

CERTIFICATION OF ENROLLMENT

SENATE BILL 5172

Chapter 39, Laws of 2003

58th Legislature
2003 Regular Session

TECHNICAL CORRECTIONS

EFFECTIVE DATE: 7/27/03

Passed by the Senate March 6, 2003
YEAS 48 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House April 8, 2003
YEAS 95 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved April 17, 2003.

GARY LOCKE

Governor of the State of Washington

CERTIFICATE

I, Milton H. Doumit, Jr.,
Secretary of the Senate of the
State of Washington, do hereby
certify that the attached is
SENATE BILL 5172 as passed by the
Senate and the House of
Representatives on the dates
hereon set forth.

MILTON H. DOUMIT JR.

Secretary

FILED

April 17, 2003 - 2:28 p.m.

**Secretary of State
State of Washington**

SENATE BILL 5172

Passed Legislature - 2003 Regular Session

State of Washington 58th Legislature 2003 Regular Session

By Senators Esser, Kline, Johnson and Roach; by request of Office of the Code Reviser

Read first time 01/17/2003. 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
19 thousand dollars, or imprisonment for one year in the county or city

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

13 EXPLANATORY NOTE

14 Title 75 RCW was recodified, repealed, and/or decodified in its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

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

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

34 (2) Except as otherwise provided in subsection (3) of this section,
35 any public or private landowner or others in lawful possession and

1 control of any lands whether rural or urban, or water areas or channels
2 and lands adjacent to such areas or channels, who offer or allow such
3 land to be used for purposes of a fish or wildlife cooperative project,
4 or allow access to such land for cleanup of litter or other solid
5 waste, shall not be liable for unintentional injuries to any volunteer
6 group or to any other users.

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

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

21 EXPLANATORY NOTE

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

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

28 Unless the context clearly requires otherwise, the definition in
29 this section applies throughout this chapter.

30 "Infraction" means an offense which, by the terms of Title ((~~75~~))
31 76, 77, 79, or 79A RCW or chapter 43.30 RCW and rules adopted under
32 these titles and chapters, is declared not to be a criminal offense and
33 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;

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

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

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

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

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

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

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

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

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

33 (b) Except as provided in (c) of this subsection, of the
34 inventoried firearms a law enforcement agency shall destroy illegal
35 firearms, may retain a maximum of ten percent of legal forfeited
36 firearms for agency use, and shall either:

37 (i) Comply with the provisions for the auction of firearms in RCW
38 9.41.098 that were in effect immediately preceding May 7, 1993; or

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

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

20 (d) Firearms in the possession of the Washington state patrol on or
21 after May 7, 1993, that are judicially forfeited and no longer needed
22 for evidence, or forfeited due to a failure to make a claim under RCW
23 63.35.020, must be disposed of as follows: (i) Firearms illegal for
24 any person to possess must be destroyed; (ii) the Washington state
25 patrol may retain a maximum of ten percent of legal firearms for agency
26 use; and (iii) all other legal firearms must be auctioned or traded to
27 licensed dealers. The Washington state patrol may retain any proceeds
28 of an auction or trade.

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

34 (4) A law enforcement officer of the state or of any county or
35 municipality may confiscate a firearm found to be in the possession of
36 a person under circumstances specified in subsection (1) of this
37 section. After confiscation, the firearm shall not be surrendered
38 except: (a) To the prosecuting attorney for use in subsequent legal

1 proceedings; (b) for disposition according to an order of a court
2 having jurisdiction as provided in subsection (1) of this section; or
3 (c) to the owner if the proceedings are dismissed or as directed in
4 subsection (3) of this section.

5 EXPLANATORY NOTE

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

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

10 This chapter does not apply to property subject to forfeiture under
11 chapter 66.32 RCW, RCW 69.50.505, 9.41.098, 9.46.231, 9A.82.100,
12 9A.83.030, 7.48.090, or (~~(77.12.101)~~) 77.15.070.

13 EXPLANATORY NOTE

14 RCW 77.12.101 was repealed by 2000 c 107 § 273. RCW 77.15.070,
15 amended by 2000 c 107 § 231, is now the fish and wildlife
16 forfeiture statute.

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

19 Unless the context clearly requires otherwise, the definitions in
20 this section apply throughout this chapter.

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

24 (2) "Aquatic farmer" is a private sector person who commercially
25 farms and manages the cultivating of private sector cultured aquatic
26 products on the person's own land or on land in which the person has a
27 present right of possession.

28 (3) "Private sector cultured aquatic products" are native,
29 nonnative, or hybrids of marine or freshwater plants and animals that
30 are propagated, farmed, or cultivated on aquatic farms under the
31 supervision and management of a private sector aquatic farmer or that
32 are naturally set on aquatic farms which at the time of setting are

1 under the active supervision and management of a private sector aquatic
2 farmer. When produced under such supervision and management, private
3 sector cultured aquatic products include, but are not limited to, the
4 following plants and animals:

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

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

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

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

1 EXPLANATORY NOTE

2 RCW 75.28.245 was recodified as RCW 75.30.270 pursuant to 1993
3 c 340 § 54, effective January 1, 1994. RCW 75.30.270 was
4 subsequently recodified as RCW 77.70.210 pursuant to 2000 c 107
5 § 132.

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

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

23 The director shall consult with the director of fish and wildlife
24 to ensure that such rules enable the department of fish and wildlife to
25 enforce the programs administered under those titles. If rules adopted
26 under chapter 69.30 RCW satisfy the identification required under this
27 section for shellfish, the director shall not establish different
28 shellfish identification requirements under this section.

29 EXPLANATORY NOTE

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

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

1 As used in this chapter:

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

6 "Animal reproductive product" means sperm, ova, fertilized ova, and
7 embryos from animals.

