
HOUSE BILL 1349

State of Washington

58th Legislature

2003 Regular Session

By Representatives Flannigan and Moeller; by request of Office of the Code Reviser

Read first time 01/23/2003. Referred to Committee on Judiciary.

1 AN ACT Relating to making technical corrections to the Revised Code
2 of Washington under the authority of RCW 1.08.025; and amending RCW
3 3.66.060, 4.24.210, 7.84.020, 7.84.040, 9.41.098, 10.105.900,
4 15.85.020, 15.85.060, 16.36.005, 17.26.020, 19.27.490, 19.158.020,
5 34.05.328, 35.21.404, 35.63.230, 35A.21.290, 35A.63.250, 35A.69.010,
6 36.70.982, 36.70.992, 36.70A.460, 43.21B.005, 43.21C.0382, 43.21C.260,
7 43.21K.010, 43.52.440, 43.101.010, 69.04.930, 69.04.934, 70.105D.090,
8 72.63.040, 76.09.030, 76.09.063, 76.09.350, 76.09.910, 76.13.100,
9 76.42.060, 77.15.310, 78.44.050, 79.76.060, 79.90.150, 79.94.390,
10 79.96.080, 79A.25.240, 79A.60.010, 82.27.070, 89.08.470, 90.03.247, and
11 90.58.147.

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

13 **Sec. 1.** RCW 3.66.060 and 2000 c 111 s 3 are each amended to read
14 as follows:

15 The district court shall have jurisdiction: (1) Concurrent with
16 the superior court of all misdemeanors and gross misdemeanors committed
17 in their respective counties and of all violations of city ordinances.
18 It shall in no event impose a greater punishment than a fine of five

1 thousand dollars, or imprisonment for one year in the county or city
2 jail as the case may be, or both such fine and imprisonment, unless
3 otherwise expressly provided by statute. It may suspend and revoke
4 vehicle operators' licenses in the cases provided by law; (2) to sit as
5 a committing magistrate and conduct preliminary hearings in cases
6 provided by law; (3) concurrent with the superior court of a proceeding
7 to keep the peace in their respective counties; (4) concurrent with the
8 superior court of all violations under Title ((75)) 77 RCW; (5) to hear
9 and determine traffic infractions under chapter 46.63 RCW; and (6) to
10 take recognizance, approve bail, and arraign defendants held within its
11 jurisdiction on warrants issued by other courts of limited jurisdiction
12 when those courts are participating in the program established under
13 RCW 2.56.160.

14 EXPLANATORY NOTE

15 Title 75 RCW was recodified, repealed, and/or decodified in its
16 entirety by 2000 c 107.

17 **Sec. 2.** RCW 4.24.210 and 1997 c 26 s 1 are each amended to read as
18 follows:

19 (1) Except as otherwise provided in subsection (3) of this section,
20 any public or private landowners or others in lawful possession and
21 control of any lands whether designated resource, rural, or urban, or
22 water areas or channels and lands adjacent to such areas or channels,
23 who allow members of the public to use them for the purposes of outdoor
24 recreation, which term includes, but is not limited to, the cutting,
25 gathering, and removing of firewood by private persons for their
26 personal use without purchasing the firewood from the landowner,
27 hunting, fishing, camping, picnicking, swimming, hiking, bicycling,
28 skateboarding or other nonmotorized wheel-based activities,
29 hanggliding, paragliding, the riding of horses or other animals, clam
30 digging, pleasure driving of off-road vehicles, snowmobiles, and other
31 vehicles, boating, nature study, winter or water sports, viewing or
32 enjoying historical, archaeological, scenic, or scientific sites,
33 without charging a fee of any kind therefor, shall not be liable for
34 unintentional injuries to such users.

1 (2) Except as otherwise provided in subsection (3) of this section,
2 any public or private landowner or others in lawful possession and
3 control of any lands whether rural or urban, or water areas or channels
4 and lands adjacent to such areas or channels, who offer or allow such
5 land to be used for purposes of a fish or wildlife cooperative project,
6 or allow access to such land for cleanup of litter or other solid
7 waste, shall not be liable for unintentional injuries to any volunteer
8 group or to any other users.

9 (3) Any public or private landowner, or others in lawful possession
10 and control of the land, may charge an administrative fee of up to
11 twenty-five dollars for the cutting, gathering, and removing of
12 firewood from the land. Nothing in this section shall prevent the
13 liability of such a landowner or others in lawful possession and
14 control for injuries sustained to users by reason of a known dangerous
15 artificial latent condition for which warning signs have not been
16 conspicuously posted. Nothing in RCW 4.24.200 and 4.24.210 limits or
17 expands in any way the doctrine of attractive nuisance. Usage by
18 members of the public, volunteer groups, or other users is permissive
19 and does not support any claim of adverse possession.

20 (4) For purposes of this section, a license or permit issued for
21 statewide use under authority of chapter ((43.51)) 79A.05 RCW((~~7~~-Title
22 ~~75~~)) or Title 77 RCW is not a fee.

23 EXPLANATORY NOTE

24 Chapter 43.51 RCW was recodified as chapter 79A.05 RCW pursuant
25 to 1999 c 249 § 1601.
26 Title 75 RCW was recodified, repealed, and/or decodified in its
27 entirety by 2000 c 107.

28 **Sec. 3.** RCW 7.84.020 and 1999 c 249 s 503 are each amended to read
29 as follows:

30 Unless the context clearly requires otherwise, the definition in
31 this section applies throughout this chapter.

32 "Infraction" means an offense which, by the terms of Title ((~~75~~))
33 76, 77, 79, or 79A RCW or chapter 43.30 RCW and rules adopted under
34 these titles and chapters, is declared not to be a criminal offense and
35 is subject to the provisions of this chapter.

1 EXPLANATORY NOTE

2 Title 75 RCW was recodified, repealed, and/or decodified in its
3 entirety by 2000 c 107.

4 **Sec. 4.** RCW 7.84.040 and 1987 c 380 s 4 are each amended to read
5 as follows:

6 (1) Infraction proceedings may be heard and determined by a
7 district court.

8 (2) Infraction proceedings shall be brought in the district court
9 district in which the infraction occurred. If an infraction takes
10 place in the offshore waters, as defined in RCW (~~75.08.011~~)
11 77.08.010, the infraction proceeding may be brought in any county
12 bordering on the Pacific Ocean.

13 EXPLANATORY NOTE

14 RCW 75.08.011 was repealed by 2000 c 107 § 125. RCW 77.08.010
15 has the same definition of "offshore waters" that appeared in
16 RCW 75.08.011.

17 **Sec. 5.** RCW 9.41.098 and 1996 c 295 s 10 are each amended to read
18 as follows:

19 (1) The superior courts and the courts of limited jurisdiction of
20 the state may order forfeiture of a firearm which is proven to be:

21 (a) Found concealed on a person not authorized by RCW 9.41.060 or
22 9.41.070 to carry a concealed pistol: PROVIDED, That it is an absolute
23 defense to forfeiture if the person possessed a valid Washington
24 concealed pistol license within the preceding two years and has not
25 become ineligible for a concealed pistol license in the interim.
26 Before the firearm may be returned, the person must pay the past due
27 renewal fee and the current renewal fee;

28 (b) Commercially sold to any person without an application as
29 required by RCW 9.41.090;

30 (c) In the possession of a person prohibited from possessing the
31 firearm under RCW 9.41.040 or 9.41.045;

1 (d) In the possession or under the control of a person at the time
2 the person committed or was arrested for committing a felony or
3 committing a nonfelony crime in which a firearm was used or displayed;

4 (e) In the possession of a person who is in any place in which a
5 concealed pistol license is required, and who is under the influence of
6 any drug or under the influence of intoxicating liquor, as defined in
7 chapter 46.61 RCW;

8 (f) In the possession of a person free on bail or personal
9 recognizance pending trial, appeal, or sentencing for a felony or for
10 a nonfelony crime in which a firearm was used or displayed, except that
11 violations of Title 77 RCW shall not result in forfeiture under this
12 section;

13 (g) In the possession of a person found to have been mentally
14 incompetent while in possession of a firearm when apprehended or who is
15 thereafter committed pursuant to chapter 10.77 or 71.05 RCW;

16 (h) Used or displayed by a person in the violation of a proper
17 written order of a court of general jurisdiction; or

18 (i) Used in the commission of a felony or of a nonfelony crime in
19 which a firearm was used or displayed.

20 (2) Upon order of forfeiture, the court in its discretion may order
21 destruction of any forfeited firearm. A court may temporarily retain
22 forfeited firearms needed for evidence.

23 (a) Except as provided in (b), (c), and (d) of this subsection,
24 firearms that are: (i) Judicially forfeited and no longer needed for
25 evidence; or (ii) forfeited due to a failure to make a claim under RCW
26 63.32.010 or 63.40.010; may be disposed of in any manner determined by
27 the local legislative authority. Any proceeds of an auction or trade
28 may be retained by the legislative authority. This subsection (2)(a)
29 applies only to firearms that come into the possession of the law
30 enforcement agency after June 30, 1993.

31 By midnight, June 30, 1993, every law enforcement agency shall
32 prepare an inventory, under oath, of every firearm that has been
33 judicially forfeited, has been seized and may be subject to judicial
34 forfeiture, or that has been, or may be, forfeited due to a failure to
35 make a claim under RCW 63.32.010 or 63.40.010.

36 (b) Except as provided in (c) of this subsection, of the
37 inventoried firearms a law enforcement agency shall destroy illegal

1 firearms, may retain a maximum of ten percent of legal forfeited
2 firearms for agency use, and shall either:

3 (i) Comply with the provisions for the auction of firearms in RCW
4 9.41.098 that were in effect immediately preceding May 7, 1993; or

5 (ii) Trade, auction, or arrange for the auction of, rifles and
6 shotguns. In addition, the law enforcement agency shall either trade,
7 auction, or arrange for the auction of, short firearms, or shall pay a
8 fee of twenty-five dollars to the state treasurer for every short
9 firearm neither auctioned nor traded, to a maximum of fifty thousand
10 dollars. The fees shall be accompanied by an inventory, under oath, of
11 every short firearm listed in the inventory required by (a) of this
12 subsection, that has been neither traded nor auctioned. The state
13 treasurer shall credit the fees to the firearms range account
14 established in RCW (~~(77.12.720)~~) 79A.25.210. All trades or auctions of
15 firearms under this subsection shall be to licensed dealers. Proceeds
16 of any auction less costs, including actual costs of storage and sale,
17 shall be forwarded to the firearms range account established in RCW
18 (~~(77.12.720)~~) 79A.25.210.

19 (c) Antique firearms and firearms recognized as curios, relics, and
20 firearms of particular historical significance by the United States
21 treasury department bureau of alcohol, tobacco, and firearms are exempt
22 from destruction and shall be disposed of by auction or trade to
23 licensed dealers.

24 (d) Firearms in the possession of the Washington state patrol on or
25 after May 7, 1993, that are judicially forfeited and no longer needed
26 for evidence, or forfeited due to a failure to make a claim under RCW
27 63.35.020, must be disposed of as follows: (i) Firearms illegal for
28 any person to possess must be destroyed; (ii) the Washington state
29 patrol may retain a maximum of ten percent of legal firearms for agency
30 use; and (iii) all other legal firearms must be auctioned or traded to
31 licensed dealers. The Washington state patrol may retain any proceeds
32 of an auction or trade.

33 (3) The court shall order the firearm returned to the owner upon a
34 showing that there is no probable cause to believe a violation of
35 subsection (1) of this section existed or the firearm was stolen from
36 the owner or the owner neither had knowledge of nor consented to the
37 act or omission involving the firearm which resulted in its forfeiture.

1 (4) A law enforcement officer of the state or of any county or
2 municipality may confiscate a firearm found to be in the possession of
3 a person under circumstances specified in subsection (1) of this
4 section. After confiscation, the firearm shall not be surrendered
5 except: (a) To the prosecuting attorney for use in subsequent legal
6 proceedings; (b) for disposition according to an order of a court
7 having jurisdiction as provided in subsection (1) of this section; or
8 (c) to the owner if the proceedings are dismissed or as directed in
9 subsection (3) of this section.

