under this section, the department determines it is no longer a medical necessity for a minor to receive inpatient treatment, the department shall immediately notify the parents and the facility. The facility shall release the minor to the parents within twenty-four hours of receiving notice. If the professional person in charge and the parent believe that it is a medical necessity for the minor to remain in inpatient treatment, the minor shall be released to the parent on the second judicial day following the department's determination in order to allow the parent time to file an at-risk youth petition under chapter 13.32A RCW. If the department determines it is a medical necessity for the minor to receive outpatient treatment and the minor declines to obtain such treatment, such refusal shall be grounds for the parent to file an at-risk youth petition.

(4) If the evaluation conducted under RCW 71.34.600 is done by the department, the reviews required by subsection (1) of this section shall be done by contract with an independent agency.

(5) The department may, subject to available funds, contract with other governmental agencies to conduct the reviews under this section. The department may seek reimbursement from the parents, their insurance, or medicaid for the expense of any review conducted by an agency under contract.

(6) In addition to the review required under this section, the department may periodically determine and redetermine the medical necessity of treatment for purposes of payment with public funds. [1998 c 296 § 9; 1995 c 312 § 56. Formerly RCW 71.34.025.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**Short title—1995 c 312:** See note following RCW 13.32A.010.

**71.34.620 Minor may petition court for release from facility.** Following the review conducted under RCW 71.34.610, a minor child may petition the superior court for his or her release from the facility. The petition may be filed not sooner than five days following the review. The court shall release the minor unless it finds, upon a preponderance of the evidence, that it is a medical necessity for the minor to remain at the facility. [1998 c 296 § 19. Formerly RCW 71.34.162.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**71.34.630 Minor not released by petition under RCW 71.34.620—Release within thirty days—Professional may initiate proceedings to stop release.** If the minor is not released as a result of the petition filed under RCW 71.34.620, he or she shall be released not later than thirty days following the later of: (1) The date of the department's determination under RCW 71.34.610(2); or (2) the filing of a petition for judicial review under RCW 71.34.620, unless a professional person or the county designated mental health professional initiates proceedings under this chapter. [1998 c 296 § 20. Formerly RCW 71.34.164.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**71.34.640 Evaluation of treatment of minors.** The department shall randomly select and review the information on children who are admitted to inpatient treatment on application of the child's parent regardless of the source of payment, if any. The review shall determine whether the children reviewed were appropriately admitted into treatment based on an objective evaluation of the child's condition and the outcome of the child's treatment. [1996 c 133 § 36; 1995 c 312 § 58. Formerly RCW 71.34.035.]

**Findings—Short title—Intent—Construction—1996 c 133:** See notes following RCW 13.32A.197.

**Short title—1995 c 312:** See note following RCW 13.32A.010.

**71.34.650 Parent may request determination whether minor has mental disorder requiring outpatient treatment—Consent of minor not required—Discharge of minor.** (1) A parent may bring, or authorize the bringing of, his or her minor child to a provider of outpatient mental health treatment and request that an appropriately trained professional person examine the minor to determine whether the minor has a mental disorder and is in need of outpatient treatment.

(2) The consent of the minor is not required for evaluation if the parent brings the minor to the provider.

(3) The professional person may evaluate whether the minor has a mental disorder and is in need of outpatient treatment.

(4) Any minor admitted to inpatient treatment under RCW 71.34.500 or 71.34.600 shall be discharged immediately from inpatient treatment upon written request of the parent. [1998 c 296 § 18. Formerly RCW 71.34.054.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**71.34.660 Limitation on liability for admitting or accepting minor child.** A minor child shall have no cause of action against an evaluation and treatment facility, inpatient facility, or provider of outpatient mental health treatment for admitting or accepting the minor in good faith for evaluation or treatment under RCW 71.34.600 or 71.34.650 based solely upon the fact that the minor did not consent to evaluation or treatment if the minor's parent has consented to the evaluation or treatment. [2005 c 371 § 3.]

**Finding—Intent—Severability—2005 c 371:** See notes following RCW 71.34.600.

## INVOLUNTARY COMMITMENT

**71.34.700 Evaluation of minor thirteen or older brought for immediate mental health services—Temporary detention.** If a minor, thirteen years or older, is brought to an evaluation and treatment facility or hospital emergency room for immediate mental health services, the professional person in charge of the facility shall evaluate the minor's mental condition, determine whether the minor suffers from a mental disorder, and whether the minor is in need of immediate inpatient treatment. If it is determined that the minor suffers from a mental disorder, inpatient treatment is required, the minor is unwilling to consent to voluntary admission, and the professional person believes that the minor meets the criteria for initial detention set forth herein, the facility may detain or arrange for the detention of the minor for up to twelve hours in order to enable a county-designated mental health professional to evaluate the minor and commence initial detention proceedings under the provisions of this chapter. [1985 c 354 § 4. Formerly RCW 71.34.040.]

**71.34.710 Minor thirteen or older who presents likelihood of serious harm or is gravely disabled—Transport to inpatient facility—Petition for initial detention—Notice of commitment hearing—Facility to evaluate and admit or release minor.** (1) When a county-designated mental health professional receives information that a minor, thirteen years or older, as a result of a mental disorder presents a likelihood of serious harm or is gravely disabled, has investigated the specific facts alleged and of the credibility of the person or persons providing the information, and has determined that voluntary admission for inpatient treatment is not possible, the county-designated mental health professional may take the minor, or cause the minor to be taken, into custody and transported to an evaluation and treatment facility providing inpatient treatment.

If the minor is not taken into custody for evaluation and treatment, the parent who has custody of the minor may seek review of that decision made by the county designated mental health professional in court. The parent shall file notice with the court and provide a copy of the county designated mental health professional's report or notes.

(2) Within twelve hours of the minor's arrival at the evaluation and treatment facility, the county-designated mental health professional shall serve on the minor a copy of the petition for initial detention, notice of initial detention, and statement of rights. The county-designated mental health professional shall file with the court on the next judicial day following the initial detention the original petition for initial

detention, notice of initial detention, and statement of rights along with an affidavit of service. The county-designated mental health professional shall commence service of the petition for initial detention and notice of the initial detention on the minor's parent and the minor's attorney as soon as possible following the initial detention.

(3) At the time of initial detention, the county-designated mental health professional shall advise the minor both orally and in writing that if admitted to the evaluation and treatment facility for inpatient treatment, a commitment hearing shall be held within seventy-two hours of the minor's provisional acceptance to determine whether probable cause exists to commit the minor for further mental health treatment.

The minor shall be advised that he or she has a right to communicate immediately with an attorney and that he or she has a right to have an attorney appointed to represent him or her before and at the hearing if the minor is indigent.

(4) Whenever the county designated mental health professional petitions for detention of a minor under this chapter, an evaluation and treatment facility providing seventy-two hour evaluation and treatment must immediately accept on a provisional basis the petition and the person. Within twenty-four hours of the minor's arrival, the facility must evaluate the minor's condition and either admit or release the minor in accordance with this chapter.

(5) If a minor is not approved for admission by the inpatient evaluation and treatment facility, the facility shall make such recommendations and referrals for further care and treatment of the minor as necessary. [1995 c 312 § 53; 1985 c 354 § 5. Formerly RCW 71.34.050.]

**Short title—1995 c 312:** See note following RCW 13.32A.010.

**71.34.720 Examination and evaluation of minor approved for inpatient admission—Referral to chemical dependency treatment program—Right to communication, exception—Evaluation and treatment period.** (1) Each minor approved by the facility for inpatient admission shall be examined and evaluated by a children's mental health specialist as to the child's mental condition and by a physician as to the child's physical condition within twenty-four hours of admission. Reasonable measures shall be taken to ensure medical treatment is provided for any condition requiring immediate medical attention.

(2) If, after examination and evaluation, the children's mental health specialist and the physician determine that the initial needs of the minor would be better served by placement in a chemical dependency treatment facility, then the minor shall be referred to an approved treatment program defined under RCW 70.96A.020.

(3) The admitting facility shall take reasonable steps to notify immediately the minor's parent of the admission.

(4) During the initial seventy-two hour treatment period, the minor has a right to associate or receive communications from parents or others unless the professional person in charge determines that such communication would be seriously detrimental to the minor's condition or treatment and so indicates in the minor's clinical record, and notifies the minor's parents of this determination. In no event may the minor be denied the opportunity to consult an attorney.

(5) If the evaluation and treatment facility admits the minor, it may detain the minor for evaluation and treatment for a period not to exceed seventy-two hours from the time of provisional acceptance. The computation of such seventy-two hour period shall exclude Saturdays, Sundays, and holidays. This initial treatment period shall not exceed seventy-two hours except when an application for voluntary inpatient treatment is received or a petition for fourteen-day commitment is filed.

(6) Within twelve hours of the admission, the facility shall advise the minor of his or her rights as set forth in this chapter. [1991 c 364 § 12; 1985 c 354 § 6. Formerly RCW 71.34.060.]

**Findings—Construction—Conflict with federal requirements—1991 c 364:** See notes following RCW 70.96A.020.

**71.34.730 Petition for fourteen-day commitment—Requirements.** (1) The professional person in charge of an evaluation and treatment facility where a minor has been admitted involuntarily for the initial seventy-two hour treatment period under this chapter may petition to have a minor committed to an evaluation and treatment facility for fourteen-day diagnosis, evaluation, and treatment.

If the professional person in charge of the treatment and evaluation facility does not petition to have the minor committed, the parent who has custody of the minor may seek review of that decision in court. The parent shall file notice with the court and provide a copy of the treatment and evaluation facility's report.

(2) A petition for commitment of a minor under this section shall be filed with the superior court in the county where the minor is residing or being detained.

(a) A petition for a fourteen-day commitment shall be signed either by two physicians or by one physician and a mental health professional who have examined the minor and shall contain the following:

- (i) The name and address of the petitioner;
- (ii) The name of the minor alleged to meet the criteria for fourteen-day commitment;
- (iii) The name, telephone number, and address if known of every person believed by the petitioner to be legally responsible for the minor;
- (iv) A statement that the petitioner has examined the minor and finds that the minor's condition meets required criteria for fourteen-day commitment and the supporting facts therefor;
- (v) A statement that the minor has been advised of the need for voluntary treatment but has been unwilling or unable to consent to necessary treatment;
- (vi) A statement recommending the appropriate facility or facilities to provide the necessary treatment; and
- (vii) A statement concerning whether a less restrictive alternative to inpatient treatment is in the best interests of the minor.

(b) A copy of the petition shall be personally delivered to the minor by the petitioner or petitioner's designee. A copy of the petition shall be sent to the minor's attorney and the minor's parent. [1995 c 312 § 54; 1985 c 354 § 7. Formerly RCW 71.34.070.]

**Short title—1995 c 312:** See note following RCW 13.32A.010.

**71.34.740 Commitment hearing—Requirements—Findings by court—Commitment—Release.** (1) A commitment hearing shall be held within seventy-two hours of the minor's admission, excluding Saturday, Sunday, and holidays, unless a continuance is requested by the minor or the minor's attorney.

(2) The commitment hearing shall be conducted at the superior court or an appropriate place at the facility in which the minor is being detained.

(3) At the commitment hearing, the evidence in support of the petition shall be presented by the county prosecutor.

(4) The minor shall be present at the commitment hearing unless the minor, with the assistance of the minor's attorney, waives the right to be present at the hearing.

(5) If the parents are opposed to the petition, they may be represented at the hearing and shall be entitled to court-appointed counsel if they are indigent.

(6) At the commitment hearing, the minor shall have the following rights:

- (a) To be represented by an attorney;
- (b) To present evidence on his or her own behalf;
- (c) To question persons testifying in support of the petition.

(7) If the minor has received medication within twenty-four hours of the hearing, the court shall be informed of that fact and of the probable effects of the medication.

(8) Rules of evidence shall not apply in fourteen-day commitment hearings.

(9) For a fourteen-day commitment, the court must find by a preponderance of the evidence that:

- (a) The minor has a mental disorder and presents a "likelihood of serious harm" or is "gravely disabled";
- (b) The minor is in need of evaluation and treatment of the type provided by the inpatient evaluation and treatment facility to which continued inpatient care is sought or is in need of less restrictive alternative treatment found to be in the best interests of the minor; and
- (c) The minor is unwilling or unable in good faith to consent to voluntary treatment.

(10) If the court finds that the minor meets the criteria for a fourteen-day commitment, the court shall either authorize commitment of the minor for inpatient treatment or for less restrictive alternative treatment upon such conditions as are necessary. If the court determines that the minor does not meet the criteria for a fourteen-day commitment, the minor shall be released.

(11) Nothing in this section prohibits the professional person in charge of the evaluation and treatment facility from releasing the minor at any time, when, in the opinion of the professional person in charge of the facility, further inpatient treatment is no longer necessary. The release may be subject to reasonable conditions if appropriate.

Whenever a minor is released under this section, the professional person in charge shall within three days, notify the court in writing of the release.

(12) A minor who has been committed for fourteen days shall be released at the end of that period unless a petition for one hundred eighty-day commitment is pending before the court. [1985 c 354 § 8. Formerly RCW 71.34.080.]

**71.34.750 Petition for one hundred eighty-day commitment—Hearing—Requirements—Findings by court—Commitment order—Release—Successive commitments.** (1) At any time during the minor's period of fourteen-day commitment, the professional person in charge may petition the court for an order requiring the minor to undergo an additional one hundred eighty-day period of treatment. The evidence in support of the petition shall be presented by the county prosecutor unless the petition is filed by the professional person in charge of a state-operated facility in which case the evidence shall be presented by the attorney general.

(2) The petition for one hundred eighty-day commitment shall contain the following:

- (a) The name and address of the petitioner or petitioners;
- (b) The name of the minor alleged to meet the criteria for one hundred eighty-day commitment;
- (c) A statement that the petitioner is the professional person in charge of the evaluation and treatment facility responsible for the treatment of the minor;
- (d) The date of the fourteen-day commitment order; and
- (e) A summary of the facts supporting the petition.

(3) The petition shall be supported by accompanying affidavits signed by two examining physicians, one of whom shall be a child psychiatrist, or by one examining physician and one children's mental health specialist. The affidavits shall describe in detail the behavior of the detained minor which supports the petition and shall state whether a less restrictive alternative to inpatient treatment is in the best interests of the minor.

(4) The petition for one hundred eighty-day commitment shall be filed with the clerk of the court at least three days before the expiration of the fourteen-day commitment period. The petitioner or the petitioner's designee shall within twenty-four hours of filing serve a copy of the petition on the minor and notify the minor's attorney and the minor's parent. A copy of the petition shall be provided to such persons at least twenty-four hours prior to the hearing.

(5) At the time of filing, the court shall set a date within seven days for the hearing on the petition. The court may continue the hearing upon the written request of the minor or the minor's attorney for not more than ten days. The minor or the parents shall be afforded the same rights as in a fourteen-day commitment hearing. Treatment of the minor shall continue pending the proceeding.

(6) For one hundred eighty-day commitment, the court must find by clear, cogent, and convincing evidence that the minor:

- (a) Is suffering from a mental disorder;
- (b) Presents a likelihood of serious harm or is gravely disabled; and
- (c) Is in need of further treatment that only can be provided in a one hundred eighty-day commitment.

(7) If the court finds that the criteria for commitment are met and that less restrictive treatment in a community setting is not appropriate or available, the court shall order the minor committed for further inpatient treatment to the custody of the secretary or to a private treatment and evaluation facility if the minor's parents have assumed responsibility for payment for the treatment. If the court finds that a less restrictive alternative is in the best interest of the minor, the court shall

order less restrictive alternative treatment upon such conditions as necessary.

If the court determines that the minor does not meet the criteria for one hundred eighty-day commitment, the minor shall be released.

(8) Successive one hundred eighty-day commitments are permissible on the same grounds and under the same procedures as the original one hundred eighty-day commitment. Such petitions shall be filed at least five days prior to the expiration of the previous one hundred eighty-day commitment order. [1985 c 354 § 9. Formerly RCW 71.34.090.]

**71.34.760 Placement of minor in state evaluation and treatment facility—Placement committee—Facility to report to committee.** (1) If a minor is committed for one hundred eighty-day inpatient treatment and is to be placed in a state-supported program, the secretary shall accept immediately and place the minor in a state-funded long-term evaluation and treatment facility.

(2) The secretary's placement authority shall be exercised through a designated placement committee appointed by the secretary and composed of children's mental health specialists, including at least one child psychiatrist who represents the state-funded, long-term, evaluation and treatment facility for minors. The responsibility of the placement committee will be to:

(a) Make the long-term placement of the minor in the most appropriate, available state-funded evaluation and treatment facility, having carefully considered factors including the treatment needs of the minor, the most appropriate facility able to respond to the minor's identified treatment needs, the geographic proximity of the facility to the minor's family, the immediate availability of bed space, and the probable impact of the placement on other residents of the facility;

(b) Approve or deny requests from treatment facilities for transfer of a minor to another facility;

(c) Receive and monitor reports required under this section;

(d) Receive and monitor reports of all discharges.

(3) The secretary may authorize transfer of minors among treatment facilities if the transfer is in the best interests of the minor or due to treatment priorities.

(4) The responsible state-funded evaluation and treatment facility shall submit a report to the department's designated placement committee within ninety days of admission and no less than every one hundred eighty days thereafter, setting forth such facts as the department requires, including the minor's individual treatment plan and progress, recommendations for future treatment, and possible less restrictive treatment. [1985 c 354 § 10. Formerly RCW 71.34.100.]

**71.34.770 Release of minor—Conditional release—Discharge.** (1) The professional person in charge of the inpatient treatment facility may authorize release for the minor under such conditions as appropriate. Conditional release may be revoked pursuant to RCW 71.34.780 if leave conditions are not met or the minor's functioning substantially deteriorates.

(2) Minors may be discharged prior to expiration of the commitment period if the treating physician or professional

person in charge concludes that the minor no longer meets commitment criteria. [1985 c 354 § 12. Formerly RCW 71.34.120.]

**71.34.780 Minor's failure to adhere to outpatient conditions—Deterioration of minor's functioning—Transport to inpatient facility—Order of apprehension and detention—Revocation of alternative treatment or conditional release—Hearings.** (1) If the professional person in charge of an outpatient treatment program, a county-designated mental health professional, or the secretary determines that a minor is failing to adhere to the conditions of the court order for less restrictive alternative treatment or the conditions for the conditional release, or that substantial deterioration in the minor's functioning has occurred, the county-designated mental health professional, or the secretary may order that the minor be taken into custody and transported to an inpatient evaluation and treatment facility.

(2) The county-designated mental health professional or the secretary shall file the order of apprehension and detention and serve it upon the minor and notify the minor's parent and the minor's attorney, if any, of the detention within two days of return. At the time of service the minor shall be informed of the right to a hearing and to representation by an attorney. The county-designated mental health professional or the secretary may modify or rescind the order of apprehension and detention at any time prior to the hearing.

(3) A petition for revocation of less restrictive alternative treatment shall be filed by the county-designated mental health professional or the secretary with the court in the county ordering the less restrictive alternative treatment. The court shall conduct the hearing in that county. A petition for revocation of conditional release may be filed with the court in the county ordering inpatient treatment or the county where the minor on conditional release is residing. A petition shall describe the behavior of the minor indicating violation of the conditions or deterioration of routine functioning and a dispositional recommendation. Upon motion for good cause, the hearing may be transferred to the county of the minor's residence or to the county in which the alleged violations occurred. The hearing shall be held within seven days of the minor's return. The issues to be determined are whether the minor did or did not adhere to the conditions of the less restrictive alternative treatment or conditional release, or whether the minor's routine functioning has substantially deteriorated, and, if so, whether the conditions of less restrictive alternative treatment or conditional release should be modified or whether the minor should be returned to inpatient treatment. Pursuant to the determination of the court, the minor shall be returned to less restrictive alternative treatment or conditional release on the same or modified conditions or shall be returned to inpatient treatment. If the minor is returned to inpatient treatment, RCW 71.34.760 regarding the secretary's placement responsibility shall apply. The hearing may be waived by the minor and the minor returned to inpatient treatment or to less restrictive alternative treatment or conditional release on the same or modified conditions. [1985 c 354 § 11. Formerly RCW 71.34.110.]

[2005 RCW Supp—page 866]

**71.34.790 Transportation for minors committed to state facility for one hundred eighty-day treatment.** Necessary transportation for minors committed to the secretary under this chapter for one hundred eighty-day treatment shall be provided by the department in the most appropriate and cost-effective means. [1985 c 354 § 15. Formerly RCW 71.34.150.]

**71.34.795 Transferring or moving persons from juvenile correctional institutions or facilities to evaluation and treatment facilities.** When in the judgment of the department the welfare of any person committed to or confined in any state juvenile correctional institution or facility necessitates that the person be transferred or moved for observation, diagnosis, or treatment to an evaluation and treatment facility, the secretary or the secretary's designee is authorized to order and effect such move or transfer for a period of up to fourteen days, provided that the secretary notifies the original committing court of the transfer and the evaluation and treatment facility is in agreement with the transfer. No person committed to or confined in any state juvenile correctional institution or facility may be transferred to an evaluation and treatment facility for more than fourteen days unless that person has been admitted as a voluntary patient or committed for one hundred eighty-day treatment under this chapter or ninety-day treatment under chapter 71.05 RCW if eighteen years of age or older. Underlying jurisdiction of minors transferred or committed under this section remains with the state correctional institution. A voluntary admitted minor or minors committed under this section and no longer meeting the criteria for one hundred eighty-day commitment shall be returned to the state correctional institution to serve the remaining time of the underlying dispositional order or sentence. The time spent by the minor at the evaluation and treatment facility shall be credited towards the minor's juvenile court sentence. [1985 c 354 § 19. Formerly RCW 71.34.180.]

**71.34.800 Recodified as RCW 71.34.380.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.805 Recodified as RCW 71.34.385.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**71.34.810 Recodified as RCW 71.34.390.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Title 71A

### DEVELOPMENTAL DISABILITIES

#### Chapters

**71A.12 State services.**

**71A.20 Residential habilitation centers.**

**Chapter 71A.12 RCW****STATE SERVICES**

## Sections

71A.12.025 Persons with developmental disabilities who commit crimes—Findings.

**71A.12.025 Persons with developmental disabilities who commit crimes—Findings.** The legislature finds that among those persons who endanger the safety of others by committing crimes are a small number of persons with developmental disabilities. While their conduct is not typical of the vast majority of persons with developmental disabilities who are responsible citizens, for their own welfare and for the safety of others the state may need to exercise control over those few dangerous individuals who are developmentally disabled, have been charged with crimes that involve a threat to public safety or security, and have been found either incompetent to stand trial or not guilty by reason of insanity.

The legislature finds, however, that the use of civil commitment procedures under chapter 71.05 RCW to effect state control over dangerous developmentally disabled persons has resulted in their commitment to institutions for the mentally ill. The legislature finds that existing programs in mental institutions may be inappropriate for persons who are developmentally disabled because the services provided in mental institutions are oriented to persons with mental illness, a condition not necessarily associated with developmental disabilities.

Therefore, the legislature believes that, where appropriate, and subject to available funds, persons with developmental disabilities who have been charged with crimes that involve a threat to public safety or security and have been found incompetent to stand trial or not guilty by reason of insanity should receive state services addressing their needs, that such services must be provided in conformance with an individual habilitation plan, and that their initial treatment should be separate and discrete from treatment for persons involved in any other treatment or habilitation program in a manner consistent with the needs of public safety. [1998 c 297 § 5; 1989 c 420 § 2. Formerly RCW 71.05.035.]

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**Chapter 71A.20 RCW****RESIDENTIAL HABILITATION CENTERS**

## Sections

71A.20.170 Developmental disabilities community trust account—Created.

**71A.20.170 Developmental disabilities community trust account—Created.** (1) The developmental disabilities community trust account is created in the state treasury. All proceeds from the use of excess property identified in the 2002 joint legislative audit and review committee capital study of the division of developmental disabilities residential habilitation centers at Lakeland Village and Rainier school that would not impact current residential habilitation center operations must be deposited into the account. Income may come from the lease of the land, conservation easements, sale

of timber, or other activities short of sale of the property. "Excess property" includes that portion of the property at Rainier school previously under the cognizance and control of Washington State University for use as a dairy/forage research facility. "Proceeds" include the net receipts from the use of all or a portion of the properties. Only investment income from the principal of the proceeds deposited into the trust account may be spent from the account. Moneys in the account may be spent only after appropriation. Expenditures from the account shall be used exclusively to provide family support and/or employment/day services to eligible persons with developmental disabilities who can be served by community-based developmental disability services. It is the intent of the legislature that the account should not be used to replace, supplant, or reduce existing appropriations.

(2) The department shall report on its efforts and strategies to provide income to the developmental disabilities community trust account from the excess property identified in subsection (1) of this section from the lease of the property, sale of timber, or other activity short of sale of the property. The department shall report by June 30, 2006.

(3) The account shall be known as the Dan Thompson memorial developmental disabilities community trust account. [2005 c 353 § 1.]

**Effective dates—2005 c 353:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 10, 2005], except for section 3 of this act which takes effect July 1, 2005, and section 4 of this act which takes effect July 1, 2006." [2005 c 353 § 7.]

**Title 72****STATE INSTITUTIONS****Chapters**

**72.01 Administration.**

**72.02 Adult corrections.**

**72.09 Department of corrections.**

**72.11 Offenders' responsibility for legal financial obligations.**

**72.23 Public and private facilities for mentally ill.**

**Chapter 72.01 RCW****ADMINISTRATION**

## Sections

72.01.140 Agricultural and farm activities.

72.01.142 Repealed.

**72.01.140 Agricultural and farm activities.** The secretary shall:

(1) Make a survey, investigation, and classification of the lands connected with the state institutions under his control, and determine which thereof are of such character as to be most profitably used for agricultural, horticultural, dairying, and stock raising purposes, taking into consideration the costs of making them ready for cultivation, the character of the soil, its depth and fertility, the number of kinds of crops to which it is adapted, the local climatic conditions, the local annual rainfall, the water supply upon the land or available, the needs of all state institutions for the food products that

can be grown or produced, and the amount and character of the available labor of inmates at the several institutions;

(2) Establish and carry on suitable farming operations at the several institutions under his control;

(3) Supply the several institutions with the necessary food products produced thereat;

(4) Exchange with, or furnish to, other institutions, food products at the cost of production;

(5) Sell and dispose of surplus food products produced. [2005 c 353 § 5; 1981 c 238 § 1; 1979 c 141 § 149; 1959 c 28 § 72.01.140. Prior: 1955 c 195 § 4(7), (8), (9), (10), and (11); 1921 c 7 § 39; RRS § 10797. Formerly RCW 43.28.020, part.]

**Effective dates—2005 c 353:** See note following RCW 71A.20.170.

**Effective date—1981 c 238:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1981." [1981 c 238 § 7.]

**Savings—Liabilities—1981 c 238:** "The enactment of this act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which is already in existence on the effective date of this act." [1981 c 238 § 5.]

**Savings—Rights, actions, contracts—1981 c 238:** "Nothing in this act shall be construed as affecting any existing rights except as to the agencies referred to, nor as affecting any pending actions, activities, proceedings, or contracts, nor affect the validity of any act performed by such agency or any employee thereof prior to the effective date of this act." [1981 c 238 § 6.]

**72.01.142 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Chapter 72.02 RCW ADULT CORRECTIONS

### Sections

72.02.045 Superintendent's authority.

**72.02.045 Superintendent's authority.** The superintendent of each institution has the powers, duties, and responsibilities specified in this section.

(1) Subject to the rules of the department, the superintendent is responsible for the supervision and management of the institution, the grounds and buildings, the subordinate officers and employees, and the prisoners committed, admitted, or transferred to the institution.

(2) Subject to the rules of the department and the director of the division of prisons or his or her designee and the Washington personnel resources board, the superintendent shall appoint all subordinate officers and employees.

(3) The superintendent, subject to approval by the secretary, has the authority to determine the types and amounts of property that convicted persons may possess in department facilities. This authority includes the authority to determine the types and amounts that the department will transport at the department's expense whenever a convicted person is transferred between department institutions or to other jurisdictions. Convicted persons are responsible for the costs of transporting their excess property. If a convicted person fails to pay the costs of transporting any excess property within ninety days from the date of transfer, such property shall be presumed abandoned and may be disposed of in the manner allowed by RCW 63.42.040 (1) through (3). The superintendent shall be the custodian of all funds and valuable personal property of convicted persons as may be in their possession upon admission to the institution, or which may be sent or brought in to such persons, or earned by them while in custody, or which shall be forwarded to the superintendent on behalf of convicted persons. All such funds shall be deposited in the personal account of the convicted person and the superintendent shall have authority to disburse moneys from such person's personal account for the personal and incidental needs of the convicted person as may be deemed reasonably necessary. When convicted persons are released from the custody of the department either on parole, community placement, community custody, community supervision, or discharge, all funds and valuable personal property in the possession of the superintendent belonging to such convicted persons shall be delivered to them. In no case shall the state of Washington, or any state officer, including state elected officials, employees, or volunteers, be liable for the loss of such personal property, except upon a showing that the loss was occasioned by the intentional act, gross negligence, or negligence of the officer, official, employee, or volunteer, and that the actions or omissions occurred while the person was performing, or in good faith purporting to perform, his or her official duties. Recovery of damages for loss of personal property while in the custody of the superintendent under this subsection shall be limited to the lesser of the market value of the item lost at the time of the loss, or the original purchase price of the item or, in the case of hand-made goods, the materials used in fabricating the item.

[2005 RCW Supp—page 868]

dent shall be the custodian of all funds and valuable personal property of convicted persons as may be in their possession upon admission to the institution, or which may be sent or brought in to such persons, or earned by them while in custody, or which shall be forwarded to the superintendent on behalf of convicted persons. All such funds shall be deposited in the personal account of the convicted person and the superintendent shall have authority to disburse moneys from such person's personal account for the personal and incidental needs of the convicted person as may be deemed reasonably necessary. When convicted persons are released from the custody of the department either on parole, community placement, community custody, community supervision, or discharge, all funds and valuable personal property in the possession of the superintendent belonging to such convicted persons shall be delivered to them. In no case shall the state of Washington, or any state officer, including state elected officials, employees, or volunteers, be liable for the loss of such personal property, except upon a showing that the loss was occasioned by the intentional act, gross negligence, or negligence of the officer, official, employee, or volunteer, and that the actions or omissions occurred while the person was performing, or in good faith purporting to perform, his or her official duties. Recovery of damages for loss of personal property while in the custody of the superintendent under this subsection shall be limited to the lesser of the market value of the item lost at the time of the loss, or the original purchase price of the item or, in the case of hand-made goods, the materials used in fabricating the item.

(4) The superintendent, subject to the approval of the director of the division of prisons and the secretary, shall make, amend, and repeal rules for the administration, supervision, discipline, and security of the institution.

(5) When in the superintendent's opinion an emergency exists, the superintendent may promulgate temporary rules for the governance of the institution, which shall remain in effect until terminated by the director of the division of prisons or the secretary.

(6) The superintendent shall perform such other duties as may be prescribed. [2005 c 382 § 1; 1993 c 281 § 63; 1988 c 143 § 2.]

**Effective date—2005 c 382:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 10, 2005]." [2005 c 382 § 2.]

**Effective date—1993 c 281:** See note following RCW 41.06.022.

*Health care: RCW 41.05.280.*

## Chapter 72.09 RCW DEPARTMENT OF CORRECTIONS

### Sections

- 72.09.100 Inmate work program—Classes of work programs—Participation—Benefits.
- 72.09.116 Information obtained under RCW 72.09.115 exempt from public disclosure. (*Effective July 1, 2006.*)
- 72.09.225 Sexual misconduct by state employees, contractors. (*Effective July 1, 2006.*)
- 72.09.340 Supervision of sex offenders—Public safety—Policy for release plan evaluation and approval—Implementation, publicizing, notice—Rejection of residence locations of felony sex offenders of minor victims—Supervised visitation considerations. (*Expires July 1, 2006.*)



**72.09.100 Inmate work program—Classes of work programs—Participation—Benefits.** It is the intent of the legislature to vest in the department the power to provide for a comprehensive inmate work program and to remove statutory and other restrictions which have limited work programs in the past. It is also the intent of the legislature to ensure that the correctional industries board of directors, in developing and selecting correctional industries work programs, does not encourage the development of, or provide for selection of or contracting for, or the significant expansion of, any new or existing class I correctional industries work programs that unfairly compete with Washington businesses. The legislature intends that the requirements relating to fair competition in the correctional industries work programs be liberally construed by the correctional industries board of directors to protect Washington businesses from unfair competition. For purposes of establishing such a comprehensive program, the legislature recommends that the department consider adopting any or all, or any variation of, the following classes of work programs:

(1) CLASS I: FREE VENTURE INDUSTRIES.

(a) The employer model industries in this class shall be operated and managed in total or in part by any profit or non-profit organization pursuant to an agreement between the organization and the department. The organization shall produce goods or services for sale to both the public and private sector.

(b) The customer model industries in this class shall be operated and managed by the department to provide Washington state manufacturers or businesses with products or services currently produced or provided by out-of-state or foreign suppliers.

(c) The correctional industries board of directors shall review these proposed industries, including any potential new class I industries work program or the significant expansion of an existing class I industries work program, before the department contracts to provide such products or services. The review shall include the analysis required under RCW 72.09.115 to determine if the proposed correctional industries work program will compete with any Washington business. An agreement for a new class I correctional industries work program, or an agreement for a significant expansion of an existing class I correctional industries work program, that unfairly competes with any Washington business is prohibited.

(d) The department of corrections shall supply appropriate security and custody services without charge to the participating firms.

(e) Inmates who work in free venture industries shall do so at their own choice. They shall be paid a wage comparable to the wage paid for work of a similar nature in the locality in which the industry is located, as determined by the director of correctional industries. If the director cannot reasonably determine the comparable wage, then the pay shall not be less than the federal minimum wage.

(f) An inmate who is employed in the class I program of correctional industries shall not be eligible for unemployment compensation benefits pursuant to any of the provisions of Title 50 RCW until released on parole or discharged.

(2) CLASS II: TAX REDUCTION INDUSTRIES.

(a) Industries in this class shall be state-owned and operated enterprises designed primarily to reduce the costs for goods and services for tax-supported agencies and for non-profit organizations.

(b)(i) The industries selected for development within this class shall, as much as possible, match the available pool of inmate work skills and aptitudes with the work opportunities in the free community. The industries shall be closely patterned after private sector industries but with the objective of reducing public support costs rather than making a profit.

(ii) The products and services of this industry, including purchased products and services necessary for a complete product line, may be sold to the following:

(A) Public agencies;

(B) Nonprofit organizations;

(C) Private contractors when the goods purchased will be ultimately used by a public agency or a nonprofit organization;

(D) An employee and immediate family members of an employee of the department of corrections; and

(E) A person under the supervision of the department of corrections and his or her immediate family members.

(iii) The correctional industries board of directors shall authorize the type and quantity of items that may be purchased and sold under (b)(ii)(D) and (E) of this subsection.

(iv) It is prohibited to purchase any item purchased under (b)(ii)(D) and (E) of this subsection for the purpose of resale.

(v) Clothing manufactured by an industry in this class may be donated to nonprofit organizations that provide clothing free of charge to low-income persons.

(c)(i) Class II correctional industries products and services shall be reviewed by the correctional industries board of directors before offering such products and services for sale to private contractors.

(ii) The board of directors shall conduct a yearly marketing review of the products and services offered under this subsection. Such review shall include an analysis of the potential impact of the proposed products and services on the Washington state business community. To avoid waste or spoilage and consequent loss to the state, when there is no public sector market for such goods, byproducts and surpluses of timber, agricultural, and animal husbandry enterprises may be sold to private persons, at private sale. Surplus byproducts and surpluses of timber, agricultural and animal husbandry enterprises that cannot be sold to public agencies or to private persons may be donated to nonprofit organizations. All sales of surplus products shall be carried out in accordance with rules prescribed by the secretary.

(d) Security and custody services shall be provided without charge by the department of corrections.

(e) Inmates working in this class of industries shall do so at their own choice and shall be paid for their work on a gratuity scale which shall not exceed the wage paid for work of a similar nature in the locality in which the industry is located and which is approved by the director of correctional industries.

(f) Subject to approval of the correctional industries board, provisions of RCW 41.06.142 shall not apply to contracts with Washington state businesses entered into by the department of corrections through class II industries.

**(3) CLASS III: INSTITUTIONAL SUPPORT INDUSTRIES.**

(a) Industries in this class shall be operated by the department of corrections. They shall be designed and managed to accomplish the following objectives:

(i) Whenever possible, to provide basic work training and experience so that the inmate will be able to qualify for better work both within correctional industries and the free community. It is not intended that an inmate's work within this class of industries should be his or her final and total work experience as an inmate.

(ii) Whenever possible, to provide forty hours of work or work training per week.

(iii) Whenever possible, to offset tax and other public support costs.

(b) Class III correctional industries shall be reviewed by the correctional industries board of directors to set policy for work crews. The department shall present to the board of directors quarterly detail statements showing where work crews worked, what correctional industry class, and the hours worked. The board of directors may review any class III program at its discretion.

(c) Supervising, management, and custody staff shall be employees of the department.

(d) All able and eligible inmates who are assigned work and who are not working in other classes of industries shall work in this class.

(e) Except for inmates who work in work training programs, inmates in this class shall be paid for their work in accordance with an inmate gratuity scale. The scale shall be adopted by the secretary of corrections.

**(4) CLASS IV: COMMUNITY WORK INDUSTRIES.**

(a) Industries in this class shall be operated by the department of corrections. They shall be designed and managed to provide services in the inmate's resident community at a reduced cost. The services shall be provided to public agencies, to persons who are poor or infirm, or to nonprofit organizations.

(b) Class IV correctional industries shall be reviewed by the correctional industries board of directors to set policy for work crews. The department shall present to the board of directors quarterly detail statements showing where work crews worked, what correctional industry class, and the hours worked. The board of directors may review any class IV program at its discretion. Class IV correctional industries operated in work camps established pursuant to RCW 72.64.050 are exempt from the requirements of this subsection (4)(b).

(c) Inmates in this program shall reside in facilities owned by, contracted for, or licensed by the department of corrections. A unit of local government shall provide work supervision services without charge to the state and shall pay the inmate's wage.

(d) The department of corrections shall reimburse participating units of local government for liability and workers compensation insurance costs.

(e) Inmates who work in this class of industries shall do so at their own choice and shall receive a gratuity which shall not exceed the wage paid for work of a similar nature in the locality in which the industry is located.

**(5) CLASS V: COMMUNITY RESTITUTION PROGRAMS.**

(a) Programs in this class shall be subject to supervision by the department of corrections. The purpose of this class of industries is to enable an inmate, placed on community supervision, to work off all or part of a community restitution order as ordered by the sentencing court.

(b) Employment shall be in a community restitution program operated by the state, local units of government, or a nonprofit agency.

(c) To the extent that funds are specifically made available for such purposes, the department of corrections shall reimburse nonprofit agencies for workers compensation insurance costs. [2005 c 346 § 1; 2004 c 167 § 3; (2004 c 167 § 2 expired July 1, 2005). Prior: 2002 c 354 § 238; 2002 c 175 § 49; 1995 1st sp.s. c 19 § 33; 1994 c 224 § 1; 1992 c 123 § 1; 1990 c 22 § 1; 1989 c 185 § 7; 1986 c 193 § 2; 1985 c 151 § 1; 1983 c 255 § 5; 1981 c 136 § 11.]

**Effective date—2004 c 167 § 3:** "Section 3 of this act takes effect July 1, 2005." [2004 c 167 § 12.]

**Expiration date—2004 c 167 § 2:** "Section 2 of this act expires July 1, 2005." [2004 c 167 § 13.]

**Short title—Headings, captions not law—Severability—Effective dates—2002 c 354:** See RCW 41.80.907 through 41.80.910.

**Effective date—2002 c 175:** See note following RCW 7.80.130.

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**Severability—1983 c 255:** See RCW 72.74.900.

*Fish and game projects in prison work programs subject to RCW 72.09.100: RCW 72.63.020.*

**72.09.116 Information obtained under RCW 72.09.115 exempt from public disclosure. (Effective July 1, 2006.)** All records, documents, data, and other materials obtained under the requirements of RCW 72.09.115 from an existing correctional industries class I work program participant or an applicant for a proposed new or expanded class I correctional industries work program are exempt from public disclosure under chapter 42.56 RCW. [2005 c 274 § 347; 2004 c 167 § 8.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**72.09.225 Sexual misconduct by state employees, contractors. (Effective July 1, 2006.)** (1) When the secretary has reasonable cause to believe that sexual intercourse or sexual contact between an employee and an inmate has occurred, notwithstanding any rule adopted under chapter 41.06 RCW the secretary shall immediately suspend the employee.

(2) The secretary shall immediately institute proceedings to terminate the employment of any person:

(a) Who is found by the department, based on a preponderance of the evidence, to have had sexual intercourse or sexual contact with the inmate; or

(b) Upon a guilty plea or conviction for any crime specified in chapter 9A.44 RCW when the victim was an inmate.

(3) When the secretary has reasonable cause to believe that sexual intercourse or sexual contact between the employee of a contractor and an inmate has occurred, the secretary shall require the employee of a contractor to be immediately removed from any employment position which would permit the employee to have any access to any inmate.

(4) The secretary shall disqualify for employment with a contractor in any position with access to an inmate, any person:

(a) Who is found by the department, based on a preponderance of the evidence, to have had sexual intercourse or sexual contact with the inmate; or

(b) Upon a guilty plea or conviction for any crime specified in chapter 9A.44 RCW when the victim was an inmate.

(5) The secretary, when considering the renewal of a contract with a contractor who has taken action under subsection (3) or (4) of this section, shall require the contractor to demonstrate that there has been significant progress made in reducing the likelihood that any of its employees will have sexual intercourse or sexual contact with an inmate. The secretary shall examine whether the contractor has taken steps to improve hiring, training, and monitoring practices and whether the employee remains with the contractor. The secretary shall not renew a contract unless he or she determines that significant progress has been made.

(6)(a) For the purposes of RCW 50.20.060, a person terminated under this section shall be considered discharged for misconduct.

(b)(i) The department may, within its discretion or upon request of any member of the public, release information to an individual or to the public regarding any person or contract terminated under this section.

(ii) An appointed or elected public official, public employee, or public agency as defined in RCW 4.24.470 is immune from civil liability for damages for any discretionary release of relevant and necessary information, unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith. The immunity provided under this section applies to the release of relevant and necessary information to other public officials, public employees, or public agencies, and to the public.

(iii) Except as provided in chapter 42.56 RCW, or elsewhere, nothing in this section shall impose any liability upon a public official, public employee, or public agency for failing to release information authorized under this section. Nothing in this section implies that information regarding persons designated in subsection (2) of this section is confidential except as may otherwise be provided by law.

(7) The department shall adopt rules to implement this section. The rules shall reflect the legislative intent that this section prohibits individuals who are employed by the department or a contractor of the department from having sexual intercourse or sexual contact with inmates. The rules shall also reflect the legislative intent that when a person is employed by the department or a contractor of the department, and has sexual intercourse or sexual contact with an inmate against the employed person's will, the termination provisions of this section shall not be invoked.

(8) As used in this section:

(a) "Contractor" includes all subcontractors of a contractor;

(b) "Inmate" means an inmate as defined in RCW 72.09.015 or a person under the supervision of the department; and

(c) "Sexual intercourse" and "sexual contact" have the meanings provided in RCW 9A.44.010. [2005 c 274 § 348; 1999 c 72 § 2.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Application—1999 c 72:** See note following RCW 13.40.570.

**72.09.340 Supervision of sex offenders—Public safety—Policy for release plan evaluation and approval—Implementation, publicizing, notice—Rejection of residence locations of felony sex offenders of minor victims—Supervised visitation considerations. (Expires July 1, 2006.)** (1) In making all discretionary decisions regarding release plans for and supervision of sex offenders, the department shall set priorities and make decisions based on an assessment of public safety risks.

(2) The department shall, no later than September 1, 1996, implement a policy governing the department's evaluation and approval of release plans for sex offenders. The policy shall include, at a minimum, a formal process by which victims, witnesses, and other interested people may provide information and comments to the department on potential safety risks to specific individuals or classes of individuals posed by a specific sex offender. The department shall make all reasonable efforts to publicize the availability of this process through currently existing mechanisms and shall seek the assistance of courts, prosecutors, law enforcement, and victims' advocacy groups in doing so. Notice of an offender's proposed residence shall be provided to all people registered to receive notice of an offender's release under RCW 9.94A.612(2), except that in no case may this notification requirement be construed to require an extension of an offender's release date.

(3)(a) For any offender convicted of a felony sex offense against a minor victim after June 6, 1996, the department shall not approve a residence location if the proposed residence: (i) Includes a minor victim or child of similar age or circumstance as a previous victim who the department determines may be put at substantial risk of harm by the offender's residence in the household; or (ii) is within close proximity of the current residence of a minor victim, unless the whereabouts of the minor victim cannot be determined or unless such a restriction would impede family reunification efforts ordered by the court or directed by the department of social and health services. The department is further authorized to reject a residence location if the proposed residence is within close proximity to schools, child care centers, playgrounds, or other grounds or facilities where children of similar age or circumstance as a previous victim are present who the department determines may be put at substantial risk of harm by the sex offender's residence at that location.

(b) In addition, for any offender prohibited from living in a community protection zone under RCW 9.94A.712(6)(a)(ii), the department may not approve a residence location if the proposed residence is in a community protection zone.

(4) When the department requires supervised visitation as a term or condition of a sex offender's community placement under RCW 9.94A.700(6), the department shall, prior to approving a supervisor, consider the following:

(a) The relationships between the proposed supervisor, the offender, and the minor; (b) the proposed supervisor's acknowledgment and understanding of the offender's prior criminal conduct, general knowledge of the dynamics of

child sexual abuse, and willingness and ability to protect the minor from the potential risks posed by contact with the offender; and (c) recommendations made by the department of social and health services about the best interests of the child. [2005 c 436 § 3; 1996 c 215 § 3; 1990 c 3 § 708.]

**Expiration date—2005 c 436:** See note following RCW 9.94A.030.

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

### Chapter 72.11 RCW

#### OFFENDERS' RESPONSIBILITY FOR LEGAL FINANCIAL OBLIGATIONS

##### Sections

72.11.040 Cost of supervision fund.

**72.11.040 Cost of supervision fund.** The cost of supervision fund is created in the custody of the state treasurer. All receipts from assessments made under RCW 9.94A.780 and 72.04A.120 shall be deposited into the fund. Expenditures from the fund may be used only to support the collection of legal financial obligations. During the 2005-2007 biennium, funds from the account may also be used for costs associated with the department's supervision of the offenders in the community. Only the secretary of the department of corrections or the secretary's designee may authorize expenditures from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. [2005 c 518 § 943; 2003 1st sp.s. c 25 § 936; 2001 2nd sp.s. c 7 § 919; 2000 2nd sp.s. c 1 § 914; 1999 c 309 § 921; 1989 c 252 § 26.]

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Severability—Effective date—2001 2nd sp.s. c 7:** See notes following RCW 43.320.110.

**Severability—Effective date—2000 2nd sp.s. c 1:** See notes following RCW 41.05.143.

**Severability—Effective date—1999 c 309:** See notes following RCW 41.06.152.

**Purpose—Prospective application—Effective dates—Severability—1989 c 252:** See notes following RCW 9.94A.030.

### Chapter 72.23 RCW

#### PUBLIC AND PRIVATE FACILITIES FOR MENTALLY ILL

##### Sections

72.23.451 Annual report to the legislature.

**72.23.451 Annual report to the legislature.** By September 1st of each year, the department shall report to the house committee on commerce and labor and the senate committee on commerce and trade, or successor committees, on the department's efforts to reduce violence in the state hospitals. [2005 c 187 § 1.]

[2005 RCW Supp—page 872]

## Title 73

### VETERANS AND VETERANS' AFFAIRS

#### Chapters

**73.04 General provisions.**

**73.08 Veterans' relief.**

#### Chapter 73.04 RCW

##### GENERAL PROVISIONS

##### Sections

73.04.030 Discharges recorded without charge—Exemption from public disclosure—Fee. (*Effective July 1, 2006.*)

73.04.110 Free license plates for disabled veterans, prisoners of war—Penalty.

73.04.115 Free license plates for surviving spouses of deceased prisoners of war.

73.04.150 Joint committee on veterans' and military affairs.

**73.04.030 Discharges recorded without charge—Exemption from public disclosure—Fee. (*Effective July 1, 2006.*)** Each county auditor of the several counties of the state of Washington shall record upon presentation without expense, in a suitable permanent record the discharge of any veteran of the armed forces of the United States who is residing in the state of Washington.

The department of veterans affairs, in consultation with the association of county auditors, shall develop and distribute to county auditors the form referred to in RCW 42.56.440 entitled "request for exemption from public disclosure of discharge papers."

The county auditor may charge a basic recording fee and preservation fee that together shall not exceed a total of seven dollars for the recording of the "request for exemption from public disclosure of discharge papers."

County auditors shall develop a form for requestors of military discharge papers (form DD214) to verify that the requestor is authorized to receive or view the military discharge paper. [2005 c 274 § 349; 2002 c 224 § 3; 1989 c 50 § 1; 1943 c 38 § 1; Rem. Supp. 1943 § 10758-10. FORMER PART OF SECTION: 1923 c 17 § 1 now codified as RCW 73.04.042.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Working group on veterans' records:** See note following RCW 42.17.310.

**73.04.110 Free license plates for disabled veterans, prisoners of war—Penalty.** (1) Any person who is a veteran as defined in RCW 41.04.007 who submits to the department of licensing satisfactory proof of a service-connected disability rating from the veterans administration or the military service from which the veteran was discharged and:

- (a) Has lost the use of both hands or one foot;
- (b) Was captured and incarcerated for more than twenty-nine days by an enemy of the United States during a period of war with the United States;
- (c) Has become blind in both eyes as the result of military service; or
- (d) Is rated by the veterans administration or the military service from which the veteran was discharged and is receiv-

ing service-connected compensation at the one hundred percent rate that is expected to exist for more than one year; is entitled to regular or special license plates issued by the department of licensing. The special license plates shall bear distinguishing marks, letters, or numerals indicating that the motor vehicle is owned by a disabled veteran or former prisoner of war. This license shall be issued annually for one personal use vehicle without payment of any license fees or excise tax thereon. Whenever any person who has been issued license plates under the provisions of this section applies to the department for transfer of the plates to a subsequently acquired motor vehicle, a transfer fee of ten dollars shall be charged in addition to all other appropriate fees. The department may periodically verify the one hundred percent rate as provided in subsection (1)(d) of this section.

(2) Any person who has been issued free motor vehicle license plates under this section prior to July 1, 1983, shall continue to be eligible for the annual free license plates.

(3) For the purposes of this section: (a) "Blind" means the definition of "blind" used by the state of Washington in determining eligibility for financial assistance to the blind under Title 74 RCW; and (b) "special license plates" does not include any plate from the armed forces license plate collection established in RCW 46.16.30920.

Any unauthorized use of a special plate is a gross misdemeanor. [2005 c 216 § 6. Prior: 2004 c 223 § 6; 2004 c 125 § 1; 1987 c 98 § 2; 1983 c 230 § 2; 1982 c 115 § 1; 1980 c 88 § 2; 1979 c 158 § 221; 1972 ex.s. c 60 § 1; 1971 ex.s. c 193 § 1; 1951 c 206 § 1; 1949 c 178 § 1; Rem. Supp. 1949 § 6360-50-1.]

**Effective date—1983 c 230:** See note following RCW 41.04.005.

*Disabled parking versions of special plates: RCW 46.16.385.*

**73.04.115 Free license plates for surviving spouses of deceased prisoners of war.** (1) The department shall issue to the surviving spouse of any deceased former prisoner of war described in \*RCW 73.04.110(2), one set of regular or special license plates for use on a personal passenger vehicle registered to that person.

(2) The plates shall be issued without the payment of any license fees or excise tax on the vehicle. Whenever any person who has been issued license plates under this section applies to the department for transfer of the plates to a subsequently acquired motor vehicle, a transfer fee of five dollars shall be charged in addition to all other appropriate fees. If the surviving spouse remarries, he or she shall return the special plates to the department within fifteen days and apply for regular license plates.

(3) For purposes of this section, the term "special license plates" does not include any plate from the armed forces license plate collection established in RCW 46.16.30920. [2005 c 216 § 5; 1990 c 250 § 91; 1987 c 98 § 1.]

**\*Reviser's note:** RCW 73.04.110 was amended by 2005 c 216 § 6, changing subsection (2) to subsection (1)(b).

**Severability—1990 c 250:** See note following RCW 46.16.301.

*Disabled parking versions of special plates: RCW 46.16.385.*

**73.04.150 Joint committee on veterans' and military affairs.** (1) There is hereby created a joint committee on veterans' and military affairs. The committee shall consist of:

(a) Eight members of the senate appointed by the president of the senate, four of whom shall be members of the majority party and four of whom shall be members of the minority party; and (b) eight members of the house of representatives appointed by the speaker, four of whom shall be members of the majority party and four of whom shall be members of the minority party. Members of the committee shall be appointed before the close of the 2005 legislative session, and before the close of each regular session during an odd-numbered year thereafter.

(2) Each member's term of office shall run from the close of the session in which he or she was appointed until the close of the next regular session held in an odd-numbered year. If a successor is not appointed during a session, the member's term shall continue until the member is reappointed or a successor is appointed. The term of office for a committee member who does not continue as a member of the senate or house of representatives shall cease upon the convening of the next session of the legislature during an odd-numbered year after the member's appointment, or upon the member's resignation, whichever is earlier. Vacancies on the committee shall be filled by appointment in the same manner as described in subsection (1) of this section. All such vacancies shall be filled from the same political party and from the same house as the member whose seat was vacated.

(3) The committee shall establish an executive committee of four members, two of whom are members of the senate and two of whom are members of the house of representatives. The executive committee shall appoint one cochair from the two executive committee members who are senators and one cochair from the two executive committee members who are representatives. The two cochairs shall be from different political parties and their terms of office shall run from the close of the session in which they are appointed until the close of the next regular session in an odd-numbered year. The executive committee is responsible for performing all general administrative and personnel duties assigned to it in the rules and procedures adopted by the joint committee, as well as other duties delegated to it by the joint committee.

(4) The joint committee on veterans' and military affairs has the following powers and duties:

(a) To study veterans' issues, active military forces issues, and national guard and reserve component issues, and make recommendations to the legislature; and

(b) To study structure and administration of the department of veterans affairs and the military department, and make recommendations to the legislature.

(5) The joint committee shall adopt rules and procedures for its orderly operation. The joint committee may create subcommittees to perform duties under this section. [2005 c 141 § 1; 2001 c 268 § 1.]

## Chapter 73.08 RCW VETERANS' RELIEF

### Sections

73.08.005	Definitions.
73.08.010	County veterans' assistance programs for indigent veterans and families—Requirements.
73.08.030	Repealed.
73.08.035	Veterans' advisory boards.
73.08.040	Repealed.

73.08.050	Repealed.
73.08.070	County burial of indigent deceased veterans.
73.08.080	Tax levy authorized.
73.08.090	Public assistance eligibility.

**73.08.005 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Direct costs" includes those allowable costs that can be readily assigned to the statutory objectives of this chapter, consistent with the cost principles promulgated by the federal office of management and budget in circular No. A-87, dated May 10, 2004.

(2) "Family" means the spouse, widow, widower, and dependent children of a living or deceased veteran.

(3) "Indigent" means a person who is defined as such by the county legislative authority using one or more of the following definitions:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, general assistance, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income;

(b) Receiving an annual income, after taxes, of up to one hundred fifty percent or less of the current federally established poverty level, or receiving an annual income not exceeding a higher qualifying income established by the county legislative authority; or

(c) Unable to pay reasonable costs for shelter, food, utilities, and transportation because his or her available funds are insufficient.

(4) "Indirect costs" includes those allowable costs that are generally associated with carrying out the statutory objectives of this chapter, but the identification and tracking of those costs cannot be readily assigned to a specific statutory objective without an accounting effort that is disproportionate to the benefit received. A county legislative authority may allocate allowable indirect costs to its veterans' assistance fund if it is accomplished in a manner consistent with the cost principles promulgated by the federal office of management and budget in circular No. A-87, dated May 10, 2004.

(5) "Veteran" has the same meaning as defined in RCW 41.04.005 and 41.04.007.

(6) "Veterans' advisory board" means a board established by a county legislative authority under the authority of RCW 73.08.035.

(7) "Veterans' assistance fund" means an account in the custody of the county auditor, or the chief financial officer in a county operating under a charter, that is funded by taxes levied under the authority of RCW 73.08.080.

(8) "Veterans' assistance program" means a program approved by the county legislative authority under the authority of RCW 73.08.010 that is fully or partially funded by the veterans' assistance fund authorized by RCW 73.08.080. [2005 c 250 § 2.]

**Intent—2005 c 250:** "(1) It is the intent of the legislature that each county establish a veterans' assistance program to benefit indigent veterans and their families. These programs must be funded, at least in part, by veterans' assistance funds. The legislature intends also for each county to establish a veterans' advisory board responsible for advising the county legislative authority on needed and appropriate assistance programs for local indigent veterans and their families. Recognizing the valuable insight and perspec-

tives that veterans offer, it is the intent of the legislature that each board be comprised entirely of veterans.

(2) The legislature recognizes that ongoing veterans' relief or assistance programs in some areas of the state have provided meaningful assistance to indigent veterans and family members. The legislature further recognizes that veterans' service organizations have traditionally been the initial point of contact for indigent veterans and family members seeking assistance. In recognition of these factors, the legislature intends to authorize, upon the satisfaction of certain administrative requirements, existing veterans' relief or assistance programs to continue providing needed and effective assistance to indigent veterans and their families.

(3) The legislature recognizes that counties respond to the needs of indigent veterans and family members in the manner most appropriate to the needs and resources of the county. The legislature intends for the provisions of this act to facilitate the effective use of assistance funds through efficient model programs that benefit veterans and family members experiencing financial hardships.

(4) It is the policy of the state of Washington that bias shall not play a role in the distribution of the veterans' assistance fund." [2005 c 250 § 1.]

**73.08.010 County veterans' assistance programs for indigent veterans and families—Requirements.**

(1) For the relief of indigent veterans, their families, and the families of deceased indigent veterans, the legislative authority of each county shall establish a veterans' assistance program to address the needs of local indigent veterans and their families. The county legislative authority shall consult with and solicit recommendations from the veterans' advisory board established under RCW 73.08.035 to determine the appropriate services needed for local indigent veterans. Veterans' assistance programs shall be funded, at least in part, by the veterans' assistance fund created under the authority of RCW 73.08.080.

(2) The county legislative authority may authorize other entities to administer a veterans' assistance program or programs through grants, contracts, or interlocal agreements. If the county legislative authority authorizes another entity to administer a veterans' assistance program or programs, the terms of the grant, contract, or interlocal agreement must, for each program, specify:

- (a) The details of the program;
- (b) The responsibilities of all parties;
- (c) The duration of the program;
- (d) The costs and sources of funding;
- (e) Any insurance or bond requirements;
- (f) The format and frequency of progress and final reports; and
- (g) Any other information deemed necessary or appropriate by either party.

(3) If the county legislative authority authorizes another entity to administer a veterans' assistance program or programs, the authorized entity should, to the extent feasible and consistent with this chapter, ensure that a local branch of a nationally recognized veterans' service organization is the initial point of contact for a veteran or family member seeking assistance.

(4) Nothing in this section shall prohibit or be construed as prohibiting a county from authorizing the continued operation of a veterans' relief or assistance program or programs existing on January 1, 2005, if the authorizing legislative authority:

- (a) Solicits advice from the veterans' advisory board established in RCW 73.08.035; and

(b) Satisfies the grant, contractual, or interlocal agreement requirements of subsection (2) of this section. [2005 c 250 § 3; 2002 c 292 § 7; 1983 c 295 § 1; 1947 c 180 § 1; 1945 c 144 § 1; 1921 c 41 § 1; 1919 c 83 § 1; 1907 c 64 § 1; 1893 c 37 § 1; 1888 p 208 § 1; Rem. Supp. 1947 § 10737. Cf. 1935 c 38 § 1.]

**Intent—2005 c 250:** See note following RCW 73.08.005.

*Soldiers' home and colony:* Chapter 72.36 RCW.

*Veterans' rehabilitation council:* Chapter 43.61 RCW.

**73.08.030 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**73.08.035 Veterans' advisory boards.** (1) The legislative authority for each county must establish a veterans' advisory board. Upon its establishment, the board shall advise the county legislative authority on the needs of local indigent veterans, the resources available to local indigent veterans, and programs that could benefit the needs of local indigent veterans and their families.

(2) The county legislative authority must solicit representatives from either local branches of nationally recognized veterans' service organizations or the veterans' community at large, or both, to serve on the board. No fewer than a majority of the board members shall be members from nationally recognized veterans' service organizations and only veterans are eligible to serve as board members.

(3) Service on the board is voluntary. The county legislative authority may provide for reimbursement to board members for expenses incurred. [2005 c 250 § 4.]

**Intent—2005 c 250:** See note following RCW 73.08.005.

**73.08.040 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**73.08.050 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**73.08.070 County burial of indigent deceased veterans.** (1) The legislative authority for each county must designate a proper authority to be responsible, at the expense of the county, for the burial or cremation of any deceased indigent veteran or deceased family member of an indigent veteran who died without leaving means sufficient to defray funeral expenses. The costs of such a burial or cremation may not exceed the limit established by the county legislative authority nor be less than three hundred dollars.

(2) If the deceased has relatives or friends who desire to conduct the burial or cremation of such deceased person, then a sum not to exceed the limit established by the county legislative authority nor less than three hundred dollars shall be paid to the relatives or friends by the county auditor, or by the chief financial officer in a county operating under a charter. Payment shall be made to the relatives or friends upon presenting to the auditor or chief financial officer due proof of the death, burial or cremation, and expenses incurred.

(3) Expenses incurred for the burial or cremation of a deceased indigent veteran or the deceased family member of an indigent veteran as provided by this section shall be paid from the veterans' assistance fund authorized by RCW

73.08.080. [2005 c 250 § 5; 2002 c 292 § 9; 1997 c 286 § 1; 1983 c 295 § 5; 1949 c 15 § 1; 1947 c 180 § 6; 1945 c 144 § 6; 1921 c 41 § 6; 1919 c 83 § 6; 1917 c 42 § 1; 1907 c 64 § 6; 1899 c 99 § 1; 1888 p 209 § 6; Rem. Supp. 1949 § 10757. Formerly RCW 73.24.010.]

**Intent—2005 c 250:** See note following RCW 73.08.005.

*Counties, disposal of remains of indigent persons:* RCW 36.39.030.

**73.08.080 Tax levy authorized.** (1) The legislative authority in each county shall levy, in addition to the taxes now levied by law, a tax in a sum equal to the amount which would be raised by not less than one and one-eighth cents per thousand dollars of assessed value, and not greater than twenty-seven cents per thousand dollars of assessed value against the taxable property of their respective counties, to be levied and collected as now prescribed by law for the assessment and collection of taxes, for the purpose of creating a veterans' assistance fund. Expenditures from the veterans' assistance fund, and interest earned on balances from the fund, may be used only for:

(a) The veterans' assistance programs authorized by RCW 73.08.010;

(b) The burial or cremation of a deceased indigent veteran or deceased family member of an indigent veteran as authorized by RCW 73.08.070; and

(c) The direct and indirect costs incurred in the administration of the fund as authorized by subsection (2) of this section.

(2) If the funds on deposit in the veterans' assistance fund, less outstanding warrants, on the first Tuesday in September exceed the expected yield of one and one-eighth cents per thousand dollars of assessed value against the taxable property of the county, the county legislative authority may levy a lesser amount. The direct and indirect costs incurred in the administration of the veterans' assistance fund shall be computed by the county auditor, or the chief financial officer in a county operating under a charter, not less than annually. Following the computation of these direct and indirect costs, an amount equal to these costs may then be transferred from the veterans' assistance fund to the county current expense fund.

(3) The amount of a levy allocated to the purposes specified in this section may be reduced in the same proportion as the regular property tax levy of the county is reduced by chapter 84.55 RCW. [2005 c 250 § 6; 1985 c 181 § 2; 1983 c 295 § 6; 1980 c 155 § 6; 1973 2nd ex.s. c 4 § 5; 1973 1st ex.s. c 195 § 86; 1970 ex.s. c 47 § 9; 1969 c 57 § 1; 1945 c 144 § 7; 1921 c 41 § 7; 1919 c 83 § 7; 1907 c 64 § 7; 1893 c 37 § 2; 1888 p 210 § 7; Rem. Supp. 1945 § 10742. Formerly RCW 73.08.020.]

**Intent—2005 c 250:** See note following RCW 73.08.005.

**Effective date—Applicability—1980 c 155:** See note following RCW 84.40.030.

**Emergency—Effective dates—1973 2nd ex.s. c 4:** See notes following RCW 84.52.043.

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**73.08.090 Public assistance eligibility.** The department of social and health services shall exempt payments provided under RCW 73.08.005, 73.08.035, 73.08.010,

73.08.070, and 73.08.080 when determining eligibility for public assistance. [2005 c 250 § 7.]

**Intent—2005 c 250:** See note following RCW 73.08.005.

## Title 74

### PUBLIC ASSISTANCE

#### Chapters

- 74.08** Eligibility generally—Standards of assistance.
- 74.09** Medical care.
- 74.09A** Medical assistance—Coordination of benefits—Computerized information transfer.
- 74.13** Child welfare services.
- 74.14C** Family preservation services.
- 74.15** Care of children, expectant mothers, developmentally disabled.
- 74.34** Abuse of vulnerable adults.
- 74.39A** Long-term care services options—Expansion.
- 74.42** Nursing homes—Resident care, operating standards.
- 74.46** Nursing facility medicaid payment system.

#### Chapter 74.08 RCW

##### ELIGIBILITY GENERALLY—STANDARDS OF ASSISTANCE

#### Sections

- 74.08.025 Eligibility for public assistance—Temporary assistance for needy families—Limitations for new residents, drug or alcohol-dependent persons.

**74.08.025 Eligibility for public assistance—Temporary assistance for needy families—Limitations for new residents, drug or alcohol-dependent persons.** (1) Public assistance may be awarded to any applicant:

- (a) Who is in need and otherwise meets the eligibility requirements of department assistance programs; and
- (b) Who has not made a voluntary assignment of property or cash for the purpose of qualifying for an assistance grant; and

(c) Who is not an inmate of a public institution except as a patient in a medical institution or except as an inmate in a public institution who could qualify for federal aid assistance: PROVIDED, That the assistance paid by the department to recipients in nursing homes, or receiving nursing home care, may cover the cost of clothing and incidentals and general maintenance exclusive of medical care and health services. The department may pay a grant to cover the cost of clothing and personal incidentals in public or private medical institutions and institutions for tuberculosis. The department shall allow recipients in nursing homes to retain, in addition to the grant to cover the cost of clothing and incidentals, wages received for work as a part of a training or rehabilitative program designed to prepare the recipient for less restrictive placement to the extent permitted under Title XIX of the federal social security act.

(2) Any person otherwise qualified for temporary assistance for needy families under this title who has resided in the state of Washington for fewer than twelve consecutive months immediately preceding application for assistance is limited to the benefit level in the state in which the person

[2005 RCW Supp—page 876]

resided immediately before Washington, using the eligibility rules and other definitions established under this chapter, that was obtainable on the date of application in Washington state, if the benefit level of the prior state is lower than the level provided to similarly situated applicants in Washington state. The benefit level under this subsection shall be in effect for the first twelve months a recipient is on temporary assistance for needy families in Washington state.

(3) Any person otherwise qualified for temporary assistance for needy families who is assessed through the state alcohol and substance abuse program as drug or alcohol-dependent and requiring treatment to become employable shall be required by the department to participate in a drug or alcohol treatment program as a condition of benefit receipt.

(4) Pursuant to 21 U.S.C. 862a(d)(1), the department shall exempt individuals from the eligibility restrictions of 21 U.S.C. 862a(a)(1) and (2) to ensure eligibility for temporary assistance for needy families benefits and federal food assistance. [2005 c 174 § 2; 2004 c 54 § 5; 1997 c 58 § 101; 1981 1st ex.s. c 6 § 9; 1981 c 8 § 8; 1980 c 79 § 1; 1971 ex.s. c 169 § 1; 1967 ex.s. c 31 § 1; 1959 c 26 § 74.08.025. Prior: 1953 c 174 § 19.]

**Findings—2005 c 174:** "The legislature finds that:

(1) Too many families with children in Washington are unable to afford shelter, clothing, and other necessities of life; basic necessities that are at the core of economic security and family stability.

(2) Parents who lack resources for shelter, clothing, and transportation are less likely to obtain employment or have the ability to adequately provide for their children's physical and emotional well-being and educational success.

(3) Washington's temporary assistance for needy families helps financially struggling families find jobs, keep their jobs, get better jobs, and build a better life for their children through the WorkFirst program.

(4) Participation in the WorkFirst program through temporary assistance for needy families is an important step towards self-sufficiency and decreased long-term reliance on governmental assistance.

(5) Removing this barrier to participation in temporary assistance for needy families and WorkFirst will serve to strengthen families and communities throughout the state.

(6) Preventing even one percent of these individuals from reoffending by extending economic and employment opportunities will result in law enforcement and correctional savings that substantially exceed the cost of temporary assistance for needy families and WorkFirst services." [2005 c 174 § 1.]

**Effective date—2005 c 174:** "This act takes effect September 1, 2005." [2005 c 174 § 3.]

**Findings—Conflict with federal requirements—2004 c 54:** See notes following RCW 28A.235.160.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective date—Severability—1981 1st ex.s. c 6:** See notes following RCW 74.04.005.

#### Chapter 74.09 RCW

##### MEDICAL CARE

#### Sections

- 74.09.085 Contracts—Performance measures—Financial incentives.
- 74.09.402 Children's health care—Findings—Intent.
- 74.09.415 Children's health program established.
- 74.09.5225 Medical assistance—Payments for services provided by rural hospitals.
- 74.09.555 Medical assistance—Reinstatement upon release from confinement—Expedited eligibility determinations.



**74.09.085 Contracts—Performance measures—Financial incentives.** The secretary shall, in collaboration with other state agencies that administer state purchased health care programs, private health care purchasers, health care facilities, providers, and carriers, use evidence-based medicine principles to develop common performance measures and implement financial incentives in contracts with insuring entities, health care facilities, and providers that:

(1) Reward improvements in health outcomes for individuals with chronic diseases, increased utilization of appropriate preventive health services, and reductions in medical errors; and

(2) Increase, through appropriate incentives to insuring entities, health care facilities, and providers, the adoption and use of information technology that contributes to improved health outcomes, better coordination of care, and decreased medical errors. [2005 c 446 § 3.]

**74.09.402 Children's health care—Findings—Intent.**

(1) The legislature finds that:

(a) The health of the children of Washington state is critical to their success in school and throughout their lives. Children with health insurance coverage have better health outcomes than those who lack coverage. Children without health insurance coverage are more likely to be in poor health and more likely to delay receiving, or go without, needed health care services;

(b) Access to preventive and well-child health services for children is a cost-effective investment of both public and private dollars that improves the health of children and of our communities at large; and

(c) Health care coverage for children in Washington state is the product of critical efforts in both the private and public sectors to help children succeed. Private health insurance coverage is complemented by public programs that meet needs of low-income children whose parents are not offered health insurance coverage through their employer or who cannot otherwise afford the costs of coverage. In 2004, thirty-five percent of children in Washington state had some form of public health coverage. Yet, even with the efforts of both the private and public sectors, too many children in Washington state lack health insurance coverage. In 2004, almost one hundred thousand children were uninsured. Two-thirds of these children are low income.

(2) It is therefore the intent of the legislature that all children in the state of Washington have health care coverage by 2010. This should be accomplished by building upon and strengthening the successes of private health insurance coverage and publicly supported children's health insurance programs in Washington state. Access to coverage should be streamlined and efficient, with reductions in unnecessary administrative costs and mechanisms to expeditiously link children with a medical home. [2005 c 279 § 1.]

**74.09.415 Children's health program established.**

(1) There is hereby established a program to be known as the children's health program. The legislature finds that the children's health program is a more appropriate mechanism for providing health services to poor children who are not otherwise eligible for medical assistance than grants to community

clinics to offset uncompensated care or coverage through the Washington basic health plan.

To the extent of available funds:

(a) Health care services may be provided to persons who are under eighteen years of age with household incomes at or below the federal poverty level and not otherwise eligible for medical assistance or the limited casualty program for the medically needy.

(b) The determination of eligibility of recipients for health care services shall be the responsibility of the department. The department shall make eligibility determinations within the time frames for establishing eligibility for children on medical assistance, as defined by RCW 74.09.510.

(c) The amount, scope, and duration of health care services provided to eligible children under the children's health program shall be the same as that provided to children under medical assistance, as defined in RCW 74.09.520.

(2) Enrollment in the children's health program shall not result in expenditures that exceed the amount that has been appropriated for the program in the operating budget. If it appears that continued enrollment will result in expenditures exceeding the appropriated level for a particular fiscal year, the department may freeze new enrollment in the program for that year. [2005 c 279 § 2; 2002 c 366 § 2; 1998 c 245 § 144; 1990 c 296 § 2.]

**Effective date—2002 c 366:** See note following RCW 74.08A.100.

**Effective date—1990 c 296:** See note following RCW 74.09.405.

**74.09.5225 Medical assistance—Payments for services provided by rural hospitals.** (1) Payments for recipients eligible for medical assistance programs under this chapter for services provided by hospitals, regardless of the beneficiary's managed care enrollment status, shall be made based on allowable costs incurred during the year, when services are provided by a rural hospital certified by the centers for medicare and medicaid services as a critical access hospital. Any additional payments made by the medical assistance administration for the healthy options program shall be no more than the additional amounts per service paid under this section for other medical assistance programs.

(2) Beginning on July 24, 2005, a moratorium shall be placed on additional hospital participation in critical access hospital payments under this section. However, rural hospitals that applied for certification to the centers for medicare and medicaid services prior to January 1, 2005, but have not yet completed the process or have not yet been approved for certification, remain eligible for medical assistance payments under this section. [2005 c 383 § 1; 2001 2nd sp.s. c 2 § 2.]

**Findings—2001 2nd sp.s. c 2:** "The legislature finds that promoting a financially viable health care system in all parts of the state is a paramount interest. The health care financing administration has recognized the crucial role that hospitals play in providing care in rural areas by creating the critical access hospital program to allow small, rural hospitals that qualify to receive reasonable cost-based reimbursement for medicare services. The legislature further finds that creating a similar reimbursement system for the state's medical assistance programs in small, rural hospitals that qualify will help assure the long-term financial viability of the rural health system in those communities." [2001 2nd sp.s. c 2 § 1.]

**74.09.555 Medical assistance—Reinstatement upon release from confinement—Expedited eligibility determinations.** (1) The department shall adopt rules and policies

providing that when persons with a mental disorder, who were enrolled in medical assistance immediately prior to confinement, are released from confinement, their medical assistance coverage will be fully reinstated on the day of their release, subject to any expedited review of their continued eligibility for medical assistance coverage that is required under federal or state law.

(2) The department, in collaboration with the Washington association of sheriffs and police chiefs, the department of corrections, and the regional support networks, shall establish procedures for coordination between department field offices, institutions for mental disease, and correctional institutions, as defined in RCW 9.94.049, that result in prompt reinstatement of eligibility and speedy eligibility determinations for persons who are likely to be eligible for medical assistance services upon release from confinement. Procedures developed under this subsection must address:

(a) Mechanisms for receiving medical assistance services applications on behalf of confined persons in anticipation of their release from confinement;

(b) Expedient review of applications filed by or on behalf of confined persons and, to the extent practicable, completion of the review before the person is released;

(c) Mechanisms for providing medical assistance services identity cards to persons eligible for medical assistance services immediately upon their release from confinement; and

(d) Coordination with the federal social security administration, through interagency agreements or otherwise, to expedite processing of applications for federal supplemental security income or social security disability benefits, including federal acceptance of applications on behalf of confined persons.

(3) Where medical or psychiatric examinations during a person's confinement indicate that the person is disabled, the correctional institution or institution for mental diseases shall provide the department with that information for purposes of making medical assistance eligibility and enrollment determinations prior to the person's release from confinement. The department shall, to the maximum extent permitted by federal law, use the examination in making its determination whether the person is disabled and eligible for medical assistance.

(4) For purposes of this section, "confined" or "confinement" means incarcerated in a correctional institution, as defined in RCW 9.94.049, or admitted to an institute for mental disease, as defined in 42 C.F.R. part 435, Sec. 1009 on July 24, 2005.

(5) For purposes of this section, "likely to be eligible" means that a person:

(a) Was enrolled in medicaid or supplemental security income or general assistance immediately before he or she was confined and his or her enrollment was terminated during his or her confinement; or

(b) Was enrolled in medicaid or supplemental security income or general assistance at any time during the five years before his or her confinement, and medical or psychiatric examinations during the person's confinement indicate that the person continues to be disabled and the disability is likely to last at least twelve months following release.

(6) The economic services administration shall adopt standardized statewide screening and application practices and forms designed to facilitate the application of a confined person who is likely to be eligible for medicaid. [2005 c 503 § 12.]

**Correction of references—Savings—Severability—2005 c 503:** See notes following RCW 71.24.015.

## Chapter 74.09A RCW

### MEDICAL ASSISTANCE—COORDINATION OF BENEFITS—COMPUTERIZED INFORMATION TRANSFER

#### Sections

74.09A.020 Computerized information—Provision to private insurers.  
(Effective July 1, 2006.)

**74.09A.020 Computerized information—Provision to private insurers. (Effective July 1, 2006.)** (1) The medical assistance administration shall provide routine and periodic computerized information to private insurers regarding client eligibility and coverage information. Private insurers shall use this information to identify joint beneficiaries. Identification of joint beneficiaries shall be transmitted to the medical assistance administration. The medical assistance administration shall use this information to improve accuracy and currency of health insurance coverage and promote improved coordination of benefits.

(2) To the maximum extent possible, necessary data elements and a compatible data base shall be developed by affected health insurers and the medical assistance administration. The medical assistance administration shall establish a representative group of insurers and state agency representatives to develop necessary technical and file specifications to promote a standardized data base. The data base shall include elements essential to the medical assistance administration and its population's insurance coverage information.

(3) If the state and private insurers enter into other agreements regarding the use of common computer standards, the data base identified in this section shall be replaced by the new common computer standards.

(4) The information provided will be of sufficient detail to promote reliable and accurate benefit coordination and identification of individuals who are also eligible for medical assistance administration programs.

(5) The frequency of updates will be mutually agreed to by each insurer and the medical assistance administration based on frequency of change and operational limitations. In no event shall the computerized data be provided less than semiannually.

(6) The insurers and the medical assistance administration shall safeguard and properly use the information to protect records as provided by law, including but not limited to chapters 42.48, 74.09, 74.04, 70.02, and 42.56 RCW, and 42 U.S.C. Sec. 1396a and 42 C.F.R. Sec. 43 et seq. The purpose of this exchange of information is to improve coordination and administration of benefits and ensure that medical insurance benefits are properly utilized.

(7) The medical assistance administration shall target implementation of this chapter to those private insurers with

the highest probability of joint beneficiaries. [2005 c 274 § 350; 1993 c 10 § 3.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

## Chapter 74.13 RCW CHILD WELFARE SERVICES

### Sections

74.13.090	Repealed.
74.13.0901	Repealed.
74.13.0903	Office of child care policy.
74.13.097	Findings—Intent.
74.13.098	Child care career and wage ladder.
74.13.099	Wage increases under the child care career and wage ladder.
74.13.500	Disclosure of child welfare records—Factors—Exception. (Effective July 1, 2006.)
74.13.515	Disclosure of child welfare records—Fatalities. (Effective July 1, 2006.)
74.13.525	Disclosure of child welfare records—Immunity from liability. (Effective July 1, 2006.)
74.13.570	Oversight committee—Duties.
74.13.621	Kinship care oversight committee. (Expires January 1, 2010.)

**74.13.090 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**74.13.0901 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**74.13.0903 Office of child care policy.** The office of child care policy is established to operate under the authority of the department of social and health services. The duties and responsibilities of the office include, but are not limited to, the following, within appropriated funds:

(1) Work in conjunction with the statewide child care resource and referral network as well as local governments, nonprofit organizations, businesses, and community child care advocates to create local child care resource and referral organizations. These organizations may carry out needs assessments, resource development, provider training, technical assistance, and parent information and training;

(2) Actively seek public and private money for distribution as grants to the statewide child care resource and referral network and to existing or potential local child care resource and referral organizations;

(3) Adopt rules regarding the application for and distribution of grants to local child care resource and referral organizations. The rules shall, at a minimum, require an applicant to submit a plan for achieving the following objectives:

(a) Provide parents with information about child care resources, including location of services and subsidies;

(b) Carry out child care provider recruitment and training programs, including training under RCW 74.25.040;

(c) Offer support services, such as parent and provider seminars, toy-lending libraries, and substitute banks;

(d) Provide information for businesses regarding child care supply and demand;

(e) Advocate for increased public and private sector resources devoted to child care;

(f) Provide technical assistance to employers regarding employee child care services; and

(g) Serve recipients of temporary assistance for needy families and working parents with incomes at or below

household incomes of one hundred seventy-five percent of the federal poverty line;

(4) Provide staff support and technical assistance to the statewide child care resource and referral network and local child care resource and referral organizations;

(5) Maintain a statewide child care licensing data bank and work with department of social and health services licensors to provide information to local child care resource and referral organizations about licensed child care providers in the state;

(6) Through the statewide child care resource and referral network and local resource and referral organizations, compile data about local child care needs and availability for future planning and development;

(7) Coordinate with the statewide child care resource and referral network and local child care resource and referral organizations for the provision of training and technical assistance to child care providers; and

(8) Collect and assemble information regarding the availability of insurance and of federal and other child care funding to assist state and local agencies, businesses, and other child care providers in offering child care services. [2005 c 490 § 10; 1997 c 58 § 404; 1993 c 453 § 2; 1991 sp.s. c 16 § 924; 1989 c 381 § 5.]

**Effective date—2005 c 490:** See note following RCW 74.15.350.

**Finding—1997 c 58:** "The legislature finds that informed choice is consistent with individual responsibility and that parents should be given a range of options for available child care while participating in the program." [1997 c 58 § 401.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Finding—1993 c 453:** "The legislature finds that building a system of quality, affordable child care requires coordinated efforts toward constructing partnerships at state and community levels. Through the office of child care policy, the department of social and health services is responsible for facilitating the coordination of child care efforts and establishing working partnerships among the affected entities within the public and private sectors. Through these collaborative efforts, the office of child care policy encouraged the coalition of locally based child care resource and referral agencies into a statewide network. The statewide network, in existence since 1989, supports the development and operation of community-based resource and referral programs, improves the quality and quantity of child care available in Washington by fostering statewide strategies, and generates then nurtures effective public-private partnerships. The statewide network provides important training, standards of service, and general technical assistance to its locally based child care resource and referral programs. The locally based programs enrich the availability, affordability, and quality of child care in their communities." [1993 c 453 § 1.]

**Effective date—1993 c 453:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 17, 1993]." [1993 c 453 § 3.]

**Severability—Effective date—1991 sp.s. c 16:** See notes following RCW 9.46.100.

**Findings—Severability—1989 c 381:** See notes following RCW 74.13.085.

**74.13.097 Findings—Intent.** The legislature finds that as of 2000, child care workers in the state earned an average hourly wage of eight dollars and twenty-two cents, only fifty-eight percent received medical insurance through employers, only sixty-six percent received paid sick leave, and only seventy-three percent received paid vacation. The legislature

further finds that low wages for child care workers create a barrier for individuals entering the profession, result in child care workers leaving the profession in order to earn a living wage in another profession, and make it difficult for child care workers to afford professional education and training. As a result, the availability of quality child care in the state suffers.

The legislature intends to increase wages to child care workers through establishing a child care career and wage ladder that provides increased wages for child care workers based on their work experience, level of responsibility, and education. To the extent practicable within available funds, this child care career and wage ladder shall mirror the successful child care career and wage ladder pilot project operated by the state between 2000 and 2003. While it is the intent of the legislature to establish the vision of a statewide child care career and wage ladder that will enhance employment quality and stability for child care workers, the legislature also recognizes that funding allocations will determine the extent of statewide implementation of a child care career and wage ladder. [2005 c 507 § 1.]

**74.13.098 Child care career and wage ladder.** (1) Subject to the availability of funds appropriated for this specific purpose, the division of child care and early learning in the department of social and health services shall establish a child care career and wage ladder in licensed child care centers that meet the following criteria: (a) At least ten percent of child care slots are dedicated to children whose care is subsidized by the state or any political subdivision thereof or any local government; (b) the center agrees to adopt the child care career and wage ladder, which, at a minimum, shall be at the same pay schedule as existed in the previous child care career and wage ladder pilot project; and (c) the center meets further program standards as established by rule pursuant to \*section 4 of this act.

The child care career and wage ladder shall include wage increments for levels of education, years of relevant experience, levels of work responsibility, relevant early childhood education credits, and relevant requirements in the state training and registry system.

(2) The division shall establish procedures for the allocation of funds to implement the child care career and wage ladder among child care centers meeting the criteria identified in subsection (1) of this section. In developing these procedures, the division shall:

(a) Review past efforts or administration of the child care career and wage ladder pilot project in order to take advantage of any findings, recommendations, or administrative practices that contributed to that pilot project's success;

(b) Consult with stakeholders, including organizations representing child care teachers and providers, in developing an allocation formula that incorporates consideration of geographic and demographic distribution of child care centers adopting the child care career and wage ladder; and

(c) Develop a system for prioritizing child care centers interested in adopting the child care career and wage ladder that is based on the criteria identified in subsection (1) of this section.

(3) Notwithstanding the requirements of subsection (2) of this section, child care centers meeting the criteria in sub-

section (1) of this section located in urban areas of the department of social and health services region one shall receive a minimum of fifteen percent of the funds allocated through the child care career and wage ladder, and of these centers, child care centers meeting the criteria in subsection (1) of this section participating in the department of social and health services Spokane tiered reimbursement pilot project shall have first priority for child care career and wage ladder funding. [2005 c 507 § 2.]

\*Reviser's note: Section 4 of this act was vetoed by the governor.

**74.13.099 Wage increases under the child care career and wage ladder.** Child care centers adopting the child care career and wage ladder established pursuant to RCW 74.13.098 shall increase wages for child care workers who have earned a high school diploma or GED certificate, gain additional years of experience, or accept increasing levels of responsibility in providing child care, in accordance with the child care career and wage ladder. The adoption of a child care career and wage ladder shall not prohibit the provision of wage increases based upon merit. The department of social and health services shall pay wage increments for child care workers employed by child care centers adopting the child care career and wage ladder established pursuant to RCW 74.13.098 who earn early childhood education credits or meet relevant requirements in the state training and registry system, in accordance with the child care career and wage ladder. [2005 c 507 § 3.]

**74.13.500 Disclosure of child welfare records—Factors—Exception.** (*Effective July 1, 2006.*) (1) Consistent with the provisions of chapter 42.56 RCW and applicable federal law, the secretary, or the secretary's designee, shall disclose information regarding the abuse or neglect of a child, the investigation of the abuse, neglect, or near fatality of a child, and any services related to the abuse or neglect of a child if any one of the following factors is present:

(a) The subject of the report has been charged in an accusatory instrument with committing a crime related to a report maintained by the department in its case and management information system;

(b) The investigation of the abuse or neglect of the child by the department or the provision of services by the department has been publicly disclosed in a report required to be disclosed in the course of their official duties, by a law enforcement agency or official, a prosecuting attorney, any other state or local investigative agency or official, or by a judge of the superior court;

(c) There has been a prior knowing, voluntary public disclosure by an individual concerning a report of child abuse or neglect in which such individual is named as the subject of the report; or

(d) The child named in the report has died and the child's death resulted from abuse or neglect or the child was in the care of, or receiving services from the department at the time of death or within twelve months before death.

(2) The secretary is not required to disclose information if the factors in subsection (1) of this section are present if he or she specifically determines the disclosure is contrary to the

best interests of the child, the child's siblings, or other children in the household.

(3) Except for cases in subsection (1)(d) of this section, requests for information under this section shall specifically identify the case about which information is sought and the facts that support a determination that one of the factors specified in subsection (1) of this section is present.

(4) For the purposes of this section, "near fatality" means an act that, as certified by a physician, places the child in serious or critical condition. The secretary is under no obligation to have an act certified by a physician in order to comply with this section. [2005 c 274 § 351; 1999 c 339 § 1; 1997 c 305 § 2.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Effective date—1999 c 339:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 1999]." [1999 c 339 § 2.]

**Conflict with federal requirements—1997 c 305:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1997 c 305 § 8.]

**74.13.515 Disclosure of child welfare records—Fatalities. (Effective July 1, 2006.)** For purposes of RCW 74.13.500(1)(d), the secretary must make the fullest possible disclosure consistent with chapter 42.56 RCW and applicable federal law in cases of all fatalities of children who were in the care of, or receiving services from, the department at the time of their death or within the twelve months previous to their death.

If the secretary specifically determines that disclosure of the name of the deceased child is contrary to the best interests of the child's siblings or other children in the household, the secretary may remove personally identifying information.

For the purposes of this section, "personally identifying information" means the name, street address, social security number, and day of birth of the child who died and of private persons who are relatives of the child named in child welfare records. "Personally identifying information" shall not include the month or year of birth of the child who has died. Once this personally identifying information is removed, the remainder of the records pertaining to a child who has died must be released regardless of whether the remaining facts in the records are embarrassing to the unidentifiable other private parties or to identifiable public workers who handled the case. [2005 c 274 § 352; 1997 c 305 § 5.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Conflict with federal requirements—1997 c 305:** See note following RCW 74.13.500.

**74.13.525 Disclosure of child welfare records—Immunity from liability. (Effective July 1, 2006.)** The department, when acting in good faith, is immune from any criminal or civil liability, except as provided under RCW

42.56.550, for any action taken under RCW 74.13.500 through 74.13.520. [2005 c 274 § 353; 1997 c 305 § 7.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Conflict with federal requirements—1997 c 305:** See note following RCW 74.13.500.

**74.13.570 Oversight committee—Duties.** (1) The department shall establish an oversight committee composed of staff from the children's administration of the department, the office of the superintendent of public instruction, the higher education coordinating board, foster youth, former foster youth, foster parents, and advocacy agencies to develop strategies for maintaining foster children in the schools they were attending at the time they entered foster care and to promote opportunities for foster youth to participate in postsecondary education or training.

(2) The duties of the oversight committee shall include, but are not limited to:

(a) Developing strategies for school-based recruitment of foster homes;

(b) Monitoring the progress of current pilot projects that assist foster children to continue attending the schools they were attending at the time they entered foster care;

(c) Overseeing the expansion of the number of pilot projects;

(d) Promoting the use of best practices, throughout the state, demonstrated by the pilot projects and other programs relating to maintaining foster children in the schools they were attending at the time they entered foster care;

(e) Informing the legislature of the status of efforts to maintain foster children in the schools they were attending at the time they entered foster care;

(f) Assessing the scope and nature of statewide need among current and former foster youth for assistance to pursue and participate in postsecondary education or training opportunities;

(g) Identifying available sources of funding available in the state for services to former foster youth to pursue and participate in postsecondary education or training opportunities;

(h) Reviewing the effectiveness of activities in the state to support former foster youth to pursue and participate in postsecondary education or training opportunities;

(i) Identifying new activities, or existing activities that should be modified or expanded, to best meet statewide needs; and

(j) Reviewing on an ongoing basis the progress toward improving educational and vocational outcomes for foster youth. [2005 c 93 § 2; 2003 c 112 § 4.]

**Findings—Intent—2005 c 93:** "(1) The legislature finds that:

(a) The majority of foster youth fail to thrive in our educational system and, relative to nonfoster youth, disproportionately few enroll in college or other postsecondary training programs. As a result, former foster youth generally have poor employment and life satisfaction outcomes; and

(b) Low expectations, lack of information, fragmented support services, and financial hardship are the most frequently cited reasons for failure of foster youth to pursue postsecondary education or training. Initiatives have been undertaken at both the state and community levels in Washington to improve outcomes for foster youth in transition to independence; however, these initiatives are often not coordinated to complement one another.

(2) The legislature intends to encourage and support foster youth to pursue postsecondary education or training opportunities. A coordination committee that provides statewide planning and oversight of related efforts will improve the effectiveness of both current and future initiatives to

improve postsecondary educational outcomes for foster youth. In addition, the state can provide financial support to former foster youth pursuing higher education or training by setting aside portions of the state need grant and the state work study programs specifically for foster youth." [2005 c 93 § 1.]

**Findings—Intent—2003 c 112:** See note following RCW 74.13.550.

**74.13.621 Kinship care oversight committee.** (*Expires January 1, 2010.*) (1) Within existing resources, the department shall establish an oversight committee to monitor, guide, and report on kinship care recommendations and implementation activities. The committee shall:

(a) Draft a kinship care definition that is restricted to persons related by blood, marriage, or adoption, including marriages that have been dissolved, or for a minor defined as an "Indian child" under the federal Indian child welfare act (25 U.S.C. Sec. 1901 et seq.), the definition of "extended family member" under the federal Indian child welfare act, and a set of principles. If the committee concludes that one or more programs or services would be more efficiently and effectively delivered under a different definition of kin, it shall state what definition is needed, and identify the program or service in the report. It shall also provide evidence of how the program or service will be more efficiently and effectively delivered under the different definition. The department shall not adopt rules or policies changing the definition of kin without authorizing legislation;

(b) Monitor and provide consultation on the implementation of recommendations contained in the 2002 kinship care report, including but not limited to the recommendations relating to legal and respite care services and resources;

(c) Partner with nonprofit organizations and private sector businesses to guide a public education awareness campaign; and

(d) Assist with developing future recommendations on kinship care issues.

(2) The department shall consult with the oversight committee on its efforts to better collaborate and coordinate services to benefit kinship care families.

(3) The oversight committee must consist of a minimum of thirty percent kinship caregivers, who shall represent a diversity of kinship families. Statewide representation with geographic, ethnic, and gender diversity is required. Other members shall include representatives of the department, representatives of relevant state agencies, representatives of the private nonprofit and business sectors, child advocates, representatives of Washington state Indian tribes as defined under the federal Indian welfare act (25 U.S.C. Sec. 1901 et seq.), and representatives of the legal or judicial field. Birth parents, foster parents, and others who have an interest in these issues may also be included.

(4) To the extent funding is available, the department may reimburse nondepartmental members of the oversight committee for costs incurred in participating in the meetings of the oversight committee.

(5) The kinship care oversight committee shall update the legislature and governor annually on committee activities, with the first update due by January 1, 2006.

(6) This section expires January 1, 2010. [2005 c 439 § 1.]

## Chapter 74.14C RCW

### FAMILY PRESERVATION SERVICES

#### Sections

74.14C.100 Training and consultation for department personnel—Training for judges and service providers.

**74.14C.100 Training and consultation for department personnel—Training for judges and service providers.** (1) The department shall, within available funds, provide for ongoing training and consultation to department personnel to carry out their responsibilities effectively. Such training may:

(a) Include the family unit as the primary focus of service; identifying family member strengths; empowering families; child, adult, and family development; stress management; and may include parent training and family therapy techniques;

(b) Address intake and referral, assessment of risk, case assessment, matching clients to services, and service planning issues in the context of the home-delivered service model, including strategies for engaging family members, defusing violent situations, and communication and conflict resolution skills;

(c) Cover methods of helping families acquire the skills they need, including home management skills, life skills, parenting, child development, and the use of community resources;

(d) Address crisis intervention and other strategies for the management of depression, and suicidal, assaultive, and other high-risk behavior; and

(e) Address skills in collaborating with other disciplines and services in promoting the safety of children and other family members and promoting the preservation of the family.

(2) The department and the administrative office of the courts shall, within available funds, collaborate in providing training to judges, and others involved in the provision of services pursuant to this title, including service providers, on the function and use of preservation services. [2005 c 282 § 48; 1995 c 311 § 12.]

## Chapter 74.15 RCW

### CARE OF CHILDREN, EXPECTANT MOTHERS, DEVELOPMENTALLY DISABLED

#### Sections

74.15.030 Powers and duties of secretary.

74.15.130 Licenses—Denial, suspension, revocation, modification—Procedures—Adjudicative proceedings—Penalties.

74.15.300 Enforcement action—Definition.

74.15.310 Child day-care centers, family day-care providers—Toll-free information number.

74.15.320 Child day-care centers, family day-care providers—Required postings—Department to disclose complaints upon request.

74.15.330 Child day-care centers, family day-care providers—Public access to reports, enforcement action notices.

74.15.340 Day-care insurance.

74.15.350 Child care providers—Tiered-reimbursement system—Pilot sites.

**74.15.030 Powers and duties of secretary.** The secretary shall have the power and it shall be the secretary's duty:

(1) In consultation with the children's services advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to designate categories of facilities for which separate or different requirements shall be developed as may be appropriate whether because of variations in the ages, sex and other characteristics of persons served, variations in the purposes and services offered or size or structure of the agencies to be licensed hereunder, or because of any other factor relevant thereto;

(2) In consultation with the children's services advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to adopt and publish minimum requirements for licensing applicable to each of the various categories of agencies to be licensed.

The minimum requirements shall be limited to:

(a) The size and suitability of a facility and the plan of operation for carrying out the purpose for which an applicant seeks a license;

(b) The character, suitability and competence of an agency and other persons associated with an agency directly responsible for the care and treatment of children, expectant mothers or developmentally disabled persons. In consultation with law enforcement personnel, the secretary shall investigate the conviction record or pending charges and dependency record information under chapter 43.43 RCW of each agency and its staff seeking licensure or relicensure. No unfounded allegation of child abuse or neglect as defined in RCW 26.44.020 may be disclosed to a child-placing agency, private adoption agency, or any other provider licensed under this chapter. In order to determine the suitability of applicants for an agency license, licensees, their employees, and other persons who have unsupervised access to children in care, and who have not resided in the state of Washington during the three-year period before being authorized to care for children shall be fingerprinted. The fingerprints shall be forwarded to the Washington state patrol and federal bureau of investigation for a criminal history records check. The fingerprint criminal history records checks will be at the expense of the licensee except that in the case of a foster family home, if this expense would work a hardship on the licensee, the department shall pay the expense. The licensee may not pass this cost on to the employee or prospective employee, unless the employee is determined to be unsuitable due to his or her criminal history record. The secretary shall use the information solely for the purpose of determining eligibility for a license and for determining the character, suitability, and competence of those persons or agencies, excluding parents, not required to be licensed who are authorized to care for children, expectant mothers, and developmentally disabled persons. Criminal justice agencies shall provide the secretary such information as they may have and that the secretary may require for such purpose;

(c) The number of qualified persons required to render the type of care and treatment for which an agency seeks a license;

(d) The safety, cleanliness, and general adequacy of the premises to provide for the comfort, care and well-being of children, expectant mothers or developmentally disabled persons;

(e) The provision of necessary care, including food, clothing, supervision and discipline; physical, mental and social well-being; and educational, recreational and spiritual opportunities for those served;

(f) The financial ability of an agency to comply with minimum requirements established pursuant to chapter 74.15 RCW and RCW 74.13.031; and

(g) The maintenance of records pertaining to the admission, progress, health and discharge of persons served;

(3) To investigate any person, including relatives by blood or marriage except for parents, for character, suitability, and competence in the care and treatment of children, expectant mothers, and developmentally disabled persons prior to authorizing that person to care for children, expectant mothers, and developmentally disabled persons. However, if a child is placed with a relative under RCW 13.34.065 or 13.34.130, and if such relative appears otherwise suitable and competent to provide care and treatment the criminal history background check required by this section need not be completed before placement, but shall be completed as soon as possible after placement;

(4) On reports of alleged child abuse and neglect, to investigate agencies in accordance with chapter 26.44 RCW, including child day-care centers and family day-care homes, to determine whether the alleged abuse or neglect has occurred, and whether child protective services or referral to a law enforcement agency is appropriate;

(5) To issue, revoke, or deny licenses to agencies pursuant to chapter 74.15 RCW and RCW 74.13.031. Licenses shall specify the category of care which an agency is authorized to render and the ages, sex and number of persons to be served;

(6) To prescribe the procedures and the form and contents of reports necessary for the administration of chapter 74.15 RCW and RCW 74.13.031 and to require regular reports from each licensee;

(7) To inspect agencies periodically to determine whether or not there is compliance with chapter 74.15 RCW and RCW 74.13.031 and the requirements adopted hereunder;

(8) To review requirements adopted hereunder at least every two years and to adopt appropriate changes after consultation with affected groups for child day-care requirements and with the children's services advisory committee for requirements for other agencies; and

(9) To consult with public and private agencies in order to help them improve their methods and facilities for the care of children, expectant mothers and developmentally disabled persons. [2005 c 490 § 11. Prior: 2000 c 162 § 20; 2000 c 122 § 40; 1997 c 386 § 33; 1995 c 302 § 4; 1988 c 189 § 3; prior: 1987 c 524 § 13; 1987 c 486 § 14; 1984 c 188 § 5; 1982 c 118 § 6; 1980 c 125 § 1; 1979 c 141 § 355; 1977 ex.s. c 80 § 72; 1967 c 172 § 3.]

**Effective date—2005 c 490:** See note following RCW 74.15.350.

**Application—Effective date—1997 c 386:** See notes following RCW 74.14D.010.

**Intent—1995 c 302:** See note following RCW 74.15.010.

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**74.15.130 Licenses—Denial, suspension, revocation, modification—Procedures—Adjudicative proceedings—Penalties.** (1) An agency may be denied a license, or any license issued pursuant to chapter 74.15 RCW and RCW 74.13.031 may be suspended, revoked, modified, or not renewed by the secretary upon proof (a) that the agency has failed or refused to comply with the provisions of chapter 74.15 RCW and RCW 74.13.031 or the requirements promulgated pursuant to the provisions of chapter 74.15 RCW and RCW 74.13.031; or (b) that the conditions required for the issuance of a license under chapter 74.15 RCW and RCW 74.13.031 have ceased to exist with respect to such licenses. RCW 43.20A.205 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

(2) In any adjudicative proceeding regarding the denial, modification, suspension, or revocation of a foster family home license, the department's decision shall be upheld if there is reasonable cause to believe that:

(a) The applicant or licensee lacks the character, suitability, or competence to care for children placed in out-of-home care, however, no unfounded report of child abuse or neglect may be used to deny employment or a license;

(b) The applicant or licensee has failed or refused to comply with any provision of chapter 74.15 RCW, RCW 74.13.031, or the requirements adopted pursuant to such provisions; or

(c) The conditions required for issuance of a license under chapter 74.15 RCW and RCW 74.13.031 have ceased to exist with respect to such licenses.

(3) In any adjudicative proceeding regarding the denial, modification, suspension, or revocation of any license under this chapter, other than a foster family home license, the department's decision shall be upheld if it is supported by a preponderance of the evidence.

(4) The department may assess civil monetary penalties upon proof that an agency has failed or refused to comply with the rules adopted under the provisions of this chapter and RCW 74.13.031 or that an agency subject to licensing under this chapter and RCW 74.13.031 is operating without a license except that civil monetary penalties shall not be levied against a licensed foster home. Monetary penalties levied against unlicensed agencies that submit an application for licensure within thirty days of notification and subsequently become licensed will be forgiven. These penalties may be assessed in addition to or in lieu of other disciplinary actions. Civil monetary penalties, if imposed, may be assessed and collected, with interest, for each day an agency is or was out of compliance. Civil monetary penalties shall not exceed seventy-five dollars per violation for a family day-care home and two hundred fifty dollars per violation for group homes, child day-care centers, and child-placing agencies. Each day upon which the same or substantially similar action occurs is a separate violation subject to the assessment of a separate penalty. The department shall provide a notification period before a monetary penalty is effective and may forgive the penalty levied if the agency comes into compliance during this period. The department may suspend, revoke, or not renew a license for failure to pay a civil monetary penalty it has assessed pursuant to this chapter within ten days after such assessment becomes final. Chapter 43.20A RCW gov-

erns notice of a civil monetary penalty and provides the right of an adjudicative proceeding. The preponderance of evidence standard shall apply in adjudicative proceedings related to assessment of civil monetary penalties.

(5)(a) In addition to or in lieu of an enforcement action being taken, the department may place a child day-care center or family day-care provider on nonreferral status if the center or provider has failed or refused to comply with this chapter or rules adopted under this chapter or an enforcement action has been taken. The nonreferral status may continue until the department determines that: (i) No enforcement action is appropriate; or (ii) a corrective action plan has been successfully concluded.

(b) Whenever a child day-care center or family day-care provider is placed on nonreferral status, the department shall provide written notification to the child day-care center or family day-care provider.

(6) The department shall notify appropriate public and private child care resource and referral agencies of the department's decision to: (a) Take an enforcement action against a child day-care center or family day-care provider; or (b) place or remove a child day-care center or family day-care provider on nonreferral status. [2005 c 473 § 6; 1998 c 314 § 6; 1995 c 302 § 5; 1989 c 175 § 149; 1982 c 118 § 12; 1979 c 141 § 362; 1967 c 172 § 13.]

**Purpose—2005 c 473:** See note following RCW 74.15.300.

**Intent—1995 c 302:** See note following RCW 74.15.010.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**74.15.300 Enforcement action—Definition.** For the purposes of chapter 473, Laws of 2005, "enforcement action" means denial, suspension, revocation, modification, or nonrenewal of a license pursuant to RCW 74.15.130(1) or assessment of civil monetary penalties pursuant to RCW 74.15.130(4). [2005 c 473 § 2.]

**Purpose—2005 c 473:** "The legislature recognizes that child care providers provide valuable services for the families of Washington state and are an important part of ensuring the healthy growth and development of young children. It also recognizes the importance of ensuring that operators of child day-care centers and family day-care providers are providing safe and quality care and operating in compliance with minimal standards.

The legislature further recognizes that parents, as consumers, have an interest in obtaining access to information that is relevant to making informed decisions about the persons with whom they entrust the care of their children. The purpose of this act is to establish a system, consistent throughout the state, through which parents, guardians, and other persons acting in loco parentis can obtain certain information about child care providers." [2005 c 473 § 1.]

**74.15.310 Child day-care centers, family day-care providers—Toll-free information number.** (1) The department shall establish and maintain a toll-free telephone number, and an interactive web-based system through which persons may obtain information regarding child day-care centers and family day-care providers. This number shall be available twenty-four hours a day for persons to request information. The department shall respond to recorded messages left at the number within two business days. The number shall be published in reasonably available printed and electronic media. The number shall be easily identifiable as a number through which persons may obtain information regarding child day-care centers and family day-care providers as set forth in this section.



(2) Through the toll-free telephone line established by this section, the department shall provide information to callers about: (a) Whether a day-care provider is licensed; (b) whether a day-care provider's license is current; (c) the general nature of any enforcement against the providers; (d) how to report suspected or observed noncompliance with licensing requirements; (e) how to report alleged abuse or neglect in a day care; (f) how to report health, safety, and welfare concerns in a day care; (g) how to receive follow-up assistance, including information on the office of the family and children's ombudsman; and (h) how to receive referral information on other agencies or entities that may be of further assistance to the caller.

(3) Beginning in January 2006, the department shall print the toll-free number established by this section on the face of new licenses issued to child day-care centers and family day-care providers.

(4) This section shall not be construed to require the disclosure of any information that is exempt from public disclosure under chapter 42.17 RCW. [2005 c 473 § 3.]

**Purpose—2005 c 473:** See note following RCW 74.15.300.

**74.15.320 Child day-care centers, family day-care providers—Required postings—Department to disclose complaints upon request.** (1) Every child day-care center and family day-care provider shall prominently post the following items, clearly visible to parents and staff:

(a) The license issued under this chapter;

(b) The department's toll-free telephone number established by RCW 74.15.310;

(c) The notice of any pending enforcement action. The notice must be posted immediately upon receipt. The notice must be posted for at least two weeks or until the violation causing the enforcement action is corrected, whichever is longer;

(d) A notice that inspection reports and any notices of enforcement actions for the previous three years are available from the licensee and the department; and

(e) Any other information required by the department.

(2) The department shall disclose, upon request, the receipt, general nature, and resolution or current status of all complaints on record with the department after July 24, 2005, against a child day-care center or family day-care provider that result in an enforcement action.

This section shall not be construed to require the disclosure of any information that is exempt from public disclosure under chapter 42.17 RCW. [2005 c 473 § 4.]

**Purpose—2005 c 473:** See note following RCW 74.15.300.

**74.15.330 Child day-care centers, family day-care providers—Public access to reports, enforcement action notices.** (1) Every child day-care center and family day-care provider shall have readily available for review by the department, parents, and the public a copy of each inspection report and notice of enforcement action received by the center or provider from the department for the past three years. This subsection only applies to reports and notices received on or after July 24, 2005.

(2) The department shall make available to the public during business hours all inspection reports and notices of

enforcement actions involving child day-care centers and family day-care providers consistent with chapter 42.17 RCW. The department shall include in the inspection report a statement of the corrective measures taken by the center or provider. [2005 c 473 § 5.]

**Purpose—2005 c 473:** See note following RCW 74.15.300.

**74.15.340 Day-care insurance.** (1) Every licensed child day-care center shall, at the time of licensure or renewal and at any inspection, provide to the department proof that the licensee has day-care insurance as defined in RCW 48.88.020, or is self-insured pursuant to chapter 48.90 RCW.

(a) Every licensed child day-care center shall comply with the following requirements:

(i) Notify the department when coverage has been terminated;

(ii) Post at the day-care center, in a manner likely to be observed by patrons, notice that coverage has lapsed or been terminated;

(iii) Provide written notice to parents that coverage has lapsed or terminated within thirty days of lapse or termination.

(b) Liability limits under this subsection shall be the same as set forth in RCW 48.88.050.

(c) The department may take action as provided in RCW 74.15.130 if the licensee fails to maintain in full force and effect the insurance required by this subsection.

(d) This subsection applies to child day-care centers holding licenses, initial licenses, and probationary licenses under this chapter.

(e) A child day-care center holding a license under this chapter on July 24, 2005, is not required to be in compliance with this subsection until the time of renewal of the license or until January 1, 2006, whichever is sooner.

(2)(a) Every licensed family day-care provider shall, at the time of licensure or renewal either:

(i) Provide to the department proof that the licensee has day-care insurance as defined in RCW 48.88.020, or other applicable insurance; or

(ii) Provide written notice of their insurance status to parents with a child enrolled in family day care. Family day-care providers may choose to opt out of the requirement to have day care or other applicable insurance but must provide written notice of their insurance status to parents with a child enrolled and shall not be subject to the requirements of (b), (c), or (d) of this subsection.

(b) Any licensed family day-care provider that provides to the department proof that the licensee has insurance as provided under (a)(i) of this subsection shall comply with the following requirements:

(i) Notify the department when coverage has been terminated;

(ii) Post at the day-care home, in a manner likely to be observed by patrons, notice that coverage has lapsed or been terminated;

(iii) Provide written notice to parents that coverage has lapsed or terminated within thirty days of lapse or termination.

(c) Liability limits under (a)(i) of this subsection shall be the same as set forth in RCW 48.88.050.

(d) The department may take action as provided in RCW 74.15.130 if the licensee fails to notify the department when coverage has been terminated as required under (b) of this subsection.

(e) A family day-care provider holding a license under this chapter on July 24, 2005, is not required to be in compliance with this subsection until the time of renewal of the license or until January 1, 2006, whichever is sooner.

(3) Noncompliance or compliance with the provisions of this section shall not constitute evidence of liability or nonliability in any injury litigation. [2005 c 473 § 7.]

**Purpose—2005 c 473:** See note following RCW 74.15.300.

**74.15.350 Child care providers—Tiered-reimbursement system—Pilot sites.** (1) Subject to the availability of amounts appropriated for this specific purpose, the department of social and health services shall implement the tiered-reimbursement system developed pursuant to section 6, chapter 490, Laws of 2005. Implementation of the tiered-reimbursement system shall initially consist of two pilot sites in different geographic regions of the state with demonstrated public-private partnerships, with statewide implementation to follow.

(2) In implementing the tiered-reimbursement system, consideration shall be given to child care providers who provide staff wage progression.

(3) The department shall begin implementation of the two pilot sites by March 30, 2006. [2005 c 490 § 7.]

**Effective date—2005 c 409:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 16, 2005]." [2005 c 490 § 15.]

### Chapter 74.34 RCW

#### ABUSE OF VULNERABLE ADULTS

##### Sections

74.34.063 Response to reports—Timing—Reports to law enforcement agencies—Notification to licensing authority. (*Effective July 1, 2006.*)

**74.34.063 Response to reports—Timing—Reports to law enforcement agencies—Notification to licensing authority. (*Effective July 1, 2006.*)** (1) The department shall initiate a response to a report, no later than twenty-four hours after knowledge of the report, of suspected abandonment, abuse, financial exploitation, neglect, or self-neglect of a vulnerable adult.

(2) When the initial report or investigation by the department indicates that the alleged abandonment, abuse, financial exploitation, or neglect may be criminal, the department shall make an immediate report to the appropriate law enforcement agency. The department and law enforcement will coordinate in investigating reports made under this chapter. The department may provide protective services and other remedies as specified in this chapter.

(3) The law enforcement agency or the department shall report the incident in writing to the proper county prosecutor or city attorney for appropriate action whenever the investigation reveals that a crime may have been committed.

[2005 RCW Supp—page 886]

(4) The department and law enforcement may share information contained in reports and findings of abandonment, abuse, financial exploitation, and neglect of vulnerable adults, consistent with RCW 74.04.060, chapter 42.56 RCW, and other applicable confidentiality laws.

(5) The department shall notify the proper licensing authority concerning any report received under this chapter that alleges that a person who is professionally licensed, certified, or registered under Title 18 RCW has abandoned, abused, financially exploited, or neglected a vulnerable adult. [2005 c 274 § 354; 1999 c 176 § 8.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

### Chapter 74.39A RCW

#### LONG-TERM CARE SERVICES OPTIONS—EXPANSION

##### Sections

74.39A.200 Training curricula, materials—In public domain—Exceptions. (*Effective July 1, 2006.*)

**74.39A.200 Training curricula, materials—In public domain—Exceptions. (*Effective July 1, 2006.*)** All training curricula and material, except competency testing material, developed by or for the department and used in part or in whole for the purpose of improving provider and caregiver knowledge and skill are in the public domain unless otherwise protected by copyright law and are subject to disclosure under chapter 42.56 RCW. Any training curricula and material developed by a private entity through a contract with the department are also considered part of the public domain and shall be shared subject to copyright restrictions. Any proprietary curricula and material developed by a private entity for the purposes of training staff in facilities licensed under chapter 18.20 or 70.128 RCW or individual providers and home care agency providers under this chapter and approved for training by the department are not part of the public domain. [2005 c 274 § 355; 2000 c 121 § 11.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

### Chapter 74.42 RCW

#### NURSING HOMES—RESIDENT CARE, OPERATING STANDARDS

##### Sections

74.42.640 Quality assurance committee.

**74.42.640 Quality assurance committee.** (1) To ensure the proper delivery of services and the maintenance and improvement in quality of care through self-review, each facility may maintain a quality assurance committee that, at a minimum, includes:

- (a) The director of nursing services;
- (b) A physician designated by the facility; and
- (c) Three other members from the staff of the facility.

(2) When established, the quality assurance committee shall meet at least quarterly to identify issues that may

adversely affect quality of care and services to residents and to develop and implement plans of action to correct identified quality concerns or deficiencies in the quality of care provided to residents.

(3) To promote quality of care through self-review without the fear of reprisal, and to enhance the objectivity of the review process, the department shall not require, and the long-term care ombudsman program shall not request, disclosure of any quality assurance committee records or reports, unless the disclosure is related to the committee's compliance with this section, if:

(a) The records or reports are not maintained pursuant to statutory or regulatory mandate; and

(b) The records or reports are created for and collected and maintained by the committee.

(4) The department may request only information related to the quality assurance committee that may be necessary to determine whether a facility has a quality assurance committee and that it is operating in compliance with this section.

(5) Good faith attempts by the committee to identify and correct quality deficiencies shall not be used as a basis for imposing sanctions.

(6) If the facility offers the department documents generated by, or for, the quality assurance committee as evidence of compliance with nursing facility requirements, the documents are protected as quality assurance committee documents under subsections (7) and (9) of this section when in the possession of the department. The department is not liable for an inadvertent disclosure, a disclosure related to a required federal or state audit, or disclosure of documents incorrectly marked as quality assurance committee documents by the facility.

(7) Information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, a quality assurance committee are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the care that is the basis of the civil action whose involvement was independent of any quality improvement committee activity; and (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of their participation in the quality assurance committee activities.

(8) A quality assurance committee under subsection (1) of this section, RCW 18.20.390, 70.41.200, 4.24.250, or 43.70.510 may share information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, the committee, with one or more other quality assurance committees created under subsection (1) of this section, RCW 18.20.390, 70.41.200, 4.24.250, or 43.70.510 for the improvement of the quality of care and services rendered to nursing facility residents. Information and documents disclosed by one quality

assurance committee to another quality assurance committee and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsections (7) and (9) of this section, RCW 18.20.390 (6) and (8), 43.70.510(4), 70.41.200(3), and 4.24.250(1). The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws.

(9) Information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, a quality assurance committee are exempt from disclosure under chapter 42.17 RCW.

(10) Notwithstanding any records created for the quality assurance committee, the facility shall fully set forth in the resident's records, available to the resident, the department, and others as permitted by law, the facts concerning any incident of injury or loss to the resident, the steps taken by the facility to address the resident's needs, and the resident outcome.

(11) A facility operated as part of a hospital licensed under chapter 70.41 RCW may maintain a quality assurance committee in accordance with this section which shall be subject to the provisions of subsections (1) through (10) of this section or may conduct quality improvement activities for the facility through a quality improvement committee under RCW 70.41.200 which shall be subject to the provisions of RCW 70.41.200(9). [2005 c 33 § 3.]

**Findings—2005 c 33:** See note following RCW 18.20.390.

## Chapter 74.46 RCW

### NURSING FACILITY MEDICAID PAYMENT SYSTEM

(Formerly: Nursing home auditing and cost reimbursement act of 1980)

#### Sections

- 74.46.431 Nursing facility medicaid payment rate allocations—Components—Minimum wage—Rules.  
74.46.820 Public disclosure. (*Effective July 1, 2006.*)

**74.46.431 Nursing facility medicaid payment rate allocations—Components—Minimum wage—Rules.** (1) Effective July 1, 1999, nursing facility medicaid payment rate allocations shall be facility-specific and shall have seven components: Direct care, therapy care, support services, operations, property, financing allowance, and variable return. The department shall establish and adjust each of these components, as provided in this section and elsewhere in this chapter, for each medicaid nursing facility in this state.

(2) All component rate allocations for essential community providers as defined in this chapter shall be based upon a minimum facility occupancy of eighty-five percent of licensed beds, regardless of how many beds are set up or in use. For all facilities other than essential community providers, effective July 1, 2001, component rate allocations in direct care, therapy care, support services, variable return,

operations, property, and financing allowance shall continue to be based upon a minimum facility occupancy of eighty-five percent of licensed beds. For all facilities other than essential community providers, effective July 1, 2002, the component rate allocations in operations, property, and financing allowance shall be based upon a minimum facility occupancy of ninety percent of licensed beds, regardless of how many beds are set up or in use.

(3) Information and data sources used in determining medicaid payment rate allocations, including formulas, procedures, cost report periods, resident assessment instrument formats, resident assessment methodologies, and resident classification and case mix weighting methodologies, may be substituted or altered from time to time as determined by the department.

(4)(a) Direct care component rate allocations shall be established using adjusted cost report data covering at least six months. Adjusted cost report data from 1996 will be used for October 1, 1998, through June 30, 2001, direct care component rate allocations; adjusted cost report data from 1999 will be used for July 1, 2001, through June 30, 2005, direct care component rate allocations. Adjusted cost report data from 1999 will continue to be used for July 1, 2005, and later direct care component rate allocations.

(b) Direct care component rate allocations based on 1996 cost report data shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. A different economic trends and conditions adjustment factor or factors may be defined in the biennial appropriations act for facilities whose direct care component rate is set equal to their adjusted June 30, 1998, rate, as provided in RCW 74.46.506(5)(i).

(c) Direct care component rate allocations based on 1999 cost report data shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. A different economic trends and conditions adjustment factor or factors may be defined in the biennial appropriations act for facilities whose direct care component rate is set equal to their adjusted June 30, 1998, rate, as provided in RCW 74.46.506(5)(i).

(5)(a) Therapy care component rate allocations shall be established using adjusted cost report data covering at least six months. Adjusted cost report data from 1996 will be used for October 1, 1998, through June 30, 2001, therapy care component rate allocations; adjusted cost report data from 1999 will be used for July 1, 2001, through June 30, 2005, therapy care component rate allocations. Adjusted cost report data from 1999 will continue to be used for July 1, 2005, and later therapy care component rate allocations.

(b) Therapy care component rate allocations shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act.

(6)(a) Support services component rate allocations shall be established using adjusted cost report data covering at least six months. Adjusted cost report data from 1996 shall be used for October 1, 1998, through June 30, 2001, support services component rate allocations; adjusted cost report data from 1999 shall be used for July 1, 2001, through June 30, 2005, support services component rate allocations. Adjusted cost report data from 1999 will continue to be used for July 1, 2005, and later support services component rate allocations.

(b) Support services component rate allocations shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act.

(7)(a) Operations component rate allocations shall be established using adjusted cost report data covering at least six months. Adjusted cost report data from 1996 shall be used for October 1, 1998, through June 30, 2001, operations component rate allocations; adjusted cost report data from 1999 shall be used for July 1, 2001, through June 30, 2005, operations component rate allocations. Adjusted cost report data from 1999 will continue to be used for July 1, 2005, and later operations component rate allocations.

(b) Operations component rate allocations shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act.

(8) For July 1, 1998, through September 30, 1998, a facility's property and return on investment component rates shall be the facility's June 30, 1998, property and return on investment component rates, without increase. For October 1, 1998, through June 30, 1999, a facility's property and return on investment component rates shall be rebased utilizing 1997 adjusted cost report data covering at least six months of data.

(9) Total payment rates under the nursing facility medicaid payment system shall not exceed facility rates charged to the general public for comparable services.

(10) Medicaid contractors shall pay to all facility staff a minimum wage of the greater of the state minimum wage or the federal minimum wage.

(11) The department shall establish in rule procedures, principles, and conditions for determining component rate allocations for facilities in circumstances not directly addressed by this chapter, including but not limited to: The need to prorate inflation for partial-period cost report data, newly constructed facilities, existing facilities entering the medicaid program for the first time or after a period of absence from the program, existing facilities with expanded new bed capacity, existing medicaid facilities following a change of ownership of the nursing facility business, facilities banking beds or converting beds back into service, facilities temporarily reducing the number of set-up beds during a remodel, facilities having less than six months of either resident assessment, cost report data, or both, under the current contractor prior to rate setting, and other circumstances.

(12) The department shall establish in rule procedures, principles, and conditions, including necessary threshold costs, for adjusting rates to reflect capital improvements or new requirements imposed by the department or the federal government. Any such rate adjustments are subject to the provisions of RCW 74.46.421.

(13) Effective July 1, 2001, medicaid rates shall continue to be revised downward in all components, in accordance with department rules, for facilities converting banked beds to active service under chapter 70.38 RCW, by using the facility's increased licensed bed capacity to recalculate minimum occupancy for rate setting. However, for facilities other than essential community providers which bank beds under chapter 70.38 RCW, after May 25, 2001, medicaid rates shall be revised upward, in accordance with department rules, in direct care, therapy care, support services, and variable return components only, by using the facility's decreased licensed

bed capacity to recalculate minimum occupancy for rate setting, but no upward revision shall be made to operations, property, or financing allowance component rates.

(14) Facilities obtaining a certificate of need or a certificate of need exemption under chapter 70.38 RCW after June 30, 2001, must have a certificate of capital authorization in order for (a) the depreciation resulting from the capitalized addition to be included in calculation of the facility's property component rate allocation; and (b) the net invested funds associated with the capitalized addition to be included in calculation of the facility's financing allowance rate allocation. [2005 c 518 § 944; 2004 c 276 § 913; 2001 1st sp.s. c 8 § 5; 1999 c 353 § 4; 1998 c 322 § 19.]

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

**Severability—Effective date—2004 c 276:** See notes following RCW 43.330.167.

**Severability—Effective dates—2001 1st sp.s. c 8:** See notes following RCW 74.46.020.

**Effective dates—1999 c 353:** See note following RCW 74.46.020.

#### **74.46.820 Public disclosure. (Effective July 1, 2006.)**

(1) Cost reports and their final audit reports filed by the contractor shall be subject to public disclosure pursuant to the requirements of chapter 42.56 RCW.

(2) Subsection (1) of this section does not prevent a contractor from having access to its own records or from authorizing an agent or designee to have access to the contractor's records.

(3) Regardless of whether any document or report submitted to the secretary pursuant to this chapter is subject to public disclosure, copies of such documents or reports shall be provided by the secretary, upon written request, to the legislature and to state agencies or state or local law enforcement officials who have an official interest in the contents thereof. [2005 c 274 § 356; 1998 c 322 § 43; 1985 c 361 § 14; 1983 1st ex.s. c 67 § 41; 1980 c 177 § 82.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Savings—1985 c 361:** See note following RCW 74.46.020.

## **Title 76**

### **FORESTS AND FOREST PRODUCTS**

#### **Chapters**

**76.09 Forest practices.**

**76.48 Specialized forest products.**

#### **Chapter 76.09 RCW**

#### **FOREST PRACTICES**

##### Sections

76.09.050	Rules establishing classes of forest practices—Applications for classes of forest practices—Approval or disapproval—Notifications—Procedures—Appeals—Waiver.
76.09.060	Applications for forest practices—Form—Contents—Conversion of forest land to other use—Six-year moratorium—New applications—Approval—Emergencies. (Effective July 1, 2006.)

**76.09.050 Rules establishing classes of forest practices—Applications for classes of forest practices—Approval or disapproval—Notifications—Procedures—Appeals—Waiver.** (1) The board shall establish by rule which forest practices shall be included within each of the following classes:

Class I: Minimal or specific forest practices that have no direct potential for damaging a public resource and that may be conducted without submitting an application or a notification except that when the regulating authority is transferred to a local governmental entity, those Class I forest practices that involve timber harvesting or road construction within "urban growth areas," designated pursuant to chapter 36.70A RCW, are processed as Class IV forest practices, but are not subject to environmental review under chapter 43.21C RCW;

Class II: Forest practices which have a less than ordinary potential for damaging a public resource that may be conducted without submitting an application and may begin five calendar days, or such lesser time as the department may determine, after written notification by the operator, in the manner, content, and form as prescribed by the department, is received by the department. However, the work may not begin until all forest practice fees required under RCW 76.09.065 have been received by the department. Class II shall not include forest practices:

(a) On lands platted after January 1, 1960, as provided in chapter 58.17 RCW or on lands that have or are being converted to another use;

(b) Which require approvals under the provisions of the hydraulics act, RCW 77.55.021;

(c) Within "shorelines of the state" as defined in RCW 90.58.030;

(d) Excluded from Class II by the board; or

(e) Including timber harvesting or road construction within "urban growth areas," designated pursuant to chapter 36.70A RCW, which are Class IV;

Class III: Forest practices other than those contained in Class I, II, or IV. A Class III application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department;

Class IV: Forest practices other than those contained in Class I or II: (a) On lands platted after January 1, 1960, as provided in chapter 58.17 RCW, (b) on lands that have or are being converted to another use, (c) on lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development, (d) involving timber harvesting or road construction on lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except where the forest landowner provides: (i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or (ii) a conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application, and/or (e) which have a potential for a sub-

stantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW. Such evaluation shall be made within ten days from the date the department receives the application: PROVIDED, That nothing herein shall be construed to prevent any local or regional governmental entity from determining that a detailed statement must be prepared for an action pursuant to a Class IV forest practice taken by that governmental entity concerning the land on which forest practices will be conducted. A Class IV application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application, unless the department determines that a detailed statement must be made, in which case the application must be approved or disapproved by the department within sixty calendar days from the date the department receives the application, unless the commissioner of public lands, through the promulgation of a formal order, determines that the process cannot be completed within such period. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department.

Forest practices under Classes I, II, and III are exempt from the requirements for preparation of a detailed statement under the state environmental policy act.

(2) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, no Class II, Class III, or Class IV forest practice shall be commenced or continued after January 1, 1975, unless the department has received a notification with regard to a Class II forest practice or approved an application with regard to a Class III or Class IV forest practice containing all information required by RCW 76.09.060 as now or hereafter amended. However, in the event forest practices regulations necessary for the scheduled implementation of this chapter and RCW 90.48.420 have not been adopted in time to meet such schedules, the department shall have the authority to regulate forest practices and approve applications on such terms and conditions consistent with this chapter and RCW 90.48.420 and the purposes and policies of RCW 76.09.010 until applicable forest practices regulations are in effect.

(3) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, if a notification or application is delivered in person to the department by the operator or the operator's agent, the department shall immediately provide a dated receipt thereof. In all other cases, the department shall immediately mail a dated receipt to the operator.

(4) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, forest practices shall be conducted in accordance with the forest practices regulations, orders and directives as authorized by this chapter or the forest practices regulations, and the terms and conditions of any approved applications.

(5) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, the department of natural resources shall notify the applicant in writing of either its approval of the application or its disapproval of the application and the specific manner in which the application fails to comply with the provisions of

this section or with the forest practices regulations. Except as provided otherwise in this section, if the department fails to either approve or disapprove an application or any portion thereof within the applicable time limit, the application shall be deemed approved and the operation may be commenced: PROVIDED, That this provision shall not apply to applications which are neither approved nor disapproved pursuant to the provisions of subsection (7) of this section: PROVIDED, FURTHER, That if seasonal field conditions prevent the department from being able to properly evaluate the application, the department may issue an approval conditional upon further review within sixty days: PROVIDED, FURTHER, That the department shall have until April 1, 1975, to approve or disapprove an application involving forest practices allowed to continue to April 1, 1975, under the provisions of subsection (2) of this section. Upon receipt of any notification or any satisfactorily completed application the department shall in any event no later than two business days after such receipt transmit a copy to the departments of ecology and fish and wildlife, and to the county, city, or town in whose jurisdiction the forest practice is to be commenced. Any comments by such agencies shall be directed to the department of natural resources.

(6) For those forest practices regulated by the board and the department, if the county, city, or town believes that an application is inconsistent with this chapter, the forest practices regulations, or any local authority consistent with RCW 76.09.240 as now or hereafter amended, it may so notify the department and the applicant, specifying its objections.

(7) For those forest practices regulated by the board and the department, the department shall not approve portions of applications to which a county, city, or town objects if:

(a) The department receives written notice from the county, city, or town of such objections within fourteen business days from the time of transmittal of the application to the county, city, or town, or one day before the department acts on the application, whichever is later; and

(b) The objections relate to lands either:

(i) Platted after January 1, 1960, as provided in chapter 58.17 RCW; or

(ii) On lands that have or are being converted to another use.

The department shall either disapprove those portions of such application or appeal the county, city, or town objections to the appeals board. If the objections related to subparagraphs (b)(i) and (ii) of this subsection are based on local authority consistent with RCW 76.09.240 as now or hereafter amended, the department shall disapprove the application until such time as the county, city, or town consents to its approval or such disapproval is reversed on appeal. The applicant shall be a party to all department appeals of county, city, or town objections. Unless the county, city, or town either consents or has waived its rights under this subsection, the department shall not approve portions of an application affecting such lands until the minimum time for county, city, or town objections has expired.

(8) For those forest practices regulated by the board and the department, in addition to any rights under the above paragraph, the county, city, or town may appeal any department approval of an application with respect to any lands within its jurisdiction. The appeals board may suspend the

department's approval in whole or in part pending such appeal where there exists potential for immediate and material damage to a public resource.

(9) For those forest practices regulated by the board and the department, appeals under this section shall be made to the appeals board in the manner and time provided in RCW 76.09.220(8). In such appeals there shall be no presumption of correctness of either the county, city, or town or the department position.

(10) For those forest practices regulated by the board and the department, the department shall, within four business days notify the county, city, or town of all notifications, approvals, and disapprovals of an application affecting lands within the county, city, or town, except to the extent the county, city, or town has waived its right to such notice.

(11) For those forest practices regulated by the board and the department, a county, city, or town may waive in whole or in part its rights under this section, and may withdraw or modify any such waiver, at any time by written notice to the department.

(12) Notwithstanding subsections (2) through (5) of this section, forest practices applications or notifications are not required for exotic insect and disease control operations conducted in accordance with RCW 76.09.060(8) where eradication can reasonably be expected. [2005 c 146 § 1003; 2003 c 314 § 4; 2002 c 121 § 1; 1997 c 173 § 2; 1994 c 264 § 49; 1993 c 443 § 3; 1990 1st ex.s. c 17 § 61; 1988 c 36 § 47; 1987 c 95 § 9; 1975 1st ex.s. c 200 § 2; 1974 ex.s. c 137 § 5.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Findings—2003 c 314:** See note following RCW 17.24.220.

**Effective date—1993 c 443:** See note following RCW 76.09.010.

**Severability—Part, section headings not law—1990 1st ex.s. c 17:** See RCW 36.70A.900 and 36.70A.901.

**76.09.060 Applications for forest practices—Form—Contents—Conversion of forest land to other use—Six-year moratorium—New applications—Approval—Emergencies. (Effective July 1, 2006.)** The following shall apply to those forest practices administered and enforced by the department and for which the board shall promulgate regulations as provided in this chapter:

(1) The department shall prescribe the form and contents of the notification and application. The forest practices rules shall specify by whom and under what conditions the notification and application shall be signed or otherwise certified as acceptable. The application or notification shall be delivered in person to the department, sent by first class mail to the department or electronically filed in a form defined by the department. The form for electronic filing shall be readily convertible to a paper copy, which shall be available to the public pursuant to chapter 42.56 RCW. The information required may include, but is not limited to:

(a) Name and address of the forest landowner, timber owner, and operator;

(b) Description of the proposed forest practice or practices to be conducted;

(c) Legal description and tax parcel identification numbers of the land on which the forest practices are to be conducted;

(d) Planimetric and topographic maps showing location and size of all lakes and streams and other public waters in and immediately adjacent to the operating area and showing all existing and proposed roads and major tractor roads;

(e) Description of the silvicultural, harvesting, or other forest practice methods to be used, including the type of equipment to be used and materials to be applied;

(f) Proposed plan for reforestation and for any revegetation necessary to reduce erosion potential from roadsides and yarding roads, as required by the forest practices rules;

(g) Soil, geological, and hydrological data with respect to forest practices;

(h) The expected dates of commencement and completion of all forest practices specified in the application;

(i) Provisions for continuing maintenance of roads and other construction or other measures necessary to afford protection to public resources;

(j) An affirmation that the statements contained in the notification or application are true; and

(k) All necessary application or notification fees.

(2) Long range plans may be submitted to the department for review and consultation.

(3) The application for a forest practice or the notification of a Class II forest practice is subject to the three-year reforestation requirement.

(a) If the application states that any such land will be or is intended to be so converted:

(i) The reforestation requirements of this chapter and of the forest practices rules shall not apply if the land is in fact so converted unless applicable alternatives or limitations are provided in forest practices rules issued under RCW 76.09.070 as now or hereafter amended;

(ii) Completion of such forest practice operations shall be deemed conversion of the lands to another use for purposes of chapters 84.33 and 84.34 RCW unless the conversion is to a use permitted under a current use tax agreement permitted under chapter 84.34 RCW;

(iii) The forest practices described in the application are subject to applicable county, city, town, and regional governmental authority permitted under RCW 76.09.240 as now or hereafter amended as well as the forest practices rules.

(b) Except as provided elsewhere in this section, if the application or notification does not state that any land covered by the application or notification will be or is intended to be so converted:

(i) For six years after the date of the application the county, city, town, and regional governmental entities shall deny any or all applications for permits or approvals, including building permits and subdivision approvals, relating to nonforestry uses of land subject to the application;

(A) The department shall submit to the local governmental entity a copy of the statement of a forest landowner's intention not to convert which shall represent a recognition by the landowner that the six-year moratorium shall be imposed and shall preclude the landowner's ability to obtain development permits while the moratorium is in place. This statement shall be filed by the local governmental entity with the county recording officer, who shall record the documents as provided in chapter 65.04 RCW, except that lands designated as forest lands of long-term commercial significance under chapter 36.70A RCW shall not be recorded due to the

low likelihood of conversion. Not recording the statement of a forest landowner's conversion intention shall not be construed to mean the moratorium is not in effect.

(B) The department shall collect the recording fee and reimburse the local governmental entity for the cost of recording the application.

(C) When harvesting takes place without an application, the local governmental entity shall impose the six-year moratorium provided in (b)(i) of this subsection from the date the unpermitted harvesting was discovered by the department or the local governmental entity.

(D) The local governmental entity shall develop a process for lifting the six-year moratorium, which shall include public notification, and procedures for appeals and public hearings.

(E) The local governmental entity may develop an administrative process for lifting or waiving the six-year moratorium for the purposes of constructing a single-family residence or outbuildings, or both, on a legal lot and building site. Lifting or waiving of the six-year moratorium is subject to compliance with all local ordinances.

(F) The six-year moratorium shall not be imposed on a forest practices application that contains a conversion option harvest plan approved by the local governmental entity unless the forest practice was not in compliance with the approved forest practice permit. Where not in compliance with the conversion option harvest plan, the six-year moratorium shall be imposed from the date the application was approved by the department or the local governmental entity;

(ii) Failure to comply with the reforestation requirements contained in any final order or decision shall constitute a removal of designation under the provisions of RCW 84.33.140, and a change of use under the provisions of RCW 84.34.080, and, if applicable, shall subject such lands to the payments and/or penalties resulting from such removals or changes; and

(iii) Conversion to a use other than commercial forest product operations within six years after approval of the forest practices without the consent of the county, city, or town shall constitute a violation of each of the county, municipal city, town, and regional authorities to which the forest practice operations would have been subject if the application had so stated.

(c) The application or notification shall be signed by the forest landowner and accompanied by a statement signed by the forest landowner indicating his or her intent with respect to conversion and acknowledging that he or she is familiar with the effects of this subsection.

(4) Whenever an approved application authorizes a forest practice which, because of soil condition, proximity to a water course or other unusual factor, has a potential for causing material damage to a public resource, as determined by the department, the applicant shall, when requested on the approved application, notify the department two days before the commencement of actual operations.

(5) Before the operator commences any forest practice in a manner or to an extent significantly different from that described in a previously approved application or notification, there shall be submitted to the department a new application or notification form in the manner set forth in this section.

(6) Except as provided in RCW 76.09.350(4), the notification to or the approval given by the department to an application to conduct a forest practice shall be effective for a term of two years from the date of approval or notification and shall not be renewed unless a new application is filed and approved or a new notification has been filed. At the option of the applicant, an application or notification may be submitted to cover a single forest practice or a number of forest practices within reasonable geographic or political boundaries as specified by the department. An application or notification that covers more than one forest practice may have an effective term of more than two years. The board shall adopt rules that establish standards and procedures for approving an application or notification that has an effective term of more than two years. Such rules shall include extended time periods for application or notification approval or disapproval. On an approved application with a term of more than two years, the applicant shall inform the department before commencing operations.

(7) Notwithstanding any other provision of this section, no prior application or notification shall be required for any emergency forest practice necessitated by fire, flood, windstorm, earthquake, or other emergency as defined by the board, but the operator shall submit an application or notification, whichever is applicable, to the department within forty-eight hours after commencement of such practice or as required by local regulations.

(8) Forest practices applications or notifications are not required for forest practices conducted to control exotic forest insect or disease outbreaks, when conducted by or under the direction of the department of agriculture in carrying out an order of the governor or director of the department of agriculture to implement pest control measures as authorized under chapter 17.24 RCW, and are not required when conducted by or under the direction of the department in carrying out emergency measures under a forest health emergency declaration by the commissioner of public lands as provided in RCW 76.06.130.