8 "Farm-raised fish" means fish raised by aquaculture as defined in
9 RCW 15.85.020. Farm-raised fish are considered to be a part of animal
10 agriculture; however, disease inspection, prevention, and control
11 programs and related activities for farm-raised fish are administered
12 by the department of fish and wildlife under chapter ((75.58)) 77.115
13 RCW.

14 "Communicable disease" means a disease due to a specific infectious
15 agent or its toxic products transmitted from an infected person,
16 animal, or inanimate reservoir to a susceptible host, either directly
17 or indirectly through an intermediate plant or animal host, vector, or
18 the environment.

19 "Contagious disease" means a communicable disease that is capable
20 of being easily transmitted from one animal to another animal or a
21 human.

22 "Director" means the director of agriculture of the state of
23 Washington or his or her authorized representative.

24 "Department" means the department of agriculture of the state of
25 Washington.

26 "Deputized state veterinarian" means a Washington state licensed
27 and accredited veterinarian appointed and compensated by the director
28 according to state law and department policies.

29 "Garbage" means the solid animal and vegetable waste and offal
30 together with the natural moisture content resulting from the handling,
31 preparation, or consumption of foods in houses, restaurants, hotels,
32 kitchens, markets, meat shops, packing houses and similar
33 establishments or any other food waste containing meat or meat
34 products.

35 "Herd or flock plan" means a written management agreement between
36 the owner of a herd or flock and the state veterinarian, with possible
37 input from a private accredited veterinarian designated by the owner
38 and the area veterinarian-in-charge of the United States department of

1 agriculture, animal and plant health inspection service, veterinary
2 services in which each participant agrees to undertake actions
3 specified in the herd or flock plan to control the spread of
4 infectious, contagious, or communicable disease within and from an
5 infected herd or flock and to work toward eradicating the disease in
6 the infected herd or flock.

7 "Hold order" means an order by the director to the owner or agent
8 of the owner of animals or animal reproductive products which restricts
9 the animals or products to a designated holding location pending an
10 investigation by the director of the disease, disease exposure, well-
11 being, movement, or import status of the animals or animal reproductive
12 products.

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

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

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

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

24 "Quarantine" means the placing and restraining of any animal or its
25 reproductive products by the owner or agent of the owner within a
26 certain described and designated enclosure or area within this state,
27 or the restraining of any animal or its reproductive products from
28 entering this state, as may be directed in an order by the director.

29 "Reportable disease" means a disease designated by rule by the
30 director as reportable to the department by veterinarians and others
31 made responsible to report by statute.

32 "Veterinary biologic" means any virus, serum, toxin, and analogous
33 product of natural or synthetic origin, or product prepared from any
34 type of genetic engineering, such as diagnostics, antitoxins, vaccines,
35 live microorganisms, killed microorganisms, and the antigenic or
36 immunizing components intended for use in the diagnosis, treatment, or
37 prevention of diseases in animals.

1 EXPLANATORY NOTE

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

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

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

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

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

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

17 (5) Unless the context clearly requires otherwise, the definitions
18 in this subsection apply throughout this chapter, RCW 90.48.020,
19 90.58.030, and (~~75.20.108~~) 77.55.150:

20 (a) "Spartina" means *Spartina alterniflora*, *Spartina anglica*,
21 *Spartina x townsendii*, and *Spartina patens*.

22 (b) "Purple loosestrife" means *Lythrum salicaria* and *Lythrum*
23 *virgatum*.

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

26 EXPLANATORY NOTE

27 RCW 75.20.108 was recodified as RCW 77.55.150 pursuant to 2000
28 c 107 § 129.

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

31 A fish habitat enhancement project meeting the criteria of RCW
32 (~~75.20.350(1)~~) 77.55.290(1) is not subject to grading permits,

1 inspections, or fees and shall be reviewed according to the provisions
2 of RCW ((75.20.350)) 77.55.290.

3 EXPLANATORY NOTE

4 RCW 75.20.350 was recodified as RCW 77.55.290 pursuant to 2000
5 c 107 § 129.

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

8 Unless the context requires otherwise, the definitions in this
9 section apply throughout this chapter.

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

12 (2) "Commercial telephone solicitation" means:

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

16 (b) Other communication with a person where:

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

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

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

23 (c) Other communication with a person which misrepresents the
24 price, quality, or availability of property, goods, or services and
25 which invites a response by telephone or which is followed by a call to
26 the person by a salesperson;

27 (d) For purposes of this section, "other communication" means a
28 written or oral notification or advertisement transmitted through any
29 means.

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

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

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

1 (ii) Less than sixty percent of such person's prior year's sales
2 were made as a result of a commercial telephone solicitation as defined
3 in this chapter. Where more than sixty percent of a seller's prior
4 year's sales were made as a result of commercial telephone
5 solicitations, the service bureau contracting to provide commercial
6 telephone solicitation services to the seller shall be deemed a
7 commercial telephone solicitor.

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

10 (c) A person soliciting business solely from purchasers who have
11 previously purchased from the business enterprise for which the person
12 is calling.

13 (d) A person soliciting:

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

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

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

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

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

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

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

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

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

1 (k) Any supervised financial institution or parent, subsidiary, or
2 affiliate thereof. As used in this section, "supervised financial
3 institution" means any commercial bank, trust company, savings and loan
4 association, mutual savings banks, credit union, industrial loan
5 company, personal property broker, consumer finance lender, commercial
6 finance lender, or insurer, provided that the institution is subject to
7 supervision by an official or agency of this state or the United
8 States;

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

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

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

15 (o) A person or affiliate of a person whose business is regulated
16 by the utilities and transportation commission or the federal
17 communications commission;

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

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

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

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

28 (i) The purchaser business intends to resell the property or goods
29 purchased, or

30 (ii) The purchaser business intends to use the property or goods
31 purchased in a recycling, reuse, remanufacturing or manufacturing
32 process;

33 (t) A person licensed under RCW 19.16.110 when the solicited
34 transaction is governed by that law;

35 (u) A person soliciting the sale of food intended for immediate
36 delivery to and immediate consumption by the purchaser;

37 (v) A person soliciting the sale of food fish or shellfish when

1 that person is licensed pursuant to the provisions of Title ((75)) 77
2 RCW.