10 EXPLANATORY NOTE

11 RCW 77.12.720 was recodified as RCW 79A.25.210 pursuant to 1999
12 c 249 § 1601.

13 **Sec. 6.** RCW 10.105.900 and 1994 c 218 s 18 are each amended to
14 read as follows:

15 This chapter does not apply to property subject to forfeiture under
16 chapter 66.32 RCW, RCW 69.50.505, 9.41.098, 9.46.231, 9A.82.100,
17 9A.83.030, 7.48.090, or (~~77.12.101~~) 77.15.070.

18 EXPLANATORY NOTE

19 RCW 77.12.101 was repealed by 2000 c 107 § 273. RCW 77.15.070,
20 amended by 2000 c 107 § 231, is now the fish and wildlife
21 forfeiture statute.

22 **Sec. 7.** RCW 15.85.020 and 1989 c 176 s 3 are each amended to read
23 as follows:

24 Unless the context clearly requires otherwise, the definitions in
25 this section apply throughout this chapter.

26 (1) "Aquaculture" means the process of growing, farming, or
27 cultivating private sector cultured aquatic products in marine or
28 freshwaters and includes management by an aquatic farmer.

29 (2) "Aquatic farmer" is a private sector person who commercially
30 farms and manages the cultivating of private sector cultured aquatic

1 products on the person's own land or on land in which the person has a
2 present right of possession.

3 (3) "Private sector cultured aquatic products" are native,
4 nonnative, or hybrids of marine or freshwater plants and animals that
5 are propagated, farmed, or cultivated on aquatic farms under the
6 supervision and management of a private sector aquatic farmer or that
7 are naturally set on aquatic farms which at the time of setting are
8 under the active supervision and management of a private sector aquatic
9 farmer. When produced under such supervision and management, private
10 sector cultured aquatic products include, but are not limited to, the
11 following plants and animals:

| 12 | Scientific Name | Common Name |
|----|------------------------|------------------------------|
| 13 | Enteromorpha | green nori |
| 14 | Monostroma | awo-nori |
| 15 | Ulva | sea lettuce |
| 16 | Laminaria | konbu |
| 17 | Nereocystis | bull kelp |
| 18 | Porphyra | nori |
| 19 | Iridaea | |
| 20 | Haliotis | abalone |
| 21 | Zhlamys | pink scallop |
| 22 | Hinnites | rock scallop |
| 23 | Tatinopecten | Japanese or weathervane |
| 24 | | scallop |
| 25 | Protothaca | native littleneck clam |
| 26 | Tapes | manila clam |
| 27 | Saxidomus | butter clam |
| 28 | Mytilus | mussels |
| 29 | Crassostrea | Pacific oysters |
| 30 | Ostrea | Olympia and European oysters |
| 31 | Pacifasticus | crayfish |
| 32 | Macrobrachium | freshwater prawn |
| 33 | Salmo and Salvelinus | trout, char, and Atlantic |
| 34 | | salmon |
| 35 | Oncorhynchus | salmon |

1 Ictalurus catfish
2 Cyprinus carp
3 Acipenseridae Sturgeon

4 Private sector cultured aquatic products do not include herring
5 spawn on kelp and other products harvested under a herring spawn on
6 kelp permit issued in accordance with RCW (~~75.28.245~~) 77.70.210.

7 (4) "Department" means the department of agriculture.

8 (5) "Director" means the director of agriculture.

9 EXPLANATORY NOTE

10 RCW 75.28.245 was recodified as RCW 75.30.270 pursuant to 1993
11 c 340 § 54, effective January 1, 1994. RCW 75.30.270 was
12 subsequently recodified as RCW 77.70.210 pursuant to 2000 c 107
13 § 132.

14 **Sec. 8.** RCW 15.85.060 and 1994 c 264 s 5 are each amended to read
15 as follows:

16 The director shall establish identification requirements for
17 private sector cultured aquatic products to the extent that identifying
18 the source and quantity of the products is necessary to permit the
19 department of fish and wildlife to administer and enforce (~~Titles 75~~
20 ~~and~~) Title 77 RCW effectively. The rules shall apply only to those
21 private sector cultured aquatic products the transportation, sale,
22 processing, or other possession of which would otherwise be required to
23 be licensed under Title (~~75 or~~) 77 RCW if they were not cultivated by
24 aquatic farmers. The rules shall apply to the transportation or
25 possession of such products on land other than aquatic lands and may
26 require that they be: (1) Placed in labeled containers or accompanied
27 by bills of lading or sale or similar documents identifying the name
28 and address of the producer of the products and the quantity of the
29 products governed by the documents; or (2) both labeled and accompanied
30 by such documents.

31 The director shall consult with the director of fish and wildlife
32 to ensure that such rules enable the department of fish and wildlife to
33 enforce the programs administered under those titles. If rules adopted

1 under chapter 69.30 RCW satisfy the identification required under this
2 section for shellfish, the director shall not establish different
3 shellfish identification requirements under this section.

4 EXPLANATORY NOTE

5 Title 75 RCW was recodified, repealed, and/or decodified in its
6 entirety by 2000 c 107.

7 **Sec. 9.** RCW 16.36.005 and 1998 c 8 s 1 are each amended to read as
8 follows:

9 As used in this chapter:

10 "Animal" means all members of the animal kingdom except humans,
11 fish, and insects. However, "animal" does not mean noncaptive wildlife
12 as defined in RCW 77.08.010(16), except as used in RCW 16.36.050(1) and
13 16.36.080 (1), (2), (3), and (5).

14 "Animal reproductive product" means sperm, ova, fertilized ova, and
15 embryos from animals.

16 "Farm-raised fish" means fish raised by aquaculture as defined in
17 RCW 15.85.020. Farm-raised fish are considered to be a part of animal
18 agriculture; however, disease inspection, prevention, and control
19 programs and related activities for farm-raised fish are administered
20 by the department of fish and wildlife under chapter ((75.58)) 77.115
21 RCW.

22 "Communicable disease" means a disease due to a specific infectious
23 agent or its toxic products transmitted from an infected person,
24 animal, or inanimate reservoir to a susceptible host, either directly
25 or indirectly through an intermediate plant or animal host, vector, or
26 the environment.

27 "Contagious disease" means a communicable disease that is capable
28 of being easily transmitted from one animal to another animal or a
29 human.

30 "Director" means the director of agriculture of the state of
31 Washington or his or her authorized representative.

32 "Department" means the department of agriculture of the state of
33 Washington.

34 "Deputized state veterinarian" means a Washington state licensed

1 and accredited veterinarian appointed and compensated by the director
2 according to state law and department policies.

3 "Garbage" means the solid animal and vegetable waste and offal
4 together with the natural moisture content resulting from the handling,
5 preparation, or consumption of foods in houses, restaurants, hotels,
6 kitchens, markets, meat shops, packing houses and similar
7 establishments or any other food waste containing meat or meat
8 products.

9 "Herd or flock plan" means a written management agreement between
10 the owner of a herd or flock and the state veterinarian, with possible
11 input from a private accredited veterinarian designated by the owner
12 and the area veterinarian-in-charge of the United States department of
13 agriculture, animal and plant health inspection service, veterinary
14 services in which each participant agrees to undertake actions
15 specified in the herd or flock plan to control the spread of
16 infectious, contagious, or communicable disease within and from an
17 infected herd or flock and to work toward eradicating the disease in
18 the infected herd or flock.

19 "Hold order" means an order by the director to the owner or agent
20 of the owner of animals or animal reproductive products which restricts
21 the animals or products to a designated holding location pending an
22 investigation by the director of the disease, disease exposure, well-
23 being, movement, or import status of the animals or animal reproductive
24 products.

25 "Infectious agent" means an organism including viruses, rickettsia,
26 bacteria, fungi, protozoa, helminthes, or prions that is capable of
27 producing infection or infectious disease.

28 "Infectious disease" means a clinical disease of (~~man~~) humans or
29 animals resulting from an infection with an infectious agent that may
30 or may not be communicable or contagious.

31 "Livestock" means horses, mules, donkeys, cattle, bison, sheep,
32 goats, swine, rabbits, llamas, alpacas, ratites, poultry, waterfowl,
33 game birds, and other species so designated by statute. "Livestock"
34 does not mean free ranging wildlife as defined in Title 77 RCW.

35 "Person" means a person, persons, firm, or corporation.

36 "Quarantine" means the placing and restraining of any animal or its
37 reproductive products by the owner or agent of the owner within a

1 certain described and designated enclosure or area within this state,
2 or the restraining of any animal or its reproductive products from
3 entering this state, as may be directed in an order by the director.

4 "Reportable disease" means a disease designated by rule by the
5 director as reportable to the department by veterinarians and others
6 made responsible to report by statute.

7 "Veterinary biologic" means any virus, serum, toxin, and analogous
8 product of natural or synthetic origin, or product prepared from any
9 type of genetic engineering, such as diagnostics, antitoxins, vaccines,
10 live microorganisms, killed microorganisms, and the antigenic or
11 immunizing components intended for use in the diagnosis, treatment, or
12 prevention of diseases in animals.

13 EXPLANATORY NOTE

14 Chapter 75.58 RCW was recodified as chapter 77.115 RCW by 2000
15 c 107. The section is also made gender neutral.

16 **Sec. 10.** RCW 17.26.020 and 1995 c 255 s 12 are each amended to
17 read as follows:

18 (1) Facilitating the control of spartina and purple loosestrife is
19 a high priority for all state agencies.

20 (2) The department of natural resources is responsible for spartina
21 and purple loosestrife control on state-owned aquatic lands managed by
22 the department of natural resources.

23 (3) The department of fish and wildlife is responsible for spartina
24 and purple loosestrife control on state-owned aquatic lands managed by
25 the department of fish and wildlife.

26 (4) The state parks and recreation commission is responsible for
27 spartina and purple loosestrife control on state-owned aquatic lands
28 managed by the state parks and recreation commission.

29 (5) Unless the context clearly requires otherwise, the definitions
30 in this subsection apply throughout this chapter, RCW 90.48.020,
31 90.58.030, and (~~75.20.108~~) 77.55.150:

32 (a) "Spartina" means *Spartina alterniflora*, *Spartina anglica*,
33 *Spartina x townsendii*, and *Spartina patens*.

34 (b) "Purple loosestrife" means *Lythrum salicaria* and *Lythrum*
35 *virgatum*.

1 (c) "Aquatic noxious weed" means an aquatic weed on the state
2 noxious weed list adopted under RCW 17.10.080.

3 EXPLANATORY NOTE

4 RCW 75.20.108 was recodified as RCW 77.55.150 pursuant to 2000
5 c 107 § 129.

6 **Sec. 11.** RCW 19.27.490 and 1998 c 249 s 14 are each amended to
7 read as follows:

8 A fish habitat enhancement project meeting the criteria of RCW
9 (~~(75.20.350(1))~~) 77.55.290(1) is not subject to grading permits,
10 inspections, or fees and shall be reviewed according to the provisions
11 of RCW (~~(75.20.350)~~) 77.55.290.

12 EXPLANATORY NOTE

13 RCW 75.20.350 was recodified as RCW 77.55.290 pursuant to 2000
14 c 107 § 129.

15 **Sec. 12.** RCW 19.158.020 and 1989 c 20 s 3 are each amended to read
16 as follows:

17 Unless the context requires otherwise, the definitions in this
18 section apply throughout this chapter.

19 (1) A "commercial telephone solicitor" is any person who engages in
20 commercial telephone solicitation, including service bureaus.

21 (2) "Commercial telephone solicitation" means:

22 (a) An unsolicited telephone call to a person initiated by a
23 salesperson and conversation for the purpose of inducing the person to
24 purchase or invest in property, goods, or services;

25 (b) Other communication with a person where:

26 (i) A free gift, award, or prize is offered to a purchaser who has
27 not previously purchased from the person initiating the communication;
28 and

29 (ii) A telephone call response is invited; and

30 (iii) The salesperson intends to complete a sale or enter into an
31 agreement to purchase during the course of the telephone call;

1 (c) Other communication with a person which misrepresents the
2 price, quality, or availability of property, goods, or services and
3 which invites a response by telephone or which is followed by a call to
4 the person by a salesperson;

5 (d) For purposes of this section, "other communication" means a
6 written or oral notification or advertisement transmitted through any
7 means.