(a) For the purposes of this subsection, exotic forest insect or disease has the same meaning as defined in RCW 76.06.020.

(b) In order to minimize adverse impacts to public resources, control measures must be based on integrated pest management, as defined in RCW 17.15.010, and must follow forest practices rules relating to road construction and maintenance, timber harvest, and forest chemicals, to the extent possible without compromising control objectives.

(c) Agencies conducting or directing control efforts must provide advance notice to the appropriate regulatory staff of the department of the operations that would be subject to exemption from forest practices application or notification requirements.

(d) When the appropriate regulatory staff of the department are notified under (c) of this subsection, they must consult with the landowner, interested agencies, and affected tribes, and assist the notifying agencies in the development of integrated pest management plans that comply with forest practices rules as required under (b) of this subsection.

(e) Nothing under this subsection relieves agencies conducting or directing control efforts from requirements of the



federal clean water act as administered by the department of ecology under RCW 90.48.260.

(f) Forest lands where trees have been cut as part of an exotic forest insect or disease control effort under this subsection are subject to reforestation requirements under RCW 76.09.070.

(g) The exemption from obtaining approved forest practices applications or notifications does not apply to forest practices conducted after the governor, the director of the department of agriculture, or the commissioner of public lands have declared that an emergency no longer exists because control objectives have been met, that there is no longer an imminent threat, or that there is no longer a good likelihood of control. [2005 c 274 § 357; 2003 c 314 § 5. Prior: 1997 c 290 § 3; 1997 c 173 § 3; 1993 c 443 § 4; 1992 c 52 § 22; 1990 1st ex.s. c 17 § 62; 1975 1st ex.s. c 200 § 3; 1974 ex.s. c 137 § 6.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Findings—2003 c 314:** See note following RCW 17.24.220.

**Effective date—1993 c 443:** See note following RCW 76.09.010.

**Effective date—1992 c 52 § 22:** "Section 22 of this act shall take effect August 1, 1992." [1992 c 52 § 27.]

**Severability—Part, section headings not law—1990 1st ex.s. c 17:** See RCW 36.70A.900 and 36.70A.901.

## Chapter 76.48 RCW

### SPECIALIZED FOREST PRODUCTS

#### Sections

76.48.020	Definitions.
76.48.050	Specialized forest products permits—Expiration—Specifications.
76.48.060	Specialized forest products permits—Required—Forms—Filing.
76.48.070	Transporting or possessing cedar or other specialized forest products—Requirements.
76.48.075	Specialized forest products from out-of-state.
76.48.085	Purchase of specialized forest products—Required records.
76.48.094	Cedar or specialty wood processors—Records of purchase, possession or retention of cedar products, salvage, or specialty wood—Bill of lading.
76.48.096	Obtaining products from suppliers not having specialized forest products permit unlawful.
76.48.098	Display of valid registration certificate required.
76.48.100	Exemptions.
76.48.110	Violations—Seizure and disposition of products and other items—Disposition of proceeds.
76.48.140	Disposition of fines.
76.48.150	Department to develop specialized forest products permit/education material.

**76.48.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Authorization" means a properly completed pre-printed form authorizing the transportation or possession of Christmas trees which contains the information required by RCW 76.48.080, a sample of which is filed before the harvesting occurs with the sheriff of the county in which the harvesting is to occur.

(2) "Bill of lading" means a written or printed itemized list or statement of particulars pertinent to the transportation or possession of a specialized forest product.

(3) "Cascara bark" means the bark of a Cascara tree.

(4) "Cedar processor" means any person who purchases, takes, or retains possession of cedar products or cedar salvage for later sale in the same or modified form following removal and delivery from the land where harvested.

(5) "Cedar products" means cedar shakeboards, shake and shingle bolts, and rounds one to three feet in length.

(6) "Cedar salvage" means cedar chunks, slabs, stumps, and logs having a volume greater than one cubic foot and being harvested or transported from areas not associated with the concurrent logging of timber stands (a) under a forest practices application approved or notification received by the department of natural resources, or (b) under a contract or permit issued by an agency of the United States government.

(7) "Christmas trees" means any evergreen trees or the top thereof, commonly known as Christmas trees, with limbs and branches, with or without roots, including fir, pine, spruce, cedar, and other coniferous species.

(8) "Cut or picked evergreen foliage," commonly known as brush, means evergreen boughs, huckleberry, salal, fern, Oregon grape, rhododendron, mosses, bear grass, scotch broom (*Cytisus scoparius*), and other cut or picked evergreen products. "Cut or picked evergreen foliage" does not mean cones, berries, any foliage that does not remain green year-round, or seeds.

(9) "Harvest" means to separate, by cutting, prying, picking, peeling, breaking, pulling, splitting, or otherwise removing, a specialized forest product (a) from its physical connection or contact with the land or vegetation upon which it is or was growing or (b) from the position in which it is lying upon the land.

(10) "Harvest site" means each location where one or more persons are engaged in harvesting specialized forest products close enough to each other that communication can be conducted with an investigating law enforcement officer in a normal conversational tone.

(11) "Landowner" means, with regard to real property, the private owner, the state of Washington or any political subdivision, the federal government, or a person who by deed, contract, or lease has authority to harvest and sell forest products of the property. "Landowner" does not include the purchaser or successful high bidder at a public or private timber sale.

(12) "Native ornamental trees and shrubs" means any trees or shrubs which are not nursery grown and which have been removed from the ground with the roots intact.

(13) "Permit area" means a designated tract of land that may contain single or multiple harvest sites.

(14) "Person" includes the plural and all corporations, foreign or domestic, copartnerships, firms, and associations of persons.

(15) "Processed cedar products" means cedar shakes, shingles, fence posts, hop poles, pickets, stakes, rails, or rounds less than one foot in length.

(16) "Sheriff" means, for the purpose of validating specialized forest products permits, the county sheriff, deputy sheriff, or an authorized employee of the sheriff's office or an agent of the office.

(17) "Specialized forest products" means Christmas trees, native ornamental trees and shrubs, cut or picked evergreen foliage, cedar products, cedar salvage, processed cedar

products, specialty wood, wild edible mushrooms, and Cascara bark.

(18) "Specialized forest products permit" means a printed document in a form printed by the department of natural resources, or true copy thereof, that is signed by a landowner or his or her authorized agent or representative, referred to in this chapter as "permitter" and validated by the county sheriff and authorizes a designated person, referred to in this chapter as "permittee," who has also signed the permit, to harvest and transport a designated specialized forest product from land owned or controlled and specified by the permitter and that is located in the county where the permit is issued.

(19) "Specialty wood" means wood that is:

(a) In logs less than eight feet in length, chunks, slabs, stumps, or burls; and

(b) One or more of the following:

(i) Of the species western red cedar, Englemann spruce, Sitka spruce, big leaf maple, or western red alder;

(ii) Without knots in a portion of the surface area at least twenty-one inches long and seven and a quarter inches wide when measured from the outer surface toward the center; or

(iii) Suitable for the purposes of making musical instruments or ornamental boxes.

(20) "Specialty wood buyer" means the first person that receives any specialty wood product after it leaves the harvest site.

(21) "Specialty wood processor" means any person who purchases, takes, or retains possession of specialty wood products or specialty wood salvage for later sale in the same or modified form following removal and delivery from the land where harvested.

(22) "Transportation" means the physical conveyance of specialized forest products outside or off of a harvest site by any means.

(23) "True copy" means a replica of a validated specialized forest products permit as reproduced by a copy machine capable of effectively reproducing the information contained on the permittee's copy of the specialized forest products permit. A copy is made true by the permittee or the permittee and permitter signing in the space provided on the face of the copy. A true copy will be effective until the expiration date of the specialized forest products permit unless the permittee or the permittee and permitter specify an earlier date. A permitter may require the actual signatures of both the permittee and permitter for execution of a true copy by so indicating in the space provided on the original copy of the specialized forest products permit. A permittee, or, if so indicated, the permittee and permitter, may condition the use of the true copy to harvesting only, transportation only, possession only, or any combination thereof.

(24) "Wild edible mushrooms" means edible mushrooms not cultivated or propagated by artificial means. [2005 c 401 § 1; 2000 c 11 § 18; 1995 c 366 § 1; 1992 c 184 § 1; 1979 ex.s. c 94 § 1; 1977 ex.s. c 147 § 1; 1967 ex.s. c 47 § 3.]

**Severability—1995 c 366:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 366 § 19.]

[2005 RCW Supp—page 894]

**76.48.050 Specialized forest products permits—Expiration—Specifications.** Specialized forest products permits shall consist of properly completed permit forms validated by the sheriff of the county in which the specialized forest products are to be harvested. Each permit shall be separately numbered and the issuance of the permits shall be by consecutive numbers. All specialized forest products permits shall expire at the end of the calendar year in which issued, or sooner, at the discretion of the permitter. A properly completed specialized forest products permit form shall include:

(1) The date of its execution and expiration;

(2) The name, address, telephone number, if any, and signature of the permitter;

(3) The name, address, telephone number, if any, and signature of the permittee;

(4) The type of specialized forest products to be harvested or transported;

(5) The approximate amount or volume of specialized forest products to be harvested or transported;

(6) The legal description of the property from which the specialized forest products are to be harvested or transported, including the name of the county, or the state or province if outside the state of Washington;

(7) A description by local landmarks of where the harvesting is to occur, or from where the specialized forest products are to be transported;

(8) For cedar products, cedar salvage, and specialty wood, a copy of a map or aerial photograph, with defined permitted boundaries, included as an attachment to the permit;

(9) A copy of a valid picture identification; and

(10) Any other condition or limitation which the permitter may specify.

Except for the harvesting of Christmas trees, the permit or true copy thereof must be carried by the permittee and the permittee's agents and be available for inspection at all times. For the harvesting of Christmas trees only a single permit or true copy thereof is necessary to be available at the harvest site. [2005 c 401 § 2; 1995 c 366 § 4; 1979 ex.s. c 94 § 4; 1977 ex.s. c 147 § 4; 1967 ex.s. c 47 § 6.]

**Severability—1995 c 366:** See note following RCW 76.48.020.

**76.48.060 Specialized forest products permits—Required—Forms—Filing.** (1) A specialized forest products permit validated by the county sheriff shall be obtained by a person prior to harvesting from any lands, including his or her own, more than five Christmas trees, more than five native ornamental trees or shrubs, more than five pounds of cut or picked evergreen foliage, any cedar products, cedar salvage, processed cedar products, or more than five pounds of Cascara bark, or more than five United States gallons of a single species of wild edible mushroom.

(2) Specialized forest products permit forms shall be provided by the department of natural resources, and shall be made available through the office of the county sheriff to permittees or permitters in reasonable quantities. A permit form shall be completed in triplicate for each permitter's property on which a permittee harvests specialized forest products. A properly completed permit form shall be mailed or presented for validation to the sheriff of the county in which the specialized forest products are to be harvested.

(3) Before a permit form is validated by the sheriff, sufficient personal identification may be required to reasonably identify the person mailing or presenting the permit form and the sheriff may conduct other investigations as deemed necessary to determine the validity of the information alleged on the form. When the sheriff is reasonably satisfied as to the truth of the information, the form shall be validated with the sheriff's validation stamp.

(4) Upon validation, the form shall become the specialized forest products permit authorizing the harvesting, possession, or transportation of specialized forest products, subject to any other conditions or limitations which the permittor may specify. Two copies of the permit shall be given or mailed to the permittor, or one copy shall be given or mailed to the permittor and the other copy given or mailed to the permittee. The original permit shall be retained in the office of the county sheriff validating the permit.

(5) In the event a single land ownership is situated in two or more counties, a specialized forest product permit shall be completed as to the land situated in each county.

(6) While engaged in harvesting of specialized forest products, permittees, or their agents or employees, must have readily available at each harvest site a valid permit or true copy of the permit. [2005 c 401 § 3; 1995 c 366 § 5; 1992 c 184 § 2; 1979 ex.s. c 94 § 5; 1977 ex.s. c 147 § 5; 1967 ex.s. c 47 § 7.]

**Severability—1995 c 366:** See note following RCW 76.48.020.

**76.48.070 Transporting or possessing cedar or other specialized forest products—Requirements.**

(1) Except as provided in RCW 76.48.100 and 76.48.075, it is unlawful for any person (a) to possess, (b) to transport, or (c) to possess and transport within the state of Washington, subject to any other conditions or limitations specified in the specialized forest products permit by the permittor, more than five Christmas trees, more than five native ornamental trees or shrubs, more than five pounds of cut or picked evergreen foliage, any processed cedar products, or more than five pounds of Cascara bark, or more than five gallons of a single species of wild edible mushroom without having in his or her possession a written authorization, sales invoice, bill of lading, or specialized forest products permit or a true copy thereof evidencing his or her title to or authority to have possession of specialized forest products being so possessed or transported.

(2) It is unlawful for any person either (a) to possess, (b) to transport, or (c) to possess and transport within the state of Washington any cedar products, cedar salvage, or specialty wood without having in his or her possession a specialized forest products permit or a true copy thereof evidencing his or her title to or authority to have possession of the materials being so possessed or transported. The specialized forest products permit or true copy are valid to possess, transport, or possess and transport the cedar products, cedar salvage, or specialty wood from the harvest site to the first cedar or specialty wood processor or buyer. For purposes of this subsection, a true copy requires the actual signatures of both the permittee and the permittor for the execution of a true copy. [2005 c 401 § 4; 1995 c 366 § 6; 1992 c 184 § 3; 1979 ex.s. c 94 § 6; 1977 ex.s. c 147 § 6; 1967 ex.s. c 47 § 8.]

**Severability—1995 c 366:** See note following RCW 76.48.020.

**76.48.075 Specialized forest products from out-of-state.** (1) It is unlawful for any person to transport or cause to be transported into this state from any other state or province specialized forest products, except those harvested from that person's own property, without: (a) First acquiring and having readily available for inspection a document indicating the true origin of the specialized forest products as being outside the state, or (b) without acquiring a specialized forest products permit as provided in subsection (4) of this section.

(2) Any person transporting or causing to be transported specialized forest products into this state from any other state or province shall, upon request of any person to whom the specialized forest products are sold or delivered or upon request of any law enforcement officer, prepare and sign a statement indicating the true origin of the specialized forest products, the date of delivery, and the license number of the vehicle making delivery, and shall leave the statement with the person making the request.

(3) It is unlawful for any person to possess specialized forest products, transported into this state, with knowledge that the products were introduced into this state in violation of this chapter.

(4) When any person transporting or causing to be transported into this state specialized forest products elects to acquire a specialized forest products permit, the specialized forest products transported into this state shall be deemed to be harvested in the county of entry, and the sheriff of that county may validate the permit as if the products were so harvested, except that the permit shall also indicate the actual harvest site outside the state.

(5) A cedar or specialty wood processor shall comply with RCW 76.48.096 by requiring a person transporting specialized forest products into this state from any other state or province to display a specialized forest products permit, or true copy thereof, or other governmental document indicating the true origin of the specialized forest products as being outside the state. For purposes of this subsection, a true copy requires the actual signatures of both the permittee and the permittor for the execution of a true copy. The cedar or specialty wood processor shall make and maintain a record of the purchase, taking possession, or retention of cedar products and cedar salvage in compliance with RCW 76.48.094.

(6) If, under official inquiry, investigation, or other authorized proceeding regarding specialized forest products not covered by a valid specialized forest products permit or other acceptable document, the inspecting law enforcement officer has probable cause to believe that the specialized forest products were harvested in this state or wrongfully obtained in another state or province, the officer may take into custody and detain, for a reasonable time, the specialized forest products, all supporting documents, invoices, and bills of lading, and the vehicle in which the products were transported until the true origin of the specialized forest products can be determined. [2005 c 401 § 5; 1995 c 366 § 7; 1979 ex.s. c 94 § 15.]

**Severability—1995 c 366:** See note following RCW 76.48.020.

**76.48.085 Purchase of specialized forest products—Required records.** Buyers who purchase specialized forest products are required to record (1) the permit number; (2) the type of forest product purchased; (3) the permit holder's

name; and (4) the amount of forest product purchased. The buyer or processor shall keep a record of this information for a period of one year from the date of purchase and must make the records available for inspection upon demand by authorized enforcement officials.

The buyer of specialized forest products must record the license plate number of the vehicle transporting the forest products on the bill of sale, as well as the seller's permit number on the bill of sale. This section shall not apply to transactions involving Christmas trees.

This section shall not apply to buyers of specialized forest products at the retail sales level. [2005 c 401 § 6; 2000 c 11 § 19; 1995 c 366 § 14.]

**Severability—1995 c 366:** See note following RCW 76.48.020.

**76.48.094 Cedar or specialty wood processors—Records of purchase, possession or retention of cedar products, salvage, or specialty wood—Bill of lading.** (1) Cedar or specialty wood processors shall make and maintain a record of the purchase, taking possession, or retention of cedar products, cedar salvage, or specialty wood for at least one year after the date of receipt. The record must be legible and must be made at the time each delivery is made.

(2) The bill of lading must accompany all cedar products, cedar salvage, or specialty wood products after the products are received by the cedar or specialty wood processor. The bill of lading must include the specialized forest products permit number or the information provided for in RCW 76.48.075(5) and must also specify:

- (a) The date of transportation;
- (b) The name and address of the first cedar or specialty wood processor or buyer who recorded the specialized forest products information;
- (c) The name and address from where the cedar or specialty wood products are being transported;
- (d) The name of the person receiving the cedar or specialty wood products;
- (e) The address to where the cedar or specialty wood products are being transported;
- (f) The name of the driver;
- (g) The vehicle license number;
- (h) The type of cedar or specialty wood product being shipped; and
- (i) The amount of cedar or specialty wood product being shipped. [2005 c 401 § 7; 1979 ex.s. c 94 § 9; 1977 ex.s. c 147 § 11.]

**76.48.096 Obtaining products from suppliers not having specialized forest products permit unlawful.** It is unlawful for any cedar or specialty wood buyer or processor to purchase, take possession, or retain cedar or specialty wood products or cedar salvage subsequent to the harvesting and prior to the retail sale of the products, unless the supplier thereof displays a specialized forest products permit, or true copy thereof that appears to be valid, or obtains the information under RCW 76.48.075(5). [2005 c 401 § 8; 1995 c 366 § 8; 1979 ex.s. c 94 § 10; 1977 ex.s. c 147 § 12.]

**Severability—1995 c 366:** See note following RCW 76.48.020.

**76.48.098 Display of valid registration certificate required.** Every cedar or specialty wood buyer or processor shall prominently display a valid registration certificate, or copy thereof, obtained from the department of revenue under RCW 82.32.030 at each location where the buyer or processor receives cedar products, cedar salvage, or specialty wood.

Permittees shall sell cedar products, cedar salvage, or specialty wood products only to cedar or specialty wood processors displaying registration certificates which appear to be valid. [2005 c 401 § 9; 1995 c 366 § 9; 1979 ex.s. c 94 § 11; 1977 ex.s. c 147 § 13.]

**Severability—1995 c 366:** See note following RCW 76.48.020.

**76.48.100 Exemptions.** The provisions of this chapter do not apply to:

- (1) Nursery grown products.
- (2) Logs (except as included in the definition of "cedar salvage" under RCW 76.48.020), poles, pilings, or other major forest products from which substantially all of the limbs and branches have been removed, specialty wood, and cedar salvage when harvested concurrently with timber stands (a) under an approved forest practices application or notification, or (b) under a contract or permit issued by an agency of the United States government.

(3) The activities of a landowner, his or her agent, or representative, or of a lessee of land in carrying on noncommercial property management, maintenance, or improvements on or in connection with the land of the landowner or lessee. [2005 c 401 § 10; 1995 c 366 § 10; 1979 ex.s. c 94 § 12; 1977 ex.s. c 147 § 7; 1967 ex.s. c 47 § 11.]

**Severability—1995 c 366:** See note following RCW 76.48.020.

**76.48.110 Violations—Seizure and disposition of products and other items—Disposition of proceeds.** (1) Whenever any law enforcement officer has probable cause to believe that a person is harvesting or is in possession of or transporting specialized forest products in violation of the provisions of this chapter, he or she may, at the time of making an arrest, seize and take possession of any specialized forest products found. If the specialized forest product is a cedar product, cedar salvage, or specialty wood, at the time of making an arrest the law enforcement officer may seize and take possession of any equipment, vehicles, tools, or paperwork. The law enforcement officer shall provide reasonable protection for the equipment, vehicles, tools, paperwork, or specialized forest products involved during the period of litigation or he or she shall dispose of the equipment, vehicles, tools, paperwork, or specialized forest products at the discretion or order of the court before which the arrested person is ordered to appear.

(2) Upon any disposition of the case by the court, the court shall make a reasonable effort to return the equipment, vehicles, tools, paperwork, or specialized forest products to its rightful owner or pay the proceeds of any sale of specialized forest products less any reasonable expenses of the sale to the rightful owner. If for any reason, the proceeds of the sale cannot be disposed of to the rightful owner, the proceeds, less the reasonable expenses of the sale, shall be paid to the treasurer of the county in which the violation occurred. The county treasurer shall deposit the same in the county general

fund. The return of the equipment, vehicles, tools, paperwork, or specialized forest products or the payment of the proceeds of any sale of products seized to the owner shall not preclude the court from imposing any fine or penalty upon the violator for the violation of the provisions of this chapter. [2005 c 401 § 11; 1995 c 366 § 11; 1979 ex.s. c 94 § 13; 1977 ex.s. c 147 § 8; 1967 ex.s. c 47 § 12.]

**Severability—1995 c 366:** See note following RCW 76.48.020.

**76.48.140 Disposition of fines.** All fines collected for violations of any provision of this chapter shall be paid into the general fund of the county treasury of the county in which the violation occurred and distributed equally among the district courts in the county, the county sheriff's office, and the county's general fund. [2005 c 401 § 12; 1977 ex.s. c 147 § 15.]

**76.48.150 Department to develop specialized forest products permit/education material.** The department of natural resources is the designated agency to develop and print the specialized forest products permit and distribute it to the county sheriffs. In addition, the department of natural resources shall develop educational material and other printed information for law enforcement, forest landowners, and specialized forest products harvesters, buyers, and processors specific to this chapter. [2005 c 401 § 13.]

## Title 77

### FISH AND WILDLIFE

#### Chapters

- 77.04 Department of fish and wildlife.**
- 77.08 General terms defined.**
- 77.12 Powers and duties.**
- 77.15 Fish and wildlife enforcement code.**
- 77.18 Game fish mitigation.**
- 77.32 Licenses.**
- 77.55 Construction projects in state waters.**
- 77.57 Fishways, flow, and screening.**
- 77.65 Food fish and shellfish—Commercial licenses.**
- 77.70 License limitation programs.**
- 77.85 Salmon recovery.**

#### Chapter 77.04 RCW

#### DEPARTMENT OF FISH AND WILDLIFE

(Formerly: Department of wildlife)

#### Sections

- 77.04.150 Disabled hunters and fishers—Advisory committee—Composition—Terms—Pilot project—Report to the legislature.

**77.04.150 Disabled hunters and fishers—Advisory committee—Composition—Terms—Pilot project—Report to the legislature.** (1) The commission must appoint an advisory committee to generally represent the interests of disabled hunters and fishers on matters including, but not limited to, special hunts, modified sporting equipment, access to public land, and hunting and fishing opportunities. The advisory committee is composed of seven members, each being a person with a disability. The advisory commit-

tee members must represent the entire state. The members must be appointed so that each of the six department administrative regions, as they existed on January 1, 2001, are represented with one resident on the advisory committee. One additional member must be appointed at large. The chair of the advisory committee must be a member of the advisory committee and shall be selected by the members of the advisory committee.

(2) For the purposes of this section, a person with a disability includes but is not limited to:

(a) A permanently disabled person who is not ambulatory over natural terrain without a prosthesis or assistive device;

(b) A permanently disabled person who is unable to walk without the use of assistance from a brace, cane, crutch, wheelchair, scooter, walker, or other assistive device;

(c) A person who has a cardiac condition to the extent that the person's functional limitations are severe;

(d) A person who is restricted by lung disease to the extent that the person's functional limitations are severe;

(e) A person who is totally blind or visually impaired; or

(f) A permanently disabled person with upper or lower extremity impairments who does not have the use of one or both upper or lower extremities.

(3) The members of the advisory committee are appointed for a four-year term. If a vacancy occurs on the advisory committee prior to the expiration of a term, the commission must appoint a replacement within sixty days to complete the term.

(4) The advisory committee must meet at least semiannually, and may meet at other times as requested by a majority of the advisory committee members for any express purpose that directly relates to the duties set forth in subsection (1) of this section. A majority of members currently serving on the advisory committee constitutes a quorum. The department must provide staff support for all official advisory committee meetings.

(5) Each member of the advisory committee shall serve without compensation but may be reimbursed for travel expenses as authorized in RCW 43.03.050 and 43.03.060.

(6) The members of the advisory committee, or individuals acting on their behalf, are immune from civil liability for official acts performed in the course of their duties.

(7) The provisions of this section constitute a pilot program that expires July 1, 2008. On December 1, 2007, the commission shall present a report to the appropriate legislative committees detailing the effectiveness of the advisory committee, including, but not limited to, the participation levels, general interest, quality of advice, and recommendations as to the advisory committee's continuance or modification. [2005 c 149 § 1; 2001 c 312 § 1.]

#### Chapter 77.08 RCW

#### GENERAL TERMS DEFINED

#### Sections

- 77.08.010 Definitions.

**77.08.010 Definitions.** As used in this title or rules adopted under this title, unless the context clearly requires otherwise:

- (1) "Director" means the director of fish and wildlife.
- (2) "Department" means the department of fish and wildlife.
- (3) "Commission" means the state fish and wildlife commission.
- (4) "Person" means and includes an individual; a corporation; a public or private entity or organization; a local, state, or federal agency; all business organizations, including corporations and partnerships; or a group of two or more individuals acting with a common purpose whether acting in an individual, representative, or official capacity.
- (5) "Fish and wildlife officer" means a person appointed and commissioned by the director, with authority to enforce this title and rules adopted pursuant to this title, and other statutes as prescribed by the legislature. Fish and wildlife officer includes a person commissioned before June 11, 1998, as a wildlife agent or a fisheries patrol officer.
- (6) "Ex officio fish and wildlife officer" means a commissioned officer of a municipal, county, state, or federal agency having as its primary function the enforcement of criminal laws in general, while the officer is in the appropriate jurisdiction. The term "ex officio fish and wildlife officer" includes special agents of the national marine fisheries service, state parks commissioned officers, United States fish and wildlife special agents, department of natural resources enforcement officers, and United States forest service officers, while the agents and officers are within their respective jurisdictions.
- (7) "To hunt" and its derivatives means an effort to kill, injure, capture, or harass a wild animal or wild bird.
- (8) "To trap" and its derivatives means a method of hunting using devices to capture wild animals or wild birds.
- (9) "To fish," "to harvest," and "to take," and their derivatives means an effort to kill, injure, harass, or catch a fish or shellfish.
- (10) "Open season" means those times, manners of taking, and places or waters established by rule of the commission for the lawful hunting, fishing, taking, or possession of game animals, game birds, game fish, food fish, or shellfish that conform to the special restrictions or physical descriptions established by rule of the commission or that have otherwise been deemed legal to hunt, fish, take, harvest, or possess by rule of the commission. "Open season" includes the first and last days of the established time.
- (11) "Closed season" means all times, manners of taking, and places or waters other than those established by rule of the commission as an open season. "Closed season" also means all hunting, fishing, taking, or possession of game animals, game birds, game fish, food fish, or shellfish that do not conform to the special restrictions or physical descriptions established by rule of the commission as an open season or that have not otherwise been deemed legal to hunt, fish, take, harvest, or possess by rule of the commission as an open season.
- (12) "Closed area" means a place where the hunting of some or all species of wild animals or wild birds is prohibited.

(13) "Closed waters" means all or part of a lake, river, stream, or other body of water, where fishing or harvesting is prohibited.

(14) "Game reserve" means a closed area where hunting for all wild animals and wild birds is prohibited.

(15) "Bag limit" means the maximum number of game animals, game birds, or game fish which may be taken, caught, killed, or possessed by a person, as specified by rule of the commission for a particular period of time, or as to size, sex, or species.

(16) "Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. This includes but is not limited to mammals, birds, reptiles, amphibians, fish, and invertebrates. The term "wildlife" does not include feral domestic mammals, old world rats and mice of the family Muridae of the order Rodentia, or those fish, shellfish, and marine invertebrates classified as food fish or shellfish by the director. The term "wildlife" includes all stages of development and the bodily parts of wildlife members.

(17) "Wild animals" means those species of the class Mammalia whose members exist in Washington in a wild state and the species *Rana catesbeiana* (bullfrog). The term "wild animal" does not include feral domestic mammals or old world rats and mice of the family Muridae of the order Rodentia.

(18) "Wild birds" means those species of the class Aves whose members exist in Washington in a wild state.

(19) "Protected wildlife" means wildlife designated by the commission that shall not be hunted or fished.

(20) "Endangered species" means wildlife designated by the commission as seriously threatened with extinction.

(21) "Game animals" means wild animals that shall not be hunted except as authorized by the commission.

(22) "Fur-bearing animals" means game animals that shall not be trapped except as authorized by the commission.

(23) "Game birds" means wild birds that shall not be hunted except as authorized by the commission.

(24) "Predatory birds" means wild birds that may be hunted throughout the year as authorized by the commission.

(25) "Deleterious exotic wildlife" means species of the animal kingdom not native to Washington and designated as dangerous to the environment or wildlife of the state.

(26) "Game farm" means property on which wildlife is held or raised for commercial purposes, trade, or gift. The term "game farm" does not include publicly owned facilities.

(27) "Person of disability" means a permanently disabled person who is not ambulatory without the assistance of a wheelchair, crutches, or similar devices.

(28) "Fish" includes all species classified as game fish or food fish by statute or rule, as well as all fin fish not currently classified as food fish or game fish if such species exist in state waters. The term "fish" includes all stages of development and the bodily parts of fish species.

(29) "Raffle" means an activity in which tickets bearing an individual number are sold for not more than twenty-five dollars each and in which a permit or permits are awarded to hunt or for access to hunt big game animals or wild turkeys on the basis of a drawing from the tickets by the person or persons conducting the raffle.

(30) "Youth" means a person fifteen years old for fishing and under sixteen years old for hunting.

(31) "Senior" means a person seventy years old or older.

(32) "License year" means the period of time for which a recreational license is valid. The license year begins April 1st, and ends March 31st.

(33) "Saltwater" means those marine waters seaward of river mouths.

(34) "Freshwater" means all waters not defined as saltwater including, but not limited to, rivers upstream of the river mouth, lakes, ponds, and reservoirs.

(35) "State waters" means all marine waters and fresh waters within ordinary high water lines and within the territorial boundaries of the state.

(36) "Offshore waters" means marine waters of the Pacific Ocean outside the territorial boundaries of the state, including the marine waters of other states and countries.

(37) "Concurrent waters of the Columbia river" means those waters of the Columbia river that coincide with the Washington-Oregon state boundary.

(38) "Resident" means:

(a) A person who has maintained a permanent place of abode within the state for at least ninety days immediately preceding an application for a license, has established by formal evidence an intent to continue residing within the state, and who is not licensed to hunt or fish as a resident in another state; and

(b) A person age eighteen or younger who does not qualify as a resident under (a) of this subsection, but who has a parent that qualifies as a resident under (a) of this subsection.

(39) "Nonresident" means a person who has not fulfilled the qualifications of a resident.

(40) "Shellfish" means those species of marine and freshwater invertebrates that have been classified and that shall not be taken except as authorized by rule of the commission. The term "shellfish" includes all stages of development and the bodily parts of shellfish species.

(41) "Commercial" means related to or connected with buying, selling, or bartering.

(42) "To process" and its derivatives mean preparing or preserving fish, wildlife, or shellfish.

(43) "Personal use" means for the private use of the individual taking the fish or shellfish and not for sale or barter.

(44) "Angling gear" means a line attached to a rod and reel capable of being held in hand while landing the fish or a hand-held line operated without rod or reel.

(45) "Fishery" means the taking of one or more particular species of fish or shellfish with particular gear in a particular geographical area.

(46) "Limited-entry license" means a license subject to a license limitation program established in chapter 77.70 RCW.

(47) "Seaweed" means marine aquatic plant species that are dependent upon the marine aquatic or tidal environment, and exist in either an attached or free floating form, and includes but is not limited to marine aquatic plants in the classes Chlorophyta, Phaeophyta, and Rhodophyta.

(48) "Trafficking" means offering, attempting to engage, or engaging in sale, barter, or purchase of fish, shellfish, wildlife, or deleterious exotic wildlife.

(49) "Invasive species" means a plant species or a nonnative animal species that either:

(a) Causes or may cause displacement of, or otherwise threatens, native species in their natural communities;

(b) Threatens or may threaten natural resources or their use in the state;

(c) Causes or may cause economic damage to commercial or recreational activities that are dependent upon state waters; or

(d) Threatens or harms human health.

(50) "Prohibited aquatic animal species" means an invasive species of the animal kingdom that has been classified as a prohibited aquatic animal species by the commission.

(51) "Regulated aquatic animal species" means a potentially invasive species of the animal kingdom that has been classified as a regulated aquatic animal species by the commission.

(52) "Unregulated aquatic animal species" means a nonnative animal species that has been classified as an unregulated aquatic animal species by the commission.

(53) "Unlisted aquatic animal species" means a nonnative animal species that has not been classified as a prohibited aquatic animal species, a regulated aquatic animal species, or an unregulated aquatic animal species by the commission.

(54) "Aquatic plant species" means an emergent, submersed, partially submersed, free-floating, or floating-leaving plant species that grows in or near a body of water or wetland.

(55) "Retail-eligible species" means commercially harvested salmon, crab, and sturgeon. [2005 c 104 § 1; 2003 c 387 § 1; 2002 c 281 § 2; 2001 c 253 § 10; 2000 c 107 § 207; 1998 c 190 § 111; 1996 c 207 § 2; 1993 sp.s. c 2 § 66; 1989 c 297 § 7; 1987 c 506 § 11; 1980 c 78 § 9; 1955 c 36 § 77.08.010. Prior: 1947 c 275 § 9; Rem. Supp. 1947 § 5992-19.]

**Purpose—2002 c 281:** "The legislature recognizes the potential economic and environmental damage that can occur from the introduction of invasive aquatic species. The purpose of this act is to increase public awareness of invasive aquatic species and enhance the department of fish and wildlife's regulatory capability to address threats posed by these species." [2002 c 281 § 1.]

**Intent—1996 c 207:** "It is the intent of the legislature to clarify hunting and fishing laws in light of the decision in *State v. Bailey*, 77 Wn. App. 732 (1995). The fish and wildlife commission has the authority to establish hunting and fishing seasons. These seasons are defined by limiting the times, manners of taking, and places or waters for lawful hunting, fishing, or possession of game animals, game birds, or game fish, as well as by limiting the physical characteristics of the game animals, game birds, or game fish which may be lawfully taken at those times, in those manners, and at those places or waters." [1996 c 207 § 1.]

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

## Chapter 77.12 RCW POWERS AND DUTIES

### Sections

77.12.170 State wildlife account—Deposits.

- 77.12.203 In lieu payments authorized—Procedure—Game lands defined. (*Effective July 1, 2007.*)
- 77.12.750 Repealed.
- 77.12.865 Derelict fishing gear—Guidelines for removal and disposal.
- 77.12.879 Aquatic invasive species prevention account—Aquatic invasive species prevention program—Training—Report to the legislature.

**77.12.170 State wildlife account—Deposits.** (1) There is established in the state treasury the state wildlife account which consists of moneys received from:

- (a) Rentals or concessions of the department;
- (b) The sale of real or personal property held for department purposes;
- (c) The assessment of administrative penalties, and the sale of licenses, permits, tags, and stamps required by chapter 77.32 RCW and RCW 77.65.490, except annual resident adult saltwater and all annual razor clam and shellfish licenses, which shall be deposited into the state general fund;
- (d) Fees for informational materials published by the department;
- (e) Fees for personalized vehicle, Wild on Washington, and Endangered Wildlife license plates and Washington's Wildlife license plate collection as provided in chapter 46.16 RCW;
- (f) Articles or wildlife sold by the director under this title;
- (g) Compensation for damage to department property or wildlife losses or contributions, gifts, or grants received under RCW 77.12.320;
- (h) Excise tax on anadromous game fish collected under chapter 82.27 RCW;
- (i) The sale of personal property seized by the department for fish, shellfish, or wildlife violations;
- (j) The department's share of revenues from auctions and raffles authorized by the commission; and
- (k) The sale of watchable wildlife decals under RCW 77.32.560.

(2) State and county officers receiving any moneys listed in subsection (1) of this section shall deposit them in the state treasury to be credited to the state wildlife account. [2005 c 418 § 3; 2005 c 225 § 4; 2005 c 224 § 4; 2005 c 42 § 4; 2004 c 248 § 4; 2003 c 317 § 3; 2001 c 253 § 15; 2000 c 107 § 216. Prior: 1998 c 191 § 38; 1998 c 87 § 2; 1996 c 101 § 7; 1989 c 314 § 4; 1987 c 506 § 25; 1984 c 258 § 334; prior: 1983 1st ex.s. c 8 § 2; 1983 c 284 § 1; 1981 c 310 § 2; 1980 c 78 § 30; 1979 c 56 § 1; 1973 1st ex.s. c 200 § 12 (Referendum Bill No. 33); 1969 ex.s. c 199 § 33; 1955 c 36 § 77.12.170; prior: 1947 c 275 § 27; Rem. Supp. 1947 § 5992-37.]

**Reviser's note:** This section was amended by 2005 c 42 § 4, 2005 c 224 § 4, 2005 c 225 § 4, and by 2005 c 418 § 3, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—2003 c 317:** See note following RCW 77.32.560.

**Effective date—1998 c 191:** See note following RCW 77.32.400.

**Effective date—1998 c 87:** See note following RCW 77.32.380.

**Findings—1996 c 101:** See note following RCW 77.32.530.

**Finding—1989 c 314:** See note following RCW 77.15.098.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**Intent—1984 c 258:** See note following RCW 3.46.120.

**Findings—Intent—1983 c 284:** See note following RCW 82.27.020.

**Effective dates—1981 c 310:** "(1) Sections 9 and 10 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1981.

(2) Section 13 of this act shall take effect on May 1, 1982.

(3) Sections 8, 11, 12, and 14 of this act shall take effect on July 1, 1982.

(4) All other sections of this act shall take effect on January 1, 1982." [1981 c 310 § 32.]

**Legislative intent—1981 c 310:** "The legislature finds that abundant deer and elk populations are in the best interest of the state, and for many reasons the state's deer and elk populations have apparently declined. The legislature further finds that antlerless deer and elk seasons have been an issue of great controversy throughout the state, and that antlerless deer and elk seasons may contribute to a further decline in the state's deer and elk populations." [1981 c 310 § 1.]

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.12.203 In lieu payments authorized—Procedure—Game lands defined. (*Effective July 1, 2007.*)** (1) Notwithstanding RCW 84.36.010 or other statutes to the contrary, the director shall pay by April 30th of each year on game lands in each county, if requested by an election under RCW 77.12.201, an amount in lieu of real property taxes equal to that amount paid on similar parcels of open space land taxable under chapter 84.34 RCW or the greater of seventy cents per acre per year or the amount paid in 1984 plus an additional amount for control of noxious weeds equal to that which would be paid if such lands were privately owned. This amount shall not be assessed or paid on department buildings, structures, facilities, game farms, fish hatcheries, tidelands, or public fishing areas of less than one hundred acres.

(2) "Game lands," as used in this section and RCW 77.12.201, means those tracts one hundred acres or larger owned in fee by the department and used for wildlife habitat and public recreational purposes. All lands purchased for wildlife habitat, public access or recreation purposes with federal funds in the Snake River drainage basin shall be considered game lands regardless of acreage.

(3) This section shall not apply to lands transferred after April 23, 1990, to the department from other state agencies.

(4) The county shall distribute the amount received under this section in lieu of real property taxes to all property taxing districts except the state in appropriate tax code areas the same way it would distribute local property taxes from private property. The county shall distribute the amount received under this section for weed control to the appropriate weed district. [2005 c 303 § 14; 1990 1st ex.s. c 15 § 11; 1984 c 214 § 2; 1980 c 78 § 37; 1965 ex.s. c 97 § 3.]

**Effective date—2005 c 303 §§ 1-14:** See note following RCW 79A.15.010.

**Limitations—1990 1st ex.s. c 15:** "Amounts saved by operation of section 11 of this act during the 1989-91 fiscal biennium may be used only for financing capital facilities." [1990 1st ex.s. c 15 § 12.]

**Severability—1990 1st ex.s. c 15:** See note following RCW 43.99H.010.

**Effective date—1984 c 214:** See note following RCW 77.12.201.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.



**77.12.750 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.12.865 Derelict fishing gear—Guidelines for removal and disposal.** (1) As used in this section and RCW 77.12.870, "derelict fishing gear" includes lost or abandoned fishing nets, fishing lines, crab pots, shrimp pots, and other commercial and recreational fishing equipment. The term does not include lost or abandoned vessels.

(2) The department, in partnership with the Northwest straits commission, the department of natural resources, and other interested parties, must publish guidelines for the safe removal and disposal of derelict fishing gear. The guidelines must be completed by August 31, 2002, and made available to any person interested in derelict fishing gear removal.

(3) Derelict fishing gear removal conducted in accordance with the guidelines prepared in subsection (2) of this section is not subject to permitting under RCW 77.55.021. [2005 c 146 § 1004; 2002 c 20 § 2.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Finding—Purpose—2002 c 20:** "The legislature finds that fishing gear that is lost or abandoned may continue to catch marine organisms long after the gear is lost. The purpose of this act is to develop safe, effective methods to remove derelict fishing gear, eliminate regulatory barriers to gear removal, and discourage future losses of fishing gear." [2002 c 20 § 1.]

**77.12.879 Aquatic invasive species prevention account—Aquatic invasive species prevention program—Training—Report to the legislature.** (1) The aquatic invasive species prevention account is created in the state treasury. Moneys directed to the account from RCW 88.02.050 must be deposited in the account. Expenditures from the account may only be used as provided in this section. Moneys in the account may be spent only after appropriation.

(2) Funds in the aquatic invasive species prevention account may be appropriated to the department to develop an aquatic invasive species prevention program for recreational watercraft. Funds must be expended as follows:

(a) To inspect watercraft, watercraft trailers, and outboard motors at selected boat launching sites;

(b) To educate general law enforcement officers on how to enforce state laws relating to preventing the spread of aquatic invasive species;

(c) To evaluate and survey the risk posed by marine recreational watercraft in spreading aquatic invasive species into Washington state waters;

(d) To evaluate the risk posed by float planes in spreading aquatic invasive species into Washington state waters; and

(e) To implement an aquatic invasive species early detection and rapid response plan.

(3) The department shall provide training to Washington state patrol employees working at port of entry weigh stations on how to inspect recreational watercraft for the presence of zebra mussels and other aquatic invasive species. The department shall also cooperatively work with the Washington state patrol to set up random check stations to inspect watercraft at areas of high boating activity.

(4) The department shall submit a biennial report to the appropriate legislative committees describing the actions

taken to implement this section along with suggestions on how to better fulfill the intent of chapter 464, Laws of 2005. The first report is due December 1, 2007. [2005 c 464 § 3.]

**Findings—Intent—2005 c 464:** See note following RCW 88.02.050.

## Chapter 77.15 RCW

### FISH AND WILDLIFE ENFORCEMENT CODE

#### Sections

77.15.020	Authority to define violation of rule as infraction.
77.15.070	Civil forfeiture of property used for violation of chapter.
77.15.245	Unlawful practices—Black bear baiting—Exceptions—Illegal hunting—Use of dogs—Exceptions—Penalties.
77.15.280	Reporting of fish or wildlife harvest—Rules violation—Penalty.
77.15.370	Unlawful recreational fishing in the first degree—Penalty.
77.15.410	Unlawful hunting of big game—Penalty.
77.15.420	Illegally taken or possessed wildlife—Criminal wildlife penalty assessed.
77.15.425	Fish and wildlife enforcement reward account.
77.15.450	Spotlighting big game—Penalty.
77.15.700	Grounds for department revocation and suspension of privileges.

**77.15.020 Authority to define violation of rule as infraction.** If the commission or director has authority to adopt a rule that is punishable as a crime under this chapter, then the commission or director may provide that violation of the rule shall be punished with notice of infraction under RCW 7.84.030. Neither the commission nor the director have the authority to adopt a rule providing that a violation punishable as an infraction shall be a crime. [2005 c 321 § 2; 1998 c 190 § 3.]

**77.15.070 Civil forfeiture of property used for violation of chapter.** (1) Fish and wildlife officers and ex officio fish and wildlife officers may seize without warrant boats, airplanes, vehicles, motorized implements, conveyances, gear, appliances, or other articles they have probable cause to believe have been held with intent to violate or used in violation of this title or rule of the commission or director. However, fish and wildlife officers or ex officio fish and wildlife officers may not seize any item or article, other than for evidence, if under the circumstances, it is reasonable to conclude that the violation was inadvertent. The property seized is subject to forfeiture to the state under this section regardless of ownership. Property seized may be recovered by its owner by depositing with the department or into court a cash bond or equivalent security equal to the value of the seized property but not more than one hundred thousand dollars. Such cash bond or security is subject to forfeiture in lieu of the property. Forfeiture of property seized under this section is a civil forfeiture against property and is intended to be a remedial civil sanction.

(2) In the event of a seizure of property under this section, jurisdiction to begin the forfeiture proceedings shall commence upon seizure. Within fifteen days following the seizure, the seizing authority shall serve a written notice of intent to forfeit property on the owner of the property seized and on any person having any known right or interest in the property seized. Notice may be served by any method authorized by law or court rule, including service by certified mail with return receipt requested. Service by mail is deemed

complete upon mailing within the fifteen-day period following the seizure.

(3) Persons claiming a right of ownership or right to possession of property are entitled to a hearing to contest forfeiture. Such a claim shall specify the claim of ownership or possession and shall be made in writing and served on the director within forty-five days of the seizure. If the seizing authority has complied with notice requirements and there is no claim made within forty-five days, then the property shall be forfeited to the state.

(4) If any person timely serves the director with a claim to property, the person shall be afforded an opportunity to be heard as to the person's claim or right. The hearing shall be before the director or director's designee, or before an administrative law judge appointed under chapter 34.12 RCW, except that a person asserting a claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the property seized is more than five thousand dollars. The department may settle a person's claim of ownership prior to the administrative hearing.

(5) The hearing to contest forfeiture and any subsequent appeal shall be as provided for in chapter 34.05 RCW, the administrative procedure act. The seizing authority has the burden to demonstrate that it had reason to believe the property was held with intent to violate or was used in violation of this title or rule of the commission or director. The person contesting forfeiture has the burden of production and proof by a preponderance of evidence that the person owns or has a right to possess the property and:

(a) That the property was not held with intent to violate or used in violation of this title; or

(b) If the property is a boat, airplane, or vehicle, that the illegal use or planned illegal use of the boat, airplane, or vehicle occurred without the owner's knowledge or consent, and that the owner acted reasonably to prevent illegal uses of such boat, airplane, or vehicle.

(6) A forfeiture of a conveyance encumbered by a perfected security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission. No security interest in seized property may be perfected after seizure.

(7) If seized property is forfeited under this section the department may retain it for official use unless the property is required to be destroyed, or upon application by any law enforcement agency of the state, release such property to the agency for the use of enforcing this title, or sell such property, and deposit the proceeds to the fish and wildlife enforcement reward account created in RCW 77.15.425. [2005 c 406 § 2; 2000 c 107 § 231; 1998 c 190 § 69.]

**77.15.245 Unlawful practices—Black bear baiting—Exceptions—Illegal hunting—Use of dogs—Exceptions—Penalties.** (1) Notwithstanding the provisions of RCW 77.12.240, 77.36.020, 77.36.030, or any other provisions of law, it is unlawful to take, hunt, or attract black bear with the aid of bait.

(a) Nothing in this subsection shall be construed to prohibit the killing of black bear with the aid of bait by employees or agents of county, state, or federal agencies while acting in their official capacities for the purpose of protecting live-

stock, domestic animals, private property, or the public safety.

(b) Nothing in this subsection shall be construed to prevent the establishment and operation of feeding stations for black bear in order to prevent damage to commercial timberland.

(c) Nothing in this subsection shall be construed to prohibit the director from issuing a permit or memorandum of understanding to a public agency, university, or scientific or educational institution for the use of bait to attract black bear for scientific purposes.

(d) As used in this subsection, "bait" means a substance placed, exposed, deposited, distributed, scattered, or otherwise used for the purpose of attracting black bears to an area where one or more persons hunt or intend to hunt them.

(2) Notwithstanding RCW 77.12.240, 77.36.020, 77.36.030, or any other provisions of law, it is unlawful to hunt or pursue black bear, cougar, bobcat, or lynx with the aid of a dog or dogs.

(a) Nothing in this subsection shall be construed to prohibit the killing of black bear, cougar, bobcat, or lynx with the aid of a dog or dogs by employees or agents of county, state, or federal agencies while acting in their official capacities for the purpose of protecting livestock, domestic animals, private property, or the public safety. A dog or dogs may be used by the owner or tenant of real property consistent with a permit issued and conditioned by the director.

(b) Nothing in this subsection shall be construed to prohibit the director from issuing a permit or memorandum of understanding to a public agency, university, or scientific or educational institution for the use of a dog or dogs for the pursuit, capture and relocation, of black bear, cougar, bobcat, or lynx for scientific purposes.

(c) Nothing in this subsection shall be construed to prohibit the director from issuing a permit or memorandum of understanding to a public agency, university, or scientific or educational institution for the use of a dog or dogs for the killing of black bear, cougar, or bobcat, for the protection of a state and/or federally listed threatened or endangered species.

(3)(a) Notwithstanding subsection (2) of this section, the commission shall authorize the use of dogs only in selected areas within a game management unit to address a public safety need presented by one or more cougar. This authority may only be exercised after the commission has determined that no other practical alternative to the use of dogs exists, and after the commission has adopted rules describing the conditions in which dogs may be used. Conditions that may warrant the use of dogs within a game management unit include, but are not limited to, confirmed cougar/human safety incidents, confirmed cougar/livestock and cougar/pet depredations, and the number of cougar capture attempts and relocations.

(b) The department shall post on their internet web site the known details of all reported cougar/human, cougar/pet, or cougar/livestock interactions within ten days of receiving the report. The posted material must include, but is not limited to, the location and time of all reported sightings, and the known details of any cougar/livestock incidents.

(4) A person who violates subsection (1) or (2) of this section is guilty of a gross misdemeanor. In addition to appropriate criminal penalties, the department shall revoke

the hunting license of a person who violates subsection (1) or (2) of this section and order the suspension of wildlife hunting privileges for a period of five years following the revocation. Following a subsequent violation of subsection (1) or (2) of this section by the same person, a hunting license shall not be issued to the person at any time. [2005 c 107 § 1; 2001 c 253 § 31. Prior: 2000 c 248 § 1; 2000 c 107 § 260; 1997 c 1 § 1 (Initiative Measure No. 655, approved November 5, 1996). Formerly RCW 77.16.360.]

**Effective date—2000 c 248:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2000]." [2000 c 248 § 2.]

**Severability—1997 c 1 (Initiative Measure No. 655):** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 1 § 2 (Initiative Measure No. 655, approved November 5, 1996).]

**77.15.280 Reporting of fish or wildlife harvest—Rules violation—Penalty.** (1) A person is guilty of violating rules requiring reporting of fish or wildlife harvest if the person:

- (a) Fails to make a harvest log report of a commercial fish or shellfish catch in violation of any rule of the commission or the director;
  - (b) Fails to maintain a trapper's report or taxidermist ledger in violation of any rule of the commission or the director;
  - (c) Fails to submit any portion of a big game animal for a required inspection required by rule of the commission or the director; or
  - (d) Fails to return a catch record card to the department as required by rule of the commission or director.
- (2) Violating rules requiring reporting of fish or wildlife harvest is a misdemeanor. [2005 c 418 § 2; 1998 c 190 § 47.]

**77.15.370 Unlawful recreational fishing in the first degree—Penalty.** (1) A person is guilty of unlawful recreational fishing in the first degree if:

- (a) The person takes, possesses, or retains two times or more than the bag limit or possession limit of fish or shellfish allowed by any rule of the director or commission setting the amount of food fish, game fish, or shellfish that can be taken, possessed, or retained for noncommercial use;
  - (b) The person fishes in a fishway;
  - (c) The person shoots, gaffs, snags, snares, spears, dipnets, or stones fish or shellfish in state waters, or possesses fish or shellfish taken by such means, unless such means are authorized by express rule of the commission or director; or
  - (d) The person fishes for or possesses a fish listed as threatened or endangered in 50 C.F.R. Sec. 17.11 (2002), unless fishing for or possession of such fish is specifically allowed under federal or state law.
- (2) Unlawful recreational fishing in the first degree is a gross misdemeanor. [2005 c 406 § 3; 2001 c 253 § 38; 1998 c 190 § 19.]

**77.15.410 Unlawful hunting of big game—Penalty.** (1) A person is guilty of unlawful hunting of big game in the second degree if the person:

- (a) Hunts for, takes, or possesses big game and the person does not have and possess all licenses, tags, or permits required under this title;
  - (b) Violates any rule of the commission or director regarding seasons, bag or possession limits, closed areas including game reserves, closed times, or any other rule governing the hunting, taking, or possession of big game; or
  - (c) Possesses big game taken during a closed season for that big game or taken from a closed area for that big game.
- (2) A person is guilty of unlawful hunting of big game in the first degree if the person was previously convicted of any crime under this title involving unlawful hunting, killing, possessing, or taking big game, and within five years of the date that the prior conviction was entered the person:

- (a) Hunts for big game and does not have and possess all licenses, tags, or permits required under this title;
  - (b) Acts in violation of any rule of the commission or director regarding seasons, bag or possession limits, closed areas including game reserves, or closed times; or
  - (c) Possesses big game taken during a closed season for that big game or taken from a closed area for that big game.
- (3)(a) Unlawful hunting of big game in the second degree is a gross misdemeanor. Upon conviction of an offense involving killing or possession of big game taken during a period of time when hunting for the particular species is not permitted, or in excess of the bag or possession limit, the department shall revoke all hunting licenses and tags and order a suspension of hunting privileges for two years.
- (b) Unlawful hunting of big game in the first degree is a class C felony. Upon conviction, the department shall revoke all hunting licenses or tags and the department shall order the person's hunting privileges suspended for ten years. [2005 c 406 § 4; 1999 c 258 § 3; 1998 c 190 § 10.]

**77.15.420 Illegally taken or possessed wildlife—Criminal wildlife penalty assessed.** (1) If a person is convicted of violating RCW 77.15.410 and that violation results in the death of wildlife listed in this section, the court shall require payment of the following amounts for each animal killed or possessed. This shall be a criminal wildlife penalty assessment that shall be paid to the clerk of the court and distributed each month to the state treasurer for deposit in the fish and wildlife enforcement reward account created in RCW 77.15.425.

(a)	Moose, mountain sheep, mountain goat, and all wildlife species classified as endangered by rule of the commission, except for mountain caribou and grizzly bear as listed under (d) of this subsection . . . . .	\$4,000
(b)	Elk, deer, black bear, and cougar . . . . .	\$2,000
(c)	Trophy animal elk and deer . . . . .	\$6,000
(d)	Mountain caribou, grizzly bear, and trophy animal mountain sheep . . . . .	\$12,000

(2) No forfeiture of bail may be less than the amount of the bail established for hunting during closed season plus the amount of the criminal wildlife penalty assessment in subsection (1) of this section.

(3) For the purpose of this section a "trophy animal" is:

(a) A buck deer with four or more antler points on both sides, not including eyeguards;

(b) A bull elk with five or more antler points on both sides, not including eyeguards; or

(c) A mountain sheep with a horn curl of three-quarter curl or greater.

For purposes of this subsection, "eyeguard" means an antler protrusion on the main beam of the antler closest to the eye of the animal.

(4) If two or more persons are convicted of illegally possessing wildlife in subsection (1) of this section, the criminal wildlife penalty assessment shall be imposed on them jointly and separately.

(5) The criminal wildlife penalty assessment shall be imposed regardless of and in addition to any sentence, fines, or costs otherwise provided for violating any provision of this title. The criminal wildlife penalty assessment shall be included by the court in any pronouncement of sentence and may not be suspended, waived, modified, or deferred in any respect. This section may not be construed to abridge or alter alternative rights of action or remedies in equity or under common law or statutory law, criminal or civil.

(6) A defaulted criminal wildlife penalty assessment may be collected by any means authorized by law for the enforcement of orders of the court or collection of a fine or costs, including but not limited to vacation of a deferral of sentencing or vacation of a suspension of sentence.

(7) A person assessed a criminal wildlife penalty assessment under this section shall have his or her hunting license revoked and all hunting privileges suspended until the penalty assessment is paid through the registry of the court in which the penalty assessment was assessed.

(8) The criminal wildlife penalty assessments provided in subsection (1) of this section shall be doubled in the following instances:

(a) When a person is convicted of spotlighting big game under RCW 77.15.450;

(b) When a person commits a violation that requires payment of a wildlife penalty assessment within five years of a prior gross misdemeanor or felony conviction under this title;

(c) When the person killed the animal in question with the intent of bartering, selling, or otherwise deriving economic profit from the animal or the animal's parts; or

(d) When a person kills the animal under the supervision of a licensed guide. [2005 c 406 § 5; 1998 c 190 § 62.]

**77.15.425 Fish and wildlife enforcement reward account.** The fish and wildlife enforcement reward account is created in the custody of the state treasurer. All receipts from criminal wildlife penalty assessments under RCW 77.15.420 must be deposited into the account. The department may accept money or personal property from persons under conditions requiring the property or money to be used consistent with the intent of expenditures from the fish and wildlife enforcement reward account. Expenditures from the account may be used only for investigation and prosecution of fish and wildlife offenses, to provide rewards to persons informing the department about violations of this title and rules adopted under this title, and for other valid enforcement uses as determined by the commission. Only the director or

the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2005 c 406 § 1.]

**77.15.450 Spotlighting big game—Penalty.** (1) A person is guilty of spotlighting big game in the second degree if the person hunts big game with the aid of a spotlight, other artificial light, or night vision equipment while in possession or control of a firearm, bow and arrow, or cross bow. For purposes of this section, "night vision equipment" includes electronic light amplification devices, thermal imaging devices, and other comparable equipment used to enhance night vision.

(2) A person is guilty of spotlighting big game in the first degree if:

(a) The person has any prior conviction for gross misdemeanor or felony for a crime under this title involving big game including but not limited to subsection (1) of this section or RCW 77.15.410; and

(b) Within ten years of the date that such prior conviction was entered the person commits the act described by subsection (1) of this section.

(3)(a) Spotlighting big game in the second degree is a gross misdemeanor. Upon conviction, the department shall revoke all hunting licenses and tags and order a suspension of the person's hunting privileges for two years.

(b) Spotlighting big game in the first degree is a class C felony. Upon conviction, the department shall order suspension of all privileges to hunt wildlife for a period of ten years.

(4) A person convicted under this section shall be assessed a criminal wildlife penalty assessment as provided in RCW 77.15.420. [2005 c 406 § 6; 1998 c 190 § 27.]

**77.15.700 Grounds for department revocation and suspension of privileges.** The department shall impose revocation and suspension of privileges in the following circumstances:

(1) Upon conviction, if directed by statute for an offense;

(2) Upon conviction, if the department finds that actions of the defendant demonstrated a willful or wanton disregard for conservation of fish or wildlife. Such suspension of privileges may be permanent. This subsection (2) does not apply to violations involving commercial fishing;

(3) If a person is convicted twice within ten years for a violation involving unlawful hunting, killing, or possessing big game, the department shall order revocation and suspension of all hunting privileges for two years. RCW 77.12.722 or \*77.16.050 as it existed before June 11, 1998, may comprise one of the convictions constituting the basis for revocation and suspension under this subsection;

(4)(a) If a person is convicted of an offense, has an uncontested notice of infraction, fails to appear at a hearing to contest an infraction, or is found to have committed an infraction three times in ten years involving any violation of recreational hunting or fishing laws or rules, the department shall order a revocation and suspension of all recreational hunting and fishing privileges for two years.

(b) A violation punishable as an infraction counts towards the revocation and suspension of recreational hunting and fishing privileges only where that violation is:

(i) Punishable as a crime on July 24, 2005, and is subsequently decriminalized; or

(ii) One of the following violations, as they exist on July 24, 2005: RCW 77.15.160 (1) or (2); WAC 220-56-116; WAC 220-56-315(11); or WAC 220-56-355 (1) through (4).

(c) The commission may, by rule, designate additional infractions that do not count towards the revocation and suspension of recreational hunting and fishing privileges. [2005 c 321 § 1; 2003 c 386 § 2; 2001 c 253 § 46; 1998 c 190 § 66.]

\*Reviser's note: RCW 77.16.050 was repealed by 1998 c 190 § 124.

**Findings—Intent—2003 c 386:** "(1)(a) The legislature finds that existing law as it relates to the suspension of commercial fishing licenses does not take into account the real-life circumstances faced by the state's commercial fishing fleets. The nature of the commercial fishing industry, together with the complexity of fisheries regulations, is such that honest mistakes can be made by well-meaning and otherwise law-abiding fishers. Commercial fishing violations that occur within an acceptable margin of error should not result in the suspension of fishing privileges. Likewise, fishers facing the possibility of license suspension or revocation deserve the opportunity to explain any extenuating circumstances prior to having his or her professional privileges suspended.

(b) The legislature intends, by creating the license suspension review committee, to provide a fisher with the opportunity to explain any extenuating circumstances that led to a commercial fishing violation. The legislature intends for the license suspension review committee to give serious considerations to the case-specific facts and scenarios leading up to a violation, and for license suspensions to issue only when the facts indicate a willful act that undermines the conservation of fish stocks. Frivolous violations should not result in the suspension of privileges, and should be punished only by the criminal sanctions attached to the underlying crime.

(2)(a) The legislature further finds that gross abuses of fish stocks should not be tolerated. Individuals convicted of even one violation that is egregious in nature, causing serious detriment to a fishery or the competitive disposition of other fishers, should have his or her license suspended and revoked.

(b) The legislature intends for the license suspension review committee to take egregious fisheries' violations seriously. When dealing with individuals convicted of only one violation, the license suspension review committee should only consider suspension for individuals that are convicted of violations that are of a severe magnitude and show a wanton disregard for the public's resource." [2003 c 386 § 1.]

**Chapter 77.18 RCW  
GAME FISH MITIGATION**

Sections

- 77.18.060 Determination of appropriate waters.
- 77.18.070 Repealed.

**77.18.060 Determination of appropriate waters.** The fish and wildlife commission in consultation with the department is authorized to determine which waters of the state are appropriate for this use. In making this determination, the commission shall seek geographic distribution to assure opportunity to fishers statewide.

The commission in consultation with the department will determine the maximum number of fish that may be planted into state waters so as not to compete with the wild populations of fish species in the water body. [2005 c 87 § 1; 1999 c 363 § 2.]

**Report to the legislature—Effective date—1999 c 363:** See notes following RCW 77.18.050.

**77.18.070 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Chapter 77.32 RCW  
LICENSES**

Sections

- 77.32.070 Information required from license applicants—Reports on taking/effort to harvest fish, shellfish, and wildlife—Administrative penalty.
- 77.32.430 Catch record card—Disposition of funds.
- 77.32.450 Big game hunting license—Fees.
- 77.32.470 Personal use fishing licenses—Fees—Temporary fishing license—Family fishing weekend license—Rules.
- 77.32.555 Surcharge to fund biotoxin testing and monitoring.

**77.32.070 Information required from license applicants—Reports on taking/effort to harvest fish, shellfish, and wildlife—Administrative penalty.** (1) Applicants for a license, permit, tag, or stamp shall furnish the information required by the director. However, the director may not require the purchaser of a razor clam license under RCW 77.32.520 to provide any personal information except for proof of residency. The commission may adopt rules requiring licensees or permittees to keep records and make reports concerning the taking of or effort to harvest fish, shellfish, and wildlife. The reporting requirement may be waived where, for any reason, the department is not able to receive the report. The department must provide reasonable options for a licensee to submit information to a live operator prior to the reporting deadline.

(2) The commission may, by rule, set an administrative penalty for failure to comply with rules requiring the reporting of taking or effort to harvest wildlife. The commission may also adopt rules requiring hunters who have not reported for the previous license year to complete a report and pay the assessed administrative penalty before a new hunting license is issued.

(a) The total administrative penalty per hunter set by the commission must not exceed ten dollars.

(b) By December 31st of each year, the department shall report the rate of hunter compliance with the harvest reporting requirement, the administrative penalty imposed for failing to report, and the amount of administrative penalties collected during that year to the appropriate fiscal and policy committees of the senate and house of representatives. [2005 c 418 § 1; 2004 c 248 § 3; 1998 c 191 § 11; 1995 c 116 § 3; 1987 c 506 § 79; 1981 c 310 § 18; 1980 c 78 § 108; 1955 c 36 § 77.32.070. Prior: 1947 c 275 § 99; Rem. Supp. 1947 § 5992-108.]

**Effective date—1998 c 191:** See note following RCW 77.32.400.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective dates—Legislative intent—1981 c 310:** See notes following RCW 77.12.170.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.32.430 Catch record card—Disposition of funds.** (1) Catch record card information is necessary for proper management of the state's food fish and game fish species and shellfish resources. Catch record card administration shall be under rules adopted by the commission. There is no charge

for an initial catch record card. Each subsequent or duplicate catch record card costs ten dollars.

(2) A license to take and possess Dungeness crab is only valid in Puget Sound waters east of the Bonilla-Tatoosh line if the fisher has in possession a valid catch record card officially endorsed for Dungeness crab. The endorsement shall cost no more than three dollars, including any or all fees authorized under RCW 77.32.050, when purchased for a personal use saltwater, combination, or shellfish and seaweed license. The endorsement shall cost no more than one dollar, including any or all fees authorized under RCW 77.32.050, when purchased for a temporary combination fishing license authorized under RCW 77.32.470(3)(a).

(3) Catch record cards issued with affixed temporary short-term charter stamp licenses are not subject to the ten-dollar charge nor to the Dungeness crab endorsement fee provided for in this section. Charter boat or guide operators issuing temporary short-term charter stamp licenses shall affix the stamp to each catch record card issued before fishing commences. Catch record cards issued with a temporary short-term charter stamp are valid for one day.

(4) The department shall include provisions for recording marked and unmarked salmon in catch record cards issued after March 31, 2004.

(5) The funds received from the sale of catch record cards and the Dungeness crab endorsement must be deposited into the wildlife fund. The funds received from the Dungeness crab endorsement may be used only for the sampling, monitoring, and management of catch associated with the Dungeness crab recreational fisheries. Moneys allocated under this section shall supplement and not supplant other federal, state, and local funds used for Dungeness crab recreational fisheries management. [2005 c 192 § 2; 2004 c 107 § 2; 2003 c 318 § 1; 1998 c 191 § 5; 1989 c 305 § 10. Formerly RCW 75.25.190.]

**Intent—2004 c 107:** "It is the intent of the legislature to optimize the management of the recreational allocation of Dungeness crab in Washington state. To accomplish this task, it is necessary to accurately and efficiently quantify the total catch by recreational fishers for Dungeness crab using data from catch record cards. Therefore, an endorsement fee on the catch record card paid at the time of purchasing a recreational fishing license will be required for Dungeness crab to specifically identify the recreational crab harvesting population. The endorsement fee will significantly improve the precision of the catch estimates by eliminating the current practice of sampling fishers who do not participate in the recreational crab fishery." [2004 c 107 § 1.]

**Report—2004 c 107:** "After the completion of one season using the Dungeness crab endorsement fee for Puget Sound recreational Dungeness crab fisheries, the department of fish and wildlife shall evaluate the effectiveness of the endorsement fee as a method for improving the accuracy of catch estimates for the Puget Sound recreational Dungeness crab fishery. The department's report shall include how the method has affected their ability to more accurately estimate the preseason allocation of the Puget Sound recreational Dungeness crab fishery and monitor in-season catch. The department shall report their findings to the appropriate committees of the legislature by May 15, 2006." [2004 c 107 § 3.]

**Effective date—2004 c 107:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect May 15, 2004." [2004 c 107 § 4.]

**Effective date—2003 c 318:** "This act takes effect April 1, 2004." [2003 c 318 § 3.]

**Effective date—1998 c 191:** See note following RCW 77.32.400.

**77.32.450 Big game hunting license—Fees.** (1) A big game hunting license is required to hunt for big game. A big game license allows the holder to hunt for forest grouse, unclassified wildlife, and the individual species identified within a specific big game combination license package. Each big game license includes one transport tag for each species purchased in that package. A hunter may not purchase more than one license for each big game species except as authorized by rule of the commission. The fees for annual big game combination packages are as follows:

(a) Big game number 1: Deer, elk, bear, and cougar. The fee for this license is sixty-six dollars for residents, six hundred sixty dollars for nonresidents, and thirty-three dollars for youth.

(b) Big game number 2: Deer and elk. The fee for this license is fifty-six dollars for residents, five hundred sixty dollars for nonresidents, and twenty-eight dollars for youth.

(c) Big game number 3: Deer or elk, bear, and cougar. At the time of purchase, the holder must identify either deer or elk. The fee for this license is forty-six dollars for residents, four hundred sixty dollars for nonresidents, and twenty-three dollars for youth.

(d) Big game number 4: Deer or elk. At the time of purchase, the holder must identify either deer or elk. The fee for this license is thirty-six dollars for residents, three hundred sixty dollars for nonresidents, and eighteen dollars for youth.

(e) Big game number 5: Bear and cougar. The fee for this license is twenty dollars for residents, two hundred dollars for nonresidents, and ten dollars for youth.

(2) In the event that the commission authorizes a two animal big game limit, the fees for the second animal are as follows:

(a) Elk: The fee is twenty dollars for residents, two hundred dollars for nonresidents, and ten dollars for youth.

(b) Deer: The fee is twenty dollars for residents, two hundred dollars for nonresidents, and ten dollars for youth.

(c) Bear: The fee is ten dollars for residents, one hundred dollars for nonresidents, and five dollars for youth.

(d) Cougar: The fee is ten dollars for residents, one hundred dollars for nonresidents, and five dollars for youth.

(3) In the event that the commission authorizes a special permit hunt for goat, sheep, or moose, the permit fees are as follows:

(a) Mountain goat: The fee is one hundred dollars for residents, one thousand dollars for nonresidents, and fifty dollars for youth.

(b) Sheep: The fee is one hundred dollars for residents, one thousand dollars for nonresidents, and fifty dollars for youth.

(c) Moose: The fee is one hundred dollars for residents, one thousand dollars for nonresidents, and fifty dollars for youth.

(4) Multiple season big game permit: The commission may, by rule, offer permits for hunters to hunt deer or elk during more than one general season. Only one deer or elk may be harvested annually under a multiple season big game permit. The fee is one hundred fifty dollars for residents and one thousand five hundred dollars for nonresidents.

(5) Authorization to hunt the species set out under subsection (3)(a) through (c) of this section or in multiple sea-

sons as set out in subsection (4) of this section is by special permit issued under RCW 77.32.370.

(6) The commission may adopt rules to reduce the price of a license or eliminate the transportation tag requirements concerning bear or cougar when necessary to meet harvest objectives. [2005 c 140 § 1; 2000 c 109 § 1; 1998 c 191 § 14.]

**Effective date—1998 c 191:** See note following RCW 77.32.400.

**77.32.470 Personal use fishing licenses—Fees—Temporary fishing license—Family fishing weekend license—**

**Rules.** (1) A personal use saltwater, freshwater, combination, temporary, or family fishing weekend license is required for all persons fifteen years of age or older to fish for or possess fish taken for personal use from state waters or offshore waters.

(2) The fees for annual personal use saltwater, freshwater, or combination licenses are as follows:

(a) A combination license allows the holder to fish for or possess fish, shellfish, and seaweed from state waters or offshore waters. The fee for this license is thirty-six dollars for residents, seventy-two dollars for nonresidents, and five dollars for youth.

(b) A saltwater license allows the holder to fish for or possess fish taken from saltwater areas. The fee for this license is eighteen dollars for residents, thirty-six dollars for nonresidents, and five dollars for resident seniors.

(c) A freshwater license allows the holder to fish for, take, or possess food fish or game fish species in all freshwater areas. The fee for this license is twenty dollars for residents, forty dollars for nonresidents, and five dollars for resident seniors.

(3)(a) A temporary combination fishing license is valid for one to five consecutive days and allows the holder to fish for or possess fish, shellfish, and seaweed taken from state waters or offshore waters. The fee for this temporary fishing license is:

(i) One day - Seven dollars for residents and fourteen dollars for nonresidents;

(ii) Two days - Ten dollars for residents and twenty dollars for nonresidents;

(iii) Three days - Thirteen dollars for residents and twenty-six dollars for nonresidents;

(iv) Four days - Fifteen dollars for residents and thirty dollars for nonresidents; and

(v) Five days - Seventeen dollars for residents and thirty-four dollars for nonresidents.

(b) The fee for a charter stamp is seven dollars for a one-day temporary combination fishing license for residents and nonresidents for use on a charter boat as defined in RCW 77.65.150.

(c) A transaction fee to support the automated licensing system will be taken from the amounts set forth in this subsection for temporary licenses.

(d) Except for active duty military personnel serving in any branch of the United States armed forces, the temporary combination fishing license is not valid on game fish species for an eight-consecutive-day period beginning on the opening day of the lowland lake fishing season.

(4) A family fishing weekend license allows for a maximum of six anglers: One resident and five youth; two resi-

dents and four youth; or one resident, one nonresident, and four youth. This license allows the holders to fish for or possess fish taken from state waters or offshore waters. The fee for this license is twenty dollars. This license is only valid during periods as specified by rule of the department.

(5) The commission may adopt rules to create and sell combination licenses for all hunting and fishing activities at or below a fee equal to the total cost of the individual license contained within any combination. [2005 c 192 § 1; 2003 c 181 § 1; 1998 c 191 § 16.]

**Effective date—2003 c 181:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 2003]." [2003 c 181 § 2.]

**Effective date—1998 c 191:** See note following RCW 77.32.400.

**77.32.555 Surcharge to fund biotoxin testing and monitoring.**

In addition to the fees authorized in this chapter, the department shall include a surcharge to fund biotoxin testing and monitoring by the department of health of beaches used for recreational shellfishing, and to fund monitoring by the Olympic region harmful algal bloom program of the Olympic natural resources center at the University of Washington. A surcharge of three dollars applies to resident and nonresident shellfish and seaweed licenses as authorized by RCW 77.32.520(3) (a) and (b); a surcharge of two dollars applies to resident and nonresident adult combination licenses as authorized by RCW 77.32.470(2)(a); a surcharge of two dollars applies to annual resident and nonresident razor clam licenses as authorized by RCW 77.32.520(4); and a surcharge of one dollar applies to the three-day razor clam license authorized by RCW 77.32.520(5). Amounts collected from these surcharges must be deposited in the general fund—local account managed by the department of health, except that one hundred fifty thousand dollars per year shall be deposited in the general fund—local account managed by the University of Washington.

Unspent amounts from the surcharges deposited in the general fund—local accounts managed by the department of health and the University of Washington shall carry over to ensuing biennia to pay for the ongoing costs of the programs. The department of health and the University of Washington shall, by December 1st of each year, provide a letter to the relevant legislative policy and fiscal committees on the status of expenditures. This letter shall include, but is not limited to, the annual appropriation amount, the amount not expended, account appropriation balance, and reasons for not spending the full annual appropriation. [2005 c 416 § 1; 2004 c 248 § 2; 2003 c 263 § 2.]

**Effective date—2005 c 416:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 11, 2005]." [2005 c 416 § 2.]

**Findings—2003 c 263:** "The legislature finds that testing and monitoring of beaches used for recreational shellfishing is essential to ensure the health of recreational shellfishers. The legislature also finds that it is essential to have a stable and reliable source of funding for such biotoxin testing and monitoring. The legislature also finds that the cost of the resident and nonresident personal use shellfish and seaweed licenses is undervalued and not properly aligned with neighboring states and provinces." [2003 c 263 § 1.]

**Effective date—2003 c 263:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and takes effect July 1, 2003." [2003 c 263 § 4.]

### Chapter 77.55 RCW

#### CONSTRUCTION PROJECTS IN STATE WATERS

##### Sections

77.55.010	Recodified as RCW 77.55.211.
77.55.011	Definitions.
77.55.020	Recodified as RCW 77.55.101.
77.55.021	Permit.
77.55.030	Recodified as RCW 77.55.061.
77.55.031	Driving across established ford.
77.55.040	Recodified as RCW 77.57.010.
77.55.041	Derelict fishing gear—Removal.
77.55.050	Recodified as RCW 77.57.020.
77.55.051	Spartina/purple loosestrife—Removal or control.
77.55.060	Recodified as RCW 77.57.030.
77.55.061	Hazardous substance remedial actions—Procedural requirements not applicable.
77.55.070	Recodified as RCW 77.57.040.
77.55.071	Certain secure community transition facilities not subject to this chapter. ( <i>Expires June 30, 2009.</i> )
77.55.080	Recodified as RCW 77.57.050.
77.55.081	Removal or control of aquatic noxious weeds—Rules—Pamphlet.
77.55.090	Recodified as RCW 77.55.251.
77.55.091	Small scale prospecting and mining—Rules.
77.55.100	Repealed.
77.55.101	Environmental excellence program agreements—Effect on chapter.
77.55.110	Repealed.
77.55.111	Habitat incentives agreement.
77.55.120	Recodified as RCW 77.55.261.
77.55.121	Habitat incentives program—Goal—Requirements of agreement—Application evaluation factors.
77.55.130	Recodified as RCW 77.55.131.
77.55.131	Dike vegetation management guidelines—Memorandum of agreement.
77.55.140	Recodified as RCW 77.55.291.
77.55.141	Marine beach front protective bulkheads or rockwalls.
77.55.150	Recodified as RCW 77.55.081.
77.55.151	Marina or marine terminal.
77.55.160	Recodified as RCW 77.55.191.
77.55.161	Storm water discharges.
77.55.170	Recodified as RCW 77.55.301.
77.55.171	Watershed restoration projects—Permit processing.
77.55.180	Recodified as RCW 77.55.311.
77.55.181	Fish habitat enhancement project—Permit review and approval process.
77.55.190	Repealed.
77.55.191	Columbia river anadromous fish sanctuary—Restrictions.
77.55.200	Recodified as RCW 77.55.141.
77.55.201	Landscape management plan.
77.55.210	Recodified as RCW 77.55.171.
77.55.211	Informational brochure.
77.55.220	Recodified as RCW 77.55.151.
77.55.221	Flood damage repair and reduction activities—Five-year maintenance permit agreements.
77.55.230	Recodified as RCW 77.55.241.
77.55.231	Conditions imposed upon a permit—Reasonably related to project.
77.55.240	Recodified as RCW 77.57.080.
77.55.241	Off-site mitigation.
77.55.250	Repealed.
77.55.251	Mitigation plan review.
77.55.260	Recodified as RCW 77.55.271.
77.55.261	Placement of woody debris as condition of permit.
77.55.270	Recodified as RCW 77.55.091.
77.55.271	Sediment dredging or capping actions—Dredging of existing channels and berthing areas—Mitigation not required.
77.55.280	Recodified as RCW 77.55.111.
77.55.281	Fishways on certain agricultural drainage facilities.
77.55.290	Recodified as RCW 77.55.181.
77.55.291	Civil penalty.
77.55.300	Recodified as RCW 77.55.121.
77.55.301	Hydraulic appeals board—Members—Jurisdiction—Procedures.
77.55.310	Recodified as RCW 77.57.060.
77.55.311	Hydraulic appeals board—Procedures.
77.55.320	Recodified as RCW 77.57.070.

77.55.330	Recodified as RCW 77.55.041.
77.55.340	Recodified as RCW 77.55.161.
77.55.350	Recodified as RCW 77.55.231.
77.55.360	Recodified as RCW 77.55.071.
77.55.370	Repealed.

**77.55.010 Recodified as RCW 77.55.211.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.011 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Bed" means the land below the ordinary high water lines of state waters. This definition does not include irrigation ditches, canals, storm water runoff devices, or other artificial watercourses except where they exist in a natural watercourse that has been altered by man.

(2) "Board" means the hydraulic appeals board created in RCW 77.55.301.

(3) "Commission" means the state fish and wildlife commission.

(4) "Department" means the department of fish and wildlife.

(5) "Director" means the director of the department of fish and wildlife.

(6) "Emergency" means an immediate threat to life, the public, property, or of environmental degradation.

(7) "Hydraulic project" means the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state.

(8) "Imminent danger" means a threat by weather, water flow, or other natural conditions that is likely to occur within sixty days of a request for a permit application.

(9) "Marina" means a public or private facility providing boat moorage space, fuel, or commercial services. Commercial services include but are not limited to overnight or live-aboard boating accommodations.

(10) "Marine terminal" means a public or private commercial wharf located in the navigable water of the state and used, or intended to be used, as a port or facility for the storing, handling, transferring, or transporting of goods to and from vessels.

(11) "Ordinary high water line" means the mark on the shores of all water that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in ordinary years as to mark upon the soil or vegetation a character distinct from the abutting upland. Provided, that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater is the line of mean higher high water and the ordinary high water line adjoining fresh water is the elevation of the mean annual flood.

(12) "Permit" means a hydraulic project approval permit issued under this chapter.

(13) "Sandbars" includes, but is not limited to, sand, gravel, rock, silt, and sediments.

(14) "Small scale prospecting and mining" means the use of only the following methods: Pans; nonmotorized sluice



boxes; concentrators; and minirocker boxes for the discovery and recovery of minerals.

(15) "Spartina," "purple loosestrife," and "aquatic noxious weeds" have the same meanings as defined in RCW 17.26.020.

(16) "Streambank stabilization" means those projects that prevent or limit erosion, slippage, and mass wasting. These projects include, but are not limited to, bank resloping, log and debris relocation or removal, planting of woody vegetation, bank protection using rock or woody material or placement of jetties or groins, gravel removal, or erosion control.

(17) "Tide gate" means a one-way check valve that prevents the backflow of tidal water.

(18) "Waters of the state" and "state waters" means all salt and fresh waters waterward of the ordinary high water line and within the territorial boundary of the state. [2005 c 146 § 101.]

**Part headings not law—2005 c 146:** "Part headings used in this act are not any part of the law." [2005 c 146 § 1007.]

**77.55.020 Recodified as RCW 77.55.101.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.021 Permit.** (1) Except as provided in RCW 77.55.031, 77.55.051, and 77.55.041, in the event that any person or government agency desires to undertake a hydraulic project, the person or government agency shall, before commencing work thereon, secure the approval of the department in the form of a permit as to the adequacy of the means proposed for the protection of fish life.

(2) A complete written application for a permit may be submitted in person or by registered mail and must contain the following:

(a) General plans for the overall project;

(b) Complete plans and specifications of the proposed construction or work within the mean higher high water line in saltwater or within the ordinary high water line in freshwater;

(c) Complete plans and specifications for the proper protection of fish life; and

(d) Notice of compliance with any applicable requirements of the state environmental policy act, unless otherwise provided for in this chapter.

(3)(a) Protection of fish life is the only ground upon which approval of a permit may be denied or conditioned. Approval of a permit may not be unreasonably withheld or unreasonably conditioned. Except as provided in this subsection and subsections (8), (10), and (11) of this section, the department has forty-five calendar days upon receipt of a complete application to grant or deny approval of a permit. The forty-five day requirement is suspended if:

(i) After ten working days of receipt of the application, the applicant remains unavailable or unable to arrange for a timely field evaluation of the proposed project;

(ii) The site is physically inaccessible for inspection;

(iii) The applicant requests a delay; or

(iv) The department is issuing a permit for a storm water discharge and is complying with the requirements of RCW 77.55.161(3)(b).

(b) Immediately upon determination that the forty-five day period is suspended, the department shall notify the applicant in writing of the reasons for the delay.

(c) The period of forty-five calendar days may be extended if the permit is part of a multiagency permit streamlining effort and all participating permitting agencies and the permit applicant agree to an extended timeline longer than forty-five calendar days.

(4) If the department denies approval of a permit, the department shall provide the applicant a written statement of the specific reasons why and how the proposed project would adversely affect fish life. Issuance, denial, conditioning, or modification of a permit shall be appealable to the department or the board as specified in RCW 77.55.301 within thirty days of the notice of decision.

(5)(a) The permittee must demonstrate substantial progress on construction of that portion of the project relating to the permit within two years of the date of issuance.

(b) Approval of a permit is valid for a period of up to five years from the date of issuance, except as provided in (c) of this subsection and in RCW 77.55.151.

(c) A permit remains in effect without need for periodic renewal for hydraulic projects that divert water for agricultural irrigation or stock watering purposes and that involve seasonal construction or other work. A permit for streambank stabilization projects to protect farm and agricultural land as defined in RCW 84.34.020 remains in effect without need for periodic renewal if the problem causing the need for the streambank stabilization occurs on an annual or more frequent basis. The permittee must notify the appropriate agency before commencing the construction or other work within the area covered by the permit.

(6) The department may, after consultation with the permittee, modify a permit due to changed conditions. The modification becomes effective unless appealed to the department or the board as specified in RCW 77.55.301 within thirty days from the notice of the proposed modification. For hydraulic projects that divert water for agricultural irrigation or stock watering purposes, or when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the department to show that changed conditions warrant the modification in order to protect fish life.

(7) A permittee may request modification of a permit due to changed conditions. The request must be processed within forty-five calendar days of receipt of the written request. A decision by the department may be appealed to the board within thirty days of the notice of the decision. For hydraulic projects that divert water for agricultural irrigation or stock watering purposes, or when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the permittee to show that changed conditions warrant the requested modification and that such a modification will not impair fish life.

(8) The department or the county legislative authority may declare and continue an emergency. The county legislative authority shall immediately notify the department if it declares an emergency under this subsection. The department, through its authorized representatives, shall issue immediately, upon request, oral approval for a stream cross-

ing, or work to remove any obstructions, repair existing structures, restore streambanks, protect fish life, or protect property threatened by the stream or a change in the stream flow without the necessity of obtaining a written permit prior to commencing work. Conditions of the emergency oral permit must be established by the department and reduced to writing within thirty days and complied with as provided for in this chapter. The department may not require the provisions of the state environmental policy act, chapter 43.21C RCW, to be met as a condition of issuing a permit under this subsection.

(9) All state and local agencies with authority under this chapter to issue permits or other authorizations in connection with emergency water withdrawals and facilities authorized under RCW 43.83B.410 shall expedite the processing of such permits or authorizations in keeping with the emergency nature of such requests and shall provide a decision to the applicant within fifteen calendar days of the date of application.

(10) The department or the county legislative authority may determine an imminent danger exists. The county legislative authority shall notify the department, in writing, if it determines that an imminent danger exists. In cases of imminent danger, the department shall issue an expedited written permit, upon request, for work to remove any obstructions, repair existing structures, restore banks, protect fish resources, or protect property. Expedited permit requests require a complete written application as provided in subsection (2) of this section and must be issued within fifteen calendar days of the receipt of a complete written application. Approval of an expedited permit is valid for up to sixty days from the date of issuance. The department may not require the provisions of the state environmental policy act, chapter 43.21C RCW, to be met as a condition of issuing a permit under this subsection.

(11) The department may issue an expedited written permit in those instances where normal permit processing would result in significant hardship for the applicant or unacceptable damage to the environment. Expedited permit requests require a complete written application as provided in subsection (2) of this section and must be issued within fifteen calendar days of the receipt of a complete written application. Approval of an expedited permit is valid for up to sixty days from the date of issuance. The department may not require the provisions of the state environmental policy act, chapter 43.21C RCW, to be met as a condition of issuing a permit under this subsection. [2005 c 146 § 201.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**77.55.030 Recodified as RCW 77.55.061.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.031 Driving across established ford.** The act of driving across an established ford is exempt from a permit. Driving across streams or on wetted streambeds at areas other than established fords requires a permit. Work within the ordinary high water line of state waters to construct or repair a ford or crossing requires a permit. [2005 c 146 § 301.]

[2005 RCW Supp—page 910]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**77.55.040 Recodified as RCW 77.57.010.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.041 Derelict fishing gear—Removal.** The removal of derelict fishing gear does not require a permit under this chapter if the gear is removed according to the guidelines described in RCW 77.12.865. [2005 c 146 § 302; 2002 c 20 § 4. Formerly RCW 77.55.330.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Finding—Purpose—2002 c 20:** See note following RCW 77.12.865.

**77.55.050 Recodified as RCW 77.57.020.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.051 Spartina/purple loosestrife—Removal or control.** (1) An activity conducted solely for the removal or control of spartina does not require a permit.

(2) An activity conducted solely for the removal or control of purple loosestrife and which is performed with handheld tools, handheld equipment, or equipment carried by a person does not require a permit. [2005 c 146 § 303.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**77.55.060 Recodified as RCW 77.57.030.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.061 Hazardous substance remedial actions—Procedural requirements not applicable.** The procedural requirements of this chapter shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department of ecology shall ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW 70.105D.090. [1994 c 257 § 18. Formerly RCW 77.55.030, 75.20.025.]

**Severability—1994 c 257:** See note following RCW 36.70A.270.

**77.55.070 Recodified as RCW 77.57.040.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.071 Certain secure community transition facilities not subject to this chapter. (Expires June 30, 2009.)** An emergency has been caused by the need to expeditiously site facilities to house sexually violent predators who have been committed under chapter 71.09 RCW. To meet this emergency, secure community transition facilities sited pur-

suant to the preemption provisions of RCW 71.09.342 and secure facilities sited pursuant to the preemption provisions of RCW 71.09.250 are not subject to the provisions of this chapter.

This section expires June 30, 2009. [2002 c 68 § 14. Formerly RCW 77.55.360.]

**Purpose—Severability—Effective date—2002 c 68:** See notes following RCW 36.70A.200.

**77.55.080 Recodified as RCW 77.57.050.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.081 Removal or control of aquatic noxious weeds—Rules—Pamphlet.** (1) By June 30, 1997, the department shall develop rules for projects conducted solely for the removal or control of various aquatic noxious weeds other than spartina and purple loosestrife and for activities or hydraulic projects for controlling purple loosestrife not covered by RCW 77.55.051(2). Following the adoption of the rules, the department shall produce and distribute a pamphlet describing the methods of removing or controlling the aquatic noxious weeds that are approved under the rules. The pamphlet serves as the permit for any project that is conducted solely for the removal or control of such aquatic noxious weeds and that is conducted as described in the pamphlet. No further permit is required for such a project.

(2) From time to time as information becomes available, the department shall adopt similar rules for additional aquatic noxious weeds or additional activities for removing or controlling aquatic noxious weeds not governed by RCW 77.55.051 (1) and (2) and shall produce and distribute one or more pamphlets describing these methods of removal or control. Such a pamphlet serves as the permit for any project that is conducted solely for the removal or control of such aquatic noxious weeds and that is conducted as described in the pamphlet. No further permit is required for such a project.

(3) Nothing in this section shall prohibit the department from requiring a permit for those parts of hydraulic projects that are not specifically for the control or removal of spartina, purple loosestrife, or other aquatic noxious weeds. [2005 c 146 § 401; 1995 c 255 § 4. Formerly RCW 77.55.150, 75.20.108.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Severability—Effective date—1995 c 255:** See RCW 17.26.900 and 17.26.901.

**77.55.090 Recodified as RCW 77.55.251.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.091 Small scale prospecting and mining—Rules.** (1) Small scale prospecting and mining shall not require a permit under this chapter if the prospecting is conducted in accordance with rules established by the department.

(2) By December 31, 1998, the department shall adopt rules applicable to small scale prospecting and mining activities subject to this section. The department shall develop the

rules in cooperation with the recreational mining community and other interested parties.

(3) Within two months of adoption of the rules, the department shall distribute an updated gold and fish pamphlet that describes methods of mineral prospecting that are consistent with the department's rule. The pamphlet shall be written to clearly indicate the prospecting methods that require a permit under this chapter and the prospecting methods that require compliance with the pamphlet. To the extent possible, the department shall use the provisions of the gold and fish pamphlet to minimize the number of specific provisions of a written permit issued under this chapter. [2005 c 146 § 402; 1997 c 415 § 2. Formerly RCW 77.55.270, 75.20.330.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Findings—1997 c 415:** "The legislature finds that small scale prospecting and mining: (1) Is an important part of the heritage of the state; (2) provides economic benefits to the state; and (3) can be conducted in a manner that is beneficial to fish habitat and fish propagation. Now, therefore, the legislature declares that small scale prospecting and mining shall be regulated in the least burdensome manner that is consistent with the state's fish management objectives and the federal endangered species act." [1997 c 415 § 1.]

**77.55.100 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.101 Environmental excellence program agreements—Effect on chapter.** Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 25. Formerly RCW 77.55.020, 75.20.015.]

**Purpose—1997 c 381:** See RCW 43.21K.005.

**77.55.110 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.111 Habitat incentives agreement.** When a private landowner is applying for a permit under this chapter and that landowner has entered into a habitat incentives agreement with the department and the department of natural resources as provided in RCW 77.55.121, the department shall comply with the terms of that agreement when evaluating the request for a permit. [2005 c 146 § 403; 2001 c 253 § 54; 1997 c 425 § 4. Formerly RCW 77.55.280, 75.20.340.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Finding—Intent—1997 c 425:** See note following RCW 77.55.300.

**77.55.120 Recodified as RCW 77.55.261.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.121 Habitat incentives program—Goal—Requirements of agreement—Application evaluation factors.** (1) Beginning in January 1998, the department and the department of natural resources shall implement a habitat incentives program based on the recommendations of feder-

ally recognized Indian tribes, landowners, the regional fisheries enhancement groups, the timber, fish, and wildlife cooperators, and other interested parties. The program shall allow a private landowner to enter into an agreement with the departments to enhance habitat on the landowner's property for food fish, game fish, or other wildlife species. In exchange, the landowner shall receive state regulatory certainty with regard to future applications for a permit or a forest practices permit on the property covered by the agreement. The overall goal of the program is to provide a mechanism that facilitates habitat development on private property while avoiding an adverse state regulatory impact to the landowner at some future date. A single agreement between the departments and a landowner may encompass up to one thousand acres. A landowner may enter into multiple agreements with the departments, provided that the total acreage covered by such agreements with a single landowner does not exceed ten thousand acres. The departments are not obligated to enter into an agreement unless the departments find that the agreement is in the best interest of protecting fish or wildlife species or their habitat.

(2) A habitat incentives agreement shall be in writing and shall contain at least the following: (a) A description of the property covered by the agreement; (b) an expiration date; (c) a description of the condition of the property prior to the implementation of the agreement; and (d) other information needed by the landowner and the departments for future reference and decisions.

(3) As part of the agreement, the department may stipulate the factors that will be considered when the department evaluates a landowner's application for a permit on property covered by the agreement. The department's identification of these evaluation factors shall be in concurrence with the department of natural resources and affected federally recognized Indian tribes. In general, future decisions related to the issuance, conditioning, or denial of a permit must be based on the conditions present on the landowner's property at the time of the agreement, unless all parties agree otherwise.

(4) As part of the agreement, the department of natural resources may stipulate the factors that will be considered when the department of natural resources evaluates a landowner's application for a forest practices permit under chapter 76.09 RCW on property covered by the agreement. The department of natural resources' identification of these evaluation factors shall be in concurrence with the department and affected federally recognized Indian tribes. In general, future decisions related to the issuance, conditioning, or denial of forest practices permits shall be based on the conditions present on the landowner's property at the time of the agreement, unless all parties agree otherwise.

(5) The agreement is binding on and may be used by only the landowner who entered into the agreement with the department. The agreement shall not be appurtenant with the land. However, if a new landowner chooses to maintain the habitat enhancement efforts on the property, the new landowner and the department and the department of natural resources may jointly choose to retain the agreement on the property.

(6) If the department and the department of natural resources receive multiple requests for agreements with private landowners under the habitat incentives program, the

departments shall prioritize these requests and shall enter into as many agreements as possible within available budgetary resources. [2005 c 146 § 404; 2000 c 107 § 229; 1997 c 425 § 3. Formerly RCW 77.55.300, 77.12.830.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Finding—Intent—1997 c 425:** "In an effort to increase the amount of habitat available for fish and wildlife, the legislature finds that it is desirable for the department of fish and wildlife, the department of natural resources, and other interested parties to work closely with private landowners to achieve habitat enhancements. In some instances, private landowners avoid enhancing habitat because of a concern that the presence of fish or wildlife may make future land management more difficult. It is the intent of this act to provide a mechanism that facilitates habitat development while avoiding an adverse impact on the landowner at a later date. The habitat incentives program is not intended to supercede any federal laws." [1997 c 425 § 1.]

**77.55.130 Recodified as RCW 77.55.131.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.131 Dike vegetation management guidelines—Memorandum of agreement.** The department and the department of ecology will work cooperatively with the United States army corps of engineers to develop a memorandum of agreement outlining dike vegetation management guidelines so that dike owners are eligible for coverage under P.L. 84-99, and state requirements established pursuant to RCW 77.55.021 are met. [2005 c 146 § 405; 2000 c 107 § 18; 1993 sp.s. c 2 § 34; 1991 c 322 § 19. Formerly RCW 77.55.130, 75.20.1041.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Findings—Intent—1991 c 322:** See note following RCW 86.12.200.

**77.55.140 Recodified as RCW 77.55.291.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.141 Marine beach front protective bulkheads or rockwalls.** (1) In order to protect the property of marine waterfront shoreline owners it is necessary to facilitate issuance of permits for bulkheads or rockwalls under certain conditions.

(2) The department shall issue a permit with or without conditions within forty-five days of receipt of a complete and accurate application which authorizes commencement of construction, replacement, or repair of a marine beach front protective bulkhead or rockwall for single-family type residences or property under the following conditions:

(a) The waterward face of a new bulkhead or rockwall shall be located only as far waterward as is necessary to excavate for footings or place base rock for the structure and under no conditions shall be located more than six feet waterward of the ordinary high water line;

(b) Any bulkhead or rockwall to replace or repair an existing bulkhead or rockwall shall be placed along the same alignment as the bulkhead or rockwall it is replacing. However, the replaced or repaired bulkhead or rockwall may be

placed waterward of and directly abutting the existing structure only in cases where removal of the existing bulkhead or rockwall would result in environmental degradation or removal problems related to geological, engineering, or safety considerations; and

(c) Construction of a new bulkhead or rockwall, or replacement or repair of an existing bulkhead or rockwall waterward of the existing structure shall not result in the permanent loss of critical food fish or shellfish habitats; and

(d) Timing constraints shall be applied on a case-by-case basis for the protection of critical habitats, including but not limited to migration corridors, rearing and feeding areas, and spawning habitats, for the proper protection of fish life.

(3) Any bulkhead or rockwall construction, replacement, or repair not meeting the conditions in this section shall be processed under this chapter in the same manner as any other application.

(4) Any person aggrieved by the approval, denial, conditioning, or modification of a permit under this section may formally appeal the decision to the board pursuant to this chapter. [2005 c 146 § 501; 1991 c 279 § 1. Formerly RCW 77.55.200, 75.20.160.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**77.55.150 Recodified as RCW 77.55.081.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.151 Marina or marine terminal.** (1) For a marina or marine terminal in existence on June 6, 1996, or a marina or marine terminal that has received a permit for its initial construction, a renewable, five-year permit shall be issued, upon request, for regular maintenance activities of the marina or marine terminal.

(2) Upon construction of a new marina or marine terminal that has received a permit, a renewable, five-year permit shall be issued, upon request, for regular maintenance activities of the marina or marine terminal.

(3) For the purposes of this section, regular maintenance activities are only those activities necessary to restore the marina or marine terminal to the conditions approved in the initial permit. These activities may include, but are not limited to, dredging, piling replacement, and float replacement.

(4) The five-year permit must include a requirement that a fourteen-day notice be given to the department before regular maintenance activities begin. [2005 c 146 § 502; 2002 c 368 § 7; 1996 c 192 § 2. Formerly RCW 77.55.220, 75.20.180.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Finding—Intent—2002 c 368:** See note following RCW 77.55.100.

**Finding—Intent—1996 c 192:** "The legislature finds that initial construction of a marina and some maintenance activities change the natural flow or bed of the salt or fresh water body in which the marina is constructed. Because of this disturbance, it is appropriate that plans for initial marina construction as well as some maintenance activities undergo the hydraulic project review and approval process established in chapter 75.20 RCW.

It is the intent of the legislature that after a marina has received a hydraulic project approval and been constructed, a renewable, five-year hydraulic project approval be issued, upon request, for regular maintenance activities within the marina." [1996 c 192 § 1.]

**77.55.160 Recodified as RCW 77.55.191.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.161 Storm water discharges.** (1) Notwithstanding any other provision of this chapter, all permits related to storm water discharges must follow the provisions established in this section.

(2) Permits issued in locations covered by a national pollution discharge elimination system municipal storm water general permit may not be conditioned or denied for water quality or quantity impacts arising from storm water discharges. A permit is required only for the actual construction of any storm water outfall or associated structures pursuant to this chapter.

(3)(a) In locations not covered by a national pollution discharge elimination system municipal storm water general permit, the department may issue permits that contain provisions that protect fish life from adverse effects, such as scouring or erosion of the bed of the water body, resulting from the direct hydraulic impacts of the discharge.

(b) Prior to the issuance of a permit issued under this subsection (3), the department must:

(i) Make a finding that the discharge from the outfall will cause harmful effects to fish life;

(ii) Transmit the findings to the applicant and to the city or county where the project is being proposed; and

(iii) Allow the applicant an opportunity to use local ordinances or other mechanisms to avoid the adverse effects resulting from the direct hydraulic discharge. The forty-five day requirement for permit issuance under RCW 77.55.021 is suspended during the time period the department is meeting the requirements of this subsection (3)(b).

(c) After following the procedures set forth in (b) of this subsection, the department may issue a permit that prescribes the discharge rates from an outfall structure that will prevent adverse effects to the bed or flow of the waterway. The department may recommend, but not specify, the measures required to meet these discharge rates. The department may not require changes to the project design above the mean higher high water mark of marine waters, or the ordinary high water mark of freshwaters of the state. Nothing in this section alters any authority the department may have to regulate other types of projects under this chapter. [2005 c 146 § 503; 2002 c 368 § 4. Formerly RCW 77.55.340.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Finding—Intent—2002 c 368:** See note following RCW 77.55.100.

**77.55.170 Recodified as RCW 77.55.301.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.171 Watershed restoration projects—Permit processing.** A permit required by the department for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510. [2005 c 146 § 504; 1995 c 378 § 14. Formerly RCW 77.55.210, 75.20.170.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**77.55.180 Recodified as RCW 77.55.311.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.181 Fish habitat enhancement project—Permit review and approval process.** (1) In order to receive the permit review and approval process created in this section, a fish habitat enhancement project must meet the criteria under (a) and (b) of this subsection:

(a) A fish habitat enhancement project must be a project to accomplish one or more of the following tasks:

(i) Elimination of human-made fish passage barriers, including culvert repair and replacement;

(ii) Restoration of an eroded or unstable streambank employing the principle of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or

(iii) Placement of woody debris or other instream structures that benefit naturally reproducing fish stocks.

The department shall develop size or scale threshold tests to determine if projects accomplishing any of these tasks should be evaluated under the process created in this section or under other project review and approval processes. A project proposal shall not be reviewed under the process created in this section if the department determines that the scale of the project raises concerns regarding public health and safety; and

(b) A fish habitat enhancement project must be approved in one of the following ways:

(i) By the department pursuant to chapter 77.95 or 77.100 RCW;

(ii) By the sponsor of a watershed restoration plan as provided in chapter 89.08 RCW;

(iii) By the department as a department-sponsored fish habitat enhancement or restoration project;

(iv) Through the review and approval process for the jobs for the environment program;

(v) Through the review and approval process for conservation district-sponsored projects, where the project complies with design standards established by the conservation commission through interagency agreement with the United States fish and wildlife service and the natural resource conservation service;

(vi) Through a formal grant program established by the legislature or the department for fish habitat enhancement or restoration; and

(vii) Through other formal review and approval processes established by the legislature.

(2) Fish habitat enhancement projects meeting the criteria of subsection (1) of this section are expected to result in beneficial impacts to the environment. Decisions pertaining to fish habitat enhancement projects meeting the criteria of subsection (1) of this section and being reviewed and approved according to the provisions of this section are not subject to the requirements of RCW 43.21C.030(2)(c).

(3)(a) A permit is required for projects that meet the criteria of subsection (1) of this section and are being reviewed and approved under this section. An applicant shall use a joint aquatic resource permit application form developed by the office of regulatory assistance to apply for approval under

this chapter. On the same day, the applicant shall provide copies of the completed application form to the department and to each appropriate local government. Local governments shall accept the application as notice of the proposed project. The department shall provide a fifteen-day comment period during which it will receive comments regarding environmental impacts. Within forty-five days, the department shall either issue a permit, with or without conditions, deny approval, or make a determination that the review and approval process created by this section is not appropriate for the proposed project. The department shall base this determination on identification during the comment period of adverse impacts that cannot be mitigated by the conditioning of a permit. If the department determines that the review and approval process created by this section is not appropriate for the proposed project, the department shall notify the applicant and the appropriate local governments of its determination. The applicant may reapply for approval of the project under other review and approval processes.

(b) Any person aggrieved by the approval, denial, conditioning, or modification of a permit under this section may formally appeal the decision to the board pursuant to the provisions of this chapter.

(4) No local government may require permits or charge fees for fish habitat enhancement projects that meet the criteria of subsection (1) of this section and that are reviewed and approved according to the provisions of this section. [2005 c 146 § 505; 2001 c 253 § 55; 1998 c 249 § 3. Formerly RCW 77.55.290, 75.20.350.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Findings—Purpose—1998 c 249:** "The legislature finds that fish habitat enhancement projects play a key role in the state's salmon and steelhead recovery efforts. The legislature finds that there are over two thousand barriers to fish passage at road crossings throughout the state, blocking fish access to as much as three thousand miles of freshwater spawning and rearing habitat. The legislature further finds that removal of these barriers and completion of other fish habitat enhancement projects should be done in a cost-effective manner, which includes providing technical assistance and training to people who will undertake projects such as removal of barriers to salmon passage and minimizing the expense and delays of various permitting processes. The purpose of this act is to take immediate action to facilitate the review and approval of fish habitat enhancement projects, to encourage efforts that will continue to improve the process in the future, to address known fish passage barriers immediately, and to develop over time a comprehensive system to inventory and prioritize barriers on a statewide basis." [1998 c 249 § 1.]

**Joint aquatic resource permit application form—Modification—1998 c 249:** "The department of ecology permit assistant [assistance] center shall immediately modify the joint aquatic resource permit application form to incorporate the permit process established in section 3 of this act." [1998 c 249 § 2.]

**Finding—Report—1998 c 249:** "The legislature finds that, while the process created in this act can improve the speed with which fish habitat enhancement projects are put into place, additional efforts can improve the review and approval process for the future. The legislature directs the department of fish and wildlife, the conservation commission, local governments, fish habitat enhancement project applicants, and other interested parties to work together to continue to improve the permitting review and approval process. Specific efforts shall include the following:

(1) Development of common acceptable design standards, best management practices, and standardized hydraulic project approval conditions for each type of fish habitat enhancement project;

(2) An evaluation of the potential for using technical evaluation teams in evaluating specific project proposals or stream reaches;

(3) An evaluation of techniques appropriate for restoration and enhancement of pasture and crop land adjacent to riparian areas;

(4) A review of local government shoreline master plans to identify and correct instances where the local plan does not acknowledge potentially beneficial instream work;

(5) An evaluation of the potential for local governments to incorporate fish habitat enhancement projects into their comprehensive planning process; and

(6) Continued work with the federal government agencies on federal permitting for fish habitat enhancement projects.

The department of fish and wildlife shall coordinate this joint effort and shall report back to the legislature on the group's progress by December 1, 1998." [1998 c 249 § 15.]

**Effective date—1998 c 249:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 1, 1998]." [1998 c 249 § 18.]

**77.55.190 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.191 Columbia river anadromous fish sanctuary—Restrictions.** (1) Except for the north fork of the Lewis river and the White Salmon river, all streams and rivers tributary to the Columbia river downstream from McNary dam are established as an anadromous fish sanctuary. This sanctuary is created to preserve and develop the food fish and game fish resources in these streams and rivers and to protect them against undue industrial encroachment.

(2) Within the sanctuary area:

(a) The department shall not issue a permit to construct a dam greater than twenty-five feet high within the migration range of anadromous fish as determined by the department.

(b) A person shall not divert water from rivers and streams in quantities that will reduce the respective stream flow below the annual average low flow, based upon data published in United States geological survey reports.

(3) The commission may acquire and abate a dam or other obstruction, or acquire any water right vested on a sanctuary stream or river, which is in conflict with the provisions of subsection (2) of this section.

(4) Subsection (2)(a) of this section does not apply to the sediment retention structure to be built on the North Fork Toutle river by the United States army corps of engineers. [2005 c 146 § 506; 1998 c 190 § 89; 1995 1st sp.s. c 2 § 27 (Referendum Bill No. 45, approved November 7, 1995); 1993 sp.s. c 2 § 36; 1988 c 36 § 36; 1985 c 307 § 5; 1983 1st ex.s. c 46 § 76; 1961 c 4 § 1; Initiative Measure No. 25, approved November 8, 1960. Formerly RCW 77.55.160, 75.20.110.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

**Effective date—1995 1st sp.s. c 2:** See note following RCW 43.17.020.

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Severability—1961 c 4:** "If any section or provision or part thereof of this act shall be held unconstitutional or for any other reason invalid, the invalidity of such section, provision or part thereof shall not affect the validity of the remaining sections, provisions or parts thereof which are not judged to be invalid or unconstitutional." [1961 c 4 § 3 (Initiative Measure No. 25, approved November 8, 1960).]

**77.55.200 Recodified as RCW 77.55.141.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.201 Landscape management plan.** A landscape management plan approved by the department and the department of natural resources under RCW 76.09.350(2) shall serve as a permit for the life of the plan if fish are selected as one of the public resources for coverage under such a plan. [2005 c 146 § 507.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**77.55.210 Recodified as RCW 77.55.171.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.211 Informational brochure.** The department, the department of ecology, and the department of natural resources shall jointly develop an informational brochure that describes when permits and any other authorizations are required for flood damage prevention and reduction projects, and recommends ways to best proceed through the various regulatory permitting processes. [2005 c 146 § 406; 1993 sp.s. c 2 § 28; 1991 c 322 § 21. Formerly RCW 77.55.010, 75.20.005.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Findings—Intent—1991 c 322:** See note following RCW 86.12.200.

**77.55.220 Recodified as RCW 77.55.151.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.221 Flood damage repair and reduction activities—Five-year maintenance permit agreements.** The department shall, at the request of a county, develop five-year maintenance permit agreements, consistent with comprehensive flood control management plans adopted under the authority of RCW 86.12.200, or other watershed plan approved by a county legislative authority, to allow for work on public and private property for bank stabilization, bridge repair, removal of sandbars and debris, channel maintenance, and other flood damage repair and reduction activity under agreed-upon conditions and times without obtaining permits for specific projects. [2005 c 146 § 508.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**77.55.230 Recodified as RCW 77.55.241.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.231 Conditions imposed upon a permit—Reasonably related to project.** (1) Conditions imposed upon a permit must be reasonably related to the project. The permit conditions must ensure that the project provides proper pro-

tection for fish life, but the department may not impose conditions that attempt to optimize conditions for fish life that are out of proportion to the impact of the proposed project.

(2) The permit must contain provisions allowing for minor modifications to the plans and specifications without requiring reissuance of the permit. [2005 c 146 § 601; 2002 c 368 § 5. Formerly RCW 77.55.350.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Finding—Intent—2002 c 368:** See note following RCW 77.55.100.

**77.55.240 Recodified as RCW 77.57.080.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.241 Off-site mitigation.** (1) The legislature finds that the construction of hydraulic projects may require mitigation for the protection of fish life, and that the mitigation may be most cost-effective and provide the most benefit to the fish resource if the mitigation is allowed to be applied in locations that are off-site of the hydraulic project location. The department may approve off-site mitigation plans that are submitted by permit applicants.

(2) If a permit applicant proposes off-site mitigation and the department does not approve the permit or conditions the permit in such a manner as to render off-site mitigation unpracticable, the project proponent must be given the opportunity to submit the permit application to the board for approval. [2005 c 146 § 602; 1996 c 276 § 1. Formerly RCW 77.55.230, 75.20.190.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**77.55.250 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.251 Mitigation plan review.** When reviewing a mitigation plan under RCW 77.55.021, the department shall, at the request of the project proponent, follow the guidance contained in RCW 90.74.005 through 90.74.030. [2005 c 146 § 603; 2000 c 107 § 15; 1997 c 424 § 6. Formerly RCW 77.55.090, 75.20.098.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**77.55.260 Recodified as RCW 77.55.271.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.261 Placement of woody debris as condition of permit.** Whenever the placement of woody debris is required as a condition of a permit issued under RCW 77.55.021, the department, upon request, shall invite comment regarding that placement from the local governmental authority, affected tribes, affected federal and state agencies, and the project applicant. [2005 c 146 § 604; 2000 c 107 § 17; 1993 sp.s. c 2 § 33; 1991 c 322 § 18. Formerly RCW 77.55.120, 75.20.104.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

[2005 RCW Supp—page 916]

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Findings—Intent—1991 c 322:** See note following RCW 86.12.200.

**77.55.270 Recodified as RCW 77.55.091.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.271 Sediment dredging or capping actions—Dredging of existing channels and berthing areas—Mitigation not required.** The department shall not require mitigation for sediment dredging or capping actions that result in a cleaner aquatic environment and equal or better habitat functions and values, if the actions are taken under a state or federal cleanup action.

This chapter shall not be construed to require habitat mitigation for navigation and maintenance dredging of existing channels and berthing areas. [1997 c 424 § 5. Formerly RCW 77.55.260, 75.20.325.]

**77.55.280 Recodified as RCW 77.55.111.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.281 Fishways on certain agricultural drainage facilities.** (1) The department may not require a fishway on a tide gate, flood gate, or other associated man-made agricultural drainage facilities as a condition of a permit if such a fishway was not originally installed as part of an agricultural drainage system existing on or before May 20, 2003.

(2) Any condition requiring a self-regulating tide gate to achieve fish passage in an existing permit under this chapter may not be enforced. [2005 c 146 § 605.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**77.55.290 Recodified as RCW 77.55.181.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.291 Civil penalty.** (1) The department may levy civil penalties of up to one hundred dollars per day for violation of any provisions of RCW 77.55.021. The penalty provided shall be imposed by notice in writing, either by certified mail or personal service to the person incurring the penalty, from the director or the director's designee describing the violation.

(2) Any person incurring any penalty under this chapter may appeal the same under chapter 34.05 RCW to the director. Appeals shall be filed within thirty days of receipt of notice imposing any penalty.

(3) The penalty imposed shall become due and payable thirty days after receipt of a notice imposing the penalty unless an appeal is filed. Whenever an appeal of any penalty incurred under this chapter is filed, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part.



(4) If the amount of any penalty is not paid within thirty days after it becomes due and payable, the attorney general, upon the request of the director, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action. All penalties recovered under this section shall be paid into the state's general fund. [2005 c 146 § 701; 2000 c 107 § 19; 1993 sp.s. c 2 § 35; 1988 c 36 § 35; 1986 c 173 § 6. Formerly RCW 77.55.140, 75.20.106.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**77.55.300 Recodified as RCW 77.55.121.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.301 Hydraulic appeals board—Members—Jurisdiction—Procedures.** (1) There is created within the environmental hearings office under RCW 43.21B.005 the hydraulic appeals board of the state of Washington.

(2) The board consists of three members: The director of the department of ecology or the director's designee, the director of the department of agriculture or the director's designee, and the director or the director's designee of the department. A decision must be agreed to by at least two members of the board to be final.

(3) The board may adopt rules necessary for the conduct of its powers and duties or for transacting other official business.

(4) The board shall make findings of fact and prepare a written decision in each case decided by it. The finding and decision shall be effective upon being signed by two or more board members and upon being filed at the board's principal office, and shall be open to public inspection at all reasonable times.

(5) The board has exclusive jurisdiction to hear appeals arising from the approval, denial, conditioning, or modification of a permit issued by the department: (a) Under the authority granted in RCW 77.55.021 for the diversion of water for agricultural irrigation or stock watering purposes or when associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020; (b) under the authority granted in RCW 77.55.241 for off-site mitigation proposals; (c) under the authority granted in RCW 77.55.141; or (d) under the authority granted in RCW 77.55.181.

(6)(a) Any person aggrieved by the approval, denial, conditioning, or modification of a permit under RCW 77.55.021 may, except as otherwise provided in chapter 43.21L RCW, seek review from the board by filing a request for the same within thirty days of notice of the approval, denial, conditioning, or modification of the permit.

(b) The review proceedings authorized in (a) of this subsection are subject to the provisions of chapter 34.05 RCW pertaining to procedures in adjudicative proceedings. [2005 c 146 § 801; 2003 c 393 § 21; 2000 c 107 § 20; 1996 c 276 §

2; 1993 sp.s. c 2 § 37; 1989 c 175 § 160; 1988 c 272 § 3; 1988 c 36 § 37; 1986 c 173 § 4. Formerly RCW 77.55.170, 75.20.130.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Implementation—Effective date—2003 c 393:** See RCW 43.21L.900 and 43.21L.901.

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Severability—1988 c 272:** See note following RCW 77.55.100.

**77.55.310 Recodified as RCW 77.57.060.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.311 Hydraulic appeals board—Procedures.** (1) In all appeals, the board shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions, but such powers shall be exercised in conformity with chapter 34.05 RCW.

(2) In all appeals, the board, and each member thereof, shall be subject to all duties imposed upon and shall have all powers granted to, an agency by those provisions of chapter 34.05 RCW relating to adjudicative proceedings.

(3) All proceedings before the board or any of its members shall be conducted in accordance with such rules of practice and procedure as the board may prescribe. Such rules shall be published and distributed.

(4) Judicial review of a decision of the board may be obtained only pursuant to RCW 34.05.510 through 34.05.598. [2005 c 146 § 802; 1995 c 382 § 7; 1989 c 175 § 161; 1986 c 173 § 5. Formerly RCW 77.55.180, 75.20.140.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**77.55.320 Recodified as RCW 77.57.070.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.330 Recodified as RCW 77.55.041.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.340 Recodified as RCW 77.55.161.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.350 Recodified as RCW 77.55.231.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.360 Recodified as RCW 77.55.071.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.55.370 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Chapter 77.57 RCW

## FISHWAYS, FLOW, AND SCREENING

## Sections

77.57.010	Fish guards required on diversion devices—Penalties, remedies for failure.
77.57.020	Review of permit applications to divert or store water—Water flow policy.
77.57.030	Fishways required in dams, obstructions—Penalties, remedies for failure.
77.57.040	Director may modify inadequate fishways and fish guards.
77.57.050	If fishway is impractical, fish hatchery or cultural facility may be provided in lieu.
77.57.060	Director may modify inadequate fishways and protective devices.
77.57.070	Diversion of water—Screen, bypass required.
77.57.080	Operation and maintenance of fish collection facility on Toutle river.

**77.57.010 Fish guards required on diversion devices—Penalties, remedies for failure.** (1) A diversion device used for conducting water from a lake, river, or stream for any purpose shall be equipped with a fish guard approved by the director to prevent the passage of fish into the diversion device. The fish guard shall be maintained at all times when water is taken into the diversion device. The fish guards shall be installed at places and times prescribed by the director upon thirty days' notice to the owner of the diversion device.

(2) Each day the diversion device is not equipped with an approved fish guard is a separate offense. If within thirty days after notice to equip a diversion device the owner fails to do so, the director may take possession of the diversion device and close the device until it is properly equipped. Expenses incurred by the department constitute the value of a lien upon the diversion device and upon the real and personal property of the owner. Notice of the lien shall be filed and recorded in the office of the county auditor of the county in which the action is taken. [2005 c 146 § 901; 1998 c 190 § 85; 1983 1st ex.s. c 46 § 70; 1955 c 12 § 75.20.040. Prior: 1949 c 112 § 45; Rem. Supp. 1949 § 5780-319. Formerly RCW 77.55.040, 75.20.040.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**77.57.020 Review of permit applications to divert or store water—Water flow policy.** It is the policy of this state that a flow of water sufficient to support game fish and food fish populations be maintained at all times in the streams of this state.

The director of ecology shall give the director notice of each application for a permit to divert or store water. The director has thirty days after receiving the notice to state his or her objections to the application. The permit shall not be issued until the thirty-day period has elapsed.

The director of ecology may refuse to issue a permit if, in the opinion of the director of ecology, issuing the permit might result in lowering the flow of water in a stream below the flow necessary to adequately support food fish and game fish populations in the stream.

The provisions of this section shall in no way affect existing water rights. [2005 c 146 § 902; 1993 sp.s. c 2 § 29; 1988 c 36 § 32; 1986 c 173 § 7; 1983 1st ex.s. c 46 § 71; 1955 c 12 § 75.20.050. Prior: 1949 c 112 § 46; Rem. Supp. 1949 § 5780-320. Formerly RCW 77.55.050, 75.20.050.]

[2005 RCW Supp—page 918]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**77.57.030 Fishways required in dams, obstructions—Penalties, remedies for failure.** (1) Subject to subsection (3) of this section, a dam or other obstruction across or in a stream shall be provided with a durable and efficient fishway approved by the director. Plans and specifications shall be provided to the department prior to the director's approval. The fishway shall be maintained in an effective condition and continuously supplied with sufficient water to freely pass fish.

(2)(a) If a person fails to construct and maintain a fishway or to remove the dam or obstruction in a manner satisfactory to the director, then within thirty days after written notice to comply has been served upon the owner, his or her agent, or the person in charge, the director may construct a fishway or remove the dam or obstruction. Expenses incurred by the department constitute the value of a lien upon the dam and upon the personal property of the person owning the dam. Notice of the lien shall be filed and recorded in the office of the county auditor of the county in which the dam or obstruction is situated. The lien may be foreclosed in an action brought in the name of the state.

(b) If, within thirty days after notice to construct a fishway or remove a dam or obstruction, the owner, his or her agent, or the person in charge fails to do so, the dam or obstruction is a public nuisance and the director may take possession of the dam or obstruction and destroy it. No liability shall attach for the destruction.

(3) For the purposes of this section, "other obstruction" does not include tide gates, flood gates, and associated man-made agricultural drainage facilities that were originally installed as part of an agricultural drainage system on or before May 20, 2003, or the repair, replacement, or improvement of such tide gates or flood gates. [2005 c 146 § 903; 2003 c 391 § 1; 1998 c 190 § 86; 1983 1st ex.s. c 46 § 72; 1955 c 12 § 75.20.060. Prior: 1949 c 112 § 47; Rem. Supp. 1949 § 5780-321. Formerly RCW 77.55.060, 75.20.060.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Severability—2003 c 391:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 391 § 8.]

**Effective date—2003 c 391:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 20, 2003]." [2003 c 391 § 9.]

**77.57.040 Director may modify inadequate fishways and fish guards.** If the director determines that a fishway or fish guard described in \*RCW 77.55.040 and 77.55.060 and in existence on September 1, 1963, is inadequate, in addition to other authority granted in this chapter, the director may remove, relocate, reconstruct, or modify the device, without cost to the owner. The director shall not materially modify the amount of flow of water through the device. After the department has completed the improvements, the fishways

and fish guards shall be operated and maintained at the expense of the owner in accordance with \*RCW 77.55.040 and 77.55.060. [2000 c 107 § 14; 1983 1st ex.s. c 46 § 73; 1963 c 153 § 1. Formerly RCW 77.55.070, 75.20.061.]

**\*Reviser's note:** RCW 77.55.040 and 77.55.060 were recodified as RCW 77.57.010 and 77.57.030, respectively, pursuant to 2005 c 146 § 1002.

*Director of fish and wildlife may modify, etc., inadequate fishways and protective devices: RCW 77.57.060.*

**77.57.050 If fishway is impractical, fish hatchery or cultural facility may be provided in lieu.** Before a person commences construction on a dam or other hydraulic project for which the director determines that a fishway is impractical, the person shall at the option of the director:

(1) Convey to the state a fish cultural facility on a site satisfactory to the director and constructed according to plans and specifications approved by the director, and enter into an agreement with the director secured by sufficient bond, to furnish water and electricity, without expense, and funds necessary to operate and maintain the facilities; or

(2) Enter into an agreement with the director secured by sufficient bond to make payments to the state as the director determines are necessary to expand, maintain, and operate additional facilities at existing hatcheries within a reasonable distance of the dam or other hydraulic work to compensate for the damages caused by the dam or other hydraulic work.

(3) A decision of the director under this section is subject to review in the superior court of the state for Thurston county. Each day that a person carries on construction work or operates a dam or hydraulic project without complying with this section is a separate offense. [1983 1st ex.s. c 46 § 74; 1955 c 12 § 75.20.090. Prior: 1949 c 112 § 48; Rem. Supp. 1949 § 5780-322. Formerly RCW 77.55.080, 75.20.090.]

**77.57.060 Director may modify inadequate fishways and protective devices.** The director may authorize removal, relocation, reconstruction, or other modification of an inadequate fishway or fish protective device required by \*RCW 77.55.320 which device was in existence on September 1, 1963, without cost to the owner for materials and labor. The modification may not materially alter the amount of water flowing through the fishway or fish protective device. Following modification, the fishway or fish protective device shall be maintained at the expense of the person or governmental agency owning the obstruction or water diversion device. [2001 c 253 § 21; 1980 c 78 § 90; 1963 c 152 § 1. Formerly RCW 77.55.310, 77.12.425, 77.16.221.]

**\*Reviser's note:** RCW 77.55.320 was recodified as RCW 77.57.070 pursuant to 2005 c 146 § 1002.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

*Director of fish and wildlife may modify inadequate fishways and fish guards: RCW 77.57.040.*

**77.57.070 Diversion of water—Screen, bypass required.** (1) A person shall not divert water from a lake, river, or stream containing game fish unless the water diversion device is equipped at or near its intake with a fish guard or screen to prevent the passage of game fish into the device and, if necessary, with a means of returning game fish from

immediately in front of the fish guard or screen to the waters of origin. A person who was, on June 11, 1947, otherwise lawfully diverting water from a lake, river, or stream shall not be deemed guilty of a violation of this section.

(2) Plans for the fish guard, screen, and bypass shall be approved by the director prior to construction. The installation shall be approved by the director prior to the diversion of water.

(3) The director or the director's designee may close a water diversion device operated in violation of this section and keep it closed until it is properly equipped with a fish guard, screen, or bypass. [2005 c 146 § 904; 2001 c 253 § 48; 1998 c 190 § 122; 1980 c 78 § 89; 1955 c 36 § 77.16.220. Prior: 1947 c 275 § 61; Rem. Supp. 1947 § 5992-70. Formerly RCW 77.55.320, 77.16.220.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.57.080 Operation and maintenance of fish collection facility on Toutle river.** The legislature recognizes the need to mitigate the effects of sedimentary build-up and resultant damage to fish population in the Toutle river resulting from the Mt. St. Helens eruption. The state has entered into a contractual agreement with the United States army corps of engineers designed to minimize fish habitat disruption created by the sediment retention structure on the Toutle river, under which the corps has agreed to construct a fish collection facility at the sediment retention structure site conditional upon the state assuming the maintenance and operation costs of the facility. The department shall operate and maintain a fish collection facility on the Toutle river. [1993 sp.s. c 2 § 39; 1988 c 36 § 39; 1987 c 506 § 101. Formerly RCW 77.55.240, 75.20.310.]

**Effective date—1993 sp.s. c 2 § 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

## Chapter 77.65 RCW

### FOOD FISH AND SHELLFISH— COMMERCIAL LICENSES

#### Sections

77.65.010	Commercial licenses and permits required—Exemption.
77.65.100	Vessel designation.
77.65.130	Vessel operation—License designation—Alternate operator license required.
77.65.170	Salmon delivery license—Fee—Restrictions—Revocation.
77.65.190	Emergency salmon delivery license—Fee—Nontransferable, nonrenewable.
77.65.210	Nonlimited entry delivery license—Limitations—Fee.
77.65.250	Hardshell clam mechanical harvester fishery license.
77.65.390	Ocean pink shrimp—Delivery license—Fee.

**77.65.010 Commercial licenses and permits required—Exemption.** (1) Except as otherwise provided by this title, a person may not engage in any of the following activities without a license or permit issued by the director:

(a) Commercially fish for or take food fish or shellfish;

(b) Deliver from a commercial fishing vessel food fish or shellfish taken for commercial purposes in offshore waters. As used in this subsection, "deliver" means arrival at a place or port, and includes arrivals from offshore waters to waters within the state and arrivals from state or offshore waters;

(c) Operate a charter boat or commercial fishing vessel engaged in a fishery;

(d) Engage in processing or wholesaling food fish or shellfish; or

(e) Act as a guide for salmon for personal use in freshwater rivers and streams, other than that part of the Columbia river below the bridge at Longview.

(2) No person may engage in the activities described in subsection (1) of this section unless the licenses or permits required by this title are in the person's possession, and the person is the named license holder or an alternate operator designated on the license and the person's license is not suspended.

(3) A valid Oregon license that is equivalent to a license under this title is valid in the concurrent waters of the Columbia river if the state of Oregon recognizes as valid the equivalent Washington license. The director may identify by rule what Oregon licenses are equivalent.

(4) No license or permit is required for the production or harvesting of private sector cultured aquatic products as defined in RCW 15.85.020 or for the delivery, processing, or wholesaling of such aquatic products. However, if a means of identifying such products is required by rules adopted under RCW 15.85.060, the exemption from licensing or permit requirements established by this subsection applies only if the aquatic products are identified in conformance with those rules. [2005 c 20 § 1; 1998 c 190 § 93; 1997 c 58 § 883; 1993 c 340 § 2; 1991 c 362 § 1; 1985 c 457 § 18; 1983 1st ex.s. c 46 § 101; 1959 c 309 § 2; 1955 c 12 § 75.28.010. Prior: 1949 c 112 § 73; Rem. Supp. 1949 § 5780-511. Formerly RCW 75.28.010.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**Finding—Intent—1993 c 340:** "The legislature finds that the laws governing commercial fishing licensing in this state are highly complex and increasingly difficult to administer and enforce. The current laws governing commercial fishing licenses have evolved slowly, one section at a time, over decades of contention and changing technology, without general consideration for how the totality fits together. The result has been confusion and litigation among commercial fishers. Much of the confusion has arisen because the license holder in most cases is a vessel, not a person. The legislature intends by this act to standardize licensing criteria, clarify licensing requirements, reduce complexity, and remove inequities in commercial fishing licensing. The legislature intends that the license fees stated in this act shall be equivalent to those in effect on January 1, 1993, as adjusted under section 19, chapter 316, Laws of 1989." [1993 c 340 § 1.]

**Captions not law—1993 c 340:** "Section headings as used in this act do not constitute any part of the law." [1993 c 340 § 57.]

**Effective date—1993 c 340:** "This act shall take effect January 1, 1994." [1993 c 340 § 58.]

**Severability—1993 c 340:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 340 § 59.]

[2005 RCW Supp—page 920]

**77.65.100 Vessel designation.** This section applies to all commercial fishery licenses, delivery licenses, and charter licenses.

(1) An applicant for a license subject to this section may designate a vessel to be used with the license. Except for emergency salmon delivery licenses, the director may issue a license regardless of whether the applicant designates a vessel. An applicant may designate no more than one vessel on a license subject to this section.

(2) A license for a fishery that requires a vessel authorizes no taking or delivery of food fish or shellfish unless a vessel is designated on the license. A delivery license authorizes no delivery of food fish or shellfish unless a vessel is designated on the license.

(3) No vessel may be designated on more than one commercial fishery license unless the licenses are for different fisheries, except:

(a) The same vessel may be designated on two of the following licenses, provided the licenses are owned by the same licensee:

- (i) Shrimp pot-Puget Sound fishery license;
- (ii) Sea cucumber dive fishery license; and
- (iii) Sea urchin dive fishery license.

(b) The same vessel may be designated on two Puget Sound Dungeness crab fishery licenses, subject to the provision of RCW 77.65.130.

(4) No vessel may be designated on more than one delivery license, on more than one salmon charter license, or on more than one nonsalmon charter license. [2005 c 82 § 1; 2001 c 105 § 3; 1998 c 190 § 94; 1993 c 340 § 7. Formerly RCW 75.28.045.]

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**77.65.130 Vessel operation—License designation—Alternate operator license required.** (1) A person who holds a commercial fishery license or a delivery license may operate the vessel designated on the license. A person who is not the license holder may operate the vessel designated on the license only if:

(a) The person holds an alternate operator license issued by the director; and

(b) The person is designated as an alternate operator on the underlying commercial fishery license or delivery license under RCW 77.65.110.

(2) Only an individual at least sixteen years of age may hold an alternate operator license.

(3) No individual may hold more than one alternate operator license. An individual who holds an alternate operator license may be designated as an alternate operator on an unlimited number of commercial fishery licenses or delivery licenses under RCW 77.65.110.

(4) An individual who holds two Dungeness crab—Puget Sound fishery licenses may operate the licenses on one vessel if the license holder or alternate operator is on the vessel. The department shall allow a license holder to operate up to one hundred crab pots for each license.

(5) Two persons owning separate Dungeness crab—Puget Sound fishery licenses may operate both licenses on one vessel if the license holders or their alternate operators are on the vessel.

(6) As used in this section, to "operate" means to control the deployment or removal of fishing gear from state waters while aboard a vessel or to operate a vessel delivering food fish or shellfish taken in offshore waters to a port within the state. [2005 c 82 § 2; 2000 c 107 § 34; 1998 c 267 § 4; 1997 c 233 § 2; 1993 c 340 § 25. Formerly RCW 75.28.048.]

**Effective date—1998 c 267:** See note following RCW 77.65.050.

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**77.65.170 Salmon delivery license—Fee—Restrictions—Revocation.** (1) A salmon delivery license is required for a commercial fishing vessel to deliver salmon taken for commercial purposes in offshore waters to a place or port in the state. As used in this section, "deliver" and "delivery" mean arrival at a place or port, and include arrivals from offshore waters to waters within the state and arrivals ashore from offshore waters. The annual fee for a salmon delivery license is three hundred eighty dollars for residents and six hundred eighty-five dollars for nonresidents. The annual surcharge under RCW 77.95.090 is one hundred dollars for each license. Holders of nonlimited entry delivery licenses issued under RCW 77.65.210 may apply the nonlimited entry delivery license fee against the salmon delivery license fee.

(2) Only a person who meets the qualifications established in RCW 77.70.090 may hold a salmon delivery license issued under this section.

(3) A salmon delivery license authorizes no taking of salmon or other food fish or shellfish from the waters of the state.

(4) If the director determines that the operation of a vessel under a salmon delivery license results in the depletion or destruction of the state's salmon resource or the delivery into this state of salmon products prohibited by law, the director may revoke the license under the procedures of chapter 34.05 RCW. [2005 c 20 § 2; 2000 c 107 § 38; 1998 c 190 § 96; 1994 c 260 § 22; 1993 sp.s. c 17 § 36; (1993 c 340 § 13 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 4; 1983 1st ex.s. c 46 § 115; 1977 ex.s. c 327 § 3; 1971 ex.s. c 283 § 1; 1955 c 12 § 75.18.080. Prior: 1953 c 147 § 9. Formerly RCW 75.28.113, 75.18.080.]

**Finding—Severability—1994 c 260:** See notes following RCW 77.70.280.

**Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24:** See note following RCW 77.70.280.

**Contingent effective date—1993 sp.s. c 17 §§ 34-47:** See note following RCW 77.65.020.

**Finding—Contingent effective date—Severability—1993 sp.s. c 17:** See notes following RCW 77.32.520.

**Legislative intent—Funding of salmon enhancement facilities—Use of license fees—Severability—Effective date—1977 ex.s. c 327:** See notes following RCW 77.65.150.

**Effective dates—1971 ex.s. c 283:** "The provisions of this 1971 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. The provisions of sections 1 to 10 inclusive of this 1971 amendatory act shall take effect on January 1, 1972." [1971 ex.s. c 283 § 16.]

*Limitations on issuance of salmon delivery licenses: RCW 77.70.090.*

**77.65.190 Emergency salmon delivery license—Fee—Nontransferable, nonrenewable.** A person who does not qualify for a license under RCW 77.70.090 shall obtain a nontransferable emergency salmon delivery license to make one delivery from a commercial fishing vessel of salmon taken for commercial purposes in offshore waters. As used in this section, "delivery" means arrival at a place or port, and include arrivals from offshore waters to waters within the state and arrivals ashore from offshore waters. The director shall not issue an emergency salmon delivery license unless, as determined by the director, a bona fide emergency exists. The license fee is two hundred twenty-five dollars for residents and four hundred seventy-five dollars for nonresidents. An applicant for an emergency salmon delivery license shall designate no more than one vessel that will be used with the license. Alternate operator licenses are not required of persons delivering salmon under an emergency salmon delivery license. Emergency salmon delivery licenses are not renewable. [2005 c 20 § 3; 2000 c 107 § 40; 1993 sp.s. c 17 § 37; (1993 c 340 § 14 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 5; 1984 c 80 § 1. Prior: 1983 1st ex.s. c 46 § 116; 1983 c 297 § 1; 1977 ex.s. c 327 § 4; 1974 ex.s. c 184 § 3. Formerly RCW 75.28.116, 75.28.460.]

**Contingent effective date—1993 sp.s. c 17 §§ 34-47:** See note following RCW 77.65.020.

**Finding—Contingent effective date—Severability—1993 sp.s. c 17:** See notes following RCW 77.32.520.

**Legislative intent—Funding of salmon enhancement facilities—Use of license fees—Severability—Effective date—1977 ex.s. c 327:** See notes following RCW 77.65.150.

**Legislative intent—Severability—1974 ex.s. c 184:** See notes following RCW 77.70.090.

**77.65.210 Nonlimited entry delivery license—Limitations—Fee.** (1) Except as provided in subsection (2) of this section, a person may not use a commercial fishing vessel to deliver food fish or shellfish taken for commercial purposes in offshore waters to a port in the state without a nonlimited entry delivery license. As used in this section, "deliver" and "delivery" mean arrival at a place or port, and include arrivals from offshore waters to waters within the state and arrivals ashore from offshore waters. As used in this section, "food fish" does not include salmon. As used in this section, "shellfish" does not include ocean pink shrimp, coastal crab, or fish or shellfish taken under an emerging commercial fisheries license if taken from off-shore waters. The annual license fee for a nonlimited entry delivery license is one hundred ten dollars for residents and two hundred dollars for nonresidents.

(2) Holders of salmon troll fishery licenses issued under RCW 77.65.160, salmon delivery licenses issued under RCW 77.65.170, crab pot fishery licenses issued under RCW 77.65.220, food fish trawl—Non-Puget Sound fishery licenses, and emerging commercial fishery licenses issued under RCW 77.65.200, Dungeness crab—coastal fishery licenses, ocean pink shrimp delivery licenses, shrimp trawl—Non-Puget Sound fishery licenses, and emerging commercial fishery licenses issued under RCW 77.65.220 may deliver food fish or shellfish taken in offshore waters without a nonlimited entry delivery license.

(3) A nonlimited entry delivery license authorizes no taking of food fish or shellfish from state waters. [2005 c 20 § 4; 2000 c 107 § 42; 1998 c 190 § 97; 1994 c 260 § 21. Prior: 1993 sp.s. c 17 § 39; 1993 c 376 § 3; (1993 c 340 § 16 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 7; 1983 1st ex.s. c 46 § 119; 1971 ex.s. c 283 § 5; 1965 ex.s. c 73 § 1; 1959 c 309 § 5. Formerly RCW 75.28.125, 75.28.085.]