3 (4) "Purchaser" means a person who is solicited to become or does
4 become obligated to a commercial telephone solicitor.

5 (5) "Salesperson" means any individual employed, appointed, or
6 authorized by a commercial telephone solicitor, whether referred to by
7 the commercial telephone solicitor as an agent, representative, or
8 independent contractor, who attempts to solicit or solicits a sale on
9 behalf of the commercial telephone solicitor.

10 (6) "Service bureau" means a commercial telephone solicitor who
11 contracts with any person to provide commercial telephone solicitation
12 services.

13 (7) "Seller" means any person who contracts with any service bureau
14 to purchase commercial telephone solicitation services.

15 (8) "Person" includes any individual, firm, association,
16 corporation, partnership, joint venture, sole proprietorship, or any
17 other business entity.

18 (9) "Free gift, award, or prize" means a gratuity which the
19 purchaser believes of a value equal to or greater than the value of the
20 specific product, good, or service sought to be sold to the purchaser
21 by the seller.

22 (10) "Solicit" means to initiate contact with a purchaser for the
23 purpose of attempting to sell property, goods or services, where such
24 purchaser has expressed no previous interest in purchasing, investing
25 in, or obtaining information regarding the property, goods, or services
26 attempted to be sold.

27 EXPLANATORY NOTE

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

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

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

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

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

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

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

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

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

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

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

27 (ii) Substantial evidence that the difference is necessary to
28 achieve the general goals and specific objectives stated under (a) of
29 this subsection; and

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

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

37 (3) Before adopting rules described in subsection (5) of this

1 section, an agency shall place in the rule-making file a rule
2 implementation plan for rules filed under each adopting order. The
3 plan shall describe how the agency intends to:

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

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

7 (c) Promote and assist voluntary compliance; and

8 (d) Evaluate whether the rule achieves the purpose for which it was
9 adopted, including, to the maximum extent practicable, the use of
10 interim milestones to assess progress and the use of objectively
11 measurable outcomes.

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

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

19 (b) Coordinate implementation and enforcement of the rule with the
20 other federal and state entities regulating the same activity or
21 subject matter by making every effort to do one or more of the
22 following:

23 (i) Deferring to the other entity;

24 (ii) Designating a lead agency; or

25 (iii) Entering into an agreement with the other entities specifying
26 how the agency and entities will coordinate implementation and
27 enforcement.

28 If the agency is unable to comply with this subsection (4)(b), the
29 agency shall report to the legislature pursuant to (c) of this
30 subsection;

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

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

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

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

3 (i) Significant legislative rules of the departments of ecology,
4 labor and industries, health, revenue, social and health services, and
5 natural resources, the employment security department, the forest
6 practices board, the office of the insurance commissioner, and to the
7 legislative rules of the department of fish and wildlife implementing
8 chapter ((75.20)) 77.55 RCW; and

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

14 (b) This section does not apply to:

15 (i) Emergency rules adopted under RCW 34.05.350;

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

18 (iii) Rules adopting or incorporating by reference without material
19 change federal statutes or regulations, Washington state statutes,
20 rules of other Washington state agencies, shoreline master programs
21 other than those programs governing shorelines of statewide
22 significance, or, as referenced by Washington state law, national
23 consensus codes that generally establish industry standards, if the
24 material adopted or incorporated regulates the same subject matter and
25 conduct as the adopting or incorporating rule;

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

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

31 (vi) Rules that set or adjust fees or rates pursuant to legislative
32 standards; or

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

36 (c) For purposes of this subsection:

37 (i) A "procedural rule" is a rule that adopts, amends, or repeals
38 (A) any procedure, practice, or requirement relating to any agency

1 hearings; (B) any filing or related process requirement for making
2 application to an agency for a license or permit; or (C) any policy
3 statement pertaining to the consistent internal operations of an
4 agency.

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

8 (iii) A "significant legislative rule" is a rule other than a
9 procedural or interpretive rule that (A) adopts substantive provisions
10 of law pursuant to delegated legislative authority, the violation of
11 which subjects a violator of such rule to a penalty or sanction; (B)
12 establishes, alters, or revokes any qualification or standard for the
13 issuance, suspension, or revocation of a license or permit; or (C)
14 adopts a new, or makes significant amendments to, a policy or
15 regulatory program.

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

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

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

29 (b) The costs incurred by state agencies in complying with this
30 section;

31 (c) Any legal action maintained based upon the alleged failure of
32 any agency to comply with this section, the costs to the state of such
33 action, and the result;

34 (d) The extent to which this section has adversely affected the
35 capacity of agencies to fulfill their legislatively prescribed mission;

36 (e) The extent to which this section has improved the acceptability
37 of state rules to those regulated; and

1 (f) Any other information considered by the office of financial
2 management to be useful in evaluating the effect of this section.

3 EXPLANATORY NOTE

4 Chapter 75.20 RCW was recodified as chapter 77.55 RCW by 2000
5 c 107.

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

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

12 EXPLANATORY NOTE

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

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

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

23 EXPLANATORY NOTE

24 RCW 75.20.350 was recodified as RCW 77.55.290 pursuant to 2000
25 c 107 § 129.

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

28 A code city is not liable for adverse impacts resulting from a fish

1 enhancement project that meets the criteria of RCW ((75.20.350))
2 77.55.290 and has been permitted by the department of fish and
3 wildlife.