8 (3) A "commercial telephone solicitor" does not include any of the
9 following:

10 (a) A person engaging in commercial telephone solicitation where:

11 (i) The solicitation is an isolated transaction and not done in the
12 course of a pattern of repeated transactions of like nature; or

13 (ii) Less than sixty percent of such person's prior year's sales
14 were made as a result of a commercial telephone solicitation as defined
15 in this chapter. Where more than sixty percent of a seller's prior
16 year's sales were made as a result of commercial telephone
17 solicitations, the service bureau contracting to provide commercial
18 telephone solicitation services to the seller shall be deemed a
19 commercial telephone solicitor.

20 (b) A person making calls for religious, charitable, political, or
21 other noncommercial purposes.

22 (c) A person soliciting business solely from purchasers who have
23 previously purchased from the business enterprise for which the person
24 is calling.

25 (d) A person soliciting:

26 (i) Without the intent to complete or obtain provisional acceptance
27 of a sale during the telephone solicitation; and

28 (ii) Who does not make the major sales presentation during the
29 telephone solicitation; and

30 (iii) Who only makes the major sales presentation or arranges for
31 the major sales presentation to be made at a later face-to-face meeting
32 between the salesperson and the purchaser.

33 (e) A person selling a security which is exempt from registration
34 under RCW 21.20.310;

35 (f) A person licensed under RCW 18.85.090 when the solicited
36 transaction is governed by that law;

37 (g) A person registered under RCW 18.27.060 when the solicited
38 transaction is governed by that law;

1 (h) A person licensed under RCW 48.17.150 when the solicited
2 transaction is governed by that law;

3 (i) Any person soliciting the sale of a franchise who is registered
4 under RCW 19.100.140;

5 (j) A person primarily soliciting the sale of a newspaper of
6 general circulation, a magazine or periodical, or contractual plans,
7 including book or record clubs: (i) Under which the seller provides
8 the consumer with a form which the consumer may use to instruct the
9 seller not to ship the offered merchandise; and (ii) which is regulated
10 by the federal trade commission trade regulation concerning "use of
11 negative option plans by sellers in commerce";

12 (k) Any supervised financial institution or parent, subsidiary, or
13 affiliate thereof. As used in this section, "supervised financial
14 institution" means any commercial bank, trust company, savings and loan
15 association, mutual savings banks, credit union, industrial loan
16 company, personal property broker, consumer finance lender, commercial
17 finance lender, or insurer, provided that the institution is subject to
18 supervision by an official or agency of this state or the United
19 States;

20 (l) A person soliciting the sale of a prearrangement funeral
21 service contract registered under RCW 18.39.240 and 18.39.260;

22 (m) A person licensed to enter into prearrangement contracts under
23 RCW 68.05.155 when acting subject to that license;

24 (n) A person soliciting the sale of services provided by a cable
25 television system operating under authority of a franchise or permit;

26 (o) A person or affiliate of a person whose business is regulated
27 by the utilities and transportation commission or the federal
28 communications commission;

29 (p) A person soliciting the sale of agricultural products, as
30 defined in RCW 20.01.010 where the purchaser is a business;

31 (q) An issuer or subsidiary of an issuer that has a class of
32 securities that is subject to section 12 of the securities exchange act
33 of 1934 (15 U.S.C. Sec. 781) and that is either registered or exempt
34 from registration under paragraph (A), (B), (C), (E), (F), (G), or (H)
35 of subsection (g) of that section;

36 (r) A commodity broker-dealer as defined in RCW 21.30.010 and
37 registered with the commodity futures trading commission;

38 (s) A business-to-business sale where:

- 1 (i) The purchaser business intends to resell the property or goods
2 purchased, or
- 3 (ii) The purchaser business intends to use the property or goods
4 purchased in a recycling, reuse, remanufacturing or manufacturing
5 process;
- 6 (t) A person licensed under RCW 19.16.110 when the solicited
7 transaction is governed by that law;
- 8 (u) A person soliciting the sale of food intended for immediate
9 delivery to and immediate consumption by the purchaser;
- 10 (v) A person soliciting the sale of food fish or shellfish when
11 that person is licensed pursuant to the provisions of Title ((75)) 77
12 RCW.
- 13 (4) "Purchaser" means a person who is solicited to become or does
14 become obligated to a commercial telephone solicitor.
- 15 (5) "Salesperson" means any individual employed, appointed, or
16 authorized by a commercial telephone solicitor, whether referred to by
17 the commercial telephone solicitor as an agent, representative, or
18 independent contractor, who attempts to solicit or solicits a sale on
19 behalf of the commercial telephone solicitor.
- 20 (6) "Service bureau" means a commercial telephone solicitor who
21 contracts with any person to provide commercial telephone solicitation
22 services.
- 23 (7) "Seller" means any person who contracts with any service bureau
24 to purchase commercial telephone solicitation services.
- 25 (8) "Person" includes any individual, firm, association,
26 corporation, partnership, joint venture, sole proprietorship, or any
27 other business entity.
- 28 (9) "Free gift, award, or prize" means a gratuity which the
29 purchaser believes of a value equal to or greater than the value of the
30 specific product, good, or service sought to be sold to the purchaser
31 by the seller.
- 32 (10) "Solicit" means to initiate contact with a purchaser for the
33 purpose of attempting to sell property, goods or services, where such
34 purchaser has expressed no previous interest in purchasing, investing
35 in, or obtaining information regarding the property, goods, or services
36 attempted to be sold.

EXPLANATORY NOTE

Title 75 RCW was recodified, repealed, and/or decodified in its entirety by 2000 c 107. Provisions concerning the licensing of persons to sell food fish or shellfish now appear in Title 77 RCW.

Sec. 13. RCW 34.05.328 and 1997 c 430 s 1 are each amended to read as follows:

(1) Before adopting a rule described in subsection (5) of this section, an agency shall:

(a) Clearly state in detail the general goals and specific objectives of the statute that the rule implements;

(b) Determine that the rule is needed to achieve the general goals and specific objectives stated under (a) of this subsection, and analyze alternatives to rule making and the consequences of not adopting the rule;

(c) Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented;

(d) Determine, after considering alternative versions of the rule and the analysis required under (b) and (c) of this subsection, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated under (a) of this subsection;

(e) Determine that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law;

(f) Determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law;

(g) Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by the following:

(i) A state statute that explicitly allows the agency to differ from federal standards; or

(ii) Substantial evidence that the difference is necessary to

1 achieve the general goals and specific objectives stated under (a) of
2 this subsection; and

3 (h) Coordinate the rule, to the maximum extent practicable, with
4 other federal, state, and local laws applicable to the same activity or
5 subject matter.

6 (2) In making its determinations pursuant to subsection (1)(b)
7 through (g) of this section, the agency shall place in the rule-making
8 file documentation of sufficient quantity and quality so as to persuade
9 a reasonable person that the determinations are justified.

10 (3) Before adopting rules described in subsection (5) of this
11 section, an agency shall place in the rule-making file a rule
12 implementation plan for rules filed under each adopting order. The
13 plan shall describe how the agency intends to:

14 (a) Implement and enforce the rule, including a description of the
15 resources the agency intends to use;

16 (b) Inform and educate affected persons about the rule;

17 (c) Promote and assist voluntary compliance; and

18 (d) Evaluate whether the rule achieves the purpose for which it was
19 adopted, including, to the maximum extent practicable, the use of
20 interim milestones to assess progress and the use of objectively
21 measurable outcomes.

22 (4) After adopting a rule described in subsection (5) of this
23 section regulating the same activity or subject matter as another
24 provision of federal or state law, an agency shall do all of the
25 following:

26 (a) Provide to the business assistance center a list citing by
27 reference the other federal and state laws that regulate the same
28 activity or subject matter;

29 (b) Coordinate implementation and enforcement of the rule with the
30 other federal and state entities regulating the same activity or
31 subject matter by making every effort to do one or more of the
32 following:

33 (i) Deferring to the other entity;

34 (ii) Designating a lead agency; or

35 (iii) Entering into an agreement with the other entities specifying
36 how the agency and entities will coordinate implementation and
37 enforcement.

1 If the agency is unable to comply with this subsection (4)(b), the
2 agency shall report to the legislature pursuant to (c) of this
3 subsection;

4 (c) Report to the joint administrative rules review committee:

5 (i) The existence of any overlap or duplication of other federal or
6 state laws, any differences from federal law, and any known overlap,
7 duplication, or conflict with local laws; and

8 (ii) Make recommendations for any legislation that may be necessary
9 to eliminate or mitigate any adverse effects of such overlap,
10 duplication, or difference.

11 (5)(a) Except as provided in (b) of this subsection, this section
12 applies to:

13 (i) Significant legislative rules of the departments of ecology,
14 labor and industries, health, revenue, social and health services, and
15 natural resources, the employment security department, the forest
16 practices board, the office of the insurance commissioner, and to the
17 legislative rules of the department of fish and wildlife implementing
18 chapter ((75.20)) 77.55 RCW; and

19 (ii) Any rule of any agency, if this section is voluntarily made
20 applicable to the rule by the agency, or is made applicable to the rule
21 by a majority vote of the joint administrative rules review committee
22 within forty-five days of receiving the notice of proposed rule making
23 under RCW 34.05.320.

24 (b) This section does not apply to:

25 (i) Emergency rules adopted under RCW 34.05.350;

26 (ii) Rules relating only to internal governmental operations that
27 are not subject to violation by a nongovernment party;

28 (iii) Rules adopting or incorporating by reference without material
29 change federal statutes or regulations, Washington state statutes,
30 rules of other Washington state agencies, shoreline master programs
31 other than those programs governing shorelines of statewide
32 significance, or, as referenced by Washington state law, national
33 consensus codes that generally establish industry standards, if the
34 material adopted or incorporated regulates the same subject matter and
35 conduct as the adopting or incorporating rule;

36 (iv) Rules that only correct typographical errors, make address or
37 name changes, or clarify language of a rule without changing its
38 effect;

1 (v) Rules the content of which is explicitly and specifically
2 dictated by statute;

3 (vi) Rules that set or adjust fees or rates pursuant to legislative
4 standards; or

5 (vii) Rules of the department of social and health services
6 relating only to client medical or financial eligibility and rules
7 concerning liability for care of dependents.

8 (c) For purposes of this subsection:

9 (i) A "procedural rule" is a rule that adopts, amends, or repeals
10 (A) any procedure, practice, or requirement relating to any agency
11 hearings; (B) any filing or related process requirement for making
12 application to an agency for a license or permit; or (C) any policy
13 statement pertaining to the consistent internal operations of an
14 agency.

15 (ii) An "interpretive rule" is a rule, the violation of which does
16 not subject a person to a penalty or sanction, that sets forth the
17 agency's interpretation of statutory provisions it administers.

18 (iii) A "significant legislative rule" is a rule other than a
19 procedural or interpretive rule that (A) adopts substantive provisions
20 of law pursuant to delegated legislative authority, the violation of
21 which subjects a violator of such rule to a penalty or sanction; (B)
22 establishes, alters, or revokes any qualification or standard for the
23 issuance, suspension, or revocation of a license or permit; or (C)
24 adopts a new, or makes significant amendments to, a policy or
25 regulatory program.

26 (d) In the notice of proposed rule making under RCW 34.05.320, an
27 agency shall state whether this section applies to the proposed rule
28 pursuant to (a)(i) of this subsection, or if the agency will apply this
29 section voluntarily.

30 (6) By January 31, 1996, and by January 31st of each even-numbered
31 year thereafter, the office of financial management, after consulting
32 with state agencies, counties, and cities, and business, labor, and
33 environmental organizations, shall report to the governor and the
34 legislature regarding the effects of this section on the regulatory
35 system in this state. The report shall document:

36 (a) The rules proposed to which this section applied and to the
37 extent possible, how compliance with this section affected the
38 substance of the rule, if any, that the agency ultimately adopted;

- 1 (b) The costs incurred by state agencies in complying with this
2 section;
- 3 (c) Any legal action maintained based upon the alleged failure of
4 any agency to comply with this section, the costs to the state of such
5 action, and the result;
- 6 (d) The extent to which this section has adversely affected the
7 capacity of agencies to fulfill their legislatively prescribed mission;
- 8 (e) The extent to which this section has improved the acceptability
9 of state rules to those regulated; and
- 10 (f) Any other information considered by the office of financial
11 management to be useful in evaluating the effect of this section.