**Finding—Severability—1994 c 260:** See notes following RCW 77.70.280.

**Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24:** See note following RCW 77.70.280.

**Contingent effective date—1993 sp.s. c 17 §§ 34-47:** See note following RCW 77.65.020.

**Finding—Contingent effective date—Severability—1993 sp.s. c 17:** See notes following RCW 77.32.520.

**Findings—Effective date—1993 c 376:** See notes following RCW 77.65.380.

**Effective dates—1971 ex.s. c 283:** See note following RCW 77.65.170.

**77.65.250 Hardshell clam mechanical harvester fishery license.** A hardshell clam mechanical harvester fishery license is required to operate a mechanical or hydraulic device for commercially harvesting clams, other than geoduck clams, unless the requirements of RCW 77.55.021 are fulfilled for the proposed activity. [2005 c 146 § 1005; 2000 c 107 § 46; 1993 c 340 § 19; 1989 c 316 § 12; 1985 c 457 § 19; 1983 1st ex.s. c 46 § 125; 1979 ex.s. c 141 § 3; 1969 ex.s. c 253 § 3; 1955 c 212 § 8; 1955 c 12 § 75.28.280. Prior: 1951 c 271 § 26; 1949 c 112 § 70; Rem. Supp. 1949 § 5780-508. Formerly RCW 75.28.280.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**Construction—Severability—1969 ex.s. c 253:** See notes following RCW 77.60.070.

**77.65.390 Ocean pink shrimp—Delivery license—Fee.** An ocean pink shrimp delivery license is required for a commercial fishing vessel to deliver ocean pink shrimp taken for commercial purposes in offshore waters and delivered to a port in the state. As used in this section, "deliver" and "delivery" mean arrival at a place or port, and include arrivals from offshore waters to waters within the state and arrivals from state or offshore waters. The annual license fee is one hundred fifty dollars for residents and three hundred dollars for nonresidents. Ocean pink shrimp delivery licenses are transferable. [2005 c 20 § 5; 2000 c 107 § 51; 1993 c 376 § 4. Formerly RCW 75.28.730.]

**Findings—Effective date—1993 c 376:** See notes following RCW 77.65.380.

## Chapter 77.70 RCW

### LICENSE LIMITATION PROGRAMS

#### Sections

- 77.70.150 Sea urchin dive fishery license—Limitation on issuance—Surcharge—Sea urchin dive fishery account—Transfer of license—Issuance of new licenses.
- 77.70.190 Sea cucumber dive fishery license—Limitation on issuance—Surcharge—Sea cucumber dive fishery account—Transfer of license—Issuance of new licenses.

- 77.70.430 Puget Sound crab pot buoy tag program—Fee—Coastal crab pot buoy tag program—Fee—Review.
- 77.70.440 Puget Sound crab pot buoy tag account.
- 77.70.442 Washington coastal crab pot buoy tag account.

### 77.70.150 Sea urchin dive fishery license—Limitation on issuance—Surcharge—Sea urchin dive fishery account—Transfer of license—Issuance of new licenses.

(1) A sea urchin dive fishery license is required to take sea urchins for commercial purposes. A sea urchin dive fishery license authorizes the use of only one diver in the water at any time during sea urchin harvest operations. If the same vessel has been designated on two sea urchin dive fishery licenses, two divers may be in the water. A natural person may not hold more than two sea urchin dive fishery licenses.

(2) Except as provided in subsection (6) of this section, the director shall issue no new sea urchin dive fishery licenses. For licenses issued for the year 2000 and thereafter, the director shall renew existing licenses only to a natural person who held the license at the end of the previous year. If a sea urchin dive fishery license is not held by a natural person as of December 31, 1999, it is not renewable. However, if the license is not held because of revocation or suspension of licensing privileges, the director shall renew the license in the name of a natural person at the end of the revocation or suspension if the license holder applies for renewal of the license before the end of the year in which the revocation or suspension ends.

(3) Where a licensee failed to obtain the license during the previous year because of a license suspension or revocation by the director or the court, the licensee may qualify for a license by establishing that the person held such a license during the last year in which the person was eligible.

(4) Surcharges as provided for in this section shall be collected and deposited into the sea urchin dive fishery account hereby created in the custody of the state treasurer. Only the director or the director's designee may authorize expenditures from the account. The sea urchin dive fishery account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. Expenditures from the account shall only be used to retire sea urchin licenses until the number of licenses is reduced to twenty-five, and thereafter shall only be used for sea urchin management and enforcement.

(a) A surcharge of one hundred dollars shall be charged with each sea urchin dive fishery license renewal for licenses issued in 2000 through 2010.

(b) For licenses issued for the year 2000 and thereafter, a surcharge shall be charged on the sea urchin dive fishery license for designating an alternate operator. The surcharge shall be as follows: Five hundred dollars for the first year or each of the first two consecutive years after 1999 that any alternate operator is designated and two thousand five hundred dollars each year thereafter that any alternate operator is designated.

(5) Sea urchin dive fishery licenses are transferable. After December 31, 1999, there is a surcharge to transfer a sea urchin dive fishery license. The surcharge is five hundred dollars for the first transfer of a license valid for calendar year 2000, and two thousand five hundred dollars for any subsequent transfer, whether occurring in the year 2000 or thereafter. Notwithstanding this subsection, a one-time transfer

exempt from surcharge applies for a transfer from the natural person licensed on January 1, 2000, to that person's spouse or child.

(6) If fewer than twenty-five natural persons are eligible for sea urchin dive fishery licenses, the director may accept applications for new licenses. The additional licenses may not cause more than twenty-five natural persons to be eligible for a sea urchin dive fishery license. New licenses issued under this section shall be distributed according to rules of the department that recover the value of such licensed privilege. [2005 c 110 § 1; 2001 c 253 § 58; 1999 c 126 § 1; 1998 c 190 § 104; 1993 c 340 § 41; 1990 c 62 § 2; 1989 c 37 § 2. Formerly RCW 75.30.210.]

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**Legislative finding—1990 c 62; 1989 c 37:** "The legislature finds that a significant commercial sea urchin fishery is developing within state waters. The potential for depletion of the sea urchin stocks in these waters is increasing, particularly as the sea urchin fishery becomes an attractive alternative to fishermen facing increasing restrictions on other types of commercial fishery activities.

The legislature finds that the number of vessels engaged in commercial sea urchin fishing has steadily increased. This factor, combined with advances in marketing techniques, has resulted in strong pressures on the supply of sea urchins. The legislature desires to maintain the livelihood of those vessel owners who have historically and continuously participated in the sea urchin fishery. The legislature desires that the director have the authority to consider extenuating circumstances concerning failure to meet landing requirements for both initial endorsement issuance and endorsement renewal.

The legislature finds that increased regulation of commercial sea urchin fishing is necessary to preserve and efficiently manage the commercial sea urchin fishery in the waters of the state. The legislature is aware that the continuing license provisions of the administrative procedure act, RCW 34.05.422(3) provide procedural safeguards, but finds that the pressure on the sea urchin resource endangers both the resource and the economic well-being of the sea urchin fishery, and desires, therefore, to exempt sea urchin endorsements from the continuing license provision." [1990 c 62 § 1; 1989 c 37 § 1.]

**77.70.190 Sea cucumber dive fishery license—Limitation on issuance—Surcharge—Sea cucumber dive fishery account—Transfer of license—Issuance of new licenses.** (1) A sea cucumber dive fishery license is required to take sea cucumbers for commercial purposes. A sea cucumber dive fishery license authorizes the use of only one diver in the water at any time during sea cucumber harvest operations. If the same vessel has been designated on two sea cucumber dive fishery licenses, two divers may be in the water. A natural person may not hold more than two sea cucumber dive fishery licenses.

(2) Except as provided in subsection (6) of this section, the director shall issue no new sea cucumber dive fishery licenses. For licenses issued for the year 2000 and thereafter, the director shall renew existing licenses only to a natural person who held the license at the end of the previous year. If a sea cucumber dive fishery license is not held by a natural person as of December 31, 1999, it is not renewable. However, if the license is not held because of revocation or suspension of licensing privileges, the director shall renew the license in the name of a natural person at the end of the revocation or suspension if the license holder applies for renewal of the license before the end of the year in which the revocation or suspension ends.

(3) Where a licensee failed to obtain the license during either of the previous two years because of a license suspension by the director or the court, the licensee may qualify for a license by establishing that the person held such a license during the last year in which the person was eligible.

(4) Surcharges as provided for in this section shall be collected and deposited into the sea cucumber dive fishery account hereby created in the custody of the state treasurer. Only the director or the director's designee may authorize expenditures from the account. The sea cucumber dive fishery account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. Expenditures from the account shall only be used to retire sea cucumber licenses until the number of licenses is reduced to twenty-five, and thereafter shall only be used for sea cucumber management and enforcement.

(a) A surcharge of one hundred dollars shall be charged with each sea cucumber dive fishery license renewal for licenses issued in 2000 through 2010.

(b) For licenses issued for the year 2000 and thereafter, a surcharge shall be charged on the sea cucumber dive fishery license for designating an alternate operator. The surcharge shall be as follows: Five hundred dollars for the first year or each of the first two consecutive years after 1999 that any alternate operator is designated and two thousand five hundred dollars each year thereafter that any alternate operator is designated.

(5) Sea cucumber dive fishery licenses are transferable. After December 31, 1999, there is a surcharge to transfer a sea cucumber dive fishery license. The surcharge is five hundred dollars for the first transfer of a license valid for calendar year 2000 and two thousand five hundred dollars for any subsequent transfer whether occurring in the year 2000 or thereafter. Notwithstanding this subsection, a one-time transfer exempt from surcharge applies for a transfer from the natural person licensed on January 1, 2000, to that person's spouse or child.

(6) If fewer than twenty-five persons are eligible for sea cucumber dive fishery licenses, the director may accept applications for new licenses. The additional licenses may not cause more than twenty-five natural persons to be eligible for a sea cucumber dive fishery license. New licenses issued under this section shall be distributed according to rules of the department that recover the value of such licensed privilege. [2005 c 110 § 2; 2001 c 253 § 59; 1999 c 126 § 2; 1998 c 190 § 105; 1993 c 340 § 44; 1990 c 61 § 2. Formerly RCW 75.30.250.]

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**Legislative findings—1990 c 61:** "The legislature finds that a significant commercial sea cucumber fishery is developing within state waters. The potential for depletion of the sea cucumber stocks in these waters is increasing, particularly as the sea cucumber fishery becomes an attractive alternative to commercial fishers who face increasing restrictions on other types of commercial fishery activities.

The legislature finds that the number of commercial fishers engaged in commercially harvesting sea cucumbers has rapidly increased. This factor, combined with increases in market demand, has resulted in strong pressures on the supply of sea cucumbers.

The legislature finds that increased regulation of commercial sea cucumber fishing is necessary to preserve and efficiently manage the commercial sea cucumber fishery in the waters of the state.

The legislature finds that it is desirable in the long term to reduce the number of vessels participating in the commercial sea cucumber fishery to

fifty vessels to preserve the sea cucumber resource, efficiently manage the commercial sea cucumber fishery in the waters of the state, and reduce conflict with upland owners.

The legislature finds that it is important to preserve the livelihood of those who have historically participated in the commercial sea cucumber fishery that began about 1970 and that the 1988 and 1989 seasons should be used to document historical participation." [1990 c 61 § 1.]

**77.70.430 Puget Sound crab pot buoy tag program—Fee—Coastal crab pot buoy tag program—Fee—Review.**

(1) In order to administer a Puget Sound crab pot buoy tag program, the department may charge a fee to holders of a Dungeness crab—Puget Sound fishery license to reimburse the department for the production of Puget Sound crab pot buoy tags and the administration of a Puget Sound crab pot buoy tag program.

(2) In order to administer a Washington coastal Dungeness crab pot buoy tag program, the department may charge a fee to holders of a Dungeness crab—coastal or a Dungeness crab coastal class B fishery license to reimburse the department for the production of Washington coastal crab pot buoy tags and the administration of a Washington coastal crab pot buoy tag program.

(3) The department shall annually review the costs of crab pot buoy tag production under this section with the goal of minimizing the per tag production costs. Any savings in production costs shall be passed on to the fishers required to purchase crab pot buoy tags under this section in the form of a lower tag fee. [2005 c 395 § 1; 2001 c 234 § 1.]

**Effective date—2001 c 234:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 2001]." [2001 c 234 § 3.]

**77.70.440 Puget Sound crab pot buoy tag account.**

The Puget Sound crab pot buoy tag account is created in the custody of the state treasurer. All revenues from fees from RCW 77.70.430(1) must be deposited into the account. Expenditures from this account may be used for the production of crab pot buoy tags and the administration of a Puget Sound crab pot buoy tag program. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW but no appropriation is required for expenditures. [2005 c 395 § 2; 2001 c 234 § 2.]

**Effective date—2001 c 234:** See note following RCW 77.70.430.

**77.70.442 Washington coastal crab pot buoy tag account.**

The Washington coastal crab pot buoy tag account is created in the custody of the state treasurer. All revenues from fees from RCW 77.70.430(2) must be deposited into the account. Expenditures from this account may be used for the production of crab pot buoy tags and the administration of a Washington coastal crab pot buoy tag program. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW but no appropriation is required for expenditures. [2005 c 395 § 3.]

[2005 RCW Supp—page 924]

**Chapter 77.85 RCW  
SALMON RECOVERY**

Sections

77.85.005	Findings—Intent.
77.85.010	Definitions.
77.85.020	Report to the legislature.
77.85.030	Governor's salmon recovery office—Creation—Purpose. (Expires June 30, 2007.)
77.85.040	Independent science panel—Selection—Terms—Purpose.
77.85.050	Habitat project lists.
77.85.070	Repealed.
77.85.090	Southwest Washington salmon recovery region—Created— Recognition as a regional recovery organization.
77.85.130	Allocation of funds—Procedures and criteria.
77.85.150	Statewide salmon recovery strategy—Prospective application.
77.85.200	Salmon and steelhead recovery program—Management board—Duties—Termination of program.
77.85.210	Repealed.

**77.85.005 Findings—Intent.** The legislature finds that repeated attempts to improve salmonid fish runs throughout the state of Washington have failed to avert listings of salmon and steelhead runs as threatened or endangered under the federal endangered species act (16 U.S.C. Sec. 1531 et seq.). These listings threaten the sport, commercial, and tribal fishing industries as well as the economic well-being and vitality of vast areas of the state. It is the intent of the legislature to begin activities required for the recovery of salmon stocks as soon as possible, although the legislature understands that successful recovery efforts may not be realized for many years because of the life cycle of salmon and the complex array of natural and human-caused problems they face.

The legislature finds that it is in the interest of the citizens of the state of Washington for the state to retain primary responsibility for managing the natural resources of the state, rather than abdicate those responsibilities to the federal government, and that the state may best accomplish this objective by integrating local and regional recovery activities into a statewide strategy that can make the most effective use of provisions of federal laws allowing for a state lead in salmon recovery, delivered through implementation activities consistent with regional and watershed recovery plans. The legislature also finds that a statewide salmon recovery strategy must be developed and implemented through an active public involvement process in order to ensure public participation in, and support for, salmon recovery. The legislature also finds that there is a substantial link between the provisions of the federal endangered species act and the federal clean water act (33 U.S.C. Sec. 1251 et seq.). The legislature further finds that habitat restoration is a vital component of salmon recovery efforts. Therefore, it is the intent of the legislature to specifically address salmon habitat restoration in a coordinated manner and to develop a structure that allows for the coordinated delivery of federal, state, and local assistance to communities for habitat projects that will assist in the recovery and enhancement of salmon stocks. A strong watershed-based locally implemented plan is essential for local, regional, and statewide salmon recovery.

The legislature also finds that credible scientific review and oversight is essential for any salmon recovery effort to be successful.

The legislature further finds that it is important to monitor the overall health of the salmon resource to determine if recovery efforts are providing expected returns. It is impor-



tant to monitor salmon habitat projects and salmon recovery activities to determine their effectiveness in order to secure federal acceptance of the state's approach to salmon recovery. Adaptive management cannot exist without monitoring. For these reasons, the legislature believes that a coordinated and integrated monitoring system should be developed and implemented.

The legislature therefore finds that a coordinated framework for responding to the salmon crisis is needed immediately. To that end, the salmon recovery office should be created within the governor's office to provide overall coordination of the state's response; an independent science panel is needed to provide scientific review and oversight; a coordinated state funding process should be established through a salmon recovery funding board; the appropriate local or tribal government should provide local leadership in identifying and sequencing habitat projects to be funded by state agencies; habitat projects should be implemented without delay; and a strong locally based effort to restore salmon habitat should be established by providing a framework to allow citizen volunteers to work effectively. [2005 c 309 § 1; 1999 sp.s. c 13 § 1; 1998 c 246 § 1. Formerly RCW 75.46.005.]

**Severability—1999 sp.s. c 13:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 sp.s. c 13 § 24.]

**Effective date—1999 sp.s. c 13:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1999." [1999 sp.s. c 13 § 25.]

**77.85.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adaptive management" means reliance on scientific methods to test the results of actions taken so that the management and related policy can be changed promptly and appropriately.

(2) "Critical pathways methodology" means a project scheduling and management process for examining interactions between habitat projects and salmonid species, prioritizing habitat projects, and assuring positive benefits from habitat projects.

(3) "Habitat project list" is the list of projects resulting from the critical pathways methodology under RCW 77.85.060(2). Each project on the list must have a written agreement from the landowner on whose land the project will be implemented. Projects include habitat restoration projects, habitat protection projects, habitat projects that improve water quality, habitat projects that protect water quality, habitat-related mitigation projects, and habitat project maintenance and monitoring activities.

(4) "Habitat work schedule" means those projects from the habitat project list that will be implemented during the current funding cycle. The schedule shall also include a list of the entities and individuals implementing projects, the start date, duration, estimated date of completion, estimated cost, and funding sources for the projects.

(5) "Limiting factors" means conditions that limit the ability of habitat to fully sustain populations of salmon. These factors are primarily fish passage barriers and

degraded estuarine areas, riparian corridors, stream channels, and wetlands.

(6) "Project sponsor" is a county, city, special district, tribal government, state agency, a combination of such governments through interlocal or interagency agreements, a nonprofit organization, regional fisheries enhancement group, or one or more private citizens. A project sponsored by a state agency may be funded by the board only if it is included on the habitat project list submitted by the lead entity for that area and the state agency has a local partner that would otherwise qualify as a project sponsor.

(7) "Regional recovery organization" or "regional salmon recovery organization" means an entity formed under RCW 77.85.090 for the purpose of recovering salmon, which is recognized in statute or by the salmon recovery office.

(8) "Salmon" includes all species of the family Salmonidae which are capable of self-sustaining, natural production.

(9) "Salmon recovery plan" means a state or regional plan developed in response to a proposed or actual listing under the federal endangered species act that addresses limiting factors including, but not limited to harvest, hatchery, hydropower, habitat, and other factors of decline.

(10) "Salmon recovery region" means geographic areas of the state identified or formed under RCW 77.85.090 that encompass groups of watersheds in the state with common stocks of salmon identified for recovery activities, and that generally are consistent with the geographic areas within the state identified by the national oceanic and atmospheric administration or the United States fish and wildlife service for activities under the federal endangered species act.

(11) "Salmon recovery strategy" means the strategy adopted under RCW 77.85.150 and includes the compilation of all subbasin and regional salmon recovery plans developed in response to a proposed or actual listing under the federal endangered species act with state hatchery, harvest, and hydropower plans compiled in accordance with RCW 77.85.150.

(12) "Tribe" or "tribes" means federally recognized Indian tribes.

(13) "WRIA" means a water resource inventory area established in chapter 173-500 WAC as it existed on January 1, 1997.

(14) "Owner" means the person holding title to the land or the person under contract with the owner to lease or manage the legal owner's property. [2005 c 309 § 2; 2002 c 210 § 1; 2000 c 107 § 92; 1998 c 246 § 2. Formerly RCW 75.46.010.]

**77.85.020 Report to the legislature.** (1) By December 1, 2006, the governor shall submit a report to the legislature regarding the implementation of the state's salmon recovery strategy. The report may include the following:

(a) A description of the amount of in-kind and financial contributions, including volunteer, private, and state, federal, tribal as available, and local government money directly spent on salmon recovery in response to actual, proposed, or expected endangered species act listings;

(b) A summary of habitat projects including but not limited to:

- (i) A summary of accomplishments in removing barriers to salmon passage and an identification of existing barriers;
  - (ii) A summary of salmon restoration efforts undertaken in the past two years;
  - (iii) A summary of the role which private volunteer initiatives contribute in salmon habitat restoration efforts; and
  - (iv) A summary of efforts taken to protect salmon habitat;
- (c) A summary of collaborative efforts undertaken with adjoining states or Canada;
- (d) A summary of harvest and hatchery management activities affecting salmon recovery;
- (e) A summary of information regarding impediments to successful salmon recovery efforts;
- (f) A summary of the number and types of violations of existing laws pertaining to: (i) Water quality; and (ii) salmon. The summary shall include information about the types of sanctions imposed for these violations;
- (g) Information on the estimated carrying capacity of new habitat created pursuant to chapter 246, Laws of 1998; and
- (h) Recommendations to the legislature that would further the success of salmon recovery. The recommendations may include:
- (i) The need to expand or improve nonregulatory programs and activities;
  - (ii) The need to expand or improve state and local laws and regulations; and
  - (iii) Recommendations for state funding assistance to recovery activities and projects.
- (2) The report shall summarize the monitoring data coordinated by the monitoring forum. The summary must include but is not limited to data and analysis related to:
- (a) Measures of progress in fish recovery;
  - (b) Measures of factors limiting recovery as well as trends in such factors; and
  - (c) The status of implementation of projects and activities. [2005 c 309 § 3; 1998 c 246 § 4. Formerly RCW 75.46.030.]

**77.85.030 Governor's salmon recovery office—Creation—Purpose.** (*Expires June 30, 2007.*) (1) The salmon recovery office is created within the office of the governor to coordinate state strategy to allow for salmon recovery to healthy sustainable population levels with productive commercial and recreational fisheries. The primary purpose of the office is to coordinate and assist in the development of regional salmon recovery plans as an integral part of a statewide strategy developed consistent with the guiding principles and procedures under RCW 77.85.150. The governor's salmon recovery office shall gather regional recovery plans from regional recovery organizations and submit the plans to the federal fish services for adoption as federal recovery plans. The governor's salmon recovery office may also:

- (a) Assist state agencies, local governments, landowners, and other interested parties in obtaining federal assurances that plans, programs, or activities are consistent with fish recovery under the federal endangered species act;
- (b) Act as liaison to local governments, the state congressional delegation, the United States congress, federally rec-

ognized tribes, and the federal executive branch agencies for issues related to the state's salmon recovery plans; and

(c) Provide periodic reports pursuant to RCW 77.85.020.

(2) This section expires June 30, 2007. [2005 c 309 § 4; 2000 c 107 § 93; 1999 sp.s. c 13 § 8; 1998 c 246 § 5. Formerly RCW 75.46.040.]

**Severability—Effective date—1999 sp.s. c 13:** See notes following RCW 77.85.005.

**77.85.040 Independent science panel—Selection—Terms—Purpose.** (1) The governor shall request the national academy of sciences, the American fisheries society, or a comparable institution to screen candidates to serve as members on the independent science panel. The institution that conducts the screening of the candidates shall submit a list of the nine most qualified candidates to the governor, the speaker of the house of representatives, and the majority leader of the senate. The candidates shall reflect expertise in habitat requirements of salmon, protection and restoration of salmon populations, artificial propagation of salmon, hydrology, or geomorphology.

(2) The speaker of the house of representatives and the majority leader in the senate may each remove one name from the nomination list. The governor shall consult with tribal representatives and the governor shall appoint five scientists from the remaining names on the nomination list.

(3) The members of the independent science panel shall serve four-year terms. Vacant positions on the panel shall be filled in the same manner as the original appointments. Members shall serve no more than two full terms. The independent science panel members shall elect the chair of the panel among themselves every two years. Based upon available funding, the governor's salmon recovery office may contract for services with members of the independent science panel for compensation under chapter 39.29 RCW.

(4) The independent science panel shall be governed by generally accepted guidelines and practices governing the activities of independent science boards such as the national academy of sciences. The purpose of the independent science panel is to help ensure that sound science is used in salmon recovery efforts. The governor's salmon recovery office may request review of regional salmon recovery plans by the science review panel. The science panel does not have the authority to review individual projects or habitat project lists developed under RCW 77.85.050 or 77.85.060 or to make policy decisions. The panel shall periodically submit its findings and recommendations under this subsection to the legislature and the governor. [2005 c 309 § 5; 2000 c 107 § 94; 1999 sp.s. c 13 § 10; 1998 c 246 § 6. Formerly RCW 75.46.050.]

**Severability—Effective date—1999 sp.s. c 13:** See notes following RCW 77.85.005.

**77.85.050 Habitat project lists.** (1)(a) Counties, cities, and tribal governments must jointly designate, by resolution or by letters of support, the area for which a habitat project list is to be developed and the lead entity that is to be responsible for submitting the habitat project list. No project included on a habitat project list shall be considered mandatory in nature and no private landowner may be forced or coerced into participation in any respect. The lead entity may

be a county, city, conservation district, special district, tribal government, regional recovery organization, or other entity.

(b) The lead entity shall establish a committee that consists of representative interests of counties, cities, conservation districts, tribes, environmental groups, business interests, landowners, citizens, volunteer groups, regional fish enhancement groups, and other habitat interests. The purpose of the committee is to provide a citizen-based evaluation of the projects proposed to promote salmon habitat.

(c) The committee shall compile a list of habitat projects, establish priorities for individual projects, define the sequence for project implementation, and submit these activities as the habitat project list. The committee shall also identify potential federal, state, local, and private funding sources.

(2) The area covered by the habitat project list must be based, at a minimum, on a WRIA, combination of WRIs, or any other area as agreed to by the counties, cities, and tribes in resolutions or in letters of support meeting the requirements of this subsection. Preference will be given to projects in an area that contain a salmon species that is listed or proposed for listing under the federal endangered species act.

(3) The lead entity shall submit the habitat project list to the [salmon recovery funding] board in accordance with procedures adopted by the board. [2005 c 309 § 6; 1999 sp.s. c 13 § 11; 1998 c 246 § 7. Formerly RCW 75.46.060.]

**Severability—Effective date—1999 sp.s. c 13:** See notes following RCW 77.85.005.

**77.85.070 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**77.85.090 Southwest Washington salmon recovery region—Created—Recognition as a regional recovery organization.** (1) The southwest Washington salmon recovery region, whose boundaries are provided in chapter 60, Laws of 1998, is created.

(2) Lead entities within a salmon recovery region that agree to form a regional salmon recovery organization may be recognized by the salmon recovery office as a regional recovery organization. The regional recovery organization may plan, coordinate, and monitor the implementation of a regional recovery plan in accordance with RCW 77.85.150. Regional recovery organizations existing as of July 24, 2005, that have developed draft recovery plans approved by the governor's salmon recovery office by July 1, 2005, may continue to plan, coordinate, and monitor the implementation of regional recovery plans. [2005 c 309 § 7; 2000 c 107 § 99; 1998 c 246 § 12. Formerly RCW 75.46.110.]

**77.85.130 Allocation of funds—Procedures and criteria.** (1) The salmon recovery funding board shall develop procedures and criteria for allocation of funds for salmon habitat projects and salmon recovery activities on a statewide basis to address the highest priorities for salmon habitat protection and restoration. To the extent practicable the board shall adopt an annual allocation of funding. The allocation should address both protection and restoration of habitat, and should recognize the varying needs in each area of the state on an equitable basis. The board has the discretion to par-

tially fund, or to fund in phases, salmon habitat projects. The board may annually establish a maximum amount of funding available for any individual project, subject to available funding. No projects required solely as a mitigation or a condition of permitting are eligible for funding.

(2)(a) In evaluating, ranking, and awarding funds for projects and activities the board shall give preference to projects that:

(i) Are based upon the limiting factors analysis identified under RCW 77.85.060;

(ii) Provide a greater benefit to salmon recovery based upon the stock status information contained in the department of fish and wildlife salmonid stock inventory (SASSI), the salmon and steelhead habitat inventory and assessment project (SSHAP), and any comparable science-based assessment when available;

(iii) Will benefit listed species and other fish species;

(iv) Will preserve high quality salmonid habitat; and

(v) Are included in a regional or watershed-based salmon recovery plan that accords the project, action, or area a high priority for funding.

(b) In evaluating, ranking, and awarding funds for projects and activities the board shall also give consideration to projects that:

(i) Are the most cost-effective;

(ii) Have the greatest matched or in-kind funding;

(iii) Will be implemented by a sponsor with a successful record of project implementation; and

(iv) Involve members of the veterans conservation corps established in RCW 43.60A.150; and

(v) Are part of a regionwide list developed by lead entities.

(3) The board may reject, but not add, projects from a habitat project list submitted by a lead entity for funding.

(4) The board shall establish criteria for determining when block grants may be made to a lead entity. The board may provide block grants to the lead entity to implement habitat project lists developed under RCW 77.85.050, subject to available funding. The board shall determine an equitable minimum amount of project funds for each recovery region, and shall distribute the remainder of funds on a competitive basis. The board may also provide block grants to the lead entity or regional recovery organization to assist in carrying out functions described under this chapter. Block grants must be expended consistent with the priorities established for the board in subsection (2) of this section. Lead entities or regional recovery organizations receiving block grants under this subsection shall provide an annual report to the board summarizing how funds were expended for activities consistent with this chapter, including the types of projects funded, project outcomes, monitoring results, and administrative costs.

(5) The board may waive or modify portions of the allocation procedures and standards adopted under this section in the award of grants or loans to conform to legislative appropriations directing an alternative award procedure or when the funds to be awarded are from federal or other sources requiring other allocation procedures or standards as a condition of the board's receipt of the funds. The board shall develop an integrated process to manage the allocation of funding from federal and state sources to minimize delays in

the award of funding while recognizing the differences in state and legislative appropriation timing.

(6) The board may award a grant or loan for a salmon recovery project on private or public land when the landowner has a legal obligation under local, state, or federal law to perform the project, when expedited action provides a clear benefit to salmon recovery, and there will be harm to salmon recovery if the project is delayed. For purposes of this subsection, a legal obligation does not include a project required solely as a mitigation or a condition of permitting.

(7) Property acquired or improved by a project sponsor may be conveyed to a federal agency if: (a) The agency agrees to comply with all terms of the grant or loan to which the project sponsor was obligated; or (b) the board approves: (i) Changes in the terms of the grant or loan, and the revision or removal of binding deed of right instruments; and (ii) a memorandum of understanding or similar document ensuring that the facility or property will retain, to the extent feasible, adequate habitat protections; and (c) the appropriate legislative authority of the county or city with jurisdiction over the project area approves the transfer and provides notification to the board. [2005 c 309 § 8; 2005 c 271 § 1; 2005 c 257 § 3. Prior: 2000 c 107 § 102; 2000 c 15 § 1; 1999 sp.s. c 13 § 5. Formerly RCW 75.46.170.]

**Reviser's note:** This section was amended by 2005 c 257 § 3, 2005 c 271 § 1, and by 2005 c 309 § 8, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Purpose—2005 c 257:** See note following RCW 43.60A.150.

**Severability—Effective date—1999 sp.s. c 13:** See notes following RCW 77.85.005.

**77.85.150 Statewide salmon recovery strategy—Prospective application.** (1) The governor, with the assistance of the salmon recovery office, shall maintain and revise a statewide salmon recovery strategy.

(2) The governor and the salmon recovery office shall be guided by the following considerations in maintaining and revising the strategy:

(a) The strategy should identify statewide initiatives and responsibilities with regional recovery plans and local watershed initiatives as the principal means for implementing the strategy;

(b) The strategy should emphasize collaborative, incentive-based approaches;

(c) The strategy should address all factors limiting the recovery of Washington's listed salmon stocks, including habitat and water quality degradation, harvest and hatchery management, inadequate streamflows, and other barriers to fish passage. Where other limiting factors are beyond the state's jurisdictional authorities to respond to, such as some natural predators and high seas fishing, the strategy shall include the state's requests for federal action to effectively address these factors;

(d) The strategy should identify immediate actions necessary to prevent extinction of a listed salmon stock, establish performance measures to determine if restoration efforts are working, recommend effective monitoring and data management, and recommend to the legislature clear and certain

measures to be implemented if performance goals are not met;

(e) The strategy shall rely on the best scientific information available and provide for incorporation of new information as it is obtained;

(f) The strategy should seek a fair allocation of the burdens and costs upon economic and social sectors of the state whose activities may contribute to limiting the recovery of salmon; and

(g) The strategy should seek clear measures and procedures from the appropriate federal agencies for removing Washington's salmon stocks from listing under the federal act.

(3) Beginning on September 1, 2000, the strategy shall be updated through an active public involvement process, including early and meaningful opportunity for public comment. In obtaining public comment, the salmon recovery office shall hold public meetings throughout the state and shall encourage regional and local recovery planning efforts to similarly ensure an active public involvement process.

(4) This section shall apply prospectively only and not retroactively. Nothing in this section shall be construed to invalidate actions taken in recovery planning at the local, regional, or state level prior to July 1, 1999. [2005 c 309 § 9; 1999 sp.s. c 13 § 9. Formerly RCW 75.46.190.]

**Severability—Effective date—1999 sp.s. c 13:** See notes following RCW 77.85.005.

**77.85.200 Salmon and steelhead recovery program—Management board—Duties—Termination of program.**

(1) A program for salmon and steelhead recovery is established in Clark, Cowlitz, Lewis, Skamania, and Wahkiakum counties within the habitat areas classified as the lower Columbia evolutionarily significant units by the federal national marine fisheries service. The management board created under subsection (2) of this section is responsible for developing and overseeing the implementation of the habitat portion of the salmon and steelhead recovery plan and is empowered to receive and disburse funds for the salmon and steelhead recovery initiatives. The management board created pursuant to this section shall constitute the lead entity and the committee established under RCW 77.85.050 responsible for fulfilling the requirements and exercising powers under this chapter.

(2) A management board consisting of fifteen voting members is created within the lower Columbia evolutionarily significant units. The members shall consist of one county commissioner or designee from each of the five participating counties selected by each county legislative authority; one member representing the cities contained within the lower Columbia evolutionarily significant units as a voting member selected by the cities in the lower Columbia evolutionarily significant units; a representative of the Cowlitz Tribe appointed by the tribe; one state legislator elected from one of the legislative districts contained within the lower Columbia evolutionarily significant units selected by that group of state legislators representing the area; five representatives to include at least one member who represents private property interests appointed by the five county commissioners or designees; one hydro utility representative nominated by hydro utilities and appointed by the five county commissioners or

designees; and one representative nominated from the environmental community who resides in the lower Columbia evolutionarily significant units appointed by the five county commissioners or designees. The board shall appoint and consult a technical advisory committee, which shall include four representatives of state agencies one each appointed by the directors of the departments of ecology, fish and wildlife, and transportation, and the commissioner of public lands. The board may also appoint additional persons to the technical advisory committee as needed. The chair of the board shall be selected from among the members of the management board by the five county commissioners or designees and the legislator on the board. In making appointments under this subsection, the county commissioners shall consider recommendations of interested parties. Vacancies shall be filled in the same manner as the original appointments were selected. No action may be brought or maintained against any management board member, the management board, or any of its agents, officers, or employees for any noncontractual acts or omissions in carrying out the purposes of this section.

(3)(a) The management board shall participate in the development of a habitat recovery plan to implement its responsibilities under (b) of this subsection. The management board shall consider local watershed efforts and activities as well as habitat conservation plans in the development and implementation of the recovery plan. Any of the participating counties may continue its own efforts for restoring steelhead habitat. Nothing in this section limits the authority of units of local government to enter into interlocal agreements under chapter 39.34 RCW or any other provision of law.

(b) The management board is responsible for the development of a lower Columbia salmon and steelhead habitat recovery plan and for coordinating and monitoring the implementation of the plan. The management board will submit all future plans and amendments to plans to the governor's salmon recovery office for the incorporation of hatchery, harvest, and hydropower components of the statewide salmon recovery strategy for all submissions to the national marine fisheries service. In developing and implementing the habitat recovery plan, the management board will work with appropriate federal and state agencies, tribal governments, local governments, and the public to make sure hatchery, harvest, and hydropower components receive consideration in context with the habitat component. The management board may work in cooperation with the state and the national marine fisheries service to modify the plan, or to address habitat for other aquatic species that may be subsequently listed under the federal endangered species act. The management board may not exercise authority over land or water within the individual counties or otherwise preempt the authority of any units of local government.

(c) The management board shall prioritize as appropriate and approve projects and programs related to the recovery of lower Columbia river salmon and steelhead runs, including the funding of those projects and programs, and coordinate local government efforts as prescribed in the recovery plan. The management board shall establish criteria for funding projects and programs based upon their likely value in salmon and steelhead recovery. The management board may

consider local economic impact among the criteria, but jurisdictional boundaries and factors related to jurisdictional population may not be considered as part of the criteria.

(d) The management board shall assess the factors for decline along each tributary basin in the lower Columbia. The management board is encouraged to take a stream-by-stream approach in conducting the assessment which utilizes state and local expertise, including volunteer groups, interest groups, and affected units of local government.

(4) The management board has the authority to hire and fire staff, including an executive director, enter into contracts, accept grants and other moneys, disburse funds, make recommendations to cities and counties about potential code changes and the development of programs and incentives upon request, pay all necessary expenses, and may choose a fiduciary agent. The management board shall report on its progress on a biennial basis to the legislative bodies of the five participating counties and the state natural resource-related agencies. The management board shall prepare a final report at the conclusion of the program describing its efforts and successes in developing and implementing the lower Columbia salmon and steelhead recovery plan. The final report shall be transmitted to the appropriate committees of the legislature, the legislative bodies of the participating counties, and the state natural resource-related agencies.

(5) The program terminates on July 1, 2010.

(6) For purposes of this section, "evolutionarily significant unit" means the habitat area identified for an evolutionarily significant unit of an aquatic species listed or proposed for listing as a threatened or endangered species under the federal endangered species act (16 U.S.C. Sec. 1531 et seq.). [2005 c 308 § 1; 2001 c 135 § 1; 2000 c 107 § 121; 1998 c 60 § 2. Formerly RCW 75.56.050.]

**Effective date—2001 c 135:** "This act takes effect August 1, 2001." [2001 c 135 § 3.]

**Finding—Intent—1998 c 60:** "The legislature recognizes the need to address listings that are made under the federal endangered species act (16 U.S.C. Sec. 1531 et seq.) in a way that will make the most efficient use of existing efforts. The legislature finds that the principle of adaptive management requires that different models should be tried so that the lessons learned from these models can be put to use throughout the state. It is the intent of the legislature to create a program for southwestern Washington to address the recent steelhead listings and which takes full advantage of all state and local efforts at habitat restoration in that area to date." [2001 c 135 § 2; 1998 c 60 § 1.]

**Effective date—1998 c 60:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 19, 1998]." [1998 c 60 § 3.]

**77.85.210 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Title 79

### PUBLIC LANDS

#### Chapters

- 79.24** Capitol building lands.
- 79.64** Funds for managing and administering lands.
- 79.70** Natural area preserves.
- 79.71** Washington natural resources conservation areas.

- 79.90 Aquatic lands—In general.
- 79.91 Aquatic lands—Easements and rights of way.
- 79.92 Aquatic lands—Harbor areas.
- 79.93 Aquatic lands—Waterways and streets.
- 79.94 Aquatic lands—Tidelands and shorelands.
- 79.95 Aquatic lands—Beds of navigable waters.
- 79.96 Aquatic lands—Oysters, geoducks, shellfish, and other aquacultural uses.
- 79.97 Marine plastic debris.
- 79.105 Aquatic lands—General.
- 79.110 Aquatic lands—Easements and rights of way.
- 79.115 Aquatic lands—Harbor areas.
- 79.120 Aquatic lands—Waterways and streets.
- 79.125 Aquatic lands—Tidelands and shorelands.
- 79.130 Aquatic lands—Beds of navigable waters.
- 79.135 Aquatic lands—Oysters, geoducks, shellfish, other aquacultural uses, and marine aquatic plants.
- 79.140 Aquatic lands—Valuable materials.
- 79.145 Marine plastic debris.

### Chapter 79.24 RCW

#### CAPITOL BUILDING LANDS

##### Sections

- 79.24.087 Capitol grant revenue to capitol building construction account.
- STATE CAPITOL PUBLIC AND HISTORIC FACILITIES
- 79.24.700 Findings.
- 79.24.710 Properties identified as "state capitol public and historic facilities."
- 79.24.720 Department of general administration's responsibilities.
- 79.24.730 Funding/grants for stewardship of state capitol public and historic facilities.

**79.24.087 Capitol grant revenue to capitol building construction account.** All revenues received from leases and sales of lands, timber and other products on the surface or beneath the surface of the lands granted to the state of Washington by the United States pursuant to an act of Congress approved February 22, 1889, for capitol building purposes, shall be paid into the "capitol building construction account". Available revenues in this account shall first be pledged to state capitol public and historic facilities as defined under RCW 79.24.710. [2005 c 330 § 7; 1923 c 12 § 1; RRS § 7921-1. Formerly RCW 43.34.060.]

##### STATE CAPITOL PUBLIC AND HISTORIC FACILITIES

**79.24.700 Findings.** The legislature finds that the historic facilities of the Washington state capitol are the most important public facilities in the state. They are a source of beauty and pride, a resource for celebrating our heritage and democratic ideals, and an exceptional educational resource. The public and historic facilities of the state capitol campus should be managed and maintained to the highest standards of excellence, model the best of historic preservation practice, and maximize opportunities for public access and enjoyment. The purpose of chapter 330, Laws of 2005 is to provide authority and direction for the care and stewardship of the public and historic facilities of the state capitol, to facilitate public access, use, and enjoyment of these assets, and to carefully preserve them for the benefit of future generations. [2005 c 330 § 1.]

[2005 RCW Supp—page 930]

**79.24.710 Properties identified as "state capitol public and historic facilities."** For the purposes of RCW 79.24.720, 79.24.730, 43.01.090, 43.19.500, and 79.24.087, "state capitol public and historic facilities" includes:

(1) The east, west and north capitol campus grounds, Sylvester park, Heritage park, Marathon park, Centennial park, the Deschutes river basin commonly known as Capitol lake, the interpretive center, Deschutes parkway, and the landscape, memorials, artwork, fountains, streets, sidewalks, lighting, and infrastructure in each of these areas not including state-owned aquatic lands in these areas managed by the department of natural resources under \*RCW 79.90.450;

(2) The public spaces and the historic interior and exterior elements of the following buildings: The visitor center, the Governor's mansion, the legislative building, the John L. O'Brien building, the Cherberg building, the Newhouse building, the Pritchard building, the temple of justice, the insurance building, the Dolliver building, capitol court, and the old capitol buildings, including the historic state-owned furnishings and works of art commissioned for or original to these buildings; and

(3) Other facilities or elements of facilities as determined by the state capitol committee, in consultation with the department of general administration. [2005 c 330 § 2.]

\*Reviser's note: RCW 79.90.450 was recodified as RCW 79.105.010 pursuant to 2005 c 155 § 1003.

**79.24.720 Department of general administration's responsibilities.** The department of general administration is responsible for the stewardship, preservation, operation, and maintenance of the public and historic facilities of the state capitol, subject to the policy direction of the state capitol committee and the legislative buildings committee as created in chapter . . . (\*House Bill No. 1301), Laws of 2005, and the guidance of the capitol campus design advisory committee. In administering this responsibility, the department shall:

(1) Apply the United States secretary of the interior's standards for the treatment of historic properties;

(2) Seek to balance the functional requirements of state government operations with public access and the long-term preservation needs of the properties themselves; and

(3) Consult with the capitol furnishings preservation committee, the state historic preservation officer, the state arts commission, and the state facilities accessibility advisory committee in fulfilling the responsibilities provided for in this section. [2005 c 330 § 3.]

\*Reviser's note: House Bill No. 1301 failed to become law.

**79.24.730 Funding/grants for stewardship of state capitol public and historic facilities.** (1) To provide for responsible stewardship of the state capitol public and historic facilities, funding for:

(a) Maintenance and operational needs shall be authorized in the state's omnibus appropriations act and funded by the general administration services account as provided under RCW 43.19.500;

(b) Development and preservation needs shall be authorized in the state's capital budget. To the extent revenue is available, the capitol building construction account under RCW 79.24.087 shall fund capital budget needs. If capitol building construction account funds are not available, the

state building construction account funds may be authorized for this purpose.

(2) The department of general administration may seek grants, gifts, or donations to support the stewardship of state capitol public and historic facilities. The department may: (a) Purchase historic state capitol furnishings or artifacts; or (b) sell historic state capitol furnishings and artifacts that have been designated as state surplus by the capitol furnishings preservation committee under RCW 27.48.040(6). Funds generated from grants, gifts, donations, or sales for omnibus appropriations act needs shall be deposited into the general administration services account. Funds generated for capital budget needs shall be deposited into the capitol building construction account. [2005 c 330 § 4.]

### Chapter 79.64 RCW

#### FUNDS FOR MANAGING AND ADMINISTERING LANDS

##### Sections

79.64.040 Deductions from proceeds of all transactions authorized—Limitations.

**79.64.040 Deductions from proceeds of all transactions authorized—Limitations.** (1) The board shall determine the amount deemed necessary in order to achieve the purposes of this chapter and shall provide by rule for the deduction of this amount from the moneys received from all leases, sales, contracts, licenses, permits, easements, and rights of way issued by the department and affecting state lands and aquatic lands, provided that no deduction shall be made from the proceeds from agricultural college lands.

(2) Moneys received as deposits from successful bidders, advance payments, and security under RCW 79.15.100, 79.15.080, and 79.11.150 prior to December 1, 1981, which have not been subjected to deduction under this section are not subject to deduction under this section.

(3) Except as otherwise provided in subsection (5) of this section, the deductions authorized under this section shall not exceed twenty-five percent of the moneys received by the department in connection with any one transaction pertaining to state lands and aquatic lands other than second class tide and shore lands and the beds of navigable waters, and fifty percent of the moneys received by the department pertaining to second class tide and shore lands and the beds of navigable waters.

(4) In the event that the department sells logs using the contract harvesting process described in RCW 79.15.500 through 79.15.530, the moneys received subject to this section are the net proceeds from the contract harvesting sale.

(5) During the 2005-2007 fiscal biennium, the twenty-five percent limitation on deductions set in subsection (3) of this section may be increased to thirty percent by the board. If so increased, the department must provide a report by January 9, 2006, to the appropriate committees of the legislature on the use of the increased amount. [2005 c 518 § 945; 2004 c 199 § 227. Prior: 2003 c 334 § 522; 2003 c 313 § 8; 2001 c 250 § 16; 1999 c 279 § 2; 1981 2nd ex.s. c 4 § 3; 1971 ex.s. c 224 § 2; 1967 ex.s. c 63 § 2; 1961 c 178 § 4.]

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

**Part headings not law—2004 c 199:** See note following RCW 79.02.010.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Findings—Severability—2003 c 313:** See notes following RCW 79.15.500.

**Effective date—1999 c 279:** See note following RCW 79.64.030.

**Deductions authorized relating to common school lands—Temporary discontinued deductions for common school construction fund—1983 1st ex.s. c 17:** "(1) The deductions authorized in RCW 79.64.040 relating to common school lands may be increased by the board of natural resources to one hundred percent after temporary discontinued deductions result in a transfer to the common school construction fund in the amount of approximately fourteen million dollars or so much thereof as may be necessary to maintain a positive cash balance in the common school construction fund. The increased deductions shall continue until the additional amounts received from the increased rate equal the amounts of the deductions that were discontinued or transferred under subsection (2) of this section. Thereafter the deductions shall be as otherwise provided for in RCW 79.64.040.

(2) If the discontinued deductions will not result in a transfer of four million dollars or so much thereof as may be necessary to maintain a positive balance in the common school construction fund in the biennium ending June 30, 1983, the state treasurer shall transfer the difference from the resource management cost account to the common school construction fund." [1983 1st ex.s. c 17 § 3.]

**Severability—1981 2nd ex.s. c 4:** See note following RCW 43.30.325.

### Chapter 79.70 RCW

#### NATURAL AREA PRESERVES

##### Sections

79.70.130 Distribution of amount in lieu of real property taxes, weed control assessment. (*Effective July 1, 2007.*)

**79.70.130 Distribution of amount in lieu of real property taxes, weed control assessment. (*Effective July 1, 2007.*)** The state treasurer, on behalf of the department, must distribute to counties for all lands acquired for the purposes of this chapter an amount in lieu of real property taxes equal to the amount of tax that would be due if the land were taxable as open space land under chapter 84.34 RCW except taxes levied for any state purpose, plus an additional amount equal to the amount of weed control assessment that would be due if such lands were privately owned. The county assessor and county legislative authority shall assist in determining the appropriate calculation of the amount of tax that would be due. The county shall distribute the amount received under this section in lieu of real property taxes to all property taxing districts except the state in appropriate tax code areas the same way it would distribute local property taxes from private property. The county shall distribute the amount received under this section for weed control to the appropriate weed district. [2005 c 303 § 11.]

**Effective date—2005 c 303 §§ 1-14:** See note following RCW 79A.15.010.

### Chapter 79.71 RCW

#### WASHINGTON NATURAL RESOURCES CONSERVATION AREAS

##### Sections

79.71.130 Distribution of amount in lieu of real property taxes, weed control assessment. (*Effective July 1, 2007.*)

**79.71.130 Distribution of amount in lieu of real property taxes, weed control assessment.** (*Effective July 1, 2007.*) The state treasurer, on behalf of the department, must distribute to counties for all lands acquired for the purposes of this chapter an amount in lieu of real property taxes equal to the amount of tax that would be due if the land were taxable as open space land under chapter 84.34 RCW except taxes levied for any state purpose, plus an additional amount equal to the amount of weed control assessment that would be due if such lands were privately owned. The county assessor and county legislative authority shall assist in determining the appropriate calculation of the amount of tax that would be due. The county shall distribute the amount received under this section in lieu of real property taxes to all property taxing districts except the state in appropriate tax code areas the same way it would distribute local property taxes from private property. The county shall distribute the amount received under this section for weed control to the appropriate weed district. [2005 c 303 § 12.]

**Effective date—2005 c 303 §§ 1-14:** See note following RCW 79A.15.010.

### Chapter 79.90 RCW

#### AQUATIC LANDS—IN GENERAL

2005 c 155 recodified and/or repealed chapter 79.90 RCW in its entirety.

#### COMPARATIVE TABLE

Formerly	Currently		
79.90.010	Repealed	79.90.190	79.125.620, see also 79.140.030
79.90.015	Repealed	79.90.200	79.125.630, see also 79.140.040
79.90.020	Repealed	79.90.210	79.125.640, see also 79.140.050
79.90.025	Repealed	79.90.215	79.125.650, see also 79.140.060
79.90.030	Repealed	79.90.220	79.125.660, see also 79.140.070
79.90.035	Repealed	79.90.230	79.125.670
79.90.040	Repealed	79.90.240	79.125.680, see also 79.140.080
79.90.045	Repealed	79.90.245	79.105.150
79.90.050	Repealed	79.90.250	79.125.240
79.90.055	Repealed	79.90.260	79.125.250
79.90.060	Repealed	79.90.270	79.125.260
79.90.065	Repealed	79.90.280	79.125.270
79.90.070	Repealed	79.90.290	79.140.140
79.90.080	43.30.540	79.90.300	79.140.150
79.90.090	79.105.100	79.90.310	79.140.160
79.90.100	79.105.110	79.90.320	79.140.170
79.90.105	79.105.430	79.90.325	79.140.180
79.90.110	79.125.050, see also 79.140.130	79.90.330	79.140.190
79.90.120	79.105.120	79.90.340	79.140.200
79.90.130	79.140.100	79.90.350	79.125.280
79.90.150	79.140.110	79.90.360	79.125.310
79.90.160	79.140.120	79.90.370	79.105.140
79.90.170	79.125.600, see also 79.140.010	79.90.380	Repealed
79.90.180	79.125.610, see also 79.140.020	79.90.390	79.115.050
		79.90.400	79.105.160
		79.90.410	79.105.130
		79.90.450	79.105.010, see also 79.105.020
		79.90.455	79.105.030
		79.90.456	79.105.050
		79.90.457	79.105.400
		79.90.458	79.130.070
		79.90.460	79.105.210
		79.90.465	Repealed
		79.90.470	79.105.220, see also 79.105.230, 79.110.330
		79.90.475	79.105.420
		79.90.480	79.105.240
		79.90.485	79.105.250
		79.90.490	79.105.260
		79.90.495	79.135.100
		79.90.500	79.105.270, see also 79.105.280
		79.90.505	79.105.290
		79.90.510	79.105.300
		79.90.515	79.105.310
		79.90.520	79.105.320
		79.90.525	79.105.330
		79.90.530	79.105.340
		79.90.535	79.105.350
		79.90.540	79.105.360



79.90.545	79.105.040
79.90.550	79.105.500
79.90.555	79.105.510
79.90.560	79.105.520
79.90.565	79.105.600
79.90.570	79.135.010
79.90.575	79.110.240
79.90.580	79.105.410
79.90.900	79.105.900
79.90.901	79.105.901
79.90.902	79.105.902

**COMPARATIVE TABLE**

<b>Formerly</b>	<b>Currently</b>
79.92.010	79.115.010
79.92.020	79.115.020
79.92.030	79.115.030
79.92.035	79.115.040
79.92.060	79.115.100
79.92.070	79.115.110
79.92.080	79.115.120
79.92.090	79.115.130
79.92.100	79.115.140
79.92.110	79.115.150
79.92.900	79.115.900

**Chapter 79.91 RCW**

**AQUATIC LANDS—EASEMENTS AND RIGHTS OF WAY**

2005 c 155 recodified and/or repealed chapter 79.91 RCW in its entirety.

**COMPARATIVE TABLE**

<b>Formerly</b>	<b>Currently</b>
79.91.010	79.110.010
79.91.020	79.110.020
79.91.030	79.110.030
79.91.040	79.110.040
79.91.050	79.110.050
79.91.060	79.110.060
79.91.070	79.110.070
79.91.080	79.110.100
79.91.090	79.110.110
79.91.100	79.110.120
79.91.110	79.110.130
79.91.120	79.110.140
79.91.130	79.110.200
79.91.140	79.110.210
79.91.150	79.110.220
79.91.160	79.110.300
79.91.170	79.110.310
79.91.180	79.110.320
79.91.190	79.110.330
79.91.200	79.110.340
79.91.210	79.110.350
79.91.900	79.110.900

**Chapter 79.92 RCW**

**AQUATIC LANDS—HARBOR AREAS**

2005 c 155 recodified and/or repealed chapter 79.92 RCW in its entirety.

**Chapter 79.93 RCW**

**AQUATIC LANDS—WATERWAYS AND STREETS**

2005 c 155 recodified and/or repealed chapter 79.93 RCW in its entirety.

**COMPARATIVE TABLE**

<b>Formerly</b>	<b>Currently</b>
79.93.010	79.120.010
79.93.020	79.120.020
79.93.030	79.120.030
79.93.040	79.120.040
79.93.050	79.120.050
79.93.060	79.120.060
79.93.070	Repealed
79.93.900	79.120.900

**Chapter 79.94 RCW**

**AQUATIC LANDS—TIDELANDS AND SHORELANDS**

2005 c 155 recodified and/or repealed chapter 79.94 RCW in its entirety.

**COMPARATIVE TABLE**

<b>Formerly</b>	<b>Currently</b>
79.94.010	Repealed, see also 79.105.220
79.94.020	79.125.020
79.94.030	79.125.030
79.94.040	79.125.040
79.94.050	79.125.060
79.94.060	79.125.070
79.94.070	79.125.400
79.94.080	79.125.290
79.94.090	79.125.210
79.94.100	79.125.080

79.94.110	79.125.090
79.94.120	79.125.420
79.94.130	79.125.100
79.94.140	79.125.110
79.94.150	79.125.200
79.94.160	79.125.700
79.94.170	79.105.200, see also 79.125.200
79.94.175	79.125.710
79.94.181	79.125.720
79.94.185	79.125.730
79.94.210	79.125.450
79.94.220	79.125.500
79.94.230	79.125.510
79.94.240	79.125.520
79.94.250	79.125.530
79.94.260	79.125.460
79.94.270	79.125.230
79.94.280	79.125.410
79.94.290	79.125.220
79.94.300	79.125.430
79.94.310	79.125.440
79.94.320	79.125.300
79.94.330	79.125.010
79.94.390	79.125.740
79.94.400	79.125.750
79.94.410	79.125.760
79.94.420	79.125.770
79.94.430	79.125.780
79.94.440	79.125.790
79.94.450	79.125.800
79.94.900	79.125.900

**Chapter 79.95 RCW**

**AQUATIC LANDS—BEDS OF NAVIGABLE WATERS**

2005 c 155 recodified and/or repealed chapter 79.95 RCW in its entirety.

**COMPARATIVE TABLE**

<b>Formerly</b>	<b>Currently</b>
79.95.010	79.130.010
79.95.020	79.130.020
79.95.030	79.130.030
79.95.040	79.130.040
79.95.050	79.130.050
79.95.060	79.130.060
79.95.900	79.130.900

**Chapter 79.96 RCW**

**AQUATIC LANDS—OYSTERS, GEODUCKS, SHELLFISH, AND OTHER AQUACULTURAL USES**

2005 c 155 recodified and/or repealed chapter 79.96 RCW in its entirety.

**COMPARATIVE TABLE**

<b>Formerly</b>	<b>Currently</b>
79.96.010	79.135.110
79.96.020	79.135.120
79.96.030	79.135.130
79.96.040	79.135.140
79.96.050	79.135.150
79.96.060	79.135.160
79.96.070	79.135.170
79.96.080	79.135.210
79.96.085	79.135.220
79.96.090	79.135.300
79.96.100	79.135.310
79.96.110	79.135.320
79.96.120	79.135.020
79.96.130	79.135.030
79.96.140	79.135.200
79.96.200	79.135.400
79.96.210	79.135.410
79.96.220	79.135.420
79.96.230	79.135.430
79.96.901	79.135.900
79.96.902	79.135.901
79.96.903	79.135.902
79.96.904	79.135.903
79.96.905	79.135.904
79.96.906	79.135.230

**Chapter 79.97 RCW**

**MARINE PLASTIC DEBRIS**

2005 c 155 recodified and/or repealed chapter 79.97 RCW in its entirety.

**COMPARATIVE TABLE**

<b>Formerly</b>	<b>Currently</b>
79.97.010	79.145.010
79.97.020	79.145.020
79.97.030	79.145.030
79.97.040	79.145.040
79.97.050	79.145.050
79.97.060	79.145.060
79.97.900	79.145.900

**Chapter 79.105 RCW**  
**AQUATIC LANDS—GENERAL**

## Sections

79.105.001 Intent—2005 c 155.

## GENERAL PROVISIONS

- 79.105.010 Aquatic lands—Findings.  
79.105.020 Purpose—Articulation of management philosophy.  
79.105.030 Aquatic lands—Management guidelines.  
79.105.040 Application to existing property rights—Application of shoreline management act.  
79.105.050 Fostering use of aquatic environment—Limitation.  
79.105.060 Definitions.

## GENERAL USE, SALE, AND LEASE PROVISIONS

- 79.105.100 Sale and lease of state-owned aquatic lands—Blank forms of applications.  
79.105.110 Who may purchase or lease—Application—Fees.  
79.105.120 Survey to determine areas subject to sale or lease.  
79.105.130 Reconsideration of official acts.  
79.105.140 Assignment of contracts or leases.  
79.105.150 Deposit, use of proceeds from sale or lease of aquatic lands or valuable materials therefrom—Aquatic lands enhancement project grant requirements—Aquatic lands enhancement account.  
79.105.160 Aquatic lands—Court review of actions.

## LEASING AND RENTAL RATES

- 79.105.200 Use and occupancy fee in lieu of lease—Construction of section.  
79.105.210 Aquatic lands—Preservation and enhancement of water-dependent uses—Leasing authority.  
79.105.220 Lease of tidelands in front of public parks.  
79.105.230 Use for public parks or public recreation purposes.  
79.105.240 Determination of annual rent rates for lease of aquatic lands for water-dependent uses.  
79.105.250 Log storage rents.  
79.105.260 Rent for leases in effect October 1, 1984.  
79.105.270 Aquatic lands—Leases/rents for nonwater-dependent uses.  
79.105.280 Rents and fees for recovery of mineral or geothermal resources.  
79.105.290 Aquatic lands—Rents for multiple uses.  
79.105.300 Aquatic lands—Lease for water-dependent use—Rental for nonwater-dependent use.  
79.105.310 Aquatic lands—Rent for improvements.  
79.105.320 Aquatic lands—Administrative review of proposed rent.  
79.105.330 Aquatic lands—Security for leases for more than one year.  
79.105.340 Aquatic lands—Payment of rent.  
79.105.350 Aquatic lands—Interest rate.  
79.105.360 Adoption of rules.

## OTHER CONVEYANCES

- 79.105.400 Authority to exchange state-owned tidelands and shorelands—Rules—Limitation.  
79.105.410 Gifts of aquatic land—Procedures and criteria.  
79.105.420 Management of certain aquatic lands by port district—Agreement—Rent—Model management agreement.  
79.105.430 Private recreational docks—Mooring buoys.

## DREDGED MATERIAL DISPOSAL

- 79.105.500 Aquatic land dredged material disposal sites—Findings.  
79.105.510 Aquatic land dredged material disposal site account.  
79.105.520 Fees for use of aquatic land dredged material disposal sites authorized.

## OTHER MANAGEMENT PROVISIONS

- 79.105.600 Archaeological activities on state-owned aquatic lands—Agreements, leases, or other conveyances.  
79.105.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.  
79.105.901 Severability—1984 c 221.  
79.105.902 Effective date—1984 c 221.  
79.105.903 Severability—2005 c 155.  
79.105.904 Part/subchapter headings not law—2005 c 155.

**79.105.001 Intent—2005 c 155.** This act is intended to make technical amendments to certain codified statutes that deal with the department of natural resources. Any statutory

changes made by this act should be interpreted as technical in nature and not be interpreted to have any substantive policy implications. [2005 c 155 § 1001.]

## GENERAL PROVISIONS

**79.105.010 Aquatic lands—Findings.** The legislature finds that state-owned aquatic lands are a finite natural resource of great value and an irreplaceable public heritage. The legislature recognizes that the state owns these aquatic lands in fee and has delegated to the department the responsibility to manage these lands for the benefit of the public. The legislature finds that water-dependent industries and activities have played a major role in the history of the state and will continue to be important in the future. The legislature finds that revenues derived from leases of state-owned aquatic lands should be used to enhance opportunities for public recreation, shoreline access, environmental protection, and other public benefits associated with the aquatic lands of the state. The legislature further finds that aquatic lands are faced with conflicting use demands. [2005 c 155 § 139; 1984 c 221 § 1. Formerly RCW 79.90.450.]

**79.105.020 Purpose—Articulation of management philosophy.** The purpose of RCW 79.105.060, 79.105.230, 79.105.280, and 79.105.010 through 79.105.040 is to articulate a management philosophy to guide the exercise of the state's ownership interest and the exercise of the department's management authority, and to establish standards for determining equitable and predictable lease rates for users of state-owned aquatic lands. [2005 c 155 § 101. FORMERLY PART OF RCW 79.90.450.]

**79.105.030 Aquatic lands—Management guidelines.** The management of state-owned aquatic lands shall be in conformance with constitutional and statutory requirements. The manager of state-owned aquatic lands shall strive to provide a balance of public benefits for all citizens of the state. The public benefits provided by state-owned aquatic lands are varied and include:

- (1) Encouraging direct public use and access;
- (2) Fostering water-dependent uses;
- (3) Ensuring environmental protection;
- (4) Utilizing renewable resources.

Generating revenue in a manner consistent with subsections (1) through (4) of this section is a public benefit. [2005 c 155 § 140; 1984 c 221 § 2. Formerly RCW 79.90.455.]

**79.105.040 Application to existing property rights—Application of shoreline management act.** Nothing in \*this chapter or RCW 79.120.040 or 79.120.060 shall modify or affect any existing legal rights involving the boundaries of, title to, or vested property rights in aquatic lands or waterways. Nothing in \*this chapter shall modify, alter, or otherwise affect the applicability of chapter 90.58 RCW. [2005 c 155 § 157; 1984 c 221 § 20. Formerly RCW 79.90.545.]

**\*Reviser's note:** The reference to "this chapter" referred to chapter 79.90 RCW, which was recodified and/or repealed in its entirety by 2005 c 155. For disposition of chapter 79.90 RCW, see Supplementary Table of Disposition of Former RCW Sections, this volume.

**79.105.050 Fostering use of aquatic environment—Limitation.** The department shall foster the commercial and recreational use of the aquatic environment for production of food, fibre, income, and public enjoyment from state-owned aquatic lands and from associated waters, and to this end the department may develop and improve production and harvesting of seaweeds and sealife attached to or growing on aquatic land or contained in aquaculture containers, but nothing in this section alters the responsibility of other state agencies for their normal management of fish, shellfish, game, and water. [2005 c 155 § 141; 2003 c 334 § 541; 1971 ex.s. c 234 § 8. Formerly RCW 79.90.456, 79.68.080.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.105.060 Definitions.** The definitions in this section apply throughout chapters 79.105 through 79.145 RCW unless the context clearly requires otherwise.

(1) "Aquatic lands" means all tidelands, shorelands, harbor areas, and the beds of navigable waters.

(2) "Beds of navigable waters" means those lands lying waterward of and below the line of navigability on rivers and lakes not subject to tidal flow, or extreme low tide mark in navigable tidal waters, or the outer harbor line where harbor area has been created.

(3) "First-class shorelands" means the shores of a navigable lake or river belonging to the state, not subject to tidal flow, lying between the line of ordinary high water and the line of navigability, or inner harbor line where established and within or in front of the corporate limits of any city or within two miles of either side.

(4) "First-class tidelands" means the shores of navigable tidal waters belonging to the state, lying within or in front of the corporate limits of any city, or within one mile of either side and between the line of ordinary high tide and the inner harbor line; and within two miles of the corporate limits on either side and between the line of ordinary high tide and the line of extreme low tide.

(5) "Harbor area" means the area of navigable waters determined as provided in Article XV, section 1 of the state Constitution, which shall be forever reserved for landings, wharves, streets, and other conveniences of navigation and commerce.

(6) "Improvements" when referring to state-owned aquatic lands means anything considered a fixture in law placed within, upon, or attached to aquatic lands that has changed the value of those lands, or any changes in the previous condition of the fixtures that changes the value of the land.

(7) "Inflation rate" means for a given year the percentage rate of change in the previous calendar year's all commodity producer price index of the bureau of labor statistics of the United States department of commerce. If the index ceases to be published, the department shall designate by rule a comparable substitute index.

(8) "Inner harbor line" means a line located and established in navigable waters between the line of ordinary high tide or ordinary high water and the outer harbor line, constituting the inner boundary of the harbor area.

(9) "Log booming" means placing logs into and taking them out of the water, assembling and disassembling log rafts before or after their movement in water-borne commerce,

related handling and sorting activities taking place in the water, and the temporary holding of logs to be taken directly into a processing facility. "Log booming" does not include the temporary holding of logs to be taken directly into a vessel.

(10) "Log storage" means the water storage of logs in rafts or otherwise prepared for shipment in water-borne commerce, but does not include the temporary holding of logs to be taken directly into a vessel or processing facility.

(11) "Nonwater-dependent use" means a use that can operate in a location other than on the waterfront. Examples include, but are not limited to, hotels, condominiums, apartments, restaurants, retail stores, and warehouses not part of a marine terminal or transfer facility.

(12) "Outer harbor line" means a line located and established in navigable waters as provided in Article XV, section 1 of the state Constitution, beyond which the state shall never sell or lease any rights whatever to private persons.

(13) "Person" means any private individual, partnership, association, organization, cooperative, firm, corporation, the state or any agency or political subdivision thereof, any public or municipal corporation, or any unit of government, however designated.

(14) "Port district" means a port district created under Title 53 RCW.

(15) "Public utility lines" means pipes, conduits, and similar facilities for distribution of water, electricity, natural gas, telephone, other electronic communication, and sewers, including sewer outfall lines.

(16) "Real rate of return" means the average for the most recent ten calendar years of the average rate of return on conventional real property mortgages as reported by the federal home loan bank board or any successor agency, minus the average inflation rate for the most recent ten calendar years.

(17) "Second-class shorelands" means the shores of a navigable lake or river belonging to the state, not subject to tidal flow, lying between the line of ordinary high water and the line of navigability, and more than two miles from the corporate limits of any city.

(18) "Second-class tidelands" means the shores of navigable tidal waters belonging to the state, lying outside of and more than two miles from the corporate limits of any city, and between the line of ordinary high tide and the line of extreme low tide.

(19) "Shorelands," where not preceded by "first-class" or "second-class," means both first-class shorelands and second-class shorelands.

(20) "State-owned aquatic lands" means all tidelands, shorelands, harbor areas, the beds of navigable waters, and waterways owned by the state and administered by the department or managed under RCW 79.105.420 by a port district. "State-owned aquatic lands" does not include aquatic lands owned in fee by, or withdrawn for the use of, state agencies other than the department.

(21) "Terminal" means a point of interchange between land and water carriers, such as a pier, wharf, or group of such, equipped with facilities for care and handling of either cargo or passengers, or both.

(22) "Tidelands," where not preceded by "first-class" or "second-class," means both first-class tidelands and second-class tidelands.

(23) "Valuable materials" when referring to state-owned aquatic lands means any product or material within or upon lands, such as forest products, forage, stone, gravel, sand, peat, agricultural crops, and all other materials of value except mineral, coal, petroleum, and gas as provided for under chapter 79.14 RCW. However, RCW 79.140.190 and 79.140.200 also apply to materials provided for under chapter 79.14 RCW.

(24) "Water-dependent use" means a use that cannot logically exist in any location but on the water. Examples include, but are not limited to: Water-borne commerce; terminal and transfer facilities; ferry terminals; watercraft sales in conjunction with other water-dependent uses; watercraft construction, repair, and maintenance; moorage and launching facilities; aquaculture; log booming; and public fishing piers and parks.

(25) "Water-oriented use" means a use that historically has been dependent on a waterfront location, but with existing technology could be located away from the waterfront. Examples include, but are not limited to, wood products manufacturing, watercraft sales, fish processing, petroleum refining, sand and gravel processing, log storage, and house boats. For the purposes of determining rent under this chapter, water-oriented uses shall be classified as water-dependent uses if the activity either is conducted on state-owned aquatic lands leased on October 1, 1984, or was actually conducted on the state-owned aquatic lands for at least three years before October 1, 1984. If, after October 1, 1984, the activity is changed to a use other than a water-dependent use, the activity shall be classified as a nonwater-dependent use. If continuation of the existing use requires leasing additional state-owned aquatic lands and is permitted under the shoreline management act of 1971, chapter 90.58 RCW, the department may allow reasonable expansion of the water-oriented use. [2005 c 155 § 102.]

#### GENERAL USE, SALE, AND LEASE PROVISIONS

**79.105.100 Sale and lease of state-owned aquatic lands—Blank forms of applications.** The department shall prepare, and furnish to applicants, blank forms of applications for the purchase of state-owned tidelands or shorelands, otherwise permitted by RCW 79.125.200 to be sold, and the purchase of valuable material situated thereon, and the lease of state-owned tidelands, shorelands, and harbor areas, which forms shall contain such instructions as will inform and aid the applicants. [2005 c 155 § 104; 1982 1st ex.s. c 21 § 15. Formerly RCW 79.90.090.]

**79.105.110 Who may purchase or lease—Application—Fees.** Any person desiring to purchase any state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, or to purchase any valuable material situated thereon, or to lease any state-owned aquatic lands, shall file with the department an application, on the proper form which shall be accompanied by reasonable fees to be prescribed by the board in its rules, in an amount sufficient to defray the cost of performing or otherwise providing for the processing, review, or inspection of the applications or activities permitted pursuant to the applications for each category of services performed. These fees shall be credited

to the resource management cost account fund in the general fund. [2005 c 155 § 105; 1982 1st ex.s. c 21 § 16. Formerly RCW 79.90.100.]

**79.105.120 Survey to determine areas subject to sale or lease.** The department may cause any state-owned aquatic lands to be surveyed for the purpose of ascertaining and determining the area subject to sale or lease. [2005 c 155 § 108; 1982 1st ex.s. c 21 § 18. Formerly RCW 79.90.120.]

**79.105.130 Reconsideration of official acts.** The department may review and reconsider any of its official acts relating to state-owned aquatic lands until such time as a lease, contract, or deed is made, executed, and finally issued, and the department may recall any lease, contract, or deed issued for the purpose of correcting mistakes or errors, or supplying omissions. [2005 c 155 § 138; 1982 1st ex.s. c 21 § 47. Formerly RCW 79.90.410.]

**79.105.140 Assignment of contracts or leases.** All contracts of purchase of state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, and all leases of state-owned tidelands, shorelands, or beds of navigable waters issued by the department shall be assignable in writing by the contract holder or lessee. The assignee shall be subject to the provisions of law applicable to the purchaser or lessee of whom they are the assignee, and shall have the same rights in all respects as the original purchaser or lessee of the lands, but only if the assignment is first approved by the department and entered upon the records in the department. [2005 c 155 § 135; 1982 1st ex.s. c 21 § 43. Formerly RCW 79.90.370.]

**79.105.150 Deposit, use of proceeds from sale or lease of aquatic lands or valuable materials therefrom—Aquatic lands enhancement project grant requirements—Aquatic lands enhancement account.** (1) After deduction for management costs as provided in RCW 79.64.040 and payments to towns under RCW 79.115.150(2), all moneys received by the state from the sale or lease of state-owned aquatic lands and from the sale of valuable material from state-owned aquatic lands shall be deposited in the aquatic lands enhancement account which is hereby created in the state treasury. After appropriation, these funds shall be used solely for aquatic lands enhancement projects; for the purchase, improvement, or protection of aquatic lands for public purposes; for providing and improving access to the lands; and for volunteer cooperative fish and game projects.

(2) In providing grants for aquatic lands enhancement projects, the department shall require grant recipients to incorporate the environmental benefits of the project into their grant applications, and the department shall utilize the statement of environmental benefits in its prioritization and selection process. The department shall also develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the grants. To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270. The

department shall consult with affected interest groups in implementing this section.

(3) During the fiscal biennium ending June 30, 2007, the funds may be appropriated for boating safety, settlement costs for aquatic lands cleanup, and shellfish management, enforcement, and enhancement and assistance to local governments for septic system surveys and data bases. [2005 c 518 § 946; 2005 c 155 § 121; 2004 c 276 § 914; 2002 c 371 § 923; 2001 c 227 § 7; 1999 c 309 § 919; 1997 c 149 § 913; 1995 2nd sp.s. c 18 § 923; 1994 c 219 § 12; 1993 sp.s. c 24 § 927; 1987 c 350 § 1; 1985 c 57 § 79; 1984 c 221 § 24; 1982 2nd ex.s. c 8 § 4; 1969 ex.s. c 273 § 12; 1967 ex.s. c 105 § 3; 1961 c 167 § 9. Formerly RCW 79.90.245, 79.24.580.]

**Reviser's note:** This section was amended by 2005 c 155 § 121 and by 2005 c 518 § 946, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

**Severability—Effective date—2004 c 276:** See notes following RCW 43.330.167.

**Severability—Effective date—2002 c 371:** See notes following RCW 9.46.100.

**Findings—Intent—2001 c 227:** See note following RCW 43.41.270.

**Severability—Effective date—1999 c 309:** See notes following RCW 41.06.152.

**Severability—Effective date—1997 c 149:** See notes following RCW 43.08.250.

**Severability—Effective date—1995 2nd sp.s. c 18:** See notes following RCW 19.118.110.

**Finding—1994 c 219:** See note following RCW 43.88.030.

**Severability—Effective dates—1993 sp.s. c 24:** See notes following RCW 28A.310.020.

**Effective date—1987 c 350:** "This act shall take effect July 1, 1989." [1987 c 350 § 3.]

**Effective date—1985 c 57:** See note following RCW 18.04.105.

**Severability—Effective date—1984 c 221:** See RCW 79.90.901 and 79.90.902.

### 79.105.160 Aquatic lands—Court review of actions.

Any applicant to purchase or lease any state-owned aquatic lands, or any valuable materials on state-owned aquatic lands, and any person whose property rights or interest will be affected by the sale or lease, feeling himself or herself aggrieved by any order or decision of the board, or the commissioner, concerning the order or decision, may appeal in the manner provided in RCW 79.02.030. [2005 c 155 § 137; 2003 c 334 § 606; 1982 1st ex.s. c 21 § 46. Formerly RCW 79.90.400.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

## LEASING AND RENTAL RATES

**79.105.200 Use and occupancy fee in lieu of lease—Construction of section.** (1) The department may require the payment of a use and occupancy fee in lieu of a lease where improvements have been placed without authorization on state-owned aquatic lands.

(2) Nothing in this section shall be construed to prevent the assertion of public ownership rights in any publicly owned aquatic lands, or the leasing of the aquatic lands when the leasing is not contrary to the statewide public interest.

[2005 RCW Supp—page 938]

[2005 c 155 § 516; 1982 1st ex.s. c 21 § 102. Formerly RCW 79.94.170.]

**79.105.210 Aquatic lands—Preservation and enhancement of water-dependent uses—Leasing authority.** (1) The management of state-owned aquatic lands shall preserve and enhance water-dependent uses. Water-dependent uses shall be favored over other uses in state-owned aquatic land planning and in resolving conflicts between competing lease applications. In cases of conflict between water-dependent uses, priority shall be given to uses which enhance renewable resources, water-borne commerce, and the navigational and biological capacity of the waters, and to statewide interests as distinguished from local interests.

(2) Nonwater-dependent use of state-owned aquatic lands is a low-priority use providing minimal public benefits and shall not be permitted to expand or be established in new areas except in exceptional circumstances where it is compatible with water-dependent uses occurring in or planned for the area.

(3) The department shall consider the natural values of state-owned aquatic lands as wildlife habitat, natural area preserve, representative ecosystem, or spawning area prior to issuing any initial lease or authorizing any change in use. The department may withhold from leasing lands which it finds to have significant natural values, or may provide within any lease for the protection of such values.

(4) The power to lease state-owned aquatic lands is vested in the department, which has the authority to make leases upon terms, conditions, and length of time in conformance with the state Constitution and chapters 79.105 through 79.140 RCW.

(5) State-owned aquatic lands shall not be leased to persons or organizations which discriminate on the basis of race, color, creed, religion, sex, age, or physical or mental handicap. [2005 c 155 § 143; 1984 c 221 § 3. Formerly RCW 79.90.460.]

**79.105.220 Lease of tidelands in front of public parks.** The department may lease state-owned tidelands that are in front of state parks only with the approval of the state parks and recreation commission. The department may lease bedlands in front of state parks only after the department has consulted with the state parks and recreation commission. [2005 c 155 § 145. FORMERLY PART OF RCW 79.94.010; 2002 c 152 § 2; 1984 c 221 § 5. Formerly RCW 79.90.470.]

**Findings—Severability—2002 c 152:** See notes following RCW 79.90.575.

**79.105.230 Use for public parks or public recreation purposes.** Use for public parks or public recreation purposes shall be granted without charge if the state-owned aquatic lands and improvements are available to the general public on a first-come, first-served basis and are not managed to produce a profit for the operator or a concessionaire. [2005 c 155 § 144. FORMERLY PART OF RCW 79.90.470.]

**79.105.240 Determination of annual rent rates for lease of aquatic lands for water-dependent uses.** Except as

otherwise provided by this chapter, annual rent rates for the lease of state-owned aquatic lands for water-dependent uses shall be determined as follows:

(1)(a) The assessed land value, exclusive of improvements, as determined by the county assessor, of the upland tax parcel used in conjunction with the leased area or, if there are no such uplands, of the nearest upland tax parcel used for water-dependent purposes divided by the parcel area equals the upland value.

(b) The upland value times the area of leased aquatic lands times thirty percent equals the aquatic land value.

(2) As of July 1, 1989, and each July 1st thereafter, the department shall determine the real capitalization rate to be applied to water-dependent aquatic land leases commencing or being adjusted under subsection (3)(a) of this section in that fiscal year. The real capitalization rate shall be the real rate of return, except that until June 30, 1989, the real capitalization rate shall be five percent and thereafter it shall not change by more than one percentage point in any one year or be more than seven percent or less than three percent.

(3) The annual rent shall be:

(a) Determined initially, and redetermined every four years or as otherwise provided in the lease, by multiplying the aquatic land value times the real capitalization rate; and

(b) Adjusted by the inflation rate each year in which the rent is not determined under (a) of this subsection.

(4) If the upland parcel used in conjunction with the leased area is not assessed or has an assessed value inconsistent with the purposes of the lease, the nearest comparable upland parcel used for similar purposes shall be substituted and the lease payment determined in the same manner as provided in this section.

(5) For the purposes of this section, "upland tax parcel" is a tax parcel, some portion of which has upland characteristics. Filled tidelands or shorelands with upland characteristics which abut state-owned aquatic land shall be considered as uplands in determining aquatic land values.

(6) The annual rent for filled state-owned aquatic lands that have the characteristics of uplands shall be determined in accordance with RCW 79.105.270 in those cases in which the state owns the fill and has a right to charge for the fill.

(7) For all new leases for other water-dependent uses, issued after December 31, 1997, the initial annual water-dependent rent shall be determined by the methods in subsections (1) through (6) of this section. [2005 c 155 § 147; 2003 c 310 § 1; 1998 c 185 § 2; 1984 c 221 § 7. Formerly RCW 79.90.480.]

**Effective date—2003 c 310:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 2003]." [2003 c 310 § 2.]

**Findings—Report—1998 c 185:** "(1) The legislature finds that the current method for determining water-dependent rental rates for aquatic land leases may not be achieving the management goals in RCW 79.90.455. The current method for setting rental rates, as well as alternatives to the current methods, should be evaluated in light of achieving management goals for aquatic lands leases. The legislature further finds that there should be no further increases in water-dependent rental rates for marina leases before the completion of this evaluation.

(2) The department of natural resources shall study and prepare a report to the legislature on alternatives to the current method for determination of water-dependent rent set forth in RCW 79.90.480. The report shall be prepared with the assistance of appropriate outside economic expertise and stakeholder involvement. Affected stakeholders shall participate with the

department by providing information necessary to complete this study. For each alternative, the report shall:

(a) Describe each method and the costs and benefits of each;

(b) Compare each with the current method of calculating rents;

(c) Provide the private industry perspective;

(d) Describe the public perspective;

(e) Analyze the impact on state lease revenue;

(f) Evaluate the impacts of water-dependent rates on economic development in economically distressed counties; and

(g) Evaluate the ease of administration.

(3) The report shall be presented to the legislature by November 1, 1998, with the recommendations of the department clearly identified. The department's recommendations shall include draft legislation as necessary for implementation of its recommendations." [1998 c 185 § 1.]

**79.105.250 Log storage rents.** (1) Until June 30, 1989, the log storage rents per acre shall be the average rents the log storage leases in effect on July 1, 1984, would have had under the formula for water-dependent leases as set out in RCW 79.105.240, except that the aquatic land values shall be thirty percent of the assessed value of the abutting upland parcels exclusive of improvements, if they are assessed. If the abutting upland parcel is not assessed, the nearest assessed upland parcel shall be used.

(2) On July 1, 1989, and every four years thereafter, the base log storage rents established under subsection (1) of this section shall be adjusted in proportion to the change in average water-dependent lease rates per acre since the date the log storage rates were last established under this section.

(3) The annual rent shall be adjusted by the inflation rate each year in which the rent is not determined under subsection (1) or (2) of this section.

(4) If the lease provides for seasonal use so that portions of the leased area are available for public use without charge part of the year, the annual rent may be discounted to reflect such public use in accordance with rules adopted by the board. [2005 c 155 § 148; 1984 c 221 § 8. Formerly RCW 79.90.485.]

**79.105.260 Rent for leases in effect October 1, 1984.**

(1) For leases in effect on October 1, 1984, the rent shall remain at the annual rate in effect on September 30, 1984, until the next lease anniversary date, at which time rent established under RCW 79.105.240 or 79.105.250 shall become effective. If the first rent amount established is an increase of more than one hundred dollars and is more than thirty-three percent above the rent in effect on September 30, 1984, the annual rent shall not increase in any year by more than thirty-three percent of the difference between the previous rent and the rent established under RCW 79.105.240 or 79.105.250. If the first rent amount established under RCW 79.105.240 or 79.105.250 is more than thirty-three percent below the rent in effect on September 30, 1984, the annual rent shall not decrease in any year by more than thirty-three percent of the difference between the previous rent and the rent established under RCW 79.105.240 or 79.105.250. Thereafter, notwithstanding any other provision of this title, the annual rental established under RCW 79.105.240 or 79.105.250 shall not increase more than fifty percent in any year.

(2) This section applies only to leases of state-owned aquatic lands subject to RCW 79.105.240 or 79.105.250. [2005 c 155 § 149; 1984 c 221 § 9. Formerly RCW 79.90.490.]

**79.105.270 Aquatic lands—Leases/rents for nonwater-dependent uses.** Leases for nonwater-dependent uses of state-owned aquatic lands shall be charged the fair market rental value of the leased lands, determined in accordance with appraisal techniques specified by rule. However, rents for nonwater-dependent uses shall always be more than the amount that would be charged as rent for a water-dependent use of the same parcel. [2005 c 155 § 150; 1984 c 221 § 11. Formerly RCW 79.90.500.]

**79.105.280 Rents and fees for recovery of mineral or geothermal resources.** Rents and fees for the mining or other recovery of mineral or geothermal resources shall be established through competitive bidding, negotiations, or as otherwise provided by statute. [2005 c 155 § 151. FORMERLY PART OF RCW 79.90.500.]

**79.105.290 Aquatic lands—Rents for multiple uses.** If water-dependent and nonwater-dependent uses occupy separate portions of the same leased parcel of state-owned aquatic land, the rental rate for each use shall be that established for the use by this chapter, prorated in accordance with the proportion of the whole parcel that each use occupies. If water-dependent and nonwater-dependent uses occupy the same portion of a leased parcel of state-owned aquatic land, the rental rate for the parcel shall be subject to negotiation with the department taking into account the proportion of the improvements each use occupies. [2005 c 155 § 152; 1984 c 221 § 12. Formerly RCW 79.90.505.]

**79.105.300 Aquatic lands—Lease for water-dependent use—Rental for nonwater-dependent use.** If a parcel leased for water-dependent uses is used for an extended period of time, as defined by rule of the department, for a nonwater-dependent use, the rental for the nonwater-dependent use shall be negotiated with the department. [1984 c 221 § 13. Formerly RCW 79.90.510.]

**79.105.310 Aquatic lands—Rent for improvements.** (1) Except as agreed between the department and the lessee prior to construction of the improvements, rent shall not be charged under any lease of state-owned aquatic lands for improvements, including fills, authorized by the department or installed by the lessee or its predecessor before June 1, 1971, so long as the lands remain under a lease or succession of leases without a period of three years in which no lease is in effect or a bona fide application for a lease is pending.

(2) If improvements were installed under a good faith belief that a state-owned aquatic lands lease was not necessary, rent shall not be charged for the improvements if, within ninety days after specific written notification by the department that a lease is required, the owner either applies for a lease or files suit to determine if a lease is required. [2005 c 155 § 153; 1984 c 221 § 14. Formerly RCW 79.90.515.]

**79.105.320 Aquatic lands—Administrative review of proposed rent.** The manager shall, by rule, provide for an administrative review of any state-owned aquatic land rent proposed to be charged. The rules shall require that the lessee or applicant for release file a request for review within thirty

[2005 RCW Supp—page 940]

days after the manager has notified the lessee or applicant of the rent due. For leases issued by the department, the final authority for the review rests with the board. For leases managed under RCW 79.105.420, the final authority for the review rests with the appropriate port commission. If the request for review is made within thirty days after the manager's final determination as to the rental, the lessee may pay rent at the preceding year's rate pending completion of the review, and shall pay any additional rent or be entitled to a refund, with interest thirty days after announcement of the decision. The interest rate shall be fixed by rule adopted by the board and shall not be less than six percent per annum. Nothing in this section abrogates the right of an aggrieved party to pursue legal remedies. For purposes of this section, "manager" is the department except where state-owned aquatic lands are managed by a port district, in which case "manager" is the port district. [2005 c 155 § 154; 1991 c 64 § 1; 1984 c 221 § 15. Formerly RCW 79.90.520.]

**79.105.330 Aquatic lands—Security for leases for more than one year.** For any lease for a term of more than one year, the department may require that the rent be secured by insurance, bond, or other security satisfactory to the department in an amount not exceeding two years' rent. The department may require additional security for other lease provisions. The department shall not require cash deposits exceeding one-twelfth of the annual rental. [1984 c 221 § 16. Formerly RCW 79.90.525.]

**79.105.340 Aquatic lands—Payment of rent.** If the annual rent charged for the use of a parcel of state-owned aquatic lands exceeds four thousand dollars, the lessee may pay on a prorated quarterly basis. If the annual rent exceeds twelve thousand dollars, the lessee may pay on a prorated monthly basis. [1984 c 221 § 17. Formerly RCW 79.90.530.]

**79.105.350 Aquatic lands—Interest rate.** The interest rate and all interest rate guidelines shall be fixed by rule adopted by the board and shall not be less than six percent per annum. [2005 c 155 § 155; 1991 c 64 § 2; 1984 c 221 § 18. Formerly RCW 79.90.535.]

**79.105.360 Adoption of rules.** The department shall adopt such rules as are necessary to carry out the purposes of RCW 79.105.010, 79.105.030, 79.105.050, 79.105.210, 79.105.220, 79.105.240 through 79.105.260, 79.105.270, 79.105.290 through 79.105.350, 79.105.400, 79.105.420, 79.130.070, and 79.135.100, specifically including criteria for determining under RCW 79.105.240(4) when an abutting upland parcel has been inappropriately assessed and for determining the nearest comparable upland parcel used for water-dependent uses. [2005 c 155 § 156; 1984 c 221 § 19. Formerly RCW 79.90.540.]

#### OTHER CONVEYANCES

**79.105.400 Authority to exchange state-owned tidelands and shorelands—Rules—Limitation.** The department may exchange state-owned tidelands and shorelands



with private and other public landowners if the exchange is in the public interest and will actively contribute to the public benefits established in RCW 79.105.030. The board shall adopt rules which establish criteria for determining when a proposed exchange is in the public interest and actively contributes to the public benefits established in RCW 79.105.030. The department may not exchange state-owned harbor areas or waterways. [2005 c 155 § 142; 1995 c 357 § 1. Formerly RCW 79.90.457.]

**79.105.410 Gifts of aquatic land—Procedures and criteria.** (1) The department is authorized to accept gifts of aquatic land within the state, including tidelands, shorelands, harbor areas, and the beds of navigable waters, which shall become part of the state-owned aquatic land base. Consistent with RCW 79.105.030, the department must develop procedures and criteria that state the manner in which gifts of aquatic land, received after July 27, 2003, may occur. No gift of aquatic land may be accepted until: (a) An appraisal of the value of the land has been prepared; (b) an environmental site assessment has been conducted; and (c) the title property report has been examined and approved by the attorney general of the state. The results of the appraisal, the site assessment, and the examination of the title property report must be submitted to the board before the department may accept a gift of aquatic land.

(2) The authorization to accept gifts of aquatic land within the state extends to aquatic land accepted as gifts prior to July 27, 2003. [2005 c 155 § 163; 2003 c 176 § 1. Formerly RCW 79.90.580.]

**79.105.420 Management of certain aquatic lands by port district—Agreement—Rent—Model management agreement.** (1) Upon request of a port district, the department and port district may enter into an agreement authorizing the port district to manage state-owned aquatic lands abutting or used in conjunction with and contiguous to uplands owned, leased, or otherwise managed by a port district, for port purposes as provided in Title 53 RCW. The agreement shall include, but not be limited to, provisions defining the specific area to be managed, the term, conditions of occupancy, reservations, periodic review, and other conditions to ensure consistency with the state Constitution and the policies of this chapter. If a port district acquires operating management, lease, or ownership of real property which abuts state-owned aquatic lands currently under lease from the state to a person other than the port district, the port district shall manage state-owned aquatic lands if: (a) The port district acquires the leasehold interest in accordance with state law, or (b) the current lessee and the department agree to termination of the current lease to accommodate management by the port. The administration of state-owned aquatic lands covered by a management agreement shall be consistent with the aquatic land policies of chapters 79.105 through 79.140 RCW and the implementing rules adopted by the department. The administrative procedures for management of the lands shall be those of Title 53 RCW.

(2) No rent is due the state for the use of state-owned aquatic lands managed under this section for water-dependent or water-oriented uses. If a port district manages state-

owned aquatic lands under this section and either leases or otherwise permits any person to use the lands, the rental fee attributable to the state-owned aquatic land only shall be comparable to the rent charged lessees for the same or similar uses by the department. However, a port district need not itemize for the lessee any charges for state-owned aquatic lands improved by the port district for use by carriers by water. If a port leases state-owned aquatic lands to any person for nonwater-dependent use, eighty-five percent of the revenue attributable to the rent of the state-owned aquatic land only shall be paid to the state.

(3) Upon application for a management agreement, and so long as the application is pending and being diligently pursued, no rent is due the department for the lease by the port district of state-owned aquatic lands included within the application for water-dependent or water-oriented uses.

(4) The department and representatives of the port industry shall develop a proposed model management agreement which shall be used as the basis for negotiating the management agreements required by this section. The model management agreement shall be reviewed and approved by the board. [2005 c 155 § 146; 1984 c 221 § 6. Formerly RCW 79.90.475.]

**79.105.430 Private recreational docks—Mooring buoys.** (1) The abutting residential owner to state-owned shorelands, tidelands, or related beds of navigable waters, other than harbor areas, may install and maintain without charge a dock on the areas if used exclusively for private recreational purposes and the area is not subject to prior rights, including any rights of upland, tideland, or shoreland owners as provided in RCW 79.125.400, 79.125.460, 79.125.410, and 79.130.010. The dock cannot be sold or leased separately from the upland residence. The dock cannot be used to moor boats for commercial or residential use. This permission is subject to applicable local, state, and federal rules and regulations governing location, design, construction, size, and length of the dock. Nothing in this subsection (1) prevents the abutting owner from obtaining a lease if otherwise provided by law.

(2) The abutting residential owner to state-owned shorelands, tidelands, or related beds of navigable waters, other than harbor areas, may install and maintain a mooring buoy without charge if the boat that is moored to the buoy is used for private recreational purposes, the area is not subject to prior rights, including any rights of upland, tideland, or shoreland owners as provided in RCW 79.125.400, 79.125.460, 79.125.410, and 79.130.010, and the buoy will not obstruct the use of mooring buoys previously authorized by the department.

(a) The buoy must be located as near to the upland residence as practical, consistent with applicable rules and regulations and the provisions of this section. The buoy must be located, or relocated if necessary, to accommodate the use of lawfully installed and maintained buoys.

(b) If two or more residential owners, who otherwise qualify for free use under the provisions of this section, are in dispute over assertion of rights to install and maintain a mooring buoy in the same location, they may seek formal settlement through adjudication in superior court for the county in which the buoy site is located. In the adjudication, prefer-

ence must be given to the residential owner that first installed and continually maintained and used a buoy on that site, if it meets all applicable rules, regulations, and provisions of this section, and then to the owner of the residential property nearest the site. Nothing in this section requires the department to mediate or otherwise resolve disputes between residential owners over the use of the same site for a mooring buoy.

(c) The buoy cannot be sold or leased separately from the abutting residential property. The buoy cannot be used to moor boats for commercial or residential use, nor to moor boats over sixty feet in length.

(d) If the department determines that it is necessary for secure moorage, the abutting residential owner may install and maintain a second mooring buoy, under the same provisions as the first, the use of which is limited to a second mooring line to the boat moored at the first buoy.

(e) The permission granted in this subsection (2) is subject to applicable local, state, and federal rules and regulations governing location, design, installation, maintenance, and operation of the mooring buoy, anchoring system, and moored boat. Nothing in this subsection (2) prevents a boat owner from obtaining a lease if otherwise provided by law. This subsection (2) also applies to areas that have been designated by the commissioner or the fish and wildlife commission as aquatic reserves.

(3) This permission to install and maintain a recreational dock or mooring buoy may be revoked by the department, or the department may direct the owner of a recreational dock or mooring buoy to relocate their dock or buoy, if the department makes a finding of public necessity to protect waterward access, ingress rights of other landowners, public health or safety, or public resources. Circumstances prompting a finding of public necessity may include, but are not limited to, the dock, buoy, anchoring system, or boat posing a hazard or obstruction to navigation or fishing, contributing to degradation of aquatic habitat, or contributing to decertification of shellfish beds otherwise suitable for commercial or recreational harvest. The revocation may be appealed as provided for under RCW 79.105.160.

(4) Nothing in this section authorizes a boat owner to abandon a vessel at a recreational dock, mooring buoy, or elsewhere. [2005 c 155 § 106; 2002 c 304 § 1; 2001 c 277 § 1; 1989 c 175 § 170; 1983 2nd ex.s. c 2 § 2. Formerly RCW 79.90.105.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

#### DREDGED MATERIAL DISPOSAL

**79.105.500 Aquatic land dredged material disposal sites—Findings.** The legislature finds that the department provides, manages, and monitors aquatic land dredged material disposal sites on state-owned aquatic lands for materials dredged from rivers, harbors, and shipping lanes. These disposal sites are approved through a cooperative planning process by the departments of natural resources and ecology, the United States army corps of engineers, and the United States environmental protection agency in cooperation with the Puget Sound action team. These disposal sites are essential to the commerce and well-being of the citizens of the state of Washington. Management and environmental monitoring of

these sites are necessary to protect environmental quality and to assure appropriate use of state-owned aquatic lands. The creation of an aquatic land dredged material disposal site account is a reasonable means to enable and facilitate proper management and environmental monitoring of these disposal sites. [2005 c 155 § 158; 1987 c 259 § 1. Formerly RCW 79.90.550.]

**Effective date—1987 c 259:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1987." [1987 c 259 § 5.]

**79.105.510 Aquatic land dredged material disposal site account.** The aquatic land dredged material disposal site account is established in the state treasury. The account shall consist of funds appropriated to the account; funds transferred or paid to the account pursuant to settlements; court or administrative agency orders or judgments; gifts and grants to the account; and all funds received by the department from users of aquatic land dredged material disposal sites. After appropriation, moneys in the fund may be spent only for the management and environmental monitoring of aquatic land dredged material disposal sites. The account is subject to the allotment procedure provided under chapter 43.88 RCW. [2005 c 155 § 159; 1991 sp.s. c 13 § 63; 1987 c 259 § 2. Formerly RCW 79.90.555.]

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**Effective date—1987 c 259:** See note following RCW 79.90.550.

**79.105.520 Fees for use of aquatic land dredged material disposal sites authorized.** The department shall estimate the costs of site management and environmental monitoring at aquatic land dredged material disposal sites and may, by rule, establish fees for use of the sites in amounts no greater than necessary to cover the estimated costs. All such revenues shall be placed in the aquatic land dredged material disposal site account under RCW 79.105.510. [2005 c 155 § 160; 1987 c 259 § 3. Formerly RCW 79.90.560.]

**Effective date—1987 c 259:** See note following RCW 79.90.550.

#### OTHER MANAGEMENT PROVISIONS

**79.105.600 Archaeological activities on state-owned aquatic lands—Agreements, leases, or other conveyances.** After consultation with the director of community, trade, and economic development, the department may enter into agreements, leases, or other conveyances for archaeological activities on state-owned aquatic lands. The agreements, leases, or other conveyances may contain those conditions as are required for the department to comply with its legal rights and duties. All agreements, leases, or other conveyances, shall be issued in accordance with the terms of chapters 79.105 through 79.140 RCW. [2005 c 155 § 161; 1995 c 399 § 210; 1988 c 124 § 9. Formerly RCW 79.90.565.]

**Severability—Intent—Application—1988 c 124:** See RCW 27.53.901 and notes following RCW 27.53.030.

**79.105.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.** See RCW 79.135.900 through 79.135.904.

**79.105.901 Severability—1984 c 221.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 221 § 31. Formerly RCW 79.90.901.]

**79.105.902 Effective date—1984 c 221.** This act shall take effect on October 1, 1984. [1984 c 221 § 32. Formerly RCW 79.90.902.]

**79.105.903 Severability—2005 c 155.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2005 c 155 § 1014.]

**79.105.904 Part/subchapter headings not law—2005 c 155.** Part headings and subchapter headings used in this act are not any part of the law. [2005 c 155 § 1002.]

**Chapter 79.110 RCW**

**AQUATIC LANDS—EASEMENTS AND RIGHTS OF WAY**

Sections

79.110.001 Intent—2005 c 155.

**EASEMENTS FOR REMOVAL OF VALUABLE MATERIALS**

- 79.110.010 Certain aquatic lands subject to easements for removal of valuable materials.
- 79.110.020 Certain aquatic lands subject to easements for removal of valuable materials—Private easements subject to common use in removal of valuable materials.
- 79.110.030 Certain state and aquatic lands subject to easements for removal of valuable materials—Reasonable facilities and service for transporting must be furnished.
- 79.110.040 Certain state and aquatic lands subject to easements for removal of valuable materials—Duty of utilities and transportation commission.
- 79.110.050 Certain state and aquatic lands subject to easements for removal of valuable materials—Penalty for violation of orders.
- 79.110.060 Certain state and aquatic lands subject to easements for removal of valuable materials—Application for right of way.
- 79.110.070 Certain state and aquatic lands subject to easements for removal of valuable materials—Forfeiture for nonuser.

**RIGHTS OF WAY FOR ROADS, BRIDGES, AND TRESTLES**

- 79.110.100 United States of America, state agency, county, or city right of way for roads and streets over, and wharves over and upon aquatic lands.
- 79.110.110 Railroad bridge rights of way across navigable streams.
- 79.110.120 Public bridges or trestles across waterways and aquatic lands—Recovery of reasonable direct administrative costs—Report to the legislature.
- 79.110.130 Common carriers may bridge or trestle state waterways.
- 79.110.140 Location and plans of bridge or trestle to be approved—Future alterations.

**RIGHTS OF WAY FOR UTILITY LINES**

- 79.110.200 Right of way for utility pipelines, transmission lines, etc.
- 79.110.210 Right of way for utility pipelines, transmission lines, etc.—Procedure to acquire.
- 79.110.220 Right of way for utility pipelines, transmission lines, etc.—Appraisal—Certificate—Reversion for nonuser.
- 79.110.230 Use of state-owned aquatic lands for public utility lines.
- 79.110.240 Charge for term of easement—Recovery of costs.

**RIGHTS OF WAY FOR IRRIGATION, DIKING, AND DRAINAGE/OVERFLOW RIGHTS**

- 79.110.300 Right of way for irrigation, diking, and drainage purposes.

- 79.110.310 Right of way for irrigation, diking, and drainage purposes—Procedure to acquire.
- 79.110.320 Right of way for irrigation, diking, and drainage purposes—Appraisal—Certificate.
- 79.110.330 Grant of overflow rights.
- 79.110.340 Construction of RCW 79.110.010 through 79.110.220 and 79.110.240 through 79.110.330 relating to rights of way and overflow rights.
- 79.110.350 Grant of such easements and rights of way as applicant may acquire in private lands by eminent domain.
- 79.110.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.
- 79.110.901 Severability—Part/subchapter headings not law—2005 c 155.

**79.110.001 Intent—2005 c 155.** See RCW 79.105.001.

**EASEMENTS FOR REMOVAL OF VALUABLE MATERIALS**

**79.110.010 Certain aquatic lands subject to easements for removal of valuable materials.** All tidelands and shorelands originally belonging to the state, and which were granted, sold, or leased at any time after June 15, 1911, and which contain any valuable materials or are contiguous to or in proximity of state lands or other tidelands or shorelands which contain any valuable materials, shall be subject to the right of the state or any grantee or lessee who has acquired the other lands, or any valuable materials thereon, after June 15, 1911, to acquire the right of way over the lands so granted, sold, or leased, for private railroads, skid roads, flumes, canals, watercourses, or other easements for the purpose of, and to be used in, transporting and moving valuable materials from the other lands, over and across the lands so granted or leased in accordance with the provisions of RCW 79.36.370. [2005 c 155 § 201; 2003 c 334 § 607; 1982 1st ex.s. c 21 § 48. Formerly RCW 79.91.010.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.110.020 Certain aquatic lands subject to easements for removal of valuable materials—Private easements subject to common use in removal of valuable materials.** Every right of way for a private railroad, skid road, canal, flume, or watercourse, or other easement, over and across any state-owned tidelands or shorelands, for the purpose of, and to be used in, transporting and moving valuable materials of the land, granted after June 15, 1911, shall be subject to joint and common use in accordance with the provisions of RCW 79.36.380. [2005 c 155 § 202; 1982 1st ex.s. c 21 § 49. Formerly RCW 79.91.020.]

**79.110.030 Certain state and aquatic lands subject to easements for removal of valuable materials—Reasonable facilities and service for transporting must be furnished.** Any person having acquired a right of way or easement as provided in RCW 79.110.010 and 79.110.020 over any state-owned tidelands or shorelands or over or across beds of any navigable water or stream for the purpose of transporting or moving valuable materials and being engaged in such business, or any grantee or lessee thereof acquiring after June 15, 1911, state lands or tidelands or shorelands containing valuable materials, where the land is contiguous to or in proximity of the right of way or easement, shall accord to the state or any person acquiring after June 15, 1911, valu-

able materials upon any such lands, proper and reasonable facilities and service for transporting and moving valuable materials under reasonable rules and upon payment of just and reasonable charges in accordance with the provisions of RCW 79.36.390. [2005 c 155 § 203; 2003 c 334 § 608; 1982 1st ex.s. c 21 § 50. Formerly RCW 79.91.030.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.110.040 Certain state and aquatic lands subject to easements for removal of valuable materials—Duty of utilities and transportation commission.** Should the owner or operator of any private railroad, skid road, flume, canal, watercourse, or other right of way or easement provided for in RCW 79.110.020 and 79.110.030 fail to agree with the state or any grantee or lessee, as to the reasonable and proper rules and charges, concerning the transportation and movement of valuable materials from those lands contiguous to or in proximity to the lands over which the private right of way or easement is operated, the state or any grantee or lessee, owning and desiring to have the valuable materials transported or moved, may apply to the Washington state utilities and transportation commission for an inquiry into the reasonableness of the rules, investigate the rules, and make binding reasonable, proper, and just rates and regulations in accordance with the provisions of RCW 79.36.400. [2005 c 155 § 204; 2003 c 334 § 609; 1982 1st ex.s. c 21 § 51. Formerly RCW 79.91.040.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.110.050 Certain state and aquatic lands subject to easements for removal of valuable materials—Penalty for violation of orders.** Any person owning or operating any right of way or easement subject to the provisions of RCW 79.110.020 through 79.110.040, over and across any state-owned tidelands or shorelands or across any beds of navigable waters, and violating or failing to comply with any rule or order made by the utilities and transportation commission, after inquiry, investigation, and a hearing as provided in RCW 79.110.040, shall be subject to the same penalties provided in RCW 79.36.410. [2005 c 155 § 205; 2003 c 334 § 610; 1982 1st ex.s. c 21 § 52. Formerly RCW 79.91.050.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.110.060 Certain state and aquatic lands subject to easements for removal of valuable materials—Application for right of way.** Any person engaged in the business of logging or lumbering, quarrying, mining, or removing sand, gravel, or other valuable materials from land, and desirous of obtaining a right of way or easement provided for in RCW 79.110.010 through 79.110.030 over and across any state-owned tidelands or shorelands, or beds of navigable waters or any lands sold or leased by the state since June 15, 1911, shall file with the department upon a form to be furnished for that purpose, a written application for the right of way in accordance with the provisions of RCW 79.36.350. [2005 c 155 § 206; 2003 c 334 § 611; 1982 1st ex.s. c 21 § 53. Formerly RCW 79.91.060.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.110.070 Certain state and aquatic lands subject to easements for removal of valuable materials—Forfeiture for nonuser.** Any right of way or easement granted under the provisions of RCW 79.110.010 through 79.110.030 which has never been used, or for a period of two years has ceased to be used for the purpose for which it was granted, shall be deemed forfeited. The forfeiture of any such right of way previously granted or granted under the provisions of RCW 79.110.010 through 79.110.030, shall be rendered effective by the mailing of a notice of the forfeiture to the grantee at the grantee's last known post office address and by posting a copy of the certificate, or other record of the grant, in the department's Olympia office with the word "canceled" and the date of the cancellation. [2005 c 155 § 207; 1982 1st ex.s. c 21 § 54. Formerly RCW 79.91.070.]

#### RIGHTS OF WAY FOR ROADS, BRIDGES, AND TRESTLES

**79.110.100 United States of America, state agency, county, or city right of way for roads and streets over, and wharves over and upon aquatic lands.** Any county or city or the United States of America or any state agency desiring to locate, establish, and construct a road or street over and across any aquatic lands, or wharf over any state-owned tidelands or shorelands, shall by resolution of the legislative body of the county, or city council or other governing body of the city, or proper agency of the United States of America or state agency, file a petition with the department for a right of way for the road or street or wharf in accordance with the provisions of RCW 79.36.440.

The department may grant the petition if it deems it in the best interest of the state and upon payment for the right of way and any damages to the affected aquatic lands. [2005 c 155 § 208; 2003 c 334 § 612; 1982 1st ex.s. c 21 § 55. Formerly RCW 79.91.080.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.110.110 Railroad bridge rights of way across navigable streams.** Any railroad company organized under the laws of the territory or state of Washington, or under any other state or territory of the United States, or under any act of the congress of the United States, and authorized to do business in the state and to construct and operate railroads, shall have the right to construct bridges across the navigable streams within this state over which the line or lines of its railway shall run for the purpose of being made a part of the railway line, or for the more convenient use thereof, if the bridges are constructed so as not to interfere with, impede, or obstruct navigation on the streams. However, payment for any right of way and any damages to those aquatic lands affected must be paid first. [2005 c 155 § 209; 1982 1st ex.s. c 21 § 56. Formerly RCW 79.91.090.]

**79.110.120 Public bridges or trestles across waterways and aquatic lands—Recovery of reasonable direct administrative costs—Report to the legislature.** (1) Counties, cities, towns, and other municipalities shall have the right to construct bridges and trestles across waterways heretofore or hereafter laid out under the authority of the state of Washington, and over and across any tidelands, shorelands,

bedlands, or harbor areas owned and managed by the state adjacent thereto over which the projected line or lines of highway will run, if such bridges or trestles are constructed in good faith for the purpose of being made a part of the constructed line of such a highway, upon payment for any natural resource damages to those aquatic lands affected not already covered by an approved state or federal regulatory mitigation plan. Such a right shall be granted by easement and no charge may be made to the county, city, town, or other municipality, for such an easement. The department may recover only its reasonable direct administrative costs incurred in processing and approving the request or application, and reviewing plans for construction of the bridge or trestle.

(2) For purposes of this section, "direct administrative costs" means the cost of hours worked directly on an application or request, based on salaries and benefits, plus travel reimbursement and other actual out-of-pocket costs. Direct administrative costs recovered by the department must be deposited into the resource management cost account.

(3) By December 1, 2008, the department must deliver a report to the legislature regarding the collection of administrative fees as described in this section. [2005 c 58 § 1; 1982 1st ex.s. c 21 § 57. Formerly RCW 79.91.100.]

**79.110.130 Common carriers may bridge or trestle state waterways.** Any person authorized by any state or municipal law or ordinance to construct and operate railroads, interurban railroads, or street railroads as common carriers within this state, shall have the right to construct bridges or trestles across waterways laid out under the authority of the state of Washington, over which the projected line or lines of railroad will run. The bridges or trestles shall be constructed in good faith for the purpose of being made a part of the constructed line of the railroad, and may also include a roadway for the accommodation of vehicles and foot passengers. Full payment for any right of way and any damages to those aquatic lands affected by the right of way shall first be made. [2005 c 155 § 211; 1982 1st ex.s. c 21 § 58. Formerly RCW 79.91.110.]

**79.110.140 Location and plans of bridge or trestle to be approved—Future alterations.** The location and plans of any bridge, draw bridge, or trestle proposed to be constructed under RCW 79.110.110 through 79.110.130 shall be submitted to and approved by the department before construction is commenced. However, in case the portion of the waterway, river, stream, or watercourse, at the place to be crossed is navigable water of the United States, or otherwise within the jurisdiction of the United States, the location and plans shall also be submitted to and approved by the United States army corps of engineers before construction is commenced. When plans for any bridge or trestle have been approved by the department and the United States army corps of engineers, it is unlawful to deviate from the plans either before or after the completion of the structure, unless the modification of the plans has previously been submitted to, and received the approval of the department and the United States army corps of engineers, as the case may be. Any structure authorized and approved as indicated in this section

shall remain within the jurisdiction of the respective officer or officers approving the structure, and shall be altered or changed from time to time at the expense of the municipality owning the highway, or at the expense of the common carriers, at the time owning the railway or road using the structure, to meet the necessities of navigation and commerce in such a manner as may be from time to time ordered by the respective officer or officers at the time having jurisdiction of the structure, and the orders may be enforced by appropriate action at law or in equity at the suit of the state. [2005 c 155 § 212; 1982 1st ex.s. c 21 § 59. Formerly RCW 79.91.120.]

#### RIGHTS OF WAY FOR UTILITY LINES

**79.110.200 Right of way for utility pipelines, transmission lines, etc.** A right of way through, over, and across any tidelands, shorelands, beds of navigable waters, oyster reserves belonging to the state, or the reversionary interest of the state in oyster lands may be granted to any person or the United States of America, constructing or proposing to construct, or which has constructed, any telephone line, ditch, flume, or pipeline for the domestic water supply of any municipal corporation or transmission line for the purpose of generating or transmitting electricity for light, heat, or power. [2005 c 155 § 213; 1982 1st ex.s. c 21 § 60. Formerly RCW 79.91.130.]

**79.110.210 Right of way for utility pipelines, transmission lines, etc.—Procedure to acquire.** In order to obtain the benefits of the grant made in RCW 79.110.200, the person or the United States of America constructing or proposing to construct, or which has constructed, a telephone line, ditch, flume, pipeline, or transmission line, shall file, with the department, a map accompanied by the field notes of the survey and location of the telephone line, ditch, flume, pipeline, or transmission line, and shall make payment as provided in RCW 79.110.220. The land within the right of way shall be limited to an amount necessary for the construction of the telephone line, ditch, flume, pipeline, or transmission line sufficient for the purposes required, together with sufficient land on either side thereof for ingress and egress to maintain and repair the telephone line, ditch, flume, pipeline, or transmission line. The grant shall also include the right to cut all standing timber outside the right of way marked as danger trees located on public lands upon full payment of the appraised value. [2005 c 155 § 214; 1982 1st ex.s. c 21 § 61. Formerly RCW 79.91.140.]

**79.110.220 Right of way for utility pipelines, transmission lines, etc.—Appraisal—Certificate—Reversion for nonuser.** On the filing of the plat and field notes, as provided in RCW 79.110.210, the land applied for and any improvements included in the right of way applied for, if any, shall be appraised as in the case of an application to purchase state lands. Upon full payment of the appraised value of the state-owned aquatic land applied for, or upon payment of an annual rental when the department deems a rental to be in the best interests of the state, and upon full payment of the appraised value of any danger trees and improvements, if any, the department shall issue to the applicant a certificate of

the grant of right of way stating the terms and conditions and shall enter the certificate in the abstracts and records in the department's Olympia office, and thereafter any sale or lease of the lands affected by the right of way shall be subject to the easement of the right of way. However, should the person or the United States of America securing the right of way ever abandon the use of the right of way for the purposes for which it was granted, the right of way shall revert to the state, or the state's grantee. [2005 c 155 § 215; 1982 1st ex.s. c 21 § 62. Formerly RCW 79.91.150.]

**79.110.230 Use of state-owned aquatic lands for public utility lines.** (1) The use of state-owned aquatic lands for public utility lines owned by a governmental entity shall be granted by an agreement, permit, or other instrument if the use is consistent with the purposes of RCW 79.105.010, 79.105.030, 79.105.050, 79.105.210, 79.105.400, and 79.130.070 and does not obstruct navigation or other public uses. The department may recover only its reasonable direct administrative costs incurred in processing and approving the request or application, and reviewing plans for construction of public utility lines. For purposes of this section, "direct administrative costs" means the cost of hours worked directly on an application or request, based on salaries and benefits, plus travel reimbursement and other actual out-of-pocket costs. Direct administrative costs recovered by the department must be deposited into the resource management cost account.

(2) The use of state-owned aquatic lands for local public utility lines owned by a nongovernmental entity will be granted by easement if the use is consistent with the purpose of RCW 79.105.010, 79.105.030, 79.105.050, 79.105.210, 79.105.400, and 79.130.070 and does not obstruct navigation or other public uses. The total charge for the easement will be determined under RCW 79.110.240.

(3) Nothing in this section limits the ability of the department to obtain payment for commodity costs, such as lost revenue from renewable resources, resulting from the granted use of state-owned aquatic lands for public utility lines. [2005 c 155 § 216.]

**79.110.240 Charge for term of easement—Recovery of costs.** (1) Until July 1, 2008, the charge for the term of an easement granted under \*RCW 79.105.220(2) will be determined as follows and will be paid in advance upon grant of the easement:

(a) Five thousand dollars for individual easement crossings that are no longer than one mile in length;

(b) Twelve thousand five hundred dollars for individual easement crossings that are more than one mile but less than five miles in length; or

(c) Twenty thousand dollars for individual easement crossings that are five miles or more in length.

(2) The charge for easements under subsection (1) of this section must be adjusted annually by the rate of yearly increase in the most recently published consumer price index, all urban consumers, for the Seattle-Everett SMSA, over the consumer price index for the preceding year, as compiled by the bureau of labor statistics, United States department of

labor for the state of Washington rounded up to the nearest fifty dollars.

(3) The term of the easement is thirty years.

(4) In addition to the charge for the easement under subsection (1) of this section, the department may recover its reasonable direct administrative costs incurred in receiving an application for the easement, approving the easement, and reviewing plans for and construction of the public utility lines. For the purposes of this subsection, "direct administrative costs" means the cost of hours worked directly on an application, based on salaries and benefits, plus travel reimbursement and other actual out-of-pocket costs. Direct administrative costs recovered by the department must be deposited into the resource management cost account.

(5) Applicants under \*RCW 79.105.220(2) providing a residence with an individual service connection for electrical, natural gas, cable television, or telecommunications service are not required to pay the charge for the easement under subsection (1) of this section but shall pay administrative costs under subsection (4) of this section.

(6) A final decision on applications for an easement must be made within one hundred twenty days after the department receives the completed application and after all applicable regulatory permits for the aquatic easement have been acquired. This subsection applies to applications submitted before June 13, 2002, as well as to applications submitted on or after June 13, 2002. Upon request of the applicant, the department may reach a decision on an application within sixty days and charge an additional fee for an expedited processing. The fee for an expedited processing is the greater of: (a) Ten percent of the combined total of the easement charge and direct administrative costs; or (b) the cost of staff overtime, calculated at time and one-half, associated with the expedited processing. [2005 c 155 § 162; 2002 c 152 § 3. Formerly RCW 79.90.575.]

**\*Reviser's note:** RCW 79.105.220 was amended by 2005 c 155 § 145 deleting subsection (2).

**Findings—2002 c 152:** "The legislature finds that local public utilities provide essential services to all of the residents of the state and that the construction and improvement of local utility infrastructure is critical to the public health, safety, and welfare, community and economic development, and installation of modern and reliable communication and energy technology. The legislature further finds that local utility lines must cross state-owned aquatic lands in order to reach all state residents and that, for the benefit of such residents, the state should permit the crossings, consistent with all applicable state environmental laws, in a nondiscriminatory, economic, and timely manner. The legislature further finds that this act and the valuation methodology in section 3 of this act applies only to the uses listed in section 2 of this act, and does not establish a precedent for valuation for any other uses on state-owned aquatic lands." [2002 c 152 § 1.]

**Severability—2002 c 152:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 152 § 4.]

## RIGHTS OF WAY FOR IRRIGATION, DIKING, AND DRAINAGE/OVERFLOW RIGHTS

**79.110.300 Right of way for irrigation, diking, and drainage purposes.** A right of way through, over, and across any state-owned tidelands or shorelands is granted to any irrigation district, or irrigation company duly organized under the laws of this state, and to any person, or the United States of America, constructing or proposing to construct an irriga-

tion ditch or pipeline for irrigation, or to any diking and drainage district or any diking and drainage improvement district proposing to construct a dike or drainage ditch. [2005 c 155 § 217; 1982 1st ex.s. c 21 § 63. Formerly RCW 79.91.160.]

**79.110.310 Right of way for irrigation, diking, and drainage purposes—Procedure to acquire.** In order to obtain the benefits of the grant provided for in RCW 79.110.300, the irrigation district, irrigation company, person, or the United States of America, constructing or proposing to construct an irrigation ditch or pipeline for irrigation, or the diking and drainage district or diking and drainage improvement district constructing or proposing to construct any dike or drainage ditch, shall file with the department a map accompanied by the field notes of the survey and location of the proposed irrigation ditch, pipeline, dike, or drainage ditch, and shall pay to the state as provided in RCW 79.110.320, the amount of the appraised value of the lands used for or included within the right of way. The land within the right of way shall be limited to an amount necessary for the construction of the irrigation ditch, pipeline, dike, or drainage ditch for the purposes required, together with sufficient land on either side for ingress and egress to maintain and repair the irrigation ditch, pipeline, dike, or drainage ditch. [2005 c 155 § 218; 1982 1st ex.s. c 21 § 64. Formerly RCW 79.91.170.]

**79.110.320 Right of way for irrigation, diking, and drainage purposes—Appraisal—Certificate.** Upon the filing of the plat and field notes as in RCW 79.110.310, the lands included within the right of way applied for shall be appraised as in the case of an application to purchase the lands, at full market value. Upon full payment of the appraised value of the lands the department shall issue to the applicant a certificate of right of way, and enter the certificate in the department records. Any subsequent sale or lease by the state of the lands affected by the right of way shall be subject to the certificate of right of way. [2005 c 155 § 219; 1982 1st ex.s. c 21 § 65. Formerly RCW 79.91.180.]

**79.110.330 Grant of overflow rights.** The department has the power and authority to grant to any person, the right, privilege, and authority to perpetually back and hold water upon or over any state-owned tidelands or shorelands, and to overflow and inundate the lands, whenever the department deems it necessary for the purpose of erecting, constructing, maintaining, or operating any water power plant, reservoir, or works for impounding water for power purposes, irrigation, mining, or other public use in accordance with the provisions of RCW 79.36.570. [2005 c 155 § 220. FORMERLY PART OF RCW 79.90.470; 2003 c 334 § 613; 1982 1st ex.s. c 21 § 66. Formerly RCW 79.91.190.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.110.340 Construction of RCW 79.110.010 through 79.110.220 and 79.110.240 through 79.110.330 relating to rights of way and overflow rights.** RCW 79.110.010 through 79.110.220 and 79.110.240 through 79.110.330, relating to the acquiring of rights of way and overflow rights

through, over, and across state-owned aquatic lands, shall not be construed as exclusive or as affecting the right of municipal and public service corporations to acquire lands belonging to or under the control of the state, or rights of way or other rights, by condemnation proceedings. [2005 c 155 § 221; 1982 1st ex.s. c 21 § 67. Formerly RCW 79.91.200.]

**79.110.350 Grant of such easements and rights of way as applicant may acquire in private lands by eminent domain.** The department may grant to any person easements and rights in tidelands and shorelands and oyster reserves owned by the state as the applicant may acquire in privately or publicly owned lands through proceedings in eminent domain in accordance with the provisions of RCW 79.36.355. [2005 c 155 § 222; 2003 c 334 § 614; 1982 1st ex.s. c 21 § 68. Formerly RCW 79.91.210.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.110.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.** See RCW 79.135.900 through 79.135.904.

**79.110.901 Severability—Part/subchapter headings not law—2005 c 155.** See RCW 79.105.903 and 79.105.904.

## Chapter 79.115 RCW

### AQUATIC LANDS—HARBOR AREAS

#### Sections

79.115.001 Intent—2005 c 155.

#### HARBOR LINE ESTABLISHMENT AND RELOCATION

79.115.010 Harbor lines and areas to be established.  
79.115.020 Relocation of harbor lines by the harbor line commission.  
79.115.030 Relocation of harbor lines authorized by legislature.  
79.115.040 Modification of harbor lines in Port Gardner Bay.  
79.115.050 Seizure or sale of improvements for taxes.

#### HARBOR AREA LEASES

79.115.100 Terms of harbor area leases.  
79.115.110 Construction or extension of docks, wharves, etc., in harbor areas—New lease.  
79.115.120 Re-leases of harbor areas.  
79.115.130 Procedure to re-lease harbor areas.  
79.115.140 Regulation of wharfage, dockage, and other tolls.  
79.115.150 Harbor areas and tidelands within towns—Distribution of rents to municipal authorities.  
79.115.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.  
79.115.901 Severability—Part/subchapter headings not law—2005 c 155.

**79.115.001 Intent—2005 c 155.** See RCW 79.105.001.

#### HARBOR LINE ESTABLISHMENT AND RELOCATION

**79.115.010 Harbor lines and areas to be established.** (1) It is the duty of the board acting as the harbor line commission to locate and establish harbor lines and determine harbor areas, as required by Article XV, section 1 of the state Constitution, where harbor lines and harbor areas have not previously been located and established.

(2) The board shall locate and establish outer harbor lines beyond which the state shall never sell or lease any

rights whatever to private persons, and to locate and establish the inner harbor line, thereby defining the width of the harbor area between such harbor lines. The harbor area shall be forever reserved for landings, wharves, streets, and other conveniences of navigation and commerce. [2005 c 155 § 301; 1982 1st ex.s. c 21 § 69. Formerly RCW 79.92.010.]

**79.115.020 Relocation of harbor lines by the harbor line commission.** Whenever it appears that the inner harbor line of any harbor area has been so established as to overlap or fall inside the government meander line, or for any other good cause, the board acting as the harbor line commission is empowered to relocate and reestablish said inner harbor line so erroneously established, outside of the meander line. All tidelands or shorelands within the inner harbor line so reestablished and relocated, shall belong to the state and may be sold or leased as other first-class tidelands or shorelands in accordance with the provisions of RCW 79.125.200. However, in all other cases, authority to relocate the inner harbor line or outer harbor line, or both, shall first be obtained from the legislature. [2005 c 155 § 302; 1982 1st ex.s. c 21 § 70. Formerly RCW 79.92.020.]

**79.115.030 Relocation of harbor lines authorized by legislature.** The commission on harbor lines is authorized to change, relocate, or reestablish harbor lines in Guemes Channel and Fidalgo Bay in front of the city of Anacortes, Skagit county; in Grays Harbor in front of the cities of Aberdeen, Hoquiam, and Cosmopolis, Grays Harbor county; Bellingham Bay in front of the city of Bellingham and in Drayton Harbor in front of the city of Blaine, Whatcom county; in Elliott Bay, Puget Sound and Lake Union within, and in front of the city of Seattle, King county, and within one mile of the limits of such city; Port Angeles harbor in front of the city of Port Angeles, Clallam county; in Lake Washington in front of the cities of Renton and Lake Forest Park, King county; Commencement Bay in front of the city of Tacoma, Pierce county; and within one mile of the limits of such city; Budd Inlet in front of the city of Olympia, Thurston county; the Columbia river in front of the city of Kalama, Cowlitz county; Port Washington Narrows and Sinclair Inlet in front of the city of Bremerton, Kitsap county; Sinclair Inlet in front of the city of Port Orchard, Kitsap county; in Liberty Bay in front of the city of Poulsbo, Kitsap county; the Columbia river in front of the city of Vancouver, Clark county; Port Townsend Bay in front of the city of Port Townsend, Jefferson county; the Swinomish Channel in front of the city of La Conner, Skagit county; and Port Gardner Bay in front of the city of Everett, except no harbor lines shall be established in Port Gardner Bay west of the easterly shoreline of Jetty Island as presently situated or west of a line extending S 37° 09' 38" W from the Snohomish River Light (5), and in front of the city of Edmonds, Snohomish county; in Oakland Bay in front of the city of Shelton, Mason county; and within one mile of the limits of such city; in Gig Harbor in front of the city of Gig Harbor, Pierce county; and within one mile of the limits of such city, at the entrance to the Columbia river in front of the city of Ilwaco, Pacific county; in the Columbia river in front of the city of Pasco, Franklin county; and in the Columbia river in front of the city of Kennewick, Benton

county. [2005 c 155 § 303; 2004 c 219 § 1; 1989 c 79 § 1; 1982 1st ex.s. c 21 § 71. Formerly RCW 79.92.030.]

**79.115.040 Modification of harbor lines in Port Gardner Bay.** The harbor line commission shall modify harbor lines in Port Gardner Bay as necessary to facilitate the conveyance through exchange authorized in RCW 79.125.800. [2005 c 155 § 304; 1987 c 271 § 5. Formerly RCW 79.92.035.]

**Severability—1987 c 271:** See note following RCW 79.95.050.

**79.115.050 Seizure or sale of improvements for taxes.** Whenever improvements have been made on state-owned tidelands, shorelands, or beds of navigable waters, in front of cities or towns, prior to the location of harbor lines in front of the cities or towns, and the reserved harbor area as located include the improvements, no seizure or sale of the improvements for taxes shall be had until six months after the lands have been leased or offered for lease. However, this section shall not affect or impair the lien for taxes on the improvements. [2005 c 155 § 136; 1982 1st ex.s. c 21 § 45. Formerly RCW 79.90.390.]

#### HARBOR AREA LEASES

**79.115.100 Terms of harbor area leases.** Applications, leases, and bonds of lessees shall be in such a form as the department shall prescribe. Every lease shall provide that the rental shall be payable to the department, and for cancellation by the department upon sixty days' written notice for any breach of the conditions. Every lessee shall furnish a bond, with surety satisfactory to the department, with such penalty as the department may prescribe, but not less than five hundred dollars, conditioned upon the faithful performance of the terms of the lease and the payment of the rent when due. If the department at any time deems any bond insufficient, it may require the lessee to file a new and sufficient bond within thirty days after receiving notice to do so.

Applications for leases of harbor areas upon tidal waters shall be accompanied by plans and drawings and other data concerning the proposed wharves, docks, or other structures or improvements as the department shall require. Every lease of harbor areas shall provide that, wharves, docks, or other conveniences of navigation and commerce adequate for the public needs, to be specified in the lease, shall be constructed within the time as may be fixed in each case by the department. In no case shall the construction be commenced more than two years from the date of the lease and shall be completed within such reasonable time as the department shall fix, any of which times may be extended by the department either before or after their expiration, and the character of the improvements may be changed either before or after completion with the approval of the department. However, if in its opinion improvements existing upon such harbor area or the tidelands adjacent thereto are adequate for public needs of commerce and navigation, the department shall require the maintenance of existing improvements and need not require further improvements. [2005 c 155 § 305; 1982 1st ex.s. c 21 § 74. Formerly RCW 79.92.060.]



**79.115.110 Construction or extension of docks, wharves, etc., in harbor areas—New lease.** If the owner of any harbor area lease upon tidal waters desires to construct any wharf, dock, or other convenience of navigation or commerce, or to extend, enlarge, or substantially improve any existing structure used in connection with the harbor area, and deems the required expenditure not warranted by the lessee's right to occupy the harbor area during the remainder of the term of their lease, the lease owner may make application to the department for a new lease of the harbor area for a period not exceeding thirty years. Upon the filing of an application accompanied by proper plans, drawings, or other data, the department shall investigate the application and if the department determines that the proposed work or improvement is in the public interest and reasonably adequate for the public needs, it shall by order fix the terms and conditions and the rate of rental for a new lease, the rate of rental shall be a fixed percentage, during the term of the lease, on the true and fair value in money of the harbor area determined by the department. The department may propose modifications of the proposed wharf, dock, or other convenience or extensions, enlargements, or improvements. The department shall, within ninety days from the filing of an application notify the applicant in writing of the terms and conditions upon which a new lease will be granted, and of the rental to be paid, and if the applicant shall within ninety days elect to accept a new lease of the harbor area upon the terms and conditions, and at the rental prescribed by the department, the department shall make a new lease for the harbor area for the term applied for and the existing lease shall be surrendered and canceled. [2005 c 155 § 306; 2000 c 11 § 27; 1982 1st ex.s. c 21 § 75. Formerly RCW 79.92.070.]

**79.115.120 Re-leases of harbor areas.** Upon the expiration of any harbor area lease upon tidal waters, the lessee may apply for a re-lease of the harbor area for a period not exceeding thirty years. The application shall be accompanied with maps showing the existing improvements upon the harbor area and the adjacent tidelands and with proper plans, drawings, and other data showing any proposed extensions or improvements of existing structures. Upon the filing of an application the department shall investigate the application and if it determines that the character of the wharves, docks, or other conveniences of commerce and navigation are reasonably adequate for the public needs and in the public interest, it shall by order fix and determine the terms and conditions upon which the re-lease shall be granted and the rate of rental to be paid, which rate shall be a fixed percentage during the term of the lease on the true and fair value in money of the harbor area as determined by the department. [2005 c 155 § 307; 2000 c 11 § 28; 1982 1st ex.s. c 21 § 76. Formerly RCW 79.92.080.]

**79.115.130 Procedure to re-lease harbor areas.** Upon completion of the valuation of any tract of harbor area applied for under RCW 79.115.120, the department shall notify the applicant of the terms and conditions upon which the re-lease will be granted and of the rental fixed. The applicant or the applicant's successor in interest shall have the option for the period of sixty days from the date of the service of notice in which to accept a lease on the terms and condi-

tions and at the rental so fixed and determined by the department. If the terms and conditions and rental are accepted a new lease shall be granted for the term applied for. If the terms and conditions are not accepted by the applicant within the period of time, or within such further time, not exceeding three months, as the department shall grant, the lease shall be deemed rejected by the applicant, and the department shall give eight weeks' notice by publication once a week in one or more newspapers of general circulation in the county in which the harbor area is located, that a lease of the harbor area will be sold on the terms and conditions and at the rental, at a time and place specified in the notice (which shall not be more than three months from the date of the first publication of the notice) to the person offering at the public sale to pay the highest sum as a cash bonus at the time of sale of the lease. Notice of the sale shall be served upon the applicant at least six weeks prior to the date of sale. The person paying the highest sum as a cash bonus shall be entitled to lease the harbor area. However, if the lease is not sold at the public sale the department may at any time or times again fix the terms, conditions, and rental, and again advertise the lease for sale as provided in this section and upon similar notice. Further, upon failure to secure any sale of the lease as prescribed in this section, the department may issue revocable leases without requirement of improvements for one year periods at a minimum rate of two percent. [2005 c 155 § 308; 1985 c 469 § 61; 1982 1st ex.s. c 21 § 77. Formerly RCW 79.92.090.]

**79.115.140 Regulation of wharfage, dockage, and other tolls.** The state of Washington retains and reserves the right to regulate the rates of wharfage, dockage, and other tolls to be imposed by the lessee or the lessee's assigns upon commerce for any of the purposes for which the leased area may be used and the right to prevent extortion and discrimination in such use. [2005 c 155 § 309; 1982 1st ex.s. c 21 § 78. Formerly RCW 79.92.100.]

**79.115.150 Harbor areas and tidelands within towns—Distribution of rents to municipal authorities.** (1) Where any leased harbor area or tideland is situated within the limits of a town, whether or not the harbor area or tideland lies within a port district, the rents from the leases shall be paid by the state treasurer to the municipal authorities of the town to be expended for water-related improvements.

(2) The state treasurer is authorized and directed to make payments to the respective towns on the first days of July and January of each year, of all moneys payable under the terms of this section. [2005 c 155 § 310; 1984 c 221 § 25; 1983 c 153 § 1; 1982 2nd ex.s. c 8 § 2; 1982 1st ex.s. c 21 § 79. Formerly RCW 79.92.110.]

**Severability—Effective date—1984 c 221:** See RCW 79.90.901 and 79.90.902.

**Effective date—1983 c 153:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1983." [1983 c 153 § 2.]

**Effective date—1982 2nd ex.s. c 8 § 2:** "Section 2 of this act shall take effect July 1, 1983." [1982 2nd ex.s. c 8 § 3.]

**79.115.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.** See RCW 79.135.900 through 79.135.904.

**79.115.901 Severability—Part/subchapter headings not law—2005 c 155.** See RCW 79.105.903 and 79.105.904.

### Chapter 79.120 RCW

#### AQUATIC LANDS—WATERWAYS AND STREETS

##### Sections

- 79.120.001 Intent—2005 c 155.
- 79.120.010 First class tidelands and shorelands to be platted—Public waterways and streets.
- 79.120.020 Streets, waterways, etc., validated.
- 79.120.030 Approval of plans/authorize construction on state-owned aquatic lands.
- 79.120.040 Permits to use waterways.
- 79.120.050 Excavation of waterways—Waterways open to public—Tide gates or locks.
- 79.120.060 Vacation of waterways—Extension of streets.
- 79.120.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.
- 79.120.901 Severability—Part/subchapter headings not law—2005 c 155.

**79.120.001 Intent—2005 c 155.** See RCW 79.105.001.

**79.120.010 First class tidelands and shorelands to be platted—Public waterways and streets.** It is the duty of the department simultaneously with the establishment of harbor lines and the determination of harbor areas in front of any city or town, or as soon as practicable, to survey and plat all first-class tidelands and shorelands not previously platted, and in platting the tidelands and shorelands to lay out streets which shall be dedicated to public use, subject to the control of the cities or towns in which they are situated.

The department shall also establish one or more public waterways not less than fifty nor more than one thousand feet wide, beginning at the outer harbor line and extending inland across the tidelands belonging to the state. These waterways shall include within their boundaries, as nearly as practicable, all navigable streams running through the tidelands, and shall be located at other places as in the judgment of the department may be necessary for the present and future convenience of commerce and navigation. All waterways shall be reserved from sale or lease and remain as public highways for watercraft until vacated as provided for in this chapter.

The department shall appraise the value of platted tidelands and shorelands and enter the appraisals in its records. [2005 c 155 § 401; 1982 1st ex.s. c 21 § 80. Formerly RCW 79.93.010.]

**79.120.020 Streets, waterways, etc., validated.** All alleys, streets, avenues, boulevards, waterways, and other public places and highways located and platted on the first-class tidelands and shorelands, or harbor areas, as provided by law, and not vacated as provided by law, are validated as public highways and dedicated to the use of the public for the purposes for which they were intended, subject to vacation as provided for in this chapter. [2005 c 155 § 402; 1982 1st ex.s. c 21 § 81. Formerly RCW 79.93.020.]

[2005 RCW Supp—page 950]

**79.120.030 Approval of plans/authorize construction on state-owned aquatic lands.** The department has the power to approve plans for and authorize the construction of slopes, with rock, riprap, or other protection, upon any state-owned aquatic lands incident to the improvement of any abutting or adjacent street or avenue by any city or town in this state. [2005 c 155 § 403; 1982 1st ex.s. c 21 § 82. Formerly RCW 79.93.030.]

**79.120.040 Permits to use waterways.** If the United States government has established pierhead lines within a waterway created under the laws of this state at any distance from the boundaries established by the state, structures may be constructed in that strip of waterway between the waterway boundary and the nearest pierhead line only with the consent of the department and upon such plans, terms, and conditions and for such term as determined by the department. However, no permit shall extend for a period longer than thirty years.

The department may cancel any permit upon sixty days' notice for a substantial breach by the permittee of any of the permit conditions.

If a waterway is within the territorial limits of a port district, the duties assigned by this section to the department may be exercised by the port commission of the port district as provided in RCW 79.105.420.

Nothing in this section shall confer upon, create, or recognize in any abutting owner any right or privilege in or to any strip of waterway abutting any street and between prolongations of the lines of the street, but the control of and the right to use the strip is reserved to the state of Washington, except as authorized by RCW 79.105.420. [2005 c 155 § 404; 1984 c 221 § 21; 1982 1st ex.s. c 21 § 83. Formerly RCW 79.93.040.]

**Severability—Effective date—1984 c 221:** See RCW 79.90.901 and 79.90.902.

*Application to existing property rights:* RCW 79.105.040.