4 EXPLANATORY NOTE

5 RCW 75.20.350 was recodified as RCW 77.55.290 pursuant to 2000
6 c 107 § 129.

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

9 A permit required under this chapter for a watershed restoration
10 project as defined in RCW 89.08.460 shall be processed in compliance
11 with RCW 89.08.450 through 89.08.510. A fish habitat enhancement
12 project meeting the criteria of RCW ((75.20.350(~~1~~))) 77.55.290(1) shall
13 be reviewed and approved according to the provisions of RCW
14 ((75.20.350)) 77.55.290.

15 EXPLANATORY NOTE

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

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

20 Every code city shall have the powers, perform the functions and
21 duties and enforce the regulations prescribed by general laws relating
22 to food and drugs for any class of city as provided by Title 69 RCW;
23 relating to water pollution control as provided by chapter 90.48 RCW;
24 and relating to food fish and shellfish as provided by Title ((75)) 77
25 RCW.

26 EXPLANATORY NOTE

27 Title 75 RCW was recodified, repealed, and/or decodified in its

1 entirety by 2000 c 107. Laws concerning food fish and
2 shellfish are now codified in Title 77 RCW.

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

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

9 EXPLANATORY NOTE

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

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

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

20 EXPLANATORY NOTE

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

23 **Sec. 21.** RCW 36.70A.460 and 1998 c 249 s 11 are each amended to
24 read as follows:

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

EXPLANATORY NOTE

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

Sec. 22. RCW 43.21B.005 and 1999 c 125 s 1 are each amended to read as follows:

(1) There is created an environmental hearings office of the state of Washington. The environmental hearings office shall consist of the pollution control hearings board created in RCW 43.21B.010, the forest practices appeals board created in RCW 76.09.210, the shorelines hearings board created in RCW 90.58.170, and the hydraulic appeals board created in RCW (~~(75.20.130)~~) 77.55.170. The (~~(chairman)~~) chair of the pollution control hearings board shall be the chief executive officer of the environmental hearings office. Membership, powers, functions, and duties of the pollution control hearings board, the forest practices appeals board, the shorelines hearings board, and the hydraulic appeals board shall be as provided by law.

(2) The chief executive officer of the environmental hearings office may appoint an administrative appeals judge who shall possess the powers and duties conferred by the administrative procedure act, chapter 34.05 RCW, in cases before the boards comprising the office. The administrative appeals judge shall have a demonstrated knowledge of environmental law, and shall be admitted to the practice of law in the state of Washington. Additional administrative appeals judges may also be appointed by the chief executive officer on the same terms. Administrative appeals judges shall not be subject to chapter 41.06 RCW.

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

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

1 (5) The chief executive officer may also contract for required
2 services.

3 EXPLANATORY NOTE

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

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

8 Decisions pertaining to watershed restoration projects as defined
9 in RCW 89.08.460 are not subject to the requirements of RCW
10 43.21C.030(2)(c). Decisions pertaining to fish habitat enhancement
11 projects meeting the criteria of RCW (~~(75.20.350(1))~~) 77.55.290(1) and
12 being reviewed and approved according to the provisions of RCW
13 (~~(75.20.350)~~) 77.55.290 are not subject to the requirements of RCW
14 43.21C.030(2)(c).

15 EXPLANATORY NOTE

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

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

20 (1) Decisions pertaining to the following kinds of actions under
21 chapter 4, Laws of 1999 sp. sess. are not subject to any procedural
22 requirements implementing RCW 43.21C.030(2)(c): (a) Approval of forest
23 road maintenance and abandonment plans under chapter 76.09 RCW and
24 RCW (~~(75.20.100)~~) 77.55.100; (b) approval by the department of natural
25 resources of future timber harvest schedules involving east-side clear
26 cuts under rules implementing chapter 76.09 RCW; (c) acquisitions of
27 forest lands in stream channel migration zones under RCW 76.09.040; and
28 (d) acquisitions of conservation easements pertaining to forest lands
29 in riparian zones under RCW 76.13.120.

30 (2) For purposes of the department's threshold determination on a
31 watershed analysis, the department shall not make a determination of
32 significance unless the prescriptions themselves, compared to rules or

1 prescriptions in place prior to the analysis, will cause probable
2 significant adverse impact on elements of the environment other than
3 those addressed in the watershed analysis process. Nothing in this
4 subsection shall be construed to effect the outcome of pending
5 litigation regarding the department's authority in making a threshold
6 determination on a watershed analysis.

7 EXPLANATORY NOTE

8 RCW 75.20.100 was recodified as RCW 77.55.100 pursuant to 2000
9 c 107 § 129.

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

12 The definitions in this section apply throughout this chapter
13 unless the context clearly requires otherwise.

14 (1) "State, regional, or local agency" means an agency, board,
15 department, authority, or commission that administers environmental
16 laws.

17 (2) "Coordinating agency" means the state, regional, or local
18 agency with the primary regulatory responsibility for the proposed
19 environmental excellence program agreement. If multiple agencies have
20 jurisdiction to administer state environmental laws affected by an
21 environmental excellence agreement, the department of ecology shall
22 designate or act as the coordinating agency.

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

27 (4) "Environmental laws" means chapters 43.21A, 70.94, 70.95,
28 70.105, 70.119A, (~~75.20~~) 77.55, 90.48, 90.52, 90.58, 90.64, and 90.71
29 RCW, and RCW 90.54.020(3)(b) and rules adopted under those chapters and
30 section. The term environmental laws as used in this chapter does not
31 include any provision of the Revised Code of Washington, or of any
32 municipal ordinance or enactment, that regulates the selection of a
33 location for a new facility.

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

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

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

8 (8) "Stakeholder" means a person who has a direct interest in the
9 proposed environmental excellence program agreement or who represents
10 a public interest in the proposed environmental excellence program
11 agreement. Stakeholders may include communities near the project,
12 local or state governments, permittees, businesses, environmental and
13 other public interest groups, employees or employee representatives, or
14 other persons.