12 EXPLANATORY NOTE

13 Chapter 75.20 RCW was recodified as chapter 77.55 RCW by 2000
14 c 107.

15 **Sec. 14.** RCW 35.21.404 and 1998 c 249 s 9 are each amended to read
16 as follows:

17 A city or town is not liable for adverse impacts resulting from a
18 fish enhancement project that meets the criteria of RCW ((75.20.350))
19 77.55.290 and has been permitted by the department of fish and
20 wildlife.

21 EXPLANATORY NOTE

22 RCW 75.20.350 was recodified as RCW 77.55.290 pursuant to 2000
23 c 107 § 129.

24 **Sec. 15.** RCW 35.63.230 and 1998 c 249 s 5 are each amended to read
25 as follows:

26 A permit required under this chapter for a watershed restoration
27 project as defined in RCW 89.08.460 shall be processed in compliance
28 with RCW 89.08.450 through 89.08.510. A fish habitat enhancement
29 project meeting the criteria of RCW ((75.20.350(1))) 77.55.290(1) shall
30 be reviewed and approved according to the provisions of RCW
31 ((75.20.350)) 77.55.290.

1 EXPLANATORY NOTE

2 RCW 75.20.350 was recodified as RCW 77.55.290 pursuant to 2000
3 c 107 § 129.

4 **Sec. 16.** RCW 35A.21.290 and 1998 c 249 s 10 are each amended to
5 read as follows:

6 A code city is not liable for adverse impacts resulting from a fish
7 enhancement project that meets the criteria of RCW ((75.20.350))
8 77.55.290 and has been permitted by the department of fish and
9 wildlife.

10 EXPLANATORY NOTE

11 RCW 75.20.350 was recodified as RCW 77.55.290 pursuant to 2000
12 c 107 § 129.

13 **Sec. 17.** RCW 35A.63.250 and 1998 c 249 s 6 are each amended to
14 read as follows:

15 A permit required under this chapter for a watershed restoration
16 project as defined in RCW 89.08.460 shall be processed in compliance
17 with RCW 89.08.450 through 89.08.510. A fish habitat enhancement
18 project meeting the criteria of RCW ((75.20.350(1))) 77.55.290(1) shall
19 be reviewed and approved according to the provisions of RCW
20 ((75.20.350)) 77.55.290.

21 EXPLANATORY NOTE

22 RCW 75.20.350 was recodified as RCW 77.55.290 pursuant to 2000
23 c 107 § 129.

24 **Sec. 18.** RCW 35A.69.010 and 1999 c 291 s 31 are each amended to
25 read as follows:

26 Every code city shall have the powers, perform the functions and
27 duties and enforce the regulations prescribed by general laws relating
28 to food and drugs for any class of city as provided by Title 69 RCW;

1 relating to water pollution control as provided by chapter 90.48 RCW;
2 and relating to food fish and shellfish as provided by Title ((75)) 77
3 RCW.

4 EXPLANATORY NOTE

5 Title 75 RCW was recodified, repealed, and/or decodified in its
6 entirety by 2000 c 107. Laws concerning food fish and
7 shellfish are now codified in Title 77 RCW.

8 **Sec. 19.** RCW 36.70.982 and 1998 c 249 s 8 are each amended to read
9 as follows:

10 A county is not liable for adverse impacts resulting from a fish
11 enhancement project that meets the criteria of RCW ((75.20.350))
12 77.55.290 and has been permitted by the department of fish and
13 wildlife.

14 EXPLANATORY NOTE

15 RCW 75.20.350 was recodified as RCW 77.55.290 pursuant to 2000
16 c 107 § 129.

17 **Sec. 20.** RCW 36.70.992 and 1998 c 249 s 7 are each amended to read
18 as follows:

19 A permit required under this chapter for a watershed restoration
20 project as defined in RCW 89.08.460 shall be processed in compliance
21 with RCW 89.08.450 through 89.08.510. A fish habitat enhancement
22 project meeting the criteria of RCW ((75.20.350(1))) 77.55.290(1) shall
23 be reviewed and approved according to the provisions of RCW
24 ((75.20.350)) 77.55.290.

25 EXPLANATORY NOTE

26 RCW 75.20.350 was recodified as RCW 77.55.290 pursuant to 2000
27 c 107 § 129.

1 (3) The administrative appeals judges appointed under subsection
2 (2) of this section are subject to discipline and termination, for
3 cause, by the chief executive officer. Upon written request by the
4 person so disciplined or terminated, the chief executive officer shall
5 state the reasons for such action in writing. The person affected has
6 a right of review by the superior court of Thurston county on petition
7 for reinstatement or other remedy filed within thirty days of receipt
8 of such written reasons.

9 (4) The chief executive officer may appoint, discharge, and fix the
10 compensation of such administrative or clerical staff as may be
11 necessary.

12 (5) The chief executive officer may also contract for required
13 services.

14 EXPLANATORY NOTE

15 RCW 75.20.130 was recodified as RCW 77.55.170 pursuant to 2000
16 c 107 § 129. The section is also made gender neutral.

17 **Sec. 23.** RCW 43.21C.0382 and 1998 c 249 s 12 are each amended to
18 read as follows:

19 Decisions pertaining to watershed restoration projects as defined
20 in RCW 89.08.460 are not subject to the requirements of RCW
21 43.21C.030(2)(c). Decisions pertaining to fish habitat enhancement
22 projects meeting the criteria of RCW (~~((75.20.350(1)))~~) 77.55.290(1) and
23 being reviewed and approved according to the provisions of RCW
24 (~~((75.20.350))~~) 77.55.290 are not subject to the requirements of RCW
25 43.21C.030(2)(c).

26 EXPLANATORY NOTE

27 RCW 75.20.350 was recodified as RCW 77.55.290 pursuant to 2000
28 c 107 § 129.

29 **Sec. 24.** RCW 43.21C.260 and 1999 sp.s. c 4 s 1201 are each amended
30 to read as follows:

31 (1) Decisions pertaining to the following kinds of actions under

1 chapter 4, Laws of 1999 sp. sess. are not subject to any procedural
2 requirements implementing RCW 43.21C.030(2)(c): (a) Approval of forest
3 road maintenance and abandonment plans under chapter 76.09 RCW and
4 RCW (~~(75.20.100)~~) 77.55.100; (b) approval by the department of natural
5 resources of future timber harvest schedules involving east-side clear
6 cuts under rules implementing chapter 76.09 RCW; (c) acquisitions of
7 forest lands in stream channel migration zones under RCW 76.09.040; and
8 (d) acquisitions of conservation easements pertaining to forest lands
9 in riparian zones under RCW 76.13.120.

10 (2) For purposes of the department's threshold determination on a
11 watershed analysis, the department shall not make a determination of
12 significance unless the prescriptions themselves, compared to rules or
13 prescriptions in place prior to the analysis, will cause probable
14 significant adverse impact on elements of the environment other than
15 those addressed in the watershed analysis process. Nothing in this
16 subsection shall be construed to effect the outcome of pending
17 litigation regarding the department's authority in making a threshold
18 determination on a watershed analysis.

19 EXPLANATORY NOTE

20 RCW 75.20.100 was recodified as RCW 77.55.100 pursuant to 2000
21 c 107 § 129.

22 **Sec. 25.** RCW 43.21K.010 and 1997 c 381 s 2 are each amended to
23 read as follows:

24 The definitions in this section apply throughout this chapter
25 unless the context clearly requires otherwise.

26 (1) "State, regional, or local agency" means an agency, board,
27 department, authority, or commission that administers environmental
28 laws.

29 (2) "Coordinating agency" means the state, regional, or local
30 agency with the primary regulatory responsibility for the proposed
31 environmental excellence program agreement. If multiple agencies have
32 jurisdiction to administer state environmental laws affected by an
33 environmental excellence agreement, the department of ecology shall
34 designate or act as the coordinating agency.

1 (3) "Director" means the individual or body of individuals in whom
2 the ultimate legal authority of an agency is vested by any provision of
3 law. If the agency head is a body of individuals, a majority of those
4 individuals constitutes the director.

5 (4) "Environmental laws" means chapters 43.21A, 70.94, 70.95,
6 70.105, 70.119A, (~~75.20~~) 77.55, 90.48, 90.52, 90.58, 90.64, and 90.71
7 RCW, and RCW 90.54.020(3)(b) and rules adopted under those chapters and
8 section. The term environmental laws as used in this chapter does not
9 include any provision of the Revised Code of Washington, or of any
10 municipal ordinance or enactment, that regulates the selection of a
11 location for a new facility.

12 (5) "Facility" means a site or activity that is regulated under any
13 of the provisions of the environmental laws.

14 (6) "Legal requirement" includes any provision of an environmental
15 law, rule, order, or permit.

16 (7) "Sponsor" means the owner or operator of a facility, including
17 a municipal corporation, subject to regulation under the environmental
18 laws of the state of Washington, or an authorized representative of the
19 owner or operator, that submits a proposal for an environmental
20 excellence program agreement.

21 (8) "Stakeholder" means a person who has a direct interest in the
22 proposed environmental excellence program agreement or who represents
23 a public interest in the proposed environmental excellence program
24 agreement. Stakeholders may include communities near the project,
25 local or state governments, permittees, businesses, environmental and
26 other public interest groups, employees or employee representatives, or
27 other persons.

28 EXPLANATORY NOTE

29 Chapter 75.20 RCW was recodified as chapter 77.55 RCW by 2000
30 c 107.

31 **Sec. 26.** RCW 43.52.440 and 1983 1st ex.s. c 46 s 178 are each
32 amended to read as follows:

33 Nothing contained in this chapter shall be construed to amend,
34 modify or repeal in any manner RCW (~~75.20.110~~) 77.55.160, commonly

1 known as the "Columbia River Sanctuary Act", and all matter herein
2 contained shall be expressly subject to such act.

3 EXPLANATORY NOTE

4 RCW 75.20.110 was recodified as RCW 77.55.160 pursuant to 2000
5 c 107 § 129.

6 **Sec. 27.** RCW 43.101.010 and 2001 c 167 s 1 are each amended to
7 read as follows:

8 When used in this chapter:

9 (1) The term "commission" means the Washington state criminal
10 justice training commission.

11 (2) The term "boards" means the education and training standards
12 boards, the establishment of which are authorized by this chapter.

13 (3) The term "criminal justice personnel" means any person who
14 serves in a county, city, state, or port commission agency engaged in
15 crime prevention, crime reduction, or enforcement of the criminal law.

16 (4) The term "law enforcement personnel" means any public employee
17 or volunteer having as a primary function the enforcement of criminal
18 laws in general or any employee or volunteer of, or any individual
19 commissioned by, any municipal, county, state, or combination thereof,
20 agency having as its primary function the enforcement of criminal laws
21 in general as distinguished from an agency possessing peace officer
22 powers, the primary function of which is the implementation of
23 specialized subject matter areas. For the purposes of this subsection
24 "primary function" means that function to which the greater allocation
25 of resources is made.

26 (5) The term "correctional personnel" means any employee or
27 volunteer who by state, county, municipal, or combination thereof,
28 statute has the responsibility for the confinement, care, management,
29 training, treatment, education, supervision, or counseling of those
30 individuals whose civil rights have been limited in some way by legal
31 sanction.

32 (6) A peace officer is "convicted" at the time a plea of guilty has
33 been accepted, or a verdict of guilty or finding of guilt has been
34 filed, notwithstanding the pendency of any future proceedings,
35 including but not limited to sentencing, posttrial or postfact-finding

1 motions and appeals. "Conviction" includes a deferral of sentence and
2 also includes the equivalent disposition by a court in a jurisdiction
3 other than the state of Washington.

4 (7) "Discharged for disqualifying misconduct" means terminated from
5 employment for: (a) Conviction of (i) any crime committed under color
6 of authority as a peace officer, (ii) any crime involving dishonesty or
7 false statement within the meaning of Evidence Rule 609(a), (iii) the
8 unlawful use or possession of a controlled substance, or (iv) any other
9 crime the conviction of which disqualifies a Washington citizen from
10 the legal right to possess a firearm under state or federal law; (b)
11 conduct that would constitute any of the crimes addressed in (a) of
12 this subsection; or (c) knowingly making materially false statements
13 during disciplinary investigations, where the false statements are the
14 sole basis for the termination.