**79.120.050 Excavation of waterways—Waterways open to public—Tide gates or locks.** All waterways excavated through any state-owned tidelands or shorelands by virtue of the provisions of chapter 99, Laws of 1893, so far as they run through the tidelands or shorelands, are declared to be public waterways, free to all citizens upon equal terms, and subject to the jurisdiction of the proper authorities, as otherwise provided by law. However, where tide gates or locks are considered by the contracting parties excavating any waterways to be necessary to the efficiency of the waterway, the department may, in its discretion, authorize tide gates or locks to be constructed and may authorize the parties constructing the waterway to operate them and collect a reasonable toll from vessels passing through the tide gates or locks. Further, the state of Washington or the United States of America can, at any time, appropriate the tide gates or locks upon payment to the parties erecting them of the reasonable value of the tide gates or locks at the date of the appropriation, reasonable value to be ascertained and determined as in other cases of condemnation of private property for public use. [2005 c 155 § 405; 1982 1st ex.s. c 21 § 84. Formerly RCW 79.93.050.]

**79.120.060 Vacation of waterways—Extension of streets.** If a waterway established under the laws of this state, or any portion of the waterway, has not been excavated, or is not used for navigation, or is not required in the public interest to exist as a waterway, the waterway or a portion of the waterway may be vacated by written order of the commissioner upon request by ordinance or resolution of the city council of the city in which such waterway is located or by resolution of the port commission of the port district in which the waterway is located. If the waterway or a portion of the waterway which is vacated is navigable water of the United States, or otherwise within the jurisdiction of the United States, a copy of the resolution or ordinance, together with a copy of the vacation order of the commissioner shall be submitted to the United States army corps of engineers for their approval, and if they approve, the waterway or a portion of the waterway is vacated. However, if a port district owns property abutting the waterway and the provisions of this section are otherwise satisfied, the waterway, or the portion of the waterway that abuts the port district property, shall be vacated.

Upon vacation of a waterway, the commissioner shall notify the city in which the waterway is located, and the city has the right, if otherwise permitted by RCW 79.125.200, to extend across the portions so vacated any existing streets, or to select portions of the waterway as the city may desire for street purposes, in no case to exceed one hundred fifty feet in width for any one street. The selection shall be made within sixty days subsequent to the receipt of notice of the vacation of the portion of the waterway.

If the city fails to make a selection within the time, or selects only a portion of the waterway, the title of the remaining portions of the vacated waterway shall vest in the state, unless the waterway is located within the territorial limits of a port district, in which event, if otherwise permitted by RCW 79.125.200, the title shall vest in the port district. The title is subject to any railroad or street railway crossings existing at the time of the vacation. [2005 c 155 § 406; 1984 c 221 § 22; 1982 1st ex.s. c 21 § 85. Formerly RCW 79.93.060.]

**Severability—Effective date—1984 c 221:** See RCW 79.90.901 and 79.90.902.

*Application to existing property rights:* RCW 79.105.040.

**79.120.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.** See RCW 79.135.900 through 79.135.904.

**79.120.901 Severability—Part/subchapter headings not law—2005 c 155.** See RCW 79.105.903 and 79.105.904.

**Chapter 79.125 RCW  
AQUATIC LANDS—TIDELANDS  
AND SHORELANDS**

Sections

- 79.125.001 Intent—2005 c 155.
- PLAT/APPRaisal/REPLAT**
- 79.125.010 Location of line dividing tidelands from shorelands in tidal rivers.
- 79.125.020 First-class tidelands and shorelands to be platted.

- 79.125.030 Second-class tidelands and shorelands may be platted.
- 79.125.040 Tidelands and shorelands—Plats—Record.
- 79.125.050 Date of sale limited by time of appraisal.
- 79.125.060 First or second-class tidelands and shorelands—Appraisal—Record.
- 79.125.070 Tidelands and shorelands—Notice of filing plat and record of appraisal—Appeal.
- 79.125.080 Tidelands and shorelands—Petition for replat—Replating and reappraisal—Vacation by replat.
- 79.125.090 Tidelands and shorelands—Dedication of replat—All interests must join.
- 79.125.100 Tidelands and shorelands—Vacation procedure cumulative.
- 79.125.110 Tidelands and shorelands—Effect of replat.

**EXCHANGE, SALE, LEASE LIMITATIONS/TERMS**

- 79.125.200 State-owned tidelands, shorelands, and waterways—Sold only to public entities—Leasing—Limitation.
- 79.125.210 Sale of second-class tidelands.
- 79.125.220 Second-class tidelands or shorelands—Lease for booming purposes.
- 79.125.230 Second-class tidelands or shorelands separated from uplands by navigable water—Sale.
- 79.125.240 Sale procedure—Terms of payment—Deferred payments, rate of interest.
- 79.125.250 Sale procedure—Certificate to governor of payment in full—Deed.
- 79.125.260 Sale procedure—Reservation in contract.
- 79.125.270 Sale procedure—Form of contract—Forfeiture—Extension of time.
- 79.125.280 Subdivision of leases—Fee.
- 79.125.290 First-class tidelands and shorelands—Sale of remaining lands.
- 79.125.300 Tidelands or shorelands—Failure to re-lease tidelands or shorelands—Appraisal of improvements.
- 79.125.310 Effect of mistake or fraud.

**SALE OR LEASING PREFERENCE**

- 79.125.400 First-class tidelands and shorelands—Lease—Preference right of upland owner—How exercised.
- 79.125.410 First-class unplatted tidelands and shorelands—Lease preference right to upland owners—Lease for booming purposes.
- 79.125.420 Tidelands and shorelands—Vacation by replat—Preference right of tideland or shoreland owner.
- 79.125.430 Tidelands or shorelands—Preference rights, time limit on exercise.
- 79.125.440 Tidelands or shorelands—Accretions—Lease.
- 79.125.450 Second-class shorelands on navigable lakes—Sale.
- 79.125.460 Second-class shorelands—Sale or lease when in best public interest—Preference right of upland owner—Procedure upon determining sale or lease not in best public interest or where transfer made for public use—Platting.

**SECOND-CLASS SHORELANDS—SPECIAL PLATTING AND SELECTION PROVISIONS**

- 79.125.500 Second-class shorelands—Boundary of shorelands when water lowered—Certain shorelands granted to city of Seattle.
- 79.125.510 Second-class shorelands—Survey/platting—Selection for slips, docks, wharves, etc.—Filing of plat.
- 79.125.520 Second-class shorelands—Platting of certain shorelands of Lake Washington for use as harbor area—Effect.
- 79.125.530 Platting of certain shorelands of Lake Washington for use as harbor area—Selection for slips, docks, wharves, etc.—Vesting of title.

**SALES OF TIDELANDS AND SHORELANDS**

- 79.125.600 Sale procedure—Fixing date, place, and time of sale—Notice—Publication and posting.
- 79.125.610 List of state-owned tidelands and shorelands permitted to be sold.
- 79.125.620 Sale procedure—Additional advertising expense.
- 79.125.630 Reoffer—Continuance.
- 79.125.640 Sale at public auction—Minimum price—Sales by leaseholder.
- 79.125.650 Highest responsible bidder—Determination.
- 79.125.660 Sale procedure—Conduct of sales—Deposits—Bid bonds—Memorandum of purchase.
- 79.125.670 Sale procedure—Readvertisement of lands not sold.
- 79.125.680 Sale procedure—Confirmation of sale.

## CONVEYANCE TO PUBLIC ENTITIES/PUBLIC USE

- 79.125.700 Sale of state-owned tidelands or shorelands to municipal corporation or state agency—Authority to execute agreements, deeds, etc.
- 79.125.710 Grant of lands for city park or playground purposes.
- 79.125.720 Exchange of lands to secure city parks and playgrounds.
- 79.125.730 Director of ecology to assist city parks.
- 79.125.740 Certain tidelands reserved for recreational use and taking of fish and shellfish.
- 79.125.750 Access to and from tidelands reserved for recreational use and taking of fish and shellfish.
- 79.125.760 Use of certain tidelands, shorelands, and abutting bedlands—Grant to the United States—Purposes—Limitations.
- 79.125.770 Tidelands and shorelands—Use of lands granted to United States—Application—Proof of upland use—Conveyance.
- 79.125.780 Tidelands and shorelands—Use of lands granted to United States—Easements over tidelands or shorelands to United States.
- 79.125.790 Tidelands and shorelands—Use of lands granted to United States—Reversion on cessation of use.
- 79.125.800 United States Navy base—Exchange of property—Procedure.
- 79.125.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.
- 79.125.901 Severability—Part/subchapter headings not law—2005 c 155.

**79.125.001 Intent—2005 c 155.** See RCW 79.105.001.

## PLAT/APPRAISAL/REPLAT

**79.125.010 Location of line dividing tidelands from shorelands in tidal rivers.** The department is authorized to locate in all navigable rivers in this state which are subject to tidal flow, the line dividing the tidelands in the river from the shorelands in the river, and the classification or the location of the dividing line shall be final and not subject to review, and the department shall enter the location of the line upon the plat of the tidelands and shorelands affected. [2005 c 155 § 532; 1982 1st ex.s. c 21 § 118. Formerly RCW 79.94.330.]

**79.125.020 First-class tidelands and shorelands to be platted.** It is the duty of the department simultaneously with the establishment of harbor lines and the determination of harbor areas in front of any city or town or as soon as practicable to survey and plat all first-class tidelands and shorelands not previously platted as provided in RCW 79.120.010. [2005 c 155 § 501; 1982 1st ex.s. c 21 § 87. Formerly RCW 79.94.020.]

**79.125.030 Second-class tidelands and shorelands may be platted.** The department may survey and plat any second-class tidelands and shorelands not previously platted. [2005 c 155 § 502; 1982 1st ex.s. c 21 § 88. Formerly RCW 79.94.030.]

**79.125.040 Tidelands and shorelands—Plats—Record.** The department shall prepare plats showing all tidelands and shorelands, surveyed, platted, and appraised by it in the respective counties, on which shall be marked the location of all tidelands and shorelands, with reference to the lines of the United States survey of the abutting upland, and shall prepare a record of its proceedings, including a list of the tidelands and shorelands surveyed, platted, or replatted, and appraised by it and its appraisal of the tidelands and shorelands, which plats and books shall be in triplicate and the department shall file one copy of the plats and records in

the department's Olympia office, and file one copy in the office of the county auditor of the county where the lands platted, or replatted, and appraised are situated, and file one copy in the office of the city engineer of the city in which, or within two miles of which, the lands platted, or replatted, are situated. [2005 c 155 § 503; 1982 1st ex.s. c 21 § 89. Formerly RCW 79.94.040.]

**79.125.050 Date of sale limited by time of appraisal.** In no case shall any state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, be offered for sale unless the lands have been appraised by the department within ninety days prior to the date fixed for the sale. [2005 c 155 § 107; 1982 1st ex.s. c 21 § 17. Formerly RCW 79.90.110.]

**79.125.060 First or second-class tidelands and shorelands—Appraisal—Record.** In appraising tidelands or shorelands, the department shall appraise each lot, tract, or piece of land separately, and shall maintain a description of each lot, tract, or piece of first or second-class tidelands or shorelands, its full appraised value, the area and rate per acre at which it was appraised, and if any lot is covered in whole or in part by improvements in actual use for commerce, trade, residence, or business, on or prior to, the date of the plat or replat, the department shall enter the name of the owner, or reputed owner, the nature of the improvements, the area covered by the improvements, the portion of each lot, tract, or piece of land covered, and the appraised value of the land covered, with and exclusive of, the improvements. [2005 c 155 § 504; 1982 1st ex.s. c 21 § 90. Formerly RCW 79.94.050.]

**79.125.070 Tidelands and shorelands—Notice of filing plat and record of appraisal—Appeal.** (1) The department shall, before filing in the department's Olympia office the plat and record of appraisal of any tidelands or shorelands platted and appraised by it, publish a notice once each week for four consecutive weeks in a newspaper published and of general circulation in the county where the lands covered by the plat and record are situated, stating that the plat and record, describing it, is complete and subject to inspection at the department's Olympia office, and will be filed on a certain day to be named in the notice.

(2) Any person entitled to purchase under RCW 79.125.200 and claiming a preference right of purchase of any of the tidelands or shorelands platted and appraised by the department, and who feels aggrieved at the appraisement fixed by the department upon the lands, or any part thereof, may within sixty days after the filing of the plat and record in the department's Olympia office (which shall be done on the day fixed in the notice), appeal from the appraisement to the superior court of the county in which the tidelands or shorelands are situated, in the manner provided for taking appeals from orders or decisions under RCW 79.105.160.

(3) The prosecuting attorney of any county, or city attorney of any city, in which the aquatic lands are located, shall at the request of the governor, appeal on behalf of the state, or the county, or city, from any appraisal in the manner provided in this section. Notice of the appeal shall be served upon the

commissioner, and the department must immediately notify all persons entitled to purchase under RCW 79.125.200 and claiming a preference right to purchase the lands subject to the appraisal.

(4) Any party, other than the state or the county or city appealing, shall execute a bond to the state with sufficient surety, to be approved by the department, in the sum of two hundred dollars conditioned for the payment of costs on appeal.

(5) The superior court to which an appeal is taken shall hear evidence as to the value of the lands appraised and enter an order confirming, or raising, or lowering the appraisal appealed from, and the clerk of the court shall file a certified copy in the department's Olympia office. The appraisal fixed by the court shall be final. [2005 c 155 § 505; 1982 1st ex.s. c 21 § 91. Formerly RCW 79.94.060.]

**79.125.080 Tidelands and shorelands—Petition for replat—Replating and reappraisal—Vacation by replat.** Whenever all of the owners and other persons having a vested interest in those tidelands or shorelands embraced within any plat of tidelands or shorelands or within any portion of any plat in which there are unsold state-owned tidelands or shorelands, shall file a petition with the department accompanied by proof of service of the petition upon the city council, or other governing body, of the city or town in which the tidelands or shorelands described in the petition are situated, or upon the legislative body of the county in which the tidelands or shorelands outside of any incorporated city or town are situated, asking for a replat of the tidelands or shorelands, the department is authorized and empowered to replat the tidelands or shorelands described in the petition, and all unsold tidelands or shorelands situated within the replat shall be reappraised as provided for the original appraisal of tidelands or shorelands. However, any streets or alleys embraced within the plat or portion of plat, vacated by the replat shall vest in the owner or owners of the abutting lands. [2005 c 155 § 509; 1982 1st ex.s. c 21 § 95. Formerly RCW 79.94.100.]

**79.125.090 Tidelands and shorelands—Dedication of replat—All interests must join.** If in the preparation of a replat provided for in RCW 79.125.080 by the department, it becomes desirable to appropriate any tidelands or shorelands previously sold for use as streets, alleys, waterways, or other public places, all persons interested in the title to the tidelands or shorelands desired for public places shall join in the dedication of the replat before it shall become effective. [2005 c 155 § 510; 1982 1st ex.s. c 21 § 96. Formerly RCW 79.94.110.]

**79.125.100 Tidelands and shorelands—Vacation procedure cumulative.** RCW 79.125.080, 79.125.090, and 79.125.420 are intended to afford a method of procedure, in addition to other methods provided in this title for the vacation of streets, alleys, waterways, and other public places platted on tidelands or shorelands. [2005 c 155 § 512; 1982 1st ex.s. c 21 § 98. Formerly RCW 79.94.130.]

**79.125.110 Tidelands and shorelands—Effect of replat.** A replat of tidelands or shorelands platted shall be in full force and effect and shall constitute a vacation of streets, alleys, waterways, and other dedicated public places, when otherwise permitted by RCW 79.125.200, and the dedication of new streets, alleys, waterways, and other public places appearing upon the replat, when the replat is recorded and filed as in the case of original plats. [2005 c 155 § 513; 1982 1st ex.s. c 21 § 99. Formerly RCW 79.94.140.]

#### EXCHANGE, SALE, LEASE LIMITATIONS/TERMS

**79.125.200 State-owned tidelands, shorelands, and waterways—Sold only to public entities—Leasing—Limitation.** (1) This section applies to:

- (a) First-class tidelands as defined in RCW 79.105.060;
- (b) Second-class tidelands as defined in RCW 79.105.060;
- (c) First-class shorelands as defined in RCW 79.105.060;
- (d) Second-class shorelands as defined in RCW 79.105.060, except as included within RCW 79.125.450;
- (e) Waterways as described in RCW 79.120.010.

(2) Notwithstanding any other provision of law, from and after August 9, 1971, all state-owned tidelands and shorelands enumerated in subsection (1) of this section shall not be sold except to public entities as may be authorized by law and they shall not be given away.

(3) Tidelands and shorelands enumerated in subsection (1) of this section may be leased for a period not to exceed fifty-five years. However, nothing in this section shall be construed as modifying or canceling any outstanding lease during its present term.

(4) Nothing in this section shall:

- (a) Be construed to cancel an existing sale contract;
- (b) Prohibit sale or exchange of beds and shorelands where the water course has changed and the area now has the characteristics of uplands;
- (c) Prevent exchange involving state-owned tidelands and shorelands;
- (d) Be construed to prevent the assertion of public ownership rights in any publicly owned aquatic lands, or the leasing of such aquatic lands when such leasing is not contrary to the statewide public interest. [2005 c 155 § 514. FORMERLY PART OF RCW 79.94.170; 1982 1st ex.s. c 21 § 100. Formerly RCW 79.94.150.]

**79.125.210 Sale of second-class tidelands.** All second-class tidelands shall be offered for sale, when otherwise permitted under RCW 79.125.200 to be sold, and sold in the same manner as state lands, other than capitol building lands, but for not less than five dollars per lineal chain, measured on the United States meander line bounding the inner shore limit of the tidelands, and shall pay one-tenth of the purchase price on the date of sale. [2005 c 155 § 508; 1982 1st ex.s. c 21 § 94. Formerly RCW 79.94.090.]

**79.125.220 Second-class tidelands or shorelands—Lease for booming purposes.** (1) The department is authorized to lease any second-class tidelands or shorelands, whether reserved from sale, or from lease for other purposes,

by or under authority of law, or not, except any oyster reserve containing oysters in merchantable quantities, to any person, for booming purposes, for any term not exceeding ten years from the date of the lease, for annual rental and upon terms and conditions as the department may fix and determine, and may also provide for forfeiture and termination of any lease at any time for failure to pay the fixed rental or for any violation of the terms or conditions.

(2) The lessee of any lands for booming purposes shall receive, hold, and sort the logs and other timber products of all persons requesting the service and upon the same terms and without discrimination, and may charge and collect tolls for the service not to exceed seventy-five cents per thousand feet scale measure on all logs, spars, or other large timber and reasonable rates on all other timber products, and shall be subject to the same duties and liabilities, so far as the duties and liabilities are applicable, as are imposed upon boom companies organized under the laws of the state. However, failure to use any lands leased under the provisions of this section for booming purposes for a period of one year shall work a forfeiture of the lease, and the lands shall revert to the state without any notice to the lessee upon the entry of a declaration of forfeiture in the records of the department.

(3) At the expiration of any lease issued under the provisions of this section, the lessee shall have the preference right to re-lease the lands covered by the lessee's original lease for a further term, not exceeding ten years, at the rental and upon the terms and conditions as may be prescribed by the department. [2005 c 155 § 528; 1982 1st ex.s. c 21 § 114. Formerly RCW 79.94.290.]

**79.125.230 Second-class tidelands or shorelands separated from uplands by navigable water—Sale.** Second-class tidelands and shorelands that are separated from the upland by navigable waters shall be sold, when otherwise permitted under RCW 79.125.200 to be sold, but in no case at less than five dollars per acre. An applicant to purchase the tidelands or shorelands shall, at the applicant's own expense, survey and file with the application a plat of the surveys of the land applied for, which survey shall be connected with, and the plat shall show, two or more connections with the United States survey of the uplands, and the applicant shall file the field notes of the survey of the land with the application. The department shall examine and test the plat and field notes of the survey, and if found incorrect or indefinite, it shall cause the survey to be corrected or may reject the survey and cause a new survey to be made. [2005 c 155 § 526; 1982 1st ex.s. c 21 § 112. Formerly RCW 79.94.270.]

**79.125.240 Sale procedure—Terms of payment—Deferred payments, rate of interest.** All state-owned tidelands and shorelands, otherwise permitted under RCW 79.125.200 to be sold, shall be sold on the following terms: One-tenth to be paid on the date of sale; one-tenth to be paid one year from the date of the issuance of the contract of sale; and one-tenth annually thereafter until the full purchase price has been made; but any purchaser may make full payment at any time. All deferred payments shall draw interest at the rate as may be fixed by rule adopted by the board, and the rate of interest, as so fixed at the date of each sale, shall be stated

in all advertising for and notice of the sale and in the contract of sale. The first installment of interest shall become due and payable one year after the date of the contract of sale and all interest shall become due and payable annually on that date, and all remittances for payment of either principal or interest shall be forwarded to the department. [2005 c 155 § 122; 1982 1st ex.s. c 21 § 31. Formerly RCW 79.90.250.]

**79.125.250 Sale procedure—Certificate to governor of payment in full—Deed.** When the entire purchase price of any state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, shall have been fully paid, the department shall certify the fact to the governor, and shall cause a deed signed by the governor and attested by the secretary of state, with the seal of the state attached, to be issued to the purchaser and to be recorded in the department, and no fee shall be required for any deed issued by the governor other than the fee provided for in this chapter. [2005 c 155 § 123; 1982 1st ex.s. c 21 § 32. Formerly RCW 79.90.260.]

**79.125.260 Sale procedure—Reservation in contract.** Each and every contract for the sale of, and each deed to, state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, shall contain the reservation contained in RCW 79.11.210. [2005 c 155 § 124; 2003 c 334 § 601; 1982 1st ex.s. c 21 § 33. Formerly RCW 79.90.270.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.125.270 Sale procedure—Form of contract—Forfeiture—Extension of time.** The purchaser of state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, except in cases where the full purchase price is paid at the time of the purchase, shall enter into and sign a contract with the state to be signed by the commissioner on behalf of the state, with the seal of the commissioner's office attached, and in a form to be prescribed by the attorney general, and under those terms and conditions provided in RCW 79.11.200. [2005 c 155 § 125; 1982 1st ex.s. c 21 § 34. Formerly RCW 79.90.280.]

**79.125.280 Subdivision of leases—Fee.** Whenever the holder of any contract to purchase any state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, or the holder of any lease of any lands, except for mining of valuable minerals, or coal, or extraction of petroleum or gas, shall surrender the contract or lease to the department with the request to have it divided into two or more contracts or leases, the department may divide the contract or lease and issue new contracts or leases. However, no new contract or lease shall issue while there is due and unpaid any rental, taxes, or assessments on the land held under the contract or lease, nor in any case where the department is of the opinion that the state's security would be impaired or endangered by the proposed division. For all new contracts or leases a fee as determined by the board for each new contract or lease issued, shall be paid by the applicant and the fee shall be paid into the state treasury to the resource management cost account in the general fund, pursuant to RCW

79.64.020. [2005 c 155 § 133; 1982 1st ex.s. c 21 § 41. Formerly RCW 79.90.350.]

**79.125.290 First-class tidelands and shorelands—Sale of remaining lands.** Any first-class tidelands or shorelands remaining unsold, and where there is no pending application for purchase under claim of any preference right, when otherwise permitted under RCW 79.125.200 to be sold, shall be sold on the same terms and in the same manner as provided for the sale of state lands for not less than the appraised value fixed at the time of the application to purchase, and the department whenever it deems it advisable and for the best interest of the state may reappraise the lands in the same manner as provided for the appraisal of state lands. [2005 c 155 § 507; 1982 1st ex.s. c 21 § 93. Formerly RCW 79.94.080.]

**79.125.300 Tidelands or shorelands—Failure to re-lease tidelands or shorelands—Appraisal of improvements.** (1) In case any lessee of tidelands or shorelands, for any purpose except mining of valuable minerals or coal, or extraction of petroleum or gas, or the lessee's successor in interest, shall after the expiration of any lease, fail to purchase, when otherwise permitted under RCW 79.125.200 to be purchased, or re-lease from the state the tidelands or shorelands formerly covered by the lease, when the lands are offered for sale or re-lease, then and in that event the department shall appraise and determine the value of all improvements existing upon the tidelands or shorelands at the expiration of the lease which are not capable of removal without damage to the land, including the cost of filling and raising the property above high tide, or high water, whether filled or raised by the lessee or the lessee's successors in interest, or by virtue of any contract made with the state, and also including the then value to the land of all existing local improvements paid for by the lessee or the lessee's successors in interest. In case the lessee or the lessee's successor in interest is dissatisfied with the appraised value of the improvements as determined by the department, the lessee shall have the right of appeal to the superior court of the county where the tidelands or shorelands are situated, within the time and according to the method prescribed in RCW 79.105.160 for taking appeals from decisions of the department.

(2) In case the tidelands or shorelands are leased, or sold, to any person other than such lessee or the lessee's successor in interest, within three years from the expiration of the former lease, the bid of the subsequent lessee or purchaser shall not be accepted until payment is made by the subsequent lessee or purchaser of the appraised value of the improvements as determined by the department, or as may be determined on appeal, to the former lessee or the former lessee's successor in interest.

(3) In case the tidelands or shorelands are not leased, or sold, within three years after the expiration of the former lease, then in that event, the improvements existing on the lands at the time of any subsequent lease, shall belong to the state and be considered a part of the land, and shall be taken into consideration in appraising the value, or rental value, of the land and sold or leased with the land. [2005 c 155 § 531; 1982 1st ex.s. c 21 § 117. Formerly RCW 79.94.320.]

**79.125.310 Effect of mistake or fraud.** Any sale or lease of state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, made by mistake, or not in accordance with law, or obtained by fraud or misrepresentation, shall be void, and the contract of purchase or lease, issued shall be of no effect, and the holder of the contract or lease, shall be required to surrender the contract or lease to the department, which, except in the case of fraud on the part of the purchaser, or lessee, shall cause the money paid on account of the surrendered contract or lease to be refunded to the holder, provided the money has not been paid into the state treasury. [2005 c 155 § 134; 1982 1st ex.s. c 21 § 42. Formerly RCW 79.90.360.]

#### SALE OR LEASING PREFERENCE

**79.125.400 First-class tidelands and shorelands—Lease—Preference right of upland owner—How exercised.** (1) Upon platting and appraisal of first-class tidelands or shorelands as provided in this chapter, if the department deems it for the best public interest to offer the first-class tidelands or shorelands for lease, the department shall notify the owner of record of uplands fronting upon the tidelands or shorelands to be offered for lease if the upland owner is a resident of the state, or the upland owner is a nonresident of the state, shall mail to the upland owner's last known post office address, as reflected in the county records, a copy of the notice notifying the owner that the state is offering the tidelands or shorelands for lease, giving a description of those lands and the department's appraised fair market value of the tidelands or shorelands for lease, and notifying the owner that the upland owner has a preference right to apply to lease the tidelands or shorelands at the appraised value for the lease for a period of sixty days from the date of service of mailing of the notice.

(2) If at the expiration of sixty days from the service or mailing of the notice, as provided in subsection (1) of this section, there being no conflicting applications filed, and the owner of the uplands fronting upon the tidelands or shorelands offered for lease, has failed to avail themselves of their preference right to apply to lease or to pay to the department the appraised value for lease of the tidelands or shorelands described in the notice, the tidelands or shorelands may be offered for lease to any person and may be leased in the manner provided for in the case of lease of state lands.

(3) If at the expiration of sixty days two or more claimants asserting a preference right to lease have filed applications to lease any tract, conflicting with each other, the conflict between the claimants shall be equitably resolved by the department as the best interests of the state require in accord with the procedures prescribed by chapter 34.05 RCW. However, any contract purchaser of lands or rights therein, which upland qualifies the owner for a preference right under this section, shall have first priority for the preference right. [2005 c 155 § 506; 2000 c 11 § 29; 1982 1st ex.s. c 21 § 92. Formerly RCW 79.94.070.]

**79.125.410 First-class unplatted tidelands and shorelands—Lease preference right to upland owners—Lease for booming purposes.** (1) The department is authorized to

lease to the abutting upland owner any unplatted first-class tidelands or shorelands.

(2) The department shall, prior to the issuance of any lease under the provisions of this section, fix the annual rental for the tidelands or shorelands and prescribe the terms and conditions of the lease. No lease issued under the provisions of this section shall be for a longer term than ten years, and every lease shall be subject to termination upon ninety days' notice to the lessee in the event that the department shall decide that it is in the best interest of the state that the tidelands or shorelands be surveyed and platted. At the expiration of any lease issued under the provisions of this section, the lessee or the lessee's successors or assigns shall have a preference right to re-lease the lands covered by the original lease or any portion of the lease, if the department deems it to be in the best interests of the state to re-lease the lands, for succeeding periods not exceeding five years each at the rental and upon the terms and conditions as may be prescribed by the department.

(3) In case the abutting uplands are not improved and occupied for residential purposes and the abutting upland owner has not filed an application for the lease of the lands, the department may lease the lands to any person for booming purposes under the terms and conditions of this section. However, failure to use for booming purposes any lands leased under this section for such purposes for a period of one year shall work a forfeiture of the lease and the land shall revert to the state without any notice to the lessee upon the entry of a declaration of forfeiture in the records of the department. [2005 c 155 § 527; 1982 1st ex.s. c 21 § 113. Formerly RCW 79.94.280.]

**79.125.420 Tidelands and shorelands—Vacation by replat—Preference right of tideland or shoreland owner.** If any platted street, alley, waterway, or other public place is vacated by a replat as provided for in RCW 79.125.080 and 79.125.090, or any new street, alley, waterway, or other public place is so laid out as to leave unsold tidelands or shorelands between a new street, alley, waterway, or other public place, and tidelands or shorelands previously sold, the owner of the adjacent tidelands or shorelands shall have the preference right for sixty days after the final approval of the plat to purchase the unsold tidelands or shorelands so intervening at the appraised value, if otherwise permitted under RCW 79.125.200 to be sold. [2005 c 155 § 511; 1982 1st ex.s. c 21 § 97. Formerly RCW 79.94.120.]

**79.125.430 Tidelands or shorelands—Preference rights, time limit on exercise.** All preference rights to purchase tidelands or shorelands, when otherwise permitted by RCW 79.125.200 to be purchased, awarded by the department, or by the superior court in case of appeal from the award of the department, shall be exercised by the parties to whom the award is made within thirty days from the date of the service of notice of the award by registered mail, by the payment to the department of the sums required by law to be paid for a contract, or deed, as in the case of the sale of state lands, other than capitol building lands, and upon failure to make the payment the preference rights shall expire. [2005 c

[2005 RCW Supp—page 956]

155 § 529; 1982 1st ex.s. c 21 § 115. Formerly RCW 79.94.300.]

**79.125.440 Tidelands or shorelands—Accretions—Lease.** Any accretions that may be added to any tract or tracts of tidelands or shorelands previously sold, or that may be sold, by the state, shall belong to the state and shall not be sold, or offered for sale, unless otherwise permitted by this chapter to be sold, and unless the accretions are surveyed under the direction of the department. However, the owner of the adjacent tidelands or shorelands shall have the preference right to purchase the lands produced by accretion, when otherwise permitted by RCW 79.125.200 to be sold, for thirty days after the owner of the adjacent tidelands or shorelands shall have been notified by registered mail of the owner's preference right to purchase the accreted lands. [2005 c 155 § 530; 1982 1st ex.s. c 21 § 116. Formerly RCW 79.94.310.]

**79.125.450 Second-class shorelands on navigable lakes—Sale.** (1) The legislature finds that maintaining public lands in public ownership is often in the public interest. However, when second-class shorelands on navigable lakes have minimal public value, the sale of those shorelands to the abutting upland owner may not be contrary to the public interest. However, the purpose of this section is to remove the prohibition contained in RCW 79.125.200 regarding the sale of second-class shorelands to abutting owners, whose uplands front on the shorelands. Nothing contained in this section shall be construed to otherwise affect the rights of interested parties relating to public or private ownership of shorelands within the state.

(2) Notwithstanding the provisions of RCW 79.125.200, the department may sell second-class shorelands on navigable lakes to abutting owners whose uplands front upon the shorelands in cases where the board has determined that these sales would not be contrary to the public interest. These shorelands shall be sold at fair market value, but not less than five percent of the fair market value of the abutting upland, less improvements, to a maximum distance of one hundred and fifty feet landward from the line of ordinary high water.

(3) Review of the decision of the department regarding the sale price established for a shoreland to be sold pursuant to this section may be obtained by the upland owner by filing a petition with the board of tax appeals created in accordance with chapter 82.03 RCW within thirty days after the mailing of notification by the department to the owner regarding the price. The board of tax appeals shall review the cases in an adjudicative proceeding as described in chapter 34.05 RCW, the administrative procedure act, and the board's review shall be de novo. Decisions of the board of tax appeals regarding fair market values determined pursuant to this section shall be final unless appealed to the superior court pursuant to RCW 34.05.510 through 34.05.598. [2005 c 155 § 520. Prior: 1989 c 378 § 3; 1989 c 175 § 171; 1982 1st ex.s. c 21 § 106. Formerly RCW 79.94.210.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**79.125.460 Second-class shorelands—Sale or lease when in best public interest—Preference right of upland owner—Procedure upon determining sale or lease not in**



**best public interest or where transfer made for public use—Platting.** (1) If application is made to purchase or lease any second-class shorelands and the department deems it for the best public interest to offer second-class shorelands for sale or lease, the department shall cause a notice to be served upon the abutting upland owner if the owner is a resident of the state, or if the upland owner is a nonresident of the state, shall mail to the owner's last known post office address, as reflected in the county records a copy of a notice notifying the owner that the state is offering the shorelands for sale or lease, giving a description of the department's appraised fair market value of the shorelands for sale or lease, and notifying the upland owner that he or she has a preference right to purchase, if the purchase is otherwise permitted under RCW 79.125.200, or lease the shorelands at the appraised value for a period of thirty days from the date of the service or mailing of the notice. If at the expiration of the thirty days from the service or mailing of the notice, as provided in this section, the abutting upland owner has failed to exercise the preference right to purchase, as otherwise permitted under RCW 79.125.200, or lease, or to pay to the department the appraised value for sale or lease of the shorelands described in the notice, then in that event, except as otherwise provided in this section, the shorelands may be offered for sale, when otherwise permitted under RCW 79.125.200, or offered for lease, and sold or leased in the manner provided for the sale or lease of state lands, as otherwise permitted under this chapter.

(2) The department shall authorize the sale or lease, whether to abutting upland owners or others, only if the sale or lease would be in the best public interest and is otherwise permitted under RCW 79.125.200. It is the intent of the legislature that whenever it is in the best public interest, the second-class shorelands managed by the department shall not be sold but shall be maintained in public ownership for the use and benefit of the people of the state.

(3) In all cases where application is made for the lease of any second-class shorelands adjacent to upland, under the provisions of this section, the shorelands shall be leased per lineal chain frontage.

(4) If, following an application by the abutting upland owner to either purchase as otherwise permitted under RCW 79.125.200 or to obtain an exclusive lease at appraised full market value or rental, the department deems that the sale or lease is not in the best public interest, or if property rights in state-owned second-class shorelands are at any time withdrawn, sold, or assigned in any manner authorized by law to a public agency for a use by the general public, the department shall within one hundred and eighty days from receipt of the application to purchase or lease, or on reaching a decision to withdraw, sell, or assign such shorelands to a public agency, and: (a) Make a formal finding that the body of water adjacent to the shorelands is navigable; (b) find that the state or the public has an overriding interest inconsistent with a sale or exclusive lease to a private person, and specifically identify the interest and the factor or factors amounting to the inconsistency; and (c) provide for the review of the decision in accordance with the procedures prescribed by chapter 34.05 RCW.

(5) Notwithstanding subsections (1) through (4) of this section, the department may cause any of the shorelands to be

platted as is provided for the platting of first-class shorelands, and when so platted the lands shall be sold, when otherwise permitted under RCW 79.125.200 to be sold, or leased in the manner provided for the sale or lease of first-class shorelands. [2005 c 155 § 525; 1982 1st ex.s. c 21 § 111. Formerly RCW 79.94.260.]

#### SECOND-CLASS SHORELANDS—SPECIAL PLATTING AND SELECTION PROVISIONS

**79.125.500 Second-class shorelands—Boundary of shorelands when water lowered—Certain shorelands granted to city of Seattle.** In every case where the state of Washington had prior to June 13, 1913, sold to any purchaser from the state any second-class shorelands bordering upon navigable waters of this state by description where the water boundary of the purchased shorelands is not defined, the water boundary shall be the line of ordinary navigation in the water; and whenever the waters have been or shall be lowered by any action done or authorized either by the state of Washington or the United States, the water boundary shall be the line of ordinary navigation as the water boundary shall be found in the waters after the lowering, and there is granted and confirmed to every purchaser, the purchaser's heirs and assigns, all the lands. However, this section and RCW 79.125.510 shall not apply to the portions of the second-class shorelands which shall, as provided by RCW 79.125.510, be selected by the department for harbor areas, slips, docks, wharves, warehouses, streets, avenues, parkways and boulevards, alleys, or other public purposes. Further, all shorelands and the bed of Lake Washington from the southerly margin of the plat of Lake Washington shorelands southerly along the westerly shore of the lake to a line three hundred feet south of and parallel with the east and west center line of section 35, township 24 north, range 4 east, W.M., are reserved for public uses and are granted and donated to the city of Seattle for public park, parkway, and boulevard purposes, and as a part of its public park, parkway, and boulevard system and any diversion or attempted diversion of the lands so donated from such purposes shall cause the title to the lands to revert to the state. [2005 c 155 § 521; 1982 1st ex.s. c 21 § 107. Formerly RCW 79.94.220.]

**79.125.510 Second-class shorelands—Survey/platting—Selection for slips, docks, wharves, etc.—Filing of plat.** It is the duty of the department to survey the second-class shorelands and in platting the survey to designate for public use all of the shorelands as in the opinion of the department is available, convenient, or necessary to be selected for the use of the public as harbor areas, sites for slips, docks, wharves, warehouses, streets, avenues, parkways and boulevards, alleys, and other public purposes.

Upon the filing of the plat in the department's Olympia office, the title to all harbor areas so selected shall remain in the state, the title to all selections for streets, avenues, and alleys shall vest in any city or town within the corporate limits of which they are situated, otherwise in the county in which they are situated, the title to and control of any lands so selected and designated upon the plat for parkways and boulevard purposes shall, if the lands lie outside of the corporate limits of any city or town and if the lands form a part of the

general parkway and boulevard system of a first-class city lie in the city, and the title to all selections for slips, docks, wharves, warehouses, and other public purposes shall vest in the port district if they are situated in a port district, otherwise in the county in which they are situated. [2005 c 155 § 522; 1982 1st ex.s. c 21 § 108. Formerly RCW 79.94.230.]

**79.125.520 Second-class shorelands—Platting of certain shorelands of Lake Washington for use as harbor area—Effect.** It is the duty of the department to plat for the public use harbor area in front of the portions of the shorelands of Lake Washington sold as second-class shorelands by the state of Washington as in the opinion of the department are necessary for the use of the public as harbor area. However, this section and RCW 79.125.530 shall not be construed to authorize the department to change the location of any inner or outer harbor line or the boundaries or location of, or to replat any harbor area platted under and by virtue of sections 1 and 2, chapter 183, Laws of 1913, and the title to all shorelands purchased from the state as second-class shorelands is confirmed to the purchaser, the purchaser's heirs and assigns, out to the inner harbor line established and platted under sections 1 and 2, chapter 183, Laws of 1913, or which shall be established and platted under RCW 79.125.510 and 79.125.530, and all reservations shown upon the plat made and filed pursuant to sections 1 and 2, chapter 183, Laws of 1913, are declared null and void, except reservations shown for harbor area, and reservations in the harbor area, and reservations across shorelands for traversed streets which were extensions of streets existing across shorelands at the time of filing of such plat. The department shall in platting the harbor area make a new plat showing all the harbor area on Lake Washington already platted under sections 1 and 2, chapter 183, Laws of 1913, and under sections 1 and 2, chapter 150, Laws of 1917, and upon the adoption of any new plat by the board acting as the harbor line commission, and the filing of the plat in the department's Olympia office, the title to all the harbor areas so selected shall remain in the state of Washington, and the harbor areas shall not be sold, but may be leased as provided for by law relating to the leasing of the harbor area. [2005 c 155 § 523; 1982 1st ex.s. c 21 § 109. Formerly RCW 79.94.240.]

**79.125.530 Platting of certain shorelands of Lake Washington for use as harbor area—Selection for slips, docks, wharves, etc.—Vesting of title.** Immediately after establishing the harbor area provided for in RCW 79.125.520, it is the duty of the department to make a plat designating all first and second-class shorelands, not sold by the state of Washington, and to select for the use of the public out of the shorelands, or out of harbor areas, sites for slips, docks, wharves, warehouses, streets, avenues, parkways, boulevards, alleys, commercial waterways, and other public purposes, insofar as the shorelands may be available for any or all public purposes.

Upon the filing of the plat of shorelands with the reservations and selections in the department's Olympia office, the title to all selections for streets, avenues, and alleys shall vest in any city or town within the corporate limits of which they are situated, otherwise in the county in which they are situ-

ated. The title to and control of any land so selected and designated upon the plat for parkway and boulevard purposes shall, if the lands lie outside the corporate limits of any city or town, and if the lands form a part of the general parkway and boulevard system of the first-class city, be in the city. The title to all selections for commercial waterway purposes shall vest in the commercial waterway district in which they are situated, or for which selected, and the title to all selections for slips, docks, wharves, warehouses, and other purposes shall vest in the port district if they are situated in a port district, otherwise in the county in which they are situated, and any sales of the shorelands when otherwise permitted by law shall be made subject to the selection and reservation for public use. [2005 c 155 § 524; 1982 1st ex.s. c 21 § 110. Formerly RCW 79.94.250.]

#### SALES OF TIDELANDS AND SHORELANDS

**79.125.600 Sale procedure—Fixing date, place, and time of sale—Notice—Publication and posting.** (1) When the department decides to sell any state-owned tidelands or shorelands, otherwise permitted by RCW 79.125.200 to be sold, it shall be the duty of the department to fix the date, place, and the time of sale, and no sale shall be had on any day which is a legal holiday.

(2) The department shall give notice of the sale by advertisement published once a week for four consecutive weeks immediately preceding the date fixed for sale in the notice, in at least one newspaper published and of general circulation in the county in which the whole or any part of any lot, block, or tract of land to be sold is situated, and by causing a copy of the notice to be posted in a conspicuous place in the department's Olympia office and the region headquarters administering the sale.

(3) The notice shall: (a) Specify the place and time of sale; (b) specify the appraised value; (c) describe with particularity each parcel of land to be sold; and (d) specify that the terms of sale will be posted in the region headquarters and the department's Olympia office. [2005 c 155 § 112; 1982 1st ex.s. c 21 § 23. Formerly RCW 79.90.170.]

**79.125.610 List of state-owned tidelands and shorelands permitted to be sold.** The department shall print a list of all state-owned tidelands and shorelands otherwise permitted by RCW 79.125.200 to be sold, giving appraised value, character of the land, and other information as may be of interest to prospective buyers. The lists must be issued at least four weeks prior to the date of any sale. The department shall retain for free distribution in its office in Olympia and the regional offices sufficient copies of the lists, to be kept in a conspicuous place or receptacle on the counter of the general and regional office of the department, and, when requested to do so, shall mail copies of the list as issued to any applicant. [2005 c 155 § 113; 1982 1st ex.s. c 21 § 24. Formerly RCW 79.90.180.]

**79.125.620 Sale procedure—Additional advertising expense.** The department is authorized to expend any sum in additional advertising of the sale as shall be determined to be

in the best interests of the state. [2005 c 155 § 114; 1982 1st ex.s. c 21 § 25. Formerly RCW 79.90.190.]

**79.125.630 Reoffer—Continuance.** Any sale that has been offered, and for which there are no bids received shall not be reoffered until it has been readvertised as specified in RCW 79.125.600, 79.125.610, and 79.125.620. If all sales cannot be offered within the specified time on the advertised date, the sale shall continue on the following day between the hours of ten o'clock a.m. and four o'clock p.m. [2005 c 155 § 115; 1982 1st ex.s. c 21 § 26. Formerly RCW 79.90.200.]

**79.125.640 Sale at public auction—Minimum price—Sales by leaseholder.** All sales of state-owned tidelands and shorelands otherwise permitted by RCW 79.125.200 to be sold, shall be sold at public auction to the highest responsible bidder, on the terms prescribed by law and as specified in the notice provided, and no land shall be sold for less than the appraised value. Sales of aquaculture products by a leaseholder shall be as specified in RCW 79.135.040. [2005 c 155 § 116; 2005 c 113 § 2; 1990 c 163 § 1; 1982 1st ex.s. c 21 § 27. Formerly RCW 79.90.210.]

**Reviser's note:** This section was amended by 2005 c 113 § 2 and by 2005 c 155 § 116, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**79.125.650 Highest responsible bidder—Determination.** (1) To determine the "highest responsible bidder" under RCW 79.125.640, the department shall be entitled to consider, in addition to price, the following:

- (a) The financial and technical ability of the bidder to perform the contract;
- (b) Whether the bid contains material defects;
- (c) Whether the bidder has previously or is currently complying with terms and conditions of any other contracts with the state or relevant contracts with entities other than the state;
- (d) Whether the bidder was the "highest responsible bidder" for a sale within the previous five years but failed to complete the sale, such as by not entering into a resulting contract or by not paying the difference between the deposit and the total amount due. However, sales that were bid prior to January 1, 2003, may not be considered for the purposes of this subsection (1)(d);
- (e) Whether the bidder has been convicted of a crime relating to the public lands or natural resources of the state of Washington, the United States, or any other state, tribe, or country, where "conviction" shall include a guilty plea, or unvacated forfeiture of bail;
- (f) Whether the bidder is owned, controlled, or managed by any person, partnership, or corporation that is not responsible under this statute; and
- (g) Whether the subcontractors of the bidder, if any, are responsible under this statute.

(2) Whenever the department has reason to believe that the apparent high bidder is not a responsible bidder, the department may award the sale to the next responsible bidder or the department may reject all bids pursuant to RCW 79.125.680. [2005 c 155 § 117; 2003 c 28 § 1; 1990 c 163 § 2. Formerly RCW 79.90.215.]

**79.125.660 Sale procedure—Conduct of sales—Deposits—Bid bonds—Memorandum of purchase.** (1) Sales by public auction under this chapter shall be conducted under the direction of the department or by its authorized representative. The department's representatives are referred to as auctioneers.

(2) On or before the time specified in the notice of sale each bidder shall deposit with the auctioneer, in cash or by certified check, cashier's check, or postal money order payable to the order of the department, or by bid guarantee in the form of bid bond acceptable to the department, an amount equal to the deposit specified in the notice of sale. The deposit shall include a specified amount of the appraised price for the valuable materials offered for sale, together with any fee required by law for the issuance of contracts or bills of sale. The deposit may, when prescribed in the notice of sale, be considered an opening bid of an amount not less than the minimum appraised price established in the notice of sale. The successful bidder's deposit will be retained by the auctioneer and the difference, if any, between the deposit and the total amount due shall on the day of the sale be paid in cash, certified check, cashier's check, draft, postal money order, or by personal check made payable to the department. If a bid bond is used, the share of the total deposit due guaranteed by the bid bond shall, within ten days of the day of sale, be paid in cash, certified check, cashier's check, draft, or postal money order payable to the department. Other deposits, if any, shall be returned to the respective bidders at the conclusion of each sale.

(3) The auctioneer shall deliver to the purchaser a memorandum of the purchase containing a description of the land or materials purchased, the price bid, and the terms of the sale.

(4) The auctioneer shall at once send to the department the cash, certified check, cashier's check, draft, postal money order, or bid guarantee received from the purchaser, and a copy of the memorandum delivered to the purchaser, together with such additional report of the auctioneer's proceedings with reference to the sales as may be required by the department. [2005 c 155 § 118; 1982 1st ex.s. c 21 § 28. Formerly RCW 79.90.220.]

**79.125.670 Sale procedure—Readvertisement of lands not sold.** If any tideland or shoreland, when otherwise permitted under RCW 79.125.200, offered for sale is not sold, it may again be advertised for sale, as provided in this chapter, whenever in the opinion of the department it is expedient to do so. Whenever any person applies to the department in writing to have the land offered for sale and agrees to pay at least the appraised value of the land and deposits with the department at the time of making the application a sufficient sum of money to pay the cost of advertising the sale, the land may be advertised again and offered for sale as provided in this chapter. [2005 c 155 § 119; 1982 1st ex.s. c 21 § 29. Formerly RCW 79.90.230.]

**79.125.680 Sale procedure—Confirmation of sale.** (1) A sale of tidelands or shorelands otherwise permitted by RCW 79.125.200 to be sold shall be confirmed if:

- (a) No affidavit showing that the interest of the state in such sale was injuriously affected by fraud or collusion, is

filed with the department's Olympia office within ten days from the receipt of the report of the auctioneer conducting the sale;

(b) It appears from the report that the sale was fairly conducted, that the purchaser was the highest responsible bidder at the sale, and that the sale price is not less than the appraised value of the property sold;

(c) The department is satisfied that the lands sold would not, upon being readvertised and offered for sale, sell for a substantially higher price; and

(d) The payment required by law to be made at the time of making the sale has been made, and that the best interests of the state are being served.

(2) Upon confirming a sale, the department shall enter upon its records the confirmation of sale and issue to the purchaser a contract of sale or bill of sale as the case may be, as is provided for in this chapter. [2005 c 155 § 120; 1990 c 163 § 3; 1982 1st ex.s. c 21 § 30. Formerly RCW 79.90.240.]

#### CONVEYANCE TO PUBLIC ENTITIES/PUBLIC USE

**79.125.700 Sale of state-owned tidelands or shorelands to municipal corporation or state agency—Authority to execute agreements, deeds, etc.** The department may with the advice and approval of the board sell state-owned tidelands or shorelands at the appraised market value to any municipal corporation or agency of the state of Washington when the land is to be used solely for municipal or state purposes. However, the department shall with the advice and approval of the attorney general, execute agreements, writings, or relinquishments and certify to the governor such deeds as are necessary or proper to affect the sale or exchange. [2005 c 155 § 515; 1982 1st ex.s. c 21 § 101. Formerly RCW 79.94.160.]

**79.125.710 Grant of lands for city park or playground purposes.** Whenever application is made to the department by any incorporated city or town or metropolitan park district for the use of any state-owned tidelands or shorelands within the corporate limits of the city or town or metropolitan park district for municipal park and/or playground purposes, the department shall cause the application to be entered in the records of its office, and shall then forward the application to the governor, who shall appoint a committee of five representative citizens of the city or town, in addition to the commissioner and the director of ecology, both of whom shall be ex officio members of the committee, to investigate the lands and determine whether they are suitable and needed for park or playground purposes; and, if they so find, the commissioner shall certify to the governor that the property shall be deeded, when in accordance with RCW 79.125.200 and 79.125.700, to the city or town or metropolitan park district and the governor shall then execute a deed in the name of the state of Washington, attested by the secretary of state, conveying the use of the lands to the city or town or metropolitan park district for park or playground purposes for so long as it shall continue to hold, use, and maintain the lands for park or playground purposes. [2005 c 155 § 517; 2003 c 334 § 447; 1988 c 127 § 33; 1939 c 157 § 1; RRS § 7993-1. Formerly RCW 79.94.175, 79.08.080.]

[2005 RCW Supp—page 960]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.125.720 Exchange of lands to secure city parks and playgrounds.** In the event there are no state-owned tidelands or shorelands in any city or town or metropolitan park district suitable for the purposes of RCW 79.125.710 and the committee finds other lands which are suitable and needed for parks or playgrounds, the department is authorized to secure the lands by exchanging state-owned tidelands or shorelands of equal value in the same county, and the use of the lands so secured shall be conveyed to any city or town or metropolitan park district as provided for in RCW 79.125.710. In all exchanges the department is authorized and directed, with the assistance of the attorney general, to execute agreements, writings, relinquishments, and deeds as are necessary or proper for the purpose of carrying the exchanges into effect. Upland owners shall be notified of the state-owned tidelands or shorelands to be exchanged. [2005 c 155 § 518; 2003 c 334 § 448; 1939 c 157 § 2; RRS § 7993-2. Formerly RCW 79.94.181, 79.08.090.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.125.730 Director of ecology to assist city parks.** The director of ecology, in addition to serving as an ex officio member of the committee, is authorized and directed to assist the city or town or metropolitan park district in the development and decoration of any lands so conveyed and to furnish trees, grass, flowers, and shrubs therefor. [2005 c 155 § 519; 1988 c 127 § 34; 1939 c 157 § 3; RRS § 7993-3. Formerly RCW 79.94.185, 79.08.100.]

**79.125.740 Certain tidelands reserved for recreational use and taking of fish and shellfish.** The following described tidelands, being public lands of the state, are withdrawn from sale or lease and reserved as public areas for recreational use and for the taking of fish and shellfish for personal use as defined in RCW 77.08.010:

Parcel No. 1. (Point Whitney) The second-class tidelands, owned by the state of Washington, situate in front of, adjacent to or abutting upon lots 3, 4, and 5, section 7, township 26 north, range 1 west, W.M., with a frontage of 72.45 lineal chains, more or less.

Excepting, however, those portions of the above-described second-class tidelands conveyed to the state of Washington, department of fish and wildlife through deed issued May 14, 1925, under application No. 8136, records of department of public lands.

Parcel No. 2. (Point Whitney) The second-class tidelands lying below the line of mean low tide, owned by the state of Washington, situate in front of lot 1, section 6, township 26 north, range 1 west, W.M., with a frontage of 21.00 lineal chains, more or less; also

The second-class tidelands, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 6 and 7, and that portion of lot 5, section 1, township 26 north, range 1 west, W.M., lying south of a line running due west from a point on the government meander line which is S 22° E 1.69 chains from an angle point in said meander line which is S 15° W 1.20 chains, more or less, from the point of inter-

section of the north line of said lot 5 and the meander line, with a frontage of 40.31 lineal chains, more or less.

Parcel No. 3. (Toandos Peninsula) The second-class tidelands, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1, 2, and 3, section 5, lots 1, 2, and 3, section 4, and lot 1, section 3, all in township 25 north, range 1 west, W.M., with a frontage of 158.41 lineal chains, more or less.

Parcel No. 4. (Shine) The second-class tidelands, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1, 2, 3 and that portion of lot 4 lying north of the south 8.35 chains as measured along the government meander line, all in section 35, township 28 north, range 1 east, W.M., with a frontage of 76.70 lineal chains, more or less.

Subject to an easement for right of way for county road granted to Jefferson county December 8, 1941, under application No. 1731, records of department of public lands.

Parcel No. 5. (Lilliwaup) The second-class tidelands, owned by the state of Washington, lying easterly of the east line of vacated state oyster reserve plat No. 133 produced southerly and situate in front of, adjacent to, or abutting upon lot 9, section 30, lot 8, section 19 and lot 5 and the south 20 acres of lot 4, section 20, all in township 23 north, range 3 west, W.M., with a frontage of 62.46 lineal chains, more or less.

Subject to easements for rights of way for state road granted through the filing of state road plats No. 374 December 15, 1930, No. 661, March 29, 1949, and No. 666 August 25, 1949, records of department of public lands.

Parcel No. 6. (Nemah) Those portions of the second-class tidelands, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 5, 6, and 7, section 3 and lots 1, 2, and 3, section 4, township 12 north, range 10 west, W.M., lots 1, 2, 3, and 4, section 34, section 27 and lots 1, 2, 3 and 4, section 28, township 13 north, range 10 west, W.M., lying easterly of the easterly line of the Nemah Oyster reserve and easterly of the easterly line of a tract of second-class tidelands conveyed through deed issued July 28, 1938, pursuant to the provisions of chapter 24, Laws of 1895, under application No. 9731, with a frontage of 326.22 lineal chains, more or less.

Parcels No. 7 and 8. (Penn Cove) The unplatted first and second-class tidelands, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1 and 2, section 33, lots 1, 2, 3, and 4, section 32, lots 2 and 3 and the B.P. Barstow D.L.C. No. 49, sections 30 and 31 and that portion of the R.H. Lansdale D.L.C. No. 54 in section 30, lying west of the east 3.00 chains thereof as measured along the government meander line, all in township 32 north, range 1 east, W.M., with a frontage of 260.34 lineal chains, more or less.

Excepting, however, the tidelands above the line of mean low tide in front of said lot 1, section 32 which were conveyed as second-class tidelands through deed issued December 29, 1908, application No. 4957, records of department of public lands.

Subject to an easement for right of way for transmission cable line granted to the United States of America Army Engineers June 7, 1943, under application No. 17511, records of department of public lands.

Parcel No. 9. (South of Penn Cove) The second-class tidelands, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 2, 3 and 4, section 17 and lots 1, 2 and 3, section 20, township 31 north, range 2 east, W.M., with a frontage of 129.97 lineal chains, more or less.

Parcel No. 10. (Mud Bay—Lopez Island) The second-class tidelands, owned by the state of Washington situate in front of, adjacent to, or abutting upon lots 5, 6 and 7, section 18, lot 5, section 7 and lots 3, 4, and 5, section 8, all in township 34 north, range 1 west, W.M., with a frontage of 172.11 lineal chains, more or less.

Excepting, however, any second-class tideland in front of said lot 3, section 8 conveyed through deeds issued April 14, 1909, pursuant to the provisions of chapter 24, Laws of 1895, under application No. 4985, records of department of public lands.

Parcel No. 11. (Cattle Point) The second-class tidelands, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lot 1, section 6, lots 1, 3, 4, 5, 6, 7, 8, 9, and 10, section 7, lots 1, 2, 3, 4, 5, 6 and 7, section 8 and lot 1, section 5, all in township 34 north, range 2 west, W.M., with a frontage of 463.88 lineal chains, more or less.

Excepting, however, any second-class tidelands in front of said lot 10, section 7 conveyed through deed issued June 1, 1912, under application No. 6906, records of department of public lands.

Parcel No. 12. (Spencer Spit) The second-class tidelands, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1, 3, and 4, section 7, and lot 5, section 18 all in township 35 north, range 1 west, W.M., with a frontage of 118.80 lineal chains, more or less. [2005 c 155 § 533; 2003 c 39 § 42; 1994 c 264 § 66; 1983 1st ex.s. c 46 § 181; 1982 1st ex.s. c 21 § 124. Formerly RCW 79.94.390.]

**Tidelands—Upland owner use:** "The state department of fisheries is authorized to permit designated portions of the following described tidelands to be used by the upland owners thereof for the purpose of building and maintaining docks: Tidelands of the second class owned by the state of Washington situated in front of, adjacent to, or abutting upon, the entire west side of lot 1, section 5, Township 34 North, Range 2 West, W.M., to the northernmost tip of said lot, and lots 2 and 3, section 8, Township 34 North, Range 2 West, W.M. (Cattle Point)." [1967 ex.s. c 128 § 1.]

**79.125.750 Access to and from tidelands reserved for recreational use and taking of fish and shellfish.** The director of fish and wildlife may take appropriate action to provide public and private access, including roads and docks, to and from the tidelands described in RCW 79.125.740. [2005 c 155 § 534; 1994 c 264 § 67; 1982 1st ex.s. c 21 § 125. Formerly RCW 79.94.400.]

**79.125.760 Use of certain tidelands, shorelands, and abutting bedlands—Grant to the United States—Purposes—Limitations.** The use of any tidelands, shorelands, and abutting bedlands covered with less than four fathoms of water at ordinary low tide belonging to the state, and adjoining and bordering on any tract, piece, or parcel of land, which may have been reserved or acquired, or which may be reserved or acquired, by the government of the United States, for the purposes of erecting and maintaining forts, magazines, arsenals, dockyards, navy yards, prisons, penitentiaries, lighthouses, fog signal stations, aviation fields, or other

aids to navigation, may be granted to the United States, upon payment for the rights, so long as the upland adjoining the tidelands or shorelands shall continue to be held by the government of the United States for any of the public purposes above mentioned. However, this grant shall not extend to or include any aquatic lands covered by more than four fathoms of water at ordinary low tide; and shall not be construed to prevent any citizen of the state from using the lands for the taking of food fishes so long as the fishing does not interfere with the public use of them by the United States. [2005 c 155 § 535; 1982 1st ex.s. c 21 § 126. Formerly RCW 79.94.410.]

**79.125.770 Tidelands and shorelands—Use of lands granted to United States—Application—Proof of upland use—Conveyance.** Whenever application is made to the department by any department of the United States government for the use of any state-owned tidelands or shorelands and adjoining and bordering on any upland held by the United States for any of the purposes mentioned in RCW 79.125.760, upon proof being made to the department, that the uplands are so held by the United States for such purposes, and upon payment for the land, it shall cause the fact to be entered in the records of the department and the department shall certify the fact to the governor who will execute a deed in the name of the state, attested by the secretary of state, conveying the use of the lands, for such purposes, to the United States, so long as it shall continue to hold for the public purposes the uplands adjoining the tidelands and shorelands. [2005 c 155 § 536; 1982 1st ex.s. c 21 § 127. Formerly RCW 79.94.420.]

**79.125.780 Tidelands and shorelands—Use of lands granted to United States—Easements over tidelands or shorelands to United States.** Whenever application is made to the department, by any department of the United States government, for the use of any state-owned tidelands or shorelands, for any public purpose, and the department shall be satisfied that the United States requires or may require the use of the tidelands or shorelands for the public purposes, the department may reserve the tidelands or shorelands from public sale and grant the use of them to the United States, upon payment for the land, so long as it may require the use of them for the public purposes. In such a case, the department shall execute an easement to the United States, which grants the use of the tidelands or shorelands to the United States, so long as it shall require the use of them for the public purpose. [2005 c 155 § 537; 1982 1st ex.s. c 21 § 128. Formerly RCW 79.94.430.]

**79.125.790 Tidelands and shorelands—Use of lands granted to United States—Reversion on cessation of use.** Whenever the United States shall cease to hold and use any uplands for the use and purposes mentioned in RCW 79.125.760, or shall cease to use any tidelands or shorelands for the purpose mentioned in RCW 79.125.780, the grant or easement of the tidelands or shorelands shall be terminated, and the tidelands or shorelands shall revert to the state without resort to any court or tribunal. [2005 c 155 § 538; 1982 1st ex.s. c 21 § 129. Formerly RCW 79.94.440.]

[2005 RCW Supp—page 962]

**79.125.800 United States Navy base—Exchange of property—Procedure.** The department is authorized to deed, by exchanges of property, to the United States Navy those tidelands necessary to facilitate the location of the United States Navy base in Everett. In carrying out this authority, the department shall request that the governor execute the deed in the name of the state attested to by the secretary of state. The department will follow the requirements outlined in RCW 79.17.050 in making the exchange. The department must exchange the state's tidelands for lands of equal value, and the land received in the exchange must be suitable for natural preserves, recreational purposes, or have commercial value. The lands must not have been previously used as a waste disposal site. Choice of the site must be made with the advice and approval of the board. [2003 c 334 § 615; 1987 c 271 § 4. Formerly RCW 79.94.450.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Severability—1987 c 271:** See note following RCW 79.130.050.

**79.125.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.** See RCW 79.135.900 through 79.135.904.

**79.125.901 Severability—Part/subchapter headings not law—2005 c 155.** See RCW 79.105.903 and 79.105.904.

## Chapter 79.130 RCW

### AQUATIC LANDS—BEDS OF NAVIGABLE WATERS

#### Sections

- 79.130.001 Intent—2005 c 155.
- 79.130.010 Lease of beds of navigable waters.
- 79.130.020 Lease of beds of navigable waters—Terms and conditions of lease—Forfeiture for nonuser.
- 79.130.030 Lease of beds of navigable waters—Improvements—Federal permit—Forfeiture—Plans and specifications.
- 79.130.040 Lease of beds of navigable waters—Preference right to release.
- 79.130.050 United States Navy base—Legislative findings and declaration.
- 79.130.060 Lease of bedlands in Port Gardner Bay for dredge spoil site—Conditions.
- 79.130.070 Exchange of bedlands—Cowlitz river.
- 79.130.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.
- 79.130.901 Severability—Part/subchapter headings not law—2005 c 155.

**79.130.001 Intent—2005 c 155.** See RCW 79.105.001.

**79.130.010 Lease of beds of navigable waters.** (1) Except as provided in RCW 79.130.060, the department may lease to the abutting tidelands or shorelands owner or lessee, the beds of navigable waters lying below the line of extreme low tide in waters where the tide ebbs and flows, and below the line of navigability in lakes and rivers claimed by the state and defined in Article XVII, section 1 of the state Constitution.

(2) In case the abutting tidelands or shorelands or the abutting uplands are not improved or occupied for residential or commercial purposes, the department may lease the beds to any person for a period not exceeding ten years for booming purposes.

(3) Nothing in this chapter shall change or modify any of the provisions of the state Constitution or laws of the state which provide for the leasing of harbor areas and the reservation of lands lying in front of harbor areas. [2005 c 155 § 601; 1987 c 271 § 2; 1982 1st ex.s. c 21 § 130. Formerly RCW 79.95.010.]

**Severability—1987 c 271:** See note following RCW 79.95.050.

**79.130.020 Lease of beds of navigable waters—Terms and conditions of lease—Forfeiture for nonuser.**

(1) The department shall, prior to the issuance of any lease under the provisions of this chapter, fix the annual rental and prescribe the terms and conditions of the lease. However, in fixing the rental, the department shall not take into account the value of any improvements placed upon the lands by the lessee.

(2) No lease issued under the provisions of this chapter shall be for a term longer than thirty years from the date thereof if in front of second-class tidelands or shorelands; or a term longer than ten years if in front of unplatted first-class tidelands or shorelands leased under the provisions of RCW 79.125.410, in which case the lease shall be subject to the same terms and conditions as provided for in the lease of the unplatted first-class tidelands or shorelands. Failure to use those beds leased under the provisions of this chapter for booming purposes, for a period of two years shall work a forfeiture of the lease and the land shall revert to the state without notice to the lessee upon the entry of a declaration of forfeiture in the records of the department. [2005 c 155 § 602; 1982 1st ex.s. c 21 § 131. Formerly RCW 79.95.020.]

**79.130.030 Lease of beds of navigable waters—Improvements—Federal permit—Forfeiture—Plans and specifications.** The applicant for a lease under the provisions of this chapter shall first obtain from the United States army corps of engineers or other federal regulatory agency, a permit to place structures or improvements in the navigable waters and file with the department a copy of the permit. No structures or improvements shall be constructed beyond a point authorized by the army corps of engineers or the department and any construction beyond authorized limits will work a forfeiture of all rights granted by the terms of any lease issued under the provisions of this chapter. The applicant shall also file plans and specifications of any proposed improvements to be placed upon the areas with the department, the plans and specifications to be the same as provided for in the case of the lease of harbor areas. [2005 c 155 § 603; 1982 1st ex.s. c 21 § 132. Formerly RCW 79.95.030.]

**79.130.040 Lease of beds of navigable waters—Preference right to re-lease.** At the expiration of any lease issued under the provisions of this chapter, the lessee or the lessee's successors or assigns, shall have a preference right to re-lease all or part of the area covered by the original lease if the department deems it to be in the best interest of the state to re-lease the area. Such re-lease shall be for the term as specified by the provisions of this chapter, and at the rental and upon the conditions as may be prescribed by the department. However, if the preference right is not exercised, the rights and obligations of the lessee, the department, and any

subsequent lessee shall be the same as provided in RCW 79.125.300 relating to failure to re-lease tidelands or shorelands. Any person who prior to June 11, 1953, had occupied and improved an area subject to lease under this chapter and has secured a permit for the improvements from the United States army corps of engineers, or other federal regulatory agency, shall have the rights and obligations of a lessee under this section upon the filing of a copy of the permit together with plans and specifications of the improvements with the department. [2005 c 155 § 604; 1982 1st ex.s. c 21 § 133. Formerly RCW 79.95.040.]

**79.130.050 United States Navy base—Legislative findings and declaration.**

The legislature recognizes the importance of economic development in the state of Washington, and finds that the location of a United States Navy base in Everett, Washington will enhance economic development. The legislature finds that the state should not assume liability or risks resulting from any action taken by the United States Navy, now or in the future associated with the dredge disposal program for that project known as confined aquatic disposal (CAD). The legislature also recognizes the importance of improving water quality and cleaning up pollution in Puget Sound. The legislature declares these actions to be a public purpose necessary to protect the health, safety, and welfare of its citizens, and to promote economic growth and improve environmental quality in the state of Washington. The United States Navy proposes to commence the Everett home port project immediately. [2005 c 155 § 605; 1987 c 271 § 1. Formerly RCW 79.95.050.]

**Severability—1987 c 271:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 271 § 6.]

**79.130.060 Lease of bedlands in Port Gardner Bay for dredge spoil site—Conditions.** (1) Upon application by the United States Navy, and upon verification of the legal description and compliance with the intent of this chapter, the commissioner is authorized to lease bedlands in Port Gardner Bay for a term of thirty years so the United States Navy can utilize a dredge spoil site solely for purposes related to construction of the United States Navy base at Everett.

(2) The lease shall reserve for the state uses of the property and associated waters which are not inconsistent with the use of the bed by the Navy as a disposal site. The lease shall include conditions under which the Navy:

(a) Will agree to hold the state of Washington harmless for any damage and liability relating to, or resulting from, the use of the property by the Navy; and

(b) Will agree to comply with all terms and conditions included in the applicable state of Washington section 401 water quality certification issued under the authority of the federal clean water act (33 U.S.C. Sec. 1251, et seq.), all terms and conditions of the army corps of engineers section 404 permit (33 U.S.C. Sec. 1344), and all requirements of statutes, regulations, and permits relating to water quality and aquatic life in Puget Sound and Port Gardner Bay, including all reasonable and appropriate terms and conditions of any permits issued under the authority of the Washington state

shoreline management act (chapter 90.58 RCW) and any applicable shoreline master program.

(3) The ability of the state of Washington to enforce the terms and conditions specified in subsection (2)(b) of this section shall include, but not be limited to: (a) The terms and conditions of the lease; (b) the section 401 water quality certification under the clean water act, 33 U.S.C. Sec. 1251, et seq.; (c) the comprehensive environmental response, compensation, and liability act, 42 U.S.C. Sec. 9601, et seq.; (d) the resource conservation and recovery act, 42 U.S.C. Sec. 6901, et seq.; or (e) any other applicable federal or state law. [2005 c 155 § 606; 1987 c 271 § 3. Formerly RCW 79.95.060.]

**Severability—1987 c 271:** See note following RCW 79.95.050.

**79.130.070 Exchange of bedlands—Cowlitz river.** (1) The department is authorized to exchange bedlands abandoned through rechanneling of the Cowlitz river near the confluence of the Columbia river so that the state obtains clear title to the Cowlitz river as it now exists or where it may exist in the future through the processes of erosion and accretion.

(2) The department is also authorized to exchange bedlands and enter into boundary line agreements to resolve any disputes that may arise over the location of state-owned lands now comprising the dike that was created in the 1920s.

(3) For purposes of chapter 150, Laws of 2001, "Cowlitz river near the confluence of the Columbia river" means those tidelands and bedlands of the Cowlitz river fronting and abutting sections 10, 11, and 14, township 7 north, range 2 west, Willamette Meridian and fronting and abutting the Huntington Donation Land Claim No. 47 and the Blakeny Donation Land Claim No. 43, township 7 north, range 2 west, Willamette Meridian.

(4) Nothing in chapter 150, Laws of 2001 shall be deemed to convey to the department the power of eminent domain. [2003 c 334 § 454; 2001 c 150 § 2. Formerly RCW 79.90.458, 79.08.260.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Findings—2001 c 150:** "(1) The legislature finds that in the 1920s the Cowlitz river near the confluence of the Columbia river in Longview, Washington was diverted from its original course by dredging and construction of a dike. As a result, a portion of the original bed of the Cowlitz river became a nonnavigable body of shallow water. Another portion of the original bed of the Cowlitz river became part of a dike and is indistinguishable from existing islands. The main channel of the Cowlitz river was diverted over uplands to the south of the original bed and has continued as a navigable channel.

(2) The legislature finds that continued ownership of the nonnavigable portion of the original bed of the Cowlitz river near the confluence of the Columbia river no longer serves the state's interest in navigation. Ownership of the existing navigable bed of the Cowlitz river would better serve the state's interest in navigation. It is also in the state's interest to resolve any disputes that have arisen because state-owned land is now indistinguishable from privately owned land within the dike." [2001 c 150 § 1.]

**Severability—2001 c 150:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 150 § 3.]

**79.130.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.** See RCW 79.135.900 through 79.135.904.

[2005 RCW Supp—page 964]

**79.130.901 Severability—Part/subchapter headings not law—2005 c 155.** See RCW 79.105.903 and 79.105.904.

### Chapter 79.135 RCW

## AQUATIC LANDS—OYSTERS, GEODUCKS, SHELLFISH, OTHER AQUACULTURAL USES, AND MARINE AQUATIC PLANTS

### Sections

79.135.001 Intent—2005 c 155.

#### GENERAL PROVISIONS

79.135.010 Bush act/Callow act lands.

79.135.020 Sale of reserved or reversionary rights in tidelands.

79.135.030 Wrongful taking of shellfish from public lands—Civil remedies.

79.135.040 Aquaculture products—Sale by leaseholder.

79.135.050 Study of Hood Canal geoduck population—Report. (*Expires July 1, 2008.*)

79.135.060 Study of Hood Canal's geoduck population levels and environmental conditions—Report. (*Expires July 1, 2008.*)

79.135.070 Study of age and shell oxidation rate of Hood Canal geoduck—Report. (*Expires July 1, 2008.*)

#### LEASING FOR SHELLFISH CULTIVATION/AQUACULTURE USE

79.135.100 Rents and fees for aquatic lands used for aquaculture production and harvesting.

79.135.110 Leasing beds of tidal waters for shellfish cultivation or other aquaculture use.

79.135.120 Leasing lands for shellfish cultivation or other aquaculture use—Who may lease—Application—Deposit.

79.135.130 Leasing lands for shellfish cultivation or other aquaculture use—Inspection and report by director of fish and wildlife—Rental and term—Commercial harvest of subtidal hardshell clams by hydraulic escalating.

79.135.140 Leasing lands for shellfish cultivation or other aquaculture use—Survey and boundary markers.

79.135.150 Renewal lease—Application.

79.135.160 Leasing lands for shellfish cultivation or other aquaculture use—Reversion for use other than cultivation of shellfish.

79.135.170 Leasing lands for shellfish cultivation or other aquaculture use—Abandonment—Application for other lands.

#### GEODUCK HARVEST/CULTIVATION

79.135.200 Leasing beds for geoduck harvest/cultivation—Survey by private party.

79.135.210 Geoduck harvesting—Agreements, regulation.

79.135.220 Geoduck harvesting—Designation of aquatic lands.

79.135.230 Intensive management plan for geoducks.

#### OYSTER RESERVES

79.135.300 Lease of tidelands set aside as oyster reserves.

79.135.310 Inspection by director of fish and wildlife.

79.135.320 Vacation of reserve—Lease of lands—Designated state oyster reserve lands.

#### MARINE AQUATIC PLANTS

79.135.400 Seaweed—Marine aquatic plants defined.

79.135.410 Seaweed—Personal use limit—Commercial harvesting prohibited—Exception—Import restriction.

79.135.420 Seaweed—Harvest and possession violations—Penalties and damages.

79.135.430 Seaweed—Enforcement.

79.135.900 Savings—1982 1st ex.s. c 21.

79.135.901 Captions—1982 1st ex.s. c 21.

79.135.902 Severability—1982 1st ex.s. c 21.

79.135.903 Effective date—1982 1st ex.s. c 21 §§ 176 and 179.

79.135.904 Effective date—1982 1st ex.s. c 21.

79.135.905 Severability—Part/subchapter headings not law—2005 c 155.

**79.135.001 Intent—2005 c 155.** See RCW 79.105.001.



## GENERAL PROVISIONS

**79.135.010 Bush act/Callow act lands.** (1) A person in possession of real property conveyed by the state of Washington pursuant to the authority of chapter 24, Laws of 1895 (Bush act) or chapter 25, Laws of 1895 (Callow act), wherein such lands are subject to a possibility of reversion, shall heretofore have and are granted the further right to use all of the property for the purpose of cultivating and propagating clams and any shellfish.

(2) The rights granted under subsection (1) of this section do not include the right to use subtidal portions of Bush act and Callow act lands for the harvest and cultivation of any species of shellfish that had not commenced prior to December 31, 2001.

(3) For the purposes of this section, harvest and cultivation of any species of shellfish shall not be deemed to have commenced unless the subtidal portions of the land had been planted with that species of shellfish prior to December 31, 2001.

(4) No vested rights in shellfish cultivation may be impaired by any of the provisions of chapter 123, Laws of 2002, nor is anything other than what is stated in subsection (2) of this section intended to grant any further rights in the subtidal lands than what was originally included under the intent of the Bush and Callow acts. [2002 c 123 § 2. Formerly RCW 79.90.570.]

**Findings—2002 c 123:** "The legislature declares that shellfish farming provides a consistent source of quality food, offers opportunities of new jobs, increases farm income stability, and improves balance of trade. The legislature also finds that many areas of the state of Washington are scientifically and biologically suitable for shellfish farming, and therefore the legislature has encouraged and promoted shellfish farming activities, programs, and development with the same status as other agricultural activities, programs, and development within the state. It being the policy of this state to encourage the development and expansion of shellfish farming within the state and to promote the development of a diverse shellfish farming industry, the legislature finds that the uncertainty surrounding reversionary clauses contained in Bush act and Callow act deeds is interfering with this policy. The legislature finds that uncertainty of the grant of rights for the claim and other shellfish culture as contained in chapter 166, Laws of 1919 must be fully and finally resolved. It is not the intent of this act to impair any vested rights in shellfish cultivation or current shellfish aquaculture activities to which holders of Bush act and Callow act lands are entitled." [2002 c 123 § 1.]

**79.135.020 Sale of reserved or reversionary rights in tidelands.** Upon an application to purchase the reserved and reversionary rights of the state in any tidelands sold under the provisions of chapter 24, Laws of 1895, or chapter 25, Laws of 1895, or chapter 165, Laws of 1919, or either the reserved or reversionary right if only one exists, being filed in the department's Olympia office by the owner of the tidelands, accompanied by an abstractor's certificate, or other evidence of the applicant's title to the lands, the department, if it finds the applicant is the owner of the tidelands, is authorized to inspect, appraise, and sell, if otherwise permitted under RCW 79.125.200, for not less than the appraised value, such reserved or reversionary rights of the state to the applicant, and upon payment of the purchase price to cause a deed to be issued as in the case of the sale of state lands, or upon the payment of one-fifth of the purchase price, to issue a contract of sale, providing that the remainder of the purchase price may be paid in four equal annual installments, with interest on deferred payments at the rate of six percent per annum, or

sooner at the election of the contract holder, which contract shall be subject to cancellation by the department for failure to comply with its provisions, and upon the completion of the payments as provided in the contract to cause a deed to the lands described in the contract to be issued to the holder as in the case of the sale of state lands. [2005 c 155 § 713; 1982 1st ex.s. c 21 § 145. Formerly RCW 79.96.120.]

**79.135.030 Wrongful taking of shellfish from public lands—Civil remedies.** (1) If a person wrongfully takes shellfish or causes shellfish to be wrongfully taken from the public lands and the wrongful taking is intentional and knowing, the person is liable for damages of treble the fair market retail value of the amount of shellfish wrongfully taken. If a person wrongfully takes shellfish from the public lands under other circumstances, the person is liable for damages of double the fair market value of the amount of shellfish wrongfully taken.

(2) For purposes of this section, a person "wrongfully takes" shellfish from public lands if the person takes shellfish: (a) Above the limits of any applicable laws that govern the harvest of shellfish from public lands; (b) without reporting the harvest to the department of fish and wildlife or the department where the reporting is required by law or contract; (c) outside the area or above the limits that an agreement or contract from the department allows the harvest of shellfish from public lands; or (d) without a lease or purchase of the shellfish where the lease or purchase is required by law prior to harvest of the shellfish.

(3) The remedies in this section are for civil damages and shall be proved by a preponderance of the evidence. The department may file a civil action in Thurston county superior court or the county where the shellfish were taken against any person liable under this section. Damages recovered under this section shall be applied in the same way as received under geoduck harvesting agreements authorized by RCW 79.135.210.

(4) For purposes of the remedies created by this section, the amount of shellfish wrongfully taken by a person may be established either:

(a) By surveying the aquatic lands to reasonably establish the amount of shellfish taken from the immediate area where a person is shown to have been wrongfully taking shellfish;

(b) By weighing the shellfish on board any vessel or in possession of a person shown to be wrongfully taking shellfish; or

(c) By any other evidence that reasonably establishes the amount of shellfish wrongfully taken.

The amount of shellfish established by (a) or (b) of this subsection shall be presumed to be the amount wrongfully taken unless the defendant shows by a preponderance of evidence that the shellfish were lawfully taken or that the defendant did not take the shellfish presumed to have been wrongfully taken. Whenever there is reason to believe that shellfish in the possession of any person were wrongfully taken, the department or the department of fish and wildlife may require the person to proceed to a designated off-load point and to weigh all shellfish in possession of the person or on board the person's vessel.

(5) This civil remedy is supplemental to the state's power to prosecute any person for theft of shellfish, for other crimes where shellfish are involved, or for violation of rules of the department of fish and wildlife. [2005 c 155 § 714; 1994 c 264 § 73; 1990 c 163 § 9. Formerly RCW 79.96.130.]

**79.135.040 Aquaculture products—Sale by leaseholder.** Aquaculture products produced on leased state-owned aquatic land may be sold by the leaseholder as prescribed by the department without competitive bid or public auction and consistent with statutes governing aquaculture leases on state-owned aquatic land. [2005 c 113 § 1.]

**Reviser's note:** This section was directed to be codified in chapter 79.96 RCW. However, chapter 79.96 RCW was recodified in its entirety by 2005 c 155.

**79.135.050 Study of Hood Canal geoduck population—Report. (Expires July 1, 2008.)** The department shall conduct a study to determine if changes to the geoduck populations in Hood Canal have occurred over time. The department's study shall compare prior population surveys with current surveys conducted as part of this study. The study shall incorporate geoduck beds representative of the northern, central, and southern areas of Hood Canal. No later than January 1, 2006, the department shall submit a report describing the study results to the appropriate committees of the legislature. [2005 c 307 § 1.]

**Reviser's note:** This section was directed to be codified in chapter 79.96 RCW. However, chapter 79.96 RCW was recodified in its entirety by 2005 c 155.

**Expiration date—2005 c 307 §§ 1-3:** "Sections 1 through 3 of this act expire July 1, 2008." [2005 c 307 § 4.]

**79.135.060 Study of Hood Canal's geoduck population levels and environmental conditions—Report. (Expires July 1, 2008.)** The department shall conduct a study to assess the relationship between the Hood Canal's geoduck population levels and environmental conditions, including dissolved oxygen concentrations. To conduct this study, the department shall establish geoduck index stations near the department of ecology's Hood Canal water sampling stations. The index stations shall include stations representative of the northern, central, and southern areas of Hood Canal. No later than December 1, 2007, the department shall submit a report describing the study results to the appropriate committees of the legislature. [2005 c 307 § 2.]

**Reviser's note:** This section was directed to be codified in chapter 79.96 RCW. However, chapter 79.96 RCW was recodified in its entirety by 2005 c 155.

**Expiration date—2005 c 307 §§ 1-3:** See note following RCW 79.135.050.

**79.135.070 Study of age and shell oxidation rate of Hood Canal geoduck—Report. (Expires July 1, 2008.)** The department shall conduct a study to establish an age profile and analyze the shell oxidation rate of Hood Canal geoduck. To conduct this study, the department shall establish sampling stations representative of the northern, central, and southern areas of Hood Canal. No later than December 1, 2007, the department shall submit a report describing the study results to the appropriate committees of the legislature. [2005 c 307 § 3.]

[2005 RCW Supp—page 966]

**Reviser's note:** This section was directed to be codified in chapter 79.96 RCW. However, chapter 79.96 RCW was recodified in its entirety by 2005 c 155.

**Expiration date—2005 c 307 §§ 1-3:** See note following RCW 79.135.050.

#### LEASING FOR SHELLFISH CULTIVATION/AQUACULTURE USE

**79.135.100 Rents and fees for aquatic lands used for aquaculture production and harvesting.** If state-owned aquatic lands are used for aquaculture production or harvesting, rents and fees shall be established through competitive bidding or negotiation. [1984 c 221 § 10. Formerly RCW 79.90.495.]

**79.135.110 Leasing beds of tidal waters for shellfish cultivation or other aquaculture use.** (1) The beds of all navigable tidal waters in the state lying below extreme low tide, except as prohibited by Article XV, section 1 of the state Constitution shall be subject to lease for the purposes of planting and cultivating oyster beds, or for the purpose of cultivating clams or other edible shellfish, or for other aquaculture use, for periods not to exceed thirty years.

(2) Nothing in this section shall prevent any person from leasing more than one parcel, as offered by the department. [2005 c 155 § 701; 1993 c 295 § 1; 1982 1st ex.s. c 21 § 134. Formerly RCW 79.96.010.]

**79.135.120 Leasing lands for shellfish cultivation or other aquaculture use—Who may lease—Application—Deposit.** Any person desiring to lease tidelands or beds of navigable waters for the purpose of planting and cultivating oyster beds, or for the purpose of cultivating clams and other edible shellfish, shall file with the department, on a proper form, an application in writing signed by the applicant and accompanied by a map of the lands desired to be leased, describing the lands by metes and bounds tied to at least two United States government corners, and by the reference to local geography as shall suffice to convey a knowledge of the location of the lands with reasonable accuracy to persons acquainted with the vicinity, and accompanied by a deposit of ten dollars. The deposit shall be returned to the applicant in case a lease is not granted. [2005 c 155 § 702; 1982 1st ex.s. c 21 § 135. Formerly RCW 79.96.020.]

**79.135.130 Leasing lands for shellfish cultivation or other aquaculture use—Inspection and report by director of fish and wildlife—Rental and term—Commercial harvest of subtidal hardshell clams by hydraulic escalating.** (1) The department, upon the receipt of an application for a lease for the purpose of planting and cultivating oyster beds or for the purpose of cultivating clams or other edible shellfish, shall notify the director of fish and wildlife of the filing of the application describing the tidelands or beds of navigable waters applied for. The director of fish and wildlife shall cause an inspection of the lands applied for to be made and shall make a full report to the department of the director's findings as to whether it is necessary, in order to protect existing natural oyster beds, and to secure adequate seeding of the lands, to retain the lands described in the application for lease

or any part of the lands, and in the event the director deems it advisable to retain the lands or any part of the lands for the protection of existing natural oyster beds or to guarantee the continuance of an adequate seed stock for existing natural oyster beds, the lands shall not be subject to lease. However, if the director determines that the lands applied for or any part of the lands may be leased, the director shall so notify the department and the director shall cause an examination of the lands to be made to determine the presence, if any, of natural oysters, clams, or other edible shellfish on the lands, and to fix the rental value of the lands for use for oyster, clam, or other edible shellfish cultivation. In the report to the department, the director shall recommend a minimum rental for the lands and an estimation of the value of the oysters, clams, or other edible shellfish, if any, then present on the lands applied for. The lands approved by the director for lease may then be leased to the applicant for a period of not less than five years nor more than ten years at a rental not less than the minimum rental recommended by the director of fish and wildlife. In addition, before entering upon possession of the land, the applicant shall pay the value of the oysters, clams, or other edible shellfish, if any, then present on the land as determined by the director, plus the expense incurred by the director in investigating the quantity of oysters, clams, or other edible shellfish, present on the land applied for.

(2) When issuing new leases or reissuing existing leases the department shall not permit the commercial harvest of subtidal hardshell clams by means of hydraulic escalating when the upland within five hundred feet of any lease tract is zoned for residential development. [2005 c 155 § 703; 1994 c 264 § 68; 1987 c 374 § 1; 1982 1st ex.s. c 21 § 136. Formerly RCW 79.96.030.]

**79.135.140 Leasing lands for shellfish cultivation or other aquaculture use—Survey and boundary markers.** Before entering into possession of any leased tidelands or beds of navigable waters, the applicant shall have the lands surveyed by a registered land surveyor, and the applicant shall furnish to the department and to the director of fish and wildlife, a map of the leased premises signed and certified by the registered land surveyor. The lessee shall also mark the boundaries of the leased premises by piling monuments or other markers of a permanent nature as the director of fish and wildlife may direct. [2005 c 155 § 704; 1994 c 264 § 69; 1982 1st ex.s. c 21 § 137. Formerly RCW 79.96.040.]

**79.135.150 Renewal lease—Application.** The department may, upon the filing of an application for a renewal lease, inspect the tidelands or beds of navigable waters, and if the department deems it in the best interests of the state to release the lands, the department shall issue to the applicant a renewal lease for a further period not exceeding thirty years and under the terms and conditions as may be determined by the department. However, in the case of an application for a renewal lease it shall not be necessary for the lands to be inspected and reported upon by the director of fish and wildlife. [2005 c 155 § 705; 1994 c 264 § 70; 1993 c 295 § 2; 1982 1st ex.s. c 21 § 138. Formerly RCW 79.96.050.]

**79.135.160 Leasing lands for shellfish cultivation or other aquaculture use—Reversion for use other than cultivation of shellfish.** All leases of tidelands and beds of navigable waters for the purpose of planting and cultivating oysters, clams, or other edible shellfish shall expressly provide that if at any time after the granting of the lease, the described lands shall cease to be used for the purpose of oyster beds, clam beds, or other edible shellfish beds, they shall revert to and become the property of the state and that the lands are leased only for the purpose of cultivating oysters, clams, or other edible shellfish thereon, and that the state reserves the right to enter upon and take possession of the lands if at any time the lands are used for any other purpose than the cultivation of oysters, clams, or other edible shellfish. [2005 c 155 § 706; 1982 1st ex.s. c 21 § 139. Formerly RCW 79.96.060.]

**79.135.170 Leasing lands for shellfish cultivation or other aquaculture use—Abandonment—Application for other lands.** If from any cause any lands leased for the purpose of planting and cultivating oysters, clams, or other edible shellfish become unfit and valueless for any such purposes, the lessee or the lessee's assigns, upon certifying the fact under oath to the department, together with the fact that the lessee has abandoned the land, shall be entitled to make application for other lands for such purposes. [2005 c 155 § 707; 1982 1st ex.s. c 21 § 140. Formerly RCW 79.96.070.]

#### GEODUCK HARVEST/CULTIVATION

**79.135.200 Leasing beds for geoduck harvest/cultivation—Survey by private party.** Beds of navigable waters held under contract or deed from the state of Washington upon which a private party is harvesting or cultivating geoduck shall be surveyed by the private party and a record of survey filed in compliance with chapter 58.09 RCW prior to harvest. Property corners will be placed in sufficient quantity and location to aid in relocation of the oyster tract lines occurring or extending below extreme low tide. Buoys or anchors must be placed intervisibly along and at angle points on any ownership boundaries that extend below extreme low tide, for the harvest term. The survey of privately owned beds of navigable waters will be established on the Washington coordinate system in compliance with chapter 58.20 RCW and property corners labeled with their coordinates on the record of survey. [2002 c 123 § 3. Formerly RCW 79.96.140.]

**Findings—2002 c 123:** See note following RCW 79.135.010.

**79.135.210 Geoduck harvesting—Agreements, regulation.** (1) Except as provided in RCW 79.135.040, geoducks shall be sold as valuable materials under the provisions of chapter 79.90 RCW. After confirmation of the sale, the department may enter into an agreement with the purchaser for the harvesting of geoducks. The department may place terms and conditions in the harvesting agreements as the department deems necessary. The department may enforce the provisions of any harvesting agreement by suspending or canceling the harvesting agreement or through any other means contained in the harvesting agreement. Any geoduck harvester may terminate a harvesting agreement entered into pursuant to this subsection if actions of a governmental

agency, beyond the control of the harvester, its agents, or its employees, prohibit harvesting, for a period exceeding thirty days during the term of the harvesting agreement, except as provided within the agreement. Upon termination of the agreement by the harvester, the harvester shall be reimbursed by the department for the cost paid to the department on the agreement, less the value of the harvest already accomplished by the harvester under the agreement.

(2) Harvesting agreements under this title for the purpose of harvesting geoducks shall require the harvester and the harvester's agent or representatives to comply with all applicable commercial diving safety standards and regulations promulgated and implemented by the federal occupational safety and health administration established under the federal occupational safety and health act of 1970 as the law exists or as amended (84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq.). However, for the purposes of this section and RCW 77.60.070, all persons who dive for geoducks are deemed to be employees as defined by the federal occupational safety and health act. All harvesting agreements shall provide that failure to comply with these standards is cause for suspension or cancellation of the harvesting agreement. Further, for the purposes of this subsection if the harvester contracts with another person or entity for the harvesting of geoducks, the harvesting agreement shall not be suspended or canceled if the harvester terminates its business relationship with such an entity until compliance with this subsection is secured. [2005 c 155 § 708; 2005 c 113 § 3; 2003 c 39 § 43; 1990 c 163 § 4; 1982 1st ex.s. c 21 § 141. Formerly RCW 79.96.080.]

**Reviser's note:** \*(1) Chapter 79.90 RCW was recodified and/or repealed in its entirety by 2005 c 155. For disposition of chapter 79.90 RCW, see Supplementary Table of Disposition of Former RCW Sections, this volume.

(2) This section was amended by 2005 c 113 § 3 and by 2005 c 155 § 708, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**79.135.220 Geoduck harvesting—Designation of aquatic lands.** The department shall designate the areas of state-owned aquatic lands that are available for geoduck harvesting by licensed geoduck harvesters in accordance with \*chapter 79.90 RCW. [2005 c 155 § 709; 1990 c 163 § 5; 1983 1st ex.s. c 46 § 129; 1979 ex.s. c 141 § 5. Formerly RCW 79.96.085, 75.28.286.]

**\*Reviser's note:** Chapter 79.90 RCW was recodified and/or repealed in its entirety by 2005 c 155. For disposition of chapter 79.90 RCW, see Supplementary Table of Disposition of Former RCW Sections, this volume.

*Commercial harvesting of geoducks: RCW 77.60.070, 77.65.410.*

**79.135.230 Intensive management plan for geoducks.** The department may enter into agreements with the department of fish and wildlife for the development of an intensive management plan for geoducks including the development and operation of a geoduck hatchery. [2005 c 155 § 718; 1994 c 264 § 74; 1984 c 221 § 26. Formerly RCW 79.96.906.]

**Severability—Effective date—1984 c 221:** See RCW 79.90.901 and 79.90.902.

[2005 RCW Supp—page 968]

## OYSTER RESERVES

**79.135.300 Lease of tidelands set aside as oyster reserves.** The department is authorized to lease first or second-class tidelands which have been or that are set aside as state oyster reserves in the same manner as provided elsewhere in this chapter for the lease of those lands. [2005 c 155 § 710; 1982 1st ex.s. c 21 § 142. Formerly RCW 79.96.090.]

**79.135.310 Inspection by director of fish and wildlife.** The department, upon the receipt of an application for the lease of any first or second-class state-owned tidelands that are set aside as state oyster reserves, shall notify the director of fish and wildlife of the filing of the application describing the lands applied for. It is the duty of the director of fish and wildlife to inspect the reserve for the purpose of determining whether the reserve or any part of the reserve should be retained as a state oyster reserve or vacated. [2005 c 155 § 711; 1994 c 264 § 71; 1982 1st ex.s. c 21 § 143. Formerly RCW 79.96.100.]

**79.135.320 Vacation of reserve—Lease of lands—Designated state oyster reserve lands.** (1) In the event that the fish and wildlife commission approves the vacation of the whole or any part of a reserve, the department may vacate and offer for lease the parts or all of the reserve as it deems to be for the best interest of the state, and all moneys received for the lease of the lands shall be paid to the department.

(2) Notwithstanding RCW 77.60.020, subsection (1) of this section, or any other provision of state law, the state oyster reserves in Eld Inlet, Hammersley Inlet, or Totten Inlet, situated in Mason or Thurston counties shall permanently be designated as state oyster reserve lands. [2005 c 155 § 712; 2001 c 273 § 4; 2000 c 11 § 30; 1994 c 264 § 72; 1982 1st ex.s. c 21 § 144. Formerly RCW 79.96.110.]

## MARINE AQUATIC PLANTS

**79.135.400 Seaweed—Marine aquatic plants defined.** Unless the context clearly requires otherwise, the definition in this section applies throughout this chapter.

"Marine aquatic plants" means saltwater marine plant species that are dependent upon the marine aquatic or tidal environment, and exist in either an attached or free-floating state. Marine aquatic plants include but are not limited to seaweed of the classes Chlorophyta, Phaeophyta, and Rhodophyta. [1993 c 283 § 2. Formerly RCW 79.96.200, 79.01.800.]

**Findings—1993 c 283:** "The legislature finds that the plant resources of marine aquatic ecosystems have inherent value and provide essential habitat. These resources are also becoming increasingly valuable as economic commodities and may be declining. The legislature further finds that the regulation of harvest of these resources is currently inadequate to afford necessary protection." [1993 c 283 § 1.]

**79.135.410 Seaweed—Personal use limit—Commercial harvesting prohibited—Exception—Import restriction.** (1) The maximum daily wet weight harvest or possession of seaweed for personal use from all state-owned aquatic lands and all privately owned tidelands is ten pounds per person. The department in cooperation with the department of

fish and wildlife may establish seaweed harvest limits of less than ten pounds for conservation purposes. This section shall in no way affect the ability of any state agency to prevent harvest of any species of marine aquatic plant from lands under its control, ownership, or management.

(2) Except as provided under subsection (3) of this section, commercial harvesting of seaweed from state-owned aquatic lands, and all privately owned tidelands is prohibited. This subsection shall in no way affect commercial seaweed aquaculture.

(3) Upon mutual approval by the department and the department of fish and wildlife, seaweed species of the genus *Macrocystis* may be commercially harvested for use in the herring spawn-on-kelp fishery.

(4) Importation of seaweed species of the genus *Macrocystis* into Washington state for the herring spawn-on-kelp fishery is subject to the fish and shellfish disease control policies of the department of fish and wildlife. *Macrocystis* shall not be imported from areas with fish or shellfish diseases associated with organisms that are likely to be transported with *Macrocystis*. The department shall incorporate this policy on *Macrocystis* importation into its overall fish and shellfish disease control policies. [2005 c 155 § 715; 2003 c 334 § 442; 1996 c 46 § 1; 1994 c 286 § 1; 1993 c 283 § 3. Formerly RCW 79.96.210, 79.01.805.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Effective date—1994 c 286:** "This act shall take effect July 1, 1994." [1994 c 286 § 6.]

**Findings—1993 c 283:** See note following RCW 79.96.200.

**79.135.420 Seaweed—Harvest and possession violations—Penalties and damages.** (1) It is unlawful to exceed the harvest and possession restrictions imposed under RCW 79.135.410.

(2) A violation of this section is a misdemeanor, and a violation taking place on state-owned aquatic lands is subject to the provisions of RCW 79.02.300.

(3) A person committing a violation of this section on private tidelands which he or she owns is liable to the state for treble the amount of damages to the seaweed resource, and a person trespassing on privately owned tidelands and committing a violation of this section is liable to the private tideland owner for treble the amount of damages to the seaweed resource. Damages recoverable include, but are not limited to, damages for the market value of the seaweed, for injury to the aquatic ecosystem, and for the costs of restoration. In addition, the person is liable for reimbursing the injured party for the party's reasonable costs, including but not limited to investigative costs and reasonable attorneys' fees and other litigation-related costs. [2005 c 155 § 716. Prior: 2003 c 334 § 443; 2003 c 53 § 380; 1994 c 286 § 2; 1993 c 283 § 4. Formerly RCW 79.96.220, 79.01.810.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**Effective date—1994 c 286:** See note following RCW 79.96.210.

**Findings—1993 c 283:** See note following RCW 79.96.200.

**79.135.430 Seaweed—Enforcement.** The department of fish and wildlife and law enforcement authorities may

enforce the provisions of RCW 79.135.410 and 79.135.420. [2005 c 155 § 717; 2003 c 334 § 444; 1994 c 286 § 3; 1993 c 283 § 5. Formerly RCW 79.96.230, 79.01.815.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Effective date—1994 c 286:** See note following RCW 79.96.210.

**Findings—1993 c 283:** See note following RCW 79.96.200.

**79.135.900 Savings—1982 1st ex.s. c 21.** The enactment of this act including all repeals, decodifications, and amendments shall not be construed as affecting any existing right acquired under the statutes repealed, decodified, or amended or under any rule, regulation, or order issued pursuant thereto; nor as affecting any proceeding instituted thereunder. [1982 1st ex.s. c 21 § 181. Formerly RCW 79.96.901.]

**79.135.901 Captions—1982 1st ex.s. c 21.** Chapter and section headings as used in this act do not constitute any part of the law. [1982 1st ex.s. c 21 § 182. Formerly RCW 79.96.902.]

**79.135.902 Severability—1982 1st ex.s. c 21.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 1st ex.s. c 21 § 184. Formerly RCW 79.96.903.]

**79.135.903 Effective date—1982 1st ex.s. c 21 §§ 176 and 179.** Sections 176 (amending RCW 79.01.525) and 179 (creating a new section providing for an aquatic lands joint legislative committee) of this act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1982 1st ex.s. c 21 § 185. Formerly RCW 79.96.904.]

**79.135.904 Effective date—1982 1st ex.s. c 21.** Except as provided in \*RCW 79.96.904, this act shall take effect July 1, 1983. [1982 1st ex.s. c 21 § 186. Formerly RCW 79.96.905.]

\***Reviser's note:** RCW 79.96.904 was recodified as RCW 79.135.903 pursuant to 2005 c 155 § 1010.

**79.135.905 Severability—Part/subchapter headings not law—2005 c 155.** See RCW 79.105.903 and 79.105.904.

## Chapter 79.140 RCW

### AQUATIC LANDS—VALUABLE MATERIALS

#### Sections

79.140.001 Intent—2005 c 155.

#### SALE PROCEDURE

79.140.010 Manner of sale—Notice.

79.140.020 List of valuable materials.

79.140.030 Expenditures for advertising.

79.140.040 Reoffer of sale—Readvertised.

79.140.050 Sale by public auction/sealed bid—Exception.

79.140.060 Determination of highest responsible bidder.

79.140.070 Sales by public auction—Procedure.

- 79.140.080 Confirmation of sale.
- SPECIAL PROVISIONS AND LEASES
- 79.140.100 Valuable materials from Columbia river—Agreements with Oregon.
- 79.140.110 Material removed for channel or harbor improvement or flood control—Use for public purpose.
- 79.140.120 Mt. St. Helen's eruption—Dredge spoils—Sale by certain landowners.
- 79.140.130 Prior appraisal required.
- 79.140.140 Bill of sale for valuable material sold separately.
- 79.140.150 Sale of rock, gravel, sand, silt, and other valuable materials.
- 79.140.160 Sale of rock, gravel, sand, and silt—Application—Terms of lease or contract—Bond—Payment—Reports.
- 79.140.170 Sale of rock, gravel, sand, and silt—Investigation, audit of books of person removing.
- 79.140.180 Contract for sale of rock, gravel, etc.—Royalties—Consideration of flood protection value.
- 79.140.190 Leases and permits for prospecting and contracts for mining valuable minerals and specific materials from aquatic lands.
- 79.140.200 Option contracts for prospecting and leases for mining and extraction of coal from aquatic lands.
- 79.140.900 Severability—Part/subchapter headings not law—2005 c 155.

**79.140.001 Intent—2005 c 155.** See RCW 79.105.001.

#### SALE PROCEDURE

**79.140.010 Manner of sale—Notice.** (1) When the department decides to sell any valuable materials situated within or upon any state-owned aquatic lands, it is the duty of the department to fix the date, place, and time of sale, and no sale shall be had on any day that is a legal holiday.

(2) The department shall give notice of the sale by advertisement published once a week for four consecutive weeks immediately preceding the date fixed for sale in the notice, in at least one newspaper published and of general circulation in the county in which the whole or any part of any lot, block, or tract of land containing the valuable material to be sold is situated, and by causing a copy of the notice to be posted in a conspicuous place in the department's Olympia office and the region headquarters administering the sale.

(3) The notice shall: (a) Specify the place and time of sale; (b) estimate the volume of valuable materials; (c) state the appraised value; (d) describe with particularity each parcel of land from which valuable materials are to be sold; and (e) specify that the terms of sale will be posted in the area headquarters and the department's Olympia office. [2005 c 155 § 801. FORMERLY PART OF RCW 79.90.170.]

**79.140.020 List of valuable materials.** The department shall print a list of valuable materials contained within or upon state-owned aquatic lands, giving appraised value, character of the land, and such other information as may be of interest to prospective buyers. The lists must be issued at least four weeks prior to the date of any sale. The department shall retain for free distribution in its office in Olympia and the regional offices sufficient copies of the lists, to be kept in a conspicuous place or receptacle on the counter of the general and regional office of the department, and, when requested, shall mail copies of the list as issued to any applicant. [2005 c 155 § 802. FORMERLY PART OF RCW 79.90.180.]

**79.140.030 Expenditures for advertising.** The department is authorized to expend any sum in additional advertising of the sale as is determined to be in the best interests of the state. [2005 c 155 § 803. FORMERLY PART OF RCW 79.90.190.]

**79.140.040 Reoffer of sale—Readvertised.** Any sale that has been offered, and for which there are no bids received, shall not be reoffered until it has been readvertised as specified in RCW 79.140.010 through 79.140.030. If all sales cannot be offered within the specified time on the advertised date, the sale shall continue on the following day between the hours of ten o'clock a.m. and four o'clock p.m. [2005 c 155 § 804. FORMERLY PART OF RCW 79.90.200.]

**79.140.050 Sale by public auction/sealed bid—Exception.** All sales of valuable materials shall be at public auction or by sealed bid to the highest responsible bidder, on the terms prescribed by law and as specified in the notice provided, and no land or materials shall be sold for less than their appraised value. However:

(1) When valuable material has been appraised at an amount not exceeding one hundred thousand dollars, the department, when authorized by the board, may arrange for the sale at public auction of said valuable material and for its removal under such terms and conditions as the department may prescribe, after the department shall have caused to be published not less than ten days prior to sale a notice of such sale in a newspaper of general circulation located nearest to the property to be sold;

(2) Any sale of valuable material on state-owned aquatic lands of an appraised value of ten thousand dollars or less may be sold directly to the applicant for cash without notice or advertising. [2005 c 155 § 805. FORMERLY PART OF RCW 79.90.210.]

**79.140.060 Determination of highest responsible bidder.** (1) To determine the "highest responsible bidder" under RCW 79.140.050, the department shall be entitled to consider, in addition to price, the following:

(a) The financial and technical ability of the bidder to perform the contract;

(b) Whether the bid contains material defects;

(c) Whether the bidder has previously or is currently complying with terms and conditions of any other contracts with the state or relevant contracts with entities other than the state;

(d) Whether the bidder was the "highest responsible bidder" for a sale within the previous five years but failed to complete the sale, such as by not entering into a resulting contract or by not paying the difference between the deposit and the total amount due. However, sales that were bid prior to January 1, 2003, may not be considered for the purposes of this subsection (1)(d);

(e) Whether the bidder has been convicted of a crime relating to the public lands or natural resources of the state of Washington, the United States, or any other state, tribe, or country, where "conviction" includes a guilty plea, or unvacated forfeiture of bail;

(f) Whether the bidder is owned, controlled, or managed by any person, partnership, or corporation that is not responsible under this statute; and

(g) Whether the subcontractors of the bidder, if any, are responsible under this statute.

(2) Whenever the department has reason to believe that the apparent high bidder is not a responsible bidder, the department may award the sale to the next responsible bidder or the department may reject all bids pursuant to RCW 79.140.080. [2005 c 155 § 806. FORMERLY PART OF RCW 79.90.215.]

**79.140.070 Sales by public auction—Procedure.** (1) Sales by public auction under this chapter shall be conducted under the direction of the department, by its authorized representative. The department's representatives are referred to as auctioneers.

(2) On or before the time specified in the notice of sale each bidder shall deposit with the auctioneer, in cash or by certified check, cashier's check, or postal money order payable to the order of the department, or by bid guarantee in the form of bid bond acceptable to the department, an amount equal to the deposit specified in the notice of sale. The deposit shall include a specified amount of the appraised price for the valuable materials offered for sale, together with any fee required by law for the issuance of contracts or bills of sale. The deposit may, when prescribed in the notice of sale, be considered an opening bid of an amount not less than the minimum appraised price established in the notice of sale. The successful bidder's deposit will be retained by the auctioneer and the difference, if any, between the deposit and the total amount due shall on the day of the sale be paid in cash, certified check, cashier's check, draft, postal money order, or by personal check made payable to the department. If a bid bond is used, the share of the total deposit due guaranteed by the bid bond shall, within ten days of the day of sale, be paid in cash, certified check, cashier's check, draft, or postal money order payable to the department. Other deposits, if any, shall be returned to the respective bidders at the conclusion of each sale.

(3) The auctioneer shall deliver to the purchaser a memorandum of purchase containing a description of the materials purchased, the price bid, and the terms of the sale.

(4) The auctioneer shall at once send to the department the cash, certified check, cashier's check, draft, postal money order, or bid guarantee received from the purchaser, and a copy of the memorandum delivered to the purchaser, together with such additional report of the auctioneer's proceedings with reference to the sales as may be required by the department. [2005 c 155 § 807. FORMERLY PART OF RCW 79.90.220.]

**79.140.080 Confirmation of sale.** (1) A sale of valuable materials shall be confirmed if:

(a) No affidavit showing that the interest of the state in such a sale was injuriously affected by fraud or collusion, is filed with the department's Olympia office within ten days from the receipt of the report of the auctioneer conducting the sale;

(b) It appears from the report that the sale was fairly conducted, that the purchaser was the highest responsible bidder at the sale, and that the sale price is not less than the appraised value of the property sold;

(c) The department is satisfied that the material sold would not, upon being readvertised and offered for sale, sell for a substantially higher price; and

(d) The payment required by law to be made at the time of making the sale has been made, and that the best interests of the state are being served.

(2) Upon confirming a sale, the department shall enter upon its records the confirmation of sale and issue to the purchaser a contract of sale or bill of sale as the case may be, as is provided for in this chapter. [2005 c 155 § 808. FORMERLY PART OF RCW 79.90.240.]

## SPECIAL PROVISIONS AND LEASES

**79.140.100 Valuable materials from Columbia river—Agreements with Oregon.** The department is authorized and empowered to confer with and enter into any agreements with the public authorities of the state of Oregon, which in the judgment of the department will assist the state of Washington and the state of Oregon in securing the maximum revenues for sand, gravel, or other valuable materials taken from the bed of the Columbia river where the river forms the boundary line between the states. [2005 c 155 § 109; 1991 c 322 § 24; 1982 1st ex.s. c 21 § 19. Formerly RCW 79.90.130.]

**Findings—Intent—1991 c 322:** See note following RCW 86.12.200.

**79.140.110 Material removed for channel or harbor improvement or flood control—Use for public purpose.** When gravel, rock, sand, silt, or other material from any state-owned aquatic lands is removed by any public agency or under public contract for channel or harbor improvement, or flood control, use of the material may be authorized by the department for a public purpose on land owned or leased by the state or any municipality, county, or public corporation. However, when no public land site is available for deposit of the material, its deposit on private land with the landowner's permission is authorized and may be designated by the department to be for a public purpose. Prior to removal and use, the state agency, municipality, county, or public corporation contemplating or arranging the use shall first obtain written permission from the department. No payment of royalty shall be required for the gravel, rock, sand, silt, or other material used for the public purpose, but a charge will be made if the material is subsequently sold or used for some other purpose. Further, the department may authorize the public agency or private landowner to dispose of the material without charge when necessary to implement disposal of material. No charge shall be required for any use of the material obtained under the provisions of this chapter when used solely on an authorized site. No charge shall be required for any use of the material obtained under the provisions of this chapter if the material is used for public purposes by local governments. Public purposes include, but are not limited to, construction and maintenance of roads, dikes, and levies. Nothing in this section shall repeal or modify the provisions

of \*RCW 77.55.100 or eliminate the necessity of obtaining a permit for the removal from other state or federal agencies as otherwise required by law. [2005 c 155 § 110; 2003 c 39 § 41; 1991 c 337 § 1; 1982 1st ex.s. c 21 § 21. Formerly RCW 79.90.150.]

\*Reviser's note: RCW 77.55.100 was repealed by 2005 c 146 § 1006. For later enactment, see RCW 77.55.021.

**79.140.120 Mt. St. Helen's eruption—Dredge spoils—Sale by certain landowners.** (1) The legislature finds and declares that, due to the extraordinary volume of material washed down onto beds of navigable waters and shorelands in the Toutle river, Coweeman river, and portions of the Cowlitz river, the dredge spoils placed upon adjacent publicly and privately owned property in the areas, if further disposed, will be of nominal value to the state and that it is in the best interests of the state to allow further disposal without charge.

(2) All dredge spoil or materials removed from the state-owned beds and shores of the Toutle river, Coweeman river, and that portion of the Cowlitz river from two miles above the confluence of the Toutle river to its mouth deposited on adjacent public and private lands during the years 1980 through December 31, 1995, as a result of dredging of these rivers for navigation and flood control purposes may be sold, transferred, or otherwise disposed of by owners of the lands without the necessity of any charge by the department and free and clear of any interest of the department of the state of Washington. [2005 c 155 § 111; 2000 c 13 § 2; 1989 c 213 § 4; 1985 c 307 § 7; 1985 c 12 § 1; 1982 1st ex.s. c 21 § 22. Formerly RCW 79.90.160.]

**79.140.130 Prior appraisal required.** In no case shall any valuable materials situated within or upon any tidelands, shorelands, or beds of navigable waters belonging to the state, be offered for sale unless the same shall have been appraised by the department of natural resources within ninety days prior to the date fixed for the sale. [2005 c 155 § 809. FORMERLY PART OF RCW 79.90.110.]

**79.140.140 Bill of sale for valuable material sold separately.** When valuable materials are sold separate from state-owned aquatic lands and the purchase price is paid in full, the department shall cause a bill of sale, signed by the commissioner and attested by the seal of the commissioner's office, setting forth the time within which the material shall be removed. The bill of sale shall be issued to the purchaser and shall be recorded in the department's Olympia office, upon the payment of the fee provided for in this chapter. [2005 c 155 § 126; 1982 1st ex.s. c 21 § 35. Formerly RCW 79.90.290.]

**79.140.150 Sale of rock, gravel, sand, silt, and other valuable materials.** The department, upon application by any person or when determined by the department to be in the best interest of the state, may enter into a contract or lease providing for the removal and sale of rock, gravel, sand, and silt, or other valuable materials located within or upon beds of navigable waters, or upon any state-owned tidelands or shorelands and providing for payment to be made by such

[2005 RCW Supp—page 972]

royalty as the department may fix, by negotiation, by sealed bid, or at public auction. If application is made for the purchase of any valuable material situated within or upon state-owned aquatic lands the department shall inspect and appraise the value of the material in the application. [2005 c 155 § 127; 1991 c 322 § 26; 1982 1st ex.s. c 21 § 36. Formerly RCW 79.90.300.]

**Findings—Intent—1991 c 322:** See note following RCW 86.12.200.

**79.140.160 Sale of rock, gravel, sand, and silt—Application—Terms of lease or contract—Bond—Payment—Reports.** Each application made pursuant to RCW 79.140.150 shall set forth the estimated quantity and kind of materials desired to be removed and shall be accompanied by a map or plat showing the area from which the applicant wishes to remove the materials. The department may in its discretion include in any lease or contract entered into pursuant to RCW 79.140.150 through 79.140.170, terms and conditions deemed necessary by the department to protect the interests of the state. In each lease or contract the department shall provide for a right of forfeiture by the state, upon a failure to operate under the lease or contract or pay royalties or rent for periods therein stipulated, and the department shall require a bond with a surety company authorized to transact a surety business in this state, as surety to secure the performance of the terms and conditions of the contract or lease including the payment of royalties. The right of forfeiture shall be exercised by entry of a declaration of forfeiture in the records of the department. The amount of rock, gravel, sand, or silt taken under the contract or lease shall be reported monthly by the purchaser to the department and payment made on the basis of the royalty provided in the lease or contract. [2005 c 155 § 128; 1982 1st ex.s. c 21 § 37. Formerly RCW 79.90.310.]

**79.140.170 Sale of rock, gravel, sand, and silt—Investigation, audit of books of person removing.** The department may inspect and audit books, contracts, and accounts of each person removing rock, gravel, sand, or silt pursuant to any lease or contract under RCW 79.140.150 and 79.140.160 and make such other investigation and secure or receive any other evidence necessary to determine whether or not the state is being paid the full amount payable to it for the removal of the materials. [2005 c 155 § 129; 1982 1st ex.s. c 21 § 38. Formerly RCW 79.90.320.]

**79.140.180 Contract for sale of rock, gravel, etc.—Royalties—Consideration of flood protection value.** Whenever, pursuant to RCW 79.15.300, the department enters into a contract for the sale and removal of rock, gravel, sand, or silt out of a riverbed, the department shall, when establishing a royalty, take into consideration flood protection value to the public that will arise as a result of the removal. [2005 c 155 § 130; 2003 c 334 § 602; 1984 c 212 § 10. Formerly RCW 79.90.325, 79.01.135.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.140.190 Leases and permits for prospecting and contracts for mining valuable minerals and specific materials from aquatic lands.** The department may issue permits



and leases for prospecting, placer mining contracts, and contracts for the mining of valuable minerals and specific materials, except rock, gravel, sand, silt, coal, or hydrocarbons, upon and from any state-owned aquatic lands, or which have been sold and the minerals reserved by the state in tracts not to exceed six hundred forty acres or an entire government-surveyed section. The procedures contained at RCW 79.14.300 through 79.14.450, inclusive, shall apply. [2005 c 155 § 131; 2003 c 334 § 603; 1987 c 20 § 16; 1982 1st ex.s. c 21 § 39. Formerly RCW 79.90.330.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.140.200 Option contracts for prospecting and leases for mining and extraction of coal from aquatic lands.** The department is authorized to execute option contracts for prospecting purposes and leases for the mining and extraction of coal from any state-owned aquatic lands or from which it may acquire title, or from any aquatic lands sold or leased by the state the minerals of which have been reserved by the state. The procedures contained at RCW 79.14.470 through 79.14.580, inclusive, shall apply. [2005 c 155 § 132; 2003 c 334 § 604; 1982 1st ex.s. c 21 § 40. Formerly RCW 79.90.340.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.140.900 Severability—Part/subchapter headings not law—2005 c 155.** See RCW 79.105.903 and 79.105.904.

## Chapter 79.145 RCW MARINE PLASTIC DEBRIS

### Sections

79.145.001	Intent—2005 c 155.
79.145.010	Intent.
79.145.020	Definitions.
79.145.030	Coordinating implementation—Rules.
79.145.040	Agreements with other entities.
79.145.050	Employees—Information clearinghouse contracts.
79.145.060	Grants, funds, or gifts.
79.145.900	Severability—1989 c 23.
79.145.901	Severability—Part/subchapter headings not law—2005 c 155.

**79.145.001 Intent—2005 c 155.** See RCW 79.105.001.

**79.145.010 Intent.** The legislature finds that the public health and safety is threatened by an increase in the amount of plastic garbage being deposited in the waters and on the shores of the state. To address this growing problem, the commissioner appointed the marine plastic debris task force which presented a state action plan in October 1988. It is necessary for the state of Washington to implement the action plan in order to:

- (1) Cleanup and prevent further pollution of the state's waters and aquatic lands;
- (2) Increase public awareness;
- (3) Coordinate federal, state, local, and private efforts;
- (4) Foster the stewardship of the aquatic lands of the state. [2005 c 155 § 901; 1989 c 23 § 1. Formerly RCW 79.97.010, 79.81.010.]

**79.145.020 Definitions.** As used in this chapter:

- (1) "Department" means the department of natural resources.
- (2) "Action plan" means the marine plastic debris action plan of October 1988 as presented to the commissioner by the marine plastic debris task force. [2005 c 155 § 902; 1989 c 23 § 2. Formerly RCW 79.97.020, 79.81.020.]

**79.145.030 Coordinating implementation—Rules.** The department shall have the authority to coordinate implementation of the action plan with appropriate state agencies including the parks and recreation commission and the departments of ecology and fish and wildlife. The department is authorized to adopt, in consultation with affected agencies, the necessary rules to provide for the cleanup and to prevent pollution of the waters of the state and aquatic lands by plastic and other marine debris. [2005 c 155 § 903; 1994 c 264 § 65; 1989 c 23 § 3. Formerly RCW 79.97.030, 79.81.030.]

**79.145.040 Agreements with other entities.** The department may enter into intergovernmental agreements with federal or state agencies and agreements with private parties deemed necessary by the department to carry out the provisions of this chapter. [1989 c 23 § 4. Formerly RCW 79.97.040, 79.81.040.]

**79.145.050 Employees—Information clearinghouse contracts.** The department is the designated agency to coordinate implementation of the action plan and is authorized to hire such employees as are necessary to coordinate the action plan among state and federal agencies, the private sector, and interested public groups and organizations. The department is authorized to contract, through an open bidding process, with interested parties to act as the information clearinghouse for marine plastic debris related issues. [2005 c 155 § 904; 1989 c 23 § 5. Formerly RCW 79.97.050, 79.81.050.]

**79.145.060 Grants, funds, or gifts.** The department is authorized to accept, receive, disburse, and administer grants or funds or gifts from any source including private individuals, public entities, and the federal government to supplement the funds appropriated to carry out the purposes of this chapter. [2005 c 155 § 905; 1989 c 23 § 6. Formerly RCW 79.97.060, 79.81.060.]

**79.145.900 Severability—1989 c 23.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 23 § 7. Formerly RCW 79.97.900, 79.81.900.]

**79.145.901 Severability—Part/subchapter headings not law—2005 c 155.** See RCW 79.105.903 and 79.105.904.

## Title 79A

## PUBLIC RECREATIONAL LANDS

## Chapters

- 79A.05 Parks and recreation commission.**  
**79A.15 Acquisition of habitat conservation and outdoor recreation lands.**  
**79A.60 Regulation of recreational vessels.**

## Chapter 79A.05 RCW

## PARKS AND RECREATION COMMISSION

## Sections

- 79A.05.030 Powers and duties—Mandatory.  
 79A.05.059 State parks education and enhancement account.  
 79A.05.125 Cross-state trail—Rail line franchise negotiations by department of transportation. (*Contingent expiration date.*)  
 79A.05.350 Repealed.

**79A.05.030 Powers and duties—Mandatory.** The commission shall:

(1) Have the care, charge, control, and supervision of all parks and parkways acquired or set aside by the state for park or parkway purposes.

(2) Adopt policies, and adopt, issue, and enforce rules pertaining to the use, care, and administration of state parks and parkways. The commission shall cause a copy of the rules to be kept posted in a conspicuous place in every state park to which they are applicable, but failure to post or keep any rule posted shall be no defense to any prosecution for the violation thereof.

(3) Permit the use of state parks and parkways by the public under such rules as shall be adopted.

(4) Clear, drain, grade, seed, and otherwise improve or beautify parks and parkways, and erect structures, buildings, fireplaces, and comfort stations and build and maintain paths, trails, and roadways through or on parks and parkways.

(5) Grant concessions or leases in state parks and parkways, upon such rentals, fees, or percentage of income or profits and for such terms, in no event longer than fifty years, and upon such conditions as shall be approved by the commission: PROVIDED, That leases exceeding a twenty-year term shall require a unanimous vote of the commission: PROVIDED FURTHER, That if, during the term of any concession or lease, it is the opinion of the commission that it would be in the best interest of the state, the commission may, with the consent of the concessionaire or lessee, alter and amend the terms and conditions of such concession or lease: PROVIDED FURTHER, That television station leases shall be subject to the provisions of RCW 79A.05.085, only: PROVIDED FURTHER, That the rates of such concessions or leases shall be renegotiated at five-year intervals. No concession shall be granted which will prevent the public from having free access to the scenic attractions of any park or parkway.

(6) Employ such assistance as it deems necessary. Commission expenses relating to its use of volunteer assistance shall be limited to premiums or assessments for the insurance of volunteers by the department of labor and industries, compensation of staff who assist volunteers, materials and equipment used in authorized volunteer projects, training, reim-

bursment of volunteer travel as provided in RCW 43.03.050 and 43.03.060, and other reasonable expenses relating to volunteer recognition. The commission, at its discretion, may waive commission fees otherwise applicable to volunteers. The commission shall not use volunteers to replace or supplant classified positions. The use of volunteers may not lead to the elimination of any employees or permanent positions in the bargaining unit.

(7) By majority vote of its authorized membership select and purchase or obtain options upon, lease, or otherwise acquire for and in the name of the state such tracts of land, including shore and tide lands, for park and parkway purposes as it deems proper. If the commission cannot acquire any tract at a price it deems reasonable, it may, by majority vote of its authorized membership, obtain title thereto, or any part thereof, by condemnation proceedings conducted by the attorney general as provided for the condemnation of rights of way for state highways. Option agreements executed under authority of this subsection shall be valid only if:

(a) The cost of the option agreement does not exceed one dollar; and

(b) Moneys used for the purchase of the option agreement are from (i) funds appropriated therefor, or (ii) funds appropriated for undesignated land acquisitions, or (iii) funds deemed by the commission to be in excess of the amount necessary for the purposes for which they were appropriated; and

(c) The maximum amount payable for the property upon exercise of the option does not exceed the appraised value of the property.

(8) Cooperate with the United States, or any county or city of this state, in any matter pertaining to the acquisition, development, redevelopment, renovation, care, control, or supervision of any park or parkway, and enter into contracts in writing to that end. All parks or parkways, to which the state contributed or in whose care, control, or supervision the state participated pursuant to the provisions of this section, shall be governed by the provisions hereof.

(9) Within allowable resources, maintain policies that increase the number of people who have access to free or low-cost recreational opportunities for physical activity, including noncompetitive physical activity.

(10) Adopt rules establishing the requirements for a criminal history record information search for the following: Job applicants, volunteers, and independent contractors who have unsupervised access to children or vulnerable adults, or who will be responsible for collecting or disbursing cash or processing credit/debit card transactions. These background checks will be done through the Washington state patrol criminal identification section and may include a national check from the federal bureau of investigation, which shall be through the submission of fingerprints. A permanent employee of the commission, employed as of July 24, 2005, is exempt from the provisions of this subsection. [2005 c 373 § 1; 2005 c 360 § 5. Prior: 1999 c 249 § 302; 1999 c 155 § 1; 1999 c 59 § 1; 1989 c 175 § 106; 1980 c 89 § 1; 1979 c 10 § 4; prior: 1977 ex.s. c 123 § 1; 1977 c 75 § 57; 1967 ex.s. c 90 § 1; 1965 c 8 § 43.51.040; prior: 1959 c 317 § 1; 1955 c 391 § 1; 1929 c 148 § 1; 1923 c 157 § 1; 1921 c 149 § 2; RRS § 10942. Formerly RCW 43.51.040.]

**Reviser's note:** This section was amended by 2005 c 360 § 5 and by 2005 c 373 § 1, each without reference to the other. Both amendments are

incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Intent—2005 c 360:** See note following RCW 36.70A.070.

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

*Inspection of recreational devices: Chapter 79A.40 RCW.*

**79A.05.059 State parks education and enhancement account.** The state parks education and enhancement account is created in the custody of the state treasurer. All receipts from the sale of Washington state parks and recreation commission special license plates, after the deductions permitted by RCW 46.16.313(13), must be deposited into the account. Expenditures from the account may only be used to provide public educational opportunities and enhancement of Washington state parks. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2005 c 44 § 4.]

**79A.05.125 Cross-state trail—Rail line franchise negotiations by department of transportation. (*Contin- gent expiration date.*)** (1) The department of transportation shall negotiate a franchise with a rail carrier to establish and maintain a rail line over portions of the Milwaukee Road corridor owned by the state between Ellensburg and Lind. The department of transportation may negotiate such a franchise with any qualified rail carrier. Criteria for negotiating the franchise and establishing the right of way include:

(a) Assurances that resources from the franchise will be sufficient to compensate the state for use of the property, including completion of a cross-state trail between Easton and the Idaho border;

(b) Types of payment for use of the franchise, including payment for the use of federally granted trust lands in the transportation corridor;

(c) Standards for maintenance of the line;

(d) Provisions ensuring that both the conventional and intermodal rail service needs of local shippers are met. Such accommodations may comprise agreements with the franchisee to offer or maintain adequate service or to provide service by other carriers at commercially reasonable rates;

(e) Provisions requiring the franchisee, upon reasonable request of any other rail operator, to provide rail service and interchange freight over what is commonly known as the Stampede Pass rail line from Cle Elum to Auburn at commercially reasonable rates;

(f) If any part of the franchise agreement is invalidated by actions or rulings of the federal surface transportation board or a court of competent jurisdiction, the remaining portions of the franchise agreement are not affected;

(g) Compliance with environmental standards; and

(h) Provisions for insurance and the coverage of liability.

(2) The franchise may provide for periodic review of financial arrangements under the franchise.

(3) The department of transportation, in consultation with the parks and recreation commission and the senate and house transportation committees, shall negotiate the terms of the franchise, and shall present the agreement to the parks and recreation commission for approval of as to terms and

provisions affecting the cross-state trail or affecting the commission.

(4) This section expires July 1, 2006, if the department of transportation does not enter into a franchise agreement for a rail line over portions of the Milwaukee Road corridor by July 1, 2006. [2005 c 319 § 134; 1999 c 301 § 3; 1996 c 129 § 4. Formerly RCW 43.51.113.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Effective date—1999 c 301:** See note following RCW 79A.05.115.

**Review and approval of franchise—Report to the legislature:** "(1) Before entering into a final agreement to issue a franchise negotiated in accordance with RCW 43.51.113, the department of transportation shall submit the franchise to the legislative transportation committee for review and approval.

(2) If the department of transportation has not entered into a final agreement to franchise a rail line over portions of the Milwaukee Road corridor by December 1, 1998, a report of the progress and obstacles to such an agreement shall be made. The report shall be submitted by December 15, 1998, to appropriate committees of the legislature." [1996 c 129 § 6.]

**Intent—Effective date—Severability—1996 c 129:** See notes following RCW 79A.05.115.

**79A.05.350 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Chapter 79A.15 RCW

### ACQUISITION OF HABITAT CONSERVATION AND OUTDOOR RECREATION LANDS

#### Sections

79A.15.010	Definitions. ( <i>Effective July 1, 2007.</i> )
79A.15.030	Allocation and use of moneys—Grants. ( <i>Effective July 1, 2007.</i> )
79A.15.040	Habitat conservation account—Distribution and use of moneys. ( <i>Effective July 1, 2007.</i> )
79A.15.050	Outdoor recreation account—Distribution and use of moneys. ( <i>Effective July 1, 2007.</i> )
79A.15.060	Habitat conservation account—Acquisition policies and priorities. ( <i>Effective July 1, 2007.</i> )
79A.15.070	Acquisition and development priorities—Generally. ( <i>Effective July 1, 2007.</i> )
79A.15.080	Recommended project list—Committee authority to obligate funds—Legislature's authority. ( <i>Effective July 1, 2007.</i> )
79A.15.110	Review of proposed project application. ( <i>Effective July 1, 2007.</i> )
79A.15.120	Riparian protection account—Use of funds. ( <i>Effective July 1, 2007.</i> )
79A.15.130	Farmlands preservation account—Use of funds. ( <i>Effective July 1, 2007.</i> )

**79A.15.010 Definitions. (*Effective July 1, 2007.*)** The definitions set forth in this section apply throughout this chapter.

(1) "Acquisition" means the purchase on a willing seller basis of fee or less than fee interests in real property. These interests include, but are not limited to, options, rights of first refusal, conservation easements, leases, and mineral rights.

(2) "Committee" means the interagency committee for outdoor recreation.

(3) "Critical habitat" means lands important for the protection, management, or public enjoyment of certain wildlife species or groups of species, including, but not limited to, wintering range for deer, elk, and other species, waterfowl and upland bird habitat, fish habitat, and habitat for endangered, threatened, or sensitive species.

(4) "Farmlands" means any land defined as "farm and agricultural land" in RCW 84.34.020(2).

(5) "Local agencies" means a city, county, town, federally recognized Indian tribe, special purpose district, port district, or other political subdivision of the state providing services to less than the entire state.

(6) "Natural areas" means areas that have, to a significant degree, retained their natural character and are important in preserving rare or vanishing flora, fauna, geological, natural historical, or similar features of scientific or educational value.

(7) "Riparian habitat" means land adjacent to water bodies, as well as submerged land such as streambeds, which can provide functional habitat for salmonids and other fish and wildlife species. Riparian habitat includes, but is not limited to, shorelines and near-shore marine habitat, estuaries, lakes, wetlands, streams, and rivers.

(8) "Special needs populations" means physically restricted people or people of limited means.

(9) "State agencies" means the state parks and recreation commission, the department of natural resources, the department of general administration, and the department of fish and wildlife.

(10) "Trails" means public ways constructed for and open to pedestrians, equestrians, or bicyclists, or any combination thereof, other than a sidewalk constructed as a part of a city street or county road for exclusive use of pedestrians.

(11) "Urban wildlife habitat" means lands that provide habitat important to wildlife in proximity to a metropolitan area.

(12) "Water access" means boat or foot access to marine waters, lakes, rivers, or streams. [2005 c 303 § 1; 1990 1st ex.s. c 14 § 2. Formerly RCW 43.98A.010.]

**Effective date—2005 c 303 §§ 1-14:** "Sections 1 through 14 of this act take effect July 1, 2007." [2005 c 303 § 17.]

**79A.15.030 Allocation and use of moneys—Grants. (Effective July 1, 2007.)** (1) Moneys appropriated for this chapter shall be divided as follows:

(a) Appropriations for a biennium of forty million dollars or less must be allocated equally between the habitat conservation account and the outdoor recreation account.

(b) If appropriations for a biennium total more than forty million dollars, the money must be allocated as follows: (i) Twenty million dollars to the habitat conservation account and twenty million dollars to the outdoor recreation account; (ii) any amount over forty million dollars up to fifty million dollars shall be allocated as follows: (A) Ten percent to the habitat conservation account; (B) ten percent to the outdoor recreation account; (C) forty percent to the riparian protection account; and (D) forty percent to the farmlands preservation account; and (iii) any amounts over fifty million dollars must be allocated as follows: (A) Thirty percent to the habitat conservation account; (B) thirty percent to the outdoor recreation account; (C) thirty percent to the riparian protection account; and (D) ten percent to the farmlands preservation account.

(2) Except as otherwise provided in chapter 303, Laws of 2005, moneys deposited in these accounts shall be invested as authorized for other state funds, and any earnings on them shall be credited to the respective account.

(3) All moneys deposited in the habitat conservation, outdoor recreation, riparian protection, and farmlands preservation accounts shall be allocated as provided under RCW 79A.15.040, 79A.15.050, 79A.15.120, and 79A.15.130 as grants to state or local agencies for acquisition, development, and renovation within the jurisdiction of those agencies, subject to legislative appropriation. The committee may use or permit the use of any funds appropriated for this chapter as matching funds where federal, local, or other funds are made available for projects within the purposes of this chapter. Moneys appropriated to these accounts that are not obligated to a specific project may be used to fund projects from lists of alternate projects from the same account in biennia succeeding the biennium in which the moneys were originally appropriated.

(4) Projects receiving grants under this chapter that are developed or otherwise accessible for public recreational uses shall be available to the public.

(5) The committee may make grants to an eligible project from the habitat conservation, outdoor recreation, riparian protection, and farmlands preservation accounts and any one or more of the applicable categories under such accounts described in RCW 79A.15.040, 79A.15.050, 79A.15.120, and 79A.15.130.

(6) The committee may accept private donations to the habitat conservation account, the outdoor recreation account, the riparian protection account, and the farmlands preservation account for the purposes specified in this chapter.

(7) The committee may apply up to three percent of the funds appropriated for this chapter for the administration of the programs and purposes specified in this chapter.

(8) Habitat and recreation land and facilities acquired or developed with moneys appropriated for this chapter may not, without prior approval of the committee, be converted to a use other than that for which funds were originally approved. The committee shall adopt rules and procedures governing the approval of such a conversion. [2005 c 303 § 2; 2000 c 11 § 66; 1990 1st ex.s. c 14 § 4. Formerly RCW 43.98A.030.]

**Effective date—2005 c 303 §§ 1-14:** See note following RCW 79A.15.010.

*Outdoor recreation account: Chapter 79A.25 RCW.*

**79A.15.040 Habitat conservation account—Distribution and use of moneys. (Effective July 1, 2007.)** (1) Moneys appropriated for this chapter to the habitat conservation account shall be distributed in the following way:

(a) Not less than forty percent through June 30, 2011, at which time the amount shall become forty-five percent, for the acquisition and development of critical habitat;

(b) Not less than thirty percent for the acquisition and development of natural areas;

(c) Not less than twenty percent for the acquisition and development of urban wildlife habitat; and

(d) Not less than ten percent through June 30, 2011, at which time the amount shall become five percent, shall be used by the committee to fund restoration and enhancement projects on state lands. Only the department of natural resources and the department of fish and wildlife may apply for these funds to be used on existing habitat and natural area lands.

(2)(a) In distributing these funds, the committee retains discretion to meet the most pressing needs for critical habitat, natural areas, and urban wildlife habitat, and is not required to meet the percentages described in subsection (1) of this section in any one biennium.

(b) If not enough project applications are submitted in a category within the habitat conservation account to meet the percentages described in subsection (1) of this section in any biennium, the committee retains discretion to distribute any remaining funds to the other categories within the account.

(3) Only state agencies may apply for acquisition and development funds for natural areas projects under subsection (1) (b) of this section.

(4) State and local agencies may apply for acquisition and development funds for critical habitat and urban wildlife habitat projects under subsection (1)(a) and (c) of this section.

(5)(a) Any lands that have been acquired with grants under this section by the department of fish and wildlife are subject to an amount in lieu of real property taxes and an additional amount for control of noxious weeds as determined by RCW 77.12.203.

(b) Any lands that have been acquired with grants under this section by the department of natural resources are subject to payments in the amounts required under the provisions of RCW 79.70.130 and 79.71.130. [2005 c 303 § 3; 1999 c 379 § 917; 1997 c 235 § 718; 1990 1st ex.s. c 14 § 5. Formerly RCW 43.98A.040.]

**Effective date—2005 c 303 §§ 1-14:** See note following RCW 79A.15.010.

**Effective date—1999 c 379:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 18, 1999]." [1999 c 379 § 949.]

**Severability—1997 c 235:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 235 § 901.]

**Effective date—1997 c 235:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 26, 1997]." [1997 c 235 § 902.]

**79A.15.050 Outdoor recreation account—Distribution and use of moneys. (Effective July 1, 2007.)** (1) Moneys appropriated for this chapter to the outdoor recreation account shall be distributed in the following way:

(a) Not less than thirty percent to the state parks and recreation commission for the acquisition and development of state parks, with at least fifty percent of the money for acquisition costs;

(b) Not less than thirty percent for the acquisition, development, and renovation of local parks, with at least fifty percent of this money for acquisition costs;

(c) Not less than twenty percent for the acquisition, renovation, or development of trails;

(d) Not less than fifteen percent for the acquisition, renovation, or development of water access sites, with at least seventy-five percent of this money for acquisition costs; and

(e) Not less than five percent for development and renovation projects on state recreation lands. Only the department of natural resources and the department of fish and

wildlife may apply for these funds to be used on their existing recreation lands.

(2)(a) In distributing these funds, the committee retains discretion to meet the most pressing needs for state and local parks, trails, and water access sites, and is not required to meet the percentages described in subsection (1) of this section in any one biennium.

(b) If not enough project applications are submitted in a category within the outdoor recreation account to meet the percentages described in subsection (1) of this section in any biennium, the committee retains discretion to distribute any remaining funds to the other categories within the account.

(3) Only local agencies may apply for acquisition, development, or renovation funds for local parks under subsection (1)(b) of this section.