15 EXPLANATORY NOTE

16 Chapter 75.20 RCW was recodified as chapter 77.55 RCW by 2000
17 c 107.

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

20 Nothing contained in this chapter shall be construed to amend,
21 modify or repeal in any manner RCW ((75.20.110)) 77.55.160, commonly
22 known as the "Columbia River Sanctuary Act", and all matter herein
23 contained shall be expressly subject to such act.

24 EXPLANATORY NOTE

25 RCW 75.20.110 was recodified as RCW 77.55.160 pursuant to 2000
26 c 107 § 129.

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

29 When used in this chapter:

30 (1) The term "commission" means the Washington state criminal
31 justice training commission.

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

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

6 (4) The term "law enforcement personnel" means any public employee
7 or volunteer having as a primary function the enforcement of criminal
8 laws in general or any employee or volunteer of, or any individual
9 commissioned by, any municipal, county, state, or combination thereof,
10 agency having as its primary function the enforcement of criminal laws
11 in general as distinguished from an agency possessing peace officer
12 powers, the primary function of which is the implementation of
13 specialized subject matter areas. For the purposes of this subsection
14 "primary function" means that function to which the greater allocation
15 of resources is made.

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

22 (6) A peace officer is "convicted" at the time a plea of guilty has
23 been accepted, or a verdict of guilty or finding of guilt has been
24 filed, notwithstanding the pendency of any future proceedings,
25 including but not limited to sentencing, posttrial or postfact-finding
26 motions and appeals. "Conviction" includes a deferral of sentence and
27 also includes the equivalent disposition by a court in a jurisdiction
28 other than the state of Washington.

29 (7) "Discharged for disqualifying misconduct" means terminated from
30 employment for: (a) Conviction of (i) any crime committed under color
31 of authority as a peace officer, (ii) any crime involving dishonesty or
32 false statement within the meaning of Evidence Rule 609(a), (iii) the
33 unlawful use or possession of a controlled substance, or (iv) any other
34 crime the conviction of which disqualifies a Washington citizen from
35 the legal right to possess a firearm under state or federal law; (b)
36 conduct that would constitute any of the crimes addressed in (a) of
37 this subsection; or (c) knowingly making materially false statements

1 during disciplinary investigations, where the false statements are the
2 sole basis for the termination.

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

11 (9) When used in context of proceedings referred to in this
12 chapter, "final" means that the peace officer has exhausted all
13 available civil service appeals, collective bargaining remedies, and
14 all other such direct administrative appeals, and the officer has not
15 been reinstated as the result of the action. Finality is not affected
16 by the pendency or availability of state or federal administrative or
17 court actions for discrimination, or by the pendency or availability of
18 any remedies other than direct civil service and collective bargaining
19 remedies.

20 (10) "Peace officer" means any law enforcement personnel subject to
21 the basic law enforcement training requirement of RCW 43.101.200 and
22 any other requirements of that section, notwithstanding any waiver or
23 exemption granted by the commission, and notwithstanding the statutory
24 exemption based on date of initial hire under RCW 43.101.200.
25 Commissioned officers of the Washington state patrol, whether they have
26 been or may be exempted by rule of the commission from the basic
27 training requirement of RCW 43.101.200, are included as peace officers
28 for purposes of this chapter. Fish and wildlife officers with
29 enforcement powers for all criminal laws under RCW ((~~77.12.055~~))
30 77.15.075 are peace officers for purposes of this chapter.

31 EXPLANATORY NOTE

32 RCW 77.12.055 was recodified as RCW 77.15.075 by 2001 c 253 §
33 61.

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

EXPLANATORY NOTE

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

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

(1) A person conducting a remedial action at a facility under a consent decree, order, or agreed order, and the department when it conducts a remedial action, are exempt from the procedural requirements of chapters 70.94, 70.95, 70.105, (~~75-20~~) 77.55, 90.48, and 90.58 RCW, and the procedural requirements of any laws requiring or authorizing local government permits or approvals for the remedial action. The department shall ensure compliance with the substantive provisions of chapters 70.94, 70.95, 70.105, (~~75-20~~) 77.55, 90.48, and 90.58 RCW, and the substantive provisions of any laws requiring or authorizing local government permits of approvals. The department shall establish procedures for ensuring that such remedial actions comply with the substantive requirements adopted pursuant to such laws, and shall consult with the state agencies and local governments charged with implementing these laws. The procedures shall provide an opportunity for comment by the public and by the state agencies and local governments that would otherwise implement the laws referenced in this section. Nothing in this section is intended to prohibit implementing agencies from charging a fee to the person conducting the remedial action to defray the costs of services rendered relating to the substantive requirements for the remedial action.

(2) An exemption in this section or in RCW 70.94.335, 70.95.270, 70.105.116, (~~75-20-025~~) 77.55.030, 90.48.039, and 90.58.355 shall not apply if the department determines that the exemption would result in loss of approval from a federal agency necessary for the state to administer any federal law, including the federal resource conservation and recovery act, the federal clean water act, the federal clean air act, and the federal coastal zone management act. Such a determination by the department shall not affect the applicability of the exemptions to other statutes specified in this section.

1 EXPLANATORY NOTE

2 Chapter 75.20 RCW was recodified as chapter 77.55 RCW by 2000
3 c 107.
4 RCW 75.20.025 was recodified as RCW 77.55.030 pursuant to 2000
5 c 107 § 129.

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

8 The costs of implementation of the projects prescribed by this
9 chapter shall be supported to the extent that funds are available under
10 the provisions of chapter ((75.52)) 77.100 RCW, and from correctional
11 industries funds.