15 (8) A peace officer is "discharged for disqualifying misconduct"
16 within the meaning of subsection (7) of this section under the ordinary
17 meaning of the term and when the totality of the circumstances support
18 a finding that the officer resigned in anticipation of discipline,
19 whether or not the misconduct was discovered at the time of
20 resignation, and when such discipline, if carried forward, would more
21 likely than not have led to discharge for disqualifying misconduct
22 within the meaning of subsection (7) of this section.

23 (9) When used in context of proceedings referred to in this
24 chapter, "final" means that the peace officer has exhausted all
25 available civil service appeals, collective bargaining remedies, and
26 all other such direct administrative appeals, and the officer has not
27 been reinstated as the result of the action. Finality is not affected
28 by the pendency or availability of state or federal administrative or
29 court actions for discrimination, or by the pendency or availability of
30 any remedies other than direct civil service and collective bargaining
31 remedies.

32 (10) "Peace officer" means any law enforcement personnel subject to
33 the basic law enforcement training requirement of RCW 43.101.200 and
34 any other requirements of that section, notwithstanding any waiver or
35 exemption granted by the commission, and notwithstanding the statutory
36 exemption based on date of initial hire under RCW 43.101.200.
37 Commissioned officers of the Washington state patrol, whether they have
38 been or may be exempted by rule of the commission from the basic

1 training requirement of RCW 43.101.200, are included as peace officers
2 for purposes of this chapter. Fish and wildlife officers with
3 enforcement powers for all criminal laws under RCW ((77.12.055))
4 77.15.075 are peace officers for purposes of this chapter.

5 EXPLANATORY NOTE

6 RCW 77.12.055 was recodified as RCW 77.15.075 by 2001 c 253 §
7 61.

8 **Sec. 28.** RCW 69.04.930 and 1999 c 291 s 32 are each amended to
9 read as follows:

10 It shall be unlawful for any person to sell at retail or display
11 for sale at retail any food fish as defined in RCW 77.08.022 or
12 shellfish as defined in RCW ((75.08.011)) 77.08.010, any meat, or any
13 meat food product which has been frozen at any time, without having the
14 package or container in which the same is sold bear a label clearly
15 discernible to a customer that such product has been frozen and whether
16 or not the same has since been thawed. No such food fish or shellfish,
17 meat or meat food product shall be sold unless in such a package or
18 container bearing said label: PROVIDED, That this section shall not
19 include any of the aforementioned food or food products that have been
20 frozen prior to being smoked, cured, cooked or subjected to the heat of
21 commercial sterilization.

22 EXPLANATORY NOTE

23 RCW 75.08.011 was repealed by 2000 c 107 § 125. The section
24 updates the citations for the correct definitions of food fish
25 and shellfish.

26 **Sec. 29.** RCW 69.04.934 and 1993 c 282 s 4 are each amended to read
27 as follows:

28 With the exception of a commercial fisher engaged in sales of fish
29 to a fish buyer, no person may sell at wholesale or retail any fresh or
30 frozen:

1 (1) Private sector cultured aquatic salmon without identifying the
2 product as farm-raised salmon; or

3 (2) Commercially caught salmon designated as food fish under Title
4 ((75)) 77 RCW without identifying the product as commercially caught
5 salmon.

6 Identification of the products under subsections (1) and (2) of
7 this section shall be made to the buyer at the point of sale such that
8 the buyer can make an informed decision in purchasing.

9 A person knowingly violating this section is guilty of misbranding
10 under this chapter. A person who receives misleading or erroneous
11 information about whether the salmon is farm-raised or commercially
12 caught, and subsequently inaccurately identifies salmon shall not be
13 guilty of misbranding. This section shall not apply to salmon that is
14 minced, pulverized, coated with batter, or breaded.

15 EXPLANATORY NOTE

16 Title 75 RCW was recodified, repealed, and/or decodified in its
17 entirety by 2000 c 107.

18 **Sec. 30.** RCW 70.105D.090 and 1994 c 257 s 14 are each amended to
19 read as follows:

20 (1) A person conducting a remedial action at a facility under a
21 consent decree, order, or agreed order, and the department when it
22 conducts a remedial action, are exempt from the procedural requirements
23 of chapters 70.94, 70.95, 70.105, ((75-20)) 77.55, 90.48, and 90.58
24 RCW, and the procedural requirements of any laws requiring or
25 authorizing local government permits or approvals for the remedial
26 action. The department shall ensure compliance with the substantive
27 provisions of chapters 70.94, 70.95, 70.105, ((75-20)) 77.55, 90.48,
28 and 90.58 RCW, and the substantive provisions of any laws requiring or
29 authorizing local government permits of approvals. The department
30 shall establish procedures for ensuring that such remedial actions
31 comply with the substantive requirements adopted pursuant to such laws,
32 and shall consult with the state agencies and local governments charged
33 with implementing these laws. The procedures shall provide an
34 opportunity for comment by the public and by the state agencies and
35 local governments that would otherwise implement the laws referenced in

1 this section. Nothing in this section is intended to prohibit
2 implementing agencies from charging a fee to the person conducting the
3 remedial action to defray the costs of services rendered relating to
4 the substantive requirements for the remedial action.

5 (2) An exemption in this section or in RCW 70.94.335, 70.95.270,
6 70.105.116, (~~75.20.025~~) 77.55.030, 90.48.039, and 90.58.355 shall not
7 apply if the department determines that the exemption would result in
8 loss of approval from a federal agency necessary for the state to
9 administer any federal law, including the federal resource conservation
10 and recovery act, the federal clean water act, the federal clean air
11 act, and the federal coastal zone management act. Such a determination
12 by the department shall not affect the applicability of the exemptions
13 to other statutes specified in this section.

14 EXPLANATORY NOTE

15 Chapter 75.20 RCW was recodified as chapter 77.55 RCW by 2000
16 c 107.
17 RCW 75.20.025 was recodified as RCW 77.55.030 pursuant to 2000
18 c 107 § 129.

19 **Sec. 31.** RCW 72.63.040 and 1989 c 185 s 13 are each amended to
20 read as follows:

21 The costs of implementation of the projects prescribed by this
22 chapter shall be supported to the extent that funds are available under
23 the provisions of chapter (~~75.52~~) 77.100 RCW, and from correctional
24 industries funds.

25 EXPLANATORY NOTE

26 Chapter 75.52 RCW was recodified as chapter 77.100 RCW by 2000
27 c 107.

28 **Sec. 32.** RCW 76.09.030 and 1999 sp.s. c 4 s 1001 are each amended
29 to read as follows:

30 (1) There is hereby created the forest practices board of the state

1 of Washington as an agency of state government consisting of members as
2 follows:

3 (a) The commissioner of public lands or the commissioner's
4 designee;

5 (b) The director of the department of community, trade, and
6 economic development or the director's designee;

7 (c) The director of the department of agriculture or the director's
8 designee;

9 (d) The director of the department of ecology or the director's
10 designee;

11 (e) The director of the department of fish and wildlife or the
12 director's designee;

13 (f) An elected member of a county legislative authority appointed
14 by the governor: PROVIDED, That such member's service on the board
15 shall be conditioned on the member's continued service as an elected
16 county official; and

17 (g) Six members of the general public appointed by the governor,
18 one of whom shall be an owner of not more than five hundred acres of
19 forest land, and one of whom shall be an independent logging
20 contractor.

21 (2) The director of the department of fish and wildlife's service
22 on the board may be terminated two years after August 18, 1999, if the
23 legislature finds that after two years the department has not made
24 substantial progress toward integrating the laws, rules, and programs
25 governing forest practices, chapter 76.09 RCW, and the laws, rules, and
26 programs governing hydraulic projects, chapter ((75.20)) 77.55 RCW.
27 Such a finding shall be based solely on whether the department of fish
28 and wildlife makes substantial progress as defined in this subsection,
29 and will not be based on other actions taken as a member of the board.
30 Substantial progress shall include recommendations to the legislature
31 for closer integration of the existing rule-making authorities of the
32 board and the department of fish and wildlife, and closer integration
33 of the forest practices and hydraulics permitting processes, including
34 exploring the potential for a consolidated permitting process. These
35 recommendations shall be designed to resolve problems currently
36 associated with the existing dual regulatory and permitting processes.

37 (3) The members of the initial board appointed by the governor
38 shall be appointed so that the term of one member shall expire December

1 31, 1975, the term of one member shall expire December 31, 1976, the
2 term of one member shall expire December 31, 1977, the terms of two
3 members shall expire December 31, 1978, and the terms of two members
4 shall expire December 31, 1979. Thereafter, each member shall be
5 appointed for a term of four years. Vacancies on the board shall be
6 filled in the same manner as the original appointments. Each member of
7 the board shall continue in office until his or her successor is
8 appointed and qualified. The commissioner of public lands or the
9 commissioner's designee shall be the chairman of the board.

10 (4) The board shall meet at such times and places as shall be
11 designated by the chairman or upon the written request of the majority
12 of the board. The principal office of the board shall be at the state
13 capital.

14 (5) Members of the board, except public employees and elected
15 officials, shall be compensated in accordance with RCW 43.03.250. Each
16 member shall be entitled to reimbursement for travel expenses incurred
17 in the performance of their duties as provided in RCW 43.03.050 and
18 43.03.060.

19 (6) The board may employ such clerical help and staff pursuant to
20 chapter 41.06 RCW as is necessary to carry out its duties.

21 EXPLANATORY NOTE

22 Chapter 75.20 RCW was recodified as chapter 77.55 RCW by 2000
23 c 107.

24 **Sec. 33.** RCW 76.09.063 and 1997 c 425 s 5 are each amended to read
25 as follows:

26 When a private landowner is applying for a forest practices permit
27 under this chapter and that landowner has entered into a habitat
28 incentives agreement with the department and the department of fish and
29 wildlife as provided in RCW (~~(77.12.830)~~) 77.55.300, the department
30 shall comply with the terms of that agreement when evaluating the
31 permit application.

32 EXPLANATORY NOTE

1 RCW 77.12.830 was recodified as RCW 77.55.300 pursuant to 2000
2 c 107 § 129.

3 **Sec. 34.** RCW 76.09.350 and 1997 c 290 s 1 are each amended to read
4 as follows:

5 The legislature recognizes the importance of providing the greatest
6 diversity of habitats, particularly riparian, wetland, and old growth
7 habitats, and of assuring the greatest diversity of species within
8 those habitats for the survival and reproduction of enough individuals
9 to maintain the native wildlife of Washington forest lands. The
10 legislature also recognizes the importance of long-term habitat
11 productivity for natural and wild fish, for the protection of hatchery
12 water supplies, and for the protection of water quality and quantity to
13 meet the needs of people, fish, and wildlife. The legislature
14 recognizes the importance of maintaining and enhancing fish and
15 wildlife habitats capable of sustaining the commercial and
16 noncommercial uses of fish and wildlife. The legislature further
17 recognizes the importance of the continued growth and development of
18 the state's forest products industry which has a vital stake in the
19 long-term productivity of both the public and private forest land base.

20 The development of a landscape planning system would help achieve
21 these goals. Landowners and resource managers should be provided
22 incentives to voluntarily develop long-term multispecies landscape
23 management plans that will provide protection to public resources.
24 Because landscape planning represents a departure from the use of
25 standard baseline rules and may result in unintended consequences to
26 both the affected habitats and to a landowner's economic interests, the
27 legislature desires to establish up to seven experimental pilot
28 programs to gain experience with landscape planning that may prove
29 useful in fashioning legislation of a more general application.

30 (1) Until December 31, 2000, the department in cooperation with the
31 department of fish and wildlife, and the department of ecology when
32 relating to water quality protection, is granted authority to select
33 not more than seven pilot projects for the purpose of developing
34 individual landowner multispecies landscape management plans.

35 (a) Pilot project participants must be selected by the department
36 in cooperation with the department of fish and wildlife, and the
37 department of ecology when relating to water quality protection, no
38 later than October 1, 1997.