(4) Only state and local agencies may apply for funds for trails under subsection (1)(c) of this section.

(5) Only state and local agencies may apply for funds for water access sites under subsection (1)(d) of this section. [2005 c 303 § 4; 2003 c 184 § 1; 1999 c 379 § 941; 1999 c 379 § 920; 1990 1st ex.s. c 14 § 6. Formerly RCW 43.98A.050.]

**Effective date—2005 c 303 §§ 1-14:** See note following RCW 79A.15.010.

**Effective date—1999 c 379:** See note following RCW 79A.15.040.

**79A.15.060 Habitat conservation account—Acquisition policies and priorities. (Effective July 1, 2007.)** (1) The committee may adopt rules establishing acquisition policies and priorities for distributions from the habitat conservation account.

(2) Except as provided in RCW 79A.15.030(7), moneys appropriated for this chapter may not be used by the committee to fund staff positions or other overhead expenses, or by a state, regional, or local agency to fund operation or maintenance of areas acquired under this chapter.

(3) Moneys appropriated for this chapter may be used by grant recipients for costs incidental to acquisition, including, but not limited to, surveying expenses, fencing, and signing.

(4) Moneys appropriated for this section may be used to fund mitigation banking projects involving the restoration, creation, enhancement, or preservation of critical habitat and urban wildlife habitat, provided that the parties seeking to use the mitigation bank meet the matching requirements of subsection (5) of this section. The moneys from this section may not be used to supplant an obligation of a state or local agency to provide mitigation. For the purposes of this section, a mitigation bank means a site or sites where critical habitat or urban wildlife habitat is restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized project impacts to similar resources.

(5) The committee may not approve a local project where the local agency share is less than the amount to be awarded from the habitat conservation account.

(6) In determining acquisition priorities with respect to the habitat conservation account, the committee shall consider, at a minimum, the following criteria:

(a) For critical habitat and natural areas proposals:

(i) Community support for the project;

(ii) The project proposal's ongoing stewardship program that includes control of noxious weeds, detrimental invasive

species, and that identifies the source of the funds from which the stewardship program will be funded;

(iii) Recommendations as part of a watershed plan or habitat conservation plan, or a coordinated regionwide prioritization effort, and for projects primarily intended to benefit salmon, limiting factors, or critical pathways analysis;

(iv) Immediacy of threat to the site;

(v) Uniqueness of the site;

(vi) Diversity of species using the site;

(vii) Quality of the habitat;

(viii) Long-term viability of the site;

(ix) Presence of endangered, threatened, or sensitive species;

(x) Enhancement of existing public property;

(xi) Consistency with a local land use plan, or a regional or statewide recreational or resource plan, including projects that assist in the implementation of local shoreline master plans updated according to RCW 90.58.080 or local comprehensive plans updated according to RCW 36.70A.130;

(xii) Educational and scientific value of the site;

(xiii) Integration with recovery efforts for endangered, threatened, or sensitive species;

(xiv) For critical habitat proposals by local agencies, the statewide significance of the site.

(b) For urban wildlife habitat proposals, in addition to the criteria of (a) of this subsection:

(i) Population of, and distance from, the nearest urban area;

(ii) Proximity to other wildlife habitat;

(iii) Potential for public use; and

(iv) Potential for use by special needs populations.

(7) Before November 1st of each even-numbered year, the committee shall recommend to the governor a prioritized list of all state agency and local projects to be funded under RCW 79A.15.040(1) (a), (b), and (c). The governor may remove projects from the list recommended by the committee and shall submit this amended list in the capital budget request to the legislature. The list shall include, but not be limited to, a description of each project and any particular match requirement, and describe for each project any anticipated restrictions upon recreational activities allowed prior to the project. [2005 c 303 § 8; 2000 c 11 § 67; 1999 c 379 § 918; 1997 c 235 § 719; 1990 1st ex.s. c 14 § 7. Formerly RCW 43.98A.060.]

**Effective date—2005 c 303 §§ 1-14:** See note following RCW 79A.15.010.

**Effective date—1999 c 379:** See note following RCW 79A.15.040.

**Severability—Effective date—1997 c 235:** See notes following RCW 79A.15.040.

**79A.15.070 Acquisition and development priorities—Generally. (Effective July 1, 2007.)** (1) In determining which state parks proposals and local parks proposals to fund, the committee shall use existing policies and priorities.

(2) Except as provided in RCW 79A.15.030(7), moneys appropriated for this chapter may not be used by the committee to fund staff or other overhead expenses, or by a state, regional, or local agency to fund operation or maintenance of areas acquired under this chapter.

(3) Moneys appropriated for this chapter may be used by grant recipients for costs incidental to acquisition and devel-

opment, including, but not limited to, surveying expenses, fencing, and signing.

(4) The committee may not approve a project of a local agency where the share contributed by the local agency is less than the amount to be awarded from the outdoor recreation account.

(5) The committee may adopt rules establishing acquisition policies and priorities for the acquisition and development of trails and water access sites to be financed from moneys in the outdoor recreation account.

(6) In determining the acquisition and development priorities, the committee shall consider, at a minimum, the following criteria:

(a) For trails proposals:

(i) Community support for the project;

(ii) Immediacy of threat to the site;

(iii) Linkage between communities;

(iv) Linkage between trails;

(v) Existing or potential usage;

(vi) Consistency with a local land use plan, or a regional or statewide recreational or resource plan, including projects that assist in the implementation of local shoreline master plans updated according to RCW 90.58.080 or local comprehensive plans updated according to RCW 36.70A.130;

(vii) Availability of water access or views;

(viii) Enhancement of wildlife habitat; and

(ix) Scenic values of the site.

(b) For water access proposals:

(i) Community support for the project;

(ii) Distance from similar water access opportunities;

(iii) Immediacy of threat to the site;

(iv) Diversity of possible recreational uses;

(v) Public demand in the area; and

(vi) Consistency with a local land use plan, or a regional or statewide recreational or resource plan, including projects that assist in the implementation of local shoreline master plans updated according to RCW 90.58.080 or local comprehensive plans updated according to RCW 36.70A.130.

(7) Before November 1st of each even-numbered year, the committee shall recommend to the governor a prioritized list of all state agency and local projects to be funded under RCW 79A.15.050(1) (a), (b), (c), and (d). The governor may remove projects from the list recommended by the committee and shall submit this amended list in the capital budget request to the legislature. The list shall include, but not be limited to, a description of each project and any particular match requirement, and describe for each project any anticipated restrictions upon recreational activities allowed prior to the project. [2005 c 303 § 9; 2000 c 11 § 68; 1999 c 379 § 919; 1997 c 235 § 720; 1990 1st ex.s. c 14 § 8. Formerly RCW 43.98A.070.]

**Effective date—2005 c 303 §§ 1-14:** See note following RCW 79A.15.010.

**Effective date—1999 c 379:** See note following RCW 79A.15.040.

**Severability—Effective date—1997 c 235:** See notes following RCW 79A.15.040.

**79A.15.080 Recommended project list—Committee authority to obligate funds—Legislature's authority. (Effective July 1, 2007.)** The committee shall not sign contracts or otherwise financially obligate funds from the habitat

conservation account, the outdoor recreation account, the riparian protection account, or the farmlands preservation account as provided in this chapter before the legislature has appropriated funds for a specific list of projects. The legislature may remove projects from the list recommended by the governor. [2005 c 303 § 10; 1990 1st ex.s. c 14 § 9. Formerly RCW 43.98A.080.]

**Effective date—2005 c 303 §§ 1-14:** See note following RCW 79A.15.010.

**79A.15.110 Review of proposed project application.** (*Effective July 1, 2007.*) A state or local agency shall review the proposed project application with the county or city with jurisdiction over the project area prior to applying for funds for the acquisition of property under this chapter. The appropriate county or city legislative authority may, at its discretion, submit a letter to the committee identifying the authority's position with regard to the acquisition project. The committee shall make the letters received under this section available to the governor and the legislature when the prioritized project list is submitted under RCW 79A.15.120, 79A.15.060, and 79A.15.070. [2005 c 303 § 5.]

**Effective date—2005 c 303 §§ 1-14:** See note following RCW 79A.15.010.

**79A.15.120 Riparian protection account—Use of funds.** (*Effective July 1, 2007.*) (1) The riparian protection account is established in the state treasury. The committee must administer the account in accordance with chapter 79A.25 RCW and this chapter, and hold it separate and apart from all other money, funds, and accounts of the committee.

(2) Moneys appropriated for this chapter to the riparian protection account must be distributed for the acquisition or enhancement or restoration of riparian habitat. All enhancement or restoration projects, except those qualifying under subsection (10)(a) of this section, must include the acquisition of a real property interest in order to be eligible.

(3) State and local agencies and lead entities under chapter 77.85 RCW may apply for acquisition and enhancement or restoration funds for riparian habitat projects under subsection (1) of this section. Other state agencies not defined in RCW 79A.15.010, such as the department of transportation and the department of corrections, may enter into interagency agreements with state agencies to apply in partnership for funds under this section.

(4) The committee may adopt rules establishing acquisition policies and priorities for distributions from the riparian protection account.

(5) Except as provided in RCW 79A.15.030(7), moneys appropriated for this section may not be used by the committee to fund staff positions or other overhead expenses, or by a state, regional, or local agency to fund operation or maintenance of areas acquired under this chapter.

(6) Moneys appropriated for this section may be used by grant recipients for costs incidental to restoration and acquisition, including, but not limited to, surveying expenses, fencing, and signing.

(7) Moneys appropriated for this section may be used to fund mitigation banking projects involving the restoration, creation, enhancement, or preservation of riparian habitat, provided that the parties seeking to use the mitigation bank

meet the matching requirements of subsection (8) of this section. The moneys from this section may not be used to supplant an obligation of a state or local agency to provide mitigation. For the purposes of this section, a mitigation bank means a site or sites where riparian habitat is restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized project impacts to similar resources.

(8) The committee may not approve a local project where the local agency share is less than the amount to be awarded from the riparian protection account. In-kind contributions, including contributions of a real property interest in land may be used to satisfy the local agency's share.

(9) State agencies receiving grants for acquisition of land under this section must pay an amount in lieu of real property taxes equal to the amount of tax that would be due if the land were taxable as open space land under chapter 84.34 RCW except taxes levied for any state purpose, plus an additional amount for control of noxious weeds equal to that which would be paid if such lands were privately owned. The county assessor and county legislative authority shall assist in determining the appropriate calculation of the amount of tax that would be due.

(10) In determining acquisition priorities with respect to the riparian protection account, the committee must consider, at a minimum, the following criteria:

(a) Whether the project continues the conservation reserve enhancement program. Applications that extend the duration of leases of riparian areas that are currently enrolled in the conservation reserve enhancement program shall be eligible. Such applications are eligible for a conservation lease extension of at least twenty-five years of duration;

(b) Whether the projects are identified or recommended in a watershed planning process under chapter 247, Laws of 1998, salmon recovery planning under chapter 77.85 RCW, or other local plans, such as habitat conservation plans, and these must be highly considered in the process;

(c) Whether there is community support for the project;

(d) Whether the proposal includes an ongoing stewardship program that includes control of noxious weeds, detrimental invasive species, and that identifies the source of the funds from which the stewardship program will be funded;

(e) Whether there is an immediate threat to the site;

(f) Whether the quality of the habitat is improved or, for projects including restoration or enhancement, the potential for restoring quality habitat including linkage of the site to other high quality habitat;

(g) Whether the project is consistent with a local land use plan, or a regional or statewide recreational or resource plan. The projects that assist in the implementation of local shoreline master plans updated according to RCW 90.58.080 or local comprehensive plans updated according to RCW 36.70A.130 must be highly considered in the process;

(h) Whether the site has educational or scientific value; and

(i) Whether the site has passive recreational values for walking trails, wildlife viewing, or the observation of natural settings.

(11) Before November 1st of each even-numbered year, the committee will recommend to the governor a prioritized

list of projects to be funded under this section. The governor may remove projects from the list recommended by the committee and will submit this amended list in the capital budget request to the legislature. The list must include, but not be limited to, a description of each project and any particular match requirement. [2005 c 303 § 6.]

**Effective date—2005 c 303 §§ 1-14:** See note following RCW 79A.15.010.

**79A.15.130 Farmlands preservation account—Use of funds. (Effective July 1, 2007.)** (1) The farmlands preservation account is established in the state treasury. The committee will administer the account in accordance with chapter 79A.25 RCW and this chapter, and hold it separate and apart from all other money, funds, and accounts of the committee. Moneys appropriated for this chapter to the farmlands preservation account must be distributed for the acquisition and preservation of farmlands in order to maintain the opportunity for agricultural activity upon these lands.

(2)(a) Moneys appropriated for this chapter to the farmlands preservation account may be distributed for (i) the fee simple or less than fee simple acquisition of farmlands; (ii) the enhancement or restoration of ecological functions on those properties; or (iii) both. In order for a farmland preservation grant to provide for an environmental enhancement or restoration project, the project must include the acquisition of a real property interest.

(b) If a city or county acquires a property through this program in fee simple, the city or county shall endeavor to secure preservation of the property through placing a conservation easement, or other form of deed restriction, on the property which dedicates the land to agricultural use and retains one or more property rights in perpetuity. Once an easement or other form of deed restriction is placed on the property, the city or county shall seek to sell the property, at fair market value, to a person or persons who will maintain the property in agricultural production. Any moneys from the sale of the property shall either be used to purchase interests in additional properties which meet the criteria in subsection (9) of this section, or to repay the grant from the state which was originally used to purchase the property.

(3) Cities and counties may apply for acquisition and enhancement or restoration funds for farmland preservation projects within their jurisdictions under subsection (1) of this section.

(4) The committee may adopt rules establishing acquisition and enhancement or restoration policies and priorities for distributions from the farmlands preservation account.

(5) The acquisition of a property right in a project under this section by a county or city does not provide a right of access to the property by the public unless explicitly provided for in a conservation easement or other form of deed restriction. (6) Except as provided in RCW 79A.15.030(7), moneys appropriated for this section may not be used by the committee to fund staff positions or other overhead expenses, or by a city or county to fund operation or maintenance of areas acquired under this chapter.

(7) Moneys appropriated for this section may be used by grant recipients for costs incidental to restoration and acquisition, including, but not limited to, surveying expenses, fencing, and signing.

(8) The committee may not approve a local project where the local agency's share is less than the amount to be awarded from the farmlands preservation account. In-kind contributions, including contributions of a real property interest in land, may be used to satisfy the local agency's share.

(9) In determining the acquisition priorities, the committee must consider, at a minimum, the following criteria:

(a) Community support for the project;

(b) A recommendation as part of a limiting factors or critical pathways analysis, a watershed plan or habitat conservation plan, or a coordinated regionwide prioritization effort;

(c) The likelihood of the conversion of the site to nonagricultural or more highly developed usage;

(d) Consistency with a local land use plan, or a regional or statewide recreational or resource plan. The projects that assist in the implementation of local shoreline master plans updated according to RCW 90.58.080 or local comprehensive plans updated according to RCW 36.70A.130 must be highly considered in the process;

(e) Benefits to salmonids;

(f) Benefits to other fish and wildlife habitat;

(g) Integration with recovery efforts for endangered, threatened, or sensitive species;

(h) The viability of the site for continued agricultural production, including, but not limited to:

(i) Soil types;

(ii) On-site production and support facilities such as barns, irrigation systems, crop processing and storage facilities, wells, housing, livestock sheds, and other farming infrastructure;

(iii) Suitability for producing different types or varieties of crops;

(iv) Farm-to-market access;

(v) Water availability; and

(i) Other community values provided by the property when used as agricultural land, including, but not limited to:

(i) Viewshed;

(ii) Aquifer recharge;

(iii) Occasional or periodic collector for storm water runoff;

(iv) Agricultural sector job creation;

(v) Migratory bird habitat and forage area; and

(vi) Educational and curriculum potential.

(10) In allotting funds for environmental enhancement or restoration projects, the committee will require the projects to meet the following criteria:

(a) Enhancement or restoration projects must further the ecological functions of the farmlands;

(b) The projects, such as fencing, bridging watercourses, replanting native vegetation, replacing culverts, clearing of waterways, etc., must be less than fifty percent of the acquisition cost of the project including any in-kind contribution by any party;

(c) The projects should be based on accepted methods of achieving beneficial enhancement or restoration results; and

(d) The projects should enhance the viability of the preserved farmland to provide agricultural production while conforming to any legal requirements for habitat protection.

(11) Before November 1st of each even-numbered year, the committee will recommend to the governor a prioritized list of all projects to be funded under this section. The gover-



nor may remove projects from the list recommended by the committee and must submit this amended list in the capital budget request to the legislature. The list must include, but not be limited to, a description of each project and any particular match requirement. [2005 c 303 § 7.]

**Effective date—2005 c 303 §§ 1-14:** See note following RCW 79A.15.010.

## Chapter 79A.60 RCW

### REGULATION OF RECREATIONAL VESSELS

#### Sections

- 79A.60.010 Definitions.  
 79A.60.630 Boating safety education—Commission's duties—Fee—Report to the legislature.  
 79A.60.640 Requirements to operate motor driven boats/vessels—Exemptions—Penalty.  
 79A.60.650 Boating safety education certification account.

**79A.60.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Accredited course" means a mandatory course of instruction on boating safety education that has been approved by the commission.

(2) "Boat wastes" includes, but is not limited to, sewage, garbage, marine debris, plastics, contaminated bilge water, cleaning solvents, paint scrapings, or discarded petroleum products associated with the use of vessels.

(3) "Boater" means any person on a vessel on waters of the state of Washington.

(4) "Boater education card" means a card issued to a person who has successfully completed a boating safety education test and has paid the registration fee for a serial number record to be maintained in the commission's data base.

(5) "Boating educator" means a person providing an accredited course.

(6) "Carrying passengers for hire" means carrying passengers in a vessel on waters of the state for valuable consideration, whether given directly or indirectly or received by the owner, agent, operator, or other person having an interest in the vessel. This shall not include trips where expenses for food, transportation, or incidentals are shared by participants on an even basis. Anyone receiving compensation for skills or money for amortization of equipment and carrying passengers shall be considered to be carrying passengers for hire on waters of the state.

(7) "Certificate of accomplishment" means a form of certificate approved by the commission and issued by a boating educator to a person who has successfully completed an accredited course.

(8) "Commission" means the state parks and recreation commission.

(9) "Darkness" means that period between sunset and sunrise.

(10) "Environmentally sensitive area" means a restricted body of water where discharge of untreated sewage from boats is especially detrimental because of limited flushing, shallow water, commercial or recreational shellfish, swimming areas, diversity of species, the absence of other pollution sources, or other characteristics.

(11) "Guide" means any individual, including but not limited to subcontractors and independent contractors, engaged for compensation or other consideration by a white-water river outfitter for the purpose of operating vessels. A person licensed under RCW 77.65.480 or 77.65.440 and acting as a fishing guide is not considered a guide for the purposes of this chapter.

(12) "Marina" means a facility providing boat moorage space, fuel, or commercial services. Commercial services include but are not limited to overnight or live-aboard boating accommodations.

(13) "Motor driven boats and vessels" means all boats and vessels which are self propelled.

(14) "Motor vessel safety operating and equipment checklist" means a printed list of the safety requirements for a vessel with a motor installed or attached to the vessel being rented, chartered, or leased and meeting minimum requirements adopted by the commission in accordance with RCW 79A.60.630.

(15) "Muffler" or "muffler system" means a sound suppression device or system, including an underwater exhaust system, designed and installed to abate the sound of exhaust gases emitted from an internal combustion engine and that prevents excessive or unusual noise.

(16) "Operate" means to steer, direct, or otherwise have physical control of a vessel that is underway.

(17) "Operator" means an individual who steers, directs, or otherwise has physical control of a vessel that is underway or exercises actual authority to control the person at the helm.

(18) "Observer" means the individual riding in a vessel who is responsible for observing a water skier at all times.

(19) "Owner" means a person who has a lawful right to possession of a vessel by purchase, exchange, gift, lease, inheritance, or legal action whether or not the vessel is subject to a security interest.

(20) "Person" means any individual, sole proprietorship, partnership, corporation, nonprofit corporation or organization, limited liability company, firm, association, or other legal entity located within or outside this state.

(21) "Personal flotation device" means a buoyancy device, life preserver, buoyant vest, ring buoy, or buoy cushion that is designed to float a person in the water and that is approved by the commission.

(22) "Personal watercraft" means a vessel of less than sixteen feet that uses a motor powering a water jet pump, as its primary source of motive power and that is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

(23) "Polluted area" means a body of water used by boaters that is contaminated by boat wastes at unacceptable levels, based on applicable water quality and shellfish standards.

(24) "Public entities" means all elected or appointed bodies, including tribal governments, responsible for collecting and spending public funds.

(25) "Reckless" or "recklessly" means acting carelessly and heedlessly in a willful and wanton disregard of the rights, safety, or property of another.

(26) "Rental motor vessel" means a motor vessel that is legally owned by a person that is registered as a rental and leasing agency for recreational motor vessels, and for which

there is a written and signed rental, charter, or lease agreement between the owner, or owner's agent, of the vessel and the operator of the vessel.

(27) "Sewage pumpout or dump unit" means:

(a) A receiving chamber or tank designed to receive vessel sewage from a "porta-potty" or a portable container; and

(b) A stationary or portable mechanical device on land, a dock, pier, float, barge, vessel, or other location convenient to boaters, designed to remove sewage waste from holding tanks on vessels.

(28) "Underway" means that a vessel is not at anchor, or made fast to the shore, or aground.

(29) "Vessel" includes every description of watercraft on the water, other than a seaplane, used or capable of being used as a means of transportation on the water. However, it does not include inner tubes, air mattresses, sailboards, and small rafts or flotation devices or toys customarily used by swimmers.

(30) "Water skiing" means the physical act of being towed behind a vessel on, but not limited to, any skis, aquaplane, kneeboard, tube, or any other similar device.

(31) "Waters of the state" means any waters within the territorial limits of Washington state.

(32) "Whitewater river outfitter" means any person who is advertising to carry or carries passengers for hire on any whitewater river of the state, but does not include any person whose only service on a given trip is providing instruction in canoeing or kayaking skills.

(33) "Whitewater rivers of the state" means those rivers and streams, or parts thereof, within the boundaries of the state as listed in RCW 79A.60.470 or as designated by the commission under RCW 79A.60.495. [2005 c 392 § 2; 2003 c 39 § 45; 2000 c 11 § 92; 1998 c 219 § 5; 1997 c 391 § 1; 1993 c 244 § 5; 1933 c 72 § 1; RRS § 9851-1. Formerly RCW 88.12.010.]

**Intent—2005 c 392:** See note following RCW 79A.60.630.

**Intent—1993 c 244:** "It is the intent of the legislature that the boating safety laws administered by the state parks and recreation commission provide Washington's citizens with clear and reasonable boating safety regulations and penalties. Therefore, the legislature intends to recodify, clarify, and partially decriminalize the statewide boating safety laws in order to help the boating community understand and comply with these laws.

It is also the intent of the legislature to increase boat registration fees in order to provide additional funds to local governments for boating safety enforcement and education programs. The funds are to be used for enforcement, education, training, and equipment, including vessel noise measurement equipment. The legislature encourages programs that provide boating safety education in the primary and secondary school system for boat users and potential future boat users. The legislature also encourages boating safety programs that use volunteer and private sector efforts to enhance boating safety and education." [1993 c 244 § 1.]

**79A.60.630 Boating safety education—Commission's duties—Fee—Report to the legislature.** (1) The commission shall establish and implement by rule a program to provide required boating safety education. The boating safety education program shall include training on preventing the spread of aquatic invasive species. The program shall be phased in so that all boaters not exempted under RCW 79A.60.640(3) are required to obtain a boater education card by January 1, 2016. To obtain a boater education card, a boater shall provide a certificate of accomplishment issued by a boating educator for taking and passing an accredited

boating safety education course, or pass an equivalency exam, or provide proof of completion of a course that meets the standard adopted by the commission.

(2) As part of the boating safety education program, the commission shall:

(a) Establish a program to be phased over eleven years starting July 1, 2005, with full implementation by January 1, 2016. The period July 1, 2005, through December 31, 2007, will be program development, boater notification of the new requirements for mandatory education, and processing cards to be issued to individuals having taken an accredited course prior to January 1, 2008. The schedule for phase-in of the mandatory education requirement by age group is as follows: January 1, 2008 - All boat operators twenty years old and younger;

January 1, 2009 - All boat operators twenty-five years old and younger;

January 1, 2010 - All boat operators thirty years old and younger;

January 1, 2011 - All boat operators thirty-five years old and younger;

January 1, 2012 - All boat operators forty years old and younger;

January 1, 2013 - All boat operators fifty years old and younger;

January 1, 2014 - All boat operators sixty years old and younger;

January 1, 2015 - All boat operators seventy years old and younger;

January 1, 2016 - All boat operators;

(b) Establish a minimum standard of boating safety education accomplishment. The standard must be consistent with the applicable standard established by the national association of state boating law administrators;

(c) Adopt minimum standards for boating safety education course of instruction and examination that ensures compliance with the national association of state boating law administrators minimum standards;

(d) Approve and provide accreditation to boating safety education courses operated by volunteers, or commercial or nonprofit organizations, including, but not limited to, courses given by the United States coast guard auxiliary and the United States power squadrons;

(e) Develop an equivalency examination that may be taken as an alternative to the boating safety education course;

(f) Establish a fee of ten dollars for the boater education card to fund all commission activities related to the boating safety education program created by chapter 392, Laws of 2005, including the initial costs of developing the program. Any surplus funds resulting from the fees received shall be distributed by the commission as grants to local marine law enforcement programs approved by the commission as provided in RCW 88.02.040;

(g) Establish a fee for the replacement of the boater education card that covers the cost of replacement;

(h) Consider and evaluate public agency and commercial opportunities to assist in program administration with the intent to keep administrative costs to a minimum;

(i) Approve and provide accreditation to boating safety education courses offered online; and

(j) Provide a report to the legislature by January 1, 2008, on its progress of implementation of the mandatory education program. [2005 c 392 § 3.]

**Intent—2005 c 392:** "It is the intent of the legislature to establish a boating safety education program that contributes to the reduction of accidents and increases the enjoyment of boating by all operators of all recreational vessels on the waters of this state. Based on the 2003 report to the legislature titled "Recreational Boating Safety in Washington, A Report on Methods to Achieve Safer Boating Practices," the legislature recognizes that boating accidents also occur in nonmotorized vessels in this state, but, at this time there is no national educational standard for nonmotorized vessels. Therefore, the commission is hereby authorized and directed to work with agencies and organizations representing nonmotorized vessel activities and individuals operating nonmotorized vessels to decrease accidents of operators in these vessels. It is also the intent of the legislature to encourage boating safety education programs that use volunteer and private sector efforts to enhance boating safety and education for operators of nonmotorized vessels to work closely with the state parks and recreation commission in its efforts to reduce all boating accidents in this state." [2005 c 392 § 1.]

**79A.60.640 Requirements to operate motor driven boats/vessels—Exemptions—Penalty.** (1) No person shall operate or permit the operation of motor driven boats and vessels with a mechanical power of fifteen horsepower or greater unless the person:

(a) Is at least twelve years of age, except that an operator of a personal watercraft shall comply with the age requirements under RCW 79A.60.190; and

(b)(i) Has in his or her possession a boater education card, unless exempted under subsection (3) of this section; or

(ii) Is accompanied by and is under the direct supervision of a person sixteen years of age or older who is in possession of a boater education card, or who is not yet required to possess the card as provided in the program phase in RCW 79A.60.630(2)(a).

(2) Any person who can demonstrate they have successfully completed, prior to July 24, 2005, a boating safety education course substantially equivalent to the standards adopted by the commission shall be eligible for a boater education card upon application to the commission and payment of the fee, without having to take a course or equivalency exam as provided in RCW 79A.60.630(1). Successful completion of a boating safety education course could include an original or copy of an original certificate issued by the commission, the United States coast guard auxiliary, or the United States power squadrons, or official certification by these organizations that the individual successfully completed a course substantially equivalent to the standards adopted by the commission.

(3) The following persons are not required to carry a boater education card:

(a) The operator of a vessel engaged in a lawful commercial fishery operation as licensed by the department of fish and wildlife under Title 77 RCW. However, the person when operating a vessel for recreational purposes must carry either a valid commercial fishing license issued by the department of fish and wildlife or a boater education card;

(b) Any person who possesses a valid marine operator license issued by the United States coast guard when operating a vessel authorized by such coast guard license. However, the person when operating a vessel for recreational purposes must carry either a valid marine operator license issued by the United States coast guard or a boater education card;

(c) Any person who is legally engaged in the operation of a vessel that is exempt from vessel registration requirements under chapter 88.02 RCW and applicable rules and is used for purposes of law enforcement or official government work. However, the person when operating a vessel for recreational purposes must carry a boater education card;

(d) Any person at least twelve years old renting, chartering, or leasing a motor driven boat or vessel with an engine power of fifteen horsepower or greater who completes a commission-approved motor vessel safety operating and equipment checklist each time before operating the motor driven boat or vessel, except that an operator of a personal watercraft shall comply with the age requirements under RCW 79A.60.190;

(e) Any person who is not a resident of Washington state and who does not operate a motor driven boat or vessel with an engine power of fifteen horsepower or greater in waters of the state for more than sixty consecutive days;

(f) Any person who is not a resident of Washington state and who holds a current out-of-state or out-of-country certificate or card that is equivalent to the rules adopted by the commission;

(g) Any person who has purchased the boat or vessel within the last sixty days, and has a bill of sale in his or her possession to document the date of purchase;

(h) Any person, including those less than twelve years of age, who is involved in practicing for, or engaging in, a permitted racing event where a valid document has been issued by the appropriate local, state, or federal government agency for the event, and is available for inspection on-site during the racing event;

(i) Any person who is not yet required to have a boater education card under the phased schedule in RCW 79A.60.630(2)(a); and

(j) Any person born before January 1, 1955.

(4) Except as provided in subsection (3)(a) through (i) of this section, a boater must carry a boater education card while operating a vessel and is required to present the boater education card, or alternative license as provided in subsection (3)(a) and (b) of this section, to a law enforcement officer upon request.

(5) Failure to possess a boater education card required by this section is an infraction under chapter 7.84 RCW. The penalty shall be waived if the boater provides proof to the court within sixty days that he or she has received a boater education card.

(6) No person shall permit the rental, charter, or lease of a motor driven boat or vessel with an engine power of fifteen horsepower or greater to a person without first reviewing with that person, and all other persons who may be permitted by the person to operate the vessel, all the information contained in the motor vessel safety operating and equipment checklist. [2005 c 392 § 4.]

**Intent—2005 c 392:** See note following RCW 79A.60.630.

**79A.60.650 Boating safety education certification account.** The boating safety education certification account is created in the custody of the state treasurer. All receipts from fees collected for the issuance of a boater education card shall be deposited in the account and shall be used only for

the administration of RCW 79A.60.630 and 79A.60.640. Only the state parks and recreation commission may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2005 c 392 § 5.]

**Intent—2005 c 392:** See note following RCW 79A.60.630.

## Title 80

### PUBLIC UTILITIES

#### Chapters

#### 80.04 Regulations—General.

#### Chapter 80.04 RCW

#### REGULATIONS—GENERAL

##### Sections

80.04.095 Protection of records containing commercial information.  
(Effective July 1, 2006.)

**80.04.095 Protection of records containing commercial information.** (Effective July 1, 2006.) Records, subject to chapter 42.56 RCW, filed with the commission or the attorney general from any person which contain valuable commercial information, including trade secrets or confidential marketing, cost, or financial information, or customer-specific usage and network configuration and design information, shall not be subject to inspection or copying under chapter 42.56 RCW: (1) Until notice to the person or persons directly affected has been given; and (2) if, within ten days of the notice, the person has obtained a superior court order protecting the records as confidential. The court shall determine that the records are confidential and not subject to inspection and copying if disclosure would result in private loss, including an unfair competitive disadvantage. When providing information to the commission or the attorney general, a person shall designate which records or portions of records contain valuable commercial information. Nothing in this section shall prevent the use of protective orders by the commission governing disclosure of proprietary or confidential information in contested proceedings. [2005 c 274 § 358; 1987 c 107 § 1.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

## Title 81

### TRANSPORTATION

#### Chapters

- 81.66** Transportation for persons with special needs.
- 81.68** Auto transportation companies.
- 81.70** Passenger charter carriers.
- 81.77** Solid waste collection companies.
- 81.80** Motor freight carriers.
- 81.84** Commercial ferries.
- 81.104** High-capacity transportation systems.
- 81.112** Regional transit authorities.

[2005 RCW Supp—page 984]

#### Chapter 81.66 RCW

#### TRANSPORTATION FOR PERSONS WITH SPECIAL NEEDS

(Formerly: Transportation for the elderly and the handicapped)

##### Sections

81.66.060 Suspension, revocation, or alteration of certificate.

**81.66.060 Suspension, revocation, or alteration of certificate.** The commission may, at any time, by its order duly entered after notice to the holder of any certificate issued under this chapter, and an opportunity for a hearing, at which it is proven that the holder has willfully violated or refused to observe any of the commission's proper orders, rules, or regulations, suspend, revoke, alter, or amend any certificate issued under the provisions of this chapter, but the holder of the certificate shall have all the rights of rehearing, review, and appeal as to the order of the commission as is provided for in RCW 81.68.070. [2005 c 121 § 1; 1979 c 111 § 9.]

**Severability—1979 c 111:** See note following RCW 46.74.010.

#### Chapter 81.68 RCW

#### AUTO TRANSPORTATION COMPANIES

##### Sections

81.68.030 Regulation by commission.  
81.68.040 Certificate of convenience and necessity.  
81.68.045 Recodified as RCW 81.70.360.  
81.68.046 Temporary certificates.

**81.68.030 Regulation by commission.** The commission is vested with power and authority, and it is its duty to supervise and regulate every auto transportation company in this state as provided in this section. Under this authority, it shall for each auto transportation company:

- (1) Fix, alter, and amend just, fair, reasonable, and sufficient rates, fares, charges, classifications, rules, and regulations;
- (2) Regulate the accounts, service, and safety of operations;
- (3) Require the filing of annual and other reports and of other data;
- (4) Supervise and regulate the companies in all other matters affecting the relationship between such companies and the traveling and shipping public;
- (5) By general order or otherwise, prescribe rules and regulations in conformity with this chapter, applicable to any and all such companies, and within such limits make orders.

The commission may, at any time, by its order duly entered after notice to the holder of any certificate under this chapter, and an opportunity for a hearing, at which it shall be proven that the holder willfully violates or refuses to observe any of the commission's proper orders, rules, or regulations, suspend, revoke, alter, or amend any certificate issued under the provisions of this chapter, but the holder of the certificate has all the rights of rehearing, review, and appeal as to the order of the commission as is provided for in RCW 81.68.070. [2005 c 121 § 2; 1989 c 163 § 4; 1984 c 166 § 4; 1961 c 14 § 81.68.030. Prior: 1921 c 111 § 3; RRS § 6389.]

**81.68.040 Certificate of convenience and necessity.** No auto transportation company shall operate for the trans-

portation of persons, and baggage, mail and express on the vehicles of auto transportation companies carrying passengers, for compensation between fixed termini or over a regular route in this state, without first having obtained from the commission under the provisions of this chapter a certificate declaring that public convenience and necessity require such operation; but a certificate shall be granted when it appears to the satisfaction of the commission that such person, firm or corporation was actually operating in good faith, over the route for which such certificate shall be sought on January 15, 1921. Any right, privilege, certificate held, owned or obtained by an auto transportation company may be sold, assigned, leased, transferred or inherited as other property, only upon authorization by the commission. The commission shall have power, after notice and an opportunity for a hearing, when the applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, only when the existing auto transportation company or companies serving such territory will not provide the same to the satisfaction of the commission, or when the existing auto transportation company does not object, and in all other cases with or without hearing, to issue said certificate as prayed for; or for good cause shown to refuse to issue same, or to issue it for the partial exercise only of said privilege sought, and may attach to the exercise of the rights granted by said certificate to such terms and conditions as, in its judgment, the public convenience and necessity may require. [2005 c 121 § 3; 1961 c 14 § 81.68.040. Prior: 1921 c 111 § 4; RRS § 6390.]

**81.68.045 Recodified as RCW 81.70.360.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**81.68.046 Temporary certificates.** The commission may, with or without a hearing, issue temporary certificates to engage in the business of operating an auto transportation company, but only after it finds that the issuance of the temporary certificate is consistent with the public interest. The temporary certificate may be issued for a period up to one hundred eighty days. The commission may prescribe rules and impose terms and conditions as in its judgment are reasonable and necessary in carrying out this chapter. The commission may by rule, prescribe a fee for an application for the temporary certificate. The commission shall not issue a temporary certificate to operate in a territory: (1) For which a certificate has been issued, unless the existing certificate holder, upon twenty days' notice, does not object to the issuance of the certificate or is not providing service; or (2) for which an application is pending unless the filing for a temporary certificate is made by the applicant or the applicant does not object to the issuance of the certificate. [2005 c 121 § 8.]

### Chapter 81.70 RCW

#### PASSENGER CHARTER CARRIERS

Sections

81.70.360 Excursion service companies—Certificate.

#### 81.70.360 Excursion service companies—Certificate.

No excursion service company may operate for the transportation of persons for compensation without first having obtained from the commission under the provisions of this chapter a certificate to do so.

A certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able to properly perform the services proposed and conform to the provisions of this chapter and the rules of the commission adopted under this chapter, and that such operations will be consistent with the public interest. However, a certificate shall be granted when it appears to the satisfaction of the commission that the person, firm, or corporation was actually operating in good faith that type of service for which the certificate was sought on January 15, 1983. Any right, privilege, or certificate held, owned, or obtained by an excursion service company may be sold, assigned, leased, transferred, or inherited as other property only upon authorization by the commission. For good cause shown the commission may refuse to issue the certificate, or issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by the certificate such terms and conditions as, in its judgment, the public interest may require. [1984 c 166 § 5. Formerly RCW 81.68.045.]

### Chapter 81.77 RCW

#### SOLID WASTE COLLECTION COMPANIES

(Formerly: Garbage and refuse collection companies)

Sections

81.77.030 Supervision and regulation by commission.  
81.77.040 Certificate of convenience and necessity required—Procedure when applicant requests certificate for existing service area.

**81.77.030 Supervision and regulation by commission.** The commission shall supervise and regulate every solid waste collection company in this state,

- (1) By fixing and altering its rates, charges, classifications, rules and regulations;
- (2) By regulating the accounts, service, and safety of operations;
- (3) By requiring the filing of annual and other reports and data;
- (4) By supervising and regulating such persons or companies in all other matters affecting the relationship between them and the public which they serve;
- (5) By requiring compliance with local solid waste management plans and related implementation ordinances;
- (6) By requiring certificate holders under chapter 81.77 RCW to use rate structures and billing systems consistent with the solid waste management priorities set forth under RCW 70.95.010 and the minimum levels of solid waste collection and recycling services pursuant to local comprehensive solid waste management plans. The commission may order consolidated billing and provide for reasonable and necessary expenses to be paid to the administering company if more than one certificate is granted in an area.

The commission, on complaint made on its own motion or by an aggrieved party, at any time, after providing the

holder of any certificate with notice and an opportunity for a hearing at which it shall be proven that the holder has willfully violated or refused to observe any of the commission's orders, rules, or regulations, or has failed to operate as a solid waste collection company for a period of at least one year preceding the filing of the complaint, may suspend, revoke, alter, or amend any certificate issued under the provisions of this chapter. [2005 c 121 § 5; 1989 c 431 § 20; 1987 c 239 § 1; 1965 ex.s. c 105 § 1; 1961 c 295 § 4.]

**81.77.040 Certificate of convenience and necessity required—Procedure when applicant requests certificate for existing service area.** No solid waste collection company shall hereafter operate for the hauling of solid waste for compensation without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation. A condition of operating a solid waste company in the unincorporated areas of a county shall be complying with the solid waste management plan prepared under chapter 70.95 RCW applicable in the company's franchise area.

Issuance of the certificate of necessity shall be determined upon, but not limited to, the following factors: The present service and the cost thereof for the contemplated area to be served; an estimate of the cost of the facilities to be utilized in the plant for solid waste collection and disposal, sworn to before a notary public; a statement of the assets on hand of the person, firm, association or corporation which will be expended on the purported plant for solid waste collection and disposal, sworn to before a notary public; a statement of prior experience, if any, in such field by the petitioner, sworn to before a notary public; and sentiment in the community contemplated to be served as to the necessity for such a service.

When an applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, the commission may, after notice and an opportunity for a hearing, issue the certificate only if the existing solid waste collection company or companies serving the territory will not provide service to the satisfaction of the commission or if the existing solid waste collection company does not object.

In all other cases, the commission may, with or without hearing, issue certificates, or for good cause shown refuse to issue them, or issue them for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted such terms and conditions as, in its judgment, the public convenience and necessity may require.

Any right, privilege, certificate held, owned, or obtained by a solid waste collection company may be sold, assigned, leased, transferred, or inherited as other property, but only upon authorization by the commission.

Any solid waste collection company which upon July 1, 1961 is operating under authority of a common carrier or contract carrier permit issued under the provisions of chapter 81.80 RCW shall be granted a certificate of necessity without hearing upon compliance with the provisions of this chapter. Such solid waste collection company which has paid the plate fee and gross weight fees required by chapter 81.80 RCW for the year 1961 shall not be required to pay additional like fees

under the provisions of this chapter for the remainder of such year.

For purposes of issuing certificates under this chapter, the commission may adopt categories of solid wastes as follows: Garbage, refuse, recyclable materials, and demolition debris. A certificate may be issued for one or more categories of solid waste. Certificates issued on or before July 23, 1989, shall not be expanded or restricted by operation of this chapter. [2005 c 121 § 6; 1989 c 431 § 21; 1987 c 239 § 2; 1961 c 295 § 5.]

## Chapter 81.80 RCW MOTOR FREIGHT CARRIERS

### Sections

81.80.395 Idaho vehicles exempt—Reciprocity.

**81.80.395 Idaho vehicles exempt—Reciprocity.** The Washington utilities and transportation commission may enter into an agreement or arrangement with a duly authorized representative of the state of Idaho, for the purpose of granting to operators of commercial vehicles that are properly registered in the state of Idaho, the privilege of operating their vehicles in this state within a designated area near the border of their state without the need for registration as required by chapter 81.80 RCW if the state of Idaho grants a similar privilege to operators of commercial vehicles from this state. The initial designated area shall be limited to state route 195 from the Idaho border to Lewiston, and SR 12 from Lewiston to Clarkston. [2005 c 319 § 135; 1988 c 138 § 1.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

## Chapter 81.84 RCW COMMERCIAL FERRIES (Formerly: Steamboat companies)

### Sections

81.84.020 Application—Hearing—Issuance of certificate—Determining factors.

**81.84.020 Application—Hearing—Issuance of certificate—Determining factors.** (1) Upon the filing of an application the commission shall give reasonable notice to the department, affected cities, counties, and public transportation benefit areas and any common carrier which might be adversely affected, of the time and place for hearing on such application. The commission shall have power after notice and an opportunity for a hearing, to issue the certificate as prayed for, or to refuse to issue it, or to issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by said certificate such terms and conditions as in its judgment the public convenience and necessity may require; but the commission shall not have power to grant a certificate to operate between districts and/or into any territory prohibited by RCW 47.60.120 or already served by an existing certificate holder, unless such existing certificate holder has failed or refused to furnish reasonable and adequate service, has failed to provide the service described in its certificate or tariffs after the time period

allowed to initiate service has elapsed, or has not objected to the issuance of the certificate as prayed for: PROVIDED, A certificate shall be granted when it shall appear to the satisfaction of the commission that the commercial ferry was actually operating in good faith over the route for which such certificate shall be sought, on January 15, 1927: PROVIDED, FURTHER, That in case two or more commercial ferries shall upon said date have been operating vessels upon the same route, or between the same districts the commission shall determine after public hearing whether one or more certificates shall issue, and in determining to whom a certificate or certificates shall be issued, the commission shall consider all material facts and circumstances including the prior operation, schedules, and services rendered by either of the ferries, and in case more than one certificate shall issue, the commission shall fix and determine the schedules and services of the ferries to which the certificates are issued to the end that duplication of service be eliminated and public convenience be furthered.

(2) Before issuing a certificate, the commission shall determine that the applicant has the financial resources to operate the proposed service for at least twelve months, based upon the submission by the applicant of a pro forma financial statement of operations. Issuance of a certificate shall be determined upon, but not limited to, the following factors: Ridership and revenue forecasts; the cost of service for the proposed operation; an estimate of the cost of the assets to be used in providing the service; a statement of the total assets on hand of the applicant that will be expended on the proposed operation; and a statement of prior experience, if any, in such field by the applicant. The documentation required of the applicant under this section shall comply with the provisions of RCW 9A.72.085.

(3) Subsection (2) of this section does not apply to an application for a certificate that is pending as of July 25, 1993.

(4) In granting a certificate for passenger-only ferries and determining what conditions to place on the certificate, the commission shall consider and give substantial weight to the effect of its decisions on public agencies operating, or eligible to operate, passenger-only ferry service.

(5) Until July 1, 2006, the commission shall not accept or consider an application for passenger-only ferry service serving any county in the Puget Sound area with a population of over one million people. Applications for passenger-only ferry service serving any county in the Puget Sound area with a population of over one million pending before the commission as of May 9, 2005, shall be held in abeyance and not considered before July 1, 2006. [2005 c 313 § 609; 2005 c 121 § 7; 2003 c 373 § 5; 2003 c 83 § 212; 1993 c 427 § 3; 1961 c 14 § 81.84.020. Prior: 1950 ex.s. c 6 § 1, part; 1927 c 248 § 1, part; RRS § 10361-1, part.]

**Reviser's note:** This section was amended by 2005 c 121 § 7 and by 2005 c 313 § 609, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—2005 c 313:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 313 § 901.]

**Effective date—2005 c 313:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and takes effect immediately [May 9, 2005]." [2005 c 313 § 902.]

**Findings—Intent—2003 c 373:** See note following RCW 47.64.090.

**Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83:** See notes following RCW 36.57A.200.

## Chapter 81.104 RCW

### HIGH-CAPACITY TRANSPORTATION SYSTEMS

#### Sections

- 81.104.110 Independent system plan oversight.  
81.104.115 Rail fixed guideway system—Safety and security program plan. (*Effective July 1, 2006.*)

**81.104.110 Independent system plan oversight.** The legislature recognizes that the planning processes described in RCW 81.104.100 provide a recognized framework for guiding high capacity transportation studies. However, the process cannot guarantee appropriate decisions unless key study assumptions are reasonable.

To assure appropriate system plan assumptions and to provide for review of system plan results, an expert review panel shall be appointed to provide independent technical review for development of any system plan which is to be funded in whole or in part by the imposition of any voter-approved local option funding sources enumerated in RCW 81.104.140.

(1) The expert review panel shall consist of five to ten members who are recognized experts in relevant fields, such as transit operations, planning, emerging transportation technologies, engineering, finance, law, the environment, geography, economics, and political science.

(2) The expert review panel shall be selected cooperatively by the chairs of the senate and house transportation committees, the secretary of the department of transportation, and the governor to assure a balance of disciplines. In the case of counties adjoining another state or Canadian province the expert review panel membership shall be selected cooperatively with representatives of the adjoining state or Canadian province.

(3) The chair of the expert review panel shall be designated by the appointing authorities.

(4) The expert review panel shall serve without compensation but shall be reimbursed for expenses according to RCW 43.03.050 and 43.03.060. Reimbursement shall be paid from within the existing resources of the local authority planning under this chapter.

(5) The panel shall carry out the duties set forth in subsections (6) and (7) of this section until the date on which an election is held to consider the high capacity transportation system and financing plans.

(6) The expert panel shall review all reports required in RCW 81.104.100(2) and shall concentrate on service modes and concepts, costs, patronage and financing evaluations.

(7) The expert panel shall provide timely reviews and comments on individual reports and study conclusions to the department of transportation, the regional transportation planning organization, the joint regional policy committee, and the submitting lead transit agency. In the case of counties adjoining another state or Canadian province, the expert review panel shall provide its reviews, comments, and con-

clusions to the representatives of the adjoining state or Canadian province.

(8) The local authority planning under this chapter shall contract for consulting services for expert review panels. The amount of consultant support shall be negotiated with each expert review panel by the local authority and shall be paid from within the local authority's existing resources. [2005 c 319 § 136; 1998 c 245 § 165. Prior: 1991 c 318 § 10; 1991 c 309 § 3; 1990 c 43 § 32.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**81.104.115 Rail fixed guideway system—Safety and security program plan. (Effective July 1, 2006.)** (1) The department may collect and review the system safety and security program plan prepared by each owner or operator of a rail fixed guideway system. In carrying out this function, the department may adopt rules specifying the elements and standard to be contained in a system safety and security program plan, and the content of any investigation report, corrective action plan, and accompanying implementation schedule resulting from a reportable accident, unacceptable hazardous condition, or security breach. These rules may include due dates for the department's timely receipt of and response to required documents.

(2) The security section of the system safety and security plan as described in subsection (1)(d) of RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180 are exempt from public disclosure under chapter 42.56 RCW by the department when collected from the owners and operators of fixed railway systems. However, the activities and plans as described in subsection (1)(a), (b), and (c) of RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180 are not exempt from public disclosure.

(3) The department shall audit each system safety and security program plan at least once every three years. The department may contract with other persons or entities for the performance of duties required by this subsection. The department shall provide at least thirty days' advance notice to the owner or operator of a rail fixed guideway system before commencing the audit. The owner or operator of each rail fixed guideway system shall reimburse the reasonable expenses of the department in carrying out its responsibilities of this subsection within ninety days after receipt of an invoice. The department shall notify the owner or operator of the estimated expenses at least six months in advance of when the department audits the system.

(4) In the event of a reportable accident, unacceptable hazardous condition, or security breach, the department shall review the investigation report, corrective action plan, and accompanying implementation schedule, submitted by the owner or operator of the rail fixed guideway system to ensure that it meets the goal of preventing and mitigating a recurrence of the reportable accident, unacceptable hazardous condition, or security breach.

(a) The department may, at its option, perform a separate, independent investigation of a reportable accident, unacceptable hazardous condition, or security breach. The department may contract with other persons or entities for the performance of duties required by this subsection.

(b) If the department does not concur with the investigation report, corrective action plan, and accompanying implementation schedule, submitted by the owner or operator, the department shall notify that owner or operator in writing within forty-five days of its receipt of the complete investigation report, corrective action plan, and accompanying implementation schedule.

(5) The secretary may adopt rules to implement this section and RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180, including rules establishing procedures and timelines for owners and operators of rail fixed guideway systems to comply with RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180 and the rules adopted under this section. If non-compliance by an owner or operator of a rail fixed guideway system results in the loss of federal funds to the state of Washington or a political subdivision of the state, the owner or operator is liable to the affected entity or entities for the amount of the lost funds.

(6) The department may impose sanctions upon owners and operators of rail fixed guideway systems, but only for failure to meet reasonable deadlines for submission of required reports and audits. The department is expressly prohibited from imposing sanctions for any other purposes, including, but not limited to, differences in format or content of required reports and audits.

(7) The department and its employees have no liability arising from the adoption of rules; the review of or concurrence in a system safety and security program plan; the separate, independent investigation of a reportable accident, unacceptable hazardous condition, or security breach; and the review of or concurrence in a corrective action plan for a reportable accident, unacceptable hazardous condition, or security breach. [2005 c 274 § 359; 2001 c 127 § 1; 1999 c 202 § 7.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Effective date—1999 c 202:** See note following RCW 35.21.228.

## Chapter 81.112 RCW

### REGIONAL TRANSIT AUTHORITIES

(Formerly: Regional transportation authorities)

#### Sections

- |            |   |
|------------|---|
| 81.112.180 | Rail fixed guideway system—Safety and security program plan. ( <i>Effective July 1, 2006.</i> ) |
| 81.112.190 | Requirements for signage.   |

**81.112.180 Rail fixed guideway system—Safety and security program plan. (Effective July 1, 2006.)** (1) Each regional transit authority that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety and security program plan for that guideway to the state department of transportation by September 1, 1999, or at least three months before beginning operations or instituting revisions to its plan. This plan must describe the authority's procedures for (a) reporting and investigating reportable accidents, unacceptable hazardous conditions, and security breaches, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of



transportation, and (d) addressing passenger and employee security. The plan must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the regional transit authority shall revise its plan to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plan for review.

(2) Each regional transit authority shall implement and comply with its system safety and security program plan. The regional transit authority shall perform internal safety and security audits to evaluate its compliance with the plan, and submit its audit schedule to the department of transportation no later than December 15th each year. The regional transit authority shall prepare an annual report for its internal safety and security audits undertaken in the prior year and submit it to the department no later than February 15th. This annual report must include the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity, and the results of each audit in terms of the adequacy and effectiveness of the plan.

(3) Each regional transit authority shall notify the department of transportation within twenty-four hours of an occurrence of a reportable accident, unacceptable hazardous condition, or security breach. The department may adopt rules further defining a reportable accident, unacceptable hazardous condition, or security breach. The regional transit authority shall investigate all reportable accidents, unacceptable hazardous conditions, or security breaches and provide a written investigation report to the department within forty-five calendar days after the reportable accident, unacceptable hazardous condition, or security breach.

(4) The security section of the safety and security plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter 42.56 RCW. However, the activities and plans as described in subsections (1)(a), (b), and (c), (2), and (3) of this section are not subject to this exemption. [2005 c 274 § 360; 1999 c 202 § 6.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Effective date—1999 c 202:** See note following RCW 35.21.228.

**81.112.190 Requirements for signage.** Each authority shall incorporate in plans for stations along any light-rail facility signing that is easily understood by the traveling public, including, but not limited to, persons with disabilities, non-English speaking persons, and visitors from other nations. The signage must employ graphics consistent with international symbols for transportation facilities and signage that are consistent with department of transportation guidelines and programs. The signage must also use distinguishing symbols or pictograms developed by the authority as a means to identify stations and may identify points of interest along the corridor for persons who use languages that are not Roman-alphabet based. These requirements are intended to apply to new sign installation and not to existing signs, installed before July 24, 2005. The authority may replace existing signs as it chooses; however, it shall use the new signing designs when existing signs are replaced. All signage must comply with requirements of applicable federal law and may include recommendations contained in federal publica-

tions providing directions on way-finding for persons with disabilities. [2005 c 19 § 3.]

**Intent—Findings—2005 c 19:** See note following RCW 35.95A.140.

## Title 82

### EXCISE TAXES

#### Chapters

- 82.02** General provisions.
- 82.03** Board of tax appeals.
- 82.04** Business and occupation tax.
- 82.08** Retail sales tax.
- 82.12** Use tax.
- 82.14** Local retail sales and use taxes.
- 82.16** Public utility tax.
- 82.19** Litter tax.
- 82.24** Tax on cigarettes.
- 82.26** Tax on tobacco products.
- 82.27** Tax on enhanced food fish.
- 82.29A** Leasehold excise tax.
- 82.32** General administrative provisions.
- 82.33** Economic and revenue forecasts.
- 82.35** Cogeneration facilities—Tax credits.
- 82.36** Motor vehicle fuel tax.
- 82.38** Special fuel tax act.
- 82.42** Aircraft fuel tax.
- 82.45** Excise tax on real estate sales.
- 82.61** Tax deferrals for manufacturing, research, and development projects.
- 82.70** Commute trip reduction incentives.
- 82.71** Quality maintenance fee on nursing facility operators.
- 82.73** Washington main street program tax incentives.
- 82.74** Tax deferrals for fruit and vegetable businesses.
- 82.80** Local option transportation taxes.

#### Chapter 82.02 RCW

#### GENERAL PROVISIONS

#### Sections

- 82.02.020 State preempts certain tax fields—Fees prohibited for the development of land or buildings—Voluntary payments by developers authorized—Limitations—Exceptions.

**82.02.020 State preempts certain tax fields—Fees prohibited for the development of land or buildings—Voluntary payments by developers authorized—Limitations—Exceptions.** Except only as expressly provided in chapters 67.28 and 82.14 RCW, the state preempts the field of imposing taxes upon retail sales of tangible personal property, the use of tangible personal property, parimutuel wagering authorized pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county, town, or other municipal subdivision shall have the right to impose taxes of that nature. Except as provided in RCW 82.02.050 through 82.02.090, no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the

development, subdivision, classification, or reclassification of land. However, this section does not preclude dedications of land or easements within the proposed development or plat which the county, city, town, or other municipal corporation can demonstrate are reasonably necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply.

This section does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat. A local government shall not use such voluntary agreements for local off-site transportation improvements within the geographic boundaries of the area or areas covered by an adopted transportation program authorized by chapter 39.92 RCW. Any such voluntary agreement is subject to the following provisions:

(1) The payment shall be held in a reserve account and may only be expended to fund a capital improvement agreed upon by the parties to mitigate the identified, direct impact;

(2) The payment shall be expended in all cases within five years of collection; and

(3) Any payment not so expended shall be refunded with interest to be calculated from the original date the deposit was received by the county and at the same rate applied to tax refunds pursuant to RCW 84.69.100; however, if the payment is not expended within five years due to delay attributable to the developer, the payment shall be refunded without interest.

No county, city, town, or other municipal corporation shall require any payment as part of such a voluntary agreement which the county, city, town, or other municipal corporation cannot establish is reasonably necessary as a direct result of the proposed development or plat.

Nothing in this section prohibits cities, towns, counties, or other municipal corporations from collecting reasonable fees from an applicant for a permit or other governmental approval to cover the cost to the city, town, county, or other municipal corporation of processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter 43.21C RCW.

This section does not limit the existing authority of any county, city, town, or other municipal corporation to impose special assessments on property specifically benefitted thereby in the manner prescribed by law.

Nothing in this section prohibits counties, cities, or towns from imposing or permits counties, cities, or towns to impose water, sewer, natural gas, drainage utility, and drainage system charges: PROVIDED, That no such charge shall exceed the proportionate share of such utility or system's capital costs which the county, city, or town can demonstrate are attributable to the property being charged: PROVIDED FURTHER, That these provisions shall not be interpreted to expand or contract any existing authority of counties, cities, or towns to impose such charges.

Nothing in this section prohibits a transportation benefit district from imposing fees or charges authorized in RCW 36.73.120 nor prohibits the legislative authority of a county, city, or town from approving the imposition of such fees within a transportation benefit district.

Nothing in this section prohibits counties, cities, or towns from imposing transportation impact fees authorized pursuant to chapter 39.92 RCW.

Nothing in this section prohibits counties, cities, or towns from requiring property owners to provide relocation assistance to tenants under RCW 59.18.440 and 59.18.450.

This section does not apply to special purpose districts formed and acting pursuant to Titles 54, 57, or 87 RCW, nor is the authority conferred by these titles affected. [2005 c 502 § 5; 1997 c 452 § 21; 1996 c 230 § 1612; 1990 1st ex.s. c 17 § 42; 1988 c 179 § 6; 1987 c 327 § 17; 1982 1st ex.s. c 49 § 5; 1979 ex.s. c 196 § 3; 1970 ex.s. c 94 § 8; 1967 c 236 § 16; 1961 c 15 § 82.02.020. Prior: (i) 1935 c 180 § 29; RRS § 8370-29. (ii) 1949 c 228 § 28; 1939 c 225 § 22; 1937 c 227 § 24; Rem. Supp. 1949 § 8370-219. Formerly RCW 82.32.370.]

**Effective date—2005 c 502:** See note following RCW 1.12.070.

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

**Savings—1997 c 452:** See note following RCW 67.28.181.

**Part headings not law—Effective date—1996 c 230:** See notes following RCW 57.02.001.

**Severability—Part, section headings not law—1990 1st ex.s. c 17:** See RCW 36.70A.900 and 36.70A.901.

**Severability—Prospective application—Section captions—1988 c 179:** See RCW 39.92.900 and 39.92.901.

**Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49:** See notes following RCW 35.21.710.

**Effective date—1979 ex.s. c 196:** See note following RCW 82.04.240.

**Severability—1970 ex.s. c 94:** See RCW 82.14.900.

## Chapter 82.03 RCW BOARD OF TAX APPEALS

### Sections

82.03.130 Appeals to board—Jurisdiction as to types of appeals—Filing.

**82.03.130 Appeals to board—Jurisdiction as to types of appeals—Filing.** (1) The board shall have jurisdiction to decide the following types of appeals:

(a) Appeals taken pursuant to RCW 82.03.190.

(b) Appeals from a county board of equalization pursuant to RCW 84.08.130.

(c) Appeals by an assessor or landowner from an order of the director of revenue made pursuant to RCW 84.08.010 and 84.08.060, if filed with the board of tax appeals within thirty days after the mailing of the order, the right to such an appeal being hereby established.

(d) Appeals by an assessor or owner of an intercounty public utility or private car company from determinations by the director of revenue of equalized assessed valuation of property and the apportionment thereof to a county made pursuant to chapter 84.12 and 84.16 RCW, if filed with the board of tax appeals within thirty days after mailing of the determination, the right to such appeal being hereby established.

(e) Appeals by an assessor, landowner, or owner of an intercounty public utility or private car company from a determination of any county indicated ratio for such county compiled by the department of revenue pursuant to RCW 84.48.075: PROVIDED, That

(i) Said appeal be filed after review of the ratio under RCW 84.48.075(3) and not later than fifteen days after the mailing of the certification; and

(ii) The hearing before the board shall be expeditiously held in accordance with rules prescribed by the board and shall take precedence over all matters of the same character.

(f) Appeals from the decisions of sale price of second class shorelands on navigable lakes by the department of natural resources pursuant to \*RCW 79.94.210.

(g) Appeals from urban redevelopment property tax apportionment district proposals established by governmental ordinances pursuant to RCW 39.88.060.

(h) Appeals from interest rates as determined by the department of revenue for use in valuing farmland under current use assessment pursuant to RCW 84.34.065.

(i) Appeals from revisions to stumpage value tables used to determine value by the department of revenue pursuant to RCW 84.33.091.

(j) Appeals from denial of tax exemption application by the department of revenue pursuant to RCW 84.36.850.

(k) Appeals pursuant to RCW 84.40.038(3).

(l) Appeals pursuant to RCW 84.39.020.

(2) Except as otherwise specifically provided by law hereafter, the provisions of RCW 1.12.070 shall apply to all notices of appeal filed with the board of tax appeals. [2005 c 253 § 7; 1998 c 54 § 1; 1994 c 123 § 3; 1992 c 206 § 9; 1989 c 378 § 4; 1982 1st ex.s. c 46 § 6; 1977 ex.s. c 284 § 2; 1967 ex.s. c 26 § 42.]

\*Reviser's note: RCW 79.94.210 was recodified as RCW 79.125.450 pursuant to 2005 c 155 § 1008.

Application—2005 c 253: See note following RCW 84.39.010.

Applicability—1994 c 123: See note following RCW 84.36.815.

Effective date—1992 c 206: See note following RCW 82.04.170.

Purpose—Intent—1977 ex.s. c 284: See note following RCW 84.48.075.

Chapter 82.04 RCW

BUSINESS AND OCCUPATION TAX

Sections

82.04.050 "Sale at retail," "retail sale."  
 82.04.060 "Sale at wholesale," "wholesale sale."  
 82.04.190 "Consumer."  
 82.04.260 Tax on manufacturers and processors of various foods and by-products—Research and development organizations—Nuclear fuel assemblies—Travel agents—Certain international activities—Stevedoring and associated activities—Low-level waste disposers—Insurance agents, brokers, and solicitors—Hospitals. (Effective until July 1, 2006.)  
 82.04.260 Tax on manufacturers and processors of various foods and by-products—Research and development organizations—Travel agents—Certain international activities—Stevedoring and associated activities—Low-level waste disposers—Insurance agents, brokers, and solicitors—Hospitals. (Effective July 1, 2006.)  
 82.04.285 Tax on contests of chance.  
 82.04.286 Tax on horse races.  
 82.04.290 Tax on international investment management services or other business or service activities.  
 82.04.2908 Tax on provision of room and domiciliary care to boarding home residents.  
 82.04.294 Tax on manufacturers or wholesalers of solar energy systems. (Expires June 30, 2014.)  
 82.04.350 Exemptions—Racing.  
 82.04.4263 Exemptions—Income received by the life sciences discovery fund authority.  
 82.04.4264 Exemptions—Nonprofit boarding homes—Room and domiciliary care.

82.04.4265 Exemptions—Comprehensive cancer centers. (Effective July 1, 2006.)  
 82.04.4266 Exemptions—Fruit and vegetable businesses.  
 82.04.4267 Exemptions—Operation of parking/business improvement areas.  
 82.04.4272 Deductions—Direct mail delivery charges.  
 82.04.4311 Deductions—Compensation received under the federal medicare program by certain hospitals or health centers.  
 82.04.4329 Repealed. (Effective July 1, 2006.)  
 82.04.4336 Deductions—Cattle and beef products. (Expires December 31, 2007.)  
 82.04.440 Persons taxable on multiple activities—Credits.  
 82.04.4452 Credit—Research and development spending. (Expires January 1, 2015.)  
 82.04.4459 Repealed.  
 82.04.4463 Credit—Property taxes paid on property used for manufacture of commercial airplanes. (Effective January 1, 2006, until July 1, 2024.)  
 82.04.530 Gross proceeds of sales calculation for telephone business. (Contingent expiration date.)

**82.04.050 "Sale at retail," "retail sale."** (1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

(a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, but a purchase for the purpose of resale by a regional transit authority under RCW 81.112.300 is not a sale for resale; or

(b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(c) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; [or]

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280 (2) and (7), 82.04.290, and 82.04.2908; or

(f) Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection (7) of this section, if such tangible personal property

replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

(2) The term "sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of self-service laundry facilities, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The sale of and charge made for the furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or

lease of real property and not a mere license to enjoy the same;

(g) The sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), and (f) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section shall be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(f) Service charges associated with tickets to professional sporting events; and

(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(4)(a) The term shall also include:

(i) The renting or leasing of tangible personal property to consumers; and

(ii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A consideration of this is that the operator is necessary for the tangible personal property to perform as designed. For the purpose of this subsection (4)(a)(ii), an operator must do more than maintain, inspect, or set up the tangible personal property.

(b) The term shall not include the renting or leasing of tangible personal property where the lease or rental is for the purpose of sublease or subrent.

(5) The term shall also include the providing of telephone service, as defined in RCW 82.04.065, to consumers.

(6) The term shall also include the sale of prewritten computer software other than a sale to a person who presents a resale certificate under RCW 82.04.470, regardless of the method of delivery to the end user, but shall not include custom software or the customization of prewritten computer software.

(7) The term shall also include the sale of or charge made for an extended warranty to a consumer. For purposes of this

subsection, "extended warranty" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement. For purposes of this subsection, "sales price" has the same meaning as in RCW 82.08.010.

(8) The term shall not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(9) The term shall also not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor shall it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to: (a) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; and (c) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

(10) The term shall not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor shall the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development.

(11) The term shall not include the sale of or charge made for labor, services, or tangible personal property pursuant to agreements providing maintenance services for bus, rail, or rail fixed guideway equipment when a regional transit authority is the recipient of the labor, services, or tangible

personal property, and a transit agency, as defined in RCW 81.104.015, performs the labor or services. [2005 c 515 § 2; 2005 c 514 § 101. Prior: 2004 c 174 § 3; 2004 c 153 § 407; 2003 c 168 § 104; 2002 c 178 § 1; 2000 2nd sp.s. c 4 § 23; prior: 1998 c 332 § 2; 1998 c 315 § 1; 1998 c 308 § 1; 1998 c 275 § 1; 1997 c 127 § 1; prior: 1996 c 148 § 1; 1996 c 112 § 1; 1995 1st sp.s. c 12 § 2; 1995 c 39 § 2; 1993 sp.s. c 25 § 301; 1988 c 253 § 1; prior: 1987 c 285 § 1; 1987 c 23 § 2; 1986 c 231 § 1; 1983 2nd ex.s. c 3 § 25; 1981 c 144 § 3; 1975 1st ex.s. c 291 § 5; 1975 1st ex.s. c 90 § 1; 1973 1st ex.s. c 145 § 1; 1971 ex.s. c 299 § 3; 1971 ex.s. c 281 § 1; 1970 ex.s. c 8 § 1; prior: 1969 ex.s. c 262 § 30; 1969 ex.s. c 255 § 3; 1967 ex.s. c 149 § 4; 1965 ex.s. c 173 § 1; 1963 c 7 § 1; prior: 1961 ex.s. c 24 § 1; 1961 c 293 § 1; 1961 c 15 § 82.04.050; prior: 1959 ex.s. c 5 § 2; 1957 c 279 § 1; 1955 c 389 § 6; 1953 c 91 § 3; 1951 2nd ex.s. c 28 § 3; 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

**Reviser's note:** This section was amended by 2005 c 514 § 101 and by 2005 c 515 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—2005 c 515:** "The legislature finds that:

(1) Public entities that receive tax dollars must continuously improve the way they operate and deliver service so citizens receive maximum value for their tax dollars; and

(2) An explicit statement clarifying that no sales or use tax shall apply to the entire charge paid by regional transit authorities for bus or rail combined operations and maintenance agreements that are provided to such authorities in support of their provision of urban transportation or transportation services is necessary to improve efficient service." [2005 c 515 § 1.]

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Effective date—2004 c 174:** See note following RCW 82.04.2908.

**Retroactive effective date—Effective date—2004 c 153:** See note following RCW 82.08.0293.

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**Retroactive application—Effective date—2002 c 178:** See notes following RCW 67.28.180.

**Findings—Construction—2000 2nd sp.s. c 4 §§ 18-30:** See notes following RCW 81.112.300.

**Findings—Intent—Effective date—1998 c 332:** See notes following RCW 82.04.29001.

**Effective dates—1998 c 308:** "(1) Sections 1 through 4 of this act take effect July 1, 1998.

(2) Section 5 of this act takes effect July 1, 2003." [1998 c 308 § 6.]

**Effective date—1998 c 275:** "This act takes effect July 1, 1998." [1998 c 275 § 2.]

**Effective date—1997 c 127:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 127 § 2.]

**Severability—1996 c 148:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 148 § 7.]

**Effective date—1996 c 148:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 1, 1996." [1996 c 148 § 8.]

**Effective date—1996 c 112:** "This act shall take effect July 1, 1996." [1996 c 112 § 5.]

**Intent—1995 1st sp.s. c 12:** "It is the intent of the legislature that massage services be recognized as health care practitioners for the purposes of business and occupation tax application. To achieve this intent massage services are being removed from the definition of sale at retail and retail sale." [1995 1st sp.s. c 12 § 1.]

**Effective date—1995 1st sp.s. c 12:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 1st sp.s. c 12 § 5.]

**Effective date—1995 c 39:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 39 § 3.]

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Intent—Severability—Effective date—1981 c 144:** See notes following RCW 82.16.010.

**Application to preexisting contracts—1975 1st ex.s. c 291; 1975 1st ex.s. c 90:** See note following RCW 82.12.010.

**Effective dates—1975 1st ex.s. c 291:** "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing institutions, and shall take effect immediately: PROVIDED, That sections 8 and 26 through 43 of this amendatory act shall be effective on and after January 1, 1976: PROVIDED FURTHER, That sections 2, 3, and 4, and subsections (1) and (2) of section 24 shall be effective on and after January 1, 1977: AND PROVIDED FURTHER, That subsections (3) through (15) of section 24 shall be effective on and after January 1, 1978." [1975 1st ex.s. c 291 § 46.]

**Severability—1975 1st ex.s. c 291:** "If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 291 § 45.]

**Effective date—1975 1st ex.s. c 90:** "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975." [1975 1st ex.s. c 90 § 5.]

**Effective date—1973 1st ex.s. c 145:** "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1973." [1973 1st ex.s. c 145 § 2.]

**Effective dates—1971 ex.s. c 299:** "This 1971 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect as follows:

- (1) Sections 1 through 12, 15 through 34 and 53 shall take effect July 1, 1971;
- (2) Sections 13, 14, and 77 and 78 shall take effect June 1, 1971; and
- (3) Sections 35 through 52 and 54 through 76 shall take effect as provided in section 53." [1971 ex.s. c 299 § 79.]

**Severability—1971 ex.s. c 299:** "If any phrase, clause, subsection or section of this 1971 amendatory act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this 1971 amendatory act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid." [1971 ex.s. c 299 § 78.]

**Construction—Severability—1969 ex.s. c 255:** See notes following RCW 35.58.272.

**Effective date—1967 ex.s. c 149:** "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1967." [1967 ex.s. c 149 § 65.]

**Effective date—1965 ex.s. c 173:** "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect June 1, 1965." [1965 ex.s. c 173 § 33.]

*Credit for retail sales or use taxes paid to other jurisdictions with respect to property used: RCW 82.12.035.*

[2005 RCW Supp—page 994]

*"Services rendered in respect to" defined: RCW 82.04.051.*

**82.04.060 "Sale at wholesale," "wholesale sale."** "Sale at wholesale" or "wholesale sale" means: (1) Any sale of tangible personal property, any sale of services defined as a retail sale in RCW 82.04.050(2)(a), any sale of amusement or recreation services as defined in RCW 82.04.050(3)(a), any sale of canned software, any sale of an extended warranty as defined in RCW 82.04.050(7), or any sale of telephone service as defined in RCW 82.04.065, which is not a sale at retail; and (2) any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property, if such charge is expressly defined as a retail sale by RCW 82.04.050 when rendered to or for consumers: PROVIDED, That the term "real or personal property" as used in this subsection shall not include any natural products named in RCW 82.04.100. [2005 c 514 § 102; 2002 c 367 § 1; 1998 c 332 § 5; 1996 c 148 § 3; 1983 2nd ex.s. c 3 § 26; 1961 c 15 § 82.04.060. Prior: 1955 ex.s. c 10 § 4; 1955 c 389 § 7; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Severability—2002 c 367:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 367 § 7.]

**Effective date—2002 c 367:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 1, 2002." [2002 c 367 § 8.]

**Findings—Intent—Effective date—1998 c 332:** See notes following RCW 82.04.29001.

**Severability—Effective date—1996 c 148:** See notes following RCW 82.04.050.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**82.04.190 "Consumer."** "Consumer" means the following:

(1) Any person who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of the person's business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than for the purpose (a) of resale as tangible personal property in the regular course of business or (b) of incorporating such property as an ingredient or component of real or personal property when installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating such real or personal property of or for consumers or (c) of consuming such property in producing for sale a new article of tangible personal property or a new substance, of which such property becomes an ingredient or component or as a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale or (d) of consuming the property purchased in producing ferrosilicon which is subse-

quently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon or (e) of satisfying the person's obligations under an extended warranty as defined in RCW 82.04.050(7), if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person;

(2)(a) Any person engaged in any business activity taxable under RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or uses any telephone service as defined in RCW 82.04.065, other than for resale in the regular course of business; (c) any person who purchases, acquires, or uses any service defined in RCW 82.04.050(2)(a), other than for resale in the regular course of business or for the purpose of satisfying the person's obligations under an extended warranty as defined in RCW 82.04.050(7); (d) any person who purchases, acquires, or uses any amusement and recreation service defined in RCW 82.04.050(3)(a), other than for resale in the regular course of business; (e) any person who is an end user of software; and (f) any person who purchases or acquires an extended warranty as defined in RCW 82.04.050(7) other than for resale in the regular course of business;

(3) Any person engaged in the business of contracting for the building, repairing or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state of Washington or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind as defined in RCW 82.04.280, in respect to tangible personal property when such person incorporates such property as an ingredient or component of such publicly owned street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle by installing, placing or spreading the property in or upon the right of way of such street, place, road, highway, easement, bridge, tunnel, or trestle or in or upon the site of such mass public transportation terminal or parking facility;

(4) Any person who is an owner, lessee or has the right of possession to or an easement in real property which is being constructed, repaired, decorated, improved, or otherwise altered by a person engaged in business, excluding only (a) municipal corporations or political subdivisions of the state in respect to labor and services rendered to their real property which is used or held for public road purposes, and (b) the United States, instrumentalities thereof, and county and city housing authorities created pursuant to chapter 35.82 RCW in respect to labor and services rendered to their real property. Nothing contained in this or any other subsection of this definition shall be construed to modify any other definition of "consumer";

(5) Any person who is an owner, lessee, or has the right of possession to personal property which is being constructed, repaired, improved, cleaned, imprinted, or otherwise altered by a person engaged in business;

(6) Any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or

for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation; also, any person engaged in the business of clearing land and moving earth of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW. Any such person shall be a consumer within the meaning of this subsection in respect to tangible personal property incorporated into, installed in, or attached to such building or other structure by such person, except that consumer does not include any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, or any instrumentality thereof, if the investment project would qualify for sales and use tax deferral under chapter 82.63 RCW if undertaken by a private entity;

(7) Any person who is a lessor of machinery and equipment, the rental of which is exempt from the tax imposed by RCW 82.08.020 under RCW 82.08.02565, with respect to the sale of or charge made for tangible personal property consumed in respect to repairing the machinery and equipment, if the tangible personal property has a useful life of less than one year. Nothing contained in this or any other subsection of this section shall be construed to modify any other definition of "consumer";

(8) Any person engaged in the business of cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development; and

(9) Any person who is an owner, lessee, or has the right of possession of tangible personal property that, under the terms of an extended warranty as defined in RCW 82.04.050(7), has been repaired or is replacement property, but only with respect to the sale of or charge made for the repairing of the tangible personal property or the replacement property. [2005 c 514 § 103. Prior: 2004 c 174 § 4; 2004 c 2 § 8; 2002 c 367 § 2; prior: 1998 c 332 § 6; 1998 c 308 § 2; prior: 1996 c 173 § 2; 1996 c 148 § 4; 1996 c 112 § 2; 1995 1st sp.s. c 3 § 4; 1986 c 231 § 2; 1985 c 134 § 1; 1983 2nd ex.s. c 3 § 27; 1975 1st ex.s. c 90 § 2; 1971 ex.s. c 299 § 4; 1969 ex.s. c 255 § 4; 1967 ex.s. c 149 § 6; 1965 ex.s. c 173 § 4; 1961 c 15 § 82.04.190; prior: 1959 ex.s. c 3 § 3; 1957 c 279 § 2; 1955 c 389 § 20; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Effective date—2004 c 174:** See note following RCW 82.04.2908.

**Severability—Effective date—2002 c 367:** See notes following RCW 82.04.060.

**Findings—Intent—Effective date—1998 c 332:** See notes following RCW 82.04.29001.

**Effective dates—1998 c 308:** See note following RCW 82.04.050.

**Findings—Intent—1996 c 173:** See note following RCW 82.08.02565.

**Severability—Effective date—1996 c 148:** See notes following RCW 82.04.050.

**Effective date—1996 c 112:** See note following RCW 82.04.050.

**Findings—Effective date—1995 1st sp.s. c 3:** See notes following RCW 82.08.02565.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Application to preexisting contracts—1975 1st ex.s. c 90:** See note following RCW 82.12.010.

**Effective date—1975 1st ex.s. c 90:** See note following RCW 82.04.050.

**Effective dates—Severability—1971 ex.s. c 299:** See notes following RCW 82.04.050.

**Construction—Severability—1969 ex.s. c 255:** See notes following RCW 35.58.272.

**82.04.260 Tax on manufacturers and processors of various foods and by-products—Research and development organizations—Nuclear fuel assemblies—Travel agents—Certain international activities—Stevedoring and associated activities—Low-level waste disposers—Insurance agents, brokers, and solicitors—Hospitals. (Effective until July 1, 2006.)** (1) Upon every person engaging within this state in the business of manufacturing:

(a) Wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, canola meal, or canola byproducts, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business shall be equal to the value of the flour, pearl barley, oil, canola meal, or canola byproduct manufactured, multiplied by the rate of 0.138 percent;

(b) Seafood products which remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured, multiplied by the rate of 0.138 percent;

(c) Dairy products that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including byproducts from the manufacturing of the dairy products such as whey and casein; or selling the same to purchasers who transport in the ordinary course of business the goods out of state; as to such persons the tax imposed shall be equal to the value of the products manufactured multiplied by the rate of 0.138 percent. As proof of sale to a person who transports in the ordinary course of business goods out of this state, the seller shall annually provide a statement in a form prescribed by the department and retain the statement as a business record;

(d) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel feedstock, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business shall be equal to the value of alcohol fuel, biodiesel fuel, or biodiesel feedstock manufactured, multiplied by the rate of 0.138 percent; and

(e) Alcohol fuel or wood biomass fuel, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business shall be equal to the value of alcohol fuel or wood biomass fuel manufactured, multiplied by the rate of 0.138 percent.

(2) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business shall be

equal to the value of the peas split or processed, multiplied by the rate of 0.138 percent.

(3) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(4) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.

(5) Upon every person engaging within this state in the business of making sales, at retail or wholesale, of nuclear fuel assemblies manufactured by that person, as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the assemblies multiplied by the rate of 0.275 percent.

(6) Upon every person engaging within this state in the business of manufacturing nuclear fuel assemblies, as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured multiplied by the rate of 0.275 percent.

(7) Upon every person engaging within this state in the business of acting as a travel agent or tour operator; as to such persons the amount of the tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(8) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(9) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds derived from such activities multiplied by the rate of 0.275 percent. Persons subject to taxation under this subsection shall be exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient



place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

(10) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 43.145.010; as to such persons the amount of the tax with respect to such business shall be equal to the gross income of the business, excluding any fees imposed under chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state shall be determined in accordance with the methods of apportionment required under RCW 82.04.460.

(11) Upon every person engaging within this state as an insurance agent, insurance broker, or insurance solicitor licensed under chapter 48.17 RCW; as to such persons, the amount of the tax with respect to such licensed activities shall be equal to the gross income of such business multiplied by the rate of 0.484 percent.

(12) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities shall be equal to the gross income of the business multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5 percent thereafter. The monies collected under this subsection shall be deposited in the health services account created under RCW 43.72.900.

(13)(a) Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing commercial airplanes, or components of such airplanes, as to such persons the amount of tax with respect to such business shall, in the case of manufacturers, be equal to the value of the product manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of:

(i) 0.4235 percent from October 1, 2005, through the later of June 30, 2007, or the day preceding the date final assembly of a superefficient airplane begins in Washington state, as determined under RCW 82.32.550; and

(ii) 0.2904 percent beginning on the later of July 1, 2007, or the date final assembly of a superefficient airplane begins in Washington state, as determined under RCW 82.32.550.

(b) Beginning October 1, 2005, upon every person engaging within this state in the business of making sales, at retail or wholesale, of commercial airplanes, or components of such airplanes, manufactured by that person, as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the airplanes or components multiplied by the rate of:

(i) 0.4235 percent from October 1, 2005, through the later of June 30, 2007, or the day preceding the date final assembly of a superefficient airplane begins in Washington state, as determined under RCW 82.32.550; and

(ii) 0.2904 percent beginning on the later of July 1, 2007, or the date final assembly of a superefficient airplane begins in Washington state, as determined under RCW 82.32.550.

(c) For the purposes of this subsection (13), "commercial airplane," "component," and "final assembly of a superefficient airplane" have the meanings given in RCW 82.32.550.

(d) In addition to all other requirements under this title, a person eligible for the tax rate under this subsection (13) must report as required under RCW 82.32.545.

(e) This subsection (13) does not apply after the earlier of: July 1, 2024; or December 31, 2007, if assembly of a superefficient airplane does not begin by December 31, 2007, as determined under RCW 82.32.550. [2005 c 513 § 2. Prior: 2003 2nd sp.s. c 1 § 4; 2003 2nd sp.s. c 1 § 3; 2003 c 339 § 11; 2003 c 261 § 11; 2001 2nd sp.s. c 25 § 2; prior: 1998 c 312 § 5; 1998 c 311 § 2; prior: 1998 c 170 § 4; 1996 c 148 § 2; 1996 c 115 § 1; prior: 1995 2nd sp.s. c 12 § 1; 1995 2nd sp.s. c 6 § 1; 1993 sp.s. c 25 § 104; 1993 c 492 § 304; 1991 c 272 § 15; 1990 c 21 § 2; 1987 c 139 § 1; prior: 1985 c 471 § 1; 1985 c 135 § 2; 1983 2nd ex.s. c 3 § 5; prior: 1983 1st ex.s. c 66 § 4; 1983 1st ex.s. c 55 § 4; 1982 2nd ex.s. c 13 § 1; 1982 c 10 § 16; prior: 1981 c 178 § 1; 1981 c 172 § 3; 1979 ex.s. c 196 § 2; 1975 1st ex.s. c 291 § 7; 1971 ex.s. c 281 § 5; 1971 ex.s. c 186 § 3; 1969 ex.s. c 262 § 36; 1967 ex.s. c 149 § 10; 1965 ex.s. c 173 § 6; 1961 c 15 § 82.04.260; prior: 1959 c 211 § 2; 1955 c 389 § 46; prior: 1953 c 91 § 4; 1951 2nd ex.s. c 28 § 4; 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

**Effective dates—2005 c 513:** See note following RCW 82.04.4266.

**Contingent effective date—2003 2nd sp.s. c 1:** See RCW 82.32.550.

**Finding—2003 2nd sp.s. c 1:** See note following RCW 82.04.4461.

**Effective dates—2003 c 339:** See note following RCW 84.36.640.

**Effective dates—2003 c 261:** See note following RCW 84.36.635.

**Purpose—Intent—2001 2nd sp.s. c 25:** "The purpose of sections 2 and 3 of this act is to provide a tax rate for persons who manufacture dairy products that is commensurate to the rate imposed on certain other processors of agricultural commodities. This tax rate applies to persons who manufacture dairy products from raw materials such as fluid milk, dehydrated milk, or byproducts of milk such as cream, buttermilk, whey, butter, or casein. It is not the intent of the legislature to provide this tax rate to persons who use dairy products as an ingredient or component of their manufactured product, such as milk-based soups or pizza. It is the intent that persons who manufacture products such as milk, cheese, yogurt, ice cream, whey, or whey products be subject to this rate." [2001 2nd sp.s. c 25 § 1.]

**Part headings not law—2001 2nd sp.s. c 25:** "Part headings used in this act are not any part of the law." [2001 2nd sp.s. c 25 § 7.]

**Effective date—Savings—1998 c 312:** See notes following RCW 82.04.332.

**Effective date—1998 c 170:** See note following RCW 82.04.331.

**Severability—Effective date—1996 c 148:** See notes following RCW 82.04.050.

**Effective date—1996 c 115:** "This act shall take effect July 1, 1996." [1996 c 115 § 2.]

**Effective date—1995 2nd sp.s. c 12:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 12 § 2.]

**Effective date—1995 2nd sp.s. c 6:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 6 § 2.]

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

**Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492:** See RCW 43.72.910 through 43.72.915.

**Effective dates—1991 c 272:** See RCW 81.108.901.

**Severability—1985 c 471:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 471 § 17.]

**Effective date—1985 c 471:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985." [1985 c 471 § 18.]

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Effective dates—1983 1st ex.s. c 55:** See note following RCW 82.08.010.

**Severability—1982 2nd ex.s. c 13:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 2nd ex.s. c 13 § 2.]

**Effective date—1982 2nd ex.s. c 13:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect August 1, 1982." [1982 2nd ex.s. c 13 § 3.]

**Severability—1982 c 10:** See note following RCW 6.13.080.

**Effective dates—1981 c 172:** See note following RCW 82.04.240.

**Effective date—1979 ex.s. c 196:** See note following RCW 82.04.240.

**Effective dates—Severability—1975 1st ex.s. c 291:** See notes following RCW 82.04.050.

**Effective date—1971 ex.s. c 186:** See note following RCW 82.04.110.  
*Low-level waste disposal rate regulation study: RCW 81.04.520.*

**82.04.260 Tax on manufacturers and processors of various foods and by-products—Research and development organizations—Travel agents—Certain international activities—Stevedoring and associated activities—Low-level waste disposers—Insurance agents, brokers, and solicitors—Hospitals. (Effective July 1, 2006.)** (1) Upon every person engaging within this state in the business of manufacturing:

(a) Wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, canola meal, or canola byproducts, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business shall be equal to the value of the flour, pearl barley, oil, canola meal, or canola byproduct manufactured, multiplied by the rate of 0.138 percent;

(b) Seafood products which remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured, multiplied by the rate of 0.138 percent;

(c) Dairy products that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including byproducts from the manufacturing of the dairy products such as whey and casein; or selling the same to purchasers who transport in the ordinary course of business the goods out of state; as to such persons the tax imposed shall be equal to the value of the products manufactured multiplied by the rate of 0.138 percent. As proof of sale to a person who

transports in the ordinary course of business goods out of this state, the seller shall annually provide a statement in a form prescribed by the department and retain the statement as a business record;

(d) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel feedstock, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business shall be equal to the value of alcohol fuel, biodiesel fuel, or biodiesel feedstock manufactured, multiplied by the rate of 0.138 percent; and

(e) Alcohol fuel or wood biomass fuel, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business shall be equal to the value of alcohol fuel or wood biomass fuel manufactured, multiplied by the rate of 0.138 percent.

(2) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business shall be equal to the value of the peas split or processed, multiplied by the rate of 0.138 percent.

(3) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(4) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.

(5) Upon every person engaging within this state in the business of acting as a travel agent or tour operator; as to such persons the amount of the tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(6) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(7) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds derived from such activities multiplied by the rate of 0.275 percent. Persons subject to taxation under this subsection shall be exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar

holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

(8) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 43.145.010; as to such persons the amount of the tax with respect to such business shall be equal to the gross income of the business, excluding any fees imposed under chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state shall be determined in accordance with the methods of apportionment required under RCW 82.04.460.

(9) Upon every person engaging within this state as an insurance agent, insurance broker, or insurance solicitor licensed under chapter 48.17 RCW; as to such persons, the amount of the tax with respect to such licensed activities shall be equal to the gross income of such business multiplied by the rate of 0.484 percent.

(10) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities shall be equal to the gross income of the business multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5 percent thereafter. The moneys collected under this subsection shall be deposited in the health services account created under RCW 43.72.900.

(11)(a) Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing commercial airplanes, or components of such airplanes, as to such persons the amount of tax with respect to such business shall, in the case of manufacturers, be equal to the value of the product manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of:

(i) 0.4235 percent from October 1, 2005, through the later of June 30, 2007, or the day preceding the date final assembly of a superefficient airplane begins in Washington state, as determined under RCW 82.32.550; and

(ii) 0.2904 percent beginning on the later of July 1, 2007, or the date final assembly of a superefficient airplane begins in Washington state, as determined under RCW 82.32.550.

(b) Beginning October 1, 2005, upon every person engaging within this state in the business of making sales, at retail or wholesale, of commercial airplanes, or components of such airplanes, manufactured by that person, as to such

persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the airplanes or components multiplied by the rate of:

(i) 0.4235 percent from October 1, 2005, through the later of June 30, 2007, or the day preceding the date final assembly of a superefficient airplane begins in Washington state, as determined under RCW 82.32.550; and

(ii) 0.2904 percent beginning on the later of July 1, 2007, or the date final assembly of a superefficient airplane begins in Washington state, as determined under RCW 82.32.550.

(c) For the purposes of this subsection (11), "commercial airplane," "component," and "final assembly of a superefficient airplane" have the meanings given in RCW 82.32.550.

(d) In addition to all other requirements under this title, a person eligible for the tax rate under this subsection (11) must report as required under RCW 82.32.545.

(e) This subsection (11) does not apply after the earlier of: July 1, 2024; or December 31, 2007, if assembly of a superefficient airplane does not begin by December 31, 2007, as determined under RCW 82.32.550. [2005 c 513 § 2; 2005 c 443 § 4. Prior: 2003 2nd sp.s. c 1 § 4; 2003 2nd sp.s. c 1 § 3; 2003 c 339 § 11; 2003 c 261 § 11; 2001 2nd sp.s. c 25 § 2; prior: 1998 c 312 § 5; 1998 c 311 § 2; prior: 1998 c 170 § 4; 1996 c 148 § 2; 1996 c 115 § 1; prior: 1995 2nd sp.s. c 12 § 1; 1995 2nd sp.s. c 6 § 1; 1993 sp.s. c 25 § 104; 1993 c 492 § 304; 1991 c 272 § 15; 1990 c 21 § 2; 1987 c 139 § 1; prior: 1985 c 471 § 1; 1985 c 135 § 2; 1983 2nd ex.s. c 3 § 5; prior: 1983 1st ex.s. c 66 § 4; 1983 1st ex.s. c 55 § 4; 1982 2nd ex.s. c 13 § 1; 1982 c 10 § 16; prior: 1981 c 178 § 1; 1981 c 172 § 3; 1979 ex.s. c 196 § 2; 1975 1st ex.s. c 291 § 7; 1971 ex.s. c 281 § 5; 1971 ex.s. c 186 § 3; 1969 ex.s. c 262 § 36; 1967 ex.s. c 149 § 10; 1965 ex.s. c 173 § 6; 1961 c 15 § 82.04.260; prior: 1959 c 211 § 2; 1955 c 389 § 46; prior: 1953 c 91 § 4; 1951 2nd ex.s. c 28 § 4; 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

**Reviser's note:** This section was amended by 2005 c 443 § 4 and by 2005 c 513 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective dates—2005 c 513:** See note following RCW 82.04.4266.

**Finding—Intent—Effective date—2005 c 443:** See notes following RCW 82.08.0255.

**Contingent effective date—2003 2nd sp.s. c 1:** See RCW 82.32.550.

**Finding—2003 2nd sp.s. c 1:** See note following RCW 82.04.4461.

**Effective dates—2003 c 339:** See note following RCW 84.36.640.

**Effective dates—2003 c 261:** See note following RCW 84.36.635.

**Purpose—Intent—2001 2nd sp.s. c 25:** "The purpose of sections 2 and 3 of this act is to provide a tax rate for persons who manufacture dairy products that is commensurate to the rate imposed on certain other processors of agricultural commodities. This tax rate applies to persons who manufacture dairy products from raw materials such as fluid milk, dehydrated milk, or byproducts of milk such as cream, buttermilk, whey, butter, or casein. It is not the intent of the legislature to provide this tax rate to persons who use dairy products as an ingredient or component of their manufactured product, such as milk-based soups or pizza. It is the intent that persons who manufacture products such as milk, cheese, yogurt, ice cream, whey, or whey products be subject to this rate." [2001 2nd sp.s. c 25 § 1.]

**Part headings not law—2001 2nd sp.s. c 25:** "Part headings used in this act are not any part of the law." [2001 2nd sp.s. c 25 § 7.]

**Effective date—Savings—1998 c 312:** See notes following RCW 82.04.332.

**Effective date—1998 c 170:** See note following RCW 82.04.331.

**Severability—Effective date—1996 c 148:** See notes following RCW 82.04.050.

**Effective date—1996 c 115:** "This act shall take effect July 1, 1996." [1996 c 115 § 2.]

**Effective date—1995 2nd sp.s. c 12:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 12 § 2.]

**Effective date—1995 2nd sp.s. c 6:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 6 § 2.]

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

**Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492:** See RCW 43.72.910 through 43.72.915.

**Effective dates—1991 c 272:** See RCW 81.108.901.

**Severability—1985 c 471:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 471 § 17.]

**Effective date—1985 c 471:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985." [1985 c 471 § 18.]

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Effective dates—1983 1st ex.s. c 55:** See note following RCW 82.08.010.

**Severability—1982 2nd ex.s. c 13:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 2nd ex.s. c 13 § 2.]

**Effective date—1982 2nd ex.s. c 13:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect August 1, 1982." [1982 2nd ex.s. c 13 § 3.]

**Severability—1982 c 10:** See note following RCW 6.13.080.

**Effective dates—1981 c 172:** See note following RCW 82.04.240.

**Effective date—1979 ex.s. c 196:** See note following RCW 82.04.240.

**Effective dates—Severability—1975 1st ex.s. c 291:** See notes following RCW 82.04.050.

**Effective date—1971 ex.s. c 186:** See note following RCW 82.04.110.

*Low-level waste disposal rate regulation study: RCW 81.04.520.*

**82.04.285 Tax on contests of chance.** (1) Upon every person engaging within this state in the business of operating contests of chance; as to such persons, the amount of tax with respect to the business of operating contests of chance is equal to the gross income of the business derived from contests of chance multiplied by the rate of 1.5 percent.

(2) An additional tax is imposed on those persons subject to tax in subsection (1) of this section. The amount of the additional tax with respect to the business of operating contests of chance is equal to the gross income of the business derived from contests of chance multiplied by the rate of 0.1 percent through June 30, 2006, and 0.13 percent thereafter. The money collected under this subsection (2) shall be deposited in the problem gambling account created in RCW 43.20A.892. This subsection does not apply to businesses operating contests of chance when the gross income from the

operation of contests of chance is less than fifty thousand dollars per year.

(3) For the purpose of this section, "contests of chance" means any contests, games, gaming schemes, or gaming devices, other than the state lottery as defined in RCW 67.70.010, in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor in the outcome. The term includes social card games, bingo, raffle, and punch-board games, and pull-tabs as defined in chapter 9.46 RCW. The term does not include race meets for the conduct of which a license must be secured from the Washington horse racing commission, or "amusement game" as defined in RCW 9.46.0201.

(4) "Gross income of the business" does not include the monetary value or actual cost of any prizes that are awarded, amounts paid to players for winning wagers, accrual of prizes for progressive jackpot contests, or repayment of amounts used to seed guaranteed progressive jackpot prizes. [2005 c 369 § 5.]

**Findings—Intent—Severability—Effective date—2005 c 369:** See notes following RCW 43.20A.890.

**82.04.286 Tax on horse races.** (1) Upon every person engaging within this state in the business of conducting race meets for the conduct of which a license must be secured from the Washington horse racing commission; as to such persons, the amount of tax with respect to the business of parimutuel wagering is equal to the gross income of the business derived from parimutuel wagering multiplied by the rate of 0.1 percent through June 30, 2006, and 0.13 percent thereafter. The money collected under this section shall be deposited in the problem gambling account created in RCW 43.20A.892.

(2) For purposes of this section, "gross income of the business" does not include amounts paid to players for winning wagers, or taxes imposed or other distributions required under chapter 67.16 RCW.

(3) The tax imposed under this section is in addition to any tax imposed under chapter 67.16 RCW. [2005 c 369 § 6.]

**Findings—Intent—Severability—Effective date—2005 c 369:** See notes following RCW 43.20A.890.

**82.04.290 Tax on international investment management services or other business or service activities.** (1) Upon every person engaging within this state in the business of providing international investment management services, as to such persons, the amount of tax with respect to such business shall be equal to the gross income or gross proceeds of sales of the business multiplied by a rate of 0.275 percent.

(2) Upon every person engaging within this state in any business activity other than or in addition to an activity taxed explicitly under another section in this chapter or subsection (1) of this section; as to such persons the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of 1.5 percent.

(3) Subsection (2) of this section includes, among others, and without limiting the scope hereof (whether or not title to materials used in the performance of such business passes to another by accession, confusion or other than by outright sale), persons engaged in the business of rendering any type

of service which does not constitute a "sale at retail" or a "sale at wholesale." The value of advertising, demonstration, and promotional supplies and materials furnished to an agent by his principal or supplier to be used for informational, educational and promotional purposes shall not be considered a part of the agent's remuneration or commission and shall not be subject to taxation under this section. [2005 c 369 § 8; 2004 c 174 § 2; 2003 c 343 § 2; 2001 1st sp.s. c 9 § 6; (2001 1st sp.s. c 9 § 4 expired July 1, 2001). Prior: 1998 c 343 § 4; 1998 c 331 § 2; 1998 c 312 § 8; 1998 c 308 § 5; 1998 c 308 § 4; 1997 c 7 § 2; 1996 c 1 § 2; 1995 c 229 § 3; 1993 sp.s. c 25 § 203; 1985 c 32 § 3; 1983 2nd ex.s. c 3 § 2; 1983 c 9 § 2; 1983 c 3 § 212; 1971 ex.s. c 281 § 8; 1970 ex.s. c 65 § 4; 1969 ex.s. c 262 § 39; 1967 ex.s. c 149 § 14; 1963 ex.s. c 28 § 2; 1961 c 15 § 82.04.290; prior: 1959 ex.s. c 5 § 5; 1955 c 389 § 49; prior: 1953 c 195 § 2; 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

**Findings—Intent—Severability—Effective date—2005 c 369:** See notes following RCW 43.20A.890.

**Effective date—2004 c 174:** See note following RCW 82.04.2908.

**Expiration dates—2001 1st sp.s. c 9:** "(1) Sections 2 and 4 of this act expire July 1, 2001.

(2) Section 5 of this act expires July 1, 2003.

(3) Section 8 of this act expires July 22, 2001." [2001 1st sp.s. c 9 § 10.]

**Effective dates—2001 1st sp.s. c 9:** See note following RCW 82.04.298.

**Effective date—1998 c 343:** See note following RCW 82.04.272.

**Effective date—1998 c 331:** See note following RCW 82.04.2907.

**Effective date—Savings—1998 c 312:** See notes following RCW 82.04.332.

**Effective dates—1998 c 308:** See note following RCW 82.04.050.

**Savings—Effective date—1997 c 7:** See notes following RCW 82.04.255.

**Effective date—1996 c 1:** See note following RCW 82.04.255.

**Effective date—1995 c 229:** See note following RCW 82.04.293.

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Construction—Severability—Effective date—1983 c 9:** See notes following RCW 82.04.255.

**82.04.2908 Tax on provision of room and domiciliary care to boarding home residents.** (1) Upon every person engaging within this state in the business of providing room and domiciliary care to residents of a boarding home licensed under chapter 18.20 RCW, the amount of tax with respect to such business shall be equal to the gross income of the business, multiplied by the rate of 0.275 percent.

(2) For the purposes of this section, "domiciliary care" has the meaning provided in RCW 18.20.020. [2005 c 514 § 302; 2004 c 174 § 1.]

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Effective date—2004 c 174:** "This act takes effect July 1, 2004." [2004 c 174 § 8.]

**82.04.294 Tax on manufacturers or wholesalers of solar energy systems. (Expires June 30, 2014.)** (1) Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing solar energy systems using photovoltaic modules, or silicon components of such systems; as to such persons the amount of tax with respect to such business shall, in the case of manufacturers, be equal to the value of the product manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of 0.2904 percent.

(2) Beginning October 1, 2005, upon every person engaging within this state in the business of making sales at wholesale of solar energy systems using photovoltaic modules, or silicon components of such systems, manufactured by that person; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the solar energy systems using photovoltaic modules multiplied by the rate of 0.2904 percent.

(3) The definitions in this subsection apply throughout this section.

(a) "Module" means the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output.

(b) "Photovoltaic cell" means a device that converts light directly into electricity without moving parts.

(c) "Solar energy system" means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity.

(4) This section expires June 30, 2014. [2005 c 301 § 2.]

**Findings—Intent—2005 c 301:** "The legislature finds that the welfare of the people of the state of Washington is positively impacted through the encouragement and expansion of key growth industries in the state. The legislature further finds that targeting tax incentives to focus on key growth industries is an important strategy to enhance the state's business climate.

A recent report by the Washington State University energy program recognized the solar electric industry as one of the state's important growth industries. It is of great concern that businesses in this industry have been increasingly expanding and relocating their operations elsewhere. The report indicates that additional incentives for the solar electric industry are needed in recognition of the unique forces and issues involved in business decisions in this industry.

Therefore, the legislature intends to enact comprehensive tax incentives for the solar electric industry that address activities of the manufacture of these products and to encourage these industries to locate in Washington. Tax incentives for the solar electric industry are important in both retention and expansion of existing business and attraction of new businesses, all of which will strengthen this growth industry within our state, will create jobs, and will bring many indirect benefits to the state." [2005 c 301 § 1.]

**Effective date—2005 c 301:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 301 § 6.]

**Report to legislature—2005 c 301:** "(1) Using existing sources of information, the department shall report to the house appropriations committee, the house committee dealing with energy issues, the senate committee on ways and means, and the senate committee dealing with energy issues by December 1, 2013. The report shall measure the impacts of this act, including the total number of solar energy system manufacturing companies in the state, any change in the number of solar energy system manufacturing companies in the state, and, where relevant, the effect on job creation, the number of jobs created for Washington residents, and any other factors the department selects.

(2) The department shall not conduct any new surveys to provide the report in subsection (1) of this section." [2005 c 301 § 5.]

*Annual report: RCW 82.32.620.*

**82.04.350 Exemptions—Racing.** Except as provided in RCW 82.04.286(1), this chapter shall not apply to any person in respect to the business of conducting race meets for the conduct of which a license must be secured from the horse racing commission. [2005 c 369 § 7; 1961 c 15 § 82.04.350. Prior: 1959 c 197 § 19; prior: 1945 c 249 § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

**Findings—Intent—Severability—Effective date—2005 c 369:** See notes following RCW 43.20A.890.

**82.04.4263 Exemptions—Income received by the life sciences discovery fund authority.** This chapter does not apply to income received by the life sciences discovery fund authority under chapter 43.350 RCW. [2005 c 424 § 11.]

**Captions not law—Liberal construction—Severability—Effective dates—2005 c 424:** See RCW 43.350.900 through 43.350.903.

**82.04.4264 Exemptions—Nonprofit boarding homes—Room and domiciliary care.** (1) This chapter does not apply to amounts received by a nonprofit boarding home licensed under chapter 18.20 RCW for providing room and domiciliary care to residents of the boarding home.

(2) As used in this section:

(a) "Domiciliary care" has the meaning provided in RCW 18.20.020.

(b) "Nonprofit boarding home" means a boarding home that is operated as a religious or charitable organization, is exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3), is incorporated under chapter 24.03 RCW, is operated as part of a nonprofit hospital, or is operated as part of a public hospital district. [2005 c 514 § 301.]

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**82.04.4265 Exemptions—Comprehensive cancer centers. (Effective July 1, 2006.)** (1) This chapter does not apply to amounts received by a comprehensive cancer center to the extent the amounts are exempt from federal income tax.

(2) For the purposes of this section, "comprehensive cancer center" means a cancer center that has written confirmation that it is recognized by the national cancer institute as a comprehensive cancer center and that qualifies as an exempt organization under 26 U.S.C. Sec. 501(c)(3) as existing on July 1, 2006. [2005 c 514 § 401.]

**Effective date—2005 c 514 §§ 401-403:** "Sections 401 through 403 of this act take effect July 1, 2006." [2005 c 514 § 1304.]

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**82.04.4266 Exemptions—Fruit and vegetable businesses.** This chapter shall not apply to amounts received from:

(1) Canning, preserving, freezing, processing, or dehydrating fresh fruits and vegetables; or

(2) Selling at wholesale fresh fruits and vegetables canned, preserved, frozen, processed, or dehydrated by the seller and sold to purchasers who transport in the ordinary

[2005 RCW Supp—page 1002]

course of business the goods out of this state. As proof of sale to a person who transports in the ordinary course of business goods out of this state, the seller shall annually provide a statement in a form prescribed by the department and retain the statement as a business record. [2005 c 513 § 1.]

**Effective dates—2005 c 513:** "This act takes effect July 1, 2007, except for sections 1 through 3 of this act which are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2005." [2005 c 513 § 14.]

**Annual survey:** RCW 82.32.610.

**82.04.4267 Exemptions—Operation of parking/business improvement areas.** This chapter does not apply to amounts received by a chamber of commerce or other similar business association for administering the operation of a parking and business improvement area as defined in RCW 35.87A.110. [2005 c 476 § 1.]

**82.04.4272 Deductions—Direct mail delivery charges.** (1) In computing tax there may be deducted from the measure of tax, amounts derived from delivery charges made for the delivery of direct mail if the charges are separately stated on an invoice or similar billing document given to the purchaser.

(2) "Delivery charges" and "direct mail" have the same meanings as in RCW 82.08.010. [2005 c 514 § 114.]

**Effective date—2005 c 514:** "Sections 110(5), 114 through 116, 1001, 1003, 1004, 1201, 1311, and 1312 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [May 17, 2005]." [2005 c 514 § 1303.]

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**82.04.4311 Deductions—Compensation received under the federal medicare program by certain hospitals or health centers.** (1) A public hospital that is owned by a municipal corporation or political subdivision, or a nonprofit hospital, or a nonprofit community health center, or a network of nonprofit community health centers, that qualifies as a health and social welfare organization as defined in RCW 82.04.431, may deduct from the measure of tax amounts received as compensation for health care services covered under the federal medicare program authorized under Title XVIII of the federal social security act; medical assistance, children's health, or other program under chapter 74.09 RCW; or for the state of Washington basic health plan under chapter 70.47 RCW. The deduction authorized by this section does not apply to amounts received from patient copayments or patient deductibles.

(2) As used in this section, "community health center" means a federally qualified health center as defined in 42 U.S.C. 1396d as existing on August 1, 2005. [2005 c 86 § 1; 2002 c 314 § 2.]

**Effective date—2005 c 86:** "This act takes effect August 1, 2005." [2005 c 86 § 2.]

**Findings—2002 c 314:** "The legislature finds that the provision of health services to those people who receive federal or state subsidized health care benefits by reason of age, disability, or lack of income is a recognized, necessary, and vital governmental function. As a result, the legislature finds that it would be inconsistent with that governmental function to tax amounts received by a public hospital or nonprofit hospital qualifying as a health and

social welfare organization, when the amounts are paid under a health service program subsidized by federal or state government. Further, the tax status of these amounts should not depend on whether the amounts are received directly from the qualifying program or through a managed health care organization under contract to manage benefits for a qualifying program. Therefore, the legislature adopts this act to provide a clear and understandable deduction for these amounts, and to provide refunds for taxes paid as specified in section 4 of this act." [2002 c 314 § 1.]

**Refund of taxes—2002 c 314:** "A public hospital owned by a municipal corporation or political subdivision, or a nonprofit hospital that qualifies as a health and social welfare organization under RCW 82.04.431, is entitled to:

(1) A refund of business and occupation tax paid between January 1, 1998, and April 2, 2002, on amounts that would be deductible under section 2 of this act; and

(2) A waiver of tax liability for accrued, but unpaid taxes that would be deductible under section 2 of this act." [2002 c 314 § 4.]

**Effective date—2002 c 314:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 2, 2002]." [2002 c 314 § 5.]

**82.04.4329 Repealed. (Effective July 1, 2006.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**82.04.4336 Deductions—Cattle and beef products. (Expires December 31, 2007.)** (1) In computing tax there may be deducted from the measure of tax those amounts received for:

(a) Slaughtering cattle, but only if the taxpayer sells the resulting slaughtered cattle at wholesale and not at retail;

(b) Breaking or processing perishable beef products, but only if the perishable beef products are derived from cattle slaughtered by the taxpayer and sold at wholesale only and not at retail;

(c) Wholesale sales of perishable beef products derived from cattle slaughtered by the taxpayer;

(d) Processing nonperishable beef products, but only if the products are derived from cattle slaughtered by the taxpayer and sold at wholesale only and not at retail; and

(e) Wholesale sales of nonperishable beef products derived from cattle slaughtered by the taxpayer.

(2) For the purposes of this section, "beef products" means the carcass, parts of carcass, meat, and meat by-products, derived exclusively from cattle and containing no other ingredients.

(3) The deduction allowed under this section is allowed only for tax liability incurred after March 31, 2004, and until the first day of the month following the date on which the bans on the importation of beef and beef products from the United States of America by Japan, Mexico, and the Republic of South Korea have all been lifted.

(4) The department must provide notice, on the department's web site, of the date on which this deduction is no longer available. The notice required by this section does not affect the availability of the deduction under this section.

(5) This section expires December 31, 2007. [2005 c 150 § 1; 2004 c 235 § 2.]

**Finding—Intent—2004 c 235:** "The legislature finds that the recent occurrence of bovine spongiform encephalopathy and the resulting bans on beef imports from the United States have had a severe economic impact on the state's beef processing industry. The legislature intends to provide temporary business and occupation tax relief for Washington's beef processors." [2004 c 235 § 1.]

**Effective date—2004 c 235:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2004]." [2004 c 235 § 3.]

**82.04.440 Persons taxable on multiple activities—Credits.** (1) Every person engaged in activities which are within the purview of the provisions of two or more of sections RCW 82.04.230 to 82.04.298, inclusive, shall be taxable under each paragraph applicable to the activities engaged in.

(2) Persons taxable under RCW 82.04.2909(2), 82.04.250, 82.04.270, 82.04.294(2), or \*82.04.260 (4) or (13) with respect to selling products in this state shall be allowed a credit against those taxes for any (a) manufacturing taxes paid with respect to the manufacturing of products so sold in this state, and/or (b) extracting taxes paid with respect to the extracting of products so sold in this state or ingredients of products so sold in this state. Extracting taxes taken as credit under subsection (3) of this section may also be taken under this subsection, if otherwise allowable under this subsection. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products.

(3) Persons taxable under RCW 82.04.240 or 82.04.260(1)(b) shall be allowed a credit against those taxes for any extracting taxes paid with respect to extracting the ingredients of the products so manufactured in this state. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the manufacturing of those products.

(4) Persons taxable under RCW 82.04.230, 82.04.240, 82.04.2909(1), 82.04.294(1), or \*82.04.260 (1), (2), (4), (6), or (13) with respect to extracting or manufacturing products in this state shall be allowed a credit against those taxes for any (i) gross receipts taxes paid to another state with respect to the sales of the products so extracted or manufactured in this state, (ii) manufacturing taxes paid with respect to the manufacturing of products using ingredients so extracted in this state, or (iii) manufacturing taxes paid with respect to manufacturing activities completed in another state for products so manufactured in this state. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the extraction or manufacturing of those products.

(5) For the purpose of this section:

(a) "Gross receipts tax" means a tax:

(i) Which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which the deductions allowed would not constitute the tax an income tax or value added tax; and

(ii) Which is also not, pursuant to law or custom, separately stated from the sales price.

(b) "State" means (i) the state of Washington, (ii) a state of the United States other than Washington, or any political subdivision of such other state, (iii) the District of Columbia, and (iv) any foreign country or political subdivision thereof.

(c) "Manufacturing tax" means a gross receipts tax imposed on the act or privilege of engaging in business as a manufacturer, and includes (i) the taxes imposed in RCW



82.04.240, 82.04.2909(1), \*82.04.260 (1), (2), (4), and (13), and 82.04.294(1); and (ii) similar gross receipts taxes paid to other states.

(d) "Extracting tax" means a gross receipts tax imposed on the act or privilege of engaging in business as an extractor, and includes the tax imposed in RCW 82.04.230 and similar gross receipts taxes paid to other states.

(e) "Business", "manufacturer", "extractor", and other terms used in this section have the meanings given in RCW 82.04.020 through 82.04.212, notwithstanding the use of those terms in the context of describing taxes imposed by other states. [2005 c 301 § 3. Prior: 2004 c 174 § 5; 2004 c 24 § 7; 2003 2nd sp.s. c 1 § 6; 1998 c 312 § 9; 1994 c 124 § 4; 1987 2nd ex.s. c 3 § 2; 1985 c 190 § 1; 1981 c 172 § 5; 1967 ex.s. c 149 § 16; 1965 ex.s. c 173 § 12; 1961 c 15 § 82.04.440; prior: 1959 c 211 § 3; 1951 1st ex.s. c 9 § 1; 1950 ex.s. c 5 § 2; 1949 c 228 § 2-A; 1943 c 156 § 3; 1941 c 178 § 3; 1939 c 225 § 3; 1937 c 227 § 3; 1935 c 180 § 6; Rem. Supp. 1949 § 8370-6.]

\***Reviser's note:** RCW 82.04.260 was amended by 2005 c 443 § 4 which deleted subsection (6) and changed subsection (13) to subsection (11), effective July 1, 2006.

**Findings—Intent—Effective date—Report to legislature—2005 c 301:** See notes following RCW 82.04.294.

**Effective date—2004 c 174:** See note following RCW 82.04.2908.

**Intent—Effective date—2004 c 24:** See notes following RCW 82.04.2909.

**Contingent effective date—2003 2nd sp.s. c 1:** See RCW 82.32.550.

**Finding—2003 2nd sp.s. c 1:** See note following RCW 82.04.4461.

**Effective date—Savings—1998 c 312:** See notes following RCW 82.04.332.

**Retroactive application—1994 c 124:** "Except as otherwise provided in section 6 of this act, section 4 of this act applies retrospectively to all tax reporting periods on or after June 23, 1987." [1994 c 124 § 7.]

**Legislative findings and intent—1987 2nd ex.s. c 3:** "The legislature finds that the invalidation of the multiple activities exemption contained in RCW 82.04.440 by the United States Supreme Court now requires adjustments to the state's business and occupation tax to achieve constitutional equality between Washington taxpayers who have conducted and will continue to conduct business in interstate and intrastate commerce. It is the intent of chapter 3, Laws of 1987 2nd ex. sess. and sections 4 through 7 of this act to preserve the integrity of Washington's business and occupation tax system and impose only that financial burden upon the state necessary to establish parity in taxation between such taxpayers.

Thus, chapter 3, Laws of 1987 2nd ex. sess. and sections 4 through 7 of this act extends [extend] the system of credits originated in RCW 82.04.440 in 1985 to provide for equal treatment of taxpayers engaging in extracting, manufacturing or selling regardless of the location in which any of such activities occurs. It is further intended that RCW 82.04.440, as amended by section 2, chapter 3, Laws of 1987 2nd ex. sess. and sections 4 through 7 of this act, shall be construed and applied in a manner that will eliminate unconstitutional discrimination between taxpayers and ensure the preservation and collection of revenues from the conduct of multiple activities in which taxpayers in this state may engage." [1994 c 124 § 5; 1987 2nd ex.s. c 3 § 1.]

**Application to prior reporting periods—1987 2nd ex.s. c 3:** "If it is determined by a court of competent jurisdiction, in a judgment not subject to review, that relief is appropriate for any tax reporting periods before August 11, 1987, in respect to RCW 82.04.440 as it existed before August 11, 1987, it is the intent of the legislature that the credits provided in RCW 82.04.440 as amended by section 2, chapter 3, Laws of 1987 2nd ex. sess. and section 4 of this act shall be applied to such reporting periods and that relief for such periods be limited to the granting of such credits." [1994 c 124 § 6; 1987 2nd ex.s. c 3 § 3.]

**Severability—1987 2nd ex.s. c 3:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 2nd ex.s. c 3 § 4.]

[2005 RCW Supp—page 1004]

**Severability—1985 c 190:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 190 § 8.]

**Effective dates—1981 c 172:** See note following RCW 82.04.240.

**82.04.4452 Credit—Research and development spending. (Expires January 1, 2015.)** (1) In computing the tax imposed under this chapter, a credit is allowed for each person whose research and development spending during the year in which the credit is claimed exceeds 0.92 percent of the person's taxable amount during the same calendar year.

(2) The credit shall be calculated as follows:

(a) Determine the greater of the amount of qualified research and development expenditures of a person or eighty percent of amounts received by a person other than a public educational or research institution in compensation for the conduct of qualified research and development;

(b) Subtract 0.92 percent of the person's taxable amount from the amount determined under (a) of this subsection;

(c) Multiply the amount determined under (b) of this subsection by the following:

(i) For the period June 10, 2004, through December 31, 2006, the person's average tax rate for the calendar year for which the credit is claimed;

(ii) For the calendar year ending December 31, 2007, the greater of the person's average tax rate for that calendar year or 0.75 percent;

(iii) For the calendar year ending December 31, 2008, the greater of the person's average tax rate for that calendar year or 1.0 percent;

(iv) For the calendar year ending December 31, 2009, the greater of the person's average tax rate for that calendar year or 1.25 percent;

(v) For the calendar year ending December 31, 2010, and thereafter, 1.50 percent.

For purposes of calculating the credit, if a person's reporting period is less than annual, the person may use an estimated average tax rate for the calendar year for which the credit is claimed by using the person's average tax rate for each reporting period. A person who uses an estimated average tax rate must make an adjustment to the total credit claimed for the calendar year using the person's actual average tax rate for the calendar year when the person files its last return for the calendar year for which the credit is claimed.

(3) Any person entitled to the credit provided in subsection (2) of this section as a result of qualified research and development conducted under contract may assign all or any portion of the credit to the person contracting for the performance of the qualified research and development.

(4) The credit, including any credit assigned to a person under subsection (3) of this section, shall be claimed against taxes due for the same calendar year in which the qualified research and development expenditures are incurred. The credit, including any credit assigned to a person under subsection (3) of this section, for each calendar year shall not exceed the lesser of two million dollars or the amount of tax otherwise due under this chapter for the calendar year.

(5) For any person claiming the credit, including any credit assigned to a person under subsection (3) of this section, whose research and development spending during the



calendar year in which the credit is claimed fails to exceed 0.92 percent of the person's taxable amount during the same calendar year or who is otherwise ineligible, the department shall declare the taxes against which the credit was claimed to be immediately due and payable. The department shall assess interest, but not penalties, on the taxes against which the credit was claimed. Interest shall be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the credit was claimed, and shall accrue until the taxes against which the credit was claimed are repaid. Any credit assigned to a person under subsection (3) of this section that is disallowed as a result of this section may be claimed by the person who performed the qualified research and development subject to the limitations set forth in subsection (4) of this section.

(6)(a) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.

(b) A person claiming the credit shall file a complete annual survey with the department. The survey is due by March 31st following any year in which a credit is claimed. The department may extend the due date for timely filing of annual surveys under this section as provided in RCW 82.32.590. The survey shall include the amount of the tax credit claimed, the qualified research and development expenditures during the calendar year for which the credit is claimed, the taxable amount during the calendar year for which the credit is claimed, the number of new products or research projects by general classification, the number of trademarks, patents, and copyrights associated with the research and development activities for which a credit was claimed, and whether the credit has been assigned under subsection (3) of this section and who assigned the credit. The survey shall also include the following information for employment positions in Washington:

- (i) The number of total employment positions;
- (ii) Full-time, part-time, and temporary employment positions as a percent of total employment;
- (iii) The number of employment positions according to the following wage bands: Less than thirty thousand dollars; thirty thousand dollars or greater, but less than sixty thousand dollars; and sixty thousand dollars or greater. A wage band containing fewer than three individuals may be combined with another wage band; and
- (iv) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands.

(c) The department may request additional information necessary to measure the results of the tax credit program, to be submitted at the same time as the survey.

(d)(i) All information collected under this subsection, except the amount of the tax credit claimed, is deemed taxpayer information under RCW 82.32.330. Information on the amount of tax credit claimed is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request, except as provided in this subsection (6)(d). If the amount of the tax credit as reported on the survey is different than the amount actually claimed on the tax-

payer's tax returns or otherwise allowed by the department, the amount actually claimed or allowed may be disclosed.

(ii) Persons for whom the actual amount of the tax credit claimed on the taxpayer's returns or otherwise allowed by the department is less than ten thousand dollars during the period covered by the survey may request the department to treat the tax credit amount as confidential under RCW 82.32.330.

(e) If a person fails to file a complete annual survey required under this subsection with the department by the due date or any extension under RCW 82.32.590, the person entitled to the credit provided in subsection (2) of this section is not eligible to claim or assign the credit provided in subsection (2) of this section in the year the person failed to timely file a complete survey.

(7) The department shall use the information from subsection (6) of this section to prepare summary descriptive statistics by category. No fewer than three taxpayers shall be included in any category. The department shall report these statistics to the legislature each year by September 1st.

(8) The department shall use the information from subsection (6) of this section to study the tax credit program authorized under this section. The department shall report to the legislature by December 1, 2009, and December 1, 2013. The reports shall measure the effect of the program on job creation, the number of jobs created for Washington residents, company growth, the introduction of new products, the diversification of the state's economy, growth in research and development investment, the movement of firms or the consolidation of firms' operations into the state, and such other factors as the department selects.

(9) For the purpose of this section:

(a) "Average tax rate" means a person's total tax liability under this chapter for the calendar year for which the credit is claimed divided by the taxpayer's total taxable amount under this chapter for the calendar year for which the credit is claimed.

(b) "Qualified research and development expenditures" means operating expenses, including wages, compensation of a proprietor or a partner in a partnership as determined under rules adopted by the department, benefits, supplies, and computer expenses, directly incurred in qualified research and development by a person claiming the credit provided in this section. The term does not include amounts paid to a person other than a public educational or research institution to conduct qualified research and development. Nor does the term include capital costs and overhead, such as expenses for land, structures, or depreciable property.

(c) "Qualified research and development" shall have the same meaning as in RCW 82.63.010.

(d) "Research and development spending" means qualified research and development expenditures plus eighty percent of amounts paid to a person other than a public educational or research institution to conduct qualified research and development.

(e) "Taxable amount" means the taxable amount subject to the tax imposed in this chapter required to be reported on the person's combined excise tax returns for the calendar year for which the credit is claimed, less any taxable amount for which a credit is allowed under RCW 82.04.440.

(10) This section expires January 1, 2015. [2005 c 514 § 1003; 2004 c 2 § 2; 2000 c 103 § 7; 1997 c 7 § 4; 1994 sp.s. c 5 § 2.]

**Retroactive application—2005 c 514 § 1003:** "Section 1003 of this act applies retroactively to June 10, 2004." [2005 c 514 § 1311.]

**Interest and penalties from additional tax under section 1003(9)(a), chapter 514, Laws of 2005—2005 c 514:** "(1) A person who owes additional tax as a result of section 1003(9)(a), chapter 514, Laws of 2005 is liable for interest, but not penalties as provided in RCW 82.32.090 (1) and (2), if the entire additional tax liability is paid in full to the department of revenue before January 1, 2006. Interest shall be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the credit was claimed, and shall accrue until the additional tax is repaid.

(2) Persons who fail to repay the full amount of additional tax owed as a result of section 1003(9)(a), chapter 514, Laws of 2005 before January 1, 2006, are subject to all applicable penalties and interest as provided in chapter 82.32 RCW on the additional tax owing after December 31, 2005.

(3) This section expires December 31, 2010." [2005 c 514 § 1004.]

**Effective date—2005 c 514:** See note following RCW 82.04.4272.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Savings—Effective date—1997 c 7:** See notes following RCW 82.04.255.

**Findings—Effective date—1994 sp.s. c 5:** See RCW 82.63.005 and 82.63.900.

*Additional reporting requirements: RCW 82.32.590 and 82.32.600.*

**82.04.4459 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**82.04.4463 Credit—Property taxes paid on property used for manufacture of commercial airplanes. (Effective January 1, 2006, until July 1, 2024.)** (1) In computing the tax imposed under this chapter, a credit is allowed for property taxes paid during the calendar year.

(2) The credit is equal to:

(a)(i) Property taxes paid on new buildings, and land upon which this property is located, built after December 1, 2003, and used exclusively in manufacturing commercial airplanes or components of such airplanes; or

(ii) Property taxes attributable to an increase in assessed value due to the renovation or expansion, after December 1, 2003, of a building used exclusively in manufacturing commercial airplanes or components of such airplanes; and

(b) An amount equal to property taxes paid on machinery and equipment exempt under RCW 82.08.02565 or 82.12.02565 and acquired after December 1, 2003, multiplied by a fraction. The numerator of the fraction is the total taxable amount subject to the tax imposed under \*RCW 82.04.260(13) and the denominator of the fraction is the total taxable amount subject to the tax imposed under all manufacturing classifications in chapter 82.04 RCW, required to be reported on the person's returns for the calendar year before the calendar year in which the credit under this section is earned. No credit is available under this subsection (2)(b) if either the numerator or the denominator of the fraction is zero. If the fraction is greater than or equal to nine-tenths, then the fraction is rounded to one. For purposes of this subsection, "returns" means the combined excise tax returns for the calendar year.

(3) For the purposes of this section, "commercial passenger airplane" and "component" have the meanings given in RCW 82.32.550.

[2005 RCW Supp—page 1006]

(4) A person taking the credit under this section is subject to all the requirements of chapter 82.32 RCW. In addition, the person must report as required under RCW 82.32.545. A credit earned during one calendar year may be carried over to be credited against taxes incurred in a subsequent calendar year, but may not be carried over a second year. No refunds may be granted for credits under this section.

(5) In addition to all other requirements under this title, a person taking the credit under this section must report as required under RCW 82.32.545.

(6) This section expires July 1, 2024. [2005 c 514 § 501; 2003 2nd sp.s. c 1 § 15.]

**\*Reviser's note:** RCW 82.04.260 was amended by 2005 c 443 § 4, changing subsection (13) to subsection (11), effective July 1, 2006.

**Effective date—2005 c 514 §§ 501 and 1002:** "Sections 501 and 1002 of this act take effect January 1, 2006." [2005 c 514 § 1305.]

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Contingent effective date—2003 2nd sp.s. c 1:** See RCW 82.32.550.

**Finding—2003 2nd sp.s. c 1:** See note following RCW 82.04.4461.

### **82.04.530 Gross proceeds of sales calculation for telephone business. (Contingent expiration date.)**

**Contingency—Court judgment—2002 c 67:** "(1) If a court of competent jurisdiction enters a final judgment on the merits that is based on federal or state law, is no longer subject to appeal, and substantially limits or impairs the essential elements of P.L. 106-252, 4 U.S.C. Secs. 116 through 126, or chapter 67, Laws of 2002, then chapter 67, Laws of 2002 is null and void in its entirety.

(2) If the contingency in subsection (1) of this section occurs, section 502, chapter 168, Laws of 2003 is null and void.

(3) If the contingency in subsection (1) of this section occurs, section 410, chapter 153, Laws of 2004 is null and void.

(4) If the contingency in subsection (1) of this section occurs, section 111, chapter 514, Laws of 2005 is null and void." [2005 c 514 § 113; 2004 c 153 § 502; 2003 c 168 § 902; 2002 c 67 § 18.]

## **Chapter 82.08 RCW RETAIL SALES TAX**

### Sections

82.08.010	Definitions.
82.08.0255	Exemptions—Sales of motor vehicle and special fuel—Conditions—Credit or refund of special fuel used outside this state in interstate commerce. (Effective July 1, 2006.)
82.08.0276	Repealed. (Effective July 1, 2006.)
82.08.0295	Repealed. (Effective July 1, 2006.)
82.08.0316	Exemptions—Sales of cigarettes by Indian retailers.
82.08.150	Tax on certain sales of intoxicating liquors—Additional taxes for specific purposes—Collection.
82.08.807	Exemptions—Direct mail delivery charges.
82.08.808	Exemptions—Sales of medical supplies, chemicals, or materials to comprehensive cancer centers. (Effective July 1, 2006.)
82.08.809	Exemptions—Vehicles using clean alternative fuels. (Effective January 1, 2009, until January 1, 2011.)
82.08.813	Exemptions—High gas mileage vehicles. (Effective January 1, 2009, until January 1, 2011.)
82.08.820	Exemptions—Remittance—Warehouse and grain elevators and distribution centers—Material-handling and racking equipment—Construction of warehouse or elevator—Information sheet—Rules—Records—Exceptions. (Effective July 1, 2007.)
82.08.840	Repealed.
82.08.841	Exemptions—Farming equipment—Hay sheds. (Expires January 1, 2011.)

**82.08.010 Definitions.** For the purposes of this chapter:

(1) "Selling price" includes "sales price." "Sales price" means the total amount of consideration, except separately stated trade-in property of like kind, including cash, credit, property, and services, for which tangible personal property, extended warranties, or services defined as a "retail sale" under RCW 82.04.050 are sold, leased, or rented, valued in money, whether received in money or otherwise. No deduction from the total amount of consideration is allowed for the following: (a) The seller's cost of the property sold; (b) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller; (c) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges; (d) delivery charges; (e) installation charges; and (f) the value of exempt tangible personal property given to the purchaser where taxable and exempt tangible personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

When tangible personal property is rented or leased under circumstances that the consideration paid does not represent a reasonable rental for the use of the articles so rented or leased, the "selling price" shall be determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules as the department may prescribe.

"Selling price" or "sales price" does not include: Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale; interest, financing, and carrying charges from credit extended on the sale of tangible personal property, extended warranties, or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(2) "Seller" means every person, including the state and its departments and institutions, making sales at retail or retail sales to a buyer, purchaser, or consumer, whether as agent, broker, or principal, except "seller" does not mean the state and its departments and institutions when making sales to the state and its departments and institutions;

(3) "Buyer," "purchaser," and "consumer" include, without limiting the scope hereof, every individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, municipal corporation, quasi municipal corporation, and also the state, its departments and institutions and all political subdivisions thereof, irrespective of the nature of the activities engaged in or functions performed, and also the United States or any instrumentality thereof;

(4) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing;

(5) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address;

(6) The meaning attributed in chapter 82.04 RCW to the terms "tax year," "taxable year," "person," "company," "sale," "sale at retail," "retail sale," "sale at wholesale," "wholesale," "business," "engaging in business," "cash discount," "successor," "consumer," "in this state" and "within this state" shall apply equally to the provisions of this chapter;

(7) For the purposes of the taxes imposed under this chapter and under chapter 82.12 RCW, "tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. Tangible personal property includes electricity, water, gas, steam, and prewritten computer software;

(8) "Extended warranty" has the same meaning as in RCW 82.04.050(7). [2005 c 514 § 110; 2004 c 153 § 406; 2003 c 168 § 101; 1985 c 38 § 3; 1985 c 2 § 2 (Initiative Measure No. 464, approved November 6, 1984); 1983 1st ex.s. c 55 § 1; 1967 ex.s. c 149 § 18; 1963 c 244 § 1; 1961 c 15 § 82.08.010. Prior: (i) 1945 c 249 § 4; 1943 c 156 § 6; 1941 c 178 § 8; 1939 c 225 § 7; 1935 c 180 § 17; Rem. Supp. 1945 § 8370-17. (ii) 1935 c 180 § 20; RRS § 8370-20.]

**Effective date—2005 c 514:** See note following RCW 82.04.4272.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Retroactive effective date—Effective date—2004 c 153:** See note following RCW 82.08.0293.

**Effective dates—2003 c 168:** "Sections 101 through 104, 201 through 216, 401 through 412, 501, 502, 601 through 604, 701 through 704, 801, 901, and 902 of this act take effect July 1, 2004. Sections 301 through 305 of this act take effect January 1, 2004." [2003 c 168 § 903.]

**Part headings not law—2003 c 168:** "Part headings used in this act are not any part of the law." [2003 c 168 § 901.]

**Purpose—1985 c 2:** "The purpose of this initiative is to reduce the amount on which sales tax is paid by excluding the trade-in value of certain property from the amount taxable." [1985 c 2 § 1 (Initiative Measure No. 464, approved November 6, 1984).]

**Effective dates—1983 1st ex.s. c 55:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1983, except that section 12 of this act shall take effect January 1, 1984, and shall be effective for property taxes levied in 1983, and due in 1984, and thereafter." [1983 1st ex.s. c 55 § 13.]

**82.08.0255 Exemptions—Sales of motor vehicle and special fuel—Conditions—Credit or refund of special fuel used outside this state in interstate commerce. (Effective July 1, 2006.)** (1) The tax levied by RCW 82.08.020 shall not apply to sales of motor vehicle and special fuel if:

(a) The fuel is purchased for the purpose of public transportation and the purchaser is entitled to a refund or an exemption under RCW 82.36.275 or 82.38.080(3); or

(b) The fuel is purchased by a private, nonprofit transportation provider certified under chapter 81.66 RCW and the purchaser is entitled to a refund or an exemption under RCW 82.36.285 or 82.38.080(1)(h); or

(c) The fuel is taxable under chapter 82.36 or 82.38 RCW.

(2) Any person who has paid the tax imposed by RCW 82.08.020 on the sale of special fuel delivered in this state shall be entitled to a credit or refund of such tax with respect to fuel subsequently established to have been actually transported and used outside this state by persons engaged in interstate commerce. The tax shall be claimed as a credit or refunded through the tax reports required under RCW 82.38.150. [2005 c 443 § 5; 1998 c 176 § 4. Prior: 1983 1st ex.s. c 35 § 2; 1983 c 108 § 1; 1980 c 147 § 1; 1980 c 37 § 23. Formerly RCW 82.08.030(5).]

**Finding—Intent—2005 c 443:** "The legislature finds that a number of tax exemptions, deductions, credits, and other preferences have outlived their usefulness. State records show no taxpayers have claimed relief under these tax preferences in recent years. The intent of this act is to update and simplify the tax statutes by repealing these outdated tax preferences." [2005 c 443 § 1.]

**Effective date—2005 c 443:** "This act takes effect July 1, 2006." [2005 c 443 § 8.]

**Rules—Findings—Effective date—1998 c 176:** See RCW 82.36.800, 82.36.900, and 82.36.901.

**Intent—1983 1st ex.s. c 35:** "It is the intent of the legislature that special fuel purchased in Washington upon which the special fuel tax has been paid, regardless of whether or not the tax is subsequently refunded or credited in whole or in part, should not be subject to the sales and use tax if the special fuel is transported and used outside the state by persons engaged in interstate commerce." [1983 1st ex.s. c 35 § 1.]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.08.0276 Repealed. (Effective July 1, 2006.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**82.08.0295 Repealed. (Effective July 1, 2006.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**82.08.0316 Exemptions—Sales of cigarettes by Indian retailers.** The tax levied by RCW 82.08.020 does not apply to sales of cigarettes by an Indian retailer during the effective period of a cigarette tax contract subject to RCW 43.06.455 or a cigarette tax agreement under RCW 43.06.465. [2005 c 11 § 3; 2001 c 235 § 4.]

**Findings—Intent—Explanatory statement—Effective date—2005 c 11:** See notes following RCW 43.06.465.

**Intent—Finding—2001 c 235:** See RCW 43.06.450.

**82.08.150 Tax on certain sales of intoxicating liquors—Additional taxes for specific purposes—Collection.** (1) There is levied and shall be collected a tax upon each retail sale of spirits in the original package at the rate of fifteen percent of the selling price. The tax imposed in this subsection shall apply to all such sales including sales by the Washington state liquor stores and agencies, but excluding sales to spirits, beer, and wine restaurant licensees.

(2) There is levied and shall be collected a tax upon each sale of spirits in the original package at the rate of ten percent

of the selling price on sales by Washington state liquor stores and agencies to spirits, beer, and wine restaurant licensees.

(3) There is levied and shall be collected an additional tax upon each retail sale of spirits in the original package at the rate of one dollar and seventy-two cents per liter. The additional tax imposed in this subsection shall apply to all such sales including sales by Washington state liquor stores and agencies, and including sales to spirits, beer, and wine restaurant licensees.

(4) An additional tax is imposed equal to fourteen percent multiplied by the taxes payable under subsections (1), (2), and (3) of this section.

(5) An additional tax is imposed upon each retail sale of spirits in the original package at the rate of seven cents per liter. The additional tax imposed in this subsection shall apply to all such sales including sales by Washington state liquor stores and agencies, and including sales to spirits, beer, and wine restaurant licensees. All revenues collected during any month from this additional tax shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520 by the twenty-fifth day of the following month.

(6)(a) An additional tax is imposed upon retail sale of spirits in the original package at the rate of one and seven-tenths percent of the selling price through June 30, 1995, two and six-tenths percent of the selling price for the period July 1, 1995, through June 30, 1997, and three and four-tenths of the selling price thereafter. This additional tax applies to all such sales including sales by Washington state liquor stores and agencies, but excluding sales to spirits, beer, and wine restaurant licensees.

(b) An additional tax is imposed upon retail sale of spirits in the original package at the rate of one and one-tenth percent of the selling price through June 30, 1995, one and seven-tenths percent of the selling price for the period July 1, 1995, through June 30, 1997, and two and three-tenths of the selling price thereafter. This additional tax applies to all such sales to spirits, beer, and wine restaurant licensees.

(c) An additional tax is imposed upon each retail sale of spirits in the original package at the rate of twenty cents per liter through June 30, 1995, thirty cents per liter for the period July 1, 1995, through June 30, 1997, and forty-one cents per liter thereafter. This additional tax applies to all such sales including sales by Washington state liquor stores and agencies, and including sales to spirits, beer, and wine restaurant licensees.

(d) All revenues collected during any month from additional taxes under this subsection shall be deposited in the health services account created under RCW 43.72.900 by the twenty-fifth day of the following month.

(7)(a) An additional tax is imposed upon each retail sale of spirits in the original package at the rate of one dollar and thirty-three cents per liter. This additional tax applies to all such sales including sales by Washington state liquor stores and agencies, but excluding sales to spirits, beer, and wine restaurant licensees.