12 EXPLANATORY NOTE

13 Chapter 75.52 RCW was recodified as chapter 77.100 RCW by 2000
14 c 107.

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

17 (1) There is hereby created the forest practices board of the state
18 of Washington as an agency of state government consisting of members as
19 follows:

20 (a) The commissioner of public lands or the commissioner's
21 designee;

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

24 (c) The director of the department of agriculture or the director's
25 designee;

26 (d) The director of the department of ecology or the director's
27 designee;

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

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

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

5 (2) The director of the department of fish and wildlife's service
6 on the board may be terminated two years after August 18, 1999, if the
7 legislature finds that after two years the department has not made
8 substantial progress toward integrating the laws, rules, and programs
9 governing forest practices, chapter 76.09 RCW, and the laws, rules, and
10 programs governing hydraulic projects, chapter (~~75.20~~) 77.55 RCW.
11 Such a finding shall be based solely on whether the department of fish
12 and wildlife makes substantial progress as defined in this subsection,
13 and will not be based on other actions taken as a member of the board.
14 Substantial progress shall include recommendations to the legislature
15 for closer integration of the existing rule-making authorities of the
16 board and the department of fish and wildlife, and closer integration
17 of the forest practices and hydraulics permitting processes, including
18 exploring the potential for a consolidated permitting process. These
19 recommendations shall be designed to resolve problems currently
20 associated with the existing dual regulatory and permitting processes.

21 (3) The members of the initial board appointed by the governor
22 shall be appointed so that the term of one member shall expire December
23 31, 1975, the term of one member shall expire December 31, 1976, the
24 term of one member shall expire December 31, 1977, the terms of two
25 members shall expire December 31, 1978, and the terms of two members
26 shall expire December 31, 1979. Thereafter, each member shall be
27 appointed for a term of four years. Vacancies on the board shall be
28 filled in the same manner as the original appointments. Each member of
29 the board shall continue in office until his or her successor is
30 appointed and qualified. The commissioner of public lands or the
31 commissioner's designee shall be the chairman of the board.

32 (4) The board shall meet at such times and places as shall be
33 designated by the chairman or upon the written request of the majority
34 of the board. The principal office of the board shall be at the state
35 capital.

36 (5) Members of the board, except public employees and elected
37 officials, shall be compensated in accordance with RCW 43.03.250. Each

1 member shall be entitled to reimbursement for travel expenses incurred
2 in the performance of their duties as provided in RCW 43.03.050 and
3 43.03.060.

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

6 EXPLANATORY NOTE

7 Chapter 75.20 RCW was recodified as chapter 77.55 RCW by 2000
8 c 107.

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

11 When a private landowner is applying for a forest practices permit
12 under this chapter and that landowner has entered into a habitat
13 incentives agreement with the department and the department of fish and
14 wildlife as provided in RCW (~~77.12.830~~) 77.55.300, the department
15 shall comply with the terms of that agreement when evaluating the
16 permit application.

17 EXPLANATORY NOTE

18 RCW 77.12.830 was recodified as RCW 77.55.300 pursuant to 2000
19 c 107 § 129.

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

22 The legislature recognizes the importance of providing the greatest
23 diversity of habitats, particularly riparian, wetland, and old growth
24 habitats, and of assuring the greatest diversity of species within
25 those habitats for the survival and reproduction of enough individuals
26 to maintain the native wildlife of Washington forest lands. The
27 legislature also recognizes the importance of long-term habitat
28 productivity for natural and wild fish, for the protection of hatchery
29 water supplies, and for the protection of water quality and quantity to
30 meet the needs of people, fish, and wildlife. The legislature
31 recognizes the importance of maintaining and enhancing fish and
32 wildlife habitats capable of sustaining the commercial and

1 noncommercial uses of fish and wildlife. The legislature further
2 recognizes the importance of the continued growth and development of
3 the state's forest products industry which has a vital stake in the
4 long-term productivity of both the public and private forest land base.

5 The development of a landscape planning system would help achieve
6 these goals. Landowners and resource managers should be provided
7 incentives to voluntarily develop long-term multispecies landscape
8 management plans that will provide protection to public resources.
9 Because landscape planning represents a departure from the use of
10 standard baseline rules and may result in unintended consequences to
11 both the affected habitats and to a landowner's economic interests, the
12 legislature desires to establish up to seven experimental pilot
13 programs to gain experience with landscape planning that may prove
14 useful in fashioning legislation of a more general application.

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

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

24 (b) The number and the location of the pilot projects are to be
25 determined by the department in cooperation with the department of fish
26 and wildlife, and the department of ecology when relating to water
27 quality protection, and should be selected on the basis of risk to the
28 habitat and species, variety and importance of species and habitats in
29 the planning area, geographic distribution, surrounding ownership,
30 other ongoing landscape and watershed planning activities in the area,
31 potential benefits to water quantity and quality, financial and
32 staffing capabilities of participants, and other factors that will
33 contribute to the creation of landowner multispecies landscape planning
34 efforts.

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

37 (i) An identification of public resources selected for coverage

1 under the plan and measurable objectives for the protection of the
2 selected public resources;

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

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

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

9 (v) Proposed habitat management strategies or prescriptions;

10 (vi) A projection of the habitat conditions likely to result from
11 the implementation of the specified management strategies or
12 prescriptions;

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

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

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

19 (x) A monitoring plan;

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

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

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

25 (xiv) A procedure for adaptive management that evaluates the
26 effectiveness of the plan to meet its measurable public resources
27 objectives, reflects changes in the best available science, and
28 provides changes to its habitat management strategies, prescriptions,
29 and hydraulic project standards to the extent agreed to in the plan and
30 in a timely manner and schedule;

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

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

36 (2) Until December 31, 2000, the department, in agreement with the
37 department of fish and wildlife, and the department of ecology when the
38 landowner elects to cover water quality in the plan, shall approve a

1 landscape management plan and enter into a binding implementation
2 agreement with the landowner when such departments find, based upon the
3 best scientific data available, that:

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

6 (b) The plan is expected to be effective in meeting those
7 objectives;

8 (c) The landowner has sufficient financial resources to implement
9 the management strategies or prescriptions to be implemented by the
10 landowner under the plan;

11 (d) The plan will:

12 (i) Provide better protection than current state law for the public
13 resources selected for coverage under the plan considered in the
14 aggregate; and

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

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

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

23 (e) The plan shall include watershed analysis or provide for a
24 level of protection that meets or exceeds the protection that would be
25 provided by watershed analysis, if the landowner selects fish or water
26 quality as a public resource to be covered under the plan. Any
27 alternative process to watershed analysis would be subject to timely
28 peer review;

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

32 The management plans must be submitted to the department and the
33 department of fish and wildlife, and the department of ecology when the
34 landowner elects to cover water quality in the plan, no later than
35 March 1, 2000. The department shall provide an opportunity for public
36 comment on the proposed plan. The comment period shall not be less
37 than forty-five days. The department shall approve or reject plans
38 within one hundred twenty days of submittal by the landowner of a final

1 plan. The decision by the department, in agreement with the department
2 of fish and wildlife, and the department of ecology when the landowner
3 has elected to cover water quality in the plan, to approve or
4 disapprove the management plan is subject to the environmental review
5 process of chapter 43.21C RCW, provided that any public comment period
6 provided for under chapter 43.21C RCW shall run concurrently with the
7 public comment period provided in this subsection (2).

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

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

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

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

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

15 (B) Provide for procedural or administrative obligations
16 inconsistent with or in addition to those provided for in the plan with
17 respect to those public resources; and

18 (b) If the landowner has selected fish as one of the public
19 resources to be covered under the plan, the plan shall serve as the
20 hydraulic project approval for the life of the plan, in compliance with
21 RCW ((~~75.20.100~~)) 77.55.100.

22 (4) The department is authorized to issue a single landscape level
23 permit valid for the life of the plan to a landowner who has an
24 approved landscape management plan and who has requested a landscape
25 permit from the department. Landowners receiving a landscape level
26 permit shall meet annually with the department and the department of
27 fish and wildlife, and the department of ecology where water quality
28 has been selected as a public resource to be covered under the plan, to
29 review the specific forest practices activities planned for the next
30 twelve months and to determine whether such activities are in
31 compliance with the plan. The departments will consult with the
32 affected Indian tribes and other interested parties who have expressed
33 an interest in connection with the review. The landowner is to provide
34 ten calendar days' notice to the department prior to the commencement
35 of any forest practices authorized under a landscape level permit. The
36 landscape level permit will not impose additional conditions relating
37 to the public resources selected for coverage under the plan beyond
38 those agreed to in the plan. For the purposes of chapter 43.21C RCW,

1 forest practices conducted in compliance with an approved plan are
2 deemed not to have the potential for a substantial impact on the
3 environment as to any public resource selected for coverage under the
4 plan.

5 (5) Except as otherwise provided in a plan, the agreement
6 implementing the landscape management plan is an agreement that runs
7 with the property covered by the approved landscape management plan and
8 the department shall record notice of the plan in the real property
9 records of the counties in which the affected properties are located.
10 Prior to its termination, no plan shall permit forest land covered by
11 its terms to be withdrawn from such coverage, whether by sale,
12 exchange, or other means, nor to be converted to nonforestry uses
13 except to the extent that such withdrawal or conversion would not
14 measurably impair the achievement of the plan's stated public resource
15 objectives. If a participant transfers all or part of its interest in
16 the property, the terms of the plan still apply to the new landowner
17 for the plan's stated duration unless the plan is terminated under its
18 terms or unless the plan specifies the conditions under which the terms
19 of the plan do not apply to the new landowner.

20 (6) The departments of natural resources, fish and wildlife, and
21 ecology shall seek to develop memorandums of agreements with federal
22 agencies and affected Indian tribes relating to tribal issues in the
23 landscape management plans. The departments shall solicit input from
24 affected Indian tribes in connection with the selection, review, and
25 approval of any landscape management plan. If any recommendation is
26 received from an affected Indian tribe and is not adopted by the
27 departments, the departments shall provide a written explanation of
28 their reasons for not adopting the recommendation.

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

1 EXPLANATORY NOTE

2 RCW 75.20.100 was recodified as RCW 77.55.100 pursuant to 2000
3 c 107 § 129.

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

6 Nothing in RCW 76.09.010 through 76.09.280 as now or hereafter
7 amended shall modify any requirements to comply with the Shoreline
8 Management Act of 1971 except as limited by RCW 76.09.240 as now or
9 hereafter amended, or the hydraulics act (~~((RCW 75.20.100))~~) (RCW
10 77.55.100), other state statutes in effect on January 1, 1975, and any
11 local ordinances not inconsistent with RCW 76.09.240 as now or
12 hereafter amended.

13 EXPLANATORY NOTE

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

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

18 (1) The legislature finds that increasing regulatory requirements
19 continue to diminish the economic viability of small forest landowners.
20 The concerns set forth in RCW (~~(75.46.300)~~) 77.85.180 about the
21 importance of sustaining forestry as a viable land use are particularly
22 applicable to small landowners because of the location of their
23 holdings, the expected complexity of the regulatory requirements, and
24 the need for significant technical expertise not readily available to
25 small landowners. The further reduction in harvestable timber owned by
26 small forest landowners as a result of the rules to be adopted under
27 RCW 76.09.055 will further erode small landowners' economic viability
28 and willingness or ability to keep the lands in forestry use and,
29 therefore, reduce the amount of habitat available for salmon recovery
30 and conservation of other aquatic resources, as defined in RCW
31 76.09.020.