1 (b) The number and the location of the pilot projects are to be
2 determined by the department in cooperation with the department of fish
3 and wildlife, and the department of ecology when relating to water
4 quality protection, and should be selected on the basis of risk to the
5 habitat and species, variety and importance of species and habitats in
6 the planning area, geographic distribution, surrounding ownership,
7 other ongoing landscape and watershed planning activities in the area,
8 potential benefits to water quantity and quality, financial and
9 staffing capabilities of participants, and other factors that will
10 contribute to the creation of landowner multispecies landscape planning
11 efforts.

12 (c) Each pilot project shall have a landscape management plan with
13 the following elements:

14 (i) An identification of public resources selected for coverage
15 under the plan and measurable objectives for the protection of the
16 selected public resources;

17 (ii) A termination date of not later than 2050;

18 (iii) A general description of the planning area including its
19 geographic location, physical and biological features, habitats, and
20 species known to be present;

21 (iv) An identification of the existing forest practices rules that
22 will not apply during the term of the plan;

23 (v) Proposed habitat management strategies or prescriptions;

24 (vi) A projection of the habitat conditions likely to result from
25 the implementation of the specified management strategies or
26 prescriptions;

27 (vii) An assessment of habitat requirements and the current habitat
28 conditions of representative species included in the plan;

29 (viii) An assessment of potential or likely impacts to
30 representative species resulting from the prescribed forest practices;

31 (ix) A description of the anticipated benefits to those species or
32 other species as a result of plan implementation;

33 (x) A monitoring plan;

34 (xi) Reporting requirements including a schedule for review of the
35 plan's performance in meeting its objectives;

36 (xii) Conditions under which a plan may be modified, including a
37 procedure for adaptive management;

38 (xiii) Conditions under which a plan may be terminated;

1 (xiv) A procedure for adaptive management that evaluates the
2 effectiveness of the plan to meet its measurable public resources
3 objectives, reflects changes in the best available science, and
4 provides changes to its habitat management strategies, prescriptions,
5 and hydraulic project standards to the extent agreed to in the plan and
6 in a timely manner and schedule;

7 (xv) A description of how the plan relates to publicly available
8 plans of adjacent federal, state, tribal, and private timberland
9 owners; and

10 (xvi) A statement of whether the landowner intends to apply for
11 approval of the plan under applicable federal law.

12 (2) Until December 31, 2000, the department, in agreement with the
13 department of fish and wildlife, and the department of ecology when the
14 landowner elects to cover water quality in the plan, shall approve a
15 landscape management plan and enter into a binding implementation
16 agreement with the landowner when such departments find, based upon the
17 best scientific data available, that:

18 (a) The plan contains all of the elements required under this
19 section including measurable public resource objectives;

20 (b) The plan is expected to be effective in meeting those
21 objectives;

22 (c) The landowner has sufficient financial resources to implement
23 the management strategies or prescriptions to be implemented by the
24 landowner under the plan;

25 (d) The plan will:

26 (i) Provide better protection than current state law for the public
27 resources selected for coverage under the plan considered in the
28 aggregate; and

29 (ii) Compared to conditions that could result from compliance with
30 current state law:

31 (A) Not result in poorer habitat conditions over the life of the
32 plan for any species selected for coverage that is listed as threatened
33 or endangered under federal or state law, or that has been identified
34 as a candidate for such listing, at the time the plan is approved; and

35 (B) Measurably improve habitat conditions for species selected for
36 special consideration under the plan;

37 (e) The plan shall include watershed analysis or provide for a
38 level of protection that meets or exceeds the protection that would be

1 provided by watershed analysis, if the landowner selects fish or water
2 quality as a public resource to be covered under the plan. Any
3 alternative process to watershed analysis would be subject to timely
4 peer review;

5 (f) The planning process provides for a public participation
6 process during the development of the plan, which shall be developed by
7 the department in cooperation with the landowner.

8 The management plans must be submitted to the department and the
9 department of fish and wildlife, and the department of ecology when the
10 landowner elects to cover water quality in the plan, no later than
11 March 1, 2000. The department shall provide an opportunity for public
12 comment on the proposed plan. The comment period shall not be less
13 than forty-five days. The department shall approve or reject plans
14 within one hundred twenty days of submittal by the landowner of a final
15 plan. The decision by the department, in agreement with the department
16 of fish and wildlife, and the department of ecology when the landowner
17 has elected to cover water quality in the plan, to approve or
18 disapprove the management plan is subject to the environmental review
19 process of chapter 43.21C RCW, provided that any public comment period
20 provided for under chapter 43.21C RCW shall run concurrently with the
21 public comment period provided in this subsection (2).

22 (3) After a landscape management plan is adopted:

23 (a) Forest practices consistent with the plan need not comply with:

24 (i) The specific forest practices rules identified in the plan; and

25 (ii) Any forest practice rules and policies adopted after the
26 approval of the plan to the extent that the rules:

27 (A) Have been adopted primarily for the protection of a public
28 resource selected for coverage under the plan; or

29 (B) Provide for procedural or administrative obligations
30 inconsistent with or in addition to those provided for in the plan with
31 respect to those public resources; and

32 (b) If the landowner has selected fish as one of the public
33 resources to be covered under the plan, the plan shall serve as the
34 hydraulic project approval for the life of the plan, in compliance with
35 RCW ((75.20.100)) 77.55.100.

36 (4) The department is authorized to issue a single landscape level
37 permit valid for the life of the plan to a landowner who has an
38 approved landscape management plan and who has requested a landscape

1 permit from the department. Landowners receiving a landscape level
2 permit shall meet annually with the department and the department of
3 fish and wildlife, and the department of ecology where water quality
4 has been selected as a public resource to be covered under the plan, to
5 review the specific forest practices activities planned for the next
6 twelve months and to determine whether such activities are in
7 compliance with the plan. The departments will consult with the
8 affected Indian tribes and other interested parties who have expressed
9 an interest in connection with the review. The landowner is to provide
10 ten calendar days' notice to the department prior to the commencement
11 of any forest practices authorized under a landscape level permit. The
12 landscape level permit will not impose additional conditions relating
13 to the public resources selected for coverage under the plan beyond
14 those agreed to in the plan. For the purposes of chapter 43.21C RCW,
15 forest practices conducted in compliance with an approved plan are
16 deemed not to have the potential for a substantial impact on the
17 environment as to any public resource selected for coverage under the
18 plan.

19 (5) Except as otherwise provided in a plan, the agreement
20 implementing the landscape management plan is an agreement that runs
21 with the property covered by the approved landscape management plan and
22 the department shall record notice of the plan in the real property
23 records of the counties in which the affected properties are located.
24 Prior to its termination, no plan shall permit forest land covered by
25 its terms to be withdrawn from such coverage, whether by sale,
26 exchange, or other means, nor to be converted to nonforestry uses
27 except to the extent that such withdrawal or conversion would not
28 measurably impair the achievement of the plan's stated public resource
29 objectives. If a participant transfers all or part of its interest in
30 the property, the terms of the plan still apply to the new landowner
31 for the plan's stated duration unless the plan is terminated under its
32 terms or unless the plan specifies the conditions under which the terms
33 of the plan do not apply to the new landowner.

34 (6) The departments of natural resources, fish and wildlife, and
35 ecology shall seek to develop memorandums of agreements with federal
36 agencies and affected Indian tribes relating to tribal issues in the
37 landscape management plans. The departments shall solicit input from
38 affected Indian tribes in connection with the selection, review, and

1 approval of any landscape management plan. If any recommendation is
2 received from an affected Indian tribe and is not adopted by the
3 departments, the departments shall provide a written explanation of
4 their reasons for not adopting the recommendation.

5 (7) The department is directed to report to the forest practices
6 board annually through the year 2000, but no later than December 31st
7 of each year, on the status of each pilot project. The department is
8 directed to provide to the forest practices board, no later than
9 December 31, 2000, an evaluation of the pilot projects including a
10 determination if a permanent landscape planning process should be
11 established along with a discussion of what legislative and rule
12 modifications are necessary.

13 EXPLANATORY NOTE

14 RCW 75.20.100 was recodified as RCW 77.55.100 pursuant to 2000
15 c 107 § 129.

16 **Sec. 35.** RCW 76.09.910 and 1975 1st ex.s. c 200 s 12 are each
17 amended to read as follows:

18 Nothing in RCW 76.09.010 through 76.09.280 as now or hereafter
19 amended shall modify any requirements to comply with the Shoreline
20 Management Act of 1971 except as limited by RCW 76.09.240 as now or
21 hereafter amended, or the hydraulics act (~~((RCW 75.20.100))~~) (RCW
22 77.55.100), other state statutes in effect on January 1, 1975, and any
23 local ordinances not inconsistent with RCW 76.09.240 as now or
24 hereafter amended.

25 EXPLANATORY NOTE

26 RCW 75.20.100 was recodified as RCW 77.55.100 pursuant to 2000
27 c 107 § 129.

28 **Sec. 36.** RCW 76.13.100 and 1999 sp.s. c 4 s 501 are each amended
29 to read as follows:

30 (1) The legislature finds that increasing regulatory requirements
31 continue to diminish the economic viability of small forest landowners.

1 The concerns set forth in RCW (~~75.46.300~~) 77.85.180 about the
2 importance of sustaining forestry as a viable land use are particularly
3 applicable to small landowners because of the location of their
4 holdings, the expected complexity of the regulatory requirements, and
5 the need for significant technical expertise not readily available to
6 small landowners. The further reduction in harvestable timber owned by
7 small forest landowners as a result of the rules to be adopted under
8 RCW 76.09.055 will further erode small landowners' economic viability
9 and willingness or ability to keep the lands in forestry use and,
10 therefore, reduce the amount of habitat available for salmon recovery
11 and conservation of other aquatic resources, as defined in RCW
12 76.09.020.

13 (2) The legislature finds that the concerns identified in
14 subsection (1) of this section should be addressed by establishing
15 within the department of natural resources a small forest landowner
16 office that shall be a resource and focal point for small forest
17 landowner concerns and policies. The legislature further finds that a
18 forestry riparian easement program shall be established to acquire
19 easements from small landowners along riparian and other areas of value
20 to the state for protection of aquatic resources. The legislature
21 further finds that small forest landowners should have the option of
22 alternate management plans or alternate harvest restrictions on smaller
23 harvest units that may have a relatively low impact on aquatic
24 resources. The small forest landowner office should be responsible for
25 assisting small landowners in the development and implementation of
26 these plans or restrictions.

27 EXPLANATORY NOTE

28 RCW 75.46.300 was recodified as RCW 77.85.180 pursuant to 2000
29 c 107 § 135.

30 **Sec. 37.** RCW 76.42.060 and 1999 sp.s. c 4 s 601 are each amended
31 to read as follows:

32 It shall be unlawful to dispose of wood debris by depositing such
33 material into any of the navigable waters of this state, except as
34 authorized by law including any discharge or deposit allowed to be made
35 under and in compliance with chapter 90.48 RCW and any rules duly

1 adopted thereunder or any deposit allowed to be made under and in
2 compliance with chapter 76.09 or (~~75.46~~) 77.85 RCW and any rules duly
3 adopted under those chapters. Violation of this section shall be a
4 misdemeanor.

5 EXPLANATORY NOTE

6 Chapter 75.46 RCW was recodified as chapter 77.85 RCW by 2000
7 c 107.

8 **Sec. 38.** RCW 77.15.310 and 2000 c 107 s 240 are each amended to
9 read as follows:

10 (1) A person is guilty of unlawful failure to use or maintain an
11 approved fish guard on a diversion device if the person owns, controls,
12 or operates a device used for diverting or conducting water from a
13 lake, river, or stream and:

14 (a) The device is not equipped with a fish guard, screen, or bypass
15 approved by the director as required by RCW 77.55.040 or (~~77.16.220~~)
16 77.55.320; or

17 (b) The person knowingly fails to maintain or operate an approved
18 fish guard, screen, or bypass so as to effectively screen or prevent
19 fish from entering the intake.

20 (2) Unlawful failure to use or maintain an approved fish guard,
21 screen, or bypass on a diversion device is a gross misdemeanor.
22 Following written notification to the person from the department that
23 there is a violation, each day that a diversion device is operated
24 without an approved or maintained fish guard, screen, or bypass is a
25 separate offense.