(b) All revenues collected during any month from additional taxes under this subsection shall be deposited by the twenty-fifth day of the following month as follows:

(i) 97.5 percent into the general fund;

(ii) 2.3 percent into the health services account created under RCW 43.72.900; and

(iii) 0.2 percent into the violence reduction and drug enforcement account created under RCW 69.50.520.

(8) The tax imposed in RCW 82.08.020 shall not apply to sales of spirits in the original package.

(9) The taxes imposed in this section shall be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the tax payable in respect to each taxable sale under this section. The taxes required by this section to be collected by the seller shall be stated separately from the selling price and for purposes of determining the tax due from the buyer to the seller, it shall be conclusively presumed that the selling price quoted in any price list does not include the taxes imposed by this section.

(10) As used in this section, the terms, "spirits" and "package" shall have the meaning ascribed to them in chapter 66.04 RCW. [2005 c 514 § 201; 2003 c 167 § 11; 1998 c 126 § 16; 1997 c 321 § 55; 1994 sp.s. c 7 § 903 (Referendum Bill No. 43, approved November 8, 1994); 1993 c 492 § 310; 1989 c 271 § 503; 1983 2nd ex.s. c 3 § 12; 1982 1st ex.s. c 35 § 3; 1981 1st ex.s. c 5 § 25; 1973 1st ex.s. c 204 § 1; 1971 ex.s. c 299 § 9; 1969 ex.s. c 21 § 11; 1965 ex.s. c 173 § 16; 1965 c 42 § 1; 1961 ex.s. c 24 § 2; 1961 c 15 § 82.08.150. Prior: 1959 ex.s. c 5 § 9; 1957 c 279 § 4; 1955 c 396 § 1; 1953 c 91 § 5; 1951 2nd ex.s. c 28 § 5.]

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Effective date—2003 c 167:** See note following RCW 66.24.244.

**Report to legislature—2003 c 167:** See note following RCW 66.24.250.

**Effective date—1998 c 126:** See note following RCW 66.20.010.

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Contingent partial referendum—1994 sp.s. c 7 §§ 901-909:** See note following RCW 66.24.210.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

**Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492:** See RCW 43.72.910 through 43.72.915.

**Effective dates—1989 c 271:** See note following RCW 66.28.200.

**Severability—1989 c 271:** See note following RCW 9.94A.510.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Severability—Effective dates—1982 1st ex.s. c 35:** See notes following RCW 82.08.020.

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

**Effective date—1973 1st ex.s. c 204:** "This 1973 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect the first day of July, 1973." [1973 1st ex.s. c 204 § 4.]

**Effective dates—Severability—1971 ex.s. c 299:** See notes following RCW 82.04.050.

**Effective date—1969 ex.s. c 21:** See note following RCW 64.04.010.

**82.08.807 Exemptions—Direct mail delivery charges.** The tax levied by RCW 82.08.020 does not apply to delivery charges made for the delivery of direct mail if the

charges are separately stated on an invoice or similar billing document given to the purchaser. [2005 c 514 § 115.]

**Effective date—2005 c 514:** See note following RCW 82.04.4272.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**82.08.808 Exemptions—Sales of medical supplies, chemicals, or materials to comprehensive cancer centers. (Effective July 1, 2006.)** (1) The tax levied by RCW 82.08.020 does not apply to the sale of medical supplies, chemicals, or materials to a comprehensive cancer center. The exemption in this section does not apply to the sale of construction materials, office equipment, building equipment, administrative supplies, or vehicles.

(2) For the purposes of this section, the following definitions apply:

(a) "Comprehensive cancer center" has the meaning provided in RCW 82.04.4265.

(b) "Chemical" means any catalyst, solvent, water, acid, oil, or other additive that physically or chemically interacts with blood, bone, or tissue.

(c) "Materials" means any item of tangible personal property, including, but not limited to, bags, packs, collecting sets, filtering materials, testing reagents, antisera, and refrigerants used or consumed in performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(d) "Research" means basic and applied research that has as its objective the design, development, refinement, testing, marketing, or commercialization of a product, service, or process.

(e) "Medical supplies" means any item of tangible personal property, including any repair and replacement parts for such tangible personal property, used by a comprehensive cancer center for the purpose of performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue. The term includes tangible personal property used to:

(i) Provide preparatory treatment of blood, bone, or tissue;

(ii) Control, guide, measure, tune, verify, align, regulate, test, or physically support blood, bone, or tissue; and

(iii) Protect the health and safety of employees or others present during research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue. [2005 c 514 § 402.]

**Effective date—2005 c 514 §§ 401-403:** See note following RCW 82.04.4265.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**82.08.809 Exemptions—Vehicles using clean alternative fuels. (Effective January 1, 2009, until January 1, 2011.)** (1) The tax levied by RCW 82.08.020 does not apply to sales of new passenger cars, light duty trucks, and medium duty passenger vehicles, which are exclusively powered by a clean alternative fuel.

(2) The seller must keep records necessary for the department to verify eligibility under this section.

(3) As used in this section, "clean alternative fuel" means natural gas, propane, hydrogen, or electricity, when used as a

fuel in a motor vehicle that meets the California motor vehicle emission standards in Title 13 of the California code of regulations, effective January 1, 2005, and the rules of the Washington state department of ecology. [2005 c 296 § 1.]

**Effective date—2005 c 296:** "This act takes effect January 1, 2009." [2005 c 296 § 5.]

**Expiration date—2005 c 296:** "This act expires January 1, 2011." [2005 c 296 § 6.]

**82.08.813 Exemptions—High gas mileage vehicles. (Effective January 1, 2009, until January 1, 2011.)** (1) The tax levied by RCW 82.08.020 does not apply to sales of new passenger cars, light duty trucks, and medium duty passenger vehicles, which utilize hybrid technology and have a United States environmental protection agency estimated highway gasoline mileage rating of at least forty miles per gallon.

(2) The seller must keep records necessary for the department to verify eligibility under this section.

(3) As used in this section, "hybrid technology" means propulsion units powered by both electricity and gasoline. [2005 c 296 § 2.]

**Effective date—Expiration date—2005 c 296:** See notes following RCW 82.08.809.

**82.08.820 Exemptions—Remittance—Warehouse and grain elevators and distribution centers—Material-handling and racking equipment—Construction of warehouse or elevator—Information sheet—Rules—Records—Exceptions. (Effective July 1, 2007.)** (1) Wholesalers or third-party warehouse owners who own or operate warehouses or grain elevators and retailers who own or operate distribution centers, and who have paid the tax levied by RCW 82.08.020 on:

(a) Material-handling and racking equipment, and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment; or

(b) Construction of a warehouse or grain elevator, including materials, and including service and labor costs, are eligible for an exemption in the form of a remittance. The amount of the remittance is computed under subsection (3) of this section and is based on the state share of sales tax.

(2) For purposes of this section and RCW 82.12.820:

(a) "Agricultural products" has the meaning given in RCW 82.04.213;

(b) "Cold storage warehouse" means a storage warehouse used to store fresh and/or frozen perishable fruits or vegetables, or any combination thereof, at a desired temperature to maintain the quality of the product for orderly marketing;

(c) "Construction" means the actual construction of a warehouse or grain elevator that did not exist before the construction began. "Construction" includes expansion if the expansion adds at least twenty-five thousand square feet of additional space to an existing cold storage warehouse, at least two hundred thousand square feet of additional space to an existing warehouse other than a cold storage warehouse, or additional storage capacity of at least one million bushels to an existing grain elevator. "Construction" does not include renovation, remodeling, or repair;

(d) "Department" means the department of revenue;

(e) "Distribution center" means a warehouse that is used exclusively by a retailer solely for the storage and distribution of finished goods to retail outlets of the retailer. "Distribution center" does not include a warehouse at which retail sales occur;

(f) "Finished goods" means tangible personal property intended for sale by a retailer or wholesaler. "Finished goods" does not include agricultural products stored by wholesalers, third-party warehouses, or retailers if the storage takes place on the land of the person who produced the agricultural product. "Finished goods" does not include logs, minerals, petroleum, gas, or other extracted products stored as raw materials or in bulk;

(g) "Grain elevator" means a structure used for storage and handling of grain in bulk;

(h) "Material-handling equipment and racking equipment" means equipment in a warehouse or grain elevator that is primarily used to handle, store, organize, convey, package, or repackage finished goods. The term includes tangible personal property with a useful life of one year or more that becomes an ingredient or component of the equipment, including repair and replacement parts. The term does not include equipment in offices, lunchrooms, restrooms, and other like space, within a warehouse or grain elevator, or equipment used for nonwarehousing purposes. "Material-handling equipment" includes but is not limited to: Conveyers, carousels, lifts, positioners, pick-up-and-place units, cranes, hoists, mechanical arms, and robots; mechanized systems, including containers that are an integral part of the system, whose purpose is to lift or move tangible personal property; and automated handling, storage, and retrieval systems, including computers that control them, whose purpose is to lift or move tangible personal property; and forklifts and other off-the-road vehicles that are used to lift or move tangible personal property and that cannot be operated legally on roads and streets. "Racking equipment" includes, but is not limited to, conveying systems, chutes, shelves, racks, bins, drawers, pallets, and other containers and storage devices that form a necessary part of the storage system;

(i) "Person" has the meaning given in RCW 82.04.030;

(j) "Retailer" means a person who makes "sales at retail" as defined in chapter 82.04 RCW of tangible personal property;

(k) "Square footage" means the product of the two horizontal dimensions of each floor of a specific warehouse. The entire footprint of the warehouse shall be measured in calculating the square footage, including space that juts out from the building profile such as loading docks. "Square footage" does not mean the aggregate of the square footage of more than one warehouse at a location or the aggregate of the square footage of warehouses at more than one location;

(l) "Third-party warehouse" means a person taxable under RCW 82.04.280(4);

(m) "Warehouse" means an enclosed building or structure in which finished goods are stored. A warehouse building or structure may have more than one storage room and more than one floor. Office space, lunchrooms, restrooms, and other space within the warehouse and necessary for the operation of the warehouse are considered part of the warehouse as are loading docks and other such space attached to the building and used for handling of finished goods. Land-

scaping and parking lots are not considered part of the warehouse. A storage yard is not a warehouse, nor is a building in which manufacturing takes place; and

(n) "Wholesaler" means a person who makes "sales at wholesale" as defined in chapter 82.04 RCW of tangible personal property, but "wholesaler" does not include a person who makes sales exempt under 82.04.330.

(3)(a) A person claiming an exemption from state tax in the form of a remittance under this section must pay the tax imposed by RCW 82.08.020. The buyer may then apply to the department for remittance of all or part of the tax paid under RCW 82.08.020. For grain elevators with bushel capacity of one million but less than two million, the remittance is equal to fifty percent of the amount of tax paid. For warehouses with square footage of two hundred thousand or more, other than cold storage warehouses, and for grain elevators with bushel capacity of two million or more, the remittance is equal to one hundred percent of the amount of tax paid for qualifying construction, materials, service, and labor, and fifty percent of the amount of tax paid for qualifying material-handling equipment and racking equipment, and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment. For cold storage warehouses with square footage of twenty-five thousand or more, the remittance is equal to one hundred percent of the amount of tax paid for qualifying construction, materials, service, and labor, and one hundred percent of the amount of tax paid for qualifying material-handling equipment and racking equipment, and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment.

(b) The department shall determine eligibility under this section based on information provided by the buyer and through audit and other administrative records. The buyer shall on a quarterly basis submit an information sheet, in a form and manner as required by the department by rule, specifying the amount of exempted tax claimed and the qualifying purchases or acquisitions for which the exemption is claimed. The buyer shall retain, in adequate detail to enable the department to determine whether the equipment or construction meets the criteria under this section: Invoices; proof of tax paid; documents describing the material-handling equipment and racking equipment; location and size of warehouses and grain elevators; and construction invoices and documents.

(c) The department shall on a quarterly basis remit exempted amounts to qualifying persons who submitted applications during the previous quarter.

(4) Warehouses, grain elevators, and material-handling equipment and racking equipment for which an exemption, credit, or deferral has been or is being received under chapter 82.60, 82.61, 82.62, or 82.63 RCW or RCW 82.08.02565 or 82.12.02565 are not eligible for any remittance under this section. Warehouses and grain elevators upon which construction was initiated before May 20, 1997, are not eligible for a remittance under this section.

(5) The lessor or owner of a warehouse or grain elevator is not eligible for a remittance under this section unless the underlying ownership of the warehouse or grain elevator and the material-handling equipment and racking equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the

remittance to the lessee in the form of reduced rent payments. [2005 c 513 § 11; 1997 c 450 § 2.]

**Effective dates—2005 c 513:** See note following RCW 82.04.4266.

**Findings—Intent—1997 c 450:** "The legislature finds that the state's overall economic health and prosperity is bolstered through tax incentives targeted to specific industries. The warehouse and distribution industry is critical to other businesses. The transportation sector, the retail sector, the ports, and the wholesalers all rely on the warehouse and distribution industry. It is the intent of the legislature to stimulate interstate trade by providing tax incentives to those persons in the warehouse and distribution industry engaged in highly competitive trade." [1997 c 450 § 1.]

**Report—1997 c 450:** "The legislative fiscal committees shall report to the legislature by December 1, 2001, on the economic impacts of this act. This report shall analyze employment and other relevant economic data pertaining to the tax exemptions authorized under this act and shall measure the effect on the creation or retention of family-wage jobs and diversification of the state's economy. The report must include the committee's findings on the tax incentive program's performance in achieving its goals and recommendations on ways to improve its effectiveness. Analytic techniques may include, but not be limited to, comparisons of Washington to other states that did not enact business tax changes, comparisons across Washington counties based on usage of the tax exemptions, and comparisons across similar firms based on their use of the tax exemptions. In performing the analysis, the legislative fiscal committees shall consult with business and labor interests. The department of revenue, the employment security department, and other agencies shall provide to the legislative fiscal committees such data as the legislative fiscal committees may request in performing the analysis required under this section." [1997 c 450 § 6.]

**Effective date—1997 c 450:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 20, 1997]." [1997 c 450 § 7.]

**82.08.840 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**82.08.841 Exemptions—Farming equipment—Hay sheds. (Expires January 1, 2011.)** (1) The tax levied by RCW 82.08.020 does not apply to:

(a) Sales of the following machinery and equipment to qualified farmers: No-till drills, minimum-till drills, chisels, plows, sprayers, discs, cultivators, harrows, mowers, swathers, power rakes, balers, bale handlers, shredders, transplanter, tractors two hundred fifty horsepower and over designed to pull conservation equipment on steep hills and highly erodible lands, and combine components limited to straw choppers, chaff spreaders, and stripper headers; and

(b) Labor and services rendered in respect to constructing hay sheds for qualified farmers or to sales of tangible personal property to qualified farmers that becomes an ingredient or component of hay sheds during the course of the constructing.

(2)(a) No application is necessary for the tax exemption in this section. A person taking the exemption under this section must keep records necessary for the department to verify eligibility. The department may request from a qualified farmer, copies of farm service agency or crop insurance records for verification purposes, however information obtained from farm service agency or crop insurance records is deemed taxpayer information under RCW 82.32.330 and is not disclosable.

(b) The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller shall retain a copy of the certificate for the seller's files.

(3) The definitions in this subsection apply to this section.

(a) "Qualified farmer" means a farmer as defined in RCW 82.04.213 who has more than fifty percent of his or her tillable acres in cereal grains and/or field and turf grass grown for seed in qualified counties.

(b) "Qualified counties" means those counties in Washington state where cereal grain production within the county exceeds fifteen thousand acres.

(4) This section expires January 1, 2011. [2005 c 420 § 2.]

**Findings—2005 c 420:** "The legislature finds that rules enacted to improve air quality in selected parts of eastern Washington created a financial hardship for some growers of cereal grains and grass grown for seed. As stated in RCW 70.94.656, it is "the policy of this state ...to promote the development of economical and practical alternate agricultural practices to such burning...". The legislature provided tax incentives in 2000 to assist such growers transition to alternative management systems while further improving air quality. Because those incentives have been difficult to administer, the legislature finds that it is necessary to refine and narrow those incentives." [2005 c 420 § 1.]

**Effective date—2005 c 420:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 420 § 5.]

## Chapter 82.12 RCW USE TAX

### Sections

82.12.010	Definitions.
82.12.020	Use tax imposed.
82.12.0251	Exemptions—Use of tangible personal property by nonresident while temporarily within state—Use of household goods, personal effects, and private motor vehicles acquired in another state while resident of other state—Use of certain warranties.
82.12.02545	Repealed. ( <i>Effective July 1, 2006.</i> )
82.12.0255	Exemptions—Nontaxable tangible personal property and warranties.
82.12.0256	Exemptions—Use of motor vehicle and special fuel—Conditions. ( <i>Effective July 1, 2006.</i> )
82.12.0295	Repealed. ( <i>Effective July 1, 2006.</i> )
82.12.0316	Exemptions—Sales of cigarettes by Indian retailers.
82.12.035	Credit for retail sales or use taxes paid to other jurisdictions with respect to property used.
82.12.040	Retailers to collect tax—Penalty—Contingent expiration of subsection.
82.12.807	Exemptions—Direct mail delivery charges.
82.12.808	Exemptions—Use of medical supplies, chemicals, or materials by comprehensive cancer centers. ( <i>Effective July 1, 2006.</i> )
82.12.809	Exemptions—Vehicles using clean alternative fuels. ( <i>Effective January 1, 2009, until January 1, 2011.</i> )
82.12.813	Exemptions—High gas mileage vehicles. ( <i>Effective January 1, 2009, until January 1, 2011.</i> )
82.12.820	Exemptions—Warehouse and grain elevators and distribution centers. ( <i>Effective July 1, 2007.</i> )
82.12.840	Repealed.
82.12.841	Exemptions—Farming equipment—Hay sheds. ( <i>Expires January 1, 2011.</i> )

### 82.12.010 Definitions.

For the purposes of this chapter:

(1) "Purchase price" means the same as sales price as defined in RCW 82.08.010.

(2)(a) "Value of the article used" shall be the purchase price for the article of tangible personal property, the use of which is taxable under this chapter. The term also includes, in addition to the purchase price, the amount of any tariff or duty paid with respect to the importation of the article used. In case the article used is acquired by lease or by gift or is

extracted, produced, or manufactured by the person using the same or is sold under conditions wherein the purchase price does not represent the true value thereof, the value of the article used shall be determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character under such rules as the department may prescribe.

(b) In case the articles used are acquired by bailment, the value of the use of the articles so used shall be in an amount representing a reasonable rental for the use of the articles so bailed, determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules as the department of revenue may prescribe. In case any such articles of tangible personal property are used in respect to the construction, repairing, decorating, or improving of, and which become or are to become an ingredient or component of, new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any such articles therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, then the value of the use of such articles so used shall be determined according to the retail selling price of such articles, or in the absence of such a selling price, as nearly as possible according to the retail selling price at place of use of similar products of like quality and character or, in the absence of either of these selling price measures, such value may be determined upon a cost basis, in any event under such rules as the department of revenue may prescribe.

(c) In the case of articles owned by a user engaged in business outside the state which are brought into the state for no more than one hundred eighty days in any period of three hundred sixty-five consecutive days and which are temporarily used for business purposes by the person in this state, the value of the article used shall be an amount representing a reasonable rental for the use of the articles, unless the person has paid tax under this chapter or chapter 82.08 RCW upon the full value of the article used, as defined in (a) of this subsection.

(d) In the case of articles manufactured or produced by the user and used in the manufacture or production of products sold or to be sold to the department of defense of the United States, the value of the articles used shall be determined according to the value of the ingredients of such articles.

(e) In the case of an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product, the value of the article used shall be determined by: (i) The retail selling price of such new or improved product when first offered for sale; or (ii) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

(f) In the case of an article purchased with a direct pay permit under RCW 82.32.087, the value of the article used shall be determined by the purchase price of such article if, but for the use of the direct pay permit, the transaction would have been subject to sales tax;

(3) "Value of the service used" means the purchase price for the service, the use of which is taxable under this chapter.



If the service is received by gift or under conditions wherein the purchase price does not represent the true value thereof, the value of the service used shall be determined as nearly as possible according to the retail selling price at place of use of similar services of like quality and character under rules the department may prescribe;

(4) "Value of the extended warranty used" means the purchase price for the extended warranty, the use of which is taxable under this chapter. If the extended warranty is received by gift or under conditions wherein the purchase price does not represent the true value of the extended warranty, the value of the extended warranty used shall be determined as nearly as possible according to the retail selling price at place of use of similar extended warranties of like quality and character under rules the department may prescribe;

(5) "Use," "used," "using," or "put to use" shall have their ordinary meaning, and shall mean:

(a) With respect to tangible personal property, the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption within this state;

(b) With respect to a service defined in RCW 82.04.050(2)(a), the first act within this state after the service has been performed by which the taxpayer takes or assumes dominion or control over the article of tangible personal property upon which the service was performed (as a consumer), and includes installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article within this state; and

(c) With respect to an extended warranty, the first act within this state after the extended warranty has been acquired by which the taxpayer takes or assumes dominion or control over the article of tangible personal property to which the extended warranty applies, and includes installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article within this state;

(6) "Taxpayer" and "purchaser" include all persons included within the meaning of the word "buyer" and the word "consumer" as defined in chapters 82.04 and 82.08 RCW;

(7) "Retailer" means every seller as defined in RCW 82.08.010 and every person engaged in the business of selling tangible personal property at retail and every person required to collect from purchasers the tax imposed under this chapter;

(8) "Extended warranty" has the same meaning as in RCW 82.04.050(7);

(9) The meaning ascribed to words and phrases in chapters 82.04 and 82.08 RCW, insofar as applicable, shall have full force and effect with respect to taxes imposed under the provisions of this chapter. "Consumer," in addition to the meaning ascribed to it in chapters 82.04 and 82.08 RCW insofar as applicable, shall also mean any person who distributes or displays, or causes to be distributed or displayed, any article of tangible personal property, except newspapers, the

primary purpose of which is to promote the sale of products or services. With respect to property distributed to persons within this state by a consumer as defined in this subsection (9), the use of the property shall be deemed to be by such consumer. [2005 c 514 § 104. Prior: 2003 c 168 § 102; 2003 c 5 § 1; 2002 c 367 § 3; 2001 c 188 § 3; 1994 c 93 § 1; prior: 1985 c 222 § 1; 1985 c 132 § 1; 1983 1st ex.s. c 55 § 2; 1975-'76 2nd ex.s. c 1 § 1; 1975 1st ex.s. c 278 § 52; 1965 ex.s. c 173 § 17; 1961 c 293 § 15; 1961 c 15 § 82.12.010; prior: 1955 c 389 § 24; 1951 1st ex.s. c 9 § 3; 1949 c 228 § 9; 1945 c 249 § 8; 1943 c 156 § 10; 1939 c 225 § 18; 1937 c 191 § 4; 1935 c 180 § 35; Rem. Supp. 1949 § 8370-35.]

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**Finding—Intent—Retroactive application—2003 c 5:** "The legislature finds that in the enactment of chapter 367, Laws of 2002, some use tax exemptions were not updated to reflect the change in taxability regarding services. It is the legislature's intent to correct this omission by amending the various use tax exemptions so that services exempt from the sales tax are also exempt from the use tax. Sections 1 through 19 of this act apply retroactively to June 1, 2002. The department of revenue shall refund any use taxes paid and forgive use taxes unpaid as a result of the omission." [2003 c 5 § 20.]

**Effective date—2003 c 5:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 18, 2003]." [2003 c 5 § 21.]

**Severability—Effective date—2002 c 367:** See notes following RCW 82.04.060.

**Finding—Intent—Effective date—2001 c 188:** See notes following RCW 82.32.087.

**Effective date—1994 c 93:** "This act shall take effect July 1, 1994." [1994 c 93 § 3.]

**Effective dates—1983 1st ex.s. c 55:** See note following RCW 82.08.010.

**Application to preexisting contracts—1975-'76 2nd ex.s. c 1; 1975 1st ex.s. c 90:** "In the event any person has entered into a contract prior to July 1, 1975 or has bid upon a contract prior to July 1, 1975 and has been awarded the contract after July 1, 1975, the additional taxes imposed by chapter 90, Laws of 1975 1st ex. sess., section 5, chapter 291, Laws of 1975 1st ex. sess. and this 1975 amendatory act shall not be required to be paid by such person in carrying on activities in the fulfillment of such contract." [1975-'76 2nd ex.s. c 1 § 3; 1975 1st ex.s. c 90 § 4.]

**Severability—1975-'76 2nd ex.s. c 1:** "If any provision of this 1975 amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 1 § 4.]

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**Effective date—1965 ex.s. c 173:** See note following RCW 82.04.050.

**82.12.020 Use tax imposed.** (1) There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state as a consumer: (a) Any article of tangible personal property purchased at retail, or acquired by lease, gift, repossession, or bailment, or extracted or produced or manufactured by the person so using the same, or otherwise furnished to a person engaged in any business taxable under RCW 82.04.280 (2) or (7); (b) any prewritten computer software, regardless of the method of delivery, but excluding prewritten computer software that is either provided free of charge or is provided for

temporary use in viewing information, or both; or (c) any extended warranty.

(2) This tax shall apply to the use of every extended warranty, service defined as a retail sale in RCW 82.04.050 (2)(a) or (3)(a), and the use of every article of tangible personal property, including property acquired at a casual or isolated sale, and including byproducts used by the manufacturer thereof, except as hereinafter provided, irrespective of whether the article or similar articles are manufactured or are available for purchase within this state.

(3) The provisions of this chapter do not apply in respect to the use of any article of tangible personal property, extended warranty, or service taxable under RCW 82.04.050 (2)(a) or (3)(a), purchased at retail or acquired by lease, gift, or bailment if the sale to, or the use by, the present user or his bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by his bailor or donor.

(4) Except as provided in this section, payment by one purchaser or user of tangible personal property, extended warranty, or service of the tax imposed by chapter 82.08 or 82.12 RCW shall not have the effect of exempting any other purchaser or user of the same property, extended warranty, or service from the taxes imposed by such chapters. If the sale to, or the use by, the present user or his or her bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by his or her bailor or donor; or in respect to the use of property acquired by bailment and the tax has once been paid based on reasonable rental as determined by RCW 82.12.060 measured by the value of the article at time of first use multiplied by the tax rate imposed by chapter 82.08 RCW or this chapter as of the time of first use; or in respect to the use of any article of tangible personal property acquired by bailment, if the property was acquired by a previous bailee from the same bailor for use in the same general activity and the original bailment was prior to June 9, 1961, the tax imposed by this chapter does not apply.

(5) The tax shall be levied and collected in an amount equal to the value of the article used, value of the extended warranty used, or value of the service used by the taxpayer multiplied by the rates in effect for the retail sales tax under RCW 82.08.020, except in the case of a seller required to collect use tax from the purchaser, the tax shall be collected in an amount equal to the purchase price multiplied by the rate in effect for the retail sales tax under RCW 82.08.020. [2005 c 514 § 105. Prior: 2003 c 361 § 302; 2003 c 168 § 214; 2003 c 5 § 2; 2002 c 367 § 4; 1999 c 358 § 9; 1998 c 332 § 7; 1996 c 148 § 5; 1994 c 93 § 2; 1983 c 7 § 7; 1981 2nd ex.s. c 8 § 2; 1980 c 37 § 79; 1977 ex.s. c 324 § 3; 1975-'76 2nd ex.s. c 130 § 2; 1975-'76 2nd ex.s. c 1 § 2; 1971 ex.s. c 281 § 10; 1969 ex.s. c 262 § 32; 1967 ex.s. c 149 § 22; 1965 ex.s. c 173 § 18; 1961 c 293 § 9; 1961 c 15 § 82.12.020; prior: 1959 ex.s. c 3 § 10; 1955 ex.s. c 10 § 3; 1955 c 389 § 25; 1949 c 228 § 7; 1943 c 156 § 8; 1941 c 76 § 6; 1939 c 225 § 14; 1937 c 191 § 1; 1935 c 180 § 31; Rem. Supp. 1949 § 8370-31.]

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Effective dates—2003 c 361:** See note following RCW 82.08.020.

**Findings—Part headings not law—Severability—2003 c 361:** See notes following RCW 82.36.025.

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**Finding—Intent—Retroactive application—Effective date—2003 c 5:** See notes following RCW 82.12.010.

**Severability—Effective date—2002 c 367:** See notes following RCW 82.04.060.

**Effective date—1999 c 358 §§ 1 and 3-21:** See note following RCW 82.04.3651.

**Findings—Intent—Effective date—1998 c 332:** See notes following RCW 82.04.29001.

**Severability—Effective date—1996 c 148:** See notes following RCW 82.04.050.

**Effective date—1994 c 93:** See note following RCW 82.12.010.

**Construction—Severability—Effective dates—1983 c 7:** See notes following RCW 82.08.020.

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**Effective date—1975-'76 2nd ex.s. c 130:** See note following RCW 82.08.020.

**Application to preexisting contracts—1975-'76 2nd ex.s. c 1:** See note following RCW 82.12.010.

**Severability—1975-'76 2nd ex.s. c 1:** See note following RCW 82.12.010.

*High capacity transportation systems—Sales and use tax: RCW 81.104.170.*

**82.12.0251 Exemptions—Use of tangible personal property by nonresident while temporarily within state—Use of household goods, personal effects, and private motor vehicles acquired in another state while resident of other state—Use of certain warranties.** The provisions of this chapter shall not apply in respect to the use:

(1) Of any article of tangible personal property, and services that were rendered in respect to such property, brought into the state of Washington by a nonresident thereof for his or her use or enjoyment while temporarily within the state of Washington unless such property is used in conducting a nontransitory business activity within the state of Washington;

(2) By a nonresident of Washington of a motor vehicle or trailer which is registered or licensed under the laws of the state of his or her residence, and which is not required to be registered or licensed under the laws of Washington, including motor vehicles or trailers exempt pursuant to a declaration issued by the department of licensing under RCW 46.85.060, and services rendered outside the state of Washington in respect to such property;

(3) Of household goods, personal effects, and private motor vehicles, and services rendered in respect to such property, by a bona fide resident of Washington, or nonresident members of the armed forces who are stationed in Washington pursuant to military orders, if such articles and services were acquired and used by such person in another state while a bona fide resident thereof and such acquisition and use occurred more than ninety days prior to the time he or she entered Washington. For purposes of this subsection, private motor vehicles do not include motor homes;

(4) Of an extended warranty, to the extent that the property covered by the extended warranty is exempt under this section from the tax imposed under this chapter.

For purposes of this section, "state" means a state of the United States, any political subdivision thereof, the District

of Columbia, and any foreign country or political subdivision thereof, and "services" means services defined as retail sales in RCW 82.04.050(2)(a). [2005 c 514 § 106; 2003 c 5 § 18; 1997 c 301 § 1; 1987 c 27 § 1; 1985 c 353 § 4; 1983 c 26 § 2; 1980 c 37 § 51. Formerly RCW 82.12.030(1).]

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Finding—Intent—Retroactive application—Effective date—2003 c 5:** See notes following RCW 82.12.010.

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.12.02545 Repealed. (Effective July 1, 2006.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**82.12.0255 Exemptions—Nontaxable tangible personal property and warranties.** The provisions of this chapter shall not apply in respect to the use of any article of tangible personal property, extended warranty, or service which the state is prohibited from taxing under the Constitution of the state or under the Constitution or laws of the United States. [2005 c 514 § 107; 2003 c 5 § 4; 1980 c 37 § 55. Formerly RCW 82.12.030(5).]

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Finding—Intent—Retroactive application—Effective date—2003 c 5:** See notes following RCW 82.12.010.

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.12.0256 Exemptions—Use of motor vehicle and special fuel—Conditions. (Effective July 1, 2006.)** The provisions of this chapter shall not apply in respect to the use of:

(1) Special fuel purchased in this state upon which a refund is obtained as provided in RCW 82.38.180(2); and

(2) Motor vehicle and special fuel if:

(a) The fuel is used for the purpose of public transportation and the purchaser is entitled to a refund or an exemption under RCW 82.36.275 or 82.38.080(3); or

(b) The fuel is purchased by a private, nonprofit transportation provider certified under chapter 81.66 RCW and the purchaser is entitled to a refund or an exemption under RCW 82.36.285 or 82.38.080(1)(h); or

(c) The fuel is taxable under chapter 82.36 or 82.38 RCW: PROVIDED, That the use of motor vehicle and special fuel upon which a refund of the applicable fuel tax is obtained shall not be exempt under this subsection (2)(c), and the director of licensing shall deduct from the amount of such tax to be refunded the amount of tax due under this chapter and remit the same each month to the department of revenue. [2005 c 443 § 6; 1998 c 176 § 5. Prior: 1983 1st ex.s. c 35 § 3; 1983 c 108 § 2; 1980 c 147 § 2; 1980 c 37 § 56. Formerly RCW 82.12.030(6).]

**Finding—Intent—Effective date—2005 c 443:** See notes following RCW 82.08.0255.

**Rules—Findings—Effective date—1998 c 176:** See RCW 82.36.800, 82.36.900, and 82.36.901.

**Intent—1983 1st ex.s. c 35:** See note following RCW 82.08.0255.

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.12.0295 Repealed. (Effective July 1, 2006.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**82.12.0316 Exemptions—Sales of cigarettes by Indian retailers.** The provisions of this chapter shall not apply in respect to the use of cigarettes sold by an Indian retailer during the effective period of a cigarette tax contract subject to RCW 43.06.455 or a cigarette tax agreement under RCW 43.06.465. [2005 c 11 § 4; 2001 c 235 § 5.]

**Findings—Intent—Explanatory statement—Effective date—2005 c 11:** See notes following RCW 43.06.465.

**Intent—Finding—2001 c 235:** See RCW 43.06.450.

**82.12.035 Credit for retail sales or use taxes paid to other jurisdictions with respect to property used.** A credit shall be allowed against the taxes imposed by this chapter upon the use of tangible personal property, extended warranty, or services taxable under RCW 82.04.050 (2)(a) or (3)(a), in the state of Washington in the amount that the present user thereof or his or her bailor or donor has paid a retail sales or use tax with respect to such property, extended warranty, or service to any other state of the United States, any political subdivision thereof, the District of Columbia, and any foreign country or political subdivision thereof, prior to the use of such property, extended warranty, or service in Washington. [2005 c 514 § 108; 2002 c 367 § 5; 1996 c 148 § 6; 1987 c 27 § 2; 1967 ex.s. c 89 § 5.]

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Severability—Effective date—2002 c 367:** See notes following RCW 82.04.060.

**Severability—Effective date—1996 c 148:** See notes following RCW 82.04.050.

**82.12.040 Retailers to collect tax—Penalty—Continuing expiration of subsection.** (1) Every person who maintains in this state a place of business or a stock of goods, or engages in business activities within this state, shall obtain from the department a certificate of registration, and shall, at the time of making sales of tangible personal property, extended warranties, or sales of any service defined as a retail sale in RCW 82.04.050 (2)(a) or (3)(a), or making transfers of either possession or title, or both, of tangible personal property for use in this state, collect from the purchasers or transferees the tax imposed under this chapter. The tax to be collected under this section shall be in an amount equal to the purchase price multiplied by the rate in effect for the retail sales tax under RCW 82.08.020. For the purposes of this chapter, the phrase "maintains in this state a place of business" shall include the solicitation of sales and/or taking of orders by sales agents or traveling representatives. For the purposes of this chapter, "engages in business activity within this state" includes every activity which is sufficient under the Constitution of the United States for this state to require collection of tax under this chapter. The department shall in rules specify activities which constitute engaging in business activity within this state, and shall keep the rules current with future court interpretations of the Constitution of the United States.

(2) Every person who engages in this state in the business of acting as an independent selling agent for persons who do not hold a valid certificate of registration, and who receives compensation by reason of sales of tangible personal property, extended warranties, or sales of any service defined as a retail sale in RCW 82.04.050 (2)(a) or (3)(a), of his or her principals for use in this state, shall, at the time such sales are made, collect from the purchasers the tax imposed on the purchase price under this chapter, and for that purpose shall be deemed a retailer as defined in this chapter.

(3) The tax required to be collected by this chapter shall be deemed to be held in trust by the retailer until paid to the department and any retailer who appropriates or converts the tax collected to the retailer's own use or to any use other than the payment of the tax provided herein to the extent that the money required to be collected is not available for payment on the due date as prescribed shall be guilty of a misdemeanor. In case any seller fails to collect the tax herein imposed or having collected the tax, fails to pay the same to the department in the manner prescribed, whether such failure is the result of the seller's own acts or the result of acts or conditions beyond the seller's control, the seller shall nevertheless, be personally liable to the state for the amount of such tax, unless the seller has taken from the buyer in good faith a copy of a direct pay permit issued under RCW 82.32.087.

(4) Any retailer who refunds, remits, or rebates to a purchaser, or transferee, either directly or indirectly, and by whatever means, all or any part of the tax levied by this chapter shall be guilty of a misdemeanor.

(5) Notwithstanding subsections (1) through (4) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if:

(a) The person's activities in this state, whether conducted directly or through another person, are limited to:

- (i) The storage, dissemination, or display of advertising;
- (ii) The taking of orders; or
- (iii) The processing of payments; and

(b) The activities are conducted electronically via a web site on a server or other computer equipment located in Washington that is not owned or operated by the person making sales into this state nor owned or operated by an affiliated person. "Affiliated persons" has the same meaning as provided in RCW 82.04.424.

(6) Subsection (5) of this section expires when: (a) The United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or (b) it is determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers. [2005 c 514 § 109. Prior: 2003 c 168 § 215; 2003 c 76 § 4; 2001 c 188 § 5; 1986 c 48 § 1; 1971 ex.s. c 299 § 11; 1961 c 293 § 11; 1961 c 15 § 82.12.040; prior: 1955 c 389 § 27; 1945 c 249 § 7; 1941 c 178 § 10; 1939 c 225 § 16; Rem. Supp. 1945 § 8370-33; prior: 1935 c 180 § 33.]

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**Intent—2003 c 76:** See note following RCW 82.04.424.

**Finding—Intent—Effective date—2001 c 188:** See notes following RCW 82.32.087.

**Effective date—1986 c 48:** "This act shall take effect July 1, 1986." [1986 c 48 § 2.]

**Effective dates—Severability—1971 ex.s. c 299:** See notes following RCW 82.04.050.

*Project on exemption reporting requirements: RCW 82.32.440.*

**82.12.807 Exemptions—Direct mail delivery charges.** (1) The tax levied by this chapter does not apply to the value of delivery charges made for the delivery of direct mail if the charges are separately stated on an invoice or similar billing document given to the purchaser.

(2) "Delivery charges" and "direct mail" have the same meanings as in RCW 82.08.010. [2005 c 514 § 116.]

**Effective date—2005 c 514:** See note following RCW 82.04.4272.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**82.12.808 Exemptions—Use of medical supplies, chemicals, or materials by comprehensive cancer centers. (Effective July 1, 2006.)** (1) The provisions of this chapter do not apply in respect to the use of medical supplies, chemicals, or materials by a comprehensive cancer center. The exemption in this section does not apply to the use of construction materials, office equipment, building equipment, administrative supplies, or vehicles.

(2) The definitions in RCW 82.04.4265 and 82.08.808 apply to this section. [2005 c 514 § 403.]

**Part headings not law—2005 c 514:** "Part headings used in this act are not any part of the law." [2005 c 514 § 1301.]

**Severability—2005 c 514:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 514 § 1309.]

**Effective date—2005 c 514 §§ 401-403:** See note following RCW 82.04.4265.

**82.12.809 Exemptions—Vehicles using clean alternative fuels. (Effective January 1, 2009, until January 1, 2011.)** (1) The provisions of this chapter do not apply in respect to the use of new passenger cars, light duty trucks, and medium duty passenger vehicles, which are exclusively powered by a clean alternative fuel.

(2) "Clean alternative fuel" has the same meaning as provided in RCW 82.08.809. [2005 c 296 § 3.]

**Effective date—Expiration date—2005 c 296:** See notes following RCW 82.08.809.

**82.12.813 Exemptions—High gas mileage vehicles. (Effective January 1, 2009, until January 1, 2011.)** (1) The provisions of this chapter do not apply in respect to the use of new passenger cars, light duty trucks, and medium duty passenger vehicles, which utilize hybrid technology and have a United States environmental protection agency estimated highway gasoline mileage rating of at least forty miles per gallon.

(2) "Hybrid technology" has the same meaning as provided in RCW 82.08.813. [2005 c 296 § 4.]

**Effective date—Expiration date—2005 c 296:** See notes following RCW 82.08.809.

**82.12.820 Exemptions—Warehouse and grain elevators and distribution centers. (Effective July 1, 2007.)** (1) Wholesalers or third-party warehouse owners who own or operate warehouses or grain elevators, and retailers who own or operate distribution centers, and who have paid the tax levied under RCW 82.12.020 on:

(a) Material-handling equipment and racking equipment and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment; or

(b) Materials incorporated in the construction of a warehouse or grain elevator, are eligible for an exemption on tax paid in the form of a remittance or credit against tax owed. The amount of the remittance or credit is computed under subsection (2) of this section and is based on the state share of use tax.

(2)(a) A person claiming an exemption from state tax in the form of a remittance under this section must pay the tax imposed by RCW 82.12.020 to the department. The person may then apply to the department for remittance of all or part of the tax paid under RCW 82.12.020. For grain elevators with bushel capacity of one million but less than two million, the remittance is equal to fifty percent of the amount of tax paid. For warehouses with square footage of two hundred thousand or more, other than cold storage warehouses, and for grain elevators with bushel capacity of two million or more, the remittance is equal to one hundred percent of the amount of tax paid for qualifying construction materials, and fifty percent of the amount of tax paid for qualifying material-handling equipment and racking equipment. For cold storage warehouses with square footage of twenty-five thousand or more, the remittance is equal to one hundred percent of the amount of tax paid for qualifying construction, materials, service, and labor, and one hundred percent of the amount of tax paid for qualifying material-handling equipment and racking equipment, and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment.

(b) The department shall determine eligibility under this section based on information provided by the buyer and through audit and other administrative records. The buyer shall on a quarterly basis submit an information sheet, in a form and manner as required by the department by rule, specifying the amount of exempted tax claimed and the qualifying purchases or acquisitions for which the exemption is claimed. The buyer shall retain, in adequate detail to enable the department to determine whether the equipment or construction meets the criteria under this section: Invoices; proof of tax paid; documents describing the material-handling equipment and racking equipment; location and size of warehouses, if applicable; and construction invoices and documents.

(c) The department shall on a quarterly basis remit or credit exempted amounts to qualifying persons who submitted applications during the previous quarter.

(3) Warehouse, grain elevators, and material-handling equipment and racking equipment for which an exemption, credit, or deferral has been or is being received under chapter 82.60, 82.61, 82.62, or 82.63 RCW or RCW 82.08.02565 or 82.12.02565 are not eligible for any remittance under this section. Materials incorporated in warehouses and grain elevators upon which construction was initiated prior to May 20, 1997, are not eligible for a remittance under this section.

(4) The lessor or owner of the warehouse or grain elevator is not eligible for a remittance or credit under this section unless the underlying ownership of the warehouse or grain elevator and material-handling equipment and racking equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the exemption to the lessee in the form of reduced rent payments.

(5) The definitions in RCW 82.08.820 apply to this section. [2005 c 513 § 12; 2003 c 5 § 13; 2000 c 103 § 9; 1997 c 450 § 3.]

**Effective dates—2005 c 513:** See note following RCW 82.04.4266.

**Finding—Intent—Retroactive application—Effective date—2003 c 5:** See notes following RCW 82.12.010.

**Findings—Intent—Report—Effective date—1997 c 450:** See notes following RCW 82.08.820.

**82.12.840 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**82.12.841 Exemptions—Farming equipment—Hay sheds. (Expires January 1, 2011.)** (1) The tax levied by RCW 82.12.020 does not apply in respect to:

(a) The use of the following machinery and equipment by qualified farmers: No-till drills, minimum-till drills, chisels, plows, sprayers, discs, cultivators, harrows, mowers, swathers, power rakes, balers, bale handlers, shredders, transplanter, tractors two hundred fifty horsepower and over designed to pull conservation equipment on steep hills and highly erodible lands, and combine components limited to straw choppers, chaff spreaders, and stripper headers; and

(b) The use of tangible personal property that will be incorporated as an ingredient or component of hay sheds by a qualified farmer, during the course of constructing such hay sheds.

(2) The eligibility requirements, conditions, and definitions in RCW 82.08.841 apply to this section.

(3) This section expires January 1, 2011. [2005 c 420 § 3.]

**Findings—Effective date—2005 c 420:** See notes following RCW 82.08.841.

## Chapter 82.14 RCW

### LOCAL RETAIL SALES AND USE TAXES

Sections	
82.14.020	Definitions—Where retail sale occurs. ( <i>Contingent expiration date.</i> )
82.14.020	Definitions—Where retail sale occurs. ( <i>Contingent effective date.</i> )
82.14.0455	Sales and use tax for transportation benefit districts.
82.14.050	Administration and collection—Local sales and use tax account.
82.14.060	Distributions to counties, cities, transportation authorities, public facilities districts, and transportation benefit districts—Imposition at excess rates, effect.
82.14.310	County criminal justice assistance account—Transfers from general fund—Distributions based on crime rate and population—Limitations.
82.14.460	Sales and use tax for chemical dependency or mental health treatment services or therapeutic courts.

**82.14.020 Definitions—Where retail sale occurs. (Contingent expiration date.)** For purposes of this chapter:

(1) A retail sale consisting solely of the sale of tangible personal property shall be deemed to have occurred at the retail outlet at or from which delivery is made to the consumer;

(2) A retail sale consisting essentially of the performance of personal, business, or professional services shall be deemed to have occurred at the place at which such services were primarily performed, except that for the performance of a tow truck service, as defined in RCW 46.55.010, the retail sale shall be deemed to have occurred at the place of business of the operator of the tow truck service;

(3) A retail sale consisting of the rental of tangible personal property shall be deemed to have occurred (a) in the case of a rental involving periodic rental payments, at the place of primary use by the lessee during the period covered by each payment, or (b) in all other cases, at the place of first use by the lessee;

(4) A retail sale within the scope of RCW 82.04.050(2), and a retail sale of taxable personal property to be installed by the seller shall be deemed to have occurred at the place where the labor and services involved were primarily performed;

(5)(a) A retail sale consisting of the providing to a consumer of telephone service, as defined in RCW 82.04.065, other than a sale of tangible personal property under subsection (1) of this section or a rental of tangible personal property under subsection (3) of this section or a sale of mobile telecommunications services, shall be deemed to have occurred at the situs of the telephone or other instrument through which the telephone service is rendered;

(b) A retail sale consisting of the providing of telecommunications services shall be sourced in accordance with RCW 82.32.520;

(6) A retail sale of linen and uniform supply services is deemed to occur as provided in RCW 82.08.0202;

(7) A retail sale consisting of an extended warranty shall be deemed to have occurred at the business location of the seller if the extended warranty is received by the purchaser at that location. If an extended warranty is not received by the purchaser at the business location of the seller, a retail sale of an extended warranty shall be deemed to have occurred at the location where receipt by the buyer occurs;

(8) "City" means a city or town;

(9) The meaning ascribed to words and phrases in chapters 82.04, 82.08 and 82.12 RCW, as now or hereafter amended, insofar as applicable, shall have full force and effect with respect to taxes imposed under authority of this chapter;

(10) "Taxable event" shall mean any retail sale, or any use, upon which a state tax is imposed pursuant to chapter 82.08 or 82.12 RCW, as they now exist or may hereafter be amended: PROVIDED, HOWEVER, That the term shall not include a retail sale taxable pursuant to RCW 82.08.150, as now or hereafter amended;

(11) "Treasurer or other legal depository" shall mean the treasurer or legal depository of a county or city. [2005 c 514 § 111; 2003 c 168 § 502. Prior: 2002 c 367 § 6; 2002 c 67 § 7; 2001 c 186 § 3; 1997 c 201 § 1; 1983 2nd ex.s. c 3 § 31; 1982 c 211 § 1; 1981 c 144 § 4; 1970 ex.s. c 94 § 3.]

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**Severability—Effective date—2002 c 367:** See notes following RCW 82.04.060.

**Finding—Contingency—Court judgment—Effective date—2002 c 67:** See notes following RCW 82.04.530.

**Finding—Purpose—Effective date—2001 c 186:** See notes following RCW 82.08.0202.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Intent—Severability—Effective date—1981 c 144:** See notes following RCW 82.16.010.

**82.14.020 Definitions—Where retail sale occurs. (Contingent effective date.)** For purposes of this chapter:

(1) A retail sale consisting solely of the sale of tangible personal property shall be deemed to have occurred at the retail outlet at or from which delivery is made to the consumer;

(2) A retail sale consisting essentially of the performance of personal, business, or professional services shall be deemed to have occurred at the place at which such services were primarily performed, except that for the performance of a tow truck service, as defined in RCW 46.55.010, the retail sale shall be deemed to have occurred at the place of business of the operator of the tow truck service;

(3) A retail sale consisting of the rental of tangible personal property shall be deemed to have occurred (a) in the case of a rental involving periodic rental payments, at the primary place of use by the lessee during the period covered by each payment, or (b) in all other cases, at the place of first use by the lessee;

(4) A retail sale within the scope of RCW 82.04.050(2), and a retail sale of taxable personal property to be installed by the seller shall be deemed to have occurred at the place where the labor and services involved were primarily performed;

(5) A retail sale consisting of the providing of telecommunications services shall be sourced in accordance with RCW 82.32.520;

(6) A retail sale of linen and uniform supply services is deemed to occur as provided in RCW 82.08.0202;

(7) A retail sale consisting of an extended warranty shall be deemed to have occurred at the business location of the seller if the extended warranty is received by the purchaser at that location. If an extended warranty is not received by the purchaser at the business location of the seller, a retail sale of an extended warranty shall be deemed to have occurred at the location where receipt by the buyer occurs;

(8) "City" means a city or town;

(9) The meaning ascribed to words and phrases in chapters 82.04, 82.08 and 82.12 RCW, as now or hereafter amended, insofar as applicable, shall have full force and effect with respect to taxes imposed under authority of this chapter;

(10) "Taxable event" shall mean any retail sale, or any use, upon which a state tax is imposed pursuant to chapter 82.08 or 82.12 RCW, as they now exist or may hereafter be amended: PROVIDED, HOWEVER, That the term shall not include a retail sale taxable pursuant to RCW 82.08.150, as now or hereafter amended;

(11) "Treasurer or other legal depository" shall mean the treasurer or legal depository of a county or city. [2005 c 514

§ 112; 2003 c 168 § 503; 2002 c 367 § 6; 2001 c 186 § 3; 1997 c 201 § 1; 1983 2nd ex.s. c 3 § 31; 1982 c 211 § 1; 1981 c 144 § 4; 1970 ex.s. c 94 § 3.]

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Part headings not law—2003 c 168:** See note following RCW 82.08.010.

**Severability—Effective date—2002 c 367:** See notes following RCW 82.04.060.

**Finding—Purpose—Effective date—2001 c 186:** See notes following RCW 82.08.0202.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Intent—Severability—Effective date—1981 c 144:** See notes following RCW 82.16.010.

**82.14.0455 Sales and use tax for transportation benefit districts.** (1) Subject to the provisions in RCW 36.73.065, a transportation benefit district under chapter 36.73 RCW may fix and impose a sales and use tax in accordance with the terms of this chapter. The tax authorized in this section is in addition to any other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the boundaries of the district. The rate of tax shall not exceed two-tenths of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax. The tax may not be imposed for a period exceeding ten years. This tax may be extended for a period not exceeding ten years with an affirmative vote of the voters voting at the election.

(2) Money received from the tax imposed under this section must be spent in accordance with the requirements of chapter 36.73 RCW.

(3) A district may only levy the tax under this section if the district is comprised of boundaries coextensive with the boundaries of a county, counties, city or cities, a county transportation authority or authorities, a public transportation benefit area or areas, or any combination of these jurisdictions. [2005 c 336 § 15.]

**Effective date—2005 c 336:** See note following RCW 36.73.015.

**82.14.050 Administration and collection—Local sales and use tax account.** The counties, cities, and transportation authorities under RCW 82.14.045, public facilities districts under chapters 36.100 and 35.57 RCW, public transportation benefit areas under RCW 82.14.440, regional transportation investment districts, and transportation benefit districts under chapter 36.73 RCW shall contract, prior to the effective date of a resolution or ordinance imposing a sales and use tax, the administration and collection to the state department of revenue, which shall deduct a percentage amount, as provided by contract, not to exceed two percent of the taxes collected for administration and collection expenses incurred by the department. The remainder of any portion of any tax authorized by this chapter that is collected by the department of revenue shall be deposited by the state department of revenue in the local sales and use tax account hereby created in the state treasury. Moneys in the local sales and use tax account may be spent only for distribution to coun-

ties, cities, transportation authorities, public facilities districts, public transportation benefit areas, regional transportation investment districts, and transportation benefit districts imposing a sales and use tax. All administrative provisions in chapters 82.03, 82.08, 82.12, and 82.32 RCW, as they now exist or may hereafter be amended, shall, insofar as they are applicable to state sales and use taxes, be applicable to taxes imposed pursuant to this chapter. Counties, cities, transportation authorities, public facilities districts, and regional transportation investment districts may not conduct independent sales or use tax audits of sellers registered under the streamlined sales tax agreement. Except as provided in RCW 43.08.190, all earnings of investments of balances in the local sales and use tax account shall be credited to the local sales and use tax account and distributed to the counties, cities, transportation authorities, public facilities districts, public transportation benefit areas, regional transportation investment districts, and transportation benefit districts monthly. [2005 c 336 § 20. Prior: 2003 c 168 § 201; 2003 c 83 § 208; 2002 c 56 § 406; 1999 c 165 § 14; 1991 sp.s. c 13 § 34; 1991 c 207 § 2; 1990 2nd ex.s. c 1 § 201; 1985 c 57 § 81; 1981 2nd ex.s. c 4 § 10; 1971 ex.s. c 296 § 3; 1970 ex.s. c 94 § 6.]

**Effective date—2005 c 336:** See note following RCW 36.73.015.

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83:** See notes following RCW 36.57A.200.

**Captions and subheadings not law—Severability—2002 c 56:** See RCW 36.120.900 and 36.120.901.

**Severability—1999 c 164:** See RCW 35.57.900.

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**Applicability—1990 2nd ex.s. c 1 §§ 201-204:** "Sections 201 through 204 of this act shall not be effective for earnings on balances prior to July 1, 1990, regardless of when a distribution is made." [1990 2nd ex.s. c 1 § 205.]

**Severability—1990 2nd ex.s. c 1:** See note following RCW 82.14.300.

**Effective date—1985 c 57:** See note following RCW 18.04.105.

**Severability—1981 2nd ex.s. c 4:** See note following RCW 43.30.325.

**Legislative finding, declaration—Severability—1971 ex.s. c 296:** See notes following RCW 82.14.045.

**82.14.060 Distributions to counties, cities, transportation authorities, public facilities districts, and transportation benefit districts—Imposition at excess rates, effect.** Monthly the state treasurer shall make distribution from the local sales and use tax account to the counties, cities, transportation authorities, public facilities districts, and transportation benefit districts the amount of tax collected on behalf of each taxing authority, less the deduction provided for in RCW 82.14.050. The state treasurer shall make the distribution under this section without appropriation.

In the event that any ordinance or resolution imposes a sales and use tax at a rate in excess of the applicable limits contained herein, such ordinance or resolution shall not be considered void in toto, but only with respect to that portion of the rate which is in excess of the applicable limits contained herein. [2005 c 336 § 21; 1991 c 207 § 3; 1990 2nd ex.s. c 1 § 202; 1981 2nd ex.s. c 4 § 11; 1971 ex.s. c 296 § 4; 1970 ex.s. c 94 § 7.]

**Effective date—2005 c 336:** See note following RCW 36.73.015.

**Applicability—1990 2nd ex.s. c 1:** See note following RCW 82.14.050.

**Severability—1990 2nd ex.s. c 1:** See note following RCW 82.14.300.

**Severability—1981 2nd ex.s. c 4:** See note following RCW 43.30.325.

**Legislative finding, declaration—Severability—1971 ex.s. c 296:** See notes following RCW 82.14.045.

**82.14.310 County criminal justice assistance account—Transfers from general fund—Distributions based on crime rate and population—Limitations.** (1) The county criminal justice assistance account is created in the state treasury. Beginning in fiscal year 2000, the state treasurer shall transfer into the county criminal justice assistance account from the general fund the sum of twenty-three million two hundred thousand dollars divided into four equal deposits occurring on July 1, October 1, January 1, and April 1. For each fiscal year thereafter, the state treasurer shall increase the total transfer by the fiscal growth factor, as defined in RCW 43.135.025, forecast for that fiscal year by the office of financial management in November of the preceding year.

(2) The moneys deposited in the county criminal justice assistance account for distribution under this section, less any moneys appropriated for purposes under subsection (4) of this section, shall be distributed at such times as distributions are made under \*RCW 82.44.150 and on the relative basis of each county's funding factor as determined under this subsection.

(a) A county's funding factor is the sum of:

(i) The population of the county, divided by one thousand, and multiplied by two-tenths;

(ii) The crime rate of the county, multiplied by three-tenths; and

(iii) The annual number of criminal cases filed in the county superior court, for each one thousand in population, multiplied by five-tenths.

(b) Under this section and RCW 82.14.320 and 82.14.330:

(i) The population of the county or city shall be as last determined by the office of financial management;

(ii) The crime rate of the county or city is the annual occurrence of specified criminal offenses, as calculated in the most recent annual report on crime in Washington state as published by the Washington association of sheriffs and police chiefs, for each one thousand in population;

(iii) The annual number of criminal cases filed in the county superior court shall be determined by the most recent annual report of the courts of Washington, as published by the administrative office of the courts;

(iv) Distributions and eligibility for distributions in the 1989-91 biennium shall be based on 1988 figures for both the crime rate as described under (ii) of this subsection and the annual number of criminal cases that are filed as described under (iii) of this subsection. Future distributions shall be based on the most recent figures for both the crime rate as described under (ii) of this subsection and the annual number of criminal cases that are filed as described under (iii) of this subsection.

(3) Moneys distributed under this section shall be expended exclusively for criminal justice purposes and shall not be used to replace or supplant existing funding. Criminal

justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil or juvenile justice system occurs, and which includes (a) domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in RCW 70.123.020, and (b) during the 2001-2003 fiscal biennium, juvenile dispositional hearings relating to petitions for at-risk youth, truancy, and children in need of services. Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes. Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures.

(4) Not more than five percent of the funds deposited to the county criminal justice assistance account shall be available for appropriations for enhancements to the state patrol crime laboratory system and the continuing costs related to these enhancements. Funds appropriated from this account for such enhancements shall not supplant existing funds from the state general fund. [2005 c 282 § 49; 2001 2nd sp.s. c 7 § 915; 1999 c 309 § 920; 1998 c 321 § 11 (Referendum Bill No. 49, approved November 3, 1998); 1995 c 398 § 11; 1993 sp.s. c 21 § 1; 1991 c 311 § 1; 1990 2nd ex.s. c 1 § 102.]

**\*Reviser's note:** RCW 82.44.150 was repealed by 2003 c 1 § 5 (Initiative Measure No. 776, approved November 5, 2002).

**Severability—Effective date—2001 2nd sp.s. c 7:** See notes following RCW 43.320.110.

**Severability—Effective date—1999 c 309:** See notes following RCW 41.14.045.

**Purpose—Severability—1998 c 321:** See notes following RCW 82.14.045.

**Effective dates—Application—1998 c 321 §§ 1-21, 44, and 45:** See note following RCW 82.14.045.

**Referral to electorate—1998 c 321 §§ 1-21 and 44-46:** See note following RCW 82.14.045.

**Effective dates—1993 sp.s. c 21:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993, except for section 4 of this act, which shall take effect immediately [May 28, 1993], and sections 1 through 3, 5, and 7 of this act, which shall take effect January 1, 1994." [1993 sp.s. c 21 § 10.]

**Severability—1991 c 311:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 311 § 8.]

**Effective dates—1990 2nd ex.s. c 1:** See note following RCW 84.52.010.

**Severability—1990 2nd ex.s. c 1:** See note following RCW 82.14.300.

**82.14.460 Sales and use tax for chemical dependency or mental health treatment services or therapeutic courts.**

(1) A county legislative authority may authorize, fix, and impose a sales and use tax in accordance with the terms of this chapter.

(2) The tax authorized in this section shall be in addition to any other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county. The rate of tax shall equal one-



tenth of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

(3) Moneys collected under this section shall be used solely for the purpose of providing new or expanded chemical dependency or mental health treatment services and for the operation of new or expanded therapeutic court programs. Moneys collected under this section shall not be used to supplant existing funding for these purposes. [2005 c 504 § 804.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

## Chapter 82.16 RCW PUBLIC UTILITY TAX

### Sections

82.16.110	Renewable energy system cost recovery—Definitions.
82.16.120	Renewable energy system cost recovery—Application to light/power business—Certification—Limitations.
82.16.130	Renewable energy system cost recovery—Light/power business tax credit.
82.16.140	Renewable energy system cost recovery—Report to legislature.

**82.16.110 Renewable energy system cost recovery—Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Customer-generated electricity" means the alternating current electricity that is generated from a renewable energy system located on an individual's, businesses', or local government's real property that is also provided electricity generated by a light and power business. A system located on a leasehold interest does not qualify under this definition. "Customer-generated electricity" does not include electricity generated by a light and power business with greater than one thousand megawatt hours of annual sales or a gas distribution business.

(2) "Economic development kilowatt-hour" means the actual kilowatt-hour measurement of customer-generated electricity multiplied by the appropriate economic development factor.

(3) "Photovoltaic cell" means a device that converts light directly into electricity without moving parts.

(4) "Renewable energy system" means a solar energy system, an anaerobic digester as defined in RCW 82.08.900, or a wind generator used for producing electricity.

(5) "Solar energy system" means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity.

(6) "Solar inverter" means the device used to convert direct current to alternating current in a photovoltaic cell system.

(7) "Solar module" means the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output.

(8) "Standards for interconnection to the electric distribution system" means technical, engineering, operational, safety, and procedural requirements for interconnection to

the electric distribution system of a light and power business. [2005 c 300 § 2.]

**Findings—Intent—2005 c 300:** "The legislature finds that the use of renewable energy resources generated from local sources such as solar and wind power benefit our state by reducing the load on the state's electric energy grid, by providing nonpolluting sources of electricity generation, and by the creation of jobs for local industries that develop and sell renewable energy products and technologies.

The legislature finds that Washington state has become a national and international leader in the technologies related to the solar electric markets. The state can support these industries by providing incentives for the purchase of locally made renewable energy products. Locally made renewable technologies benefit and protect the state's environment. The legislature also finds that the state's economy can be enhanced through the creation of incentives to develop additional renewable energy industries in the state.

The legislature intends to provide incentives for the greater use of locally created renewable energy technologies, support and retain existing local industries, and create new opportunities for renewable energy industries to develop in Washington state." [2005 c 300 § 1.]

**Effective date—2005 c 300:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 300 § 8.]

**82.16.120 Renewable energy system cost recovery—Application to light/power business—Certification—Limitations.** (1) Any individual, business, or local governmental entity, not in the light and power business or in the gas distribution business, may apply to the light and power business serving the situs of the system, each fiscal year beginning on July 1, 2005, for an investment cost recovery incentive for each kilowatt-hour from a customer-generated electricity renewable energy system installed on its property that is not interconnected to the electric distribution system. No incentive may be paid for kilowatt-hours generated before July 1, 2005, or after June 30, 2014.

(2) When light and power businesses serving eighty percent of the total customer load in the state adopt uniform standards for interconnection to the electric distribution system, any individual, business, or local governmental entity, not in the light and power business or in the gas distribution business, may apply to the light and power business serving the situs of the system, each fiscal year, for an investment cost recovery incentive for each kilowatt-hour from a customer-generated electricity renewable energy system installed on its property that is interconnected to the electric distribution system. Uniform standards for interconnection to the electric distribution system means those standards established by light and power businesses that have ninety percent of total requirements the same. No incentive may be paid for kilowatt-hours generated before July 1, 2005, or after June 30, 2014.

(3)(a) Before submitting for the first time the application for the incentive allowed under this section, the applicant shall submit to the department of revenue and to the climate and rural energy development center at the Washington State University, established under RCW 28B.30.642, a certification in a form and manner prescribed by the department that includes, but is not limited to, the following information:

(i) The name and address of the applicant and location of the renewable energy system;

(ii) The applicant's tax registration number;

(iii) That the electricity produced by the applicant meets the definition of "customer-generated electricity" and that the renewable energy system produces electricity with:

(A) Any solar inverters and solar modules manufactured in Washington state;

(B) A wind generator powered by blades manufactured in Washington state;

(C) A solar inverter manufactured in Washington state;

(D) A solar module manufactured in Washington state;

or  
(E) Solar or wind equipment manufactured outside of Washington state;

(iv) That the electricity can be transformed or transmitted for entry into or operation in parallel with electricity transmission and distribution systems;

(v) The date that the renewable energy system received its final electrical permit from the applicable local jurisdiction.

(b) Within thirty days of receipt of the certification the department of revenue shall advise the applicant in writing whether the renewable energy system qualifies for an incentive under this section. The department may consult with the climate and rural energy development center to determine eligibility for the incentive. System certifications and the information contained therein are subject to disclosure under RCW 82.32.330(3)(m).

(4)(a) By August 1st of each year application for the incentive shall be made to the light and power business serving the situs of the system by certification in a form and manner prescribed by the department that includes, but is not limited to, the following information:

(i) The name and address of the applicant and location of the renewable energy system;

(ii) The applicant's tax registration number;

(iii) The date of the letter from the department of revenue stating that the renewable energy system is eligible for the incentives under this section;

(iv) A statement of the amount of kilowatt-hours generated by the renewable energy system in the prior fiscal year.

(b) Within sixty days of receipt of the incentive certification the light and power business serving the situs of the system shall notify the applicant in writing whether the incentive payment will be authorized or denied. The business may consult with the climate and rural energy development center to determine eligibility for the incentive payment. Incentive certifications and the information contained therein are subject to disclosure under RCW 82.32.330(3)(m).

(c)(i) Persons receiving incentive payments shall keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of incentive applied for and received. Such records shall be open for examination at any time upon notice by the light and power business that made the payment or by the department. If upon examination of any records or from other information obtained by the business or department it appears that an incentive has been paid in an amount that exceeds the correct amount of incentive payable, the business may assess against the person for the amount found to have been paid in excess of the correct amount of incentive payable and shall add thereto interest on the amount. Interest shall be assessed in

the manner that the department assesses interest upon delinquent tax under RCW 82.32.050.

(ii) If it appears that the amount of incentive paid is less than the correct amount of incentive payable the business may authorize additional payment.

(5) The investment cost recovery incentive may be paid fifteen cents per economic development kilowatt-hour unless requests exceed the amount authorized for credit to the participating light and power business. For the purposes of this section, the rate paid for the investment cost recovery incentive may be multiplied by the following factors:

(a) For customer-generated electricity produced using solar modules manufactured in Washington state, two and four-tenths;

(b) For customer-generated electricity produced using a solar or a wind generator equipped with an inverter manufactured in Washington state, one and two-tenths;

(c) For customer-generated electricity produced using an anaerobic digester, or by other solar equipment or using a wind generator equipped with blades manufactured in Washington state, one; and

(d) For all other customer-generated electricity produced by wind, eight-tenths.

(6) No individual, household, business, or local governmental entity is eligible for incentives for more than two thousand dollars per year.

(7) If requests for the investment cost recovery incentive exceed the amount of funds available for credit to the participating light and power business, the incentive payments shall be reduced proportionately.

(8) The climate and rural energy development center at Washington State University energy program may establish guidelines and standards for technologies that are identified as Washington manufactured and therefore most beneficial to the state's environment.

(9) The environmental attributes of the renewable energy system belong to the applicant, and do not transfer to the state or the light and power business upon receipt of the investment cost recovery incentive. [2005 c 300 § 3.]

**Findings—Intent—Effective date—2005 c 300:** See notes following RCW 82.16.110.

**82.16.130 Renewable energy system cost recovery—Light/power business tax credit.** (1) A light and power business shall be allowed a credit against taxes due under this chapter in an amount equal to investment cost recovery incentive payments made in any fiscal year under RCW 82.16.120. The credit shall be taken in a form and manner as required by the department. The credit under this section for the fiscal year shall not exceed twenty-five one-hundredths of one percent of the businesses' taxable power sales due under RCW 82.16.020(1)(b) or twenty-five thousand dollars, whichever is greater. The credit may not exceed the tax that would otherwise be due under this chapter. Refunds shall not be granted in the place of credits. Expenditures not used to earn a credit in one fiscal year may not be used to earn a credit in subsequent years.

(2) For any business that has claimed credit for amounts that exceed the correct amount of the incentive payable under RCW 82.16.120, the amount of tax against which credit was claimed for the excess payments shall be immediately due

and payable. The department shall assess interest but not penalties on the taxes against which the credit was claimed. Interest shall be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the credit was claimed, and shall accrue until the taxes against which the credit was claimed are repaid.

(3) The right to earn tax credits under this section expires June 30, 2015. Credits may not be claimed after June 30, 2016. [2005 c 300 § 4.]

**Findings—Intent—Effective date—2005 c 300:** See notes following RCW 82.16.110.

**82.16.140 Renewable energy system cost recovery—Report to legislature.** (1) Using existing sources of information, the department shall report to the house appropriations committee, the house committee dealing with energy issues, the senate committee on ways and means, and the senate committee dealing with energy issues by December 1, 2009. The report shall measure the impacts of chapter 300, Laws of 2005, including the total number of solar energy system manufacturing companies in the state, any change in the number of solar energy system manufacturing companies in the state, and, where relevant, the effect on job creation, the number of jobs created for Washington residents, and such other factors as the department selects.

(2) The department shall not conduct any new surveys to provide the report in subsection (1) of this section. [2005 c 300 § 5.]

**Findings—Intent—Effective date—2005 c 300:** See notes following RCW 82.16.110.

## Chapter 82.19 RCW LITTER TAX

### Sections

82.19.050 Exemptions.

**82.19.050 Exemptions.** The litter tax imposed in this chapter does not apply to:

(1) The manufacture or sale of products for use and consumption outside the state;

(2) The value of products or gross proceeds of the sales exempt from tax under RCW 82.04.330;

(3) The sale of products for resale by a qualified grocery distribution cooperative to customer-owners of the grocery distribution cooperative. For the purposes of this section, "qualified grocery distribution cooperative" and "customer-owner" have the meanings given in RCW 82.04.298;

(4) The sale of food or beverages by retailers that are sold solely for immediate consumption indoors at the seller's place of business or at a deck or patio at the seller's place of business, or indoors at an eating area that is contiguous to the seller's place of business; or

(5)(a) The sale of prepared food or beverages by caterers where the food or beverages are to be served for immediate consumption in or on individual nonsingle use containers at premises occupied or controlled by the customer.

(b) For the purposes of this subsection, the following definitions apply:

(i) "Prepared food" has the same meaning as provided in RCW 82.08.0293.

(ii) "Nonsingle use container" means a receptacle for holding a single individual's food or beverage that is designed to be used more than once. Nonsingle use containers do not include pizza delivery bags and similar insulated containers that do not directly contact the food. Nonsingle use containers do not include plastic or paper plates or other containers that are disposable.

(iii) "Caterer" means a person contracted to prepare food where the final cooking or serving occurs at a location selected by the customer. [2005 c 289 § 1; 2003 c 120 § 1; 2001 1st sp.s. c 9 § 7; (2001 1st sp.s. c 9 § 8 expired July 22, 2001); 2001 c 118 § 7; 1992 c 175 § 7; 1971 ex.s. c 307 § 17. Formerly RCW 70.93.170.]

**Effective date—2003 c 120:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2003]." [2003 c 120 § 2.]

**Effective dates—2001 1st sp.s. c 9:** See note following RCW 82.04.298.

**Expiration dates—2001 1st sp.s. c 9:** See note following RCW 82.04.290.

## Chapter 82.24 RCW TAX ON CIGARETTES

### Sections

82.24.026 Additional tax imposed—Deposit into accounts.  
82.24.300 Exceptions—Puyallup Tribe of Indians.  
82.24.550 Enforcement—Rules—Notice—Hearing—Reinstatement of license—Appeal.

**82.24.026 Additional tax imposed—Deposit into accounts.** (1) In addition to the tax imposed upon the sale, use, consumption, handling, possession, or distribution of cigarettes set forth in RCW 82.24.020, there is imposed a tax in an amount equal to the rate of thirty mills per cigarette.

(2) The revenue collected under this section shall be deposited as follows:

(a) 21.7 percent shall be deposited into the health services account.

(b) 2.8 percent shall be deposited into the general fund.

(c) 2.3 percent shall be deposited into the violence reduction and drug enforcement account under RCW 69.50.520.

(d) 1.7 percent shall be deposited into the water quality account under RCW 70.146.030.

(e) The remainder shall be deposited into the education legacy trust account. [2005 c 514 § 1102.]

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**82.24.300 Exceptions—Puyallup Tribe of Indians.** The taxes imposed by this chapter do not apply to the sale, use, consumption, handling, possession, or distribution of cigarettes by an Indian retailer during the effective period of a cigarette tax agreement under RCW 43.06.465. [2005 c 11 § 5.]

**Findings—Intent—Explanatory statement—Effective date—2005 c 11:** See notes following RCW 43.06.465.

**82.24.550 Enforcement—Rules—Notice—Hearing—Reinstatement of license—Appeal.** (1) The board shall enforce the provisions of this chapter. The board may adopt, amend, and repeal rules necessary to enforce the provisions of this chapter.

(2) The department may adopt, amend, and repeal rules necessary to administer the provisions of this chapter. The department has full power and authority to revoke or suspend the license or permit of any wholesale or retail cigarette dealer in the state upon sufficient cause appearing of the violation of this chapter or upon the failure of such licensee to comply with any of the provisions of this chapter.

(3) A license shall not be suspended or revoked except upon notice to the licensee and after a hearing as prescribed by the department. The department, upon finding that the licensee has failed to comply with any provision of this chapter or any rule adopted under this chapter, shall, in the case of the first offense, suspend the license or licenses of the licensee for a period of not less than thirty consecutive business days, and, in the case of a second or further offense, shall suspend the license or licenses for a period of not less than ninety consecutive business days nor more than twelve months, and, in the event the department finds the licensee has been guilty of willful and persistent violations, it may revoke the license or licenses.

(4) Any licenses issued under chapter 82.26 RCW to a person whose license or licenses have been suspended or revoked under this section shall also be suspended or revoked during the period of suspension or revocation under this section.

(5) Any person whose license or licenses have been revoked under this section may apply to the department at the expiration of one year for a reinstatement of the license or licenses. The license or licenses may be reinstated by the department if it appears to the satisfaction of the department that the licensee will comply with the provisions of this chapter and the rules adopted under this chapter.

(6) A person whose license has been suspended or revoked shall not sell cigarettes or tobacco products or permit cigarettes or tobacco products to be sold during the period of such suspension or revocation on the premises occupied by the person or upon other premises controlled by the person or others or in any other manner or form whatever.

(7) Any determination and order by the department, and any order of suspension or revocation by the department of the license or licenses, or refusal to reinstate a license or licenses after revocation shall be reviewable by an appeal to the superior court of Thurston county. The superior court shall review the order or ruling of the department and may hear the matter de novo, having due regard to the provisions of this chapter and the duties imposed upon the department and the board.

(8) For purposes of this section, "tobacco products" has the same meaning as in RCW 82.26.010. [2005 c 180 § 19; 1997 c 420 § 8; 1993 c 507 § 17; 1986 c 321 § 9.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**Finding—Severability—1993 c 507:** See RCW 70.155.005 and 70.155.900.

**Policy—Intent—Savings—Effective date—1986 c 321:** See notes following RCW 82.24.500.

[2005 RCW Supp—page 1024]

## Chapter 82.26 RCW

### TAX ON TOBACCO PRODUCTS

#### Sections

82.26.010	Definitions.
82.26.020	Tax imposed—Deposit of tax revenue.
82.26.025	Repealed.
82.26.028	Repealed.
82.26.030	Legislative intent—Purpose.
82.26.050	Repealed.
82.26.060	Books and records to be preserved—Entry and inspection by department.
82.26.070	Preservation of invoices of sales to other than ultimate consumer.
82.26.080	Retailer invoices—Requirements—Inspection.
82.26.100	Reports and returns.
82.26.105	Inspection of books, documents, or records of carriers.
82.26.110	When credit may be obtained for tax paid.
82.26.140	Transport of tobacco products—Requirements—Vehicle inspection.
82.26.150	Distributor's license, retailer's license—Application—Approval—Display.
82.26.160	Distributor's license—Application fees.
82.26.170	Retailer's license—Application fee.
82.26.180	Department web site listing distributors and retailers.
82.26.190	Distributors and retailers—Valid license required—Violations—Penalties.
82.26.200	Sales from distributors to retailers—Requirements.
82.26.210	Manufacturer's representatives—Requirements.
82.26.220	Enforcement, administration of chapter—License suspension, revocation.
82.26.230	Enforcement—Unlicensed distributors or retailers—Seizure and forfeiture of property.
82.26.240	Seizure and forfeiture of property—Department and board requirements.
82.26.250	Enforcement—Search warrants.

**82.26.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, but shall not include cigarettes as defined in RCW 82.24.010.

(2) "Manufacturer" means a person who manufactures and sells tobacco products.

(3) "Distributor" means (a) any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale, (b) any person who makes, manufactures, fabricates, or stores tobacco products in this state for sale in this state, (c) any person engaged in the business of selling tobacco products without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers, (d) any person engaged in the business of selling tobacco products in this state who handles for sale any tobacco products that are within this state but upon which tax has not been imposed.

(4) "Retailer" means any person engaged in the business of selling tobacco products to ultimate consumers.

(5)(a) "Sale" means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person.

(b) The term "sale" includes a gift by a person engaged in the business of selling tobacco products, for advertising, pro-

moting, or as a means of evading the provisions of this chapter.

(6) "Business" means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state.

(7) "Place of business" means any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale, including any vessel, vehicle, airplane, train, or vending machine.

(8) "Retail outlet" means each place of business from which tobacco products are sold to consumers.

(9) "Department" means the department of revenue.

(10) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the state and its departments and institutions, political subdivision of the state of Washington, corporation, limited liability company, association, society, any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise. The term excludes any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

(11) "Indian country" means the same as defined in chapter 82.24 RCW.

(12) "Actual price" means the total amount of consideration for which tobacco products are sold, valued in money, whether received in money or otherwise, including any charges by the seller necessary to complete the sale such as charges for delivery, freight, transportation, or handling.

(13) "Affiliated" means related in any way by virtue of any form or amount of common ownership, control, operation, or management.

(14) "Board" means the liquor control board.

(15) "Cigar" means a roll for smoking that is of any size or shape and that is made wholly or in part of tobacco, irrespective of whether the tobacco is pure or flavored, adulterated or mixed with any other ingredient, if the roll has a wrapper made wholly or in greater part of tobacco. "Cigar" does not include a cigarette.

(16) "Cigarette" has the same meaning as in RCW 82.24.010.

(17) "Manufacturer's representative" means a person hired by a manufacturer to sell or distribute the manufacturer's tobacco products, and includes employees and independent contractors.

(18)(a) "Taxable sales price" means:

(i) In the case of a taxpayer that is not affiliated with the manufacturer, distributor, or other person from whom the taxpayer purchased tobacco products, the actual price for which the taxpayer purchased the tobacco products;

(ii) In the case of a taxpayer that purchases tobacco products from an affiliated manufacturer, affiliated distributor, or other affiliated person, and that sells those tobacco products to unaffiliated distributors, unaffiliated retailers, or ultimate consumers, the actual price for which that taxpayer sells those tobacco products to unaffiliated distributors, unaffiliated retailers, or ultimate consumers;

(iii) In the case of a taxpayer that sells tobacco products only to affiliated distributors or affiliated retailers, the price,

determined as nearly as possible according to the actual price, that other distributors sell similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers;

(iv) In the case of a taxpayer that is a manufacturer selling tobacco products directly to ultimate consumers, the actual price for which the taxpayer sells those tobacco products to ultimate consumers;

(v) In the case of a taxpayer that has acquired tobacco products under a sale as defined in subsection (5)(b) of this section, the price, determined as nearly as possible according to the actual price, that the taxpayer or other distributors sell the same tobacco products or similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers; or

(vi) In any case where (a)(i) through (v) of this subsection do not apply, the price, determined as nearly as possible according to the actual price, that the taxpayer or other distributors sell the same tobacco products or similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers.

(b) For purposes of (a)(i) and (ii) of this subsection only, "person" includes both persons as defined in subsection (10) of this section and any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

(c) The department may adopt rules regarding the determination of taxable sales price under this subsection.

(19) "Taxpayer" means a person liable for the tax imposed by this chapter.

(20) "Unaffiliated distributor" means a distributor that is not affiliated with the manufacturer, distributor, or other person from whom the distributor has purchased tobacco products.

(21) "Unaffiliated retailer" means a retailer that is not affiliated with the manufacturer, distributor, or other person from whom the retailer has purchased tobacco products. [2005 c 180 § 2; 2002 c 325 § 1; 1995 c 278 § 16; 1975 1st ex.s. c 278 § 70; 1961 c 15 § 82.26.010. Prior: 1959 ex.s. c 5 § 11.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**Effective date—2002 c 325:** "This act takes effect July 1, 2002." [2002 c 325 § 6.]

**Effective date—1995 c 278:** See note following RCW 82.24.010.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

### **82.26.020 Tax imposed—Deposit of tax revenue.** (1)

There is levied and there shall be collected a tax upon the sale, handling, or distribution of all tobacco products in this state at the following rate:

(a) Seventy-five percent of the taxable sales price of cigars, not to exceed fifty cents per cigar; or

(b) Seventy-five percent of the taxable sales price of all tobacco products that are not cigars.

(2) Taxes under this section shall be imposed at the time the distributor (a) brings, or causes to be brought, into this state from without the state tobacco products for sale, (b) makes, manufactures, fabricates, or stores tobacco products in this state for sale in this state, (c) ships or transports

tobacco products to retailers in this state, to be sold by those retailers, or (d) handles for sale any tobacco products that are within this state but upon which tax has not been imposed.

(3) The moneys collected under this section shall be deposited as follows:

(a) Thirty-seven percent in the general fund;

(b) Fifty percent in the health services account created under RCW 43.72.900; and

(c) Thirteen percent in the water quality account under RCW 70.146.030 for the period beginning July 1, 2005, through June 30, 2021, and in the general fund for the period beginning July 1, 2021. [2005 c 180 § 3; 2002 c 325 § 2; 1993 c 492 § 309; 1983 2nd ex.s. c 3 § 16; 1982 1st ex.s. c 35 § 9; 1975 1st ex.s. c 278 § 71; 1971 ex.s. c 299 § 77; 1965 ex.s. c 173 § 25; 1961 c 15 § 82.26.020. Prior: 1959 ex.s. c 5 § 12.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**Effective date—2002 c 325:** See note following RCW 82.26.010.

**Finding—Intent—1993 c 492:** See notes following RCW 43.20.050.

**Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492:** See RCW 43.72.910 through 43.72.915.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Severability—Effective dates—1982 1st ex.s. c 35:** See notes following RCW 82.08.020.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**Effective dates—Severability—1971 ex.s. c 299:** See notes following RCW 82.04.050.

**82.26.025 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**82.26.028 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**82.26.030 Legislative intent—Purpose.** It is the intent and purpose of this chapter to levy a tax on all tobacco products sold, used, consumed, handled, or distributed within this state and to collect the tax from the distributor as defined in RCW 82.26.010. It is the further intent and purpose of this chapter to impose the tax once, and only once, on all tobacco products for sale in this state, but nothing in this chapter shall be construed to exempt any person taxable under any other law or under any other tax imposed under Title 82 RCW. It is the further intent and purpose of this chapter that the distributor who first possesses the tobacco product in this state shall be the distributor liable for the tax and that in most instances the tax will be based on the actual price that the distributor paid for the tobacco product, unless the distributor is affiliated with the seller. [2005 c 180 § 1; 2002 c 325 § 4; 1961 c 15 § 82.26.030. Prior: 1959 ex.s. c 5 § 13.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**Effective date—2002 c 325:** See note following RCW 82.26.010.

**82.26.050 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**82.26.060 Books and records to be preserved—Entry and inspection by department.** (1) Every distributor shall [2005 RCW Supp—page 1026]

keep at each place of business complete and accurate records for that place of business, including itemized invoices, of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of tobacco products made.

(2) These records shall show the names and addresses of purchasers, the inventory of all tobacco products, and other pertinent papers and documents relating to the purchase, sale, or disposition of tobacco products. All invoices and other records required by this section to be kept shall be preserved for a period of five years from the date of the invoices or other documents or the date of the entries appearing in the records.

(3) At any time during usual business hours the department, board, or its duly authorized agents or employees, may enter any place of business of a distributor, without a search warrant, and inspect the premises, the records required to be kept under this chapter, and the tobacco products contained therein, to determine whether or not all the provisions of this chapter are being fully complied with. If the department, board, or any of its agents or employees, are denied free access or are hindered or interfered with in making such examination, the registration certificate issued under RCW 82.32.030 of the distributor at such premises shall be subject to revocation, and any licenses issued under this chapter or chapter 82.24 RCW are subject to suspension or revocation, by the department. [2005 c 180 § 4; 1975 1st ex.s. c 278 § 73; 1961 c 15 § 82.26.060. Prior: 1959 ex.s. c 5 § 16.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.26.070 Preservation of invoices of sales to other than ultimate consumer.** Every person required to be licensed under this chapter who sells tobacco products to persons other than the ultimate consumer shall render with each sale itemized invoices showing the seller's name and address, the purchaser's name and address, the date of sale, and all prices. The person shall preserve legible copies of all such invoices for five years from the date of sale. [2005 c 180 § 7; 1961 c 15 § 82.26.070. Prior: 1959 ex.s. c 5 § 17.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**82.26.080 Retailer invoices—Requirements—Inspection.** (1) Every retailer shall procure itemized invoices of all tobacco products purchased. The invoices shall show the seller's name and address, the date of purchase, and all prices and discounts.

(2) The retailer shall keep at each retail outlet copies of complete, accurate, and legible invoices for that retail outlet or place of business. All invoices required to be kept under this section shall be preserved for five years from the date of purchase.

(3) At any time during usual business hours the department, board, or its duly authorized agents or employees may enter any retail outlet without a search warrant, and inspect the premises for invoices required to be kept under this section and the tobacco products contained in the retail outlet, to determine whether or not all the provisions of this chapter are

being fully complied with. If the department, board, or any of its agents or employees, are denied free access or are hindered or interfered with in making the inspection, the registration certificate issued under RCW 82.32.030 of the retailer at the premises is subject to revocation, and any licenses issued under this chapter or chapter 82.24 RCW are subject to suspension or revocation by the department. [2005 c 180 § 5; 1975 1st ex.s. c 278 § 74; 1961 c 15 § 82.26.080. Prior: 1959 ex.s. c 5 § 18.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.26.100 Reports and returns.** Every taxpayer shall report and make returns as provided in RCW 82.32.045. [2005 c 180 § 8; 1983 c 3 § 218; 1961 c 15 § 82.26.100. Prior: 1959 ex.s. c 5 § 20.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**82.26.105 Inspection of books, documents, or records of carriers.** (1) For the purposes of obtaining information concerning any matter relating to the administration or enforcement of this chapter, the department, the board, or any of its agents, may inspect the books, documents, or records of any person transporting tobacco products for sale to any person or entity in the state, and books, documents, or records containing any information relating to the transportation or possession of tobacco products for sale in the possession of a specific common carrier as defined in RCW 81.80.010 doing business in this state.

(2) If a person neglects or refuses to produce and submit for inspection any book, record, or document as required by this section when requested to do so by the department, the board, or its agent, then the department or the board may seek an order in superior court compelling production of the books, records, or documents. [2005 c 180 § 6.]

**Effective date—2005 c 180:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 180 § 25.]

**82.26.110 When credit may be obtained for tax paid.** (1) Where tobacco products upon which the tax imposed by this chapter has been reported and paid, are shipped or transported outside this state by the distributor to a person engaged in the business of selling tobacco products, to be sold by that person, or are returned to the manufacturer by the distributor or destroyed by the distributor, credit of such tax may be made to the distributor in accordance with rules prescribed by the department.

(2) Credit allowed under this section shall be determined based on the tax rate in effect for the period for which the tax imposed by this chapter, for which a credit is sought, was paid. [2005 c 180 § 9; 1975 1st ex.s. c 278 § 76; 1961 c 15 § 82.26.110. Prior: 1959 ex.s. c 5 § 21.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.26.140 Transport of tobacco products—Requirements—Vehicle inspection.** (1) No person other than (a) a

licensed distributor in the distributor's own vehicle, a manufacturer's representative authorized to sell or distribute tobacco products in this state under RCW 82.26.210, or a licensed retailer in the retailer's own vehicle, or (b) a person who has given notice to the board in advance of the commencement of transportation shall transport or cause to be transported in this state tobacco products for sale.

(2) When transporting tobacco products for sale, the person shall have in his or her actual possession, or cause to have in the actual possession of those persons transporting such tobacco products on his or her behalf, invoices or delivery tickets for the tobacco products, which shall show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the tobacco products being transported.

(3) In any case where the department or the board, or any peace officer of the state, has knowledge or reasonable grounds to believe that any vehicle is transporting tobacco products in violation of this section, the department, the board, or peace officer, is authorized to stop the vehicle and to inspect it for contraband tobacco products. [2005 c 180 § 10.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**82.26.150 Distributor's license, retailer's license—Application—Approval—Display.** (1) The licenses issuable by the department under this chapter are as follows:

- (a) A distributor's license; and
- (b) A retailer's license.

(2) Application for the licenses shall be made through the master license system under chapter 19.02 RCW. The department may adopt rules regarding the regulation of the licenses. The department may refuse to issue any license under this chapter if the department has reasonable cause to believe that the applicant has willfully withheld information requested for the purpose of determining the eligibility of the applicant to receive a license, or if the department has reasonable cause to believe that information submitted in the application is false or misleading or is not made in good faith. In addition, for the purpose of reviewing an application for a distributor's license and for considering the denial, suspension, or revocation of any such license, the department may consider criminal convictions of the applicant related to the selling of tobacco products within the previous five years in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions, and the provisions of RCW 9.95.240 and chapter 9.96A RCW shall not apply to such cases. The department may, in its discretion, issue or refuse to issue the distributor's license, subject to the provisions of RCW 82.26.220.

(3) No person may qualify for a distributor's license under this section without first undergoing a criminal background check. The background check shall be performed by the board and must disclose any criminal convictions related to the selling of tobacco products within the previous five years in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions. If the applicant or licensee also has a license issued under chapter 66.24 or 82.24 RCW, the background check done under the authority of

chapter 66.24 or 82.24 RCW satisfies the requirements of this section.

(4) Each license issued under this chapter shall expire on the master license expiration date. The license shall be continued annually if the licensee has paid the required fee and complied with all the provisions of this chapter and the rules of the department adopted pursuant to this chapter.

(5) Each license and any other evidence of license as the department requires shall be exhibited in the place of business for which it is issued and in the manner required for the display of a master license. [2005 c 180 § 11.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

#### **82.26.160 Distributor's license—Application fees.**

(1) A fee of six hundred fifty dollars shall accompany each distributor's license application or license renewal application. If a distributor sells or intends to sell tobacco products at two or more places of business, whether established or temporary, a separate license with a license fee of one hundred fifteen dollars shall be required for each additional place of business.

(2) The fees imposed under subsection (1) of this section do not apply to any person applying for a distributor's license or for renewal of a distributor's license if the person has a valid wholesaler's license under RCW 82.24.510 for the place of business associated with the distributor's license application or license renewal application. [2005 c 180 § 12.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**82.26.170 Retailer's license—Application fee.** (1) A fee of ninety-three dollars shall accompany each retailer's license application or license renewal application. A separate license is required for each separate location at which the retailer operates.

(2) The fee imposed under subsection (1) of this section does not apply to any person applying for a retailer's license or for renewal of a retailer's license if the person has a valid retailer's license under RCW 82.24.510 for the place of business associated with the retailer's license application or renewal application. [2005 c 180 § 13.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**82.26.180 Department web site listing distributors and retailers.** The department shall compile and maintain a current record of the names of all distributors and retailers licensed under this chapter and the status of their license or licenses. The information must be updated on a monthly basis and published on the department's official internet web site. This information is not subject to the confidentiality provisions of RCW 82.32.330 and shall be disclosed to manufacturers, distributors, retailers, and the general public upon request. [2005 c 180 § 15.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**82.26.190 Distributors and retailers—Valid license required—Violations—Penalties.** (1)(a) No person may engage in or conduct business as a distributor or retailer in this state after September 30, 2005, without a valid license issued by the department under this chapter. Any person who sells tobacco products to persons other than ultimate consum-

ers or who meets the definition of distributor under RCW 82.26.010(3)(d) must obtain a distributor's license under this chapter. Any person who sells tobacco products to ultimate consumers must obtain a retailer's license under this chapter.

(b) A violation of this subsection (1) is punishable as a class C felony according to chapter 9A.20 RCW.

(2)(a) No person engaged in or conducting business as a distributor or retailer in this state may:

(i) Refuse to allow the department or the board, on demand, to make a full inspection of any place of business where any of the tobacco products taxed under this chapter are sold, stored, or handled, or otherwise hinder or prevent such inspection;

(ii) Make, use, or present or exhibit to the department or the board any invoice for any of the tobacco products taxed under this chapter that bears an untrue date or falsely states the nature or quantity of the goods invoiced; or

(iii) Fail to produce on demand of the department or the board all invoices of all the tobacco products taxed under this chapter within five years prior to such demand unless the person can show by satisfactory proof that the nonproduction of the invoices was due to causes beyond the person's control.

(b) No person, other than a licensed distributor or retailer, may transport tobacco products for sale in this state for which the taxes imposed under this chapter have not been paid unless:

(i) Notice of the transportation has been given as required under RCW 82.26.140;

(ii) The person transporting the tobacco products actually possesses invoices or delivery tickets showing the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of tobacco products being transported; and

(iii) The tobacco products are consigned to or purchased by a person in this state who is licensed under this chapter.

(c) A violation of this subsection (2) is a gross misdemeanor.

(3) Any person licensed under this chapter as a distributor, and any person licensed under this chapter as a retailer, shall not operate in any other capacity unless the additional appropriate license is first secured. A violation of this subsection (3) is a misdemeanor.

(4) The penalties provided in this section are in addition to any other penalties provided by law for violating the provisions of this chapter or the rules adopted under this chapter. [2005 c 180 § 16.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**82.26.200 Sales from distributors to retailers—Requirements.** (1) A retailer that obtains tobacco products from an unlicensed distributor or any other person that is not licensed under this chapter must be licensed both as a retailer and a distributor under this chapter and is liable for the tax imposed under RCW 82.26.020 with respect to the tobacco products acquired from the unlicensed person that are held for sale, handling, or distribution in this state. For the purposes of this subsection, "person" includes both persons defined in RCW 82.26.010(10) and any person immune from state taxation, such as the United States or its instrumentali-



ties, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

(2) Every distributor licensed under this chapter shall sell tobacco products to retailers located in Washington only if the retailer has a current retailer's license under this chapter. [2005 c 180 § 17.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

#### **82.26.210 Manufacturer's representatives—**

**Requirements.** A manufacturer that has manufacturer's representatives who sell or distribute the manufacturer's tobacco products in this state must provide the department a list of the names and addresses of all such representatives and must ensure that the list provided to the department is kept current. A manufacturer's representative is not authorized to distribute or sell tobacco products in this state unless the manufacturer that hired the representative has a valid distributor's license under this chapter and that manufacturer provides the department a current list of all of its manufacturer's representatives as required by this section. A manufacturer's representative must carry a copy of the distributor's license of the manufacturer that hired the representative at all times when selling or distributing the manufacturer's tobacco products. [2005 c 180 § 14.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

#### **82.26.220 Enforcement, administration of chapter—**

**License suspension, revocation.** (1) The board shall enforce this chapter. The board may adopt, amend, and repeal rules necessary to enforce this chapter.

(2) The department may adopt, amend, and repeal rules necessary to administer this chapter. The department has full power and authority to revoke or suspend the distributor's or retailer's license of any distributor or retailer of tobacco products in the state upon sufficient cause showing a violation of this chapter or upon the failure of the licensee to comply with any of the rules adopted under it.

(3) A license shall not be suspended or revoked except upon notice to the licensee and after a hearing as prescribed by the department. The department, upon finding that the licensee has failed to comply with any provision of this chapter or of any rule adopted under it, shall, in the case of the first offense, suspend the license or licenses of the licensee for a period of not less than thirty consecutive business days, and in the case of a second or further offense, suspend the license or licenses for a period of not less than ninety consecutive business days but not more than twelve months, and in the event the department finds the licensee has been guilty of willful and persistent violations, it may revoke the license or licenses.

(4) Any licenses issued under chapter 82.24 RCW to a person whose license or licenses have been suspended or revoked under this section shall also be suspended or revoked during the period of suspension or revocation under this section.

(5) Any person whose license or licenses have been revoked under this section may apply to the department at the expiration of one year for a reinstatement of the license or licenses. The license or licenses may be reinstated by the department if it appears to the satisfaction of the department

that the licensee will comply with the provisions of this chapter and the rules adopted under it.

(6) A person whose license has been suspended or revoked shall not sell tobacco products or cigarettes or permit tobacco products or cigarettes to be sold during the period of suspension or revocation on the premises occupied by the person or upon other premises controlled by the person or others or in any other manner or form.

(7) Any determination and order by the department, and any order of suspension or revocation by the department of the license or licenses, or refusal to reinstate a license or licenses after revocation is reviewable by an appeal to the superior court of Thurston county. The superior court shall review the order or ruling of the department and may hear the matter de novo, having due regard to the provisions of this chapter and the duties imposed upon the department and the board. [2005 c 180 § 18.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

#### **82.26.230 Enforcement—Unlicensed distributors or retailers—Seizure and forfeiture of property.**

(1) Any tobacco products in the possession of a person selling tobacco products in this state acting as a distributor or retailer and who is not licensed as required under RCW 82.26.190, or a person who is selling tobacco products in violation of RCW 82.26.220(6), may be seized without a warrant by any agent of the department, agent of the board, or law enforcement officer of this state. Any tobacco products seized under this subsection shall be deemed forfeited.

(2) Any tobacco products in the possession of a person who is not a licensed distributor or retailer and who transports tobacco products for sale without having provided notice to the board required under RCW 82.26.140, or without invoices or delivery tickets showing the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of tobacco products being transported may be seized and are subject to forfeiture.

(3) All conveyances, including aircraft, vehicles, or vessels that are used, or intended for use to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of tobacco products under subsection (2) of this section, may be seized and are subject to forfeiture except:

(a) A conveyance used by any person as a common or contract carrier having in actual possession invoices or delivery tickets showing the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the tobacco products transported, unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(b) A conveyance subject to forfeiture under this section by reason of any act or omission of which the owner establishes to have been committed or omitted without his or her knowledge or consent; or

(c) A conveyance encumbered by a bona fide security interest if the secured party neither had knowledge of nor consented to the act or omission.

(4) Property subject to forfeiture under subsections (2) and (3) of this section may be seized by any agent of the

department, the board, or law enforcement officer of this state upon process issued by any superior court or district court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search warrant or an inspection under an administrative inspection warrant; or

(b) The department, board, or law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter and exigent circumstances exist making procurement of a search warrant impracticable.

(5) This section shall not be construed to require the seizure of tobacco products if the department's agent, board's agent, or law enforcement officer reasonably believes that the tobacco products are possessed for personal consumption by the person in possession of the tobacco products.

(6) Any tobacco products seized by a law enforcement officer shall be turned over to the board as soon as practicable. [2005 c 180 § 20.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**82.26.240 Seizure and forfeiture of property—Department and board requirements.** (1) In all cases of seizure of any tobacco products made subject to forfeiture under this chapter, the department or board shall proceed as provided in RCW 82.24.135.

(2) When tobacco products are forfeited under this chapter, the department or board may:

(a) Retain the property for official use or upon application by any law enforcement agency of this state, another state, or the District of Columbia, or of the United States for the exclusive use of enforcing this chapter or the laws of any other state or the District of Columbia or of the United States; or

(b) Sell the tobacco products at public auction to the highest bidder after due advertisement. Before delivering any of the goods to the successful bidder, the department or board shall require the purchaser to pay the proper amount of any tax due. The proceeds of the sale shall be first applied to the payment of all proper expenses of any investigation leading to the seizure and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs. The balance of the proceeds and all money shall be deposited in the general fund of the state. Proper expenses of investigation include costs incurred by any law enforcement agency or any federal, state, or local agency.

(3) The department or the board may return any property seized under the provisions of this chapter when it is shown that there was no intention to violate the provisions of this chapter. When any property is returned under this section, the department or the board may return the property to the parties from whom they were seized if and when such parties have paid the proper amount of tax due under this chapter. [2005 c 180 § 21.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**82.26.250 Enforcement—Search warrants.** When the department or the board has good reason to believe that any

of the tobacco products taxed under this chapter are being kept, sold, offered for sale, or given away in violation of the provisions of this chapter, it may make affidavit of facts describing the place or thing to be searched, before any judge of any court in this state, and the judge shall issue a search warrant directed to the sheriff, any deputy, police officer, or duly authorized agent of the department or the board commanding him or her diligently to search any building, room in a building, place, or vehicle as may be designated in the affidavit and search warrant, and to seize the tobacco products and hold them until disposed of by law. [2005 c 180 § 22.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

## Chapter 82.27 RCW

### TAX ON ENHANCED FOOD FISH

#### Sections

82.27.020	Excise tax imposed—Deduction—Measure of tax—Rates—Additional tax imposed.
82.27.070	Deposit of taxes.

**82.27.020 Excise tax imposed—Deduction—Measure of tax—Rates—Additional tax imposed.** (1) In addition to all other taxes, licenses, or fees provided by law there is established an excise tax on the commercial possession of enhanced food fish as provided in this chapter. The tax is levied upon and shall be collected from the owner of the enhanced food fish whose possession constitutes the taxable event. The taxable event is the first possession in Washington by an owner after the enhanced food fish has been landed. Processing and handling of enhanced food fish by a person who is not the owner is not a taxable event to the processor or handler.

(2) A person in possession of enhanced food fish and liable to this tax may deduct from the price paid to the person from which the enhanced food fish (except oysters) are purchased an amount equal to a tax at one-half the rate levied in this section upon these products.

(3) The measure of the tax is the value of the enhanced food fish at the point of landing.

(4) The tax shall be equal to the measure of the tax multiplied by the rates for enhanced food fish as follows:

(a) Chinook, coho, and chum salmon and anadromous game fish: Five and twenty-five one-hundredths percent;

(b) Pink and sockeye salmon: Three and fifteen one-hundredths percent;

(c) Other food fish and shellfish, except oysters, sea urchins, and sea cucumbers: Two and one-tenth percent;

(d) Oysters: Eight one-hundredths of one percent;

(e) Sea urchins: Four and six-tenths percent through December 31, 2010, and two and one-tenth percent thereafter; and

(f) Sea cucumbers: Four and six-tenths percent through December 31, 2010, and two and one-tenth percent thereafter.

(5) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (4) of this section. [2005 c 110 § 3; 2001 c 320 § 9; 1999 c 126 § 3; 1993 sp.s. c 17 § 12; 1985 c 413 § 2; 1983 2nd ex.s. c 3 § 17; 1983 c 284 § 6; 1982 1st ex.s. c 35 § 10; 1980 c 98 § 2.]

**Effective date—2001 c 320:** See note following RCW 11.02.005.

**Effective date—1999 c 126 § 3:** "Section 3 of this act takes effect January 1, 2000." [1999 c 126 § 5.]

**Finding—Contingent effective date—Severability—1993 sp.s. c 17:** See notes following RCW 77.32.520.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Findings—Intent—1983 c 284:** "The legislature finds that there are commercial fish buyers benefiting financially from the propagation of game fish in the state. The legislature recognizes that license fees obtained from sports fishermen support the majority of the production of these game fish. The legislature finds that commercial operations which benefit from the commercial harvest of these fish should pay a tax to assist in the funding of these facilities. However, the intent of the legislature is not to support the commercial harvest of steelhead and other game fish." [1983 c 284 § 8.]

**Severability—Effective dates—1982 1st ex.s. c 35:** See notes following RCW 82.08.020.

**82.27.070 Deposit of taxes.** All taxes collected by the department of revenue under this chapter shall be deposited in the state general fund except for the excise tax on anadromous game fish, which shall be deposited in the wildlife fund, and, during the period January 1, 2000, to December 31, 2010, twenty-five forty-sixths of the revenues derived from the excise tax on sea urchins collected under RCW 82.27.020 shall be deposited into the sea urchin dive fishery account created in RCW 77.70.150, and twenty-five forty-sixths of the revenues derived from the excise tax on sea cucumbers collected under RCW 82.27.020 shall be deposited into the sea cucumber dive fishery account created in RCW 77.70.190. [2005 c 110 § 4; 2003 c 39 § 46; 1999 c 126 § 4; 1988 c 36 § 61; 1983 c 284 § 7; 1980 c 98 § 7.]

**Findings—Intent—1983 c 284:** See note following RCW 82.27.020.

## Chapter 82.29A RCW LEASEHOLD EXCISE TAX

### Sections

82.29A.130 Exemptions.

**82.29A.130 Exemptions.** The following leasehold interests shall be exempt from taxes imposed pursuant to RCW 82.29A.030 and 82.29A.040:

(1) All leasehold interests constituting a part of the operating properties of any public utility which is assessed and taxed as a public utility pursuant to chapter 84.12 RCW.

(2) All leasehold interests in facilities owned or used by a school, college or university which leasehold provides housing for students and which is otherwise exempt from taxation under provisions of RCW 84.36.010 and 84.36.050.

(3) All leasehold interests of subsidized housing where the fee ownership of such property is vested in the government of the United States, or the state of Washington or any political subdivision thereof but only if income qualification exists for such housing.

(4) All leasehold interests used for fair purposes of a nonprofit fair association that sponsors or conducts a fair or fairs which receive support from revenues collected pursuant to RCW 67.16.100 and allocated by the director of the department of agriculture where the fee ownership of such property is vested in the government of the United States, the state of Washington or any of its political subdivisions: PRO-

VIDED, That this exemption shall not apply to the leasehold interest of any sublessee of such nonprofit fair association if such leasehold interest would be taxable if it were the primary lease.

(5) All leasehold interests in any property of any public entity used as a residence by an employee of that public entity who is required as a condition of employment to live in the publicly owned property.

(6) All leasehold interests held by enrolled Indians of lands owned or held by any Indian or Indian tribe where the fee ownership of such property is vested in or held in trust by the United States and which are not subleased to other than to a lessee which would qualify pursuant to this chapter, RCW 84.36.451 and 84.40.175.

(7) All leasehold interests in any real property of any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States: PROVIDED, That this exemption shall apply only where it is determined that contract rent paid is greater than or equal to ninety percent of fair market rental, to be determined by the department of revenue using the same criteria used to establish taxable rent in RCW 82.29A.020(2)(b).

(8) All leasehold interests for which annual taxable rent is less than two hundred fifty dollars per year. For purposes of this subsection leasehold interests held by the same lessee in contiguous properties owned by the same lessor shall be deemed a single leasehold interest.

(9) All leasehold interests which give use or possession of the leased property for a continuous period of less than thirty days: PROVIDED, That for purposes of this subsection, successive leases or lease renewals giving substantially continuous use of possession of the same property to the same lessee shall be deemed a single leasehold interest: PROVIDED FURTHER, That no leasehold interest shall be deemed to give use or possession for a period of less than thirty days solely by virtue of the reservation by the public lessor of the right to use the property or to allow third parties to use the property on an occasional, temporary basis.

(10) All leasehold interests under month-to-month leases in residential units rented for residential purposes of the lessee pending destruction or removal for the purpose of constructing a public highway or building.

(11) All leasehold interests in any publicly owned real or personal property to the extent such leasehold interests arises solely by virtue of a contract for public improvements or work executed under the public works statutes of this state or of the United States between the public owner of the property and a contractor.

(12) All leasehold interests that give use or possession of state adult correctional facilities for the purposes of operating correctional industries under RCW 72.09.100.

(13) All leasehold interests used to provide organized and supervised recreational activities for disabled persons of all ages in a camp facility and for public recreational purposes by a nonprofit organization, association, or corporation that would be exempt from property tax under RCW 84.36.030(1) if it owned the property. If the publicly owned property is used for any taxable purpose, the leasehold excise taxes set forth in RCW 82.29A.030 and 82.29A.040 shall be imposed and shall be apportioned accordingly.

(14) All leasehold interests in the public or entertainment areas of a baseball stadium with natural turf and a retractable roof or canopy that is in a county with a population of over one million, that has a seating capacity of over forty thousand, and that is constructed on or after January 1, 1995. "Public or entertainment areas" include ticket sales areas, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality and stadium club areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas and suites, the playing field, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" does not include locker rooms or private offices exclusively used by the lessee.

(15) All leasehold interests in the public or entertainment areas of a stadium and exhibition center, as defined in RCW 36.102.010, that is constructed on or after January 1, 1998. For the purposes of this subsection, "public or entertainment areas" has the same meaning as in subsection (14) of this section, and includes exhibition areas.

(16) All leasehold interests in public facilities districts, as provided in chapter 36.100 or 35.57 RCW.

(17) All leasehold interests in property that is: (a) Owned by a municipal corporation; (b) listed on any federal or state register of historical sites; and (c) wholly contained within a designated national historic reserve under 16 U.S.C. Sec. 461.

(18) All leasehold interests in the public or entertainment areas of an amphitheater if a private entity is responsible for one hundred percent of the cost of constructing the amphitheater which is not reimbursed by the public owner, both the public owner and the private lessee sponsor events at the facility on a regular basis, the lessee is responsible under the lease or agreement to operate and maintain the facility, and the amphitheater has a seating capacity of over seventeen thousand reserved and general admission seats and is in a county with a population of over three hundred fifty thousand, but less than four hundred twenty-five thousand. For the purposes of this subsection, "public or entertainment areas" include box offices or other ticket sales areas, entrance gates, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas including lawn seating areas and suites, stages, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" does not include office areas used predominately by the lessee. [2005 c 514 § 601; 2005 c 170 § 1; 1999 c 165 § 21; 1997 c 220 § 202 (Referendum Bill No. 48, approved June 17, 1997); 1995

3rd sp.s. c 1 § 307; 1995 c 138 § 1; 1992 c 123 § 2; 1975-'76 2nd ex.s. c 61 § 13.]

**Reviser's note:** This section was amended by 2005 c 170 § 1 and by 2005 c 514 § 601, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Severability—1999 c 164:** See RCW 35.57.900.

**Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220:** See RCW 36.102.800 through 36.102.803.

**Part headings not law—Severability—1997 c 220:** See RCW 36.102.900 and 36.102.901.

**Part headings not law—Effective date—1995 3rd sp.s. c 1:** See notes following RCW 82.14.0485.

**Effective date—1995 c 138:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 27, 1995]." [1995 c 138 § 2.]

## Chapter 82.32 RCW

### GENERAL ADMINISTRATIVE PROVISIONS

#### Sections

82.32.330	Disclosure of return or tax information. ( <i>Effective until July 1, 2006.</i> )
82.32.330	Disclosure of return or tax information. ( <i>Effective July 1, 2006.</i> )
82.32.410	Written determinations as precedents. ( <i>Effective July 1, 2006.</i> )
82.32.580	Sales and use tax deferral—Historic automobile museum. ( <i>Effective July 1, 2007.</i> )
82.32.590	Annual survey under RCW 82.04.4452—Failure to file.
82.32.600	Annual survey under RCW 82.04.4452—Electronic filing. ( <i>Effective January 1, 2006.</i> )
82.32.610	Annual survey for fruit and vegetable business tax incentive—Report to legislature.
82.32.620	Annual report for tax incentives under RCW 82.04.294.

**82.32.330 Disclosure of return or tax information. (*Effective until July 1, 2006.*)** (1) For purposes of this section:

(a) "Disclose" means to make known to any person in any manner whatever a return or tax information;

(b) "Return" means a tax or information return or claim for refund required by, or provided for or permitted under, the laws of this state which is filed with the department of revenue by, on behalf of, or with respect to a person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return so filed;

(c) "Tax information" means (i) a taxpayer's identity, (ii) the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability deficiencies, overassessments, or tax payments, whether taken from the taxpayer's books and records or any other source, (iii) whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, (iv) a part of a written determination that is not designated as a precedent and disclosed pursuant to RCW 82.32.410, or a background file document relating to a written determination, and (v) other data received by, recorded by, prepared by, furnished to, or collected by the

department of revenue with respect to the determination of the existence, or possible existence, of liability, or the amount thereof, of a person under the laws of this state for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense: PROVIDED, That data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section. Except as provided by RCW 82.32.410, nothing in this chapter shall require any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material, or documents so as to permit its disclosure;

(d) "State agency" means every Washington state office, department, division, bureau, board, commission, or other state agency;

(e) "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer; and

(f) "Department" means the department of revenue or its officer, agent, employee, or representative.

(2) Returns and tax information shall be confidential and privileged, and except as authorized by this section, neither the department of revenue nor any other person may disclose any return or tax information.

(3) This section does not prohibit the department of revenue from:

(a) Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding:

(i) In respect of any tax imposed under the laws of this state if the taxpayer or its officer or other person liable under Title 82 RCW is a party in the proceeding; or

(ii) In which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the proceeding;

(b) Disclosing, subject to such requirements and conditions as the director shall prescribe by rules adopted pursuant to chapter 34.05 RCW, such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person: PROVIDED, That tax information not received from the taxpayer shall not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court;

(c) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been either issued or filed and remains outstanding for a period of at least ten working days. The department shall not be required to disclose any informa-

tion under this subsection if a taxpayer: (i) Has been issued a tax assessment; (ii) has been issued a warrant that has not been filed; and (iii) has entered a deferred payment arrangement with the department of revenue and is making payments upon such deficiency that will fully satisfy the indebtedness within twelve months;

(d) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been filed with a court of record and remains outstanding;

(e) Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;

(f) Disclosing such return or tax information, for official purposes only, to the governor or attorney general, or to any state agency, or to any committee or subcommittee of the legislature dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;

(g) Permitting the department of revenue's records to be audited and examined by the proper state officer, his or her agents and employees;

(h) Disclosing any such return or tax information to a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county prosecuting attorney who receives the return or tax information may disclose that return or tax information only for use in the investigation and a related court proceeding, or in the court proceeding for which the return or tax information originally was sought;

(i) Disclosing any such return or tax information to the proper officer of the internal revenue service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of this state;

(j) Disclosing any such return or tax information to the Department of Justice, the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury, the Department of Defense, the United States Customs Service, the Coast Guard of the United States, and the United States Department of Transportation, or any authorized representative thereof, for official purposes;

(k) Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410;

(l) Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers, North American industry classification system or standard industrial classification code of a taxpayer, and the dates of opening and closing of business. This subsection shall not be construed as giving authority to the department to give, sell, or provide access to any list of taxpayers for any commercial purpose;

(m) Disclosing such return or tax information that is also maintained by another Washington state or local government-

tal agency as a public record available for inspection and copying under the provisions of chapter 42.17 RCW or is a document maintained by a court of record not otherwise prohibited from disclosure;

(n) Disclosing such return or tax information to the United States department of agriculture for the limited purpose of investigating food stamp fraud by retailers;

(o) Disclosing to a financial institution, escrow company, or title company, in connection with specific real property that is the subject of a real estate transaction, current amounts due the department for a filed tax warrant, judgment, or lien against the real property;

(p) Disclosing to a person against whom the department has asserted liability as a successor under RCW 82.32.140 return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded; or

(q) Disclosing such return or tax information in the possession of the department relating to the administration or enforcement of the real estate excise tax imposed under chapter 82.45 RCW, including information regarding transactions exempt or otherwise not subject to tax.

(4)(a) The department may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection (4). The disclosure must be in connection with the department's official duties relating to an audit, collection activity, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information to be disclosed. The department may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the department may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivable/payable ledgers, general journals, financial statements, expert's workpapers, income tax returns, state tax returns, tax return workpapers, or other similar data, materials, or documents.

(b) Before disclosure of any tax return or tax information under this subsection (4), the department shall, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence shall clearly identify the data, materials, or documents to be disclosed. The department may not disclose any tax return or tax information under this subsection (4) until the time period allowed in (c) of this subsection has expired or until the court has ruled on any challenge brought under (c) of this subsection.

(c) The person in possession of the data, materials, or documents to be disclosed by the department has twenty days from the receipt of the written request required under (b) of this subsection to petition the superior court of the county in which the petitioner resides for injunctive relief. The court shall limit or deny the request of the department if the court determines that:

(i) The data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) The production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the needs of the department, the amount in controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or

(iii) The data, materials, or documents sought for disclosure contain trade secret information that, if disclosed, could harm the petitioner.

(d) The department shall reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.

(e) Requesting information under (b) of this subsection that may indicate that a taxpayer is under investigation does not constitute a disclosure of tax return or tax information under this section.

(5) Any person acquiring knowledge of any return or tax information in the course of his or her employment with the department of revenue and any person acquiring knowledge of any return or tax information as provided under subsection (3)(f), (g), (h), (i), (j), or (n) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the state, such person shall forfeit such office or employment and shall be incapable of holding any public office or employment in this state for a period of two years thereafter. [2005 c 326 § 1. Prior: 2000 c 173 § 1; 2000 c 106 § 1; 1998 c 234 § 1; 1996 c 184 § 5; 1995 c 197 § 1; 1991 c 330 § 1; 1990 c 67 § 1; 1985 c 414 § 9; 1984 c 138 § 12; 1969 ex.s. c 104 § 1; 1963 ex.s. c 28 § 10; 1961 c 15 § 82.32.330; prior: 1943 c 156 § 12; 1935 c 180 § 210; Rem. Supp. 1943 § 8370-210.]

**Effective date—2000 c 173:** "This act takes effect July 1, 2000." [2000 c 173 § 2.]

**Effective date—2000 c 106:** "This act takes effect July 1, 2000." [2000 c 106 § 13.]

**Effective date—1996 c 184:** See note following RCW 46.16.010.

**Effective date—1995 c 197:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 197 § 2.]

**82.32.330 Disclosure of return or tax information. (Effective July 1, 2006.)** (1) For purposes of this section:

(a) "Disclose" means to make known to any person in any manner whatever a return or tax information;

(b) "Return" means a tax or information return or claim for refund required by, or provided for or permitted under, the laws of this state which is filed with the department of revenue by, on behalf of, or with respect to a person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return so filed;

(c) "Tax information" means (i) a taxpayer's identity, (ii) the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability deficiencies, overassessments, or tax payments, whether taken from the taxpayer's books and records or any other source, (iii) whether the taxpayer's return was, is being, or will be examined or subject to other investi-

gation or processing, (iv) a part of a written determination that is not designated as a precedent and disclosed pursuant to RCW 82.32.410, or a background file document relating to a written determination, and (v) other data received by, recorded by, prepared by, furnished to, or collected by the department of revenue with respect to the determination of the existence, or possible existence, of liability, or the amount thereof, of a person under the laws of this state for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense: PROVIDED, That data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section. Except as provided by RCW 82.32.410, nothing in this chapter shall require any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material, or documents so as to permit its disclosure;

(d) "State agency" means every Washington state office, department, division, bureau, board, commission, or other state agency;

(e) "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer; and

(f) "Department" means the department of revenue or its officer, agent, employee, or representative.

(2) Returns and tax information shall be confidential and privileged, and except as authorized by this section, neither the department of revenue nor any other person may disclose any return or tax information.

(3) This section does not prohibit the department of revenue from:

(a) Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding:

(i) In respect of any tax imposed under the laws of this state if the taxpayer or its officer or other person liable under Title 82 RCW is a party in the proceeding; or

(ii) In which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the proceeding;

(b) Disclosing, subject to such requirements and conditions as the director shall prescribe by rules adopted pursuant to chapter 34.05 RCW, such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person: PROVIDED, That tax information not received from the taxpayer shall not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court;

(c) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been either issued or filed and remains outstanding for a period of at least ten working days. The department shall not be required to disclose any information under this subsection if a taxpayer: (i) Has been issued a tax assessment; (ii) has been issued a warrant that has not been filed; and (iii) has entered a deferred payment arrangement with the department of revenue and is making payments upon such deficiency that will fully satisfy the indebtedness within twelve months;

(d) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been filed with a court of record and remains outstanding;

(e) Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;

(f) Disclosing such return or tax information, for official purposes only, to the governor or attorney general, or to any state agency, or to any committee or subcommittee of the legislature dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;

(g) Permitting the department of revenue's records to be audited and examined by the proper state officer, his or her agents and employees;

(h) Disclosing any such return or tax information to a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county prosecuting attorney who receives the return or tax information may disclose that return or tax information only for use in the investigation and a related court proceeding, or in the court proceeding for which the return or tax information originally was sought;

(i) Disclosing any such return or tax information to the proper officer of the internal revenue service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of this state;

(j) Disclosing any such return or tax information to the Department of Justice, the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury, the Department of Defense, the United States Customs Service, the Coast Guard of the United States, and the United States Department of Transportation, or any authorized representative thereof, for official purposes;

(k) Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410;

(l) Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers, North American industry classification system or standard industrial classification code of a taxpayer, and the dates of opening and closing of business. This subsection shall not

be construed as giving authority to the department to give, sell, or provide access to any list of taxpayers for any commercial purpose;

(m) Disclosing such return or tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.56 RCW or is a document maintained by a court of record not otherwise prohibited from disclosure;

(n) Disclosing such return or tax information to the United States department of agriculture for the limited purpose of investigating food stamp fraud by retailers;

(o) Disclosing to a financial institution, escrow company, or title company, in connection with specific real property that is the subject of a real estate transaction, current amounts due the department for a filed tax warrant, judgment, or lien against the real property;

(p) Disclosing to a person against whom the department has asserted liability as a successor under RCW 82.32.140 return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded; or

(q) Disclosing such return or tax information in the possession of the department relating to the administration or enforcement of the real estate excise tax imposed under chapter 82.45 RCW, including information regarding transactions exempt or otherwise not subject to tax.

(4)(a) The department may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection (4). The disclosure must be in connection with the department's official duties relating to an audit, collection activity, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information to be disclosed. The department may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the department may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivable/payable ledgers, general journals, financial statements, expert's workpapers, income tax returns, state tax returns, tax return workpapers, or other similar data, materials, or documents.

(b) Before disclosure of any tax return or tax information under this subsection (4), the department shall, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence shall clearly identify the data, materials, or documents to be disclosed. The department may not disclose any tax return or tax information under this subsection (4) until the time period allowed in (c) of this subsection has expired or until the court has ruled on any challenge brought under (c) of this subsection.

(c) The person in possession of the data, materials, or documents to be disclosed by the department has twenty days from the receipt of the written request required under (b) of this subsection to petition the superior court of the county in which the petitioner resides for injunctive relief. The court shall limit or deny the request of the department if the court determines that:

(i) The data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) The production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the needs of the department, the amount in controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or

(iii) The data, materials, or documents sought for disclosure contain trade secret information that, if disclosed, could harm the petitioner.

(d) The department shall reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.

(e) Requesting information under (b) of this subsection that may indicate that a taxpayer is under investigation does not constitute a disclosure of tax return or tax information under this section.

(5) Any person acquiring knowledge of any return or tax information in the course of his or her employment with the department of revenue and any person acquiring knowledge of any return or tax information as provided under subsection (3)(f), (g), (h), (i), (j), or (n) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the state, such person shall forfeit such office or employment and shall be incapable of holding any public office or employment in this state for a period of two years thereafter. [2005 c 326 § 1; 2005 c 274 § 361. Prior: 2000 c 173 § 1; 2000 c 106 § 1; 1998 c 234 § 1; 1996 c 184 § 5; 1995 c 197 § 1; 1991 c 330 § 1; 1990 c 67 § 1; 1985 c 414 § 9; 1984 c 138 § 12; 1969 ex.s. c 104 § 1; 1963 ex.s. c 28 § 10; 1961 c 15 § 82.32.330; prior: 1943 c 156 § 12; 1935 c 180 § 210; Rem. Supp. 1943 § 8370-210.]

**Reviser's note:** This section was amended by 2005 c 274 § 361 and by 2005 c 326 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Effective date—2000 c 173:** "This act takes effect July 1, 2000." [2000 c 173 § 2.]

**Effective date—2000 c 106:** "This act takes effect July 1, 2000." [2000 c 106 § 13.]

**Effective date—1996 c 184:** See note following RCW 46.16.010.

**Effective date—1995 c 197:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 197 § 2.]

**82.32.410 Written determinations as precedents. (Effective July 1, 2006.)** (1) The director may designate certain written determinations as precedents.

(a) By rule adopted pursuant to chapter 34.05 RCW, the director shall adopt criteria which he or she shall use to decide whether a determination is precedential. These criteria shall include, but not be limited to, whether the determination clarifies an unsettled interpretation of Title 82 RCW or



where the determination modifies or clarifies an earlier interpretation.

(b) Written determinations designated as precedents by the director shall be made available for public inspection and shall be published by the department.

(c) The department shall disclose any written determination upon which it relies to support any assessment of tax, interest, or penalty against such taxpayer, after making the deletions provided by subsection (2) of this section.

(2) Before making a written determination available for public inspection under subsection (1) of this section, the department shall delete:

(a) The names, addresses, and other identifying details of the person to whom the written determination pertains and of another person identified in the written determination; and

(b) Information the disclosure of which is specifically prohibited by any statute applicable to the department of revenue, and the department may also delete other information exempted from disclosure by chapter 42.56 RCW or any other statute applicable to the department of revenue. [2005 c 274 § 362; 2001 c 320 § 10; 1997 c 409 § 211; 1991 c 330 § 2.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Effective date—2001 c 320:** See note following RCW 11.02.005.

**Part headings—Severability—1997 c 409:** See notes following RCW 43.22.051.

**82.32.580 Sales and use tax deferral—Historic automobile museum. (Effective July 1, 2007.)** (1) The governing board of a nonprofit organization, corporation, or association may apply for deferral of taxes on an eligible project. Application shall be made to the department in a form and manner prescribed by the department. The application shall contain information regarding the location of the project, estimated or actual costs of the project, time schedules for completion and operation of the project, and other information required by the department. The department shall rule on the application within sixty days. All applications for the tax deferral under this section must be received no later than December 31, 2008.

(2) The department shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on each eligible project.

(3) The nonprofit organization, corporation, or association shall begin paying the deferred taxes in the fifth year after the date certified by the department as the date on which the eligible project is operationally complete. The first payment is due on December 31st of the fifth calendar year after such certified date, with subsequent annual payments due on December 31st of the following nine years. Each payment shall equal ten percent of the deferred tax.

(4) The department may authorize an accelerated repayment schedule upon request of the nonprofit organization, corporation, or association.

(5) Except as provided in subsection (6) of this section, interest shall not be charged on any taxes deferred under this section for the period of deferral. The debt for deferred taxes is not extinguished by insolvency or other failure of the nonprofit organization, corporation, or association.

(6) If the project is not operationally complete within five calendar years from issuance of the tax deferral or if at any time the department finds that the project is not eligible for tax deferral under this section, the amount of deferred taxes outstanding for the project shall be immediately due and payable. If deferred taxes must be repaid under this subsection, the department shall assess interest, but not penalties, on amounts due under this subsection. Interest shall be assessed at the rate provided for delinquent taxes under this chapter, retroactively to the date of deferral, and shall accrue until the deferred taxes due are repaid.

(7) Applications and any other information received by the department of revenue under this section are not confidential under RCW 82.32.330. This chapter applies to the administration of this section.

(8) This section applies to taxable eligible project activity that occurs on or after July 1, 2007.

(9) The following definitions apply to this section:

(a) "Eligible project" means a project that is used primarily for a historic automobile museum.

(b) "Historic automobile museum" means a facility owned and operated by a nonprofit organization, corporation, or association that is used to maintain and exhibit to the public a collection of at least five hundred motor vehicles.

(c) "Nonprofit organization, corporation, or association" means an organization, corporation, or association exempt from tax under section 501(c) (3), (4), or (10) of the federal internal revenue code (26 U.S.C. Sec. 501(c) (3), (4), or (10)).

(d) "Project" means the construction of new structures, the acquisition and installation of fixtures that are permanently affixed to and become a physical part of those structures, and site preparation. For purposes of this subsection, structures do not include parking facilities used for motor vehicles that are not on display or part of the museum collection.

(e) "Site preparation" includes soil testing, site clearing and grading, demolition, or any other related activities that are initiated before construction. Site preparation does not include landscaping services or landscaping materials. [2005 c 514 § 701.]

**Effective date—2005 c 514 § 701:** "Section 701 of this act takes effect July 1, 2007." [2005 c 514 § 1306.]

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**82.32.590 Annual survey under RCW 82.04.4452—Failure to file.** (1) If the department finds that the failure of a taxpayer to file an annual survey under RCW 82.04.4452 by the due date was the result of circumstances beyond the control of the taxpayer, the department shall extend the time for filing the survey. Such extension shall be for a period of thirty days from the date the department issues its written notification to the taxpayer that it qualifies for an extension under this section. The department may grant additional extensions as it deems proper.

(2) In making a determination whether the failure of a taxpayer to file an annual survey by the due date was the result of circumstances beyond the control of the taxpayer, the department shall be guided by rules adopted by the department for the waiver or cancellation of penalties when

the underpayment or untimely payment of any tax was due to circumstances beyond the control of the taxpayer. [2005 c 514 § 1001.]

**Retroactive application—2005 c 514 § 1001:** "Section 1001 of this act applies retroactively to annual surveys required under RCW 82.04.4452 that are due after December 31, 2004." [2005 c 514 § 1312.]

**Effective date—2005 c 514:** See note following RCW 82.04.4272.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**82.32.600 Annual survey under RCW 82.04.4452—Electronic filing. (Effective January 1, 2006.)** (1) Persons required to file surveys under RCW 82.04.4452 must electronically file with the department all surveys, returns, and any other forms or information the department requires in an electronic format as provided or approved by the department, unless the department grants relief under subsection (2) of this section. As used in this section, "returns" has the same meaning as "return" in RCW 82.32.050.

(2) Upon request, the department may relieve a person of the obligations in subsection (1) of this section if the person's taxes have been reduced a cumulative total of less than one thousand dollars from all of the credits, exemptions, or preferential business and occupation tax rates, for which a person is required to file an annual survey under RCW 82.04.4452, 82.32.535, 82.32.545, 82.32.570, 82.32.560, 82.60.070, or 82.63.020.

(3) Persons who no longer qualify for relief under subsection (2) of this section will be notified in writing by the department and must comply with subsection (1) of this section by the date provided in the notice.

(4) Any survey, return, or any other form or information required to be filed in an electronic format under subsection (1) of this section is not filed until received by the department in an electronic format. [2005 c 514 § 1002.]

**Effective date—2005 c 514 §§ 501 and 1002:** See note following RCW 82.04.4463.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**82.32.610 Annual survey for fruit and vegetable business tax incentive—Report to legislature.** (1) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.

(2) Each person claiming a tax exemption under RCW 82.04.4266 shall report information to the department by filing a complete annual survey. The survey is due by March 31st of the year following any calendar year in which a tax exemption under RCW 82.04.4266 is taken. The survey shall include the amount of tax exemption taken. The survey shall also include the following information for employment positions in Washington:

- (a) The number of total employment positions;
- (b) Full-time, part-time, and temporary employment positions as a percent of total employment;
- (c) The number of employment positions according to the following wage bands: Less than thirty thousand dollars; thirty thousand dollars or greater, but less than sixty thousand dollars; and sixty thousand dollars or greater. A wage band

containing fewer than three individuals may be combined with another wage band; and

(d) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands.

The first survey filed under this subsection shall also include information for the twelve-month period immediately before first use of a tax incentive.

(3) The department may request additional information necessary to measure the results of the exemption program, to be submitted at the same time as the survey.

(4) All information collected under this section, except the amount of the tax exemption taken, is deemed taxpayer information under RCW 82.32.330. Information on the amount of tax exemption taken is not subject to the confidentiality provisions of RCW 82.32.330.

(5) If a person fails to submit an annual survey under subsection (2) of this section by the due date of the report, the department shall declare the amount of taxes exempted for the previous calendar year to be immediately due and payable. The department shall assess interest, but not penalties, on the amounts due under this section. The amount due shall be calculated using a rate of 0.138 percent. The interest shall be assessed at the rate provided for delinquent taxes under this chapter, retroactively to the date the exemption was claimed, and shall accrue until the taxes for which the exemption was claimed are repaid. This information is not subject to the confidentiality provisions of RCW 82.32.330.

(6) The department shall use the information from this section to prepare summary descriptive statistics by category. No fewer than three taxpayers shall be included in any category. The department shall report these statistics to the legislature each year by September 1st.

(7) The department shall study the tax exemption authorized in RCW 82.04.4266. The department shall submit a report to the finance committee of the house of representatives and the ways and means committee of the senate by December 1, 2011. The report shall measure the effect of the exemption on job creation, job retention, company growth, the movement of firms or the consolidation of firms' operations into the state, and such other factors as the department selects. [2005 c 513 § 3.]

**Effective dates—2005 c 513:** See note following RCW 82.04.4266.

**82.32.620 Annual report for tax incentives under RCW 82.04.294.** (1) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.

(2)(a) A person who reports taxes under RCW 82.04.294 shall make an annual report to the department detailing employment, wages, and employer-provided health and retirement benefits per job at the manufacturing site. The report shall not include names of employees. The report shall also detail employment by the total number of full-time, part-time, and temporary positions. The first report filed under this subsection shall include employment, wage, and benefit information for the twelve-month period immediately before first use of a preferential tax rate under RCW 82.04.294. The

report is due by March 31st following any year in which a preferential tax rate under RCW 82.04.294 is used. This information is not subject to the confidentiality provisions of RCW 82.32.330.

(b) If a person fails to submit an annual report under (a) of this subsection, the department shall declare the amount of taxes reduced for the previous calendar year to be immediately due and payable. Excise taxes payable under this subsection are subject to interest, but not penalties, at the rate provided for delinquent taxes, as provided under this chapter. The department shall assess interest, retroactively to the date the preferential tax rate under RCW 82.04.294, was used. The interest shall be assessed at the rate provided for delinquent excise taxes under this chapter, and shall accrue until the taxes for which the preferential tax rate was used are repaid. This information is not subject to the confidentiality provisions of RCW 82.32.330. [2005 c 301 § 4.]

**Findings—Intent—Effective date—Report to legislature—2005 c 301:** See notes following RCW 82.04.294.

### Chapter 82.33 RCW

#### ECONOMIC AND REVENUE FORECASTS

##### Sections

82.33.020 Economic and revenue forecast supervisor—Economic and revenue forecasts—Submittal of forecasts—Estimated tuition fees revenue.

**82.33.020 Economic and revenue forecast supervisor—Economic and revenue forecasts—Submittal of forecasts—Estimated tuition fees revenue.** (1) Four times each year the supervisor shall prepare, subject to the approval of the economic and revenue forecast council under RCW 82.33.010:

- (a) An official state economic and revenue forecast;
- (b) An unofficial state economic and revenue forecast based on optimistic economic and revenue projections; and
- (c) An unofficial state economic and revenue forecast based on pessimistic economic and revenue projections.

(2) The supervisor shall submit forecasts prepared under this section, along with any unofficial forecasts provided under RCW 82.33.010, to the governor and the members of the committees on ways and means and the chairs of the committees on transportation of the senate and house of representatives, including one copy to the staff of each of the committees, on or before November 20th, February 20th in the even-numbered years, March 20th in the odd-numbered years, June 20th, and September 20th. All forecasts shall include both estimated receipts and estimated revenues in conformance with generally accepted accounting principles as provided by RCW 43.88.037.

(3) All agencies of state government shall provide to the supervisor immediate access to all information relating to economic and revenue forecasts. Revenue collection information shall be available to the supervisor the first business day following the conclusion of each collection period.

(4) The economic and revenue forecast supervisor and staff shall co-locate and share information, data, and files with the tax research section of the department of revenue but shall not duplicate the duties and functions of one another.

(5) As part of its forecasts under subsection (1) of this section, the supervisor shall provide estimated revenue from tuition fees as defined in RCW 28B.15.020. [2005 c 319 § 137; 1992 c 231 § 34; 1990 c 229 § 2. Prior: 1987 c 505 § 79; 1987 c 502 § 10; 1986 c 112 § 2; 1984 c 138 § 1. Formerly RCW 82.01.120.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Effective date—1992 c 231:** See note following RCW 28B.10.016.

**Effective date—1990 c 229:** See note following RCW 41.06.087.

### Chapter 82.35 RCW

#### COGENERATION FACILITIES—TAX CREDITS

##### Sections

82.35.010 through 82.35.080 Repealed. (*Effective July 1, 2006.*)

82.35.900 Repealed. (*Effective July 1, 2006.*)

**82.35.010 through 82.35.080 Repealed. (*Effective July 1, 2006.*)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**82.35.900 Repealed. (*Effective July 1, 2006.*)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

### Chapter 82.36 RCW

#### MOTOR VEHICLE FUEL TAX

##### Sections

82.36.025 Motor vehicle fuel tax rate—Expiration of subsection.

82.36.035 Computation and payment of tax—Remittance—Electronic funds transfer.

82.36.405 Repealed.

**82.36.025 Motor vehicle fuel tax rate—Expiration of subsection.** (1) A motor vehicle fuel tax rate of twenty-three cents per gallon applies to the sale, distribution, or use of motor vehicle fuel.

(2) Beginning July 1, 2003, an additional and cumulative motor vehicle fuel tax rate of five cents per gallon applies to the sale, distribution, or use of motor vehicle fuel. This subsection (2) expires when the bonds issued for transportation 2003 projects are retired.

(3) Beginning July 1, 2005, an additional and cumulative motor vehicle fuel tax rate of three cents per gallon applies to the sale, distribution, or use of motor vehicle fuel.

(4) Beginning July 1, 2006, an additional and cumulative motor vehicle fuel tax rate of three cents per gallon applies to the sale, distribution, or use of motor vehicle fuel.

(5) Beginning July 1, 2007, an additional and cumulative motor vehicle fuel tax rate of two cents per gallon applies to the sale, distribution, or use of motor vehicle fuel.

(6) Beginning July 1, 2008, an additional and cumulative motor vehicle fuel tax rate of one and one-half cents per gallon applies to the sale, distribution, or use of motor vehicle fuel. [2005 c 314 § 101; 2003 c 361 § 401. Prior: 1999 c 269 § 16; 1999 c 94 § 29; 1994 c 179 § 30; 1991 c 342 § 57; 1990 c 42 § 101; 1983 1st ex.s. c 49 § 27; 1981 c 342 § 2; 1979 c 158 § 224; 1977 ex.s. c 317 § 6.]

**Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401:** See note following RCW 46.68.290.

**Part headings not law—2005 c 314:** See note following RCW 46.17.010.

**Findings—2003 c 361:** "The legislature finds that the state's transportation system is in critical need of repair, restoration, and enhancement. The state's economy, the ability to move goods to market, and the overall mobility and safety of the citizens of the state rely on the state's transportation system. The revenues generated by this act are dedicated to funds, accounts, and activities that are necessary to improve the delivery of state transportation projects and services." [2003 c 361 § 101.]