26 EXPLANATORY NOTE

27 RCW 77.16.220 was recodified as RCW 77.55.320 pursuant to 2001
28 c 253 § 61.

29 **Sec. 39.** RCW 78.44.050 and 1997 c 185 s 1 are each amended to read
30 as follows:

31 The department shall have the exclusive authority to regulate

1 surface mine reclamation. No county, city, or town may require for its
2 review or approval a separate reclamation plan or application. The
3 department may, however, delegate some or all of its enforcement
4 authority by contractual agreement to a county, city, or town that
5 employs personnel who are, in the opinion of the department, qualified
6 to enforce plans approved by the department. All counties, cities, or
7 towns shall have the authority to zone surface mines and adopt
8 ordinances regulating operations as provided in this chapter, except
9 that county, city, or town operations ordinances may be preempted by
10 the department during the emergencies outlined in RCW 78.44.200 and
11 related rules.

12 This chapter shall not alter or preempt any provisions of the state
13 (~~(fisheries laws (Title 75 RCW), the state)~~) water allocation and use
14 laws (chapters 90.03 and 90.44 RCW), the state water pollution control
15 laws (chapter 90.48 RCW), the state fish and wildlife laws (Title 77
16 RCW), state noise laws or air quality laws (Title 70 RCW), shoreline
17 management (chapter 90.58 RCW), the state environmental policy act
18 (chapter 43.21C RCW), state growth management (chapter 36.70A RCW),
19 state drinking water laws (chapters 43.20 and 70.119A RCW), or any
20 other state statutes.

21 EXPLANATORY NOTE

22 Title 75 RCW was recodified, repealed, and/or decodified in its
23 entirety by 2000 c 107.

24 **Sec. 40.** RCW 79.76.060 and 1974 ex.s. c 43 s 6 are each amended to
25 read as follows:

26 This chapter is intended to preempt local regulation of the
27 drilling and operation of wells for geothermal resources but shall not
28 be construed to permit the locating of any well or drilling when such
29 well or drilling is prohibited under state or local land use law or
30 regulations promulgated thereunder. Geothermal resources, byproducts
31 and/or waste products which have escaped or been released from the
32 energy transfer system and/or a mineral recovery process shall be
33 subject to provisions of state law relating to the pollution of ground
34 or surface waters (Title 90 RCW), provisions of the state fisheries law
35 (~~((Title 75 RCW),)~~) and the state game laws (Title 77 RCW), and any

1 other state environmental pollution control laws. Authorization for
2 use of byproduct water resources for all beneficial uses, including but
3 not limited to greenhouse heating, warm water fish propagation, space
4 heating plants, irrigation, swimming pools, and hot springs baths,
5 shall be subject to the appropriation procedure as provided in Title 90
6 RCW.

7 EXPLANATORY NOTE

8 Title 75 RCW was recodified, repealed, and/or decodified in its
9 entirety by 2000 c 107.

10 **Sec. 41.** RCW 79.90.150 and 1991 c 337 s 1 are each amended to read
11 as follows:

12 When gravel, rock, sand, silt or other material from any aquatic
13 lands is removed by any public agency or under public contract for
14 channel or harbor improvement, or flood control, use of such material
15 may be authorized by the department of natural resources for a public
16 purpose on land owned or leased by the state or any municipality,
17 county, or public corporation: PROVIDED, That when no public land site
18 is available for deposit of such material, its deposit on private land
19 with the landowner's permission is authorized and may be designated by
20 the department of natural resources to be for a public purpose. Prior
21 to removal and use, the state agency, municipality, county, or public
22 corporation contemplating or arranging such use shall first obtain
23 written permission from the department of natural resources. No
24 payment of royalty shall be required for such gravel, rock, sand, silt,
25 or other material used for such public purpose, but a charge will be
26 made if such material is subsequently sold or used for some other
27 purpose: PROVIDED, That the department may authorize such public
28 agency or private landowner to dispose of such material without charge
29 when necessary to implement disposal of material. No charge shall be
30 required for any use of the material obtained under the provisions of
31 this chapter when used solely on an authorized site. No charge shall
32 be required for any use of the material obtained under the provisions
33 of this chapter if the material is used for public purposes by local
34 governments. Public purposes include, but are not limited to,
35 construction and maintenance of roads, dikes, and levies. Nothing in

1 this section shall repeal or modify the provisions of RCW (~~75.20.100~~)
2 77.55.100 or eliminate the necessity of obtaining a permit for such
3 removal from other state or federal agencies as otherwise required by
4 law.

5 EXPLANATORY NOTE

6 RCW 75.20.100 was recodified as RCW 77.55.100 pursuant to 2000
7 c 107 § 129.

8 **Sec. 42.** RCW 79.94.390 and 1994 c 264 s 66 are each amended to
9 read as follows:

10 The following described tidelands, being public lands of the state,
11 are withdrawn from sale or lease and reserved as public areas for
12 recreational use and for the taking of fish and shellfish for personal
13 use as defined in RCW (~~75.08.011~~) 77.08.010:

14 Parcel No. 1. (Point Whitney) The tidelands of the second class,
15 owned by the state of Washington, situate in front of, adjacent to or
16 abutting upon lots 3, 4, and 5, section 7, township 26 north, range 1
17 west, W.M., with a frontage of 72.45 lineal chains, more or less.

18 Excepting, however, those portions of the above described tidelands
19 of the second class conveyed to the state of Washington, department of
20 fish and wildlife through deed issued May 14, 1925, under application
21 No. 8136, records of department of public lands.

22 Parcel No. 2. (Point Whitney) The tidelands of the second class
23 lying below the line of mean low tide, owned by the state of
24 Washington, situate in front of lot 1, section 6, township 26 north,
25 range 1 west, W.M., with a frontage of 21.00 lineal chains, more or
26 less; also

27 The tidelands of the second class, owned by the state of
28 Washington, situate in front of, adjacent to or abutting upon lots 6
29 and 7, and that portion of lot 5, section 1, township 26 north, range
30 1 west, W.M., lying south of a line running due west from a point on
31 the government meander line which is S 22° E 1.69 chains from an angle
32 point in said meander line which is S 15° W 1.20 chains, more or less,
33 from the point of intersection of the north line of said lot 5 and said
34 meander line, with a frontage of 40.31 lineal chains, more or less.

1 Parcel No. 3. (Toandos Peninsula) The tidelands of the second
2 class, owned by the state of Washington, situate in front of, adjacent
3 to, or abutting upon lots 1, 2, and 3, section 5, lots 1, 2, and 3,
4 section 4, and lot 1, section 3, all in township 25 north, range 1
5 west, W.M., with a frontage of 158.41 lineal chains, more or less.

6 Parcel No. 4. (Shine) The tidelands of the second class, owned by
7 the state of Washington, situate in front of, adjacent to, or abutting
8 upon lots 1, 2, 3 and that portion of lot 4 lying north of the south
9 8.35 chains thereof as measured along the government meander line, all
10 in section 35, township 28 north, range 1 east, W.M., with a frontage
11 of 76.70 lineal chains, more or less.

12 Subject to an easement for right of way for county road granted to
13 Jefferson county December 8, 1941 under application No. 1731, records
14 of department of public lands.

15 Parcel No. 5. (Lilliwaup) The tidelands of the second class, owned
16 by the state of Washington, lying easterly of the east line of vacated
17 state oyster reserve plat No. 133 produced southerly and situate in
18 front of, adjacent to or abutting upon lot 9, section 30, lot 8,
19 section 19 and lot 5 and the south 20 acres of lot 4, section 20, all
20 in township 23 north, range 3 west, W.M., with a frontage of 62.46
21 lineal chains, more or less.

22 Subject to easements for rights of way for state road granted
23 through the filing of state road plats No. 374 December 15, 1930, No.
24 661, March 29, 1949, and No. 666 August 25, 1949, records of department
25 of public lands.

26 Parcel No. 6. (Nemah) Those portions of the tidelands of the
27 second class, owned by the state of Washington, situate in front of,
28 adjacent to, or abutting upon lots 5, 6, and 7, section 3 and lots 1,
29 2, and 3, section 4, township 12 north, range 10 west, W.M., lots 1, 2,
30 3, and 4, section 34, section 27 and lots 1, 2, 3 and 4, section 28,
31 township 13 north, range 10 west, W.M., lying easterly of the easterly
32 line of the Nemah Oyster reserve and easterly of the easterly line of
33 a tract of tidelands of the second class conveyed through deed issued
34 July 28, 1938, pursuant to the provisions of chapter 24, Laws of 1895,
35 under application No. 9731, with a frontage of 326.22 lineal chains,
36 more or less.

37 Parcels No. 7 and 8. (Penn Cove) The unplatted tidelands of the
38 first class, and tidelands of the second class, owned by the state of

1 Washington, situate in front of, adjacent to, or abutting upon lots 1
2 and 2, section 33, lots 1, 2, 3, and 4, section 32, lots 2 and 3 and
3 the B.P. Barstow D.L.C. No. 49, sections 30 and 31 and that portion of
4 the R.H. Lansdale D.L.C. No. 54 in section 30, lying west of the east
5 3.00 chains thereof as measured along the government meander line, all
6 in township 32 north, range 1 east, W.M., with a frontage of 260.34
7 lineal chains, more or less.

8 Excepting, however, the tidelands above the line of mean low tide
9 in front of said lot 1, section 32 which were conveyed as tidelands of
10 the second class through deed issued December 29, 1908, application No.
11 4957, records of department of public lands.

12 Subject to an easement for right of way for transmission cable line
13 granted to the United States of America Army Engineers June 7, 1943,
14 under application No. 17511, records of department of public lands.

15 Parcel No. 9. (South of Penn Cove) The tidelands of the second
16 class, owned by the state of Washington, situate in front of, adjacent
17 to, or abutting upon lots 2, 3 and 4, section 17 and lots 1, 2 and 3,
18 section 20, township 31 north, range 2 east, W.M., with a frontage of
19 129.97 lineal chains, more or less.

20 Parcel No. 10. (Mud Bay--Lopez Island) The tidelands of the second
21 class, owned by the state of Washington situate in front of, adjacent
22 to, or abutting upon lots 5, 6 and 7, section 18, lot 5, section 7 and
23 lots 3, 4, and 5, section 8, all in township 34 north, range 1 west,
24 W.M., with a frontage of 172.11 lineal chains, more or less.

25 Excepting, however, any tideland of the second class in front of
26 said lot 3, section 8 conveyed through deeds issued April 14, 1909,
27 pursuant to the provisions of chapter 24, Laws of 1895, under
28 application No. 4985, records of department of public lands.

29 Parcel No. 11. (Cattle Point) The tidelands of the second class,
30 owned by the state of Washington, situate in front of, adjacent to, or
31 abutting upon lot 1, section 6, lots 1, 3, 4, 5, 6, 7, 8, 9, and 10,
32 section 7, lots 1, 2, 3, 4, 5, 6 and 7, section 8 and lot 1, section 5,
33 all in township 34 north, range 2 west, W.M., with a frontage of 463.88
34 lineal chains, more or less.

35 Excepting, however, any tidelands of the second class in front of
36 said lot 10, section 7 conveyed through deed issued June 1, 1912, under
37 application No. 6906, records of department of public lands.

1 Parcel No. 12. (Spencer Spit) The tidelands of the second class,
2 owned by the state of Washington, situate in front of, adjacent to, or
3 abutting upon lots 1, 3, and 4, section 7, and lot 5, section 18 all in
4 township 35 north, range 1 west, W.M., with a frontage of 118.80 lineal
5 chains, more or less.

6 EXPLANATORY NOTE

7 RCW 75.08.011 was repealed by 2000 c 107 § 125. RCW 77.08.010
8 has the same definition of "personal use" that appeared in RCW
9 75.08.011.

10 **Sec. 43.** RCW 79.96.080 and 1990 c 163 s 4 are each amended to read
11 as follows:

12 (1) Geoducks shall be sold as valuable materials under the
13 provisions of chapter 79.90 RCW. After confirmation of the sale, the
14 department of natural resources may enter into an agreement with the
15 purchaser for the harvesting of geoducks. The department of natural
16 resources may place terms and conditions in the harvesting agreements
17 as the department deems necessary. The department of natural resources
18 may enforce the provisions of any harvesting agreement by suspending or
19 canceling the harvesting agreement or through any other means contained
20 in the harvesting agreement. Any geoduck harvester may terminate a
21 harvesting agreement entered into pursuant to this subsection if
22 actions of a governmental agency, beyond the control of the harvester,
23 its agents, or its employees, prohibit harvesting, for a period
24 exceeding thirty days during the term of the harvesting agreement,
25 except as provided within the agreement. Upon such termination of the
26 agreement by the harvester, the harvester shall be reimbursed by the
27 department of natural resources for the cost paid to the department on
28 the agreement, less the value of the harvest already accomplished by
29 the harvester under the agreement.

30 (2) Harvesting agreements under this title for the purpose of
31 harvesting geoducks shall require the harvester and the harvester's
32 agent or representatives to comply with all applicable commercial
33 diving safety standards and regulations promulgated and implemented by
34 the federal occupational safety and health administration established
35 under the federal occupational safety and health act of 1970 as such

1 law exists or as hereafter amended (84 Stat. 1590 et seq.; 29 U.S.C.
2 Sec. 651 et seq.): PROVIDED, That for the purposes of this section and
3 RCW ((~~75.24.100~~)) 77.60.070 as now or hereafter amended, all persons
4 who dive for geoducks are deemed to be employees as defined by the
5 federal occupational safety and health act. All harvesting agreements
6 shall provide that failure to comply with these standards is cause for
7 suspension or cancellation of the harvesting agreement: PROVIDED
8 FURTHER, That for the purposes of this subsection if the harvester
9 contracts with another person or entity for the harvesting of geoducks,
10 the harvesting agreement shall not be suspended or canceled if the
11 harvester terminates its business relationship with such entity until
12 compliance with this subsection is secured.

13 EXPLANATORY NOTE

14 RCW 75.24.100 was recodified as RCW 77.60.070 pursuant to 2000
15 c 107 § 130.

16 **Sec. 44.** RCW 79A.25.240 and 2000 c 11 s 78 are each amended to
17 read as follows:

18 The interagency committee for outdoor recreation shall provide
19 necessary grants and loan administration support to the salmon recovery
20 funding board as provided in RCW ((~~75.46.160~~)) 77.85.120. The
21 committee shall also be responsible for tracking salmon recovery
22 expenditures under RCW ((~~75.46.180~~)) 77.85.140. The committee shall
23 provide all necessary administrative support to the board, and the
24 board shall be located with the committee. The committee shall provide
25 necessary information to the salmon recovery office.

26 EXPLANATORY NOTE

27 RCW 75.46.160 and 75.46.180 were recodified as RCW 77.85.120
28 and 77.85.140, respectively, pursuant to 2000 c 107 § 135.

29 **Sec. 45.** RCW 79A.60.010 and 2000 c 11 s 92 are each amended to
30 read as follows:

1 Unless the context clearly requires otherwise, the definitions in
2 this section apply throughout this chapter.

3 (1) "Boat wastes" includes, but is not limited to, sewage, garbage,
4 marine debris, plastics, contaminated bilge water, cleaning solvents,
5 paint scrapings, or discarded petroleum products associated with the
6 use of vessels.

7 (2) "Boater" means any person on a vessel on waters of the state of
8 Washington.

9 (3) "Carrying passengers for hire" means carrying passengers in a
10 vessel on waters of the state for valuable consideration, whether given
11 directly or indirectly or received by the owner, agent, operator, or
12 other person having an interest in the vessel. This shall not include
13 trips where expenses for food, transportation, or incidentals are
14 shared by participants on an even basis. Anyone receiving compensation
15 for skills or money for amortization of equipment and carrying
16 passengers shall be considered to be carrying passengers for hire on
17 waters of the state.

18 (4) "Commission" means the state parks and recreation commission.

19 (5) "Darkness" means that period between sunset and sunrise.

20 (6) "Environmentally sensitive area" means a restricted body of
21 water where discharge of untreated sewage from boats is especially
22 detrimental because of limited flushing, shallow water, commercial or
23 recreational shellfish, swimming areas, diversity of species, the
24 absence of other pollution sources, or other characteristics.

25 (7) "Guide" means any individual, including but not limited to
26 subcontractors and independent contractors, engaged for compensation or
27 other consideration by a whitewater river outfitter for the purpose of
28 operating vessels. A person licensed under RCW (~~77.32.211 or~~
29 ~~75.28.780~~) 77.65.480 or 77.65.440 and acting as a fishing guide is not
30 considered a guide for the purposes of this chapter.

31 (8) "Marina" means a facility providing boat moorage space, fuel,
32 or commercial services. Commercial services include but are not
33 limited to overnight or live-aboard boating accommodations.

34 (9) "Motor driven boats and vessels" means all boats and vessels
35 which are self propelled.

36 (10) "Muffler" or "muffler system" means a sound suppression device
37 or system, including an underwater exhaust system, designed and

1 installed to abate the sound of exhaust gases emitted from an internal
2 combustion engine and that prevents excessive or unusual noise.

3 (11) "Operate" means to steer, direct, or otherwise have physical
4 control of a vessel that is underway.

5 (12) "Operator" means an individual who steers, directs, or
6 otherwise has physical control of a vessel that is underway or
7 exercises actual authority to control the person at the helm.

8 (13) "Observer" means the individual riding in a vessel who is
9 responsible for observing a water skier at all times.

10 (14) "Owner" means a person who has a lawful right to possession of
11 a vessel by purchase, exchange, gift, lease, inheritance, or legal
12 action whether or not the vessel is subject to a security interest.

13 (15) "Person" means any individual, sole proprietorship,
14 partnership, corporation, nonprofit corporation or organization,
15 limited liability company, firm, association, or other legal entity
16 located within or outside this state.

17 (16) "Personal flotation device" means a buoyancy device, life
18 preserver, buoyant vest, ring buoy, or buoy cushion that is designed to
19 float a person in the water and that is approved by the commission.

20 (17) "Personal watercraft" means a vessel of less than sixteen feet
21 that uses a motor powering a water jet pump, as its primary source of
22 motive power and that is designed to be operated by a person sitting,
23 standing, or kneeling on, or being towed behind the vessel, rather than
24 in the conventional manner of sitting or standing inside the vessel.

25 (18) "Polluted area" means a body of water used by boaters that is
26 contaminated by boat wastes at unacceptable levels, based on applicable
27 water quality and shellfish standards.

28 (19) "Public entities" means all elected or appointed bodies,
29 including tribal governments, responsible for collecting and spending
30 public funds.

31 (20) "Reckless" or "recklessly" means acting carelessly and
32 heedlessly in a willful and wanton disregard of the rights, safety, or
33 property of another.

34 (21) "Sewage pumpout or dump unit" means:

35 (a) A receiving chamber or tank designed to receive vessel sewage
36 from a "porta-potty" or a portable container; and

37 (b) A stationary or portable mechanical device on land, a dock,

1 pier, float, barge, vessel, or other location convenient to boaters,
2 designed to remove sewage waste from holding tanks on vessels.

3 (22) "Underway" means that a vessel is not at anchor, or made fast
4 to the shore, or aground.

5 (23) "Vessel" includes every description of watercraft on the
6 water, other than a seaplane, used or capable of being used as a means
7 of transportation on the water. However, it does not include inner
8 tubes, air mattresses, sailboards, and small rafts or flotation devices
9 or toys customarily used by swimmers.

10 (24) "Water skiing" means the physical act of being towed behind a
11 vessel on, but not limited to, any skis, aquaplane, kneeboard, tube, or
12 any other similar device.

13 (25) "Waters of the state" means any waters within the territorial
14 limits of Washington state.

15 (26) "Whitewater river outfitter" means any person who is
16 advertising to carry or carries passengers for hire on any whitewater
17 river of the state, but does not include any person whose only service
18 on a given trip is providing instruction in canoeing or kayaking
19 skills.

20 (27) "Whitewater rivers of the state" means those rivers and
21 streams, or parts thereof, within the boundaries of the state as listed
22 in RCW 79A.60.470 or as designated by the commission under RCW
23 79A.60.495.

24 EXPLANATORY NOTE

25 RCW 77.32.211 and 75.28.780 were recodified as RCW 77.65.480
26 and 77.65.440, respectively, pursuant to 2000 c 107 § 31.

27 **Sec. 46.** RCW 82.27.070 and 1999 c 126 s 4 are each amended to read
28 as follows:

29 All taxes collected by the department of revenue under this chapter
30 shall be deposited in the state general fund except for the excise tax
31 on anadromous game fish, which shall be deposited in the wildlife fund,
32 and, during the period January 1, 2000, to December 31, 2005, twenty-
33 five forty-sixths of the revenues derived from the excise tax on sea
34 urchins collected under RCW 82.27.020 shall be deposited into the sea
35 urchin dive fishery account created in RCW (~~(75.30.210)~~) 77.70.150, and

1 twenty-five forty-sixths of the revenues derived from the excise tax on
2 sea cucumbers collected under RCW 82.27.020 shall be deposited into the
3 sea cucumber dive fishery account created in RCW ((75.30.250))
4 77.70.190.

5 EXPLANATORY NOTE

6 RCW 75.30.210 and 75.30.250 were recodified as RCW 77.70.150
7 and 77.70.190, respectively, pursuant to 2000 c 107 § 132.

8 **Sec. 47.** RCW 89.08.470 and 1998 c 249 s 13 are each amended to
9 read as follows:

10 (1) By January 1, 1996, the Washington conservation commission
11 shall develop, in consultation with other state agencies, tribes, and
12 local governments, a consolidated application process for permits for
13 a watershed restoration project developed by an agency or sponsored by
14 an agency on behalf of a volunteer organization. The consolidated
15 process shall include a single permit application form for use by all
16 responsible state and local agencies. The commission shall encourage
17 use of the consolidated permit application process by any federal
18 agency responsible for issuance of related permits. The permit
19 application forms to be consolidated shall include, at a minimum,
20 applications for: (a) Approvals related to water quality standards
21 under chapter 90.48 RCW; (b) hydraulic project approvals under chapter
22 ((75.20)) 77.55 RCW; and (c) section 401 water quality certifications
23 under 33 U.S.C. Sec. 1341 and chapter 90.48 RCW.

24 (2) If a watershed restoration project is also a fish habitat
25 enhancement project that meets the criteria of RCW ((75.20.350(1)))
26 77.55.290(1), the project sponsor shall instead follow the permit
27 review and approval process established in RCW ((75.20.350)) 77.55.290
28 with regard to state and local government permitting requirements. The
29 sponsor shall so notify state and local permitting authorities.

30 EXPLANATORY NOTE

31 Chapter 75.20 RCW was recodified as chapter 77.55 RCW by 2000

1 c 107.
2 RCW 75.20.350 was recodified as RCW 77.55.290 pursuant to 2000
3 c 107 § 129.

4 **Sec. 48.** RCW 90.03.247 and 1996 c 186 s 523 are each amended to
5 read as follows:

6 Whenever an application for a permit to make beneficial use of
7 public waters is approved relating to a stream or other water body for
8 which minimum flows or levels have been adopted and are in effect at
9 the time of approval, the permit shall be conditioned to protect the
10 levels or flows. No agency may establish minimum flows and levels or
11 similar water flow or level restrictions for any stream or lake of the
12 state other than the department of ecology whose authority to establish
13 is exclusive, as provided in chapter 90.03 RCW and RCW 90.22.010 and
14 90.54.040. The provisions of other statutes, including but not limited
15 to RCW ((~~75.20.100~~)) 77.55.100 and chapter 43.21C RCW, may not be
16 interpreted in a manner that is inconsistent with this section. In
17 establishing such minimum flows, levels, or similar restrictions, the
18 department shall, during all stages of development by the department of
19 ecology of minimum flow proposals, consult with, and carefully consider
20 the recommendations of, the department of fish and wildlife, the
21 department of community, trade, and economic development, the
22 department of agriculture, and representatives of the affected Indian
23 tribes. Nothing herein shall preclude the department of fish and
24 wildlife, the department of community, trade, and economic development,
25 or the department of agriculture from presenting its views on minimum
26 flow needs at any public hearing or to any person or agency, and the
27 department of fish and wildlife, the department of community, trade,
28 and economic development, and the department of agriculture are each
29 empowered to participate in proceedings of the federal energy
30 regulatory commission and other agencies to present its views on
31 minimum flow needs.

32 EXPLANATORY NOTE

33 RCW 75.20.100 was recodified as RCW 77.55.100 pursuant to 2000
34 c 107 § 129.