**Part headings not law—2003 c 361:** "Part headings used in this act are not any part of the law." [2003 c 361 § 701.]

**Severability—2003 c 361:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 361 § 702.]

**Effective dates—2003 c 361:** See note following RCW 82.08.020.

**Effective date—1999 c 269:** See note following RCW 36.78.070.

**Legislative finding—Effective dates—1999 c 94:** See notes following RCW 43.84.092.

**Effective dates—1991 c 342:** See note following RCW 47.26.167.

**Purpose of state and local transportation funding program—1990 c 42:** "(1) The legislature finds that a new comprehensive funding program is required to maintain the state's commitment to the growing mobility needs of its citizens and commerce. The transportation funding program is intended to satisfy the following state policies and objectives:

(a) Statewide system: Provide for preservation of the existing statewide system and improvements for current and expected capacity needs in rural, established urban, and growing suburban areas throughout the state;

(b) Local flexibility: Provide for necessary state highway improvements, as well as providing local governments with the option to use new funding sources for projects meeting local and regional needs;

(c) Multimodal: Provide a source of funds that may be used for multimodal transportation purposes;

(d) Program compatibility: Implement transportation facilities and services that are consistent with adopted land use and transportation plans and coordinated with recently authorized programs such as the act authorizing creation of transportation benefit districts and the local transportation act of 1988;

(e) Interjurisdictional cooperation: Encourage transportation planning and projects that are multijurisdictional in their conception, development, and benefit, recognizing that mobility problems do not respect jurisdictional boundaries;

(f) Public and private sector: Use a state, local, and private sector partnership that equitably shares the burden of meeting transportation needs.

(2) The legislature further recognizes that the revenues currently available to the state and to counties, cities, and transit authorities for highway, road, and street construction and preservation fall far short of the identified need. The 1988 Washington road jurisdiction study identified a statewide funding shortfall of between \$14.6 and \$19.9 billion to bring existing roads to acceptable standards. The gap between identified transportation needs and available revenues continues to increase. A comprehensive transportation funding program is required to meet the current and anticipated future needs of this state.

(3) The legislature further recognizes the desirability of making certain changes in the collection and distribution of motor vehicle excise taxes with the following objectives: Simplifying administration and collection of the taxes including adoption of a predictable depreciation schedule for vehicles; simplifying the allocation of the taxes among various recipients; and the dedication of a portion of motor vehicle excise taxes for transportation purposes.

(4) The legislature, therefore, declares a need for the three-part funding program embodied in this act: (a) Statewide funding for highways, roads, and streets in urban and rural areas; (b) local option funding authority, available immediately, for the construction and preservation of roads, streets, and transit improvements and facilities; and (c) the creation of a multimodal transportation fund that is funded through dedication of a portion of motor vehicle excise tax. This funding program is intended, by targeting certain new revenues, to produce a significant increase in the overall capacity of the state, county, and city transportation systems to satisfy and efficiently accommodate the movement of people and goods." [1990 c 42 § 1.]

**Headings—1990 c 42:** "The index and part and section headings as used in this act do not constitute any part of the law." [1990 c 42 § 502.]

[2005 RCW Supp—page 1040]

**Severability—1990 c 42:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 42 § 503.]

**Effective dates—Application—Implementation—1990 c 42:** "(1) Sections 101 through 104, 115 through 117, 201 through 214, 405 through 411, and 503, chapter 42, Laws of 1990 are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 1, 1990.

(2) Sections 105 through 114, chapter 42, Laws of 1990 shall take effect September 1, 1990. The additional fees in sections 105 through 108, chapter 42, Laws of 1990 apply for all motor vehicle registrations that expire August 31, 1991, and thereafter.

(3) Sections 301 through 303 and 305 through 328, chapter 42, Laws of 1990 shall take effect September 1, 1990, and apply to the purchase of vehicle registrations that expire August 31, 1991, and thereafter.

(4) Section 304, chapter 42, Laws of 1990 shall take effect July 1, 1991, and apply to all vehicles registered for the first time with an expiration date of June 30, 1992, and thereafter.

(5) The director of licensing may immediately take such steps as are necessary to ensure that the sections of chapter 42, Laws of 1990 are implemented on their effective dates.

(6) \*Sections 401 through 404, chapter 42, Laws of 1990 shall take effect September 1, 1990, only if the bonds issued under RCW 47.56.711 for the Spokane river toll bridge have been retired or fully defeased, and shall become null and void if the bonds have not been retired or fully defeased on that date." [1990 c 298 § 38; 1990 c 42 § 504.]

\*Reviser's note: The bonds were fully defeased on June 1, 1990.

**Severability—Effective date—1983 1st ex.s. c 49:** See RCW 36.79.900 and 36.79.901.

**Effective date—Severability—1981 c 342:** See notes following RCW 82.36.010.

**Effective dates—Severability—1977 ex.s. c 317:** See notes following RCW 82.36.010.

**82.36.035 Computation and payment of tax—Remittance—Electronic funds transfer.** (1) The tax imposed by this chapter shall be computed by multiplying the tax rate per gallon provided in this chapter by the number of gallons of motor vehicle fuel subject to the motor vehicle fuel tax.

(2) Except as provided in subsection (3) of this section, tax reports shall be accompanied by a remittance payable to the state treasurer covering the tax amount determined to be due for the reporting period.

(3) If the tax is paid by electronic funds transfer, the tax shall be paid on or before the twenty-sixth calendar day of the month immediately following the reporting period. If the payment due date falls on a Saturday, Sunday, or legal holiday the next business day will be the payment date.

(4) The tax shall be paid by electronic funds transfer whenever the amount due is fifty thousand dollars or more.

(5) A motor vehicle fuel distributor shall remit tax on motor vehicle fuel purchased from a motor vehicle fuel supplier, and due to the state for that reporting period, to the motor vehicle fuel supplier.

(6) At the election of the distributor, the payment of the motor vehicle fuel tax owed on motor vehicle fuel purchased from a supplier shall be remitted to the supplier on terms agreed upon between the distributor and supplier or no later than seven business days before the twenty-sixth day of the following month. This election shall be subject to a condition that the distributor's remittances of all amounts of motor vehicle fuel tax due to the supplier shall be paid by electronic funds transfer. The distributor's election may be terminated by the supplier if the distributor does not make timely pay-

ments to the supplier as required by this section. This section shall not apply if the distributor is required by the supplier to pay cash or cash equivalent for motor vehicle fuel purchases. [2005 c 260 § 1; 1998 c 176 § 12.]

**Effective date—2005 c 260:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 260 § 4.]

**82.36.405 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Chapter 82.38 RCW SPECIAL FUEL TAX ACT

### Sections

82.38.030	Tax imposed—Rate—Incidence—Allocation of proceeds—Expiration of subsection.
82.38.035	Remittance of tax.
82.38.045	Liability of terminal operator for remittance.
82.38.160	Computation and payment of tax—Remittance—Electronic funds transfer.
82.38.289	Repealed.

**82.38.030 Tax imposed—Rate—Incidence—Allocation of proceeds—Expiration of subsection.** (1) There is hereby levied and imposed upon special fuel users a tax at the rate of twenty-three cents per gallon of special fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature.

(2) Beginning July 1, 2003, an additional and cumulative tax rate of five cents per gallon of special fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature shall be imposed on special fuel users. This subsection (2) expires when the bonds issued for transportation 2003 projects are retired.

(3) Beginning July 1, 2005, an additional and cumulative tax rate of three cents per gallon of special fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature shall be imposed on special fuel users.

(4) Beginning July 1, 2006, an additional and cumulative tax rate of three cents per gallon of special fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature shall be imposed on special fuel users.

(5) Beginning July 1, 2007, an additional and cumulative tax rate of two cents per gallon of special fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature shall be imposed on special fuel users.

(6) Beginning July 1, 2008, an additional and cumulative tax rate of one and one-half cents per gallon of special fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature shall be imposed on special fuel users.

(7) Taxes are imposed when:

(a) Special fuel is removed in this state from a terminal if the special fuel is removed at the rack unless the removal is to a licensed exporter for direct delivery to a destination outside of the state, or the removal is to a special fuel distributor for

direct delivery to an international fuel tax agreement licensee under RCW 82.38.320;

(b) Special fuel is removed in this state from a refinery if either of the following applies:

(i) The removal is by bulk transfer and the refiner or the owner of the special fuel immediately before the removal is not a licensee; or

(ii) The removal is at the refinery rack unless the removal is to a licensed exporter for direct delivery to a destination outside of the state, or the removal is to a special fuel distributor for direct delivery to an international fuel tax agreement licensee under RCW 82.38.320;

(c) Special fuel enters into this state for sale, consumption, use, or storage if either of the following applies:

(i) The entry is by bulk transfer and the importer is not a licensee; or

(ii) The entry is not by bulk transfer;

(d) Special fuel is sold or removed in this state to an unlicensed entity unless there was a prior taxable removal, entry, or sale of the special fuel;

(e) Blended special fuel is removed or sold in this state by the blender of the fuel. The number of gallons of blended special fuel subject to tax is the difference between the total number of gallons of blended special fuel removed or sold and the number of gallons of previously taxed special fuel used to produce the blended special fuel;

(f) Dyed special fuel is used on a highway, as authorized by the internal revenue code, unless the use is exempt from the special fuel tax;

(g) Dyed special fuel is held for sale, sold, used, or is intended to be used in violation of this chapter;

(h) Special fuel purchased by an international fuel tax agreement licensee under RCW 82.38.320 is used on a highway; and

(i) Special fuel is sold by a licensed special fuel supplier to a special fuel distributor, special fuel importer, or special fuel blender and the special fuel is not removed from the bulk transfer-terminal system.

(8) The tax imposed by this chapter, if required to be collected by the licensee, is held in trust by the licensee until paid to the department, and a licensee who appropriates or converts the tax collected to his or her own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter is guilty of a felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. A person, partnership, corporation, or corporate officer who fails to collect the tax imposed by this section, or who has collected the tax and fails to pay it to the department in the manner prescribed by this chapter, is personally liable to the state for the amount of the tax. [2005 c 314 § 102; 2003 c 361 § 402; 2002 c 183 § 2; 2001 c 270 § 6; 1998 c 176 § 51; 1996 c 104 § 7; 1989 c 193 § 3; 1983 1st ex.s. c 49 § 30; 1979 c 40 § 3; 1977 ex.s. c 317 § 5; 1975 1st ex.s. c 62 § 1; 1973 1st ex.s. c 156 § 1; 1972 ex.s. c 135 § 2; 1971 ex.s. c 175 § 4.]

**Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401:** See note following RCW 46.68.290.

**Part headings not law—2005 c 314:** See note following RCW 46.17.010.

**Findings—Part headings not law—Severability—2003 c 361:** See notes following RCW 82.36.025.

**Effective dates—2003 c 361:** See note following RCW 82.08.020.

**Severability—Effective date—1983 1st ex.s. c 49:** See RCW 36.79.900 and 36.79.901.

**Effective dates—Severability—1977 ex.s. c 317:** See notes following RCW 82.36.010.

**82.38.035 Remittance of tax.** (1) A licensed supplier shall remit tax on special fuel to the department as provided in RCW 82.38.030(7)(a). On a two-party exchange, or buy-sell agreement between two licensed suppliers, the receiving exchange partner or buyer shall remit the tax.

(2) A refiner shall remit tax to the department on special fuel removed from a refinery as provided in RCW 82.38.030(7)(b).

(3) An importer shall remit tax to the department on special fuel imported into this state as provided in RCW 82.38.030(7)(c).

(4) A blender shall remit tax to the department on the removal or sale of blended special fuel as provided in RCW 82.38.030(7)(e).

(5) A dyed special fuel user shall remit tax to the department on the use of dyed special fuel as provided in RCW 82.38.030(7)(f). [2005 c 314 § 107; 2003 c 361 § 405; 2001 c 270 § 7; 1998 c 176 § 53.]

**Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401:** See note following RCW 46.68.290.

**Part headings not law—2005 c 314:** See note following RCW 46.17.010.

**Findings—Part headings not law—Severability—2003 c 361:** See notes following RCW 82.36.025.

**Effective dates—2003 c 361:** See note following RCW 82.08.020.

**82.38.045 Liability of terminal operator for remittance.** A terminal operator is jointly and severally liable for remitting the tax imposed under RCW 82.38.030 if, at the time of removal:

(1) The position holder with respect to the special fuel is a person other than the terminal operator and is not a licensee;

(2) The terminal operator is not a licensee;

(3) The position holder has an expired internal revenue service notification certificate issued under chapter 26, C.F.R. Part 48; or

(4) The terminal operator had reason to believe that information on the notification certificate was false. [2005 c 314 § 108; 1998 c 176 § 54.]

**Part headings not law—2005 c 314:** See note following RCW 46.17.010.

**82.38.160 Computation and payment of tax—Remittance—Electronic funds transfer.** (1) The tax imposed by this chapter shall be computed by multiplying the tax rate per gallon provided in this chapter by the number of gallons of special fuel subject to the special fuel tax.

(2) A special fuel distributor shall remit tax on special fuel purchased from a special fuel supplier, and due to the state for that reporting period, to the special fuel supplier.

(3) At the election of the distributor, the payment of the special fuel tax owed on special fuel purchased from a supplier shall be remitted to the supplier on terms agreed upon

[2005 RCW Supp—page 1042]

between the distributor and the supplier or no later than seven business days before the twenty-sixth day of the following month. This election shall be subject to a condition that the distributor's remittances of all amounts of special fuel tax due to the supplier shall be paid by electronic funds transfer. The distributor's election may be terminated by the supplier if the distributor does not make timely payments to the supplier as required by this section. This section shall not apply if the distributor is required by the supplier to pay cash or cash equivalent for special fuel purchases.

(4) Except as provided in subsection (5) of this section, the tax return shall be accompanied by a remittance payable to the state treasurer covering the tax amount determined to be due for the reporting period.

(5) If the tax is paid by electronic funds transfer, the tax shall be paid on or before the twenty-sixth calendar day of the month immediately following the reporting period. If the payment due date falls on a Saturday, Sunday, or legal holiday the next business day will be the payment date. If the tax is paid by electronic funds transfer and the reporting period ends on a day other than the last day of a calendar month as provided in RCW 82.38.150, the tax shall be paid on or before the last state business day of the thirty-day period following the end of the reporting period.

(6) The tax shall be paid by electronic funds transfer whenever the amount due is fifty thousand dollars or more. [2005 c 260 § 2; 1998 c 176 § 68; 1987 c 174 § 5; 1979 c 40 § 12; 1971 ex.s. c 175 § 17.]

**Effective date—2005 c 260:** See note following RCW 82.36.035.

**Effective date—1987 c 174:** See note following RCW 82.36.010.

**82.38.289 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Chapter 82.42 RCW AIRCRAFT FUEL TAX

### Sections

82.42.020	Aircraft fuel tax imposed—Exception—Rate to be computed—Misappropriation or conversion—Penalties, liability.
82.42.030	Exemptions.

**82.42.020 Aircraft fuel tax imposed—Exception—Rate to be computed—Misappropriation or conversion—Penalties, liability.** There is hereby levied, and there shall be collected by every distributor of aircraft fuel, an excise tax at the rate of eleven cents on each gallon of aircraft fuel sold, delivered, or used in this state: PROVIDED HOWEVER, That such aircraft fuel excise tax shall not apply to fuel for aircraft that both operate from a private, non-state-funded airfield during at least ninety-five percent of the aircraft's normal use and are used principally for the application of pesticides, herbicides, or other agricultural chemicals and shall not apply to fuel for emergency medical air transport entities: PROVIDED FURTHER, That there shall be collected from every consumer or user of aircraft fuel either the use tax imposed by RCW 82.12.020, as amended, or the retail sales tax imposed by RCW 82.08.020, as amended, collection procedure to be as prescribed by law and/or rule or regulation of the department of revenue. The taxes imposed by this chap-

ter shall be collected and paid to the state but once in respect to any aircraft fuel.

The tax required by this chapter, to be collected by the seller, is held in trust by the seller until paid to the department, and a seller who appropriates or converts the tax collected to his or her own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter is guilty of a felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. A person, partnership, corporation, or corporate officer who fails to collect the tax imposed by this section, or who has collected the tax and fails to pay it to the department in the manner prescribed by this chapter, is personally liable to the state for the amount of the tax. [2005 c 341 § 3; 2003 c 375 § 5; 1996 c 104 § 13; 1982 1st ex.s. c 25 § 2; 1969 ex.s. c 254 § 2; 1967 ex.s. c 10 § 2.]

**Effective date—2005 c 341:** See note following RCW 47.68.230.

**Effective date—2003 c 375:** See note following RCW 47.68.233.

**Severability—Effective date—1982 1st ex.s. c 25:** See notes following RCW 82.42.010.

**82.42.030 Exemptions.** (1) The provision of RCW 82.42.020 imposing the payment of an excise tax on each gallon of aircraft fuel sold, delivered or used in this state shall not apply to aircraft fuel sold for export, nor to aircraft fuel used for the following purposes: (a) The operation of aircraft when such use is by any air carrier or supplemental air carrier operating under a certificate of public convenience and necessity under the provisions of the Federal Aviation Act of 1958, Public Law 85-726, as amended; (b) the operation of aircraft for testing or experimental purposes; (c) the operation of aircraft when such operation is for the training of crews in Washington state for purchasers of aircraft who are certified air carriers; and (d) the operation of aircraft in the operations of a local service commuter: PROVIDED, That the director's determination as to a particular activity for which aircraft fuel is used as being an exemption under this section, or otherwise, shall be final.

(2) To claim an exemption on account of sales by a licensed distributor of aircraft fuel for export, the purchaser shall obtain from the selling distributor, and such selling distributor must furnish the purchaser, an invoice giving such details of the sale for export as the director may require, copies of which shall be furnished the department and the entity of the state or foreign jurisdiction of destination which is charged by the laws of that state or foreign jurisdiction with the control or monitoring or both, of the sales or movement of aircraft fuel in that state or foreign jurisdiction.

(3) For the purposes of this section, "air carrier" means an airline, air cargo carrier, air taxi, air commuter, or air charter operator, that provides routine air service to the general public for compensation or hire, and operates at least fifteen round-trips per week between two or more points and publishes flight schedules which specify the times, days of the week, and points between which it operates. Where it is doubtful that an operation is for "compensation or hire," the test applied is whether the air service is merely incidental to the person's other business or is, in itself, a major enterprise for profit. [2005 c 341 § 4; 1989 c 193 § 4; 1982 1st ex.s. c 25 § 4; 1967 ex.s. c 10 § 3.]

**Effective date—2005 c 341:** See note following RCW 47.68.230.

**Severability—Effective date—1982 1st ex.s. c 25:** See notes following RCW 82.42.010.

## Chapter 82.45 RCW

### EXCISE TAX ON REAL ESTATE SALES

#### Sections

82.45.060	Tax on sale of property.
82.45.180	Disposition of proceeds.
82.45.200	Real estate excise tax grant account.
82.45.210	State assistance for county electronic processing and reporting of taxes—Grant program.
82.45.220	Failure to report transfer of controlling interest.

**82.45.060 Tax on sale of property.** There is imposed an excise tax upon each sale of real property at the rate of one and twenty-eight one-hundredths percent of the selling price. An amount equal to six and one-tenth percent of the proceeds of this tax to the state treasurer shall be deposited in the public works assistance account created in RCW 43.155.050. An amount equal to one and six-tenths percent of the proceeds of this tax to the state treasurer shall be deposited in the city-county assistance account created in RCW 43.08.290. [2005 c 450 § 1; 2000 c 103 § 15; 1987 c 472 § 14; 1983 2nd ex.s. c 3 § 20; 1982 1st ex.s. c 35 § 14; 1980 c 154 § 2; 1969 ex.s. c 223 § 28A.45.060. Prior: 1951 1st ex.s. c 11 § 5. Formerly RCW 28A.45.060, 28.45.060.]

**Effective date—2005 c 450:** "This act takes effect August 1, 2005." [2005 c 450 § 4.]

**Severability—1987 c 472:** See RCW 79.71.900.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Severability—Effective dates—1982 1st ex.s. c 35:** See notes following RCW 82.08.020.

**Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154:** See notes following chapter digest.

**82.45.180 Disposition of proceeds.** (1)(a) For taxes collected by the county under this chapter, the county treasurer shall collect a five-dollar fee on all transactions required by this chapter where the transaction does not require the payment of tax. A total of five dollars shall be collected in the form of a tax and fee, where the calculated tax payment is less than five dollars. Through June 30, 2010, the county treasurer shall collect an additional five-dollar fee on all transactions required by this chapter where the transaction does not require the payment of a tax, and on all taxable transactions required by this chapter where the calculated tax payment is less than five dollars. This additional five-dollar fee shall be deposited in the county treasurer's real estate excise tax electronic technology account. Through June 30, 2006, the county treasurer shall place one percent of the taxes collected by the county under this chapter and the treasurer's fee in the county current expense fund to defray costs of collection. After June 30, 2006, the county treasurer shall place one and three-tenths percent of the taxes collected by the county under this chapter and the treasurer's fee in the county current expense fund to defray costs of collection. For taxes collected by the county under this chapter before July 1, 2006, the county treasurer shall pay over to the state treasurer and account to the department of revenue for the proceeds at

the same time the county treasurer remits funds to the state under RCW 84.56.280. For taxes collected by the county under this chapter after June 30, 2006, on a monthly basis the county treasurer shall pay over to the state treasurer the month's transmittal. The month's transmittal must be received by the state treasurer by 5:00 p.m. on the last working day of each month. The county treasurer shall account to the department for the month's transmittal by the twentieth day of the month following the month in which the month's transmittal was paid over to the state treasurer. The state treasurer shall deposit the proceeds in the general fund.

(b) For purposes of this subsection, the definitions in this subsection apply.

(i) "Close of business" means the time when the county treasurer makes his or her daily deposit of proceeds.

(ii) "Month's transmittal" means all proceeds deposited by the county through the close of business of the day that is two working days before the last working day of the month. This definition of "month's transmittal" shall not be construed as requiring any change in a county's practices regarding the timing of its daily deposits of proceeds.

(iii) "Proceeds" means moneys collected and receipted by the county from the taxes imposed by this chapter, less the county's share of the proceeds used to defray the county's costs of collection allowable in (a) of this subsection.

(iv) "Working day" means a calendar day, except Saturdays, Sundays, and all legal holidays as provided in RCW 1.16.050.

(2) For taxes collected by the department of revenue under this chapter, the department shall remit the tax to the state treasurer who shall deposit the proceeds of any state tax in the general fund. The state treasurer shall deposit the proceeds of any local taxes imposed under chapter 82.46 RCW in the local real estate excise tax account hereby created in the state treasury. Moneys in the local real estate excise tax account may be spent only for distribution to counties, cities, and towns imposing a tax under chapter 82.46 RCW. Except as provided in RCW 43.08.190, all earnings of investments of balances in the local real estate excise tax account shall be credited to the local real estate excise tax account and distributed to the counties, cities, and towns monthly. Monthly the state treasurer shall make distribution from the local real estate excise tax account to the counties, cities, and towns the amount of tax collected on behalf of each taxing authority. The state treasurer shall make the distribution under this subsection without appropriation.

(3)(a) The real estate excise tax electronic technology account is created in the custody of the state treasurer. An appropriation is not required for expenditures and the account is not subject to allotment procedures under chapter 43.88 RCW.

(b) Through June 30, 2010, the county treasurer shall collect an additional five-dollar fee on all taxable transactions required by this chapter. The county treasurer shall remit this fee to the state treasurer at the same time the county treasurer remits funds to the state under subsection (1) of this section. The state treasurer shall place money from this fee in the real estate excise tax electronic technology account. By the twentieth day of the subsequent month, the state treasurer shall distribute to each county treasurer according to the following formula: Three-quarters of the funds available shall be

equally distributed among the thirty-nine counties; and the balance shall be ratably distributed among the counties in direct proportion to their population as it relates to the total state's population based on most recent statistics by the office of financial management.

(c) When received by the county treasurer, the funds shall be placed in a special real estate excise tax electronic technology fund held by the county treasurer to be used exclusively for the development, implementation, and maintenance of an electronic processing and reporting system for real estate excise tax affidavits. Funds may be expended to make the system compatible with the automated real estate excise tax system developed by the department and compatible with the processes used in the offices of the county assessor and county auditor. Any funds held in the account that are not expended by July 1, 2015, revert to the county capital improvements fund in accordance with RCW 82.46.010. [2005 c 486 § 2; 2005 c 480 § 2; 1998 c 106 § 11; 1993 sp.s. c 25 § 510; 1991 c 245 § 15; 1982 c 176 § 2; 1981 c 167 § 3; 1980 c 154 § 6.]

**Reviser's note:** This section was amended by 2005 c 480 § 2 and by 2005 c 486 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Purpose—2005 c 486:** "Over the past decade, traditional school construction funding sources, such as timber revenues, have been declining, while the demand for school facility construction and improvements have been increasing. Washington's youth deserve safe, healthy, and supportive learning environments to help meet their educational needs. To increase state assistance for local school construction projects, the legislature expects to rely more on state bonding authority. The purpose of this act is to expand the constitutional definition of general state revenues by removing the dedication of a portion of the real estate excise tax for common schools. Nothing in this act is intended to affect the state's current efforts to support common schools in the state's omnibus appropriations act." [2005 c 486 § 1.]

**Intent—Findings—Effective date—2005 c 480:** See notes following RCW 82.45.210.

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Findings—Intent—1993 sp.s. c 25:** See note following RCW 82.45.010.

**Audits, assessments, and refunds—1982 c 176:** See note following chapter digest.

**Effective date—1981 c 167:** See note following RCW 82.45.150.

**Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154:** See notes following chapter digest.

### **82.45.200 Real estate excise tax grant account. (1)**

The real estate excise tax grant account is created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for grants authorized under RCW 82.45.210 in the manner provided for in RCW 82.45.210.

(2) Any funds remaining in the real estate excise tax grant account on July 1, 2010, shall be deposited in the general fund. [2005 c 480 § 3.]

**Intent—Findings—Effective date—2005 c 480:** See notes following RCW 82.45.210.

**82.45.210 State assistance for county electronic processing and reporting of taxes—Grant program. (1)** To the extent that funds are appropriated, the department shall administer a grant program for counties to assist in the development, implementation, and maintenance of an electronic



processing and reporting system for real estate excise tax affidavits that is compatible with the automated real estate excise tax system developed by the department, and to assist in complying with the requirements of RCW 82.45.180(1).

(2) Subject to the limit in subsection (3) of this section, the amount of the grant shall be equal to the amount paid by a county to:

(a) Purchase computer hardware or software, or to repair or upgrade existing computer hardware or software, used for the electronic processing and reporting of real estate excise tax affidavits and that is compatible with the automated real estate excise tax system developed by the department; and

(b) Make changes to existing software that are necessary to comply with the requirements of RCW 82.45.180(1).

(3) No county is eligible for grants under this section totaling more than one hundred thousand dollars.

(4) No more than three million nine hundred thousand dollars in grants may be awarded under this section.

(5) The source of funds for this grant program is the real estate excise tax grant account created in RCW 82.45.200. [2005 c 480 § 4.]

**Intent—Findings—2005 c 480:** "(1) It is the legislature's intent to provide funding for the development and implementation of an automated system for the electronic processing of the real estate excise tax. The legislature finds that due to the numerous users of the real estate excise tax information, and the many entities involved in its work flow, county systems must be compatible with the automated system developed by the state department of revenue.

(2) The legislature finds that under current law an electronic real estate excise tax affidavit that is signed with a digital signature under chapter 19.34 RCW is a legally valid document and, pursuant to RCW 5.46.010, electronic facsimiles, scanned signatures, and digital and other electronic conversions of written signatures satisfy the signature component of the affidavit requirement under this act." [2005 c 480 § 1.]

**Effective date—2005 c 480:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 480 § 6.]

**82.45.220 Failure to report transfer of controlling interest.** An organization that fails to report a transfer of the controlling interest in the organization under RCW 43.07.390 to the secretary of state and is later determined to be subject to real estate excise taxes due to the transfer, shall be subject to the provisions of RCW 82.45.100 as well as the evasion penalty in RCW 82.32.090(6). [2005 c 326 § 3.]

## Chapter 82.61 RCW

### TAX DEFERRALS FOR MANUFACTURING, RESEARCH, AND DEVELOPMENT PROJECTS

#### Sections

82.61.010 through 82.61.090 Repealed. (*Effective July 1, 2006.*)  
82.61.900 Repealed. (*Effective July 1, 2006.*)  
82.61.901 Repealed. (*Effective July 1, 2006.*)

**82.61.010 through 82.61.090 Repealed. (*Effective July 1, 2006.*)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**82.61.900 Repealed. (*Effective July 1, 2006.*)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**82.61.901 Repealed. (*Effective July 1, 2006.*)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Chapter 82.70 RCW

### COMMUTE TRIP REDUCTION INCENTIVES

#### Sections

82.70.010 Definitions. (*Expires July 1, 2013.*)  
82.70.020 Tax credit authorized. (*Expires July 1, 2013.*)  
82.70.025 Application for tax credit. (*Expires July 1, 2013.*)  
82.70.030 False statement in application—Penalty. (*Expires July 1, 2013.*)  
82.70.040 Tax credit limitations. (*Expires July 1, 2013.*)  
82.70.060 Commute trip reduction task force report. (*Expires July 1, 2013.*)

**82.70.010 Definitions. (*Expires July 1, 2013.*)** The definitions in this section apply throughout this chapter and RCW 70.94.996 unless the context clearly requires otherwise.

(1) "Public agency" means any county, city, or other local government agency or any state government agency, board, or commission.

(2) "Public transportation" means the same as "public transportation service" as defined in RCW 36.57A.010 and includes passenger services of the Washington state ferries.

(3) "Nonmotorized commuting" means commuting to and from the workplace by an employee by walking or running or by riding a bicycle or other device not powered by a motor.

(4) "Ride sharing" means the same as "flexible commuter ride sharing" as defined in RCW 46.74.010, including ride sharing on Washington state ferries.

(5) "Car sharing" means a membership program intended to offer an alternative to car ownership under which persons or entities that become members are permitted to use vehicles from a fleet on an hourly basis.

(6) "Telework" means a program where work functions that are normally performed at a traditional workplace are instead performed by an employee at his or her home at least one day a week for the purpose of reducing the number of trips to the employee's workplace.

(7) "Applicant" means a person applying for a tax credit under this chapter. [2005 c 297 § 1; 2003 c 364 § 1.]

**Effective date—2005 c 297:** See note following RCW 82.70.025.

**Effective date—Contingency—Captions not law—2003 c 364:** See notes following RCW 82.70.020.

**82.70.020 Tax credit authorized. (*Expires July 1, 2013.*)** (1) Employers in this state who are taxable under chapter 82.04 or 82.16 RCW and provide financial incentives to their own or other employees for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting before July 1, 2013, are allowed a credit against taxes payable under chapters 82.04 and 82.16 RCW for amounts paid to or on behalf of employees for ride sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing, or for using nonmotorized commuting, not to exceed sixty dollars per employee per fiscal year.

(2) Property managers who are taxable under chapter 82.04 or 82.16 RCW and provide financial incentives to persons employed at a worksite in this state managed by the property manager for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting before July 1, 2013, are allowed a credit against taxes payable under chapters 82.04 and 82.16 RCW for amounts paid to or on behalf of these persons for ride sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing, or for using nonmotorized commuting, not to exceed sixty dollars per person per fiscal year.

(3) The credit under this section is equal to the amount paid to or on behalf of each employee multiplied by fifty percent, but may not exceed sixty dollars per employee per fiscal year. No refunds may be granted for credits under this section.

(4) A person may not receive credit under this section for amounts paid to or on behalf of the same employee under both chapters 82.04 and 82.16 RCW.

(5) A person may not take a credit under this section for amounts claimed for credit by other persons. [2005 c 297 § 3; 2003 c 364 § 2.]

**Effective date—2005 c 297:** See note following RCW 82.70.025.

**Effective date—Contingency—2003 c 364:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect on July 1, 2003, but only if Engrossed Substitute House Bill No. 2231 becomes law by July 1, 2003. If Engrossed Substitute House Bill No. 2231 does not become law by July 1, 2003, this act is null and void." [2003 c 364 § 13.] Engrossed Substitute House Bill No. 2231 was signed into law by the governor on May 19, 2003.

**Captions not law—2003 c 364:** "Captions used in this act are not part of the law." [2003 c 364 § 14.]

**82.70.025 Application for tax credit. (Expires July 1, 2013.)** (1) Application for tax credits under this chapter must be received by the department between the first day of January and the 31st day of January, following the calendar year in which the applicant made payments to or on behalf of employees for ride sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing, or for using nonmotorized commuting. The application shall be made to the department in a form and manner prescribed by the department. The application shall contain information regarding the number of employees for which incentives are paid during the calendar year, the amounts paid to or on behalf of employees for ride sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing, or for using nonmotorized commuting, the amount of credit deferred under RCW 82.70.040(2)(b)(i) to be used, and other information required by the department. For applications due by January 31, 2006, the application shall not include amounts paid from January 1, 2005, through June 30, 2005, to or on behalf of employees for ride sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing, or for using nonmotorized commuting.

(2) The department shall rule on the application within sixty days of the deadline provided in subsection (1) of this section.

(3) The department shall disapprove any application not received by the deadline provided in subsection (1) of this

section regardless of the reason that the application was received after the deadline.

(4) After an application is approved and tax credit granted, no increase in the credit shall be allowed. [2005 c 297 § 2.]

**Effective date—2005 c 297:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 297 § 6.]

**82.70.030 False statement in application—Penalty. (Expires July 1, 2013.)** Any person who knowingly makes a false statement of a material fact in the application required under RCW 82.70.025 for a credit under RCW 82.70.020 is guilty of a gross misdemeanor. [2005 c 297 § 4; 2003 c 364 § 3.]

**Effective date—2005 c 297:** See note following RCW 82.70.025.

**Effective date—Contingency—Captions not law—2003 c 364:** See notes following RCW 82.70.020.

**82.70.040 Tax credit limitations. (Expires July 1, 2013.)** (1)(a) The department shall keep a running total of all credits allowed under RCW 82.70.020 during each fiscal year. The department shall not allow any credits that would cause the total amount allowed to exceed two million seven hundred fifty thousand dollars in any fiscal year. This limitation includes any deferred credits carried forward under subsection (2)(b)(i) of this section from prior years.

(b) If the total amount of credit applied for by all applicants in any year exceeds the limit in this subsection, the department shall ratably reduce the amount of credit allowed for all applicants so that the limit in this subsection is not exceeded. If a credit is reduced under this subsection, the amount of the reduction may not be carried forward and claimed in subsequent fiscal years.

(2)(a) Tax credits under RCW 82.70.020 may not be claimed in excess of the amount of tax otherwise due under chapter 82.04 or 82.16 RCW.

(b)(i) Through June 30, 2005, a person with taxes equal to or in excess of the credit under RCW 82.70.020, and therefore not subject to the limitation in (a) of this subsection, may elect to defer tax credits for a period of not more than three years after the year in which the credits accrue. No credits deferred under this subsection (2)(b)(i) may be used after June 30, 2008. A person deferring tax credits under this subsection (2)(b)(i) must submit an application as provided in RCW 82.70.025 in the year in which the deferred tax credits will be used. This application is subject to the provisions of subsection (1) of this section for the year in which the tax credits will be applied. If a deferred credit is reduced under subsection (1)(b) of this section, the amount of deferred credit disallowed because of the reduction may be carried forward as long as the period of deferral does not exceed three years after the year in which the credit was earned.

(ii) For credits approved by the department after June 30, 2005, the approved credit may be carried forward to subsequent years until used. Credits carried forward as authorized by this subsection are subject to the limitation in subsection (1)(a) of this section for the fiscal year for which the credits were originally approved.

(3) No person shall be approved for tax credits under RCW 82.70.020 in excess of two hundred thousand dollars in any fiscal year. This limitation does not apply to credits carried forward from prior years under subsection (2)(b) of this section.

(4) No person may claim tax credits after June 30, 2013.

(5) Credits may not be carried forward other than as authorized in subsection (2)(b) of this section.

(6) No person is eligible for tax credits under RCW 82.70.020 if the additional revenues for the multimodal transportation account created by Engrossed Substitute House Bill No. 2231 are terminated. [2005 c 297 § 5; 2003 c 364 § 4.]

**Effective date—2005 c 297:** See note following RCW 82.70.025.

**Effective date—Contingency—Captions not law—2003 c 364:** See notes following RCW 82.70.020.

**82.70.060 Commute trip reduction task force report. (Expires July 1, 2013.)** The commute trip reduction task force shall determine the effectiveness of the tax credit under RCW 82.70.020, the grant program in RCW 70.94.996, and the relative effectiveness of the tax credit and the grant program as part of its ongoing evaluation of the commute trip reduction law and report to the senate and house transportation committees and to the fiscal committees of the house of representatives and the senate. The report must include information on the amount of tax credits claimed to date and recommendations on future funding between the tax credit program and the grant program. The report must be incorporated into the recommendations required in RCW 70.94.537(5). [2005 c 319 § 138; 2003 c 364 § 6.]

**Expiration date—2005 c 319 § 138:** "Section 138 of this act expires July 1, 2013." [2005 c 319 § 146.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Effective date—Contingency—Captions not law—2003 c 364:** See notes following RCW 82.70.020.

## Chapter 82.71 RCW

### QUALITY MAINTENANCE FEE ON NURSING FACILITY OPERATORS

#### Sections

82.71.020 Fee imposed—Contingent expiration date. (*Expires July 1, 2011.*)

**82.71.020 Fee imposed—Contingent expiration date. (Expires July 1, 2011.)** (1) In addition to any other tax, a quality maintenance fee is imposed on every operator of a nonexempt nursing facility in this state. The quality maintenance fee shall be:

(a) Six dollars and fifty cents per patient day through June 30, 2005;

(b) Five dollars and twenty-five cents per patient day for the period July 1, 2005, through June 30, 2007;

(c) Three dollars per patient day for the period July 1, 2007, through June 30, 2009; and

(d) One dollar and fifty cents per patient day for the period July 1, 2009, through June 30, 2011.

(2) Each operator of a nonexempt nursing facility shall file a return with the department on a monthly basis. The return shall include the following:

(a) The number of patient days for nonexempt nursing facilities operated by that person in that month; and

(b) Remittance of the nonexempt nursing facility operator's quality maintenance fee for that month.

(3) This section expires July 1, 2011. [2005 c 514 § 801; 2003 1st sp.s. c 16 § 2.]

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Contingent expiration date—2003 1st sp.s. c 16:** "(1) RCW 82.71.010, 82.71.020, 82.71.030, 74.46.091, and 74.46.535 shall expire on the effective date that federal medicaid matching funds are substantially reduced or that a federal sanction is imposed due to the quality maintenance fee under RCW 82.71.020, as such date is certified by the secretary of social and health services.

(2) The expiration of RCW 82.71.010, 82.71.020, 82.71.030, 74.46.091, and 74.46.535 shall not be construed as affecting any existing right acquired or liability or obligation incurred under those sections or under any rule or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [2005 c 514 § 802; 2003 1st sp.s. c 16 § 6.]

**Severability—2003 1st sp.s. c 16:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 1st sp.s. c 16 § 7.]

**Effective date—2003 1st sp.s. c 16:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 1st sp.s. c 16 § 9.]

## Chapter 82.73 RCW

### WASHINGTON MAIN STREET PROGRAM TAX INCENTIVES

#### Sections

82.73.010 Definitions.  
82.73.020 Application for credit.  
82.73.030 Credit authorized—Limitations.  
82.73.040 Filing requirements.  
82.73.050 Administrative assistance by CTED.  
82.73.060 Application of chapter 82.32 RCW.

*Washington main street program: Chapter 43.360 RCW.*

**82.73.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Applicant" means a person applying for a tax credit under this chapter.

(2) "Contribution" means cash contributions.

(3) "Department" means the department of revenue.

(4) "Person" has the meaning given in RCW 82.04.030.

(5) "Program" means a nonprofit organization under internal revenue code sections 501(c)(3) or 501(c)(6), with the sole mission of revitalizing a downtown or neighborhood commercial district area, that is designated by the department of community, trade, and economic development as described in RCW 43.360.010 through 43.360.050.

(6) "Main street trust fund" means the department of community, trade, and economic development's main street trust fund account under RCW 43.360.050. [2005 c 514 § 902.]

**Short title—2005 c 514 §§ 901-912:** See note following RCW 43.360.005.

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**82.73.020 Application for credit.** (1) Application for tax credits under this chapter must be made to the department before making a contribution to a program or the main street trust fund. The application shall be made to the department in a form and manner prescribed by the department. The application shall contain information regarding the proposed amount of contribution to a program or the main street trust fund, and other information required by the department to determine eligibility under chapter 514, Laws of 2005. The department shall rule on the application within forty-five days. Applications shall be approved on a first-come basis.

(2) The person must make the contribution described in the approved application by the end of the calendar year in which the application is approved to claim a credit allowed under RCW 82.73.030.

(3) The department shall not accept any applications before January 1, 2006. [2005 c 514 § 903.]

**Short title—2005 c 514 §§ 901-912:** See note following RCW 43.360.005.

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**82.73.030 Credit authorized—Limitations.** (1) Subject to the limitations in this chapter, a credit is allowed against the tax imposed by chapters 82.04 and 82.16 RCW for approved contributions that are made by a person to a program or the main street trust fund.

(2) The credit allowed under this section is limited to an amount equal to:

(a) Seventy-five percent of the approved contribution made by a person to a program; or

(b) Fifty percent of the approved contribution made by a person to the main street trust fund.

(3) The department may not approve credit with respect to a program in a city or town with a population of one hundred ninety thousand persons or more.

(4) The department shall keep a running total of all credits approved under this chapter for each calendar year. The department shall not approve any credits under this section that would cause the total amount of approved credits statewide to exceed one million five hundred thousand dollars in any calendar year.

(5) The total credits allowed under this chapter for contributions made to each program may not exceed one hundred thousand dollars in a calendar year. The total credits allowed under this chapter for a person may not exceed two hundred fifty thousand dollars in a calendar year.

(6) The credit may be claimed against any tax due under chapters 82.04 and 82.16 RCW only in the calendar year immediately following the calendar year in which the credit was approved by the department and the contribution was made to the program or the main street trust fund. Credits may not be carried over to subsequent years. No refunds may be granted for credits under this chapter.

(7) The total amount of the credit claimed in any calendar year by a person may not exceed the lesser amount of the approved credit, or seventy-five percent of the amount of the

[2005 RCW Supp—page 1048]

contribution that is made by the person to a program and fifty percent of the amount of the contribution that is made by the person to the main street trust fund, in the prior calendar year. [2005 c 514 § 904.]

**Short title—2005 c 514 §§ 901-912:** See note following RCW 43.360.005.

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**82.73.040 Filing requirements.** To claim a credit under this chapter, a person must electronically file with the department all returns, forms, and other information the department requires in an electronic format as provided or approved by the department. Any return, form, or information required to be filed in an electronic format under this section is not filed until received by the department in an electronic format. As used in this section, "returns" has the same meaning as "return" in RCW 82.32.050. [2005 c 514 § 905.]

**Short title—2005 c 514 §§ 901-912:** See note following RCW 43.360.005.

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**82.73.050 Administrative assistance by CTED.** The department of community, trade, and economic development shall provide information to the department to administer this chapter, including a list of designated programs that shall be updated as necessary. [2005 c 514 § 906.]

**Short title—2005 c 514 §§ 901-912:** See note following RCW 43.360.005.

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**82.73.060 Application of chapter 82.32 RCW.** Chapter 82.32 RCW applies to the administration of this chapter. [2005 c 514 § 907.]

**Short title—2005 c 514 §§ 901-912:** See note following RCW 43.360.005.

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

## Chapter 82.74 RCW

### TAX DEFERRALS FOR FRUIT AND VEGETABLE BUSINESSES

#### Sections

82.74.010	Definitions. <i>(Effective July 1, 2007.)</i>
82.74.020	Application for tax deferral. <i>(Effective July 1, 2007.)</i>
82.74.030	Issuance of certificate. <i>(Effective July 1, 2007, until July 1, 2012.)</i>
82.74.040	Annual survey. <i>(Effective July 1, 2007.)</i>
82.74.050	Repayment of deferred taxes. <i>(Effective July 1, 2007.)</i>
82.74.060	Application of chapter 82.32 RCW. <i>(Effective July 1, 2007.)</i>
82.74.070	Confidentiality of applications. <i>(Effective July 1, 2007.)</i>

**82.74.010 Definitions. *(Effective July 1, 2007.)*** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Applicant" means a person applying for a tax deferral under this chapter.

(2) "Cold storage warehouse" means a storage warehouse used to store fresh and/or frozen perishable fruits or vegetables, or any combination thereof, at a desired temperature to maintain the quality of the product for orderly marketing.

(3) "Department" means the department of revenue.

(4) "Eligible investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project. The lessor or owner of a qualified building is not eligible for a deferral unless (a) the underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person; or (b)(i) the lessor by written contract agrees to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments, and (ii) the lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual survey under RCW 82.74.040. The economic benefit of the deferral to the lessee may be evidenced by any type of payment, credit, or any other financial arrangement between the lessor or owner of the qualified building and the lessee.

(5) "Fresh fruit and vegetable processing" means manufacturing as defined in RCW 82.04.120 which consists of the canning, preserving, freezing, processing, or dehydrating fresh fruits and/or vegetables.

(6)(a) "Initiation of construction" means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for:

(i) Construction of the qualified building, if the underlying ownership of the building vests exclusively with the person receiving the economic benefit of the deferral;

(ii) Construction of the qualified building, if the economic benefits of the deferral are passed to a lessee as provided in subsection (4) of this section; or

(iii) Tenant improvements for a qualified building, if the economic benefits of the deferral are passed to a lessee as provided in subsection (4) of this section.

(b) "Initiation of construction" does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of the building.

(c) If the investment project is a phased project, "initiation of construction" applies separately to each phase.

(7) "Person" has the meaning given in RCW 82.04.030.

(8) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity used for fresh fruit and vegetable processing, cold storage warehouse, and research and development activities, including plant offices and warehouses or other facilities for the storage of raw material or finished goods if such facilities are an essential or an integral part of a factory, plant, or laboratory used for fresh fruit and vegetable processing, cold storage warehousing, or research and development. If a building is used partly for fresh fruit and vegetable processing, cold storage warehousing, or research and development and partly for other purposes, the applicable tax deferral shall be deter-

mined by apportionment of the costs of construction under rules adopted by the department.

(9) "Qualified machinery and equipment" means all industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a fresh fruit and vegetable processing, cold storage warehouse, or research and development operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control or operate the machinery.

(10) "Recipient" means a person receiving a tax deferral under this chapter.

(11) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process related to fresh fruit and vegetable processing or cold storage warehousing before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars. [2005 c 513 § 4.]

**Effective dates—2005 c 513:** See note following RCW 82.04.4266.

**82.74.020 Application for tax deferral. (Effective July 1, 2007.)** (1) Application for deferral of taxes under this chapter must be made before initiation of the construction of the investment project or acquisition of equipment or machinery. The application shall be made to the department in a form and manner prescribed by the department. The application shall contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department.

(2) The department shall rule on the application within sixty days. The department shall keep a running total of all deferrals granted under this chapter during each fiscal biennium.

(3) No application may be made under this chapter for a project for which a refund is requested under RCW 82.08.820 or 82.12.820. [2005 c 513 § 5.]

**Effective dates—2005 c 513:** See note following RCW 82.04.4266.

**82.74.030 Issuance of certificate. (Effective July 1, 2007, until July 1, 2012.)** (1) The department shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on each eligible investment project if the investment project is undertaken for the purpose of fresh fruit and vegetable processing, cold storage warehousing, or research and development.

(2) This section expires July 1, 2012. [2005 c 513 § 6.]

**Effective dates—2005 c 513:** See note following RCW 82.04.4266.

**82.74.040 Annual survey. (Effective July 1, 2007.)** (1)(a) The legislature finds that accountability and effective-

ness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.

(b) Each recipient of a deferral granted under this chapter shall complete an annual survey. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.74.010(4), the lessee shall complete the annual survey and the applicant is not required to complete the annual survey. The survey is due by March 31st of the year following the calendar year in which the investment project is certified by the department as having been operationally complete and each of the seven succeeding calendar years. The survey shall include the amount of tax deferred. The survey shall also include the following information for employment positions in Washington:

- (i) The number of total employment positions;
- (ii) Full-time, part-time, and temporary employment positions as a percent of total employment;
- (iii) The number of employment positions according to the following wage bands: Less than thirty thousand dollars; thirty thousand dollars or greater, but less than sixty thousand dollars; and sixty thousand dollars or greater. A wage band containing fewer than three individuals may be combined with another wage band; and
- (iv) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands.

(c) The department may request additional information necessary to measure the results of the deferral program, to be submitted at the same time as the survey.

(d) All information collected under this subsection, except the amount of the tax deferral taken, is deemed taxpayer information under RCW 82.32.330. Information on the amount of tax deferral taken is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(e) The department shall use the information from this section to prepare summary descriptive statistics by category. No fewer than three taxpayers shall be included in any category. The department shall report these statistics to the legislature each year by September 1st.

(f) The department shall also use the information to study the tax deferral program authorized under this chapter. The department shall report to the legislature by December 1, 2011. The report shall measure the effect of the program on job creation, the number of jobs created for residents of eligible areas, company growth, the introduction of new products, the diversification of the state's economy, growth in research and development investment, the movement of firms or the consolidation of firms' operations into the state, and such other factors as the department selects.

(2)(a) If a recipient of the deferral fails to complete the annual survey required under subsection (1) of this section by the date due, twelve and one-half percent of the deferred tax shall be immediately due. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.74.010(4), the lessee shall be responsible for payment to the extent the lessee has received the economic benefit. The department shall assess interest, but not penalties, on the amounts due under this section. The interest shall be

assessed at the rate provided for delinquent taxes under chapter 82.32 RCW, and shall accrue until the amounts due are repaid.

(b) A recipient who must repay deferred taxes under RCW 82.74.050(2) because the department has found that an investment project is used for purposes other than fresh fruit and vegetable processing, cold storage warehousing, or research and development is no longer required to file annual surveys under this section beginning on the date an investment project is used for nonqualifying purposes. [2005 c 513 § 7.]

Effective dates—2005 c 513: See note following RCW 82.04.4266.

**82.74.050 Repayment of deferred taxes. (Effective July 1, 2007.)** (1) Except as provided in subsection (2) of this section, taxes deferred under this chapter need not be repaid.

(2) If, on the basis of survey under RCW 82.74.040 or other information, the department finds that an investment project is used for purposes other than fresh fruit and vegetable processing, cold storage warehousing, or research and development at any time during the calendar year in which the investment project is certified by the department as having been operationally completed, or at any time during any of the seven succeeding calendar years, a portion of deferred taxes shall be immediately due according to the following schedule:

Year in which use occurs	% of deferred taxes due
1	100%
2	87.5%
3	75%
4	62.5%
5	50%
6	37.5%
7	25%
8	12.5%

(3) The department shall assess interest, but not penalties, on the deferred taxes under subsection (2) of this section. The interest shall be assessed at the rate provided for delinquent taxes under chapter 82.32 RCW, retroactively to the date of deferral, and shall accrue until the deferred taxes are repaid. The debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral.

(4) Notwithstanding subsection (2) of this section, deferred taxes on the following need not be repaid:

(a) Machinery and equipment, and sales of or charges made for labor and services, which at the time of purchase would have qualified for exemption under RCW 82.08.02565; and

(b) Machinery and equipment which at the time of first use would have qualified for exemption under RCW 82.12.02565. [2005 c 513 § 8.]

**Effective dates—2005 c 513:** See note following RCW 82.04.4266.

**82.74.060 Application of chapter 82.32 RCW. (Effective July 1, 2007.)** Chapter 82.32 RCW applies to the administration of this chapter. [2005 c 513 § 9.]

**Effective dates—2005 c 513:** See note following RCW 82.04.4266.

**82.74.070 Confidentiality of applications. (Effective July 1, 2007.)** Applications received by the department under this chapter are not confidential and are subject to disclosure. [2005 c 513 § 10.]

**Effective dates—2005 c 513:** See note following RCW 82.04.4266.

## Chapter 82.80 RCW

### LOCAL OPTION TRANSPORTATION TAXES

#### Sections

82.80.030	Commercial parking tax.
82.80.070	Use of revenues.
82.80.140	Vehicle fee—Transportation benefit district—Exemptions.

**82.80.030 Commercial parking tax.** (1) Subject to the conditions of this section, the legislative authority of a county, city, or district may fix and impose a parking tax on all persons engaged in a commercial parking business within its respective jurisdiction. A city or county may impose the tax only to the extent that it has not been imposed by the district, and a district may impose the tax only to the extent that it has not been imposed by a city or county. The jurisdiction of a county, for purposes of this section, includes only the unincorporated area of the county. The jurisdiction of a city or district includes only the area within its boundaries.

(2) In lieu of the tax in subsection (1) of this section, a city, a county in its unincorporated area, or a district may fix and impose a tax for the act or privilege of parking a motor vehicle in a facility operated by a commercial parking business.

The city, county, or district may provide that:

(a) The tax is paid by the operator or owner of the motor vehicle;

(b) The tax applies to all parking for which a fee is paid, whether paid or leased, including parking supplied with a lease of nonresidential space;

(c) The tax is collected by the operator of the facility and remitted to the city, county, or district;

(d) The tax is a fee per vehicle or is measured by the parking charge;

(e) The tax rate varies with zoning or location of the facility, the duration of the parking, the time of entry or exit, the type or use of the vehicle, or other reasonable factors; and

(f) Tax exempt carpools, vehicles with handicapped decals, or government vehicles are exempt from the tax.

(3) "Commercial parking business" as used in this section, means the ownership, lease, operation, or management of a commercial parking lot in which fees are charged. "Commercial parking lot" means a covered or uncovered area with stalls for the purpose of parking motor vehicles.

(4) The rate of the tax under subsection (1) of this section may be based either upon gross proceeds or the number of vehicle stalls available for commercial parking use. The rates

charged must be uniform for the same class or type of commercial parking business.

(5) The county, city, or district levying the tax provided for in subsection (1) or (2) of this section may provide for its payment on a monthly, quarterly, or annual basis. Each local government may develop by ordinance or resolution rules for administering the tax, including provisions for reporting by commercial parking businesses, collection, and enforcement.

(6) The proceeds of the commercial parking tax fixed and imposed by a city or county under subsection (1) or (2) of this section shall be used for transportation purposes in accordance with RCW 82.80.070 or for transportation improvements in accordance with chapter 36.73 RCW. The proceeds of the parking tax imposed by a district must be used as provided in chapter 36.120 RCW. [2005 c 336 § 24; 2002 c 56 § 412; 1990 c 42 § 208.]

**Effective date—2005 c 336:** See note following RCW 36.73.015.

**Captions and subheadings not law—Severability—2002 c 56:** See RCW 36.120.900 and 36.120.901.

**82.80.070 Use of revenues.** (1) The proceeds collected pursuant to the exercise of the local option authority of RCW 82.80.010, 82.80.030, and 82.80.050 (hereafter called "local option transportation revenues") shall be used for transportation purposes only, including but not limited to the following: The operation and preservation of roads, streets, and other transportation improvements; new construction, reconstruction, and expansion of city streets, county roads, and state highways and other transportation improvements; development and implementation of public transportation and high-capacity transit improvements and programs; and planning, design, and acquisition of right of way and sites for such transportation purposes. The proceeds collected from excise taxes on the sale, distribution, or use of motor vehicle fuel and special fuel under RCW 82.80.010 shall be used exclusively for "highway purposes" as that term is construed in Article II, section 40 of the state Constitution.

(2) The local option transportation revenues shall be expended for transportation uses consistent with the adopted transportation and land use plans of the jurisdiction expending the funds and consistent with any applicable and adopted regional transportation plan for metropolitan planning areas.

(3) Each local government with a population greater than eight thousand that levies or expends local option transportation funds, is also required to develop and adopt a specific transportation program that contains the following elements:

(a) The program shall identify the geographic boundaries of the entire area or areas within which local option transportation revenues will be levied and expended.

(b) The program shall be based on an adopted transportation plan for the geographic areas covered and shall identify the proposed operation and construction of transportation improvements and services in the designated plan area intended to be funded in whole or in part by local option transportation revenues and shall identify the annual costs applicable to the program.

(c) The program shall indicate how the local transportation plan is coordinated with applicable transportation plans for the region and for adjacent jurisdictions.

(d) The program shall include at least a six-year funding plan, updated annually, identifying the specific public and

private sources and amounts of revenue necessary to fund the program. The program shall include a proposed schedule for construction of projects and expenditure of revenues. The funding plan shall consider the additional local tax revenue estimated to be generated by new development within the plan area if all or a portion of the additional revenue is proposed to be earmarked as future appropriations for transportation improvements in the program.

(4) Local governments with a population greater than eight thousand exercising the authority for local option transportation funds shall periodically review and update their transportation program to ensure that it is consistent with applicable local and regional transportation and land use plans and within the means of estimated public and private revenue available.

(5) In the case of expenditure for new or expanded transportation facilities, improvements, and services, priorities in the use of local option transportation revenues shall be identified in the transportation program and expenditures shall be made based upon the following criteria, which are stated in descending order of weight to be attributed:

- (a) First, the project serves a multijurisdictional function;
- (b) Second, it is necessitated by existing or reasonably foreseeable congestion;
- (c) Third, it has the greatest person-carrying capacity;
- (d) Fourth, it is partially funded by other government funds, such as from the state transportation improvement board, or by private sector contributions, such as those from the local transportation act, chapter 39.92 RCW; and
- (e) Fifth, it meets such other criteria as the local government determines is appropriate.

(6) It is the intent of the legislature that as a condition of levying, receiving, and expending local option transportation revenues, no local government agency use the revenues to replace, divert, or loan any revenues currently being used for transportation purposes to nontransportation purposes.

(7) Local governments are encouraged to enter into inter-local agreements to jointly develop and adopt with other local governments the transportation programs required by this section for the purpose of accomplishing regional transportation planning and development.

(8) Local governments may use all or a part of the local option transportation revenues for the amortization of local government general obligation and revenue bonds issued for transportation purposes consistent with the requirements of this section.

(9) Subsections (1) through (8) of this section do not apply to a regional transportation investment district imposing a tax or fee under the local option authority of this chapter. Proceeds collected under the exercise of local option authority under this chapter by a district must be used in accordance with chapter 36.120 RCW. [2005 c 319 § 139; 2002 c 56 § 413; 1991 c 141 § 4. Prior: 1990 c 42 § 212.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Captions and subheadings not law—Severability—2002 c 56:** See RCW 36.120.900 and 36.120.901.

**82.80.140 Vehicle fee—Transportation benefit district—Exemptions.** (1) Subject to the provisions of RCW 36.73.065, a transportation benefit district under chapter

36.73 RCW may fix and impose an annual vehicle fee, not to exceed one hundred dollars per vehicle registered in the district, for each vehicle subject to license tab fees under RCW 46.16.0621 and for each vehicle subject to gross weight fees under RCW 46.16.070 with an unladen weight of six thousand pounds or less.

(2) The department of licensing shall administer and collect the fee. The department shall deduct a percentage amount, as provided by contract, not to exceed one percent of the fees collected, for administration and collection expenses incurred by it. The department shall remit remaining proceeds to the custody of the state treasurer. The state treasurer shall distribute the proceeds to the district on a monthly basis.

(3) No fee under this section may be collected until six months after approval by the district voters under RCW 36.73.065.

(4) The vehicle fee under this section applies only when renewing a vehicle registration, and is effective upon the registration renewal date as provided by the department of licensing.

(5) The following vehicles are exempt from the fee under this section:

- (a) Farm tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181;
- (b) Off-road and nonhighway vehicles as defined in RCW 46.09.020;
- (c) Vehicles registered under chapter 46.87 RCW and the international registration plan; and
- (d) Snowmobiles as defined in RCW 46.10.010. [2005 c 336 § 16.]

**Effective date—2005 c 336:** See note following RCW 36.73.015.

## Title 83

### ESTATE TAXATION

#### Chapters

- 83.100 Estate and transfer tax act.**
- 83.110 Uniform estate tax apportionment act.**
- 83.110A Washington uniform estate tax apportionment act.**

#### Chapter 83.100 RCW

#### ESTATE AND TRANSFER TAX ACT

##### Sections

- 83.100.010 Short title.
- 83.100.020 Definitions.
- 83.100.030 Repealed.
- 83.100.040 Estate tax imposed—Amount of tax.
- 83.100.045 Repealed.
- 83.100.046 Deduction—Property used for farming—Requirements, conditions.
- 83.100.047 Marital deduction, qualified domestic trust—Election—Other deductions taken for income tax purposes disallowed.
- 83.100.050 Tax returns—Filing dates—Extensions.
- 83.100.060 Date payment due—Extensions.
- 83.100.070 Interest on amount due—Penalty for late filing—Exceptions—Rules.
- 83.100.090 Amended returns—Adjustments or final determinations.
- 83.100.095 Examination by department of returns, other information—Assessment of additional tax, interest.
- 83.100.110 Tax lien.
- 83.100.130 Refund for overpayment—Requirements.
- 83.100.140 Criminal acts relating to tax returns.
- 83.100.150 Collection of tax—Findings filed in court.



- 83.100.210 Application of chapter 82.32 RCW—Closing agreements authorized.  
 83.100.220 Deposit of funds into education legacy trust account.  
 83.100.230 Education legacy trust account.

**83.100.010 Short title.** This chapter may be cited as the "Estate and Transfer Tax Act." [2005 c 516 § 19; 1988 c 64 § 1; 1981 2nd ex.s. c 7 § 83.100.010 (Initiative Measure No. 402, approved November 3, 1981).]

**Finding—Intent—Application—Severability—Effective date—2005 c 516:** See notes following RCW 83.100.040.

**83.100.020 Definitions.** As used in this chapter:

- (1) "Decedent" means a deceased individual;
- (2) "Department" means the department of revenue, the director of that department, or any employee of the department exercising authority lawfully delegated to him by the director;
- (3) "Federal return" means any tax return required by chapter 11 of the Internal Revenue Code;
- (4) "Federal tax" means a tax under chapter 11 of the Internal Revenue Code;
- (5) "Gross estate" means "gross estate" as defined and used in section 2031 of the Internal Revenue Code;
- (6) "Person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, or other entity and, to the extent permitted by law, any federal, state, or other governmental unit or subdivision or agency, department, or instrumentality thereof;
- (7) "Person required to file the federal return" means any person required to file a return required by chapter 11 of the Internal Revenue Code, such as the personal representative of an estate;
- (8) "Property" means property included in the gross estate;
- (9) "Resident" means a decedent who was domiciled in Washington at time of death;
- (10) "Taxpayer" means a person upon whom tax is imposed under this chapter, including an estate or a person liable for tax under RCW 83.100.120;
- (11) "Transfer" means "transfer" as used in section 2001 of the Internal Revenue Code. However, "transfer" does not include a qualified heir disposing of an interest in property qualifying for a deduction under RCW 83.100.046 or ceasing to use the property for farming purposes;
- (12) "Internal Revenue Code" means, for the purposes of this chapter and \*RCW 83.110.010, the United States Internal Revenue Code of 1986, as amended or renumbered as of January 1, 2005;
- (13) "Washington taxable estate" means the federal taxable estate, less: (a) One million five hundred thousand dollars for decedents dying before January 1, 2006; and (b) two million dollars for decedents dying on or after January 1, 2006; and (c) the amount of any deduction allowed under RCW 83.100.046; and

(14) "Federal taxable estate" means the taxable estate as determined under chapter 11 of the Internal Revenue Code without regard to: (a) The termination of the federal estate tax under section 2210 of the Internal Revenue Code or any other provision of law, and (b) the deduction for state estate, inheritance, legacy, or succession taxes allowable under sec-

tion 2058 of the Internal Revenue Code. [2005 c 516 § 2; 2001 c 320 § 15; 1999 c 358 § 19; 1998 c 292 § 401; 1994 c 221 § 70; 1993 c 73 § 9; 1990 c 224 § 1; 1988 c 64 § 2; 1981 2nd ex.s. c 7 § 83.100.020 (Initiative Measure No. 402, approved November 3, 1981).]

**\*Reviser's note:** Chapter 83.110 RCW was repealed by 2005 c 332 § 15, effective January 1, 2006, and replaced with new chapter 83.110A RCW.

**Finding—Intent—Application—Severability—Effective date—2005 c 516:** See notes following RCW 83.100.040.

**Effective date—2001 c 320:** See note following RCW 11.02.005.

**Effective date—1999 c 358 §§ 1 and 3-21:** See note following RCW 82.04.3651.

**Part headings and section captions not law—Effective dates—1998 c 292:** See RCW 11.11.902 and 11.11.903.

**Effective dates—1994 c 221:** See note following RCW 11.94.070.

**83.100.030 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**83.100.040 Estate tax imposed—Amount of tax.** (1) A tax in an amount computed as provided in this section is imposed on every transfer of property located in Washington. For the purposes of this section, any intangible property owned by a resident is located in Washington.

(2)(a) Except as provided in (b) of this subsection, the amount of tax is the amount provided in the following table:

If Washington Taxable Estate is at least		The amount of Tax Equals		Of Washington Taxable Estate Value Greater than
	But Less Than	Initial Tax Amount	Plus Tax Rate %	
\$0	\$1,000,000	\$0	10.00%	\$0
\$1,000,000	\$2,000,000	\$100,000	14.00%	\$1,000,000
\$2,000,000	\$3,000,000	\$240,000	15.00%	\$2,000,000
\$3,000,000	\$4,000,000	\$390,000	16.00%	\$3,000,000
\$4,000,000	\$6,000,000	\$550,000	17.00%	\$4,000,000
\$6,000,000	\$7,000,000	\$890,000	18.00%	\$6,000,000
\$7,000,000	\$9,000,000	\$1,070,000	18.50%	\$7,000,000
Above \$9,000,000		\$1,440,000	19.00%	Above \$9,000,000

(b) If any property in the decedent's estate is located outside of Washington, the amount of tax is the amount determined in (a) of this subsection multiplied by a fraction. The numerator of the fraction is the value of the property located in Washington. The denominator of the fraction is the value of the decedent's gross estate. Property qualifying for a deduction under RCW 83.100.046 shall be excluded from the numerator and denominator of the fraction.

(3) The tax imposed under this section is a stand-alone estate tax that incorporates only those provisions of the Internal Revenue Code as amended or renumbered as of January 1, 2005, that do not conflict with the provisions of this chapter. The tax imposed under this chapter is independent of any federal estate tax obligation and is not affected by termination of the federal estate tax. [2005 c 516 § 3; 1988 c 64 § 4; 1981 2nd ex.s. c 7 § 83.100.040 (Initiative Measure No. 402, approved November 3, 1981).]

**Finding—Intent—2005 c 516:** "The legislature recognizes that on February 3, 2005, the Washington state supreme court decided in *Estate of Hemphill v. Dep't of Rev.*, Docket No. 74974-4, that Washington's estate tax is tied to the current federal Internal Revenue Code. The legislature finds that the revenue loss resulting from the *Hemphill* decision will severely affect the legislature's ability to fund programs vital to the peace, health, safety, and support of the citizens of this state. The legislature intends to address the adverse fiscal impact of the *Hemphill* decision and provide funding for education by creating a stand-alone state estate tax." [2005 c 516 § 1.]

**Application—2005 c 516:** "This act applies prospectively only and not retroactively. Sections 2 through 17 of this act apply only to estates of decedents dying on or after May 17, 2005." [2005 c 516 § 20.]

**Severability—2005 c 516:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 516 § 21.]

**Effective date—2005 c 516:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 17, 2005]." [2005 c 516 § 22.]

**83.100.045 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**83.100.046 Deduction—Property used for farming—Requirements, conditions.** (1) For the purposes of determining the Washington taxable estate, a deduction is allowed from the federal taxable estate for:

(a) The value of qualified real property reduced by any amounts allowable as a deduction in respect of the qualified real property and tangible personal property under section 2053(a)(4) of the internal revenue code, if the decedent was

at the time of his or her death a citizen or resident of the United States.

(b) The value of any tangible personal property used by the decedent or a member of the decedent's family for a qualified use on the date of the decedent's death, reduced by any amounts allowable as a deduction in respect of the tangible personal property under section 2053(a)(4) of the internal revenue code, if all of the requirements of subsection (10)(f)(i)(A) of this section are met and the decedent was at the time of his or her death a citizen or resident of the United States.

(c) The value of real property that is not deductible under (a) of this subsection solely by reason of subsection (10)(f)(i)(B) of this section, reduced by any amounts allowable as a deduction in respect of the qualified real property and tangible personal property under section 2053(a)(4) of the internal revenue code, if the requirements of subsection (10)(f)(i)(C) of this section are met with respect to the property and the decedent was at the time of his or her death a citizen or resident of the United States.

(2) Property shall be considered to have been acquired from or to have passed from the decedent if:

(a) The property is so considered under section 1014(b) of the Internal Revenue Code;

(b) The property is acquired by any person from the estate; or

(c) The property is acquired by any person from a trust, to the extent the property is includible in the gross estate of the decedent.

(3) If the decedent and the decedent's surviving spouse at any time held qualified real property as community property, the interest of the surviving spouse in the property shall be taken into account under this section to the extent necessary to provide a result under this section with respect to the property which is consistent with the result which would have obtained under this section if the property had not been community property.

(4) In the case of any qualified woodland, the value of trees growing on the woodland may be deducted if otherwise qualified under this section.

(5) If property is qualified real property with respect to a decedent, hereinafter in this subsection referred to as the "first decedent," and the property was acquired from or passed from the first decedent to the surviving spouse of the first decedent, active management of the farm by the surviving spouse shall be treated as material participation by the surviving spouse in the operation of the farm.

(6) Property owned indirectly by the decedent may qualify for a deduction under this section if owned through an interest in a corporation, partnership, or trust as the terms corporation, partnership, or trust are used in section 2032A(g) of the Internal Revenue Code. In order to qualify for a deduction under this subsection, the interest, in addition to meeting the other tests for qualification under this section, must qualify under section 6166(b)(1) of the Internal Revenue Code as an interest in a closely held business on the date of the decedent's death and for sufficient other time, combined with periods of direct ownership, to equal at least five years of the eight-year period preceding the death.

(7)(a) If, on the date of the decedent's death, the requirements of subsection (10)(f)(i)(C)(II) of this section with respect to the decedent for any property are not met, and the decedent (i) was receiving old age benefits under Title II of the social security act for a continuous period ending on such date, or (ii) was disabled for a continuous period ending on this date, then subsection (10)(f)(i)(C)(II) of this section shall be applied with respect to the property by substituting "the date on which the longer of such continuous periods began" for "the date of the decedent's death" in subsection (10)(f)(i)(C) of this section.

(b) For the purposes of (a) of this subsection, an individual shall be disabled if the individual has a mental or physical impairment which renders that individual unable to materially participate in the operation of the farm.

(8) Property may be deducted under this section whether or not special valuation is elected under section 2032A of the Internal Revenue Code on the federal return. For the purposes of determining the deduction under this section, the value of property is its value as used to determine the value of the gross estate.

(9)(a) In the case of any qualified replacement property, any period during which there was ownership, qualified use, or material participation with respect to the replaced property by the decedent or any member of the decedent's family shall be treated as a period during which there was ownership, use, or material participation, as the case may be, with respect to the qualified replacement property.

(b) Subsection (9)(a) of this section shall not apply to the extent that the fair market value of the qualified replacement property, as of the date of its acquisition, exceeds the fair market value of the replaced property, as of the date of its disposition.

(c) For the purposes of this subsection (9), the following definitions apply:

(i) "Qualified replacement property" means any real property:

(A) Which is acquired in an exchange which qualifies under section 1031 of the Internal Revenue Code; or

(B) The acquisition of which results in the nonrecognition of gain under section 1033 of the Internal Revenue Code.

The term "qualified replacement property" only includes property which is used for the same qualified use as the replaced property was being used before the exchange.

(ii) "Replaced property" means the property was:

(A) Transferred in the exchange which qualifies under section 1031 of the Internal Revenue Code; or

(B) Compulsorily or involuntarily converted within the meaning of section 1033 of the Internal Revenue Code.

(10) For the purposes of this section, the following definitions apply:

(a) "Active management" means the making of the management decisions of a farm, other than the daily operating decisions.

(b) "Farm" includes stock, dairy, poultry, fruit, furbearing animal, and truck farms; plantations; ranches; nurseries; ranges; greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities; and orchards and woodlands.

(c) "Farming purposes" means:

(i) Cultivating the soil or raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of animals on a farm;

(ii) Handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated; and

(iii)(A) The planting, cultivating, caring for, or cutting of trees; or

(B) The preparation, other than milling, of trees for market.

(d) "Member of the family" means, with respect to any individual, only:

(i) An ancestor of the individual;

(ii) The spouse of the individual;

(iii) A lineal descendant of the individual, of the individual's spouse, or of a parent of the individual; or

(iv) The spouse of any lineal descendant described in (d)(iii) of this subsection.

For the purposes of this subsection (10)(d), a legally adopted child of an individual shall be treated as the child of such individual by blood.

(e) "Qualified heir" means, with respect to any property, a member of the decedent's family who acquired property, or to whom property passed, from the decedent.

(f)(i) "Qualified real property" means real property which was acquired from or passed from the decedent to a qualified heir of the decedent and which, on the date of the decedent's death, was being used for a qualified use by the decedent or a member of the decedent's family, but only if:

(A) Fifty percent or more of the adjusted value of the gross estate consists of the adjusted value of real or personal property which:

(I) On the date of the decedent's death, was being used for a qualified use by the decedent or a member of the decedent's family; and

(II) Was acquired from or passed from the decedent to a qualified heir of the decedent;

(B) Twenty-five percent or more of the adjusted value of the gross estate consists of the adjusted value of real property which meets the requirements of (f)(i)(A)(II) and (f)(i)(C) of this subsection; and

(C) During the eight-year period ending on the date of the decedent's death there have been periods aggregating five years or more during which:

(I) The real property was owned by the decedent or a member of the decedent's family and used for a qualified use by the decedent or a member of the decedent's family; and

(II) There was material participation by the decedent or a member of the decedent's family in the operation of the farm. For the purposes of this subsection (f)(i)(C)(II), material participation shall be determined in a manner similar to the manner used for purposes of section 1402(a)(1) of the Internal Revenue Code.

(ii) For the purposes of this subsection, the term "adjusted value" means:

(A) In the case of the gross estate, the value of the gross estate, determined without regard to any special valuation under section 2032A of the Internal Revenue Code, reduced by any amounts allowable as a deduction under section 2053(a)(4) of the Internal Revenue Code; or

(B) In the case of any real or personal property, the value of the property for purposes of chapter 11 of the Internal Revenue Code, determined without regard to any special valuation under section 2032A of the Internal Revenue Code, reduced by any amounts allowable as a deduction in respect of such property under section 2053(a)(4) of the Internal Revenue Code.

(g) "Qualified use" means the property is used as a farm for farming purposes. In the case of real property which meets the requirements of (f)(i)(C) of this subsection, residential buildings and related improvements on the real property occupied on a regular basis by the owner or lessee of the real property or by persons employed by the owner or lessee for the purpose of operating or maintaining the real property, and roads, buildings, and other structures and improvements functionally related to the qualified use shall be treated as real property devoted to the qualified use. For tangible personal property eligible for a deduction under subsection (1)(b) of this section, "qualified use" means the property is used primarily for farming purposes on a farm.

(h) "Qualified woodland" means any real property which:

(i) Is used in timber operations; and

(ii) Is an identifiable area of land such as an acre or other area for which records are normally maintained in conducting timber operations.

(i) "Timber operations" means:

(i) The planting, cultivating, caring for, or cutting of trees; or

(ii) The preparation, other than milling, of trees for market. [2005 c 514 § 1201; 2005 c 516 § 4.]

**Finding—Intent—Application—Severability—Effective date—2005 c 516:** See notes following RCW 83.100.040.

**Effective date—2005 c 514:** See note following RCW 82.04.4272.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**83.100.047 Marital deduction, qualified domestic trust—Election—Other deductions taken for income tax purposes disallowed.** (1) If the federal taxable estate on the federal return is determined by making an election under section 2056 or 2056A of the Internal Revenue Code, or if no federal return is required to be filed, the department may provide by rule for a separate election on the Washington return, consistent with section 2056 or 2056A of the Internal Revenue Code, for the purpose of determining the amount of tax due under this chapter. The election shall be binding on the estate and the beneficiaries, consistent with the Internal Revenue Code.

[2005 RCW Supp—page 1056]

All other elections or valuations on the Washington return shall be made in a manner consistent with the federal return, if a federal return is required, and such rules as the department may provide.

(2) Amounts deducted for federal income tax purposes under section 642(g) of the Internal Revenue Code of 1986, shall not be allowed as deductions in computing the amount of tax due under this chapter. [2005 c 516 § 13.]

**Finding—Intent—Application—Severability—Effective date—2005 c 516:** See notes following RCW 83.100.040.

**83.100.050 Tax returns—Filing dates—Extensions.**

(1) A Washington return must be filed if: (a) A federal return is required to be filed; or (b) for decedents dying prior to January 1, 2006, the gross estate exceeds one million five hundred thousand dollars; or (c) for decedents dying on or after January 1, 2006, the gross estate exceeds two million dollars.

(2)(a) A person required to file a federal return shall file with the department on or before the date the federal return is required to be filed, including any extension of time for filing under subsection (4) of this section, a Washington return for the tax due under this chapter.

(b) If no federal return is required to be filed, a taxpayer shall file with the department on or before the date a federal return would have been required to be filed, including any extension of time for filing under subsection (5) of this section, a Washington return for the tax due under this chapter.

(3) A Washington return delivered to the department by United States mail shall be considered to have been received by the department on the date of the United States postmark stamped on the cover in which the return is mailed, if the postmark date is within the time allowed for filing the Washington return, including extensions.

(4) In addition to the Washington return required to be filed in subsection (2) of this section, a person, if required to file a federal return, shall file with the department on or before the date the federal return, is required to be filed a copy of the federal return along with all supporting documentation. If the person required to file the federal return has obtained an extension of time for filing the federal return, the person shall file the Washington return within the same time period and in the same manner as provided for the federal return. A copy of the federal extension shall be filed with the department on or before the date the Washington return is due, not including any extension of time for filing, or within thirty days of issuance, whichever is later.

(5) A person who is required to file a Washington return under subsection (2) of this section, but is not required to file a federal return, may obtain an extension of time for filing the Washington return as provided by rule of the department. [2005 c 516 § 5; 1988 c 64 § 6; 1986 c 44 § 1; 1981 2nd ex.s. c 7 § 83.100.050 (Initiative Measure No. 402, approved November 3, 1981).]

**Finding—Intent—Application—Severability—Effective date—2005 c 516:** See notes following RCW 83.100.040.

**83.100.060 Date payment due—Extensions.** (1) The taxes imposed by this chapter shall be paid by the person required to file a Washington return on or before the date the Washington return is required to be filed under RCW 83.100.050, not including any extension of time for filing.

Payment delivered to the department by United States mail shall be considered to have been received by the department on the date of the United States postmark stamped on the cover in which payment is mailed, if the postmark date is within the time allowed for making the payment, including any extensions.

(2) If the person has obtained an extension of time for payment of the federal tax or has elected to pay such tax in installments, the person may elect to pay the tax imposed by this chapter within the same time period and in the same manner as provided for payment of the federal tax. A copy of the federal extension shall be filed on or before the date the tax imposed by this chapter is due, not including any extension of time for payment, or within thirty days of issuance, whichever is later.

(3) A person who is required to file a Washington return under RCW 83.100.050, but is not required to file a federal return, may obtain an extension of time for payment of the Washington tax or elect to pay such tax in installments as provided by rule of the department.

(4) The periods of limitation in RCW 83.100.130 and 83.100.095 shall extend an additional three years beyond the due date of the last scheduled installment payment authorized under this section. [2005 c 516 § 6; 1988 c 64 § 7; 1981 2nd ex.s. c 7 § 83.100.060 (Initiative Measure No. 402, approved November 3, 1981).]

**Finding—Intent—Application—Severability—Effective date—2005 c 516:** See notes following RCW 83.100.040.

**83.100.070 Interest on amount due—Penalty for late filing—Exceptions—Rules.** (1) For periods before January 2, 1997, any tax due under this chapter which is not paid by the due date under RCW 83.100.060(1) shall bear interest at the rate of twelve percent per annum from the date the tax is due until the date of payment.

(2) Interest imposed under this section for periods after January 1, 1997, shall be computed at the rate as computed under RCW 82.32.050(2). The rate so computed shall be adjusted on the first day of January of each year.

(3)(a) If the Washington return is not filed when due under RCW 83.100.050 and the person required to file the Washington return under RCW 83.100.050 voluntarily files the Washington return with the department before the department notifies the person in writing that the department has determined that the person has not filed a Washington return, no penalty is imposed on the person required to file the Washington return.

(b) If the Washington return is not filed when due under RCW 83.100.050 and the person required to file the Washington return under RCW 83.100.050 does not file a return with the department before the department notifies the person in writing that the department has determined that the person has not filed a Washington return, the person required to file the Washington return shall pay, in addition to interest, a penalty equal to five percent of the tax due for each month after the date the return is due until filed. However, in no instance may the penalty exceed the lesser of twenty-five percent of the tax due or one thousand five hundred dollars.

(c) If the department finds that a return due under this chapter has not been filed by the due date, and the delinquency was the result of circumstances beyond the control of

the responsible person, the department shall waive or cancel any penalties imposed under this chapter with respect to the filing of such a tax return. The department shall adopt rules for the waiver or cancellation of the penalties imposed by this section. [2005 c 516 § 7; 2000 c 105 § 1; 1997 c 136 § 1; 1996 c 149 § 13; 1988 c 64 § 8; 1981 2nd ex.s. c 7 § 83.100.070 (Initiative Measure No. 402, approved November 3, 1981).]

**Finding—Intent—Application—Severability—Effective date—2005 c 516:** See notes following RCW 83.100.040.

**Effective date—2000 c 105:** "This act takes effect July 1, 2000." [2000 c 105 § 2.]

**Findings—Intent—Effective date—1996 c 149:** See notes following RCW 82.32.050.

**83.100.090 Amended returns—Adjustments or final determinations.** Notwithstanding the periods of limitation in RCW 83.100.095 and 83.100.130:

(1) If the person required to file the Washington return under RCW 83.100.050 files an amended federal return, that person shall immediately file with the department an amended Washington return with a copy of the amended federal return. If the amended Washington return requires payment of an additional tax under this chapter, the tax shall be paid in accordance with RCW 83.100.060 and interest shall be paid in accordance with RCW 83.100.070.

(2) Upon any adjustment in, or final determination of, the amount of federal tax due, the person required to file the Washington return under RCW 83.100.050 shall notify the department in writing within one hundred twenty days after the adjustment or final determination. If the adjustment or final determination requires payment of an additional tax under this chapter, the tax shall be paid in accordance with RCW 83.100.060 and interest shall be paid in accordance with RCW 83.100.070.

(3) If the department determines the amended Washington return, adjustment, or final determination requires payment of an additional tax under this chapter, the department may assess against the taxpayer an additional amount found to be due within one year of receipt of the amended Washington return or written notice as required by this section, or at any time if no amended Washington return is filed or notice is provided as required by this section. The execution of a written waiver at the request of the department by the person required to file the Washington return under RCW 83.100.050 may extend this limitation. Interest shall be added to the amount of tax assessed by the department in accordance with RCW 83.100.070. The department shall notify the taxpayer by mail of the additional amount, and the additional amount shall become due and shall be paid within thirty days from the date of the notice, or within such further time as the department may provide.

(4) If the department determines the amended Washington return, adjustment, or final determination requires the refund of overpaid tax, penalties, or interest under this chapter, the department shall refund the amount of the overpayment with interest in accordance with RCW 83.100.130. The person required to file the Washington return under RCW 83.100.050 shall provide the department with any additional information or supporting documents necessary to determine if a refund is due. The execution of a written waiver to extend

the period for assessment under subsection (3) of this section shall extend the time for making a refund, if prior to the expiration of the waiver period an application for refund of the taxes is made by the person required to file the Washington return under RCW 83.100.050, or the department discovers a refund is due. [2005 c 516 § 8; 1988 c 64 § 10; 1981 2nd ex.s. c 7 § 83.100.090 (Initiative Measure No. 402, approved November 3, 1981).]

**Finding—Intent—Application—Severability—Effective date—2005 c 516:** See notes following RCW 83.100.040.

**83.100.095 Examination by department of returns, other information—Assessment of additional tax, interest.** (1) If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer an additional amount found to be due and shall add interest as provided in RCW 83.100.070 on the tax only. The department shall notify the taxpayer by mail of the additional amount, and the additional amount shall become due and shall be paid within thirty days from the date of the notice, or within such further time as the department may provide.

(2) Interest shall be computed from the original due date of the Washington return until the due date of the notice. If payment in full is not made by the due date of the notice, additional interest shall be computed until the date of payment.

(3) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the close of the calendar year in which a Washington return is due under this chapter, including any extension of time for filing, except upon a showing of fraud or of misrepresentation of a material fact by the taxpayer or as provided under subsection (4) or (5) of this section or as otherwise provided in this chapter.

(4) For persons liable for tax under RCW 83.100.120, the period for assessment or correction of an assessment shall extend an additional three years beyond the period described in subsection (3) of this section.

(5) A taxpayer may extend the periods of limitation under subsection (3) or (4) of this section by executing a written waiver. The execution of the waiver shall also extend the period for making a refund as provided in RCW 83.100.130. [2005 c 516 § 14.]

**Finding—Intent—Application—Severability—Effective date—2005 c 516:** See notes following RCW 83.100.040.

**83.100.110 Tax lien.** (1) Unless any tax due under this chapter is sooner paid in full, it shall be a lien upon the property subject to the tax for a period of ten years from the date of the transfer, except that any part of the property which is used for the payment of claims against the property or expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of the lien. Liens created under this subsection shall be qualified as follows:

(a) Any part of the property subject to the tax which is sold to a bona fide purchaser shall be divested of the lien and the lien shall be transferred to the proceeds of the sale; and

(b) The lien shall be subordinate to any mortgage or deed of trust on the property pursuant to an order of court for pay-

ment of claims against the property or expenses of administration. The lien shall attach to any proceeds from the sale of the property in excess of the obligations secured by the mortgage or deed of trust and the expenses of sale, including a reasonable charge by the trustee and by his or her attorney where the property has been sold by a nonjudicial trustee's sale pursuant to chapter 61.24 RCW, and including court costs and any attorneys' fees awarded by the superior court of the county in which the property is sold at sheriff's sale pursuant to a judicial foreclosure of the mortgage or deed of trust.

(2) If the person required to file the Washington return under RCW 83.100.050 has obtained an extension of time for payment of the tax or has elected to pay such tax in installments, the tax lien under this section shall be extended as necessary to prevent its expiration prior to twelve months following the expiration of any such extension or the installment.

(3) The tax lien shall be extended as necessary to prevent its expiration prior to twelve months following the conclusion of litigation of any question affecting the determination of the amount of tax due if a lis pendens has been filed with the auditor of the county in which the property is located. [2005 c 516 § 9; 1988 c 64 § 11; 1981 2nd ex.s. c 7 § 83.100.110 (Initiative Measure No. 402, approved November 3, 1981).]

**Finding—Intent—Application—Severability—Effective date—2005 c 516:** See notes following RCW 83.100.040.

**83.100.130 Refund for overpayment—Requirements.** (1) If, upon receipt of an application by a taxpayer for a refund, or upon examination of the returns or records of any taxpayer, the department determines that within the statutory period for assessment of taxes, penalties, or interest prescribed by RCW 83.100.095 a person required to file the Washington return under RCW 83.100.050 has overpaid the tax due under this chapter, the department shall refund the amount of the overpayment, together with interest as provided in subsection (2) of this section. If the application for refund, with supporting documents, is filed within one hundred twenty days after an adjustment or final determination of federal tax liability, the department shall pay interest until the date the refund is mailed. If the application for refund, with supporting documents, is filed after one hundred twenty days after the adjustment or final determination, the department shall pay interest only until the end of the one hundred twenty-day period.

(2) Interest refunded under this section for periods before January 2, 1997, shall be computed at the rate provided in RCW 83.100.070(1). Interest refunded under this section for periods after January 1, 1997, through December 31, 1998, shall be computed on a daily basis at the rate as computed under RCW 82.32.050(2) less one percentage point. Interest allowed for periods after December 31, 1998, shall be computed at the rate as computed under RCW 82.32.050(2). Except as provided in subsection (1) of this section, interest shall be refunded from the date of overpayment until the date the refund is mailed. The rate so computed shall be adjusted on the first day of January of each year.

(3) Except as otherwise provided in subsection (4) of this section and RCW 83.100.090, no refund shall be made for taxes, penalties, or interest paid more than four years prior to

the beginning of the calendar year in which the refund application is made or an examination of records is complete.

(4) The execution of a written waiver under RCW 83.100.095 shall extend the time for making a refund if, prior to the expiration of the waiver period, an application for refund is made by the taxpayer or the department discovers a refund is due.

(5) An application for refund shall be on a form prescribed by the department and shall contain any information and supporting documents the department requires. [2005 c 516 § 10; 1997 c 157 § 6; 1996 c 149 § 14; 1988 c 64 § 12; 1981 2nd ex.s. c 7 § 83.100.130 (Initiative Measure No. 402, approved November 3, 1981).]

**Finding—Intent—Application—Severability—Effective date—2005 c 516:** See notes following RCW 83.100.040.

**Findings—Intent—Effective date—1996 c 149:** See notes following RCW 82.32.050.

**83.100.140 Criminal acts relating to tax returns.** Any person required to file the Washington return who willfully fails to file a Washington return when required by this chapter or who willfully files a false return commits a gross misdemeanor as defined in Title 9A RCW and shall be punished as provided in Title 9A RCW for the perpetration of a gross misdemeanor. [2005 c 516 § 11; 1988 c 64 § 13; 1981 2nd ex.s. c 7 § 83.100.140 (Initiative Measure No. 402, approved November 3, 1981).]

**Finding—Intent—Application—Severability—Effective date—2005 c 516:** See notes following RCW 83.100.040.

**83.100.150 Collection of tax—Findings filed in court.** The department may collect the estate tax imposed under RCW 83.100.040, including interest and penalties, and shall represent this state in all matters pertaining to the same, either before courts or in any other manner. At any time after the Washington return is due, the department may file its findings regarding the amount of the tax computed as provided in RCW 83.100.040, the person required to file the Washington return under RCW 83.100.050, and all persons having an interest in property subject to the tax with the clerk of the superior court in the matter of the estate of the decedent or, if no probate or administration proceedings have been commenced in any court of this state, of the superior court for the county in which the decedent was a resident, if the resident was a domiciliary, or, if the decedent was a nondomiciliary, of any superior court which has jurisdiction over the property. Such a court first acquiring jurisdiction shall retain jurisdiction to the exclusion of every other court. [2005 c 516 § 12; 1988 c 64 § 14; 1981 2nd ex.s. c 7 § 83.100.150 (Initiative Measure No. 402, approved November 3, 1981).]

**Finding—Intent—Application—Severability—Effective date—2005 c 516:** See notes following RCW 83.100.040.

**83.100.210 Application of chapter 82.32 RCW—Closing agreements authorized.** (1) The following provisions of chapter 82.32 RCW have full force and application with respect to the taxes imposed under this chapter unless the context clearly requires otherwise: RCW 82.32.110, 82.32.120, 82.32.130, 82.32.320, and 82.32.340. The definitions in this chapter have full force and application with

respect to the application of chapter 82.32 RCW to this chapter unless the context clearly requires otherwise.

(2) The department may enter into closing agreements as provided in RCW 82.32.350 and 82.32.360. [2005 c 516 § 15; 1996 c 149 § 18.]

**Finding—Intent—Application—Severability—Effective date—2005 c 516:** See notes following RCW 83.100.040.

**Findings—Intent—Effective date—1996 c 149:** See notes following RCW 82.32.050.

**83.100.220 Deposit of funds into education legacy trust account.** All receipts from taxes, penalties, interest, and fees collected under this chapter must be deposited into the education legacy trust account. [2005 c 516 § 16.]

**Finding—Intent—Application—Severability—Effective date—2005 c 516:** See notes following RCW 83.100.040.

**83.100.230 Education legacy trust account.** The education legacy trust account is created in the state treasury. Money in the account may be spent only after appropriation. Expenditures from the account may be used only for deposit into the student achievement fund and for expanding access to higher education through funding for new enrollments and financial aid, and other educational improvement efforts. [2005 c 514 § 1101.]

**Effective date—2005 c 514:** "Except for sections 110(5), 114 through 116, 401 through 403, 501, 701, 1001 through 1004, 1106, 1201, 1311, and 1312 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 514 § 1302.]

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

## Chapter 83.110 RCW

### UNIFORM ESTATE TAX APPORTIONMENT ACT

#### Sections

83.110.010 through 83.110.904 Repealed. (*Effective January 1, 2006.*)

**83.110.010 through 83.110.904 Repealed.** (*Effective January 1, 2006.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Chapter 83.110A RCW

### WASHINGTON UNIFORM ESTATE TAX APPORTIONMENT ACT

#### Sections

- 83.110A.010 Definitions. (*Effective January 1, 2006.*)
- 83.110A.020 Apportionment by will or other dispositive instrument. (*Effective January 1, 2006.*)
- 83.110A.030 Statutory apportionment of estate taxes. (*Effective January 1, 2006.*)
- 83.110A.040 Credits and deferrals. (*Effective January 1, 2006.*)
- 83.110A.050 Insulated property—Advancement of tax. (*Effective January 1, 2006.*)
- 83.110A.060 Apportionment and recapture of special elective benefits. (*Effective January 1, 2006.*)
- 83.110A.070 Securing payment of estate tax from property in possession of fiduciary. (*Effective January 1, 2006.*)
- 83.110A.080 Collection of estate tax by fiduciary. (*Effective January 1, 2006.*)
- 83.110A.090 Right of reimbursement. (*Effective January 1, 2006.*)
- 83.110A.100 Action to determine or enforce chapter—Application of chapter 11.96A RCW. (*Effective January 1, 2006.*)

- 83.110A.110 Uniformity of application and construction. (*Effective January 1, 2006.*)
- 83.110A.900 Short title. (*Effective January 1, 2006.*)
- 83.110A.901 Captions not law. (*Effective January 1, 2006.*)
- 83.110A.902 Effective date—2005 c 332.
- 83.110A.903 Severability—2005 c 332. (*Effective January 1, 2006.*)
- 83.110A.904 Application—2005 c 332. (*Effective January 1, 2006.*)

**83.110A.010 Definitions.** (*Effective January 1, 2006.*)

The following definitions apply throughout this chapter unless the context clearly requires otherwise.

(1) "Apportionable estate" means the value of the gross estate as finally determined for purposes of the estate tax to be apportioned reduced by:

(a) Any claim or expense allowable as a deduction for purposes of the tax;

(b) The value of any interest in property that, for purposes of the tax, qualifies for a marital or charitable deduction or otherwise is deductible or is exempt; and

(c) Any amount added to the decedent's gross estate because of a gift tax on transfers made before death.

(2) "Estate tax" means a federal, state, or foreign tax imposed because of the death of an individual and interest and penalties associated with the tax. The term does not include an inheritance tax, income tax, or generation-skipping transfer tax other than a generation-skipping transfer tax incurred on a direct skip taking effect at death.

(3) "Gross estate" means, with respect to an estate tax, all interests in property subject to the tax.

(4) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(5) "Ratable" means apportioned or allocated pro rata according to the relative values of interests to which the term is to be applied. "Ratably" has a corresponding meaning.

(6) "Time-limited interest" means an interest in property which terminates on a lapse of time or on the occurrence or nonoccurrence of an event or which is subject to the exercise of discretion that could transfer a beneficial interest to another person. The term does not include a cotenancy unless the cotenancy itself is a time-limited interest.

(7) "Value" means, with respect to an interest in property, fair market value as finally determined for purposes of the estate tax that is to be apportioned, reduced by any outstanding debt secured by the interest without reduction for taxes paid or required to be paid or for any special valuation adjustment.

(8) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended or renumbered as of January 1, 2005. [2005 c 332 § 2.]

**83.110A.020 Apportionment by will or other dispositive instrument.** (*Effective January 1, 2006.*) (1) Except as otherwise provided in subsection (3) of this section, the following rules apply:

(a) To the extent that a provision of a decedent's will provides for the apportionment of an estate tax, the tax must be apportioned accordingly.

(b) Any portion of an estate tax not apportioned pursuant to (a) of this subsection must be apportioned in accordance

with any provision of a revocable trust of which the decedent was the settlor which provides for the apportionment of an estate tax. If conflicting apportionment provisions appear in two or more revocable trust instruments, the provision in the most recently dated instrument prevails. For purposes of this subsection (1)(b):

(i) A trust is revocable if it was revocable immediately after the trust instrument was executed, even if the trust subsequently becomes irrevocable; and

(ii) The date of an amendment to a revocable trust instrument is the date of the amended instrument only if the amendment contains an apportionment provision.

(c) If any portion of an estate tax is not apportioned pursuant to (a) or (b) of this subsection, and a provision in any other dispositive instrument provides that any interest in the property disposed of by the instrument is or is not to be applied to the payment of the estate tax attributable to the interest disposed of by the instrument, the provision controls the apportionment of the tax to that interest.

(2) Subject to subsection (3) of this section, and unless the decedent provides to the contrary, the following rules apply:

(a) If an apportionment provision provides that a person receiving an interest in property under an instrument is to be exonerated from the responsibility to pay an estate tax that would otherwise be apportioned to the interest:

(i) The tax attributable to the exonerated interest must be apportioned among the other persons receiving interests passing under the instrument; or

(ii) If the values of the other interests are less than the tax attributable to the exonerated interest, the deficiency must be apportioned ratably among the other persons receiving interests in the apportionable estate that are not exonerated from apportionment of the tax.

(b) If an apportionment provision provides that an estate tax is to be apportioned to an interest in property a portion of which qualifies for a marital or charitable deduction, the estate tax must first be apportioned ratably among the holders of the portion that does not qualify for a marital or charitable deduction and then apportioned ratably among the holders of the deductible portion to the extent that the value of the non-deductible portion is insufficient.

(c) Except as otherwise provided in (d) of this subsection, if an apportionment provision provides that an estate tax be apportioned to property in which one or more time-limited interests exist, other than interests in specified property under RCW 83.110A.060, the tax must be apportioned to the principal of that property, regardless of the deductibility of some of the interests in that property.

(d) If an apportionment provision provides that an estate tax is to be apportioned to the holders of interests in property in which one or more time-limited interests exist and a charity has an interest that otherwise qualifies for an estate tax charitable deduction, the tax must first be apportioned, to the extent feasible, to interests in property that have not been distributed to the persons entitled to receive the interests. No tax shall be paid from a charitable remainder annuity trust or a charitable remainder unitrust described in section 664 of the Internal Revenue Code and created during the decedent's life.

(3) A provision that apportions an estate tax is ineffective to the extent that it increases the tax apportioned to a per-



son having an interest in the gross estate over which the decedent had no power to transfer immediately before the decedent executed the instrument in which the apportionment direction was made. For purposes of this section, a testamentary power of appointment is a power to transfer the property that is subject to the power. [2005 c 332 § 3.]

**83.110A.030 Statutory apportionment of estate taxes.** (*Effective January 1, 2006.*) To the extent that apportionment of an estate tax is not controlled by an instrument described in RCW 83.110A.020 and except as otherwise provided in RCW 83.110A.050 and 83.110A.060, the following rules apply:

(1) Subject to subsections (2), (3), and (4) of this section, the estate tax is apportioned ratably to each person that has an interest in the apportionable estate.

(2) A generation-skipping transfer tax incurred on a direct skip taking effect at death is charged to the person to which the interest in property is transferred.

(3) If property is included in the decedent's gross estate because of section 2044 of the Internal Revenue Code or any similar estate tax provision, the difference between the total estate tax for which the decedent's estate is liable and the amount of estate tax for which the decedent's estate would have been liable if the property had not been included in the decedent's gross estate is apportioned ratably among the holders of interests in the property. The balance of the tax, if any, is apportioned ratably to each other person having an interest in the apportionable estate.

(4) Except as otherwise provided in RCW 83.110A.020(2)(d) and except as to property to which RCW 83.110A.060 applies, an estate tax apportioned to persons holding interests in property subject to a time-limited interest must be apportioned, without further apportionment, to the principal of that property.

(5) If the court finds that it is inequitable to apportion interest and penalties in the manner provided in this chapter because of special circumstances, it may direct apportionment thereon in the manner it finds equitable. [2005 c 332 § 4.]

**83.110A.040 Credits and deferrals.** (*Effective January 1, 2006.*) Except as otherwise provided in RCW 83.110A.050 and 83.110A.060, the following rules apply to credits and deferrals of estate taxes:

(1) A credit resulting from the payment of gift taxes or from estate taxes paid on property previously taxed inures ratably to the benefit of all persons to which the estate tax is apportioned.

(2) A credit for state or foreign estate taxes inures ratably to the benefit of all persons to which the estate tax is apportioned, except that the amount of a credit for a state or foreign tax paid by a beneficiary of the property on which the state or foreign tax was imposed, directly or by a charge against the property, inures to the benefit of the beneficiary.

(3) If payment of a portion of an estate tax is deferred because of the inclusion in the gross estate of a particular interest in property, the benefit of the deferral inures ratably to the persons to which the estate tax attributable to the interest is apportioned. The burden of any interest charges

incurred on a deferral of taxes and the benefit of any tax deduction associated with the accrual or payment of the interest charge is allocated ratably among the persons receiving an interest in the property. [2005 c 332 § 5.]

**83.110A.050 Insulated property—Advancement of tax.** (*Effective January 1, 2006.*) (1) As used in this section:

(a) "Advanced fraction" means a fraction that has as its numerator the amount of the advanced tax and as its denominator the value of the interests in insulated property to which that tax is attributable.

(b) "Advanced tax" means the aggregate amount of estate tax attributable to interests in insulated property which is required to be advanced by uninsured holders under subsection (3) of this section.

(c) "Insulated property" means property subject to a time-limited interest which is included in the apportionable estate and is unavailable for payment of an estate tax because of impossibility or impracticability. Insulated property does not include property from which the beneficial holder has the unilateral right to cause distribution to himself or herself.

(d) "Uninsulated holder" means a person who has an interest in uninsured property.

(e) "Uninsulated property" means property included in the apportionable estate other than insulated property.

(2) If an estate tax is to be advanced pursuant to subsection (3) of this section by persons holding interests in uninsured property subject to a time-limited interest other than property to which RCW 83.110A.060 applies, the tax must be advanced, without further apportionment, from the principal of the uninsured property.

(3) Subject to RCW 83.110A.080 (2) and (4), an estate tax attributable to interests in insulated property must be advanced ratably by uninsured holders.

(4) A court having jurisdiction to determine the apportionment of an estate tax may require a beneficiary of an interest in insulated property to pay all or part of the estate tax otherwise apportioned to the interest if the court finds that it would be substantially more equitable for that beneficiary to bear the tax liability personally than for that part of the tax to be advanced by uninsured holders.

(5) Upon payment by an uninsured holder of estate tax required to be advanced, a court may require the beneficiary of an interest in insulated property to provide a bond or other security, including a recordable lien on the property of the beneficiary, for repayment of the advanced tax.

(6) When a distribution of insulated property is made, each uninsured holder may recover from the distributee a ratable portion of the advanced fraction of the property distributed. To the extent that undistributed insulated property ceases to be insulated, each uninsured holder may recover from the property a ratable portion of the advanced fraction of the total undistributed property. [2005 c 332 § 6.]

**83.110A.060 Apportionment and recapture of special elective benefits.** (*Effective January 1, 2006.*) (1) As used in this section:

(a) "Special elective benefit" means a reduction in an estate tax obtained by an election for:

(i) A reduced valuation of specified property that is included in the gross estate;

(ii) A deduction from the gross estate, other than a marital or charitable deduction, allowed for specified property; or

(iii) An exclusion from the gross estate of specified property.

(b) "Specified property" means property for which an election has been made for a special elective benefit.

(2) If an election is made for one or more special elective benefits, an initial apportionment of a hypothetical estate tax must be computed as if no election for any of those benefits had been made. The aggregate reduction in estate tax resulting from all elections made must be allocated among holders of interests in the specified property in the proportion that the amount of deduction, reduced valuation, or exclusion attributable to each holder's interest bears to the aggregate amount of deductions, reduced valuations, and exclusions obtained by the decedent's estate from the elections. If the estate tax initially apportioned to the holder of an interest in specified property is reduced to zero, any excess amount of reduction reduces ratably the estate tax apportioned to other persons that receive interests in the apportionable estate.

(3) An additional estate tax imposed to recapture all or part of a special elective benefit must be charged to the persons that are liable for the additional tax under the law providing for the recapture. [2005 c 332 § 7.]

**83.110A.070 Securing payment of estate tax from property in possession of fiduciary. (Effective January 1, 2006.)** (1) A fiduciary may defer a distribution of property until the fiduciary is satisfied that adequate provision for payment of the estate tax has been made.

(2) A fiduciary may withhold from a distributee the estate tax apportioned to and the estate tax required to be advanced by the distributee.

(3) As a condition to a distribution, a fiduciary may require the distributee to provide a bond or other security for the estate tax apportioned to and the estate tax required to be advanced by the distributee. [2005 c 332 § 8.]

**83.110A.080 Collection of estate tax by fiduciary. (Effective January 1, 2006.)** (1) A fiduciary responsible for payment of an estate tax may collect from any person the estate tax apportioned to and the estate tax required to be advanced by the person.

(2) Except as otherwise provided in RCW 83.110A.050, any estate tax due from a person that cannot be collected from the person may be collected by the fiduciary from other persons in the following order of priority:

(a) Any person having an interest in the apportionable estate which is not exonerated from the tax;

(b) Any other person having an interest in the apportionable estate;

(c) Any person having an interest in the gross estate.

(3) A domiciliary fiduciary may recover from an ancillary personal representative the estate tax apportioned to the property controlled by the ancillary personal representative.

(4) The total tax collected from a person pursuant to this chapter may not exceed the value of the person's interest. [2005 c 332 § 9.]

**83.110A.090 Right of reimbursement. (Effective January 1, 2006.)** (1) A person required under RCW 83.110A.080 to pay an estate tax greater than the amount due from the person under RCW 83.110A.020 or 83.110A.030 has a right to reimbursement from another person to the extent that the other person has not paid the tax required by RCW 83.110A.020 or 83.110A.030 and a right to reimbursement ratably from other persons to the extent that each has not contributed a portion of the amount collected under RCW 83.110A.080(2).

(2) A fiduciary may enforce the right of reimbursement under subsection (1) of this section on behalf of the person that is entitled to the reimbursement and shall take reasonable steps to do so if requested by the person. [2005 c 332 § 10.]

**83.110A.100 Action to determine or enforce chapter—Application of chapter 11.96A RCW. (Effective January 1, 2006.)** Chapter 11.96A RCW applies to issues, questions, or disputes that arise under or that relate to this chapter. Any and all such issues, questions, or disputes may be resolved judicially or nonjudicially under chapter 11.96A RCW. [2005 c 332 § 11.]

**83.110A.110 Uniformity of application and construction. (Effective January 1, 2006.)** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2005 c 332 § 12.]

**83.110A.900 Short title. (Effective January 1, 2006.)** This chapter may be cited as the Washington Uniform Estate Tax Apportionment Act of 2005. [2005 c 332 § 1.]

**83.110A.901 Captions not law. (Effective January 1, 2006.)** Captions used in this chapter are not part of the law. [2005 c 332 § 16.]

**83.110A.902 Effective date—2005 c 332.** This act takes effect January 1, 2006. [2005 c 332 § 17.]

**83.110A.903 Severability—2005 c 332. (Effective January 1, 2006.)** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2005 c 332 § 13.]

**83.110A.904 Application—2005 c 332. (Effective January 1, 2006.)** (1) This act takes effect for estate tax due on account of decedents who die on or after January 1, 2006.

(2) Sections 2 through 7 of this act do not apply to a decedent who dies after December 31, 2005, if the decedent continuously lacked testamentary capacity from January 1, 2006, until the date of death. For such a decedent, estate tax must be apportioned pursuant to the law in effect immediately before January 1, 2006. [2005 c 332 § 14.]

**Title 84**  
**PROPERTY TAXES**

**Chapters**

- 84.08 General powers and duties of department of revenue.**
- 84.14 New and rehabilitated multiple-unit dwellings in urban centers.**
- 84.33 Timber and forest lands.**
- 84.34 Open space, agricultural, timber lands—Current use—Conservation futures.**
- 84.36 Exemptions.**
- 84.39 Property tax exemption—Widows or widowers of veterans.**
- 84.40 Listing of property.**
- 84.52 Levy of taxes.**
- 84.56 Collection of taxes.**
- 84.69 Refunds.**
- 84.70 Destroyed property—Abatement or refund.**

**Chapter 84.08 RCW****GENERAL POWERS AND DUTIES OF DEPARTMENT OF REVENUE**

## Sections

- 84.08.210 Confidentiality and privilege of tax information—Exceptions—Penalty. (*Effective July 1, 2006.*)

**84.08.210 Confidentiality and privilege of tax information—Exceptions—Penalty. (*Effective July 1, 2006.*)**

(1) For purposes of this section, "tax information" means confidential income data and proprietary business information obtained by the department in the course of carrying out the duties now or hereafter imposed upon it in this title that has been communicated in confidence in connection with the assessment of property and that has not been publicly disseminated by the taxpayer, the disclosure of which would be either highly offensive to a reasonable person and not a legitimate concern to the public or would result in an unfair competitive disadvantage to the taxpayer.

(2) Tax information is confidential and privileged, and except as authorized by this section, neither the department nor any other person may disclose tax information.

(3) Subsection (2) of this section, however, does not prohibit the department from:

(a) Disclosing tax information to any county assessor or county treasurer;

(b) Disclosing tax information in a civil or criminal judicial proceeding or an administrative proceeding in respect to taxes or penalties imposed under this title or Title 82 RCW or in respect to assessment or valuation for tax purposes of the property to which the information or facts relate;

(c) Disclosing tax information with the written permission of the taxpayer;

(d) Disclosing tax information to the proper officer of the tax department of any state responsible for the imposition or collection of property taxes, or for the valuation of property for tax purposes, if the other state grants substantially similar privileges to the proper officers of this state;

(e) Disclosing tax information that is also maintained by another Washington state or local governmental agency as a

public record available for inspection and copying under chapter 42.56 RCW or is a document maintained by a court of record not otherwise prohibited from disclosure;

(f) Disclosing tax information to a peace officer as defined in RCW 9A.04.110 or county prosecutor, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county prosecutor who receives the tax information may disclose the tax information only for use in the investigation and a related court proceeding, or in the court proceeding for which the tax information originally was sought; or

(g) Disclosing information otherwise available under chapter 42.56 RCW.

(4) A violation of this section constitutes a gross misdemeanor. [2005 c 274 § 363; 1997 c 239 § 1.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Chapter 84.14 RCW****NEW AND REHABILITATED MULTIPLE-UNIT DWELLINGS IN URBAN CENTERS**

## Sections

- 84.14.030 Application—Requirements.

**84.14.030 Application—Requirements.** An owner of property making application under this chapter must meet the following requirements:

(1) The new or rehabilitated multiple-unit housing must be located in a residential targeted area as designated by the city;

(2) The multiple-unit housing must meet the guidelines as adopted by the governing authority that may include height, density, public benefit features, number and size of proposed development, parking, low-income or moderate-income occupancy requirements, and other adopted requirements indicated necessary by the city. The required amenities should be relative to the size of the project and tax benefit to be obtained;

(3) The new, converted, or rehabilitated multiple-unit housing must provide for a minimum of fifty percent of the space for permanent residential occupancy. In the case of existing occupied multifamily development, the multifamily housing must also provide for a minimum of four additional multifamily units. Existing multifamily vacant housing that has been vacant for twelve months or more does not have to provide additional multifamily units;

(4) New construction multifamily housing and rehabilitation improvements must be completed within three years from the date of approval of the application;

(5) Property proposed to be rehabilitated must fail to comply with one or more standards of the applicable state or local building or housing codes on or after July 23, 1995. If the property proposed to be rehabilitated is not vacant, an applicant shall provide each existing tenant housing of comparable size, quality, and price and a reasonable opportunity to relocate; and

(6) The applicant must enter into a contract with the city approved by the governing body under which the applicant has agreed to the implementation of the development on terms and conditions satisfactory to the governing authority. [2005 c 80 § 1; 1997 c 429 § 42; 1995 c 375 § 6.]

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**Chapter 84.33 RCW**

**TIMBER AND FOREST LANDS**

Sections

84.33.140 Forest land valuation—Notation of forest land designation upon assessment and tax rolls—Notice of continuance—Removal of designation—Compensating tax. (*Effective July 1, 2007.*)

**84.33.140 Forest land valuation—Notation of forest land designation upon assessment and tax rolls—Notice of continuance—Removal of designation—Compensating tax. (*Effective July 1, 2007.*)**

(1) When land has been designated as forest land under RCW 84.33.130, a notation of the designation shall be made each year upon the assessment and tax rolls. A copy of the notice of approval together with the legal description or assessor's parcel numbers for the land shall, at the expense of the applicant, be filed by the assessor in the same manner as deeds are recorded.

(2) In preparing the assessment roll as of January 1, 2002, for taxes payable in 2003 and each January 1st thereafter, the assessor shall list each parcel of designated forest land at a value with respect to the grade and class provided in this subsection and adjusted as provided in subsection (3) of this section. The assessor shall compute the assessed value of the land using the same assessment ratio applied generally in computing the assessed value of other property in the county. Values for the several grades of bare forest land shall be as follows:

LAND GRADE	OPERABILITY CLASS	VALUES PER ACRE
1	1	\$234
	2	229
	3	217
	4	157
2	1	198
	2	190
	3	183
	4	132
3	1	154
	2	149
	3	148
	4	113
4	1	117
	2	114
	3	113
	4	86
5	1	85
	2	78

	3	77
	4	52
	1	43
6	2	39
	3	39
	4	37
	1	21
7	2	21
	3	20
	4	20
8		1

(3) On or before December 31, 2001, the department shall adjust by rule under chapter 34.05 RCW, the forest land values contained in subsection (2) of this section in accordance with this subsection, and shall certify the adjusted values to the assessor who will use these values in preparing the assessment roll as of January 1, 2002. For the adjustment to be made on or before December 31, 2001, for use in the 2002 assessment year, the department shall:

(a) Divide the aggregate value of all timber harvested within the state between July 1, 1996, and June 30, 2001, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 84.33.074; and

(b) Divide the aggregate value of all timber harvested within the state between July 1, 1995, and June 30, 2000, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 84.33.074; and

(c) Adjust the forest land values contained in subsection (2) of this section by a percentage equal to one-half of the percentage change in the average values of harvested timber reflected by comparing the resultant values calculated under (a) and (b) of this subsection.

(4) For the adjustments to be made on or before December 31, 2002, and each succeeding year thereafter, the same procedure described in subsection (3) of this section shall be followed using harvester excise tax returns filed under RCW 84.33.074. However, this adjustment shall be made to the prior year's adjusted value, and the five-year periods for calculating average harvested timber values shall be successively one year more recent.

(5) Land graded, assessed, and valued as forest land shall continue to be so graded, assessed, and valued until removal of designation by the assessor upon the occurrence of any of the following:

(a) Receipt of notice from the owner to remove the designation;

(b) Sale or transfer to an ownership making the land exempt from ad valorem taxation;

(c) Sale or transfer of all or a portion of the land to a new owner, unless the new owner has signed a notice of forest land designation continuance, except transfer to an owner who is an heir or devisee of a deceased owner, shall not, by itself, result in removal of designation. The signed notice of continuance shall be attached to the real estate excise tax affidavit provided for in RCW 82.45.150. The notice of contin-

uance shall be on a form prepared by the department. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all compensating taxes calculated under subsection (11) of this section shall become due and payable by the seller or transferor at time of sale. The auditor shall not accept an instrument of conveyance regarding designated forest land for filing or recording unless the new owner has signed the notice of continuance or the compensating tax has been paid, as evidenced by the real estate excise tax stamp affixed thereto by the treasurer. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (11) of this section to the county board of equalization in accordance with the provisions of RCW 84.40.038. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals;

(d) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that:

(i) The land is no longer primarily devoted to and used for growing and harvesting timber. However, land shall not be removed from designation if a governmental agency, organization, or other recipient identified in subsection (13) or (14) of this section as exempt from the payment of compensating tax has manifested its intent in writing or by other official action to acquire a property interest in the designated forest land by means of a transaction that qualifies for an exemption under subsection (13) or (14) of this section. The governmental agency, organization, or recipient shall annually provide the assessor of the county in which the land is located reasonable evidence in writing of the intent to acquire the designated land as long as the intent continues or within sixty days of a request by the assessor. The assessor may not request this evidence more than once in a calendar year;

(ii) The owner has failed to comply with a final administrative or judicial order with respect to a violation of the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW or any applicable rules under Title 76 RCW; or

(iii) Restocking has not occurred to the extent or within the time specified in the application for designation of such land.

(6) Land shall not be removed from designation if there is a governmental restriction that prohibits, in whole or in part, the owner from harvesting timber from the owner's designated forest land. If only a portion of the parcel is impacted by governmental restrictions of this nature, the restrictions cannot be used as a basis to remove the remainder of the forest land from designation under this chapter. For the purposes of this section, "governmental restrictions" includes: (a) Any law, regulation, rule, ordinance, program, or other action adopted or taken by a federal, state, county, city, or other governmental entity; or (b) the land's zoning or its presence within an urban growth area designated under RCW 36.70A.110.

(7) The assessor shall have the option of requiring an owner of forest land to file a timber management plan with the assessor upon the occurrence of one of the following:

(a) An application for designation as forest land is submitted; or

(b) Designated forest land is sold or transferred and a notice of continuance, described in subsection (5)(c) of this section, is signed.

(8) If land is removed from designation because of any of the circumstances listed in subsection (5)(a) through (c) of this section, the removal shall apply only to the land affected. If land is removed from designation because of subsection (5)(d) of this section, the removal shall apply only to the actual area of land that is no longer primarily devoted to the growing and harvesting of timber, without regard to any other land that may have been included in the application and approved for designation, as long as the remaining designated forest land meets the definition of forest land contained in RCW 84.33.035.

(9) Within thirty days after the removal of designation as forest land, the assessor shall notify the owner in writing, setting forth the reasons for the removal. The seller, transferor, or owner may appeal the removal to the county board of equalization in accordance with the provisions of RCW 84.40.038.

(10) Unless the removal is reversed on appeal a copy of the notice of removal with a notation of the action, if any, upon appeal, together with the legal description or assessor's parcel numbers for the land removed from designation shall, at the expense of the applicant, be filed by the assessor in the same manner as deeds are recorded and a notation of removal from designation shall immediately be made upon the assessment and tax rolls. The assessor shall revalue the land to be removed with reference to its true and fair value as of January 1st of the year of removal from designation. Both the assessed value before and after the removal of designation shall be listed. Taxes based on the value of the land as forest land shall be assessed and payable up until the date of removal and taxes based on the true and fair value of the land shall be assessed and payable from the date of removal from designation.

(11) Except as provided in subsection (5)(c), (13), or (14) of this section, a compensating tax shall be imposed on land removed from designation as forest land. The compensating tax shall be due and payable to the treasurer thirty days after the owner is notified of the amount of this tax. As soon as possible after the land is removed from designation, the assessor shall compute the amount of compensating tax and mail a notice to the owner of the amount of compensating tax owed and the date on which payment of this tax is due. The amount of compensating tax shall be equal to the difference between the amount of tax last levied on the land as designated forest land and an amount equal to the new assessed value of the land multiplied by the dollar rate of the last levy extended against the land, multiplied by a number, in no event greater than nine, equal to the number of years for which the land was designated as forest land, plus compensating taxes on the land at forest land values up until the date of removal and the prorated taxes on the land at true and fair value from the date of removal to the end of the current tax year.

(12) Compensating tax, together with applicable interest thereon, shall become a lien on the land which shall attach at the time the land is removed from designation as forest land and shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligat-

tion, or responsibility to or with which the land may become charged or liable. The lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050. Any compensating tax unpaid on its due date shall thereupon become delinquent. From the date of delinquency until paid, interest shall be charged at the same rate applied by law to delinquent ad valorem property taxes.

(13) The compensating tax specified in subsection (11) of this section shall not be imposed if the removal of designation under subsection (5) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other forest land located within the state of Washington;

(b) A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power;

(c) A donation of fee title, development rights, or the right to harvest timber, to a government agency or organization qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections, or the sale or transfer of fee title to a governmental entity or a nonprofit nature conservancy corporation, as defined in RCW 64.04.130, exclusively for the protection and conservation of lands recommended for state natural area preserve purposes by the natural heritage council and natural heritage plan as defined in chapter 79.70 RCW or approved for state natural resources conservation area purposes as defined in chapter 79.71 RCW. At such time as the land is not used for the purposes enumerated, the compensating tax specified in subsection (11) of this section shall be imposed upon the current owner;

(d) The sale or transfer of fee title to the parks and recreation commission for park and recreation purposes;

(e) Official action by an agency of the state of Washington or by the county or city within which the land is located that disallows the present use of the land;

(f) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120;

(g) The creation, sale, or transfer of a fee interest or a conservation easement for the riparian open space program under RCW 76.09.040;

(h) The sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as classified forest land, designated as forest land under this chapter, or classified under chapter 84.34 RCW continuously since 1993. The date of death shown on a death certificate is the date used for the purposes of this subsection (13)(h); or

(i) The sale or transfer of land after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as classified forest land, designated as forest land under this chapter, or classified under chapter 84.34 RCW continuously since 1993 and the sale or transfer takes place after July 22, 2001, and on or before July 22, 2003, and the death of the owner occurred after January 1, 1991. The date of death shown on a death certificate is the date used for the purposes of this subsection (13)(i).

(14) In a county with a population of more than one million inhabitants, the compensating tax specified in subsection (11) of this section shall not be imposed if the removal of des-

ignation as forest land under subsection (5) of this section resulted solely from:

(a) An action described in subsection (13) of this section; or

(b) A transfer of a property interest to a government entity, or to a nonprofit historic preservation corporation or nonprofit nature conservancy corporation, as defined in RCW 64.04.130, to protect or enhance public resources, or to preserve, maintain, improve, restore, limit the future use of, or otherwise to conserve for public use or enjoyment, the property interest being transferred. At such time as the property interest is not used for the purposes enumerated, the compensating tax shall be imposed upon the current owner. [2005 c 303 § 13; 2003 c 170 § 5. Prior: 2001 c 305 § 2; 2001 c 249 § 3; 2001 c 185 § 5; 1999 sp.s. c 4 § 703; 1999 c 233 § 21; 1997 c 299 § 2; 1995 c 330 § 2; 1992 c 69 § 2; 1986 c 238 § 2; 1981 c 148 § 9; 1980 c 134 § 3; 1974 ex.s. c 187 § 7; 1973 1st ex.s. c 195 § 93; 1972 ex.s. c 148 § 6; 1971 ex.s. c 294 § 14.]

**Effective date—2005 c 303 §§ 1-14:** See note following RCW 79A.15.010.

**Purpose—Intent—2003 c 170:** See note following RCW 84.33.130.

**Application—2001 c 185 §§ 1-12:** See note following RCW 84.14.110.

**Part headings not law—1999 sp.s. c 4:** See note following RCW 77.85.180.

**Effective date—1999 c 233:** See note following RCW 4.28.320.

**Effective date—1997 c 299:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 1997]." [1997 c 299 § 4.]

**Effective date—1995 c 330:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 11, 1995]." [1995 c 330 § 3.]

**Effective date—1992 c 69:** See RCW 84.34.923.

**Purpose—Severability—Effective dates—1981 c 148:** See notes following RCW 84.33.130.

**Severability—1974 ex.s. c 187:** See note following RCW 84.33.130.

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

## Chapter 84.34 RCW

### OPEN SPACE, AGRICULTURAL, TIMBER LANDS— CURRENT USE—CONSERVATION FUTURES

#### Sections

84.34.020	Definitions.
84.34.055	Open space priorities—Open space plan and public benefit rating system.
84.34.230	Acquisition of open space, etc., land or rights to future development by certain entities—Additional property tax levy authorized.
84.34.240	Acquisition of open space, etc., land or rights to future development by certain entities—Conservation futures fund—Additional requirements, authority.

**84.34.020 Definitions.** As used in this chapter, unless a different meaning is required by the context:

(1) "Open space land" means (a) any land area so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly, or (b) any land area, the preservation of which in its present use would (i) conserve and enhance natural or scenic resources, or (ii) pro-

tect streams or water supply, or (iii) promote conservation of soils, wetlands, beaches or tidal marshes, or (iv) enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space, or (v) enhance recreation opportunities, or (vi) preserve historic sites, or (vii) preserve visual quality along highway, road, and street corridors or scenic vistas, or (viii) retain in its natural state tracts of land not less than one acre situated in an urban area and open to public use on such conditions as may be reasonably required by the legislative body granting the open space classification, or (c) any land meeting the definition of farm and agricultural conservation land under subsection (8) of this section. As a condition of granting open space classification, the legislative body may not require public access on land classified under (b)(iii) of this subsection for the purpose of promoting conservation of wetlands.

(2) "Farm and agricultural land" means:

(a) Any parcel of land that is twenty or more acres or multiple parcels of land that are contiguous and total twenty or more acres:

(i) Devoted primarily to the production of livestock or agricultural commodities for commercial purposes;

(ii) Enrolled in the federal conservation reserve program or its successor administered by the United States department of agriculture; or

(iii) Other similar commercial activities as may be established by rule;

(b)(i) Any parcel of land that is five acres or more but less than twenty acres devoted primarily to agricultural uses, which has produced a gross income from agricultural uses equivalent to, as of January 1, 1993:

(A) One hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter for all parcels of land that are classified under this subsection or all parcels of land for which an application for classification under this subsection is made with the granting authority prior to January 1, 1993; and

(B) On or after January 1, 1993, two hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter;

(ii) For the purposes of (b)(i) of this subsection, "gross income from agricultural uses" includes, but is not limited to, the wholesale value of agricultural products donated to non-profit food banks or feeding programs;

(c) Any parcel of land of less than five acres devoted primarily to agricultural uses which has produced a gross income as of January 1, 1993, of:

(i) One thousand dollars or more per year for three of the five calendar years preceding the date of application for classification under this chapter for all parcels of land that are classified under this subsection or all parcels of land for which an application for classification under this subsection is made with the granting authority prior to January 1, 1993; and

(ii) On or after January 1, 1993, fifteen hundred dollars or more per year for three of the five calendar years preceding the date of application for classification under this chapter.

Parcels of land described in (b)(i)(A) and (c)(i) of this subsection shall, upon any transfer of the property excluding a transfer to a surviving spouse, be subject to the limits of (b)(i)(B) and (c)(ii) of this subsection;

(d) Any lands including incidental uses as are compatible with agricultural purposes, including wetlands preservation, provided such incidental use does not exceed twenty percent of the classified land and the land on which appurtenances necessary to the production, preparation, or sale of the agricultural products exist in conjunction with the lands producing such products. Agricultural lands shall also include any parcel of land of one to five acres, which is not contiguous, but which otherwise constitutes an integral part of farming operations being conducted on land qualifying under this section as "farm and agricultural lands"; or

(e) The land on which housing for employees and the principal place of residence of the farm operator or owner of land classified pursuant to (a) of this subsection is sited if: The housing or residence is on or contiguous to the classified parcel; and the use of the housing or the residence is integral to the use of the classified land for agricultural purposes.

(3) "Timber land" means any parcel of land that is five or more acres or multiple parcels of land that are contiguous and total five or more acres which is or are devoted primarily to the growth and harvest of timber for commercial purposes. Timber land means the land only and does not include a residential homesite. The term includes land used for incidental uses that are compatible with the growing and harvesting of timber but no more than ten percent of the land may be used for such incidental uses. It also includes the land on which appurtenances necessary for the production, preparation, or sale of the timber products exist in conjunction with land producing these products.

(4) "Current" or "currently" means as of the date on which property is to be listed and valued by the assessor.

(5) "Owner" means the party or parties having the fee interest in land, except that where land is subject to real estate contract "owner" shall mean the contract vendee.

(6) "Contiguous" means land adjoining and touching other property held by the same ownership. Land divided by a public road, but otherwise an integral part of a farming operation, shall be considered contiguous.

(7) "Granting authority" means the appropriate agency or official who acts on an application for classification of land pursuant to this chapter.

(8) "Farm and agricultural conservation land" means either:

(a) Land that was previously classified under subsection (2) of this section, that no longer meets the criteria of subsection (2) of this section, and that is reclassified under subsection (1) of this section; or

(b) Land that is traditional farmland that is not classified under chapter 84.33 or 84.34 RCW, that has not been irrevocably devoted to a use inconsistent with agricultural uses, and that has a high potential for returning to commercial agriculture. [2005 c 57 § 1; 2004 c 217 § 1; 2002 c 315 § 1; 2001 c 249 § 12; 1998 c 320 § 7; 1997 c 429 § 31; 1992 c 69 § 4; 1988 c 253 § 3; 1983 c 3 § 227; 1973 1st ex.s. c 212 § 2; 1970 ex.s. c 87 § 2.]

**Purpose—2004 c 217 § 1:** "The purpose of the amendatory language in section 1 of this act is to clarify the timber land definition as it relates to tax

issues. The language does not affect land use policy or law." [2004 c 217 § 2.]

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**84.34.055 Open space priorities—Open space plan and public benefit rating system.** (1)(a) The county legislative authority may direct the county planning commission to set open space priorities and adopt, after a public hearing, an open space plan and public benefit rating system for the county. The plan shall consist of criteria for determining eligibility of lands, the process for establishing a public benefit rating system, and an assessed valuation schedule. The assessed valuation schedule shall be developed by the county assessor and shall be a percentage of market value based upon the public benefit rating system. The open space plan, the public benefit rating system, and the assessed valuations schedule shall not be effective until approved by the county legislative authority after at least one public hearing: PROVIDED, That any county which has complied with the procedural requisites of chapter 393, Laws of 1985, prior to July 28, 1985, need not repeat those procedures in order to adopt an open space plan pursuant to chapter 393, Laws of 1985.

(b) County legislative authorities, in open space plans, public benefit rating systems, and assessed valuation schedules, shall give priority consideration to lands used for buffers that are planted with or primarily contain native vegetation.

(c) "Priority consideration" as used in this section may include, but is not limited to, establishing classification eligibility and maintenance criteria for buffers meeting the requirements of (b) of this subsection.

(d) County legislative authorities shall meet the requirements of (b) of this subsection no later than July 1, 2006, unless buffers already receive priority consideration in the existing open space plans, public benefit rating systems, and assessed valuation schedules.

(2) In adopting an open space plan, recognized sources shall be used unless the county does its own survey of important open space priorities or features, or both. Recognized sources include but are not limited to the natural heritage data base; the state office of historic preservation; the interagency committee for outdoor recreation inventory of dry accretion beach and shoreline features; state, national, county, or city registers of historic places; the shoreline master program; or studies by the parks and recreation commission and by the departments of fish and wildlife and natural resources. Features and sites may be verified by an outside expert in the field and approved by the appropriate state or local agency to be sent to the county legislative authority for final approval as open space.

(3) When the county open space plan is adopted, owners of open space lands then classified under this chapter shall be notified in the same manner as is provided in RCW 84.40.045 of their new assessed value. These lands may be removed from classification, upon request of owner, without penalty within thirty days of notification of value.

(4) The open space plan and public benefit rating system under this section may be adopted for taxes payable in 1986 and thereafter. [2005 c 310 § 1; 1994 c 264 § 76; 1988 c 36 § 62; 1985 c 393 § 3.]

**84.34.230 Acquisition of open space, etc., land or rights to future development by certain entities—Additional property tax levy authorized.** Conservation futures are a useful tool for counties to preserve lands of public interest for future generations. Counties are encouraged to use some conservation futures as one tool for salmon preservation purposes.

For the purpose of acquiring conservation futures and other rights and interests in real property pursuant to RCW 84.34.210 and 84.34.220, and for maintaining and operating any property acquired with these funds, a county may levy an amount not to exceed six and one-quarter cents per thousand dollars of assessed valuation against the assessed valuation of all taxable property within the county. The limitations in RCW 84.52.043 shall not apply to the tax levy authorized in this section. Any rights or interests in real property acquired under this section after July 24, 2005, must be located within the assessing county. Further, the county must determine if the rights or interests in real property acquired with these funds would reduce the capacity of land suitable for development necessary to accommodate the allocated housing and employment growth, as adopted in the countywide planning policies. When actions are taken that reduce capacity to accommodate planned growth, the jurisdiction shall adopt reasonable measures to increase the capacity lost by such actions. [2005 c 449 § 1; 1995 c 318 § 8; 1994 c 301 § 33; 1973 1st ex.s. c 195 § 94; 1973 1st ex.s. c 195 § 145; 1971 ex.s. c 243 § 4.]

**Effective date—1995 c 318:** See note following RCW 82.04.030.

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**84.34.240 Acquisition of open space, etc., land or rights to future development by certain entities—Conservation futures fund—Additional requirements, authority.** Conservation futures are a useful tool for counties to preserve lands of public interest for future generations. Counties are encouraged to use some conservation futures as one tool for salmon preservation purposes.

(1) Any board of county commissioners may establish by resolution a special fund which may be termed a conservation futures fund to which it may credit all taxes levied pursuant to RCW 84.34.230. Amounts placed in this fund may be used for the purpose of acquiring rights and interests in real property pursuant to the terms of RCW 84.34.210 and 84.34.220, and for the maintenance and operation of any property acquired with these funds. The amount of revenue used for maintenance and operations of parks and recreational land may not exceed fifteen percent of the total amount collected from the tax levied under RCW 84.34.230 in the preceding calendar year. Revenues from this tax may not be used to supplant existing maintenance and operation funding. Any rights or interests in real property acquired under this section must be located within the assessing county. Further, the county must determine if the rights or interests in real property acquired with these funds would reduce the capacity of land suitable for development necessary to accommodate the allocated housing and employment growth, as adopted in the countywide planning policies. When actions are taken that reduce capacity to accommodate planned growth, the juris-



diction shall adopt reasonable measures to increase the capacity lost by such actions.

(2) In counties greater than one hundred thousand in population, the board of county commissioners or county legislative authority shall develop a process to help ensure distribution of the tax levied under RCW 84.34.230, over time, throughout the county.

(3)(a) Between July 24, 2005, and July 1, 2008, the county legislative authority of a county with a population density of fewer than four persons per square mile may enact an ordinance offering a ballot proposal to the people of the county to determine whether or not the county legislative authority may make a one-time emergency reallocation of unspent conservation futures funds to pay for other county government purposes, where such conservation futures funds were originally levied under RCW 84.34.230 but never spent to acquire rights and interests in real property.

(b) Upon adoption by the county legislative authority of a ballot proposal ordinance under (a) of this subsection the county auditor shall: (i) Confer with the county legislative authority and review any proposal to the people as to form and style; (ii) give the ballot proposal a number, which thereafter shall be the identifying number for the proposal; (iii) transmit a copy of the proposal to the prosecuting attorney; and (iv) submit the proposal to the people at the next general or special election that is not less than ninety days after the adoption of the ordinance by the county legislative authority.

(c) The county prosecuting attorney shall within fifteen working days of receipt of the proposal compose a concise statement, posed as a positive question, not to exceed twenty-five words, which shall express and give a true and impartial statement of the proposal. Such concise statement shall be the ballot title.

(d) If the measure is affirmed by a majority voting on the issue it shall become effective ten days after the results of the election are certified.

(4) Nothing in this section shall be construed as limiting in any manner methods and funds otherwise available to a county for financing the acquisition of such rights and interests in real property. [2005 c 449 § 2; 1971 ex.s. c 243 § 5.]

## Chapter 84.36 RCW

### EXEMPTIONS

#### Sections

84.36.379	Residences—Property tax exemption—Findings.
84.36.381	Residences—Property tax exemptions—Qualifications.
84.36.580	Repealed.
84.36.660	Installation of automatic sprinkler system under RCW 18.27.500 through 18.27.520.

**84.36.379 Residences—Property tax exemption—Findings.** The legislature finds that the property tax exemption authorized by Article VII, section 10 of the state Constitution should be made available on the basis of a retired person's ability to pay property taxes and that the best measure of a retired person's ability to pay taxes is that person's disposable income as defined in RCW 84.36.383. The legislature further finds that veterans with one hundred percent service-connected disabilities have given so much to our country that

they deserve property tax relief. [2005 c 248 § 1; 2000 c 103 § 25; 1980 c 185 § 3.]

**Application—2005 c 248:** See note following RCW 84.36.381.

**Applicability—1980 c 185:** "Except for the amendment to RCW 84.36.381(2) by this 1980 act, sections 3 through 5 of this 1980 act are effective for property taxes due in 1982 and thereafter." [1980 c 185 § 7.]

**84.36.381 Residences—Property tax exemptions—Qualifications.** A person shall be exempt from any legal obligation to pay all or a portion of the amount of excess and regular real property taxes due and payable in the year following the year in which a claim is filed, and thereafter, in accordance with the following:

(1) The property taxes must have been imposed upon a residence which was occupied by the person claiming the exemption as a principal place of residence as of the time of filing: PROVIDED, That any person who sells, transfers, or is displaced from his or her residence may transfer his or her exemption status to a replacement residence, but no claimant shall receive an exemption on more than one residence in any year: PROVIDED FURTHER, That confinement of the person to a hospital, nursing home, boarding home, or adult family home shall not disqualify the claim of exemption if:

(a) The residence is temporarily unoccupied;

(b) The residence is occupied by a spouse and/or a person financially dependent on the claimant for support; or

(c) The residence is rented for the purpose of paying nursing home, hospital, boarding home, or adult family home costs;

(2) The person claiming the exemption must have owned, at the time of filing, in fee, as a life estate, or by contract purchase, the residence on which the property taxes have been imposed or if the person claiming the exemption lives in a cooperative housing association, corporation, or partnership, such person must own a share therein representing the unit or portion of the structure in which he or she resides. For purposes of this subsection, a residence owned by a marital community or owned by cotenants shall be deemed to be owned by each spouse or cotenant, and any lease for life shall be deemed a life estate;

(3) The person claiming the exemption must be (a) sixty-one years of age or older on December 31st of the year in which the exemption claim is filed, or must have been, at the time of filing, retired from regular gainful employment by reason of disability, or (b) a veteran of the armed forces of the United States with one hundred percent service-connected disability as provided in 42 U.S.C. Sec. 423 (d)(1)(A) as amended prior to January 1, 2005. However, any surviving spouse of a person who was receiving an exemption at the time of the person's death shall qualify if the surviving spouse is fifty-seven years of age or older and otherwise meets the requirements of this section;

(4) The amount that the person shall be exempt from an obligation to pay shall be calculated on the basis of combined disposable income, as defined in RCW 84.36.383. If the person claiming the exemption was retired for two months or more of the assessment year, the combined disposable income of such person shall be calculated by multiplying the average monthly combined disposable income of such person during the months such person was retired by twelve. If the income of the person claiming exemption is reduced for two

or more months of the assessment year by reason of the death of the person's spouse, or when other substantial changes occur in disposable income that are likely to continue for an indefinite period of time, the combined disposable income of such person shall be calculated by multiplying the average monthly combined disposable income of such person after such occurrences by twelve. If it is necessary to estimate income to comply with this subsection, the assessor may require confirming documentation of such income prior to May 31 of the year following application;

(5)(a) A person who otherwise qualifies under this section and has a combined disposable income of thirty-five thousand dollars or less shall be exempt from all excess property taxes; and

(b)(i) A person who otherwise qualifies under this section and has a combined disposable income of thirty thousand dollars or less but greater than twenty-five thousand dollars shall be exempt from all regular property taxes on the greater of fifty thousand dollars or thirty-five percent of the valuation of his or her residence, but not to exceed seventy thousand dollars of the valuation of his or her residence; or

(ii) A person who otherwise qualifies under this section and has a combined disposable income of twenty-five thousand dollars or less shall be exempt from all regular property taxes on the greater of sixty thousand dollars or sixty percent of the valuation of his or her residence;

(6) For a person who otherwise qualifies under this section and has a combined disposable income of thirty-five thousand dollars or less, the valuation of the residence shall be the assessed value of the residence on the later of January 1, 1995, or January 1st of the assessment year the person first qualifies under this section. If the person subsequently fails to qualify under this section only for one year because of high income, this same valuation shall be used upon requalification. If the person fails to qualify for more than one year in succession because of high income or fails to qualify for any other reason, the valuation upon requalification shall be the assessed value on January 1st of the assessment year in which the person requalifies. If the person transfers the exemption under this section to a different residence, the valuation of the different residence shall be the assessed value of the different residence on January 1st of the assessment year in which the person transfers the exemption.

In no event may the valuation under this subsection be greater than the true and fair value of the residence on January 1st of the assessment year.

This subsection does not apply to subsequent improvements to the property in the year in which the improvements are made. Subsequent improvements to the property shall be added to the value otherwise determined under this subsection at their true and fair value in the year in which they are made. [2005 c 248 § 2; 2004 c 270 § 1; 1998 c 333 § 1; 1996 c 146 § 1; 1995 1st sp.s. c 8 § 1; 1994 sp.s. c 8 § 1; 1993 c 178 § 1; 1992 c 187 § 1. Prior: 1991 c 213 § 3; 1991 c 203 § 1; 1987 c 301 § 1; 1983 1st ex.s. c 11 § 5; 1983 1st ex.s. c 11 § 2; 1980 c 185 § 4; 1979 ex.s. c 214 § 1; 1977 ex.s. c 268 § 1; 1975 1st ex.s. c 291 § 14; 1974 ex.s. c 182 § 1.]

**Application—2005 c 248:** "This act applies to taxes levied for collection in 2006 and thereafter." [2005 c 248 § 3.]

**Application—1998 c 333:** "This act applies to taxes levied for collection in 1999 and thereafter." [1998 c 333 § 4.]

[2005 RCW Supp—page 1070]

**Effective date—1996 c 146:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 25, 1996]." [1996 c 146 § 2.]

**Effective date of 1994 sp.s. c 8—Applicability—1995 1st sp.s. c 8:** "Chapter 8, Laws of 1994 sp. sess. shall take effect July 1, 1995, and shall be effective for taxes levied in 1995 for collection in 1996 and thereafter." [1995 1st sp.s. c 8 § 6.]

**Application—1995 1st sp.s. c 8:** "This act shall apply to taxes levied in 1995 for collection in 1996 and thereafter." [1995 1st sp.s. c 8 § 7.]

**Severability—1995 1st sp.s. c 8:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 1st sp.s. c 8 § 8.]

**Effective date—1995 1st sp.s. c 8:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 1st sp.s. c 8 § 9.]

**Applicability—1993 c 178:** "This act shall be effective for taxes levied for collection in 1993 and thereafter." [1993 c 178 § 2.]

**Effective date—1993 c 178:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 30, 1993]." [1993 c 178 § 3.]

**Applicability—1992 c 187:** "Section 1 of this act shall be effective for taxes levied for collection in 1992 and thereafter." [1992 c 187 § 2.]

**Applicability—1991 c 213:** See note following RCW 84.38.020.

**Applicability—1991 c 203:** "Section 1 of this act shall be effective for taxes levied for collection in 1992 and thereafter." [1991 c 203 § 5.]

**Applicability—1987 c 301:** "This act shall be effective for taxes levied for collection in 1989 and thereafter." [1987 c 301 § 2.]

**Intent—1983 1st ex.s. c 11:** "The legislature finds that inflation has significant detrimental effects on the senior citizen property tax relief program. Inflation increases incomes without increasing real buying power. Inflation also raises the values of homes, and thus the taxes on those homes. This act addresses the problem of inflation in two ways. First, the assessed value exemption is tied to home value so it will increase as values rise. Secondly, though the income of most senior citizens does not keep pace with inflation, it is the legislature's intent that inflationary increases in incomes will not result in program disqualification. Therefore, the income levels are adjusted to reflect the forecasted increase in inflation. The legislature also recommends that similar adjustments be examined by future legislatures." [1983 1st ex.s. c 11 § 1.]

**Applicability—1983 1st ex.s. c 11:** "This act applies to taxes first due in 1984 and thereafter." [1983 1st ex.s. c 11 § 7.]

**Effective dates—1983 1st ex.s. c 11:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [May 11, 1983], except sections 5 and 6 of this act shall take effect January 1, 1984." [1983 1st ex.s. c 11 § 8.]

**Applicability—1980 c 185:** See note following RCW 84.36.379.

**Applicability—1979 ex.s. c 214:** "The exemption created by sections 1 through 4 of this act shall be effective starting with property taxes levied in calendar year 1979 for collection in calendar year 1980. The former exemption created by the law amended shall continue to be effective with respect to property taxes levied in calendar year 1978 for collection in calendar year 1979." [1979 ex.s. c 214 § 10.]

**Effective dates—Severability—1975 1st ex.s. c 291:** See notes following RCW 82.04.050.

**Severability—1974 ex.s. c 182:** "If any provision of this 1974 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 182 § 8.]

**84.36.580 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**84.36.660 Installation of automatic sprinkler system under RCW 18.27.500 through 18.27.520.** (1) Prior to installation of an automatic sprinkler system under RCW 18.27.500 through 18.27.520, an owner of property may apply to the assessor of the county in which the property is located for a special property tax exemption. This application shall be made upon forms prescribed by the department of revenue and supplied by the county assessor.

(2) As used in this chapter, "special property tax exemption" means the determination of the assessed value of the property subtracting, for ten years, the increase in value attributable to the installation of an automatic sprinkler system under RCW 18.27.500 through 18.27.520.

(3) The county assessor shall, for ten consecutive assessment years following the calendar year in which application is made, place a special property tax exemption on property classified as eligible. [2005 c 148 § 4.]

### Chapter 84.39 RCW

## PROPERTY TAX EXEMPTION—WIDOWS OR WIDOWERS OF VETERANS

### Sections

84.39.010	Exemption authorized—Qualifications.
84.39.020	Filing claim for exemption—Requirements.
84.39.030	Continued eligibility—Renewal forms.
84.39.040	Agent or guardian filing claim on behalf of claimant.
84.39.050	Failure to reside on property—Repayment.
84.39.060	Determination of assistance—Biennial budget request.

**84.39.010 Exemption authorized—Qualifications.** A person is entitled to a property tax exemption in the form of a grant as provided in this chapter. The person is entitled to assistance for the payment of all or a portion of the amount of excess and regular real property taxes imposed on the person's residence in the year in which a claim is filed in accordance with the following:

(1) The claimant must meet all requirements for an exemption for the residence under RCW 84.36.381, other than the income limits under RCW 84.36.381.

(2)(a) The person making the claim must be:

(i) Sixty-two years of age or older on December 31st of the year in which the claim is filed, or must have been, at the time of filing, retired from regular gainful employment by reason of physical disability; and

(ii) A widow or widower of a veteran who:

(A) Died as a result of a service-connected disability;

(B) Was rated as one hundred percent disabled by the United States veterans' administration for the ten years prior to his or her death;

(C) Was a former prisoner of war as substantiated by the United States veterans' administration and was rated as one hundred percent disabled by the United States veterans' administration for one or more years prior to his or her death; or

(D) Died on active duty or in active training status as a member of the United States uniformed services, reserves, or national guard; and

(b) The person making the claim must not have remarried.

(3) The claimant must have a combined disposable income of forty thousand dollars or less.

(4) The claimant must have owned, at the time of filing, the residence on which the real property taxes have been imposed. For purposes of this subsection, a residence owned by cotenants shall be deemed to be owned by each cotenant. A claimant who has only a share ownership in cooperative housing, a life estate, a lease for life, or a revocable trust does not satisfy the ownership requirement.

(5) A person who otherwise qualifies under this section is entitled to assistance in an amount equal to regular and excess property taxes imposed on the difference between the value of the residence eligible for exemption under RCW 84.36.381(5) and:

(a) The first one hundred thousand dollars of assessed value of the residence for a person who has a combined disposable income of thirty thousand dollars or less;

(b) The first seventy-five thousand dollars of assessed value of the residence for a person who has a combined disposable income of thirty-five thousand dollars or less but greater than thirty thousand dollars; or

(c) The first fifty thousand dollars of assessed value of the residence for a person who has a combined disposable income of forty thousand dollars or less but greater than thirty-five thousand dollars.

(6) As used in this section:

(a) "Veteran" has the same meaning as provided under RCW 41.04.005.

(b) The meanings attributed in RCW 84.36.383 to the terms "residence," "combined disposable income," "disposable income," and "disability" apply equally to this section. [2005 c 253 § 1.]

**Application—2005 c 253:** "This act applies to taxes levied for collection in 2006 and thereafter." [2005 c 253 § 9.]

**84.39.020 Filing claim for exemption—Requirements.** (1) Each claimant applying for assistance under RCW 84.39.010 shall file a claim with the department, on forms prescribed by the department, no later than thirty days before the tax is due. The department may waive this requirement for good cause shown. The department shall supply forms to the county assessor to allow persons to apply for the program at the county assessor's office.

(2) The claim shall designate the property to which the assistance applies and shall include a statement setting forth (a) a list of all members of the claimant's household, (b) facts establishing the eligibility under this section, and (c) any other relevant information required by the rules of the department. Each copy shall be signed by the claimant subject to the penalties as provided in chapter 9A.72 RCW for false swearing. The first claim shall include proof of the claimant's age acceptable to the department.

(3) The following documentation shall be filed with a claim along with any other documentation required by the department:

(a) The deceased veteran's DD 214 report of separation, or its equivalent, that must be under honorable conditions;

(b) A copy of the applicant's certificate of marriage to the deceased;

(c) A copy of the deceased veteran's death certificate; and

(d) A letter from the United States veterans' administration certifying that the death of the veteran meets the requirements of RCW 84.39.010(2).

The department of veterans affairs shall assist an eligible widow or widower in the preparation and submission of an application and the procurement of necessary substantiating documentation.

(4) The department shall determine if each claimant is eligible each year. Any applicant aggrieved by the department's denial of assistance may petition the state board of tax appeals to review the denial and the board shall consider any appeals to determine (a) if the claimant is entitled to assistance and (b) the amount or portion thereof. [2005 c 253 § 2.]

**Application—2005 c 253:** See note following RCW 84.39.010.

**84.39.030 Continued eligibility—Renewal forms.** (1) Claims for assistance for all years following the first year may be made by filing with the department no later than thirty days before the tax is due a renewal form in duplicate, prescribed by the department, that affirms the continued eligibility of the claimant.

(2) In January of each year, the department shall send to each claimant who has been granted assistance for the previous year renewal forms and notice to renew. [2005 c 253 § 3.]

**Application—2005 c 253:** See note following RCW 84.39.010.

**84.39.040 Agent or guardian filing claim on behalf of claimant.** If the claimant is unable to make his or her own claim, it may be made by a duly authorized agent or by a guardian or other person charged with care of the person or property of the claimant. [2005 c 253 § 4.]

**Application—2005 c 253:** See note following RCW 84.39.010.

**84.39.050 Failure to reside on property—Repayment.** If the claimant receiving assistance under RCW 84.39.010 ceases to reside permanently on the property for which the claim is made between the date of filing the declaration and December 15th of that year, the amount of assistance otherwise allowable under RCW 84.39.010 shall not be allowed for that portion of the year in which the claimant was not qualified, and that amount shall constitute a lien on the property in favor of the state and shall have priority as provided in chapter 84.60 RCW until repaid to the department. [2005 c 253 § 5.]

**Application—2005 c 253:** See note following RCW 84.39.010.

**84.39.060 Determination of assistance—Biennial budget request.** (1) The department shall consult with the appropriate county assessors and county treasurers to determine the amount of assistance to which each claimant is eligible and the appropriate method of providing the assistance. The department shall pay, from amounts appropriated for this purpose, to the claimant, the claimant's mortgage company, or the county treasurer, as appropriate for each claimant, the amount of assistance to which the claimant is entitled under RCW 84.39.010.

(2) The department shall request in its biennial budget request an appropriation to satisfy its obligations under this section. [2005 c 253 § 6.]

[2005 RCW Supp—page 1072]

**Application—2005 c 253:** See note following RCW 84.39.010.

## Chapter 84.40 RCW LISTING OF PROPERTY

### Sections

84.40.020 Assessment date—Average inventory basis may be used—Public inspection of listing, documents, and records. (*Effective July 1, 2006.*)

**84.40.020 Assessment date—Average inventory basis may be used—Public inspection of listing, documents, and records.** (*Effective July 1, 2006.*) All real property in this state subject to taxation shall be listed and assessed every year, with reference to its value on the first day of January of the year in which it is assessed. Such listing and all supporting documents and records shall be open to public inspection during the regular office hours of the assessor's office: PROVIDED, That confidential income data is hereby exempted from public inspection as noted in RCW 42.56.070 and 42.56.210. All personal property in this state subject to taxation shall be listed and assessed every year, with reference to its value and ownership on the first day of January of the year in which it is assessed: PROVIDED, That if the stock of goods, wares, merchandise or material, whether in a raw or finished state or in process of manufacture, owned or held by any taxpayer on January 1 of any year does not fairly represent the average stock carried by such taxpayer, such stock shall be listed and assessed upon the basis of the monthly average of stock owned or held by such taxpayer during the preceding calendar year or during such portion thereof as the taxpayer was engaged in business. [2005 c 274 § 364; 2001 c 187 § 16. Prior: 1997 c 239 § 2; 1997 c 3 § 103 (Referendum Bill No. 47, approved November 4, 1997); 1973 c 69 § 1; 1967 ex.s. c 149 § 35; 1961 c 15 § 84.40.020; prior: (i) 1939 c 137 § 1; 1925 ex.s. c 130 § 8; 1897 c 71 § 6; 1895 c 176 § 3; 1893 c 124 § 6; 1891 c 140 §§ 1, 6; 1890 p 532 § 6; Code 1881 § 2832; 1871 p 40 § 15; 1869 p 180 § 15; 1867 p 62 § 6; 1854 p 332 § 4; RRS § 11112. (ii) 1937 c 122 § 1; 1890 p 532 § 6; RRS § 11112-1.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Application—2001 c 187:** "This act applies for [to] taxes levied in 2001 for collection in 2002 and thereafter." [2001 c 187 § 33.]

**Contingent effective date—2001 c 187:** See note following RCW 84.70.010.

**Application—Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

**Effective date—1967 ex.s. c 149:** See note following RCW 82.04.050.

**Savings—1967 ex.s. c 149:** See RCW 82.98.035.

**Severability—1967 ex.s. c 149:** See note following RCW 82.98.030.

## Chapter 84.52 RCW LEVY OF TAXES

### Sections

84.52.010 Taxes levied or voted in specific amounts—Effect of constitutional and statutory limitations.

84.52.020 City and district budgets to be filed with county legislative authority.

84.52.043 Limitations upon regular property tax levies.

84.52.068 State levy—Distribution to school districts.

84.52.125 Fire protection districts—Protection from levy prorationing.

**84.52.010 Taxes levied or voted in specific amounts—**  
**Effect of constitutional and statutory limitations.** Except as is permitted under RCW 84.55.050, all taxes shall be levied or voted in specific amounts.

The rate percent of all taxes for state and county purposes, and purposes of taxing districts coextensive with the county, shall be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the county, as shown by the completed tax rolls of the county, and the rate percent of all taxes levied for purposes of taxing districts within any county shall be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the taxing districts respectively.

When a county assessor finds that the aggregate rate of tax levy on any property, that is subject to the limitations set forth in RCW 84.52.043 or 84.52.050, exceeds the limitations provided in either of these sections, the assessor shall recompute and establish a consolidated levy in the following manner:

(1) The full certified rates of tax levy for state, county, county road district, and city or town purposes shall be extended on the tax rolls in amounts not exceeding the limitations established by law; however any state levy shall take precedence over all other levies and shall not be reduced for any purpose other than that required by RCW 84.55.010. If, as a result of the levies imposed under RCW 84.52.125, 84.52.135, 36.54.130, 84.52.069, 84.34.230, the portion of the levy by a metropolitan park district that was protected under RCW 84.52.120, and 84.52.105, the combined rate of regular property tax levies that are subject to the one percent limitation exceeds one percent of the true and fair value of any property, then these levies shall be reduced as follows:

(a) The portion of the levy by a fire protection district that is protected under RCW 84.52.125 shall be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or shall be eliminated;

(b) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the levy imposed by a county under RCW 84.52.135 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(c) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the levy imposed by a ferry district under RCW 36.54.130 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(d) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the portion of the levy by a metropolitan park district that is protected under RCW 84.52.120 shall be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or shall be eliminated;

(e) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one

percent of the true and fair value of any property, then the levies imposed under RCW 84.34.230, 84.52.105, and any portion of the levy imposed under RCW 84.52.069 that is in excess of thirty cents per thousand dollars of assessed value, shall be reduced on a pro rata basis until the combined rate no longer exceeds one percent of the true and fair value of any property or shall be eliminated; and

(f) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the thirty cents per thousand dollars of assessed value of tax levy imposed under RCW 84.52.069 shall be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or eliminated.

(2) The certified rates of tax levy subject to these limitations by all junior taxing districts imposing taxes on such property shall be reduced or eliminated as follows to bring the consolidated levy of taxes on such property within the provisions of these limitations:

(a) First, the certified property tax levy rates of those junior taxing districts authorized under RCW 36.68.525, 36.69.145, 35.95A.100, and 67.38.130 shall be reduced on a pro rata basis or eliminated;

(b) Second, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of flood control zone districts shall be reduced on a pro rata basis or eliminated;

(c) Third, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of all other junior taxing districts, other than fire protection districts, regional fire protection service authorities, library districts, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts, and the first fifty cent per thousand dollars of assessed valuation levies for public hospital districts, shall be reduced on a pro rata basis or eliminated;

(d) Fourth, if the consolidated tax levy rate still exceeds these limitations, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts created on or after January 1, 2002, shall be reduced on a pro rata basis or eliminated;

(e) Fifth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized to regional fire protection service authorities under RCW 52.26.140(1) (b) and (c) and fire protection districts under RCW 52.16.140 and 52.16.160 shall be reduced on a pro rata basis or eliminated; and

(f) Sixth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized for regional fire protection service authorities under RCW 52.26.140(1)(a), fire protection districts under RCW 52.16.130, library districts, metropolitan park districts created before January 1, 2002, under their first fifty cent per thousand dollars of assessed valuation levy, and public hospital districts under their first fifty cent per thousand dollars of assessed valuation levy, shall be reduced on a pro rata basis or eliminated. [2005 c 122 § 2. Prior: 2004 c 129 § 21; 2004 c 80 § 3; 2003 c 83 § 310; prior: 2002 c 248 § 15; 2002 c 88 § 7; 1995 2nd sp.s. c 13 § 4; 1995 c 99 § 2; 1994 c 124 § 36; 1993 c 337 § 4; 1990 c 234 § 4; 1988 c 274 § 7; 1987 c 255 § 1; 1973 1st ex.s. c 195 § 101; 1973 1st ex.s. c 195 § 146; 1971

ex.s. c 243 § 6; 1970 ex.s. c 92 § 4; 1961 c 15 § 84.52.010; prior: 1947 c 270 § 1; 1925 ex.s. c 130 § 74; Rem. Supp. 1947 § 11235; prior: 1920 ex.s. c 3 § 1; 1897 c 71 § 62; 1893 c 124 § 63.]

**Application—2005 c 122:** See note following RCW 84.52.125.

**Captions not law—Severability—2004 c 129:** See RCW 52.26.900 and 52.26.901.

**Effective date—2004 c 80:** See note following RCW 84.52.135.

**Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83:** See notes following RCW 36.57A.200.

**Intent—1995 2nd sp.s. c 13:** See note following RCW 84.55.012.

**Finding—1993 c 337:** See note following RCW 84.52.105.

**Purpose—1988 c 274:** "The legislature finds that, due to statutory and constitutional limitations, the interdependence of the regular property tax levies of the state, counties, county road districts, cities and towns, and junior taxing districts can cause significant reductions in the otherwise authorized levies of those taxing districts, resulting in serious disruptions to essential services provided by those taxing districts. The purpose of this act is to avoid unnecessary reductions in regular property tax revenue without exceeding existing statutory and constitutional tax limitations on cumulative regular property tax levy rates. The legislature declares that it is a purpose of the state, counties, county road districts, cities and towns, public hospital districts, library districts, fire protection districts, metropolitan park districts, and other taxing districts to participate in the methods provided by this act by which revenue levels supporting the services provided by all taxing districts might be maintained." [1988 c 274 § 1.]

**Severability—1988 c 274:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 274 § 13.]

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**Severability—1971 ex.s. c 243:** See RCW 84.34.920.

**Intent—1970 ex.s. c 92:** "It is the intent of this 1970 amendatory act to prevent a potential doubling of property taxes that might otherwise result from the enforcement of the constitutionally required fifty percent assessment ratio as of January 1, 1970, and to adjust property tax millage rates for subsequent years to levels which will conform to the requirements of any constitutional amendment imposing a one percent limitation on property taxes. It is the further intent of this 1970 amendatory act that the statutory authority of any taxing district to impose excess levies shall not be impaired by reason of the reduction in millage rates for regular property tax levies. This 1970 amendatory act shall be construed to effectuate the legislative intent expressed in this section." [1970 ex.s. c 92 § 1.]

**Effective date—Application—1970 ex.s. c 92:** "This act shall take effect July 1, 1970 but shall not affect property taxes levied in 1969 or prior years." [1970 ex.s. c 92 § 11.]

**84.52.020 City and district budgets to be filed with county legislative authority.** It shall be the duty of the city council or other governing body of every city, other than a city having a population of three hundred thousand or more, the board of directors of school districts of the first class, the superintendent of each educational service district for each constituent second class school district, commissioners of port districts, commissioners of metropolitan park districts, and of all officials or boards of taxing districts within or coextensive with any county required by law to certify to the county legislative authority, for the purpose of levying district taxes, budgets or estimates of the amounts to be raised by taxation on the assessed valuation of the property in the city or district, through their chair and clerk, or secretary, to make and file such certified budget or estimates with the clerk of the county legislative authority on or before the thirtieth day of November. [2005 c 52 § 1; 1994 c 81 § 85; 1988 c 222 § 27; 1975-'76 2nd ex.s. c 118 § 33; 1975 c 43 § 33; 1961 c 15

[2005 RCW Supp—page 1074]

§ 84.52.020. Prior: 1939 c 37 § 1; 1925 ex.s. c 130 § 75; RRS § 11236; prior: 1909 c 138 § 1; 1893 c 71 §§ 2, 3.]

**Severability—1975-'76 2nd ex.s. c 118:** See note following RCW 28A.505.010.

**Effective date—Severability—1975 c 43:** See notes following RCW 28A.535.050.

**84.52.043 Limitations upon regular property tax levies.** Within and subject to the limitations imposed by RCW 84.52.050 as amended, the regular ad valorem tax levies upon real and personal property by the taxing districts hereafter named shall be as follows:

(1) Levies of the senior taxing districts shall be as follows: (a) The levy by the state shall not exceed three dollars and sixty cents per thousand dollars of assessed value adjusted to the state equalized value in accordance with the indicated ratio fixed by the state department of revenue to be used exclusively for the support of the common schools; (b) the levy by any county shall not exceed one dollar and eighty cents per thousand dollars of assessed value; (c) the levy by any road district shall not exceed two dollars and twenty-five cents per thousand dollars of assessed value; and (d) the levy by any city or town shall not exceed three dollars and thirty-seven and one-half cents per thousand dollars of assessed value. However any county is hereby authorized to increase its levy from one dollar and eighty cents to a rate not to exceed two dollars and forty-seven and one-half cents per thousand dollars of assessed value for general county purposes if the total levies for both the county and any road district within the county do not exceed four dollars and five cents per thousand dollars of assessed value, and no other taxing district has its levy reduced as a result of the increased county levy.

(2) The aggregate levies of junior taxing districts and senior taxing districts, other than the state, shall not exceed five dollars and ninety cents per thousand dollars of assessed valuation. The term "junior taxing districts" includes all taxing districts other than the state, counties, road districts, cities, towns, port districts, and public utility districts. The limitations provided in this subsection shall not apply to: (a) Levies at the rates provided by existing law by or for any port or public utility district; (b) excess property tax levies authorized in Article VII, section 2 of the state Constitution; (c) levies for acquiring conservation futures as authorized under RCW 84.34.230; (d) levies for emergency medical care or emergency medical services imposed under RCW 84.52.069; (e) levies to finance affordable housing for very low-income housing imposed under RCW 84.52.105; (f) the portions of levies by metropolitan park districts that are protected under RCW 84.52.120; (g) levies imposed by ferry districts under RCW 36.54.130; (h) levies for criminal justice purposes under RCW 84.52.135; and (i) the portions of levies by fire protection districts that are protected under RCW 84.52.125. [2005 c 122 § 3; 2004 c 80 § 4; 2003 c 83 § 311; 1995 c 99 § 3; 1993 c 337 § 3; 1990 c 234 § 1; 1989 c 378 § 36; 1988 c 274 § 5; 1973 1st ex.s. c 195 § 134.]

**Application—2005 c 122:** See note following RCW 84.52.125.

**Effective date—2004 c 80:** See note following RCW 84.52.135.

**Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83:** See notes following RCW 36.57A.200.

**Finding—1993 c 337:** See note following RCW 84.52.105.

**Purpose—Severability—1988 c 274:** See notes following RCW 84.52.010.

**Effective date—1973 2nd ex.s. c 4:** "Sections 4 through 6 of this 1973 amendatory act shall be effective on and after January 1, 1974." [1973 2nd ex.s. c 4 § 6.]

**Emergency—1973 2nd ex.s. c 4:** "Except as otherwise in this 1973 amendatory act provided, this 1973 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately." [1973 2nd ex.s. c 4 § 7.]

**Construction—1973 1st ex.s. c 195:** "Sections 135 through 152 of this 1973 amendatory act shall apply to tax levies made in 1973 for collection in 1974, and sections 1 through 134 shall apply to tax levies made in 1974 and each year thereafter for collection in 1975 and each year thereafter." [1973 1st ex.s. c 195 § 155.]

**Severability—1973 1st ex.s. c 195:** "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 195 § 153.]

**Effective dates and termination dates—1973 1st ex.s. c 195 (as amended by 1973 2nd ex.s. c 4):** "This 1973 amendatory act, chapter 195, Laws of 1973, is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately: PROVIDED, That section 9 shall take effect January 1, 1975, and section 133(3) shall take effect on January 31, 1974: PROVIDED, FURTHER, That section 137 shall not be effective until July 1, 1973, at which time section 136 shall be void and of no effect: PROVIDED, FURTHER, That section 138 shall not be effective until January 1, 1974, at which time section 137 shall be void and of no effect: PROVIDED, FURTHER, That section 139 shall not be effective until July 1, 1974 at which time section 138 shall be void and of no effect, and section 139 shall be null and void and of no further effect on and after January 1, 1975: PROVIDED, FURTHER, That sections 1 through 8, sections 10 through 132, section 133(1), (2), (4), and (5), and section 134 shall not take effect until January 1, 1974, at which time sections 135, 136, and sections 140 through 151 shall be void and of no effect: PROVIDED, FURTHER, That section 152 shall be void and of no effect on and after January 1, 1975." [1973 2nd ex.s. c 4 § 3; 1973 1st ex.s. c 195 § 154.]

#### 84.52.068 State levy—Distribution to school districts.

(1) A portion of the proceeds of the state property tax levy shall be deposited into the student achievement fund as provided in this section.

(2)(a) The amount of the deposit shall be based upon the average number of full-time equivalent students in the school districts during the previous school year as reported to the office of the superintendent of public instruction by August 31st of the previous school year.

(b) For the 2004-2005 through 2007-2008 school years, an annual amount equal to two hundred fifty-four dollars per full-time equivalent student in all school districts shall be deposited in the student achievement fund.

(c) For the 2008-2009 school year, an annual amount equal to two hundred sixty-five dollars per full-time equivalent student in all school districts shall be deposited in the student achievement fund.

(d) For the 2009-2010 school year, an annual amount equal to two hundred seventy-seven dollars per full-time equivalent student in all school districts shall be deposited in the student achievement fund.

(e) For the 2010-2011 school year and each year thereafter, an annual amount equal to two hundred seventy-eight dollars per full-time equivalent student in all school districts shall be deposited in the student achievement fund.

(f) The school district annual amounts shall be deposited based on the monthly apportionment schedule as defined in RCW 28A.510.250. The office of the superintendent of pub-

lic instruction shall notify the department of the monthly amounts to be deposited into the student achievement fund to meet the apportionment schedule. [2005 c 514 § 1104; 2003 1st sp.s. c 19 § 1; 2001 c 3 § 5 (Initiative Measure No. 728, approved November 7, 2000).]

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Application—2001 c 3 § 5 (Initiative Measure No. 728):** "Section 5 of this act applies to taxes levied in 2000 for collection in 2001 and thereafter." [2001 c 3 § 6 (Initiative Measure No. 728, approved November 7, 2000).]

**Short title—Purpose—Intent—Construction—Severability—Effective dates—2001 c 3 (Initiative Measure No. 728):** See notes following RCW 28A.505.210.

**84.52.125 Fire protection districts—Protection from levy prorationing.** A fire protection district may protect the district's tax levy from prorationing under RCW 84.52.010(2) by imposing up to a total of twenty-five cents per thousand dollars of assessed value of the tax levies authorized under RCW 52.16.140 and 52.16.160 outside of the five dollars and ninety cents per thousand dollars of assessed valuation limitation established under RCW 84.52.043(2), if those taxes otherwise would be prorated under RCW 84.52.010(2)(e). [2005 c 122 § 1.]

**Application—2005 c 122:** "This act applies to taxes levied for collection in 2006 and thereafter." [2005 c 122 § 4.]

## Chapter 84.56 RCW COLLECTION OF TAXES

### Sections

84.56.020	Taxes collected by treasurer—Dates of delinquency—Tax statement notice concerning payment by check—Interest—Penalties.
84.56.310	Interested person may pay real property taxes—Limitation.
84.56.345	Alteration of property lines—Payment of taxes and assessments.
84.56.450	Repealed. ( <i>Effective July 1, 2006.</i> )

**84.56.020 Taxes collected by treasurer—Dates of delinquency—Tax statement notice concerning payment by check—Interest—Penalties.** (1) The county treasurer shall be the receiver and collector of all taxes extended upon the tax rolls of the county, whether levied for state, county, school, bridge, road, municipal or other purposes, and also of all fines, forfeitures or penalties received by any person or officer for the use of his or her county. All taxes upon real and personal property made payable by the provisions of this title shall be due and payable to the treasurer on or before the thirtieth day of April and, except as provided in this section, shall be delinquent after that date.

(2) Each tax statement shall include a notice that checks for payment of taxes may be made payable to "Treasurer of . . . . . County" or other appropriate office, but tax statements shall not include any suggestion that checks may be made payable to the name of the individual holding the office of treasurer nor any other individual.

(3) When the total amount of tax or special assessments on personal property or on any lot, block or tract of real property payable by one person is fifty dollars or more, and if one-half of such tax be paid on or before the thirtieth day of April,

the remainder of such tax shall be due and payable on or before the thirty-first day of October following and shall be delinquent after that date.

(4) When the total amount of tax or special assessments on any lot, block or tract of real property or on any mobile home payable by one person is fifty dollars or more, and if one-half of such tax be paid after the thirtieth day of April but before the thirty-first day of October, together with the applicable interest and penalty on the full amount of tax payable for that year, the remainder of such tax shall be due and payable on or before the thirty-first day of October following and shall be delinquent after that date.

(5) Delinquent taxes under this section are subject to interest at the rate of twelve percent per annum computed on a monthly basis on the full year amount of tax unpaid from the date of delinquency until paid. Interest shall be calculated at the rate in effect at the time of payment of the tax, regardless of when the taxes were first delinquent. In addition, delinquent taxes under this section are subject to penalties as follows:

(a) A penalty of three percent of the full year amount of tax unpaid shall be assessed on the tax delinquent on June 1st of the year in which the tax is due.

(b) An additional penalty of eight percent shall be assessed on the amount of tax delinquent on December 1st of the year in which the tax is due.

(6) Subsection (5) of this section notwithstanding, no interest or penalties may be assessed during any period of armed conflict on delinquent taxes imposed on the personal residences owned by active duty military personnel who are participating as part of one of the branches of the military involved in the conflict and assigned to a duty station outside the territorial boundaries of the United States.

(7) For purposes of this chapter, "interest" means both interest and penalties.

(8) All collections of interest on delinquent taxes shall be credited to the county current expense fund; but the cost of foreclosure and sale of real property, and the fees and costs of distraint and sale of personal property, for delinquent taxes, shall, when collected, be credited to the operation and maintenance fund of the county treasurer prosecuting the foreclosure or distraint or sale; and shall be used by the county treasurer as a revolving fund to defray the cost of further foreclosure, distraint and sale for delinquent taxes without regard to budget limitations. [2005 c 502 § 7; 2004 c 161 § 6; 1996 c 153 § 1. Prior: 1991 c 245 § 16; 1991 c 52 § 1; 1988 c 222 § 30; 1987 c 211 § 1; 1984 c 131 § 1; 1981 c 322 § 2; 1974 ex.s. c 196 § 1; 1974 ex.s. c 116 § 1; 1971 ex.s. c 288 § 3; 1969 ex.s. c 216 § 3; 1961 c 15 § 84.56.020; prior: 1949 c 21 § 1; 1935 c 30 § 2; 1931 c 113 § 1; 1925 ex.s. c 130 § 83; Rem. Supp. 1949 § 11244; prior: 1917 c 141 § 1; 1899 c 141 § 6; 1897 c 71 § 68; 1895 c 176 § 14; 1893 c 124 § 69; 1890 p 561 § 84; Code 1881 § 2892. Formerly RCW 84.56.020 and 84.56.030.]

**Application—2005 c 502 § 7:** "Section 7 of this act applies to all taxes levied for collection in 2005 and thereafter." [2005 c 502 § 10.]

**Effective date—2005 c 502:** See note following RCW 1.12.070.

**Effective date—2004 c 161:** See note following RCW 28B.10.270.

**Applicability—1996 c 153:** "This act is effective for taxes levied for collection in 1997 and thereafter." [1996 c 153 § 4.]

**Effective date—1988 c 222:** See note following RCW 84.40.040.

**Effective date—1987 c 211:** "This act shall take effect January 1, 1988." [1987 c 211 § 2.]

**Applicability—1984 c 131 § 1:** "Section 1 of this act applies to taxes payable in 1985 and thereafter." [1984 c 131 § 12.]

**Severability—1974 ex.s. c 196:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 196 § 9.]

**Savings—Severability—1971 ex.s. c 288:** See notes following RCW 84.40.030.

*Advance deposit of taxes on certain platted property:* RCW 58.08.040.

*Payment of taxes upon loss of exempt status:* RCW 84.40.380.

**84.56.310 Interested person may pay real property taxes—Limitation.** Any person being the owner or having an interest in an estate or claim to real property against which taxes have not been paid may pay the same and satisfy the lien at any time before the filing of a certificate of delinquency against the real property. The person or authority who shall collect or receive the same shall give a certificate that such taxes have been so paid to the person or persons entitled to demand such certificate. After the filing of a certificate of delinquency, the redemption rights shall be controlled by RCW 84.64.060. [2005 c 502 § 8; 1961 c 15 § 84.56.310. Prior: 1925 ex.s. c 130 § 100; RRS § 11261; prior: 1897 c 71 § 79; 1893 c 124 § 84.]

**Effective date—2005 c 502:** See note following RCW 1.12.070.

**84.56.345 Alteration of property lines—Payment of taxes and assessments.** Every person who offers a document to the auditor of the proper county for recording that results in any division, alteration, or adjustment of real property boundary lines, except as provided for in RCW 58.04.007(1) and 84.40.042(1)(c), shall present a certificate of payment from the proper officer who is in charge of the collection of taxes and assessments for the affected property or properties. All taxes and assessments, both current and delinquent must be paid. For purposes of chapter 502, Laws of 2005, liability shall begin on January 1st. Taxes not yet levied and certified shall be collected as an advance tax under RCW 58.08.040. [2005 c 502 § 6.]

**Effective date—2005 c 502:** See note following RCW 1.12.070.

**84.56.450 Repealed. (Effective July 1, 2006.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Chapter 84.69 RCW REFUNDS

### Sections

84.69.020 Grounds for refunds—Determination—Payment—Report.

**84.69.020 Grounds for refunds—Determination—Payment—Report.** On the order of the county treasurer, ad valorem taxes paid before or after delinquency shall be refunded if they were:

- (1) Paid more than once;
- (2) Paid as a result of manifest error in description;
- (3) Paid as a result of a clerical error in extending the tax rolls;



(4) Paid as a result of other clerical errors in listing property;

(5) Paid with respect to improvements which did not exist on assessment date;

(6) Paid under levies or statutes adjudicated to be illegal or unconstitutional;

(7) Paid as a result of mistake, inadvertence, or lack of knowledge by any person exempted from paying real property taxes or a portion thereof pursuant to RCW 84.36.381 through 84.36.389, as now or hereafter amended;

(8) Paid as a result of mistake, inadvertence, or lack of knowledge by either a public official or employee or by any person with respect to real property in which the person paying the same has no legal interest;

(9) Paid on the basis of an assessed valuation which was appealed to the county board of equalization and ordered reduced by the board;

(10) Paid on the basis of an assessed valuation which was appealed to the state board of tax appeals and ordered reduced by the board: PROVIDED, That the amount refunded under subsections (9) and (10) of this section shall only be for the difference between the tax paid on the basis of the appealed valuation and the tax payable on the valuation adjusted in accordance with the board's order;

(11) Paid as a state property tax levied upon property, the assessed value of which has been established by the state board of tax appeals for the year of such levy: PROVIDED, HOWEVER, That the amount refunded shall only be for the difference between the state property tax paid and the amount of state property tax which would, when added to all other property taxes within the one percent limitation of Article VII, section 2 of the state Constitution equal one percent of the assessed value established by the board;

(12) Paid on the basis of an assessed valuation which was adjudicated to be unlawful or excessive: PROVIDED, That the amount refunded shall be for the difference between the amount of tax which was paid on the basis of the valuation adjudged unlawful or excessive and the amount of tax payable on the basis of the assessed valuation determined as a result of the proceeding;

(13) Paid on property acquired under RCW 84.60.050, and canceled under RCW 84.60.050(2);

(14) Paid on the basis of an assessed valuation that was reduced under RCW 84.48.065;

(15) Paid on the basis of an assessed valuation that was reduced under RCW 84.40.039; or

(16) Abated under RCW 84.70.010.

No refunds under the provisions of this section shall be made because of any error in determining the valuation of property, except as authorized in subsections (9), (10), (11), and (12) of this section nor may any refunds be made if a bona fide purchaser has acquired rights that would preclude the assessment and collection of the refunded tax from the property that should properly have been charged with the tax. Any refunds made on delinquent taxes shall include the proportionate amount of interest and penalties paid. However, no refunds as a result of an incorrect payment authorized under subsection (8) of this section made by a third party payee shall be granted. The county treasurer may deduct from moneys collected for the benefit of the state's levy,

refunds of the state levy including interest on the levy as provided by this section and chapter 84.68 RCW.

The county treasurer of each county shall make all refunds determined to be authorized by this section, and by the first Monday in February of each year, report to the county legislative authority a list of all refunds made under this section during the previous year. The list is to include the name of the person receiving the refund, the amount of the refund, and the reason for the refund. [2005 c 502 § 9; 2002 c 168 § 11; 1999 sp.s. c 8 § 2. Prior: 1998 c 306 § 2; 1997 c 393 § 18; 1996 c 296 § 2; 1994 c 301 § 55; 1991 c 245 § 31; 1989 c 378 § 17; 1981 c 228 § 1; 1975 1st ex.s. c 291 § 21; 1974 ex.s. c 122 § 2; 1972 ex.s. c 126 § 2; 1971 ex.s. c 288 § 14; 1969 ex.s. c 224 § 1; 1961 c 15 § 84.69.020; prior: 1957 c 120 § 2.]

**Effective date—2005 c 502:** See note following RCW 1.12.070.

**Severability—Effective date—1999 sp.s. c 8:** See notes following RCW 84.70.010.

**Applicability—1981 c 228:** "Section 1(12) of the [this] amendatory act applies to only those taxes which first become due and payable subsequent to January 1, 1981: PROVIDED, HOWEVER, That this section shall not apply to any taxes which were paid under protest and which were timely paid." [1981 c 228 § 4.]

**Effective dates—Severability—1975 1st ex.s. c 291:** See notes following RCW 82.04.050.

**Purpose—1974 ex.s. c 122:** "The legislature recognizes that the operation of the provisions of RCW 84.52.065 and 84.48.080, providing for adjustments in the county-determined assessed value of property for purposes of the state property tax for schools, may, with respect to certain properties, result in a total regular property tax payment in excess of the one percent limitation provided for in Article 7, section 2 (Amendment 59) of the state Constitution. The primary purpose of this 1974 amendatory act is to provide a procedure for administrative relief in such cases, such relief to be in addition to the presently existing procedure for judicial relief through a refund action provided for in RCW 84.68.020." [1974 ex.s. c 122 § 1.]

**Severability—Savings—1971 ex.s. c 288:** See notes following RCW 84.40.030.

## Chapter 84.70 RCW

### DESTROYED PROPERTY— ABATEMENT OR REFUND

#### Sections

84.70.010 Reduction in value—Abatement—Formulas—Appeal.

**84.70.010 Reduction in value—Abatement—Formulas—Appeal.** (1) If, on or before December 31 in any calendar year, any real or personal property placed upon the assessment roll of that year is destroyed in whole or in part, or is in an area that has been declared a disaster area by the governor or the county legislative authority and has been reduced in value by more than twenty percent as a result of a natural disaster, the true and fair value of such property shall be reduced for that assessment year by an amount determined by taking the true and fair value of such taxable property before destruction or reduction in value and deduct therefrom the true and fair value of the remaining property after destruction or reduction in value.

(2) Taxes levied for collection in the year in which the true and fair value has been reduced under subsection (1) of this section shall be abated in whole or in part as provided in this subsection. The amount of taxes to be abated shall be determined by first multiplying the amount deducted from

the true and fair value under subsection (1) of this section by the rate of levy applicable to the property in the tax year. Then divide the product by the number of days in the year and multiply the quotient by the number of days remaining in the calendar year after the date of the destruction or reduction in value of the property. If taxes abated under this section have been paid, the amount paid shall be refunded under RCW 84.69.020. The tax relief provided for in this section for the tax year in which the damage or destruction occurred does not apply to property damaged or destroyed voluntarily.

(3) No reduction in the true and fair value or abatements shall be made more than three years after the date of destruction or reduction in value.

(4) The assessor shall make such reduction on his or her own motion; however, the taxpayer may make application for reduction on forms prepared by the department and provided by the assessor. The assessor shall notify the taxpayer of the amount of reduction.

(5) If destroyed property is replaced prior to the valuation dates contained in RCW 36.21.080 and 36.21.090, the total taxable value for that assessment year shall not exceed the value as of the appropriate valuation date in RCW 36.21.080 or 36.21.090, whichever is appropriate.

(6) The taxpayer may appeal the amount of reduction to the county board of equalization in accordance with the provisions of RCW 84.40.038. The board shall reconvene, if necessary, to hear the appeal. [2005 c 56 § 1; 2001 c 187 § 26; 1999 sp.s. c 8 § 1; 1997 c 3 § 126 (Referendum Bill No. 47, approved November 4, 1997); 1994 c 301 § 56; 1987 c 319 § 6; 1981 c 274 § 1; 1975 1st ex.s. c 120 § 2; 1974 ex.s. c 196 § 3.]

**Contingent effective date—2001 c 187:** "Sections 29, 30, and 31 of this act take effect for taxes levied in 2001 for collection in 2002 and thereafter if the proposed amendment to Article VII, section 1 of the state Constitution providing for valuation increases to be phased in over a period of four years is validly submitted to and is approved and ratified by voters at the next general election. If the proposed amendment is not approved and ratified, sections 29, 30, and 31 of this act are null and void. If such proposed amendment is approved and ratified, sections 2 through 13, 16 through 19, and 21 through 28 of this act are null and void." [2001 c 187 § 32.]

**Reviser's note:** No proposed amendment to Article VII, section 1 of the state Constitution was submitted to the voters.

**Application—2001 c 187:** See note following RCW 84.40.020.

**Severability—1999 sp.s. c 8:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 sp.s. c 8 § 3.]

**Effective date—1999 sp.s. c 8:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 7, 1999]." [1999 sp.s. c 8 § 4.]

**Application—Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

**Severability—1974 ex.s. c 196:** See note following RCW 84.56.020.

*Refund of property taxes: Chapter 84.69 RCW.*

## Title 85

### DIKING AND DRAINAGE

#### Chapters

#### 85.38 Special district creation and operation.

[2005 RCW Supp—page 1078]

## Chapter 85.38 RCW

### SPECIAL DISTRICT CREATION AND OPERATION

#### Sections

85.38.165 Applicable assessed value.

**85.38.165 Applicable assessed value.** (1) Every special district must use the assessed value applicable to forest land, farm and agricultural land, or open space land, under chapter 84.33 or 84.34 RCW, when the land has been designated as such and the assessed value is used as a component in determining the district assessment.

(2) If a district uses a fractional amount of assessed value as a component in determining the district assessment, then a fractional amount of the value applicable to forest land, farm and agricultural land, or open space land, under chapter 84.33 or 84.34 RCW, shall be used. [2005 c 181 § 1.]

## Title 86

### FLOOD CONTROL

#### Chapters

**86.15 Flood control zone districts.**

**86.26 State participation in flood control maintenance.**

## Chapter 86.15 RCW

### FLOOD CONTROL ZONE DISTRICTS

#### Sections

86.15.055 Elected supervisors—Compensation.

86.15.060 Administration.

**86.15.055 Elected supervisors—Compensation.** In a zone with supervisors elected pursuant to RCW 86.15.050, the supervisors may each receive up to seventy dollars for attendance at official meetings of the supervisors and for each day or major part thereof for all necessary services actually performed in connection with their duties as a supervisor. The board of county commissioners shall fix any such compensation to be paid to the initial supervisors during their initial terms of office. The supervisors shall fix the compensation to be paid to the supervisors thereafter. Compensation for the supervisors shall not exceed six thousand seven hundred twenty dollars in one calendar year. A supervisor is entitled to reimbursement for reasonable expenses actually incurred in connection with performance of the duties of a supervisor, including subsistence and lodging, while away from the supervisor's place of residence, and mileage for use of a privately owned vehicle in accordance with chapter 42.24 RCW.

Any supervisor may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the supervisors as provided in this section. The waiver, to be effective, must be filed any time after the member's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made. [2005 c 127 § 2.]

**Effective date—2005 c 127:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and takes effect immediately [April 21, 2005]." [2005 c 127 § 3.]

**86.15.060 Administration.** (1) Except as provided in subsection (2) of this section, administration of the affairs of zones shall be in the county engineer. The engineer may appoint such deputies and engage such employees, specialists, and technicians as may be required by the zone and as are authorized by the zone's budget. Subject to the approval of the supervisors, the engineer may organize, or reorganize as required, the zone into such departments, divisions, or other administrative relationships as he deems necessary to its efficient operation.

(2) In a zone with supervisors elected pursuant to RCW 86.15.050, the supervisors may provide for administration of the affairs of the zone by other than the county engineer, pursuant to the authority established in RCW 86.15.095 to hire employees, staff, and services and to enter into contracts. [2005 c 127 § 1; 1961 c 153 § 6.]

**Effective date—2005 c 127:** See note following RCW 86.15.055.

### Chapter 86.26 RCW

## STATE PARTICIPATION IN FLOOD CONTROL MAINTENANCE

### Sections

86.26.007 Flood control assistance account—Use.

### **86.26.007 Flood control assistance account—Use.**

The flood control assistance account is hereby established in the state treasury. At the beginning of the 2005-2007 fiscal biennium, the state treasurer shall transfer three million dollars from the general fund to the flood control assistance account. Each biennium thereafter the state treasurer shall transfer four million dollars from the general fund to the flood control assistance account. Moneys in the flood control assistance account may be spent only after appropriation for purposes specified under this chapter. [2005 c 518 § 947; 2003 1st sp.s. c 25 § 943; 1997 c 149 § 914; 1996 c 283 § 903; 1995 2nd sp.s. c 18 § 915; 1993 sp.s. c 24 § 928; 1991 sp.s. c 13 § 24; 1986 c 46 § 1; 1985 c 57 § 88; 1984 c 212 § 1.]

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.305.210.

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Severability—Effective date—1997 c 149:** See notes following RCW 43.08.250.

**Severability—Effective date—1996 c 283:** See notes following RCW 43.08.250.

**Severability—Effective date—1995 2nd sp.s. c 18:** See notes following RCW 19.118.110.

**Severability—Effective dates—1993 sp.s. c 24:** See notes following RCW 28A.310.020.

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**Effective date—1985 c 57:** See note following RCW 18.04.105.

## Title 88

## NAVIGATION AND HARBOR IMPROVEMENTS

### Chapters

**88.02 Vessel registration.**

**88.16 Pilotage act.**

**88.46 Vessel oil spill prevention and response.**

### Chapter 88.02 RCW

## VESSEL REGISTRATION

(Formerly: Watercraft registration)

### Sections

88.02.050 Application—Registration fee and excise tax—Registration number and decal—Registration periods—Renewals—Marine oil refuse dump and holding tank information—Transfer of registrations. (*Expires June 30, 2012.*)

**88.02.050 Application—Registration fee and excise tax—Registration number and decal—Registration periods—Renewals—Marine oil refuse dump and holding tank information—Transfer of registrations.** (*Expires June 30, 2012.*) (1) Application for a vessel registration shall be made to the department or its authorized agent in the manner and upon forms prescribed by the department. The application shall state the name and address of each owner of the vessel and such other information as may be required by the department, shall be signed by at least one owner, and shall be accompanied by a vessel registration fee of ten dollars and fifty cents per year and the excise tax imposed under chapter 82.49 RCW.

(2) Five additional dollars must be collected annually from every vessel registration application. These moneys must be distributed in the following manner:

(a) Two dollars must be deposited into the derelict vessel removal account established in RCW 79.100.100. If the department of natural resources indicates that the balance of the derelict vessel removal account reaches one million dollars as of March 1st of any year, the collection of the two-dollar fee must be suspended for the following fiscal year.

(b) One dollar and fifty cents must be deposited in the aquatic invasive species prevention account created in RCW 77.12.879.

(c) One dollar must be deposited into the freshwater aquatic algae control account created in RCW 43.21A.667.

(d) Fifty cents must be deposited into the aquatic invasive species enforcement account created in RCW 43.43.400.

(3) Any fees required for licensing agents under RCW 46.01.140 shall be in addition to the ten dollar and fifty cent annual registration fee and the five-dollar fee created in subsection (2) of this section.

(4) Upon receipt of the application and the registration fee, the department shall assign a registration number and issue a decal for each vessel. The registration number and decal shall be issued and affixed to the vessel in a manner prescribed by the department consistent with the standard numbering system for vessels set forth in volume 33, part 174, of the code of federal regulations. A valid decal affixed as prescribed shall indicate compliance with the annual registration requirements of this chapter.

(5) The vessel registrations and decals are valid for a period of one year, except that the director of licensing may extend or diminish vessel registration periods, and the decals therefor, for the purpose of staggered renewal periods. For registration periods of more or less than one year, the department may collect prorated annual registration fees and excise taxes based upon the number of months in the registration period. Vessel registrations are renewable every year in a manner prescribed by the department upon payment of the vessel registration fee, excise tax, and the derelict vessel fee. Upon renewing a vessel registration, the department shall issue a new decal to be affixed as prescribed by the department.

(6) When the department issues either a notice to renew a vessel registration or a decal for a new or renewed vessel registration, it shall also provide information on the location of marine oil recycling tanks and sewage holding tank pumping stations. This information will be provided to the department by the state parks and recreation commission in a form ready for distribution. The form will be developed and prepared by the state parks and recreation commission with the cooperation of the department of ecology. The department, the state parks and recreation commission, and the department of ecology shall enter into a memorandum of agreement to implement this process.

(7) A person acquiring a vessel from a dealer or a vessel already validly registered under this chapter shall, within fifteen days of the acquisition or purchase of the vessel, apply to the department or its authorized agent for transfer of the vessel registration, and the application shall be accompanied by a transfer fee of one dollar. [2005 c 464 § 2; 2002 c 286 § 13; 1993 c 244 § 38; 1989 c 17 § 1; 1983 2nd ex.s. c 3 § 45; 1983 c 7 § 18.]

**Findings—Intent—2005 c 464:** "The legislature finds that aquatic invasive species and freshwater aquatic algae are causing economic, environmental, and public health problems that affect the citizens and aquatic resources of our state. Many highly destructive species, such as the zebra mussel, are currently not found in Washington's waters and efforts should be made to prevent the introduction or spread of these aquatic invasive species into our state waters. Preventing new introductions is significantly less expensive and causes far less ecological damage than trying to control new infestations.

The legislature also finds that freshwater algae, particularly blue-green algae, are also seriously degrading the water quality and recreational value of a number of our lakes. Blue-green algae can produce toxins that inhibit recreational uses and pose a threat to humans and pets.

It is therefore the intent of the legislature to clarify the roles of the different state agencies involved in these issues in order to address the threat of aquatic invasive species and the problem caused by aquatic freshwater algae, and to provide a dedicated fund source to prevent and control further impacts." [2005 c 464 § 1.]

**Application—2005 c 464 § 2:** "Section 2 of this act applies to vessel registration fees that are due or become due on or after August 1, 2005." [2005 c 464 § 6.]

**Expiration date—2005 c 464 § 2:** "Section 2 of this act expires June 30, 2012." [2005 c 464 § 7.]

**Severability—Effective date—2002 c 286:** See RCW 79.100.900 and 79.100.901.

**Application—1993 c 244 § 38:** "Section 38 of this act [the 1993 amendments to RCW 88.02.050] applies to registrations expiring June 30, 1995, and thereafter." [1993 c 244 § 43.]

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

[2005 RCW Supp—page 1080]

## Chapter 88.16 RCW

### PILOTAGE ACT

#### Sections

88.16.035	Board of pilotage commissioners—Powers and duties.
88.16.090	Pilots' licenses—Qualifications—Duration—Annual fee—Examinations and evaluations—Training program and license—Penalty—Reporting requirements.
88.16.115	Limiting liability of pilots and any countywide port district in Grays Harbor pilotage district—Deemed in public interest.
88.16.118	Limited liability of pilots and pilot trainees—Liability of vessel, owner, or operator not limited ( <i>as amended by 2005 c 26</i> ).
88.16.118	Limited liability of pilots and any countywide port district in Grays Harbor pilotage district—Liability of vessel, owner, or operator not limited ( <i>as amended by 2005 c 123</i> ).

#### **88.16.035 Board of pilotage commissioners—Powers and duties.** The board of pilotage commissioners shall:

(1) Adopt rules, pursuant to chapter 34.05 RCW, necessary for the enforcement and administration of this chapter;

(2)(a) Issue training licenses and pilot licenses to pilot applicants meeting the qualifications provided for in RCW 88.16.090 and such additional qualifications as may be determined by the board;

(b) Establish a comprehensive training program to assist in the training and evaluation of pilot applicants before final licensing; and

(c) Establish additional training requirements, including a program of continuing education developed after consultation with pilot organizations, including those located within the state of Washington, as required to maintain a competent pilotage service;

(3) Maintain a register of pilots, records of pilot accidents and other history pertinent to pilotage, along with a roster of vessels, agents, owners, operators, and masters necessary for the maintenance of a roster of persons interested in and concerned with pilotage and maritime safety;

(4) Determine from time to time the number of pilots necessary to be licensed in each district of the state to optimize the operation of a safe, fully regulated, efficient, and competent pilotage service in each district;

(5) Annually fix the pilotage tariffs for pilotage services performed aboard vessels as required by this chapter: PROVIDED, That the board may fix extra compensation for extra services to vessels in distress, for awaiting vessels, or for being carried to sea on vessels against the will of the pilot, and for such other services as may be determined by the board;

(6) File annually with the governor and the chairs of the transportation committees of the senate and house of representatives a report which includes, but is not limited to, the following: The number, names, addresses, ages, pilot license number, and years of service as a Washington licensed pilot of any person licensed by the board as a Washington state pilot; the names, employment, and other information of the members of the board; the total number of pilotage assignments by pilotage district, including information concerning the various types and sizes of vessels and the total annual tonnage; the annual earnings of individual pilots before and after deduction for expenses of pilot organizations, including extra compensation as a separate category; the annual expenses of private pilot associations, including personnel employed and capital expenditures; the status of pilotage tariffs, extra com-

compensation, and travel; the retirement contributions paid to pilots and the disposition thereof; the number of groundings, mishaps, or other incidents which are reported to or investigated by the board, and which are determined to be accidents, as defined by the board, including the vessel name, location of incident, pilot's name, and disposition of the case together with information received before the board acted from all persons concerned, including the United States coast guard; the names, qualifications, time scheduled for examinations, and the district of persons desiring to apply for Washington state pilotage licenses; summaries of dispatch records, quarterly reports from pilots, and the bylaws and operating rules of pilotage organizations; the names, sizes in deadweight tons, surcharges, if any, port of call, name of the pilot, and names and horsepower of tug boats for any and all oil tankers subject to the provisions of RCW 88.16.190 together with the names of any and all vessels for which the United States coast guard requires special handling pursuant to their authority under the Ports and Waterways Safety Act of 1972; the expenses of the board; and any and all other information which the board deems appropriate to include;

(7) Publish a manual which includes the pilotage act and other statutes of Washington state and the federal government which affect pilotage, including the rules of the board, together with such additional information as may be informative for pilots, agents, owners, operators, and masters. Such manual shall be distributed without cost to all pilots and governmental agencies upon request. All other copies shall be sold for a five dollar fee with proceeds to be credited to the pilotage account;

(8) Appoint advisory committees and employ marine experts as necessary to carry out its duties under this chapter;

(9) Provide for the maintenance of efficient and competent pilotage service on all waters covered by this chapter; and do such other things as are reasonable, necessary, and expedient to insure proper and safe pilotage upon the waters covered by this chapter and facilitate the efficient administration of this chapter. [2005 c 26 § 1; 1987 c 264 § 1; 1977 ex.s. c 337 § 4.]

**Effective date—2005 c 26:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 12, 2005]." [2005 c 26 § 4.]

**Severability—1977 ex.s. c 337:** See note following RCW 88.16.005.

**88.16.090 Pilots' licenses—Qualifications—Duration—Annual fee—Examinations and evaluations—Training program and license—Penalty—Reporting requirements.** (1) A person may pilot any vessel subject to this chapter on waters covered by this chapter only if licensed to pilot such vessels on such waters under this chapter.

(2)(a) A person is eligible to be licensed as a pilot if the person:

- (i) Is a citizen of the United States;
- (ii) Is over the age of twenty-five years and under the age of seventy years;
- (iii) Is a resident of the state of Washington at the time of licensure as a pilot;
- (iv)(A) Holds at the time of application, as a minimum, a United States government license as master of steam or motor vessels of not more than one thousand six hundred

gross register tons (three thousand international tonnage convention tons) upon oceans, near coastal waters, or inland waters; or the then most equivalent federal license as determined by the board; any such license to have been held by the applicant for a period of at least two years before application;

(B) Holds at the time of licensure as a pilot, after successful completion of the board-required training program, a first class United States endorsement without restrictions on the United States government license for the pilotage district in which the pilot applicant desires to be licensed; however, all applicants for a pilot examination scheduled to be given before July 1, 2008, must have the United States pilotage endorsement at the time of application; and

(C) The board may establish such other federal license requirements for applicants and pilots as it deems appropriate; and

(v) Successfully completes a board-specified training program.

(b) In addition to the requirements of (a) of this subsection, a pilot applicant must meet such other qualifications as may be required by the board.

(c) A person applying for a license under this section shall not have been convicted of an offense involving drugs or the personal consumption of alcohol in the twelve months prior to the date of application. This restriction does not apply to license renewals under this section.

(3) The board may establish such other training license and pilot license requirements as it deems appropriate.

(4) Pilot applicants shall be evaluated and ranked in a manner specified by the board based on their experience, other qualifications as may be set by the board, performance on a written examination or examinations established by the board, and performance in such other evaluation exercises as may be required by the board, for entry into a board-specified training program.

When the board determines that the demand for pilots requires entry of an applicant into the training program it shall issue a training license to that applicant, but under no circumstances may an applicant be issued a training license more than four years after taking the written entry examination. The training license authorizes the trainee to do such actions as are specified in the training program.

After the completion of the training program the board shall evaluate the trainee's performance and knowledge. The board, as it deems appropriate, may then issue a pilot license, delay the issuance of the pilot license, deny the issuance of the pilot license, or require further training and evaluation.

(5) The board may appoint a special independent committee or may contract with a firm knowledgeable and experienced in the development of professional tests and evaluations for development and grading of the examinations and other evaluation methods. Active licensed state pilots may be consulted for the general development of any examinations and evaluation exercises but shall have no knowledge of the specific questions. The pilot members of the board may participate in the grading of examinations. If the board does appoint a special examination or evaluation development committee it is authorized to pay the members of the committee the same compensation and travel expenses as received by members of the board. Any person who willfully gives advance knowledge of information contained on a pilot

examination or other evaluation exercise is guilty of a gross misdemeanor.

(6) Pilots are licensed under this section for a term of five years from and after the date of the issuance of their respective state licenses. Licenses must thereafter be renewed as a matter of course, unless the board withholds the license for good cause. Each pilot shall pay to the state treasurer an annual license fee of three thousand dollars. The fees must be deposited in the state treasury to the credit of the pilotage account. The board may assess partially active or inactive pilots a reduced fee.

(7) All pilots and applicants are subject to an annual physical examination by a physician chosen by the board. The physician shall examine the applicant's heart, blood pressure, circulatory system, lungs and respiratory system, eyesight, hearing, and such other items as may be prescribed by the board. After consultation with a physician and the United States coast guard, the board shall establish minimum health standards to ensure that pilots licensed by the state are able to perform their duties. Within ninety days of the date of each annual physical examination, and after review of the physician's report, the board shall make a determination of whether the pilot or applicant is fully able to carry out the duties of a pilot under this chapter. The board may in its discretion check with the appropriate authority for any convictions of offenses involving drugs or the personal consumption of alcohol in the prior twelve months.

(8) The board may require vessel simulator training for a pilot applicant and shall require vessel simulator training for a licensed pilot subject to RCW 88.16.105. The board shall also require vessel simulator training in the first year of active duty for a new pilot and at least once every five years for all active pilots.

(9) The board shall prescribe, pursuant to chapter 34.05 RCW, such reporting requirements and review procedures as may be necessary to assure the accuracy and validity of license and service claims. Willful misrepresentation of such required information by a pilot applicant shall result in disqualification of the pilot applicant. [2005 c 26 § 2; 1999 sp.s. c 1 § 607; 1995 c 175 § 1; 1991 c 200 § 1002. Prior: 1990 c 116 § 27; 1990 c 112 § 1; 1987 c 264 § 2; 1986 c 122 § 1; 1981 c 303 § 1; 1979 ex.s. c 207 § 3; 1977 ex.s. c 337 § 7; 1967 c 15 § 5; 1935 c 18 § 8; RRS § 9871-8; prior: 1907 c 147 § 1; 1888 p 176 § 8.]

**Effective date—2005 c 26:** See note following RCW 88.16.035.

**Severability—Effective date—1999 sp.s. c 1:** See notes following RCW 43.19.1906.

**Effective date—1995 c 175:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 175 § 2.]

**Effective dates—Severability—1991 c 200:** See RCW 90.56.901 and 90.56.904.

**Findings—Severability—1990 c 116:** See notes following RCW 90.56.210.

**Severability—1977 ex.s. c 337:** See note following RCW 88.16.005.

**88.16.115 Limiting liability of pilots and any countywide port district in Grays Harbor pilotage district—Deemed in public interest.** The preservation of human life and property associated with maritime commerce on the

[2005 RCW Supp—page 1082]

pilotage waters of this state is declared to be in the public interest, and the limitation and regulation of the liability of pilots licensed by the state of Washington, and of any countywide port district located partly or entirely within the Grays Harbor pilotage district as defined by RCW 88.16.050(2) authorized to provide pilotage services, is necessary to such preservation and is deemed to be in the public interest. [2005 c 123 § 1; 1981 c 196 § 1.]

**Report to legislature and governor—1981 c 196:** "Prior to January 5, 1983, the board of pilotage commissioners shall forward to the legislature and governor a report concerning the implementation of sections 1 through 3 of this act." [1981 c 196 § 4.]

**88.16.118 Limited liability of pilots and pilot trainees—Liability of vessel, owner, or operator not limited (as amended by 2005 c 26).** (1) A ship's pilot licensed to act as such by the state of Washington shall not be liable for damages in excess of the amount of five thousand dollars for damages or loss occasioned by the pilot's errors, omissions, fault, or neglect in the performance of pilotage or pilot training services, except as may arise by reason of the willful misconduct or gross negligence of ~~((the))~~ that pilot. A ship's pilot trainee licensed to act as such by the state of Washington is not liable for damages in excess of the amount of five thousand dollars for damages or loss occasioned by the pilot trainee's errors, omissions, fault, or neglect in the performance of pilotage or pilot training services, except as may arise by reason of the willful misconduct or gross negligence of that pilot trainee.

(2) When a pilot or pilot trainee boards a vessel, that pilot or pilot trainee becomes a servant of the vessel and its owner and operator. Nothing in this section exempts the vessel, its owner or operator from liability for damage or loss occasioned by that ship to a person or property on the ground that ~~((+))~~ (a) the ship was piloted by a Washington state licensed pilot or pilot trainee, or ~~((=))~~ (b) the damage or loss was occasioned by the error, omission, fault, or neglect of a Washington state licensed pilot or pilot trainee. [2005 c 26 § 3; 1984 c 69 § 1.]

**Effective date—2005 c 26:** See note following RCW 88.16.035.

**88.16.118 Limited liability of pilots and any countywide port district in Grays Harbor pilotage district—Liability of vessel, owner, or operator not limited (as amended by 2005 c 123).** A ship's pilot licensed to act as such by the state of Washington, and any countywide port district located partly or entirely within the Grays Harbor pilotage district as defined by RCW 88.16.050(2) authorized to provide pilotage services, shall not be liable for damages in excess of the amount of five thousand dollars for damages or loss occasioned by ~~((the))~~ a pilot's errors, omissions, fault, or neglect in the performance of pilotage services, except as may arise by reason of the willful misconduct or gross negligence of ~~((the))~~ a pilot.

When a pilot boards a vessel, that pilot becomes a servant of the vessel and its owner and operator. Nothing in this section exempts the vessel, its owner or operator from liability for damage or loss occasioned by that ship to a person or property on the ground that (1) the ship was piloted by a Washington state licensed pilot, or (2) the damage or loss was occasioned by the error, omission, fault, or neglect of a Washington state licensed pilot. [2005 c 123 § 2; 1984 c 69 § 1.]

**Reviser's note:** RCW 88.16.118 was amended twice during the 2005 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

## Chapter 88.46 RCW

### VESSEL OIL SPILL PREVENTION AND RESPONSE

#### Sections

88.46.060 Contingency plans.

**88.46.060 Contingency plans.** (1) Each covered vessel shall have a contingency plan for the containment and cleanup of oil spills from the covered vessel into the waters of the state and for the protection of fisheries and wildlife, shellfish beds, natural resources, and public and private property

from such spills. The department shall by rule adopt and periodically revise standards for the preparation of contingency plans. The department shall require contingency plans, at a minimum, to meet the following standards:

(a) Include full details of the method of response to spills of various sizes from any vessel which is covered by the plan;

(b) Be designed to be capable in terms of personnel, materials, and equipment, of promptly and properly, to the maximum extent practicable, as defined by the department, removing oil and minimizing any damage to the environment resulting from a worst case spill;

(c) Provide a clear, precise, and detailed description of how the plan relates to and is integrated into relevant contingency plans which have been prepared by cooperatives, ports, regional entities, the state, and the federal government;

(d) Provide procedures for early detection of spills and timely notification of such spills to appropriate federal, state, and local authorities under applicable state and federal law;

(e) State the number, training preparedness, and fitness of all dedicated, prepositioned personnel assigned to direct and implement the plan;

(f) Incorporate periodic training and drill programs to evaluate whether personnel and equipment provided under the plan are in a state of operational readiness at all times;

(g) Describe important features of the surrounding environment, including fish and wildlife habitat, shellfish beds, environmentally and archaeologically sensitive areas, and public facilities. The departments of ecology, fish and wildlife, and natural resources, and the office of archaeology and historic preservation, upon request, shall provide information that they have available to assist in preparing this description. The description of archaeologically sensitive areas shall not be required to be included in a contingency plan until it is reviewed and updated pursuant to subsection (9) of this section;

(h) State the means of protecting and mitigating effects on the environment, including fish, shellfish, marine mammals, and other wildlife, and ensure that implementation of the plan does not pose unacceptable risks to the public or the environment;

(i) Establish guidelines for the use of equipment by the crew of a vessel to minimize vessel damage, stop or reduce any spilling from the vessel, and, only when appropriate and only when vessel safety is assured, contain and clean up the spilled oil;

(j) Provide arrangements for the prepositioning of spill containment and cleanup equipment and trained personnel at strategic locations from which they can be deployed to the spill site to promptly and properly remove the spilled oil;

(k) Provide arrangements for enlisting the use of qualified and trained cleanup personnel to implement the plan;

(l) Provide for disposal of recovered spilled oil in accordance with local, state, and federal laws;

(m) Until a spill prevention plan has been submitted pursuant to RCW 88.46.040, state the measures that have been taken to reduce the likelihood that a spill will occur, including but not limited to, design and operation of a vessel, training of personnel, number of personnel, and backup systems designed to prevent a spill;

(n) State the amount and type of equipment available to respond to a spill, where the equipment is located, and the

extent to which other contingency plans rely on the same equipment; and

(o) If the department has adopted rules permitting the use of dispersants, the circumstances, if any, and the manner for the application of the dispersants in conformance with the department's rules.

(2)(a) The owner or operator of a tank vessel of three thousand gross tons or more shall submit a contingency plan to the department within six months after the department adopts rules establishing standards for contingency plans under subsection (1) of this section.

(b) Contingency plans for all other covered vessels shall be submitted to the department within eighteen months after the department has adopted rules under subsection (1) of this section. The department may adopt a schedule for submission of plans within the eighteen-month period.

(3)(a) The owner or operator of a tank vessel or of the facilities at which the vessel will be unloading its cargo, or a Washington state nonprofit corporation established for the purpose of oil spill response and contingency plan coverage and of which the owner or operator is a member, shall submit the contingency plan for the tank vessel. Subject to conditions imposed by the department, the owner or operator of a facility may submit a single contingency plan for tank vessels of a particular class that will be unloading cargo at the facility.

(b) The contingency plan for a cargo vessel or passenger vessel may be submitted by the owner or operator of the cargo vessel or passenger vessel, by the agent for the vessel resident in this state, or by a Washington state nonprofit corporation established for the purpose of oil spill response and contingency plan coverage and of which the owner or operator is a member. Subject to conditions imposed by the department, the owner, operator, or agent may submit a single contingency plan for cargo vessels or passenger vessels of a particular class.

(c) A person who has contracted with a covered vessel to provide containment and cleanup services and who meets the standards established pursuant to RCW 90.56.240, may submit the plan for any covered vessel for which the person is contractually obligated to provide services. Subject to conditions imposed by the department, the person may submit a single plan for more than one covered vessel.

(4) A contingency plan prepared for an agency of the federal government or another state that satisfies the requirements of this section and rules adopted by the department may be accepted by the department as a contingency plan under this section. The department shall ensure that to the greatest extent possible, requirements for contingency plans under this section are consistent with the requirements for contingency plans under federal law.

(5) In reviewing the contingency plans required by this section, the department shall consider at least the following factors:

(a) The adequacy of containment and cleanup equipment, personnel, communications equipment, notification procedures and call down lists, response time, and logistical arrangements for coordination and implementation of response efforts to remove oil spills promptly and properly and to protect the environment;

(b) The nature and amount of vessel traffic within the area covered by the plan;

(c) The volume and type of oil being transported within the area covered by the plan;

(d) The existence of navigational hazards within the area covered by the plan;

(e) The history and circumstances surrounding prior spills of oil within the area covered by the plan;

(f) The sensitivity of fisheries and wildlife, shellfish beds, and other natural resources within the area covered by the plan;

(g) Relevant information on previous spills contained in on-scene coordinator reports prepared by the director; and

(h) The extent to which reasonable, cost-effective measures to prevent a likelihood that a spill will occur have been incorporated into the plan.

(6) The department shall approve a contingency plan only if it determines that the plan meets the requirements of this section and that, if implemented, the plan is capable, in terms of personnel, materials, and equipment, of removing oil promptly and properly and minimizing any damage to the environment.

(7) The approval of the contingency plan shall be valid for five years. Upon approval of a contingency plan, the department shall provide to the person submitting the plan a statement indicating that the plan has been approved, the vessels covered by the plan, and other information the department determines should be included.

(8) An owner or operator of a covered vessel shall notify the department in writing immediately of any significant change of which it is aware affecting its contingency plan, including changes in any factor set forth in this section or in rules adopted by the department. The department may require the owner or operator to update a contingency plan as a result of these changes.

(9) The department by rule shall require contingency plans to be reviewed, updated, if necessary, and resubmitted to the department at least once every five years.

(10) Approval of a contingency plan by the department does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under this chapter or other state law. [2005 c 78 § 2; 2000 c 69 § 6; 1995 c 148 § 3; 1992 c 73 § 20; 1991 c 200 § 419.]

**Effective date—1995 c 148 §§ 1-3:** "Sections 1 through 3 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 27, 1995]." [1995 c 148 § 6.]

**Effective dates—Severability—1992 c 73:** See RCW 82.23B.902 and 90.56.905.

## Title 89

### RECLAMATION, SOIL CONSERVATION, AND LAND SETTLEMENT

#### Chapters

#### 89.08 Conservation districts.

[2005 RCW Supp—page 1084]

## Chapter 89.08 RCW CONSERVATION DISTRICTS

#### Sections

89.08.400	Special assessments for natural resource conservation.
89.08.410	Grants to conservation districts—Rules—Report to the legislature.
89.08.550	Conservation assistance revolving account.

**89.08.400 Special assessments for natural resource conservation.** (1) Special assessments are authorized to be imposed for conservation districts as provided in this section. Activities and programs to conserve natural resources, including soil and water, are declared to be of special benefit to lands and may be used as the basis upon which special assessments are imposed.

(2) Special assessments to finance the activities of a conservation district may be imposed by the county legislative authority of the county in which the conservation district is located for a period or periods each not to exceed ten years in duration.

The supervisors of a conservation district shall hold a public hearing on a proposed system of assessments prior to the first day of August in the year prior to which it is proposed that the initial special assessments be collected. At that public hearing, the supervisors shall gather information and shall alter the proposed system of assessments when appropriate, including the number of years during which it is proposed that the special assessments be imposed.

On or before the first day of August in that year, the supervisors of a conservation district shall file the proposed system of assessments, indicating the years during which it is proposed that the special assessments shall be imposed, and a proposed budget for the succeeding year with the county legislative authority of the county within which the conservation district is located. The county legislative authority shall hold a public hearing on the proposed system of assessments. After the hearing, the county legislative authority may accept, or modify and accept, the proposed system of assessments, including the number of years during which the special assessments shall be imposed, if it finds that both the public interest will be served by the imposition of the special assessments and that the special assessments to be imposed on any land will not exceed the special benefit that the land receives or will receive from the activities of the conservation district. The findings of the county legislative authority shall be final and conclusive. Special assessments may be altered during this period on individual parcels in accordance with the system of assessments if land is divided or land uses or other factors change.

Notice of the public hearings held by the supervisors and the county legislative authority shall be posted conspicuously in at least five places throughout the conservation district, and published once a week for two consecutive weeks in a newspaper in general circulation throughout the conservation district, with the date of the last publication at least five days prior to the public hearing.

(3) A system of assessments shall classify lands in the conservation district into suitable classifications according to benefits conferred or to be conferred by the activities of the conservation district, determine an annual per acre rate of assessment for each classification of land, and indicate the



total amount of special assessments proposed to be obtained from each classification of lands. Lands deemed not to receive benefit from the activities of the conservation district shall be placed into a separate classification and shall not be subject to the special assessments. An annual assessment rate shall be stated as either uniform annual per acre amount, or an annual flat rate per parcel plus a uniform annual rate per acre amount, for each classification of land. The maximum annual per acre special assessment rate shall not exceed ten cents per acre. The maximum annual per parcel rate shall not exceed five dollars, except that for counties with a population of over one million five hundred thousand persons, the maximum annual per parcel rate shall not exceed ten dollars.

Public land, including lands owned or held by the state, shall be subject to special assessments to the same extent as privately owned lands. The procedures provided in chapter 79.44 RCW shall be followed if lands owned or held by the state are subject to the special assessments of a conservation district.

Forest lands used solely for the planting, growing, or harvesting of trees may be subject to special assessments if such lands benefit from the activities of the conservation district, but the per acre rate of special assessment on benefited forest lands shall not exceed one-tenth of the weighted average per acre assessment on all other lands within the conservation district that are subject to its special assessments. The calculation of the weighted average per acre special assessment shall be a ratio calculated as follows: (a) The numerator shall be the total amount of money estimated to be derived from the imposition of per acre special assessments on the nonforest lands in the conservation district; and (b) the denominator shall be the total number of nonforest land acres in the conservation district that receive benefit from the activities of the conservation district and which are subject to the special assessments of the conservation district. No more than ten thousand acres of such forest lands that is both owned by the same person or entity and is located in the same conservation district may be subject to the special assessments that are imposed for that conservation district in any year. Per parcel charges shall not be imposed on forest land parcels. However, in lieu of a per parcel charge, a charge of up to three dollars per forest landowner may be imposed on each owner of forest lands whose forest lands are subject to a per acre rate of assessment.

(4) A conservation district shall prepare an assessment roll that implements the system of assessments approved by the county legislative authority. The special assessments from the assessment roll shall be spread by the county assessor as a separate item on the tax rolls and shall be collected and accounted for with property taxes by the county treasurer. The amount of a special assessment shall constitute a lien against the land that shall be subject to the same conditions as a tax lien, collected by the treasurer in the same manner as delinquent real property taxes, and subject to the same interest rate and penalty as for delinquent property taxes. The county treasurer shall deduct an amount from the collected special assessments, as established by the county legislative authority, to cover the costs incurred by the county assessor and county treasurer in spreading and collecting the special assessments, but not to exceed the actual costs of such work. All remaining funds collected under this section shall be

transferred to the conservation district and used by the conservation district in accordance with this section.

(5) The special assessments for a conservation district shall not be spread on the tax rolls and shall not be collected with property tax collections in the following year if, after the system of assessments has been approved by the county legislative authority but prior to the fifteenth day of December in that year, a petition has been filed with the county legislative authority objecting to the imposition of such special assessments, which petition has been signed by at least twenty percent of the owners of land that would be subject to the special assessments to be imposed for a conservation district. [2005 c 466 § 1; 1992 c 70 § 1; 1989 c 18 § 1.]

**89.08.410 Grants to conservation districts—Rules—Report to the legislature.** The state conservation commission may authorize grants to conservation districts from moneys appropriated to the commission for such purposes as provided in this section. Such grants shall be awarded annually on or before the last day of June of each year and shall be made only to those conservation districts that apply for the grants. The conservation commission may adopt rules pertaining to eligibility and distribution of these funds. The conservation commission shall submit a report on the distribution of these funds to the appropriate committees of the legislature by September 30, 2007. [2005 c 31 § 1; 1989 c 18 § 2.]

**Effective date—2005 c 31:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 13, 2005]." [2005 c 31 § 2.]

**89.08.550 Conservation assistance revolving account.** (1) The conservation assistance revolving account is created in the custody of the state treasurer. Moneys from the account may only be spent after appropriation. Moneys placed in the account shall include principal and interest from the repayment of any loans granted under this section, and any other moneys appropriated to the account by the legislature. Expenditures from the account may be used only to make loans to landowners for projects enrolled in the conservation reserve enhancement program and the continuous conservation reserve program.

(2) In order to aid the financing of conservation reserve enhancement program projects and continuous conservation reserve program projects, the conservation commission, through the conservation districts, may make interest-free loans to these enrollees from the conservation assistance revolving account. The conservation commission may require such terms and conditions as it deems necessary to carry out the purposes of this section. Loans to landowners shall be for costs associated with the installation of conservation improvements eligible for and secured by federal farm service agency practice incentive payment reimbursement. Loans under this program promote critical habitat protection and restoration by bridging the financing gap between project implementation and federal funding. The conservation commission shall give loan preferences to those projects expected to generate the greatest environmental benefits and that occur in basins with critical or depressed salmonid stocks. Money received from landowners in loan repayments made under this section shall be paid into the conservation assistance

revolving account for uses consistent with this section. [2005 c 30 § 1; 2004 c 277 § 901.]

**Severability—2004 c 277:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 277 § 919.]

**Effective dates—2004 c 277:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 1, 2004], except for sections 117 and 202 of this act, which take effect April 16, 2004." [2004 c 277 § 920.]

## Title 90

### WATER RIGHTS—ENVIRONMENT

#### Chapters

- 90.03** Water code.
- 90.14** Water rights—Registration—Waiver and relinquishment, etc.
- 90.46** Reclaimed water use.
- 90.48** Water pollution control.
- 90.56** Oil and hazardous substance spill prevention and response.
- 90.58** Shoreline management act of 1971.
- 90.64** Dairy nutrient management.
- 90.71** Puget Sound water quality protection.
- 90.80** Water conservancy boards.
- 90.86** Joint legislative committee on water supply during drought.
- 90.88** Aquatic rehabilitation zones.

#### Chapter 90.03 RCW

##### WATER CODE

#### Sections

- 90.03.470 Schedule of fees.
- 90.03.525 Storm water control facilities—Imposition of rates and charges with respect to state highway rights of way—Annual plan for expenditure of charges.

**90.03.470 Schedule of fees.** The fees specified in this section shall be collected by the department in advance of the requested action.

(1) For the examination of an application for a permit to appropriate water, a minimum fee of fifty dollars must be remitted with the application. For an amount of water exceeding one-half cubic foot per second, the examination fee shall be assessed at the rate of one dollar per one hundredth cubic foot per second. In no case will the examination fee be less than fifty dollars or more than twenty-five thousand dollars. No fee is required under this subsection (1) for an application filed by a party to a cost reimbursement agreement made under RCW 90.03.265.

(2) For the examination of an application to store water, a fee of two dollars for each acre foot of storage proposed shall be charged, but a minimum fee of fifty dollars must be remitted with the application. In no case will the examination fee for a storage project be less than fifty dollars or more than twenty-five thousand dollars. No fee is required under this subsection (2) for an application filed by a party to a cost reimbursement agreement made under RCW 90.03.265.

(3)(a) For the examination of an application to transfer, change, or amend a water right certificate, permit, or claim as authorized by RCW 90.44.100, 90.44.105, or 90.03.380, a minimum fee of fifty dollars must be remitted with the application. For an application for change involving an amount of water exceeding one cubic foot per second, the total examination fee shall be assessed at the rate of fifty cents per one hundredth cubic foot per second. For an application for change of a storage water right, the total examination fee shall be assessed at the rate of one dollar for each acre foot of water involved in the change. The fee shall be based on the amount of water subject to change as proposed in the application, not on the total amount of water reflected in the water right certificate, permit, or claim. In no case will the examination fee charged for a change application be less than fifty dollars or more than twelve thousand five hundred dollars.

(b) The examination fee for a temporary or seasonal change under RCW 90.03.390 is fifty dollars and must be remitted with the application.

(c) No fee is required under this subsection (3) for:

(i) An application to process a change relating to donation of a trust water right to the state;

(ii) An application to process a change when the department otherwise acquires a trust water right for purposes of improving instream flows or for other public purposes;

(iii) An application filed with a water conservancy board according to chapter 90.80 RCW or for the review of a water conservancy board's record of decision submitted to the department according to chapter 90.80 RCW; or

(iv) An application filed by a party to a cost reimbursement agreement made under RCW 90.03.265.

(d) For a change, transfer, or amendment involving a single project operating under more than one water right, including related secondary diversion rights, or involving the consolidation of multiple water rights, only one examination fee and one certificate fee are required to be paid.

(4) The fifty-dollar minimum fee payable with the application shall be a credit to the total amount whenever the examination fee totals more than fifty dollars under the schedule specified in subsections (1) through (3) of this section and in such case the further fee due shall be the total computed amount, less the amount previously paid. Within five working days from receipt of an application, the department shall notify the applicant by registered mail of any additional fees due under subsections (1) through (3) of this section.

(5) The fees specified in subsections (1) through (3) of this section do not apply to any filings for emergency withdrawal authorizations or temporary drought-related water right changes authorized under RCW 43.83B.410 that are received by the department while a drought condition order issued under RCW 43.83B.405 is in effect.

(6) For applying for each extension of time for beginning construction work under a permit to appropriate water, for completion of construction work, or for completing application of water to a beneficial use, a fee of fifty dollars is required. These fees also apply to similar extensions of time requested under a change or transfer authorization.

(7) For the inspection of any hydraulic works to insure safety to life and property, a fee based on the actual cost of the inspection, including the expense incident thereto, is

required except as follows: (a) For any hydraulic works less than ten years old, that the department examined and approved the construction plans and specifications as to its safety when required under RCW 90.03.350, there shall be no fee charged; or (b) for any hydraulic works more than ten years old, but less than twenty years old, that the department examined and approved the construction plans and specifications as to its safety when required under RCW 90.03.350, the fee charged shall not exceed the fee for a significant hazard dam.

(8) For the examination of plans and specifications as to safety of controlling works for storage of ten acre feet or more of water, a minimum fee of ten dollars, or a fee equal to the actual cost, is required.

(9) For recording an assignment either of a permit to appropriate water or of an application for such a permit, a fee of fifty dollars is required.

(10) For preparing and issuing all water right certificates, a fee of fifty dollars is required.

(11) For filing and recording a formal protest against granting any application, a fee of fifty dollars is required. No fee is required to submit a comment, by mail or otherwise, regarding an application.

(12) For filing an application to amend a water right claim filed under chapter 90.14 RCW, a fee of fifty dollars is required.

(13) An application or request for an action as provided for under this section is incomplete unless accompanied by the fee or the minimum fee. If no fee or an amount less than the minimum fee accompanies an application or other request for an action as provided under this section, the department shall return the application or request to the applicant with advice as to the fee that must be remitted with the application or request for it to be accepted for processing. If additional fees are due, the department shall provide timely notification by certified mail with return receipt requested to the applicant. No action may be taken by the department until the fee is paid in full. Failure to remit fees within sixty days of the department's notification is grounds for rejecting the application or request or canceling the permit. Cash shall not be accepted. Fees must be paid by check or money order and are nonrefundable.

(14) For purposes of calculating fees for ground water filings, one cubic foot per second shall be regarded as equivalent to four hundred fifty gallons per minute.

(15) Eighty percent of the fees collected by the department under this section shall be deposited in the state general fund. Twenty percent of the fees collected by the department under this section shall be deposited in the water rights tracking system account established in RCW 90.14.240.

(16) Except for the fees relating to the inspection of hydraulic works and the examination of plans and specifications of controlling works provided for in subsections (7) and (8) of this section, nothing in this section is intended to grant authority to the department to amend the fees in this section by adoption of rules or otherwise. [2005 c 412 § 2; 1993 c 495 § 2; 1987 c 109 § 98; 1965 ex.s. c 160 § 1; 1951 c 57 § 5; 1929 c 122 § 8; 1925 ex.s. c 161 § 2; 1917 c 117 § 44; RRS § 7399. Formerly RCW 90.04.040.]

**Findings—Intent—2005 c 412:** "The legislature finds that the fees associated with various actions of the department of ecology relating to the

processing and administration of water rights are outdated and are insufficient even to recover the cost of handling the funds submitted. The legislature also finds that water right processing fees are currently collected at three different stages of the water rights process and that reducing the number of instances of fee collection to two stages of the process would increase efficiency and reduce administrative costs. The legislature further finds that several current statutory fees are archaic or are otherwise covered by other general statutes, including the state's public disclosure laws. The legislature therefore intends to update and modernize the fee schedule associated with water right-related actions of the department of ecology." [2005 c 412 § 1.]

**Findings—1993 c 495:** "The legislature finds that a water right confers significant economic benefits to the water right holder. The fees associated with acquiring a water right have not changed significantly since 1917. Water rights applicants pay less than two percent of the costs of the administration of the water rights program. The legislature finds that, since water rights are of significant value, water rights applicants should contribute more to the cost of administration of the water rights program.

The legislature also finds that an abrupt increase in water rights fees could be disruptive to water rights holders and applicants. The legislature further finds that water rights applicants have a right to know that the water rights program is being administered efficiently and that the fees charged for various services relate directly to the cost of providing those services.

Therefore, the legislature creates a task force to review the water rights program, to make recommendations for streamlining the application process and increasing the overall efficiency and accountability of the administration of the program, and to return to the legislature with a proposal for a fee schedule where the fee levels relate clearly to the cost of services provided." [1993 c 495 § 1.]

**Reviser's note:** 1993 c 495 § 3 created a water rights task force that expired June 30, 1994.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.03.525 Storm water control facilities—Imposition of rates and charges with respect to state highway rights of way—Annual plan for expenditure of charges.** (1) The rate charged by a local government utility to the department of transportation with respect to state highway right of way or any section of state highway right of way for the construction, operation, and maintenance of storm water control facilities under chapters 35.67, 35.92, 36.89, 36.94, 57.08, and 86.15 RCW, shall be thirty percent of the rate for comparable real property, except as otherwise provided in this section. The rate charged to the department with respect to state highway right of way or any section of state highway right of way within a local government utility's jurisdiction shall not, however, exceed the rate charged for comparable city street or county road right of way within the same jurisdiction. The legislature finds that the aforesaid rates are presumptively fair and equitable because of the traditional and continuing expenditures of the department of transportation for the construction, operation, and maintenance of storm water control facilities designed to control surface water or storm water runoff from state highway rights of way.

(2) Charges paid under subsection (1) of this section by the department of transportation must be used solely for storm water control facilities that directly reduce state highway runoff impacts or implementation of best management practices that will reduce the need for such facilities. By January 1st of each year, beginning with calendar year 1997, the local government utility, in coordination with the department, shall develop a plan for the expenditure of the charges for that calendar year. The plan must be consistent with the objectives identified in \*RCW 90.78.010. In addition, beginning with the submittal for 1998, the utility shall provide a progress report on the use of charges assessed for the prior

year. No charges may be paid until the plan and report have been submitted to the department.

(3) The utility imposing the charge and the department of transportation may, however, agree to either higher or lower rates with respect to the construction, operation, or maintenance of any specific storm water control facilities based upon the annual plan prescribed in subsection (2) of this section. If, after mediation, the local government utility and the department of transportation cannot agree upon the proper rate, either may commence an action in the superior court for the county in which the state highway right of way is located to establish the proper rate. The court in establishing the proper rate shall take into account the extent and adequacy of storm water control facilities constructed by the department and the actual benefits to the sections of state highway rights of way from storm water control facilities constructed, operated, and maintained by the local government utility. Control of surface water runoff and storm water runoff from state highway rights of way shall be deemed an actual benefit to the state highway rights of way. The rate for sections of state highway right of way as determined by the court shall be set forth in terms of the percentage of the rate for comparable real property, but shall in no event exceed the rate charged for comparable city street or county road right of way within the same jurisdiction.

(4) The legislature finds that the federal clean water act (national pollutant discharge elimination system, 40 C.F.R. parts 122-124), the state water pollution control act, chapter 90.48 RCW, and the highway runoff program under chapter 90.71 RCW, mandate the treatment and control of storm water runoff from state highway rights of way owned by the department of transportation. Appropriations made by the legislature to the department of transportation for the construction, operation, and maintenance of storm water control facilities are intended to address applicable federal and state mandates related to storm water control and treatment. This section is not intended to limit opportunities for sharing the costs of storm water improvements between cities, counties, and the state. [2005 c 319 § 140; 1996 c 285 § 1; 1996 c 230 § 1617; 1986 c 278 § 54.]

**\*Reviser's note:** RCW 90.78.010 expired July 1, 2003, pursuant to 1996 c 285 § 5.

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Part headings not law—Effective date—1996 c 230:** See notes following RCW 57.02.001.

**Severability—1986 c 278:** See note following RCW 36.01.010.

## Chapter 90.14 RCW

### WATER RIGHTS—REGISTRATION—WAIVER AND RELINQUISHMENT, ETC.

#### Sections

- 90.14.068 Statement of claim—New filing period. (*Effective July 1, 2006.*)  
90.14.240 Water rights tracking system account.

**90.14.068 Statement of claim—New filing period. (*Effective July 1, 2006.*)** (1) A new period for filing statements of claim for water rights is established. The filing period shall begin September 1, 1997, and shall end at mid-

[2005 RCW Supp—page 1088]

night June 30, 1998. Each person or entity claiming under state law a right to withdraw or divert and beneficially use surface water under a right that was established before \*the effective date of [the] water code established by chapter 117, Laws of 1917, and any person claiming under state law a right to withdraw and beneficially use ground water under a right that was established before \*\*the effective date of the ground water code established by chapter 263, Laws of 1945, shall register the claim with the department during the filing period unless the claim has been filed in the state water rights claims registry before July 27, 1997. A person who claims such a right and fails to register the claim as required is conclusively deemed to have waived and relinquished any right, title, or interest in the right. A statement filed during this filing period shall be filed as provided in RCW 90.14.051 and 90.14.061 and shall be subject to the provisions of this chapter regarding statements of claim. This reopening of the period for filing statements of claim shall not affect or impair in any respect whatsoever any water right existing prior to July 27, 1997. A water right embodied in a statement of claim filed under this section is subordinate to any water right embodied in a permit or certificate issued under chapter 90.03 or 90.44 RCW prior to the date the statement of claim is filed with the department and is subordinate to any water right embodied in a statement of claim filed in the water rights claims registry before July 27, 1997.

(2) The department of ecology shall, at least once each week during the month of August 1997 and at least once each month during the filing period, publish a notice regarding this new filing period in newspapers of general circulation in the various regions of the state. The notice shall contain the substance of the following notice:

#### WATER RIGHTS NOTICE

Each person or entity claiming a right to withdraw or divert and beneficially use surface water under a right that was established before June 7, 1917, or claiming a right to withdraw and beneficially use ground water under a right that was established before June 7, 1945, under the laws of the state of Washington must register the claim with the department of ecology, Olympia, Washington. The claim must be registered on or after September 1, 1997, and not later than five o'clock on June 30, 1998.

#### FAILURE TO REGISTER THE CLAIM WILL RESULT IN A WAIVER AND RELINQUISHMENT OF THE WATER RIGHT OR CLAIMED WATER RIGHT

Registering a claim is NOT required for:

1. A water right that is based on the authority of a permit or certificate issued by the department of ecology or one of its predecessors;
2. A water right that is based on the exemption from permitting requirements provided by RCW 90.44.050 for certain very limited uses of ground water; or
3. A water right that is based on a statement of claim that has previously been filed in the state's water

rights claims registry during other registration periods.

For further information, for a copy of the law establishing this filing period, and for an explanation of the law and its requirements, contact the department of ecology, Olympia, Washington.

The department shall also prepare, make available to the public, and distribute to the communications media information describing the types of rights for which statements of claim need not be filed, the effect of filing, the effect of RCW 90.14.071, and other information relevant to filings and statements of claim.

(3) The department of ecology shall ensure that employees of the department are readily available to respond to inquiries regarding filing statements of claim and that all of the information the department has at its disposal that is relevant to an inquiry regarding a particular potential claim, including information regarding other rights and claims in the vicinity of the potentially claimed right, is available to the person making the inquiry. The department shall dedicate additional staff in each of the department's regional offices and in the department's central office to ensure that responses and information are provided in a timely manner during each of the business days during the month of August 1997 and during the new filing period.

(4) To assist the department in avoiding unnecessary duplication, the department shall provide to a requestor, within ten working days of receiving the request, the records of any water right claimed, listed, recorded, or otherwise existing in the records of the department or its predecessor agencies, including any report of a referee in a water rights adjudication. This information shall be provided as required by this subsection if the request is provided in writing from the owner of the water right or from the holder of a possessory interest in any real property for water right records associated with the property or if the requestor is an attorney for such an owner. The information regarding water rights in the area served by a regional office of the department shall also be provided within ten working days to any requestor who requests to review the information in person in the department's regional office. The information held by the headquarters office of the department shall also be provided within ten working days to any requestor who requests to review the information in person in the department's headquarters office. The requirements of this subsection that records and information be provided to requestors within ten working days may not be construed as limiting in any manner the obligations of the department to provide public access to public records as required by chapter 42.56 RCW.

(5) This section does not apply to claims for the use of ground water withdrawn in an area that is, during the period established by subsection (2) of this section, the subject of a general adjudication proceeding for water rights in superior court under RCW 90.03.110 through 90.03.245 and the proceeding applies to ground water rights. This section does not apply to claims for the use of surface water withdrawn in an area that is, during the period established by subsection (2) of this section, the subject of a general adjudication proceeding for water rights in superior court under RCW 90.03.110

through 90.03.245 and the proceeding applies to surface water rights.

(6) This section does not apply to claims for the use of water in a ground water area or subarea for which a management program adopted by the department by rule and in effect on July 27, 1997, establishes acreage expansion limitations for the use of ground water. [2005 c 274 § 365; 1997 c 440 § 1.]

**Reviser's note:** \*(1) The effective date of chapter 117, Laws of 1917, is June 7, 1917.

\*\* (2) The effective date of chapter 263, Laws of 1945, is June 7, 1945.

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**90.14.240 Water rights tracking system account.** The water rights tracking system account is created in the state treasury. Twenty percent of the fees collected by the department of ecology according to RCW 90.03.470 must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used by the department of ecology for the development, implementation, and management of a water rights tracking system, including a water rights mapping system and a water rights data base. [2005 c 412 § 3.]

**Findings—Intent—2005 c 412:** See note following RCW 90.03.470.

## Chapter 90.46 RCW RECLAIMED WATER USE

### Sections

90.46.030	Standards, procedures, and guidelines for industrial and commercial use of reclaimed water—Reclaimed water permits—Fee structure for permits—Formal agreements between the departments of health and ecology.
90.46.040	Standards, procedures, and guidelines for land applications of reclaimed water—Permits—Referral to department of health.

**90.46.030 Standards, procedures, and guidelines for industrial and commercial use of reclaimed water—Reclaimed water permits—Fee structure for permits—Formal agreements between the departments of health and ecology.** (1) The department of health shall, in coordination with the department of ecology, adopt a single set of standards, procedures, and guidelines on or before August 1, 1993, for the industrial and commercial use of reclaimed water.

(2) The department of health may issue a reclaimed water permit for industrial and commercial uses of reclaimed water to the generator of reclaimed water who may then distribute the water, subject to provisions in the permit governing the location, rate, water quality, and purposes of use.

(3) The department of health in consultation with the advisory committee established in RCW 90.46.050, shall develop recommendations for a fee structure for permits issued under subsection (2) of this section. Fees shall be established in amounts to fully recover, and not exceed, expenses incurred by the department of health in processing permit applications and modifications, monitoring and evaluating compliance with permits, and conducting inspections and supporting the reasonable overhead expenses that are directly related to these activities. Permit fees may not be

used for research or enforcement activities. The department of health shall not issue permits under this section until a fee structure has been established.

(4) A permit under this section for use of reclaimed water may be issued only to:

(a) A municipal, quasi-municipal, or other governmental entity;

(b) A private utility as defined in RCW 36.94.010; or

(c) The holder of a waste discharge permit issued under chapter 90.48 RCW.

(5) The authority and duties created in this section are in addition to any authority and duties already provided in law with regard to sewage and wastewater collection, treatment, and disposal for the protection of health and safety of the state's waters. Nothing in this section limits the powers of the state or any political subdivision to exercise such authority.

(6) The department of health may implement the requirements of this section through the department of ecology by execution of a formal agreement between the departments. Upon execution of such an agreement, the department of ecology may issue reclaimed water permits for industrial and commercial uses of reclaimed water by issuance of permits under chapter 90.48 RCW, and may establish and collect fees as required for permits issued under chapter 90.48 RCW.

(7) Before deciding whether to issue a permit under this section to a private utility, the department of health may require information that is reasonable and necessary to determine whether the private utility has the financial and other resources to assure the reliability, continuity, and supervision of the reclaimed water facility. [2005 c 59 § 1; 2002 c 329 § 4; 1992 c 204 § 4.]

**90.46.040 Standards, procedures, and guidelines for land applications of reclaimed water—Permits—Referral to department of health.** (1) The department of ecology shall, in coordination with the department of health, adopt a single set of standards, procedures, and guidelines, on or before August 1, 1993, for land applications of reclaimed water.

(2) A permit is required for any land application of reclaimed water. The department of ecology may issue a reclaimed water permit under chapter 90.48 RCW to the generator of reclaimed water who may then distribute the water, subject to provisions in the permit governing the location, rate, water quality, and purpose of use. The department of ecology shall not issue more than one permit for any individual land application of reclaimed water to a single generator.

(3) In cases where the department of ecology determines, in land applications of reclaimed water, that a significant risk to the public health exists, the department shall refer the application to the department of health for review and consultation and the department of health may require fees appropriate for review and consultation from the applicant pursuant to RCW 43.70.250.

(4) A permit under this section for use of reclaimed water may be issued only to:

(a) A municipal, quasi-municipal, or other governmental entity;

(b) A private utility as defined under RCW 36.94.010; or

(c) The holder of a waste discharge permit issued under chapter 90.48 RCW.

(5) The authority and duties created in this section are in addition to any authority and duties already provided in law. Nothing in this section limits the powers of the state or any political subdivision to exercise such authority.

(6) Before deciding whether to issue a permit under this section to a private utility, the department of ecology may require information that is reasonable and necessary to determine whether the private utility has the financial and other resources to assure the reliability, continuity, and supervision of the reclaimed water facility. [2005 c 59 § 2; 1992 c 204 § 5.]

## Chapter 90.48 RCW

### WATER POLLUTION CONTROL

#### Sections

90.48.285 Contracts with municipal or public corporations and political subdivisions to finance water pollution control projects—Requisites—Priorities.

**90.48.285 Contracts with municipal or public corporations and political subdivisions to finance water pollution control projects—Requisites—Priorities.** The department is authorized to enter into contracts with any municipal or public corporation or political subdivision within the state for the purpose of assisting such agencies to finance the design and construction of water pollution control projects, whether procured through chapter 39.10 or 70.150 RCW, or otherwise, that are necessary to prevent the discharge of untreated or inadequately treated sewage or other waste into the waters of the state, including but not limited to, systems for the control of storm or surface waters which will provide for the removal of waste or polluting materials in a manner conforming to the comprehensive plan of water pollution control and abatement proposed by the agencies and approved by the department. Any such contract may provide for:

The payment by the department to a municipal or public corporation or political subdivision on a monthly, quarterly, or annual basis of varying amounts of moneys as advances which shall be repayable by said municipal or public corporation, or political subdivision under conditions determined by the department.

Contracts made by the department shall be subject to the following limitations:

(1) No contract shall be made unless the department shall find that the project cannot be financed at reasonable cost or within statutory limitations by the borrower without the making of such contract.

(2) No contract shall be made with any public or municipal corporation or political subdivision to assist in the financing of any project located within a sewage drainage basin for which the department shall have previously adopted a comprehensive water pollution control and abatement plan unless the project is found by the department to conform with the basin comprehensive plan.

(3) The department shall determine the interest rate, not to exceed ten percent per annum, which such advances shall bear.

(4) The department shall provide such reasonable terms and conditions of repayment of advances as it may determine.

(5) The total outstanding amount which the department may at any time be obligated to pay under all outstanding contracts made pursuant to this section shall not exceed the moneys available for such payment.

(6) Municipal or public corporations or political subdivisions shall meet such qualifications and follow such procedures in applying for contract assistance as shall be established by the department.

In making such contracts the department shall give priority to projects which will provide relief from actual or potential public health hazards or water pollution conditions and which provide substantial capacity beyond present requirements to meet anticipated future demand. [2005 c 469 § 4; 1987 c 109 § 144; 1980 c 32 § 13; 1969 ex.s. c 141 § 1.]

**Purpose—Short title—Construction—Rules—Severability—Capitions—1987 c 109:** See notes following RCW 43.21B.001.

**Severability—1969 ex.s. c 141:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provisions to other persons or circumstances is not affected." [1969 ex.s. c 141 § 2.]

## Chapter 90.56 RCW

### OIL AND HAZARDOUS SUBSTANCE SPILL PREVENTION AND RESPONSE

#### Sections

90.56.005	Findings—Purpose.
90.56.060	Statewide master oil and hazardous substance spill prevention and contingency plan—Evaluation and revision or elimination of advisory committees.
90.56.120	Oil spill advisory council—Meetings—Travel expenses and compensation.
90.56.130	Council—Duties—Work plan—Reports.
90.56.210	Contingency plans.
90.56.335	Vessel response account—Dedicated rescue tug. ( <i>Expires July 1, 2020.</i> )

**90.56.005 Findings—Purpose.** (1) The legislature declares that water borne transportation as a source of supply for oil and hazardous substances poses special concern for the state of Washington. Each year billions of gallons of crude oil and refined petroleum products are transported as cargo and fuel by vessels on the navigable waters of the state. These shipments are expected to increase in the coming years. Vessels transporting oil into Washington travel on some of the most unique and special marine environments in the United States. These marine environments are a source of natural beauty, recreation, and economic livelihood for many residents of this state. As a result, the state has an obligation to ensure the citizens of the state that the waters of the state will be protected from oil spills.

(2) The legislature finds that prevention is the best method to protect the unique and special marine environments in this state. The technology for containing and cleaning up a spill of oil or hazardous substances is at best only partially effective. Preventing spills is more protective of the environment and more cost-effective when all the response and damage costs associated with responding to a spill are considered. Therefore, the legislature finds that the primary objective of the state is to achieve a zero spills strategy to prevent any oil or hazardous substances from entering waters of the state.

(3) The legislature also finds that:

(a) Recent accidents in Washington, Alaska, southern California, Texas, Pennsylvania, and other parts of the nation have shown that the transportation, transfer, and storage of oil have caused significant damage to the marine environment;

(b) Even with the best efforts, it is nearly impossible to remove all oil that is spilled into the water, and average removal rates are only fourteen percent;

(c) Washington's navigable waters are treasured environmental and economic resources that the state cannot afford to place at undue risk from an oil spill;

(d) The state has a fundamental responsibility, as the trustee of the state's natural resources and the protector of public health and the environment to prevent the spill of oil; and

(e) In section 5002 of the federal oil pollution act of 1990, the United States congress found that many people believed that complacency on the part of industry and government was one of the contributing factors to the Exxon Valdez spill and, further, that one method to combat this complacency is to involve local citizens in the monitoring and oversight of oil spill plans. Congress also found that a mechanism should be established that fosters the long-term partnership of industry, government, and local communities in overseeing compliance with environmental concerns in the operation of crude oil terminals. Moreover, congress concluded that, in addition to Alaska, a program of citizen monitoring and oversight should be established in other major crude oil terminals in the United States because recent oil spills indicate that the safe transportation of oil is a national problem.

(4) In order to establish a comprehensive prevention and response program to protect Washington's waters and natural resources from spills of oil, it is the purpose of this chapter:

(a) To establish state agency expertise in marine safety and to centralize state activities in spill prevention and response activities;

(b) To prevent spills of oil and to promote programs that reduce the risk of both catastrophic and small chronic spills;

(c) To ensure that responsible parties are liable, and have the resources and ability, to respond to spills and provide compensation for all costs and damages;

(d) To provide for state spill response and wildlife rescue planning and implementation;

(e) To support and complement the federal oil pollution act of 1990 and other federal law, especially those provisions relating to the national contingency plan for cleanup of oil spills and discharges, including provisions relating to the responsibilities of state agencies designated as natural resource trustees. The legislature intends this chapter to be interpreted and implemented in a manner consistent with federal law;

(f) To provide broad powers of regulation to the department of ecology relating to spill prevention and response;

(g) To provide for an independent oil spill advisory council to review on an ongoing basis the adequacy of oil spill prevention, preparedness, and response activities in this state; and

(h) To provide an adequate funding source for state response and prevention programs. [2005 c 304 § 1; 2004 c 226 § 2; 1991 c 200 § 101; 1990 c 116 § 1.]

**90.56.060 Statewide master oil and hazardous substance spill prevention and contingency plan—Evaluation and revision or elimination of advisory committees.** (1) The department shall prepare and annually update a statewide master oil and hazardous substance spill prevention and contingency plan. In preparing the plan, the department shall consult with an advisory committee representing diverse interests concerned with oil and hazardous substance spills, including the United States coast guard, the federal environmental protection agency, state agencies, local governments, port districts, private facilities, environmental organizations, oil companies, shipping companies, containment and cleanup contractors, tow companies, hazardous substance manufacturers, and with the oil spill advisory council.

(2) The state master plan prepared under this section shall at a minimum:

(a) Take into consideration the elements of oil spill prevention and contingency plans approved or submitted for approval pursuant to this chapter and chapter 88.46 RCW and oil and hazardous substance spill contingency plans prepared pursuant to other state or federal law or prepared by federal agencies and regional entities;

(b) State the respective responsibilities as established by relevant statutes and rules of each of the following in the prevention of and the assessment, containment, and cleanup of a worst case spill of oil or hazardous substances into the environment of the state: (i) State agencies; (ii) local governments; (iii) appropriate federal agencies; (iv) facility operators; (v) property owners whose land or other property may be affected by the oil or hazardous substance spill; and (vi) other parties identified by the department as having an interest in or the resources to assist in the containment and cleanup of an oil or hazardous substance spill;

(c) State the respective responsibilities of the parties identified in (b) of this subsection in an emergency response;

(d) Identify actions necessary to reduce the likelihood of spills of oil and hazardous substances;

(e) Identify and obtain mapping of environmentally sensitive areas at particular risk to oil and hazardous substance spills;

(f) Establish an incident command system for responding to oil and hazardous substances spills; and

(g) Establish a process for immediately notifying affected tribes of any oil spill.

(3) In preparing and updating the state master plan, the department shall:

(a) Consult with federal, provincial, municipal, and community officials, other state agencies, the state of Oregon, and with representatives of affected regional organizations;

(b) Submit the draft plan to the public for review and comment;

(c) Submit to the appropriate standing committees of the legislature for review, not later than November 1st of each year, the plan and any annual revision of the plan; and

(d) Require or schedule unannounced oil spill drills as required by RCW 90.56.260 to test the sufficiency of oil spill contingency plans approved under RCW 90.56.210.

(4) The department shall evaluate the functions of advisory committees created by the department regarding oil spill prevention, preparedness, and response programs, and shall revise or eliminate those functions which are no longer nec-

essary. [2005 c 304 § 4; 2004 c 226 § 4; 2000 c 69 § 16; 1991 c 200 § 107; 1990 c 116 § 10. Formerly RCW 90.48.378.]

**Findings—Severability—1990 c 116:** See notes following RCW 90.56.210.

**90.56.120 Oil spill advisory council—Meetings—Travel expenses and compensation.** (1)(a) There is established in the office of the governor the oil spill advisory council.

(b) The primary purpose of the council is to maintain the state's vigilance in, by ensuring an emphasis on, the prevention of oil spills to marine waters, while recognizing the importance of also improving preparedness and response.

(c) The council shall be an advisory body only.

(2)(a) In addition to members appointed under (b) of this subsection, the council is composed of the chair-facilitator and sixteen members representing various interests as follows:

(i) Three representatives of environmental organizations;

(ii) One representative of commercial shellfish interests;

(iii) One representative of commercial fisheries that primarily fishes in Washington waters;

(iv) One representative of marine recreation;

(v) One representative of tourism interests;

(vi) Three representatives of county government from counties bordering Puget Sound, the Columbia river/Pacific Ocean, and the Strait of Juan de Fuca/San Juan Islands;

(vii) One representative of marine labor;

(viii) Two representatives of marine trade interests;

(ix) One representative of major oil facilities;

(x) One representative of public ports; and

(xi) An individual who resides on a shoreline who has an interest, experience, and familiarity in the protection of water quality.

(b) In addition to the members identified in this subsection, the governor shall invite the participation of tribal governments through the appointment of two representatives to the council.

(3) Appointments to the council shall reflect a geographical balance and the diversity of populations within the areas potentially affected by oil spills to state waters.

(4) Members shall be appointed by the governor and shall serve four-year terms, except the initial members appointed to the council. Initial members to the council shall be appointed as follows: Six shall serve two-year terms, six shall serve three-year terms, and seven shall serve four-year terms. Vacancies shall be filled by appointment in the same manner as the original appointment for the remainder of the unexpired term of the position vacated. Members serve at the pleasure of the governor.

(5) The governor shall appoint a chair-facilitator who shall serve as a nonvoting member of the council. The chair shall not be an employee of a state agency, nor shall the chair have a financial interest in matters relating to oil spill prevention, preparedness, and response. The chair shall convene the council at least four times per year. At least one meeting per year shall be held in a Columbia river community, an ocean coastal community, and a Puget Sound community. The chair shall consult with councilmembers in setting agendas and determining meeting times and locations.



(6) All members shall be reimbursed for travel expenses while attending meetings of the council or technical advisory committees as provided in RCW 43.03.050 and 43.03.060. Members of the council identified in subsection (2)(a)(i), (ii), (iii), (iv), (v), (vi), (vii), and (xi) of this section shall be compensated on a per diem basis as a class two group according to RCW 43.03.230.

(7) The first meeting of the council shall be convened by the governor or the governor's designee. Other meetings may be convened by a vote of at least a majority of the voting members of the council, or by call of the chair. All meetings are subject to the open public meetings act. The council shall maintain minutes of all meetings.

(8) To the extent possible, all decisions of the council shall be by the consensus of the members. If consensus is not possible, nine voting members of the council may call for a vote on a matter. When a vote is called, all decisions shall be determined by a majority vote of the voting members present. Two-thirds of the voting members are required to be present for a quorum for all votes. The subject matter of all votes and the vote tallies shall be recorded in the minutes of the council.

(9) The council may form subcommittees and technical advisory committees. [2005 c 304 § 2.]

#### **90.56.130 Council—Duties—Work plan—Reports.**

(1) The duties of the council include:

(a) Selection and hiring of professional staff and expert consultants to support the work of the council;

(b) Early consultation with government decision makers in relation to the state's oil spill prevention, preparedness, and response programs, analyses, rule making, and related oil spill activities;

(c) Providing independent advice, expertise, research, monitoring, and assessment for review of and necessary improvements to the state's oil spill prevention, preparedness, and response programs, analyses, rule making, and other decisions, including those of the Northwest area committee, as well as the adequacy of funding for these programs;

(d) Monitoring and providing information to the public as well as state and federal agencies regarding state of the art oil spill prevention, preparedness, and response programs;

(e) Actively seeking public comments on and proposals for specific measures to improve the state's oil spill prevention, preparedness, and response program, including measures to improve the effectiveness of the Northwest area committee;

(f) Evaluating incident response reports and making recommendations to the department regarding improvements;

(g) Consulting with the department on lessons learned and agency progress on necessary actions in response to lessons learned;

(h) Promoting opportunities for the public to become involved in oil spill response activities and provide assistance to community groups with an interest in oil spill prevention and response, and coordinating with the department on the development and implementation of a citizens' involvement plan;

(i) Serving as an advisory body to the department on matters relating to international, national, and regional issues concerning oil spill prevention, preparedness, and response, and providing a mechanism for stakeholder and public con-

sideration of federal actions relating to oil spill preparedness, prevention, and response in or near the waters of the state with recommended changes or improvements in federal policies on these matters;

(j) Accepting moneys from appropriations, gifts, grants, or donations for the purposes of this section; and

(k) Any other activities necessary to maintain the state's vigilance in preventing oil spills.

(2) The council shall establish a work plan for accomplishing the duties identified in subsection (1) of this section.

(3) The council is not intended to address issues related to spills involving hazardous substances.

(4) By September 15, 2006, the council shall recommend to the governor and appropriate committees of the legislature, proposals for the long-term funding of the council's activities and for the long-term sustainable funding for oil spill preparedness, prevention, and response activities.

(5) By September 1st of each year, the council shall make recommendations for the continuing improvement of the state's oil spill prevention, preparedness, and response activities through a report to the governor, the director, and the appropriate committees of the senate and house of representatives. [2005 c 304 § 3.]

**90.56.210 Contingency plans.** (1) Each onshore and offshore facility shall have a contingency plan for the containment and cleanup of oil spills from the facility into the waters of the state and for the protection of fisheries and wildlife, shellfish beds, natural resources, and public and private property from such spills. The department shall by rule adopt and periodically revise standards for the preparation of contingency plans. The department shall require contingency plans, at a minimum, to meet the following standards:

(a) Include full details of the method of response to spills of various sizes from any facility which is covered by the plan;

(b) Be designed to be capable in terms of personnel, materials, and equipment, of promptly and properly, to the maximum extent practicable, as defined by the department removing oil and minimizing any damage to the environment resulting from a worst case spill;

(c) Provide a clear, precise, and detailed description of how the plan relates to and is integrated into relevant contingency plans which have been prepared by cooperatives, ports, regional entities, the state, and the federal government;

(d) Provide procedures for early detection of oil spills and timely notification of such spills to appropriate federal, state, and local authorities under applicable state and federal law;

(e) State the number, training preparedness, and fitness of all dedicated, prepositioned personnel assigned to direct and implement the plan;

(f) Incorporate periodic training and drill programs to evaluate whether personnel and equipment provided under the plan are in a state of operational readiness at all times;

(g) Describe important features of the surrounding environment, including fish and wildlife habitat, shellfish beds, environmentally and archaeologically sensitive areas, and public facilities. The departments of ecology, fish and wildlife, and natural resources, and the office of archaeology and historic preservation, upon request, shall provide information

that they have available to assist in preparing this description. The description of archaeologically sensitive areas shall not be required to be included in a contingency plan until it is reviewed and updated pursuant to subsection (9) of this section;

(h) State the means of protecting and mitigating effects on the environment, including fish, shellfish, marine mammals, and other wildlife, and ensure that implementation of the plan does not pose unacceptable risks to the public or the environment;

(i) Provide arrangements for the repositioning of oil spill containment and cleanup equipment and trained personnel at strategic locations from which they can be deployed to the spill site to promptly and properly remove the spilled oil;

(j) Provide arrangements for enlisting the use of qualified and trained cleanup personnel to implement the plan;

(k) Provide for disposal of recovered spilled oil in accordance with local, state, and federal laws;

(l) Until a spill prevention plan has been submitted pursuant to RCW 90.56.200, state the measures that have been taken to reduce the likelihood that a spill will occur, including but not limited to, design and operation of a facility, training of personnel, number of personnel, and backup systems designed to prevent a spill;

(m) State the amount and type of equipment available to respond to a spill, where the equipment is located, and the extent to which other contingency plans rely on the same equipment; and

(n) If the department has adopted rules permitting the use of dispersants, the circumstances, if any, and the manner for the application of the dispersants in conformance with the department's rules.

(2)(a) The following shall submit contingency plans to the department within six months after the department adopts rules establishing standards for contingency plans under subsection (1) of this section:

(i) Onshore facilities capable of storing one million gallons or more of oil; and

(ii) Offshore facilities.

(b) Contingency plans for all other onshore and offshore facilities shall be submitted to the department within eighteen months after the department has adopted rules under subsection (1) of this section. The department may adopt a schedule for submission of plans within the eighteen-month period.

(3)(a) The owner or operator of a facility shall submit the contingency plan for the facility.

(b) A person who has contracted with a facility to provide containment and cleanup services and who meets the standards established pursuant to RCW 90.56.240, may submit the plan for any facility for which the person is contractually obligated to provide services. Subject to conditions imposed by the department, the person may submit a single plan for more than one facility.

(4) A contingency plan prepared for an agency of the federal government or another state that satisfies the requirements of this section and rules adopted by the department may be accepted by the department as a contingency plan under this section. The department shall ensure that to the greatest extent possible, requirements for contingency plans under this section are consistent with the requirements for contingency plans under federal law.

(5) In reviewing the contingency plans required by this section, the department shall consider at least the following factors:

(a) The adequacy of containment and cleanup equipment, personnel, communications equipment, notification procedures and call down lists, response time, and logistical arrangements for coordination and implementation of response efforts to remove oil spills promptly and properly and to protect the environment;

(b) The nature and amount of vessel traffic within the area covered by the plan;

(c) The volume and type of oil being transported within the area covered by the plan;

(d) The existence of navigational hazards within the area covered by the plan;

(e) The history and circumstances surrounding prior spills of oil within the area covered by the plan;

(f) The sensitivity of fisheries, shellfish beds, and wildlife and other natural resources within the area covered by the plan;

(g) Relevant information on previous spills contained in on-scene coordinator reports prepared by the department; and

(h) The extent to which reasonable, cost-effective measures to prevent a likelihood that a spill will occur have been incorporated into the plan.

(6) The department shall approve a contingency plan only if it determines that the plan meets the requirements of this section and that, if implemented, the plan is capable, in terms of personnel, materials, and equipment, of removing oil promptly and properly and minimizing any damage to the environment.

(7) The approval of the contingency plan shall be valid for five years. Upon approval of a contingency plan, the department shall provide to the person submitting the plan a statement indicating that the plan has been approved, the facilities or vessels covered by the plan, and other information the department determines should be included.

(8) An owner or operator of a facility shall notify the department in writing immediately of any significant change of which it is aware affecting its contingency plan, including changes in any factor set forth in this section or in rules adopted by the department. The department may require the owner or operator to update a contingency plan as a result of these changes.

(9) The department by rule shall require contingency plans to be reviewed, updated, if necessary, and resubmitted to the department at least once every five years.

(10) Approval of a contingency plan by the department does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under this chapter or other state law. [2005 c 78 § 1; 2000 c 69 § 20; 1992 c 73 § 33; 1991 c 200 § 202; 1990 c 116 § 3. Formerly RCW 90.48.371.]

**Reviser's note:** Chapter 226, Laws of 2004 (Substitute Senate Bill No. 6641) directed that: "If specific funding for the purposes of sections 5 and 6 of this act, referencing sections 5 and 6 of this act by bill or chapter or section number, is not provided by June 30, 2004, in the omnibus transportation appropriations act, sections 5 and 6 of this act are null and void." Substitute Senate Bill No. 6641 was referenced by bill number in chapter 276, Laws of 2004, the omnibus operating appropriations act, in section 301(9), however neither the bill nor the chapter number were mentioned in chapter 229, Laws of 2004, the omnibus transportation appropriations act. Therefore, the chap-

ter 226, Laws of 2004 amendments to RCW 90.56.200 and 90.56.210, did not take effect.

**Effective dates—1992 c 73:** See RCW 82.23B.902.

**Severability—1990 c 116:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 116 § 35.]

**90.56.335 Vessel response account—Dedicated rescue tug. (Expires July 1, 2020.)**

**Expiration date—2003 c 264 § 3:** "Section 3 of this act expires July 1, 2020." [2005 c 295 § 10; 2003 c 264 § 9.]

**Chapter 90.58 RCW**

**SHORELINE MANAGEMENT ACT OF 1971**

Sections

90.58.185 Appeals involving single-family residences or involving penalties of fifteen thousand dollars or less—Composition of board—Rules to expedite appeals.

**90.58.185 Appeals involving single-family residences or involving penalties of fifteen thousand dollars or less—Composition of board—Rules to expedite appeals.** (1) In the case of an appeal involving a single-family residence or appurtenance to a single-family residence, including a dock or pier designed to serve a single-family residence, or of appeals involving a penalty of fifteen thousand dollars or less, the request for review may be heard by a panel of three board members, at least one and not more than two of whom shall be members of the pollution control hearings board. Two members of the three must agree to issue a final decision of the board.

(2) The board shall define by rule alternative processes to expedite appeals, including those involving a single-family residence or appurtenance to a single-family residence, including a dock or pier designed to serve a single-family residence, or involving a penalty of fifteen thousand dollars or less. These alternatives may include: Mediation, upon agreement of all parties; submission of testimony by affidavit; or other forms that may lead to less formal and faster resolution of appeals. [2005 c 34 § 1; 1994 c 253 § 2.]

**Chapter 90.64 RCW**

**DAIRY NUTRIENT MANAGEMENT**

(Formerly: Dairy waste management)

Sections

90.64.170 Livestock nutrient management program—Review of statutory authority—Recommendations for statutory changes—Prerequisite to administering federal program.  
90.64.180 Protocol for monitoring waters near dairies and CAFOs.  
90.64.190 Information subject to public records disclosure—Rules.

**90.64.170 Livestock nutrient management program—Review of statutory authority—Recommendations for statutory changes—Prerequisite to administering federal program.** (1) The legislature finds that a livestock nutrient management program is essential to protecting the quality of the waters of the state and ensuring a healthy and productive livestock industry.

(2) The departments of agriculture and ecology shall examine their current statutory authorities and provide the

legislature with recommendations for statutory changes to fully implement a livestock nutrient management program within the department of agriculture for concentrated animal feeding operations, animal feeding operations, and dairies, as authorized in RCW 90.48.260, 90.64.813, and 90.64.901. In developing recommended statutory changes, the departments shall consult with the livestock nutrient management program development and oversight committee created in RCW 90.64.813. The recommendations must be submitted to the legislature by the departments of agriculture and ecology prior to applying to the environmental protection agency for delegated authority to administer the CAFO portion of the national pollutant discharge elimination system permit program under the federal clean water act.

(3) For purposes of chapter 510, Laws of 2005, animal feeding operations (AFOs) and concentrated animal feeding operations (CAFOs) have the same meaning as defined in 40 C.F.R. 122.23.

(4) This section applies to all operations that meet the definition of an AFO. This section does not apply to true pasture and rangeland operations that do not meet the definition of AFO, however, such operations may have confinement areas that may qualify as an AFO. [2005 c 510 § 1.]

**90.64.180 Protocol for monitoring waters near dairies and CAFOs.** (1) The department of ecology shall develop and maintain a standard protocol for water quality monitoring of the waters of the state within the vicinity of dairies and CAFOs. The protocol shall include sampling methods and procedures and identify the water quality constituents to be monitored.

(2) The department of ecology shall submit the initial protocol developed according to this section to the appropriate committees of the legislature by December 1, 2005. [2005 c 510 § 3.]

**90.64.190 Information subject to public records disclosure—Rules.** This section applies to dairies, AFOs, and CAFOs, not required to apply for a permit. Information in plans, records, and reports obtained by state and local agencies from livestock producers under chapter 510, Laws of 2005 regarding (1) number of animals; (2) volume of livestock nutrients generated; (3) number of acres covered by the plan or used for land application of livestock nutrients; (4) livestock nutrients transferred to other persons; and (5) crop yields shall be disclosable in response to a request for public records under chapter 42.17 RCW only in ranges that provide meaningful information to the public while ensuring confidentiality of business information. The department of agriculture shall adopt rules to implement this section in consultation with affected state and local agencies. [2005 c 510 § 4.]

**Chapter 90.71 RCW**

**PUGET SOUND WATER QUALITY PROTECTION**

Sections

90.71.090 Repealed.

**90.71.090 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

### Chapter 90.80 RCW

#### WATER CONSERVANCY BOARDS

##### Sections

90.80.135 Application of public records act. (*Effective July 1, 2006.*)

**90.80.135 Application of public records act.** (*Effective July 1, 2006.*) (1) A board is subject to the requirements of chapter 42.56 RCW. Each board must establish and maintain records of its proceedings and determinations. While in the possession of the board, all such records must be made available for inspection and copies must be provided to the public on request under the provisions of chapter 42.56 RCW.

(2) Upon the conclusion of its business involving a water right transfer application, a board must promptly send the original copies of all records relating to that application to the department for recordkeeping. A board may keep a copy of the original documents. After the records are transferred to the department, the responsibility for making the records available under chapter 42.56 RCW is transferred to the department. [2005 c 274 § 366; 2001 c 237 § 18.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Finding—Intent—Severability—Effective date—2001 c 237:** See notes following RCW 90.82.040.

**Intent—2001 c 237:** See note following RCW 90.66.065.

### Chapter 90.86 RCW

#### JOINT LEGISLATIVE COMMITTEE ON WATER SUPPLY DURING DROUGHT

##### Sections

90.86.010 Joint legislative committee on water supply during drought.  
90.86.020 Membership.  
90.86.030 Meetings—Requests for information—Reports from department of ecology—Recommendations to the legislature.  
90.86.900 Effective date—2005 c 60.

**90.86.010 Joint legislative committee on water supply during drought.** The joint legislative committee on water supply during drought is created. [2005 c 60 § 1.]

**90.86.020 Membership.** The committee shall consist of four senators and four representatives who shall be selected biennially as follows:

(1) The president of the senate shall appoint four members from the senate to serve on the committee, including the chair of the committee responsible for water resource issues. Two members from each major political party must be appointed.

(2) The speaker of the house of representatives shall appoint four members from the house of representatives to serve on the committee, including the chair of the committee responsible for water resource issues. Two members from each major political party must be appointed.

(3) The committee shall elect a chair and a vice-chair. The chair shall be a member of the house of representatives in

[2005 RCW Supp—page 1096]

even-numbered years and a member of the senate in odd-numbered years.

(4) The presiding officer of the appropriate legislative chamber shall fill any vacancies occurring on the committee by appointment from the same political party as the departing member.

(5) Members shall serve until their successors are appointed as provided in this section, or until they are no longer members of the legislature, whichever is sooner. [2005 c 60 § 2.]

#### 90.86.030 Meetings—Requests for information—Reports from department of ecology—Recommendations to the legislature.

(1) The joint legislative committee on water supply during drought shall convene from time to time at the call of the chair when a drought conditions order under RCW 43.83B.405 is in effect, or when the chair determines, in consultation with the department of ecology, that it is likely that such an order will be issued within the next year.

(2) The committee may request and review information relating to water supply conditions in the state, and economic, environmental, and other impacts relating to decreased water supply being experienced or anticipated. The governor's executive water emergency committee, the department of ecology, the water supply advisory committee, and other state agencies with water management or related responsibilities shall cooperate in responding to requests from the committee.

(3) During drought conditions in which an order issued under RCW 43.83B.405 is in effect, the department of ecology shall provide to the committee no less than monthly a report describing drought response activities of the department and other state and federal agencies participating on the water supply availability committee. The report shall include information regarding applications for, and approvals and denials of emergency water withdrawals and temporary changes or transfers of, water rights under RCW 43.83B.410.

(4) The committee from time to time shall make recommendations to the senate and house of representatives on budgetary and legislative actions that will improve the state's drought response programs and planning. [2005 c 60 § 3.]

**90.86.900 Effective date—2005 c 60.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 14, 2005]. [2005 c 60 § 5.]

### Chapter 90.88 RCW

#### AQUATIC REHABILITATION ZONES

##### Sections

90.88.005 Findings—Intent.  
90.88.010 Designation by the legislature—Zone one established.  
90.88.020 Hood Canal rehabilitation program—State lead agency—Local management board.  
90.88.030 Aquatic zone one—Roles of Hood Canal coordinating council and Puget Sound action team—Participation of governments and nonprofit organizations—Project funding, priorities, and criteria—Reports.  
90.88.040 Forest practices—Nonapplicability of chapter.  
90.88.050 Scope of chapter.  
90.88.900 Effective date—2005 c 478.

90.88.901 Regulatory authority not conferred.  
 90.88.902 Activities subject to appropriations.  
 90.88.903 Effective date—2005 c 479.

**90.88.005 Findings—Intent.** (1) The legislature finds that Hood Canal is a precious aquatic resource of our state. The legislature finds that Hood Canal is a rich source of recreation, fishing, aquaculture, and aesthetic enjoyment for the citizens of this state. The legislature also finds that Hood Canal has great cultural significance for the tribes in the Hood Canal area. The legislature therefore recognizes Hood Canal's substantial environmental, cultural, economic, recreational, and aesthetic importance in this state.

(2) The legislature finds that Hood Canal is a marine water of the state at significant risk. The legislature finds that Hood Canal has a "dead zone" related to low-dissolved oxygen concentrations, a condition that has recurred for many years. The legislature also finds that this problem and various contributors to the problem were documented in the May 2004 *Preliminary Assessment and Corrective Action Plan* published by the state Puget Sound action team and the Hood Canal coordinating council.

(3) The legislature further finds that significant research, monitoring, and study efforts are currently occurring regarding Hood Canal's low-dissolved oxygen concentrations. The legislature also finds numerous public, private, and community organizations are working to provide public education and identify potential solutions. The legislature recognizes that, while some information and research is now available and some potential solutions have been identified, more research and analysis is needed to fully develop a program to address Hood Canal's low-dissolved oxygen concentrations.

(4) The legislature finds a need exists for the state to take action to address Hood Canal's low-dissolved oxygen concentrations. The legislature also finds establishing an aquatic rehabilitation zone for Hood Canal will serve as a statutory framework for future regulations and programs directed at recovery of this important aquatic resource.

(5) The legislature therefore intends to establish an aquatic rehabilitation zone for Hood Canal as the framework to address Hood Canal's low-dissolved oxygen concentrations. The legislature also intends to incorporate provisions in the new statutory chapter creating the designation as solutions are identified regarding this problem. [2005 c 478 § 1.]

**90.88.010 Designation by the legislature—Zone one established.** (1) Aquatic rehabilitation zones may be designated by the legislature for areas whose surrounding marine water bodies pose serious environmental or public health concerns.

(2) Aquatic rehabilitation zone one is established. Aquatic rehabilitation zone one includes all watersheds that drain to Hood Canal south of a line projected from Tala Point in Jefferson county to Foulweather Bluff in Kitsap county. [2005 c 478 § 2.]

**90.88.020 Hood Canal rehabilitation program—State lead agency—Local management board.** (1) The development of a program for rehabilitation of Hood Canal is authorized in Jefferson, Kitsap, and Mason counties within the aquatic rehabilitation zone one.

(2) The Puget Sound action team is designated as the state lead agency for the rehabilitation program authorized in this section.

(3) The Hood Canal coordinating council is designated as the local management board for the rehabilitation program authorized in this section.

(4) The Puget Sound action team and the Hood Canal coordinating council must each approve and must comanage projects under the rehabilitation program authorized in this section. [2005 c 479 § 2.]

**Findings—2005 c 479:** "(1) The legislature finds that Hood Canal is a precious aquatic resource of our state. The legislature finds that Hood Canal is a rich source of recreation, fishing, aquaculture, and aesthetic enjoyment for the citizens of this state. The legislature also finds that Hood Canal has great cultural significance for the tribes in the Hood Canal area. The legislature therefore recognizes Hood Canal's substantial environmental, cultural, economic, recreational, and aesthetic importance to Washington.

(2) The legislature finds that Hood Canal is a marine water of the state at significant risk. The legislature finds that Hood Canal has a "dead zone" related to low-dissolved oxygen concentrations, a condition that has recurred for many years. The legislature also finds this problem and various contributors to the problem were documented in the May 2004 *Preliminary Assessment and Corrective Action Plan* published by the state Puget Sound action team and the Hood Canal coordinating council.

(3) The legislature further finds that significant research, monitoring, and study efforts are currently occurring regarding Hood Canal's low-dissolved oxygen concentrations. The legislature recognizes that federal, state, tribal, and local governments and other organizations and entities are coordinating research, monitoring, and modeling efforts through the Hood Canal low-dissolved oxygen program. The legislature also recognizes that these entities and others are continuing individual efforts to study and identify potential solutions for Hood Canal's low-dissolved oxygen concentrations. The legislature also recognizes numerous public, private, and community organizations are working to provide public education regarding Hood Canal's low-dissolved oxygen concentrations. The legislature recognizes and encourages the continuation of these efforts.

(4) The legislature finds a need exists for the state to provide additional resources to address Hood Canal's low-dissolved oxygen concentrations. The legislature also finds a need exists to designate the state and local entities to develop, coordinate, and administer a Hood Canal rehabilitation program and funding." [2005 c 479 § 1.]

**Forest practices—Nonapplicability of act—2005 c 479:** "This act does not apply to forest practices regulated under chapter 76.09 RCW." [2005 c 479 § 4.]

**90.88.030 Aquatic zone one—Roles of Hood Canal coordinating council and Puget Sound action team—Participation of governments and nonprofit organizations—Project funding, priorities, and criteria—Reports.** (1) The Hood Canal coordinating council shall serve as the local management board for aquatic rehabilitation zone one. The local management board shall coordinate local government efforts with respect to the program authorized according to RCW 90.88.020. In the Hood Canal area, the Hood Canal coordinating council also shall:

(a) Serve as the lead entity and the regional recovery organization for the purposes of chapter 77.85 RCW for Hood Canal summer chum; and

(b) Assist in coordinating activities under chapter 90.82 RCW.

(2) When developing and implementing the program authorized in RCW 90.88.020 and when establishing funding criteria according to subsection (7) of this section, the Puget Sound action team and the local management board shall solicit participation by federal, tribal, state, and local agencies and universities and nonprofit organizations with expertise in areas related to program activities. The local management

ment board may include state and federal agency representatives, or additional persons, as nonvoting management board members or may receive technical assistance and advice from them in other venues. The local management board also may appoint technical advisory committees as needed.

(3) The local management board and the Puget Sound action team shall participate in the development of the program authorized under RCW 90.88.020.

(4) The local management board and its participating local and tribal governments shall assess concepts for a regional governance structure and shall submit a report regarding the findings and recommendations to the appropriate committees of the legislature by December 1, 2007.

(5) Any of the local management board's participating counties and tribes, any federal, tribal, state, or local agencies, or any universities or nonprofit organizations may continue individual efforts and activities for rehabilitation of Hood Canal. Nothing in this section limits the authority of units of local government to enter into interlocal agreements under chapter 39.34 RCW or any other provision of law.

(6) The local management board may not exercise authority over land or water within the individual counties or otherwise preempt the authority of any units of local government.

(7) The local management board and the Puget Sound action team each may receive and disburse funding for projects, studies, and activities related to Hood Canal's low-dissolved oxygen concentrations. The Puget Sound action team and the local management board shall jointly coordinate a process to prioritize projects, studies, and activities for which the Puget Sound action team receives state funding specifically allocated for Hood Canal corrective actions to implement this section. The local management board and the Puget Sound action team shall establish criteria for funding these projects, studies, and activities based upon their likely value in addressing and resolving Hood Canal's low-dissolved oxygen concentrations. Final approval for projects under this section requires the consent of both the Puget Sound action team and the local management board. Projects under this section must be comanaged by the Puget Sound action team and the local management board. Nothing in this section prohibits any federal, tribal, state, or local agencies, universities, or nonprofit organizations from receiving funding for specific projects that may assist in the rehabilitation of Hood Canal.

(8) The local management board may hire and fire staff, including an executive director, enter into contracts, accept grants and other moneys, disburse funds, make recommendations to local governments about potential regulations and the development of programs and incentives upon request, pay all necessary expenses, and choose a fiduciary agent.

(9) The local management board shall report its progress on a quarterly basis to the legislative bodies of the participating counties and tribes and the participating state agencies. The local management board also shall submit an annual report describing its efforts and successes in implementing the program established according to RCW 90.88.020 to the appropriate committees of the legislature. [2005 c 479 § 3.]

**Findings—Forest practices—Nonapplicability of act—2005 c 479:**  
See notes following RCW 90.88.020.

[2005 RCW Supp—page 1098]

**90.88.040 Forest practices—Nonapplicability of chapter.** This chapter does not apply to forest practices regulated under chapter 76.09 RCW. [2005 c 478 § 3.]

**90.88.050 Scope of chapter.** This chapter does not alter, diminish, or expand the jurisdictional authorities in other statutes or affect the application of other statutory requirements or programs that do not specifically refer to aquatic rehabilitation zones. [2005 c 478 § 4.]

**90.88.900 Effective date—2005 c 478.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 16, 2005]. [2005 c 478 § 6.]

**90.88.901 Regulatory authority not conferred.** Nothing in chapter 479, Laws of 2005 provides any regulatory authority to the Puget Sound action team or the Hood Canal coordinating council. [2005 c 479 § 5.]

**90.88.902 Activities subject to appropriations.** The activities of the Puget Sound action team and the Hood Canal coordinating council required by chapter 479, Laws of 2005 are subject to the availability of amounts appropriated for this specific purpose. [2005 c 479 § 6.]

**90.88.903 Effective date—2005 c 479.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 16, 2005]. [2005 c 479 § 8.]