32 (2) The legislature finds that the concerns identified in
33 subsection (1) of this section should be addressed by establishing
34 within the department of natural resources a small forest landowner

1 office that shall be a resource and focal point for small forest
2 landowner concerns and policies. The legislature further finds that a
3 forestry riparian easement program shall be established to acquire
4 easements from small landowners along riparian and other areas of value
5 to the state for protection of aquatic resources. The legislature
6 further finds that small forest landowners should have the option of
7 alternate management plans or alternate harvest restrictions on smaller
8 harvest units that may have a relatively low impact on aquatic
9 resources. The small forest landowner office should be responsible for
10 assisting small landowners in the development and implementation of
11 these plans or restrictions.

12 EXPLANATORY NOTE

13 RCW 75.46.300 was recodified as RCW 77.85.180 pursuant to 2000
14 c 107 § 135.

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

17 It shall be unlawful to dispose of wood debris by depositing such
18 material into any of the navigable waters of this state, except as
19 authorized by law including any discharge or deposit allowed to be made
20 under and in compliance with chapter 90.48 RCW and any rules duly
21 adopted thereunder or any deposit allowed to be made under and in
22 compliance with chapter 76.09 or (~~75.46~~) 77.85 RCW and any rules duly
23 adopted under those chapters. Violation of this section shall be a
24 misdemeanor.

25 EXPLANATORY NOTE

26 Chapter 75.46 RCW was recodified as chapter 77.85 RCW by 2000
27 c 107.

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

30 (1) A person is guilty of unlawful failure to use or maintain an
31 approved fish guard on a diversion device if the person owns, controls,

1 or operates a device used for diverting or conducting water from a
2 lake, river, or stream and:

3 (a) The device is not equipped with a fish guard, screen, or bypass
4 approved by the director as required by RCW 77.55.040 or (~~77.16.220~~)
5 77.55.320; or

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

9 (2) Unlawful failure to use or maintain an approved fish guard,
10 screen, or bypass on a diversion device is a gross misdemeanor.
11 Following written notification to the person from the department that
12 there is a violation, each day that a diversion device is operated
13 without an approved or maintained fish guard, screen, or bypass is a
14 separate offense.

15 EXPLANATORY NOTE

16 RCW 77.16.220 was recodified as RCW 77.55.320 pursuant to 2001
17 c 253 § 61.

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

20 The department shall have the exclusive authority to regulate
21 surface mine reclamation. No county, city, or town may require for its
22 review or approval a separate reclamation plan or application. The
23 department may, however, delegate some or all of its enforcement
24 authority by contractual agreement to a county, city, or town that
25 employs personnel who are, in the opinion of the department, qualified
26 to enforce plans approved by the department. All counties, cities, or
27 towns shall have the authority to zone surface mines and adopt
28 ordinances regulating operations as provided in this chapter, except
29 that county, city, or town operations ordinances may be preempted by
30 the department during the emergencies outlined in RCW 78.44.200 and
31 related rules.

32 This chapter shall not alter or preempt any provisions of the state
33 (~~(fisheries laws (Title 75 RCW), the state)~~) water allocation and use
34 laws (chapters 90.03 and 90.44 RCW), the state water pollution control
35 laws (chapter 90.48 RCW), the state fish and wildlife laws (Title 77

1 RCW), state noise laws or air quality laws (Title 70 RCW), shoreline
2 management (chapter 90.58 RCW), the state environmental policy act
3 (chapter 43.21C RCW), state growth management (chapter 36.70A RCW),
4 state drinking water laws (chapters 43.20 and 70.119A RCW), or any
5 other state statutes.

6 EXPLANATORY NOTE

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

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

11 This chapter is intended to preempt local regulation of the
12 drilling and operation of wells for geothermal resources but shall not
13 be construed to permit the locating of any well or drilling when such
14 well or drilling is prohibited under state or local land use law or
15 regulations promulgated thereunder. Geothermal resources, byproducts
16 and/or waste products which have escaped or been released from the
17 energy transfer system and/or a mineral recovery process shall be
18 subject to provisions of state law relating to the pollution of ground
19 or surface waters (Title 90 RCW), provisions of the state fisheries law
20 (~~((Title 75 RCW),~~) and the state game laws (Title 77 RCW), and any
21 other state environmental pollution control laws. Authorization for
22 use of byproduct water resources for all beneficial uses, including but
23 not limited to greenhouse heating, warm water fish propagation, space
24 heating plants, irrigation, swimming pools, and hot springs baths,
25 shall be subject to the appropriation procedure as provided in Title 90
26 RCW.

27 EXPLANATORY NOTE

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

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

32 When gravel, rock, sand, silt or other material from any aquatic

1 lands is removed by any public agency or under public contract for
2 channel or harbor improvement, or flood control, use of such material
3 may be authorized by the department of natural resources for a public
4 purpose on land owned or leased by the state or any municipality,
5 county, or public corporation: PROVIDED, That when no public land site
6 is available for deposit of such material, its deposit on private land
7 with the landowner's permission is authorized and may be designated by
8 the department of natural resources to be for a public purpose. Prior
9 to removal and use, the state agency, municipality, county, or public
10 corporation contemplating or arranging such use shall first obtain
11 written permission from the department of natural resources. No
12 payment of royalty shall be required for such gravel, rock, sand, silt,
13 or other material used for such public purpose, but a charge will be
14 made if such material is subsequently sold or used for some other
15 purpose: PROVIDED, That the department may authorize such public
16 agency or private landowner to dispose of such material without charge
17 when necessary to implement disposal of material. No charge shall be
18 required for any use of the material obtained under the provisions of
19 this chapter when used solely on an authorized site. No charge shall
20 be required for any use of the material obtained under the provisions
21 of this chapter if the material is used for public purposes by local
22 governments. Public purposes include, but are not limited to,
23 construction and maintenance of roads, dikes, and levies. Nothing in
24 this section shall repeal or modify the provisions of RCW ((75.20.100))
25 77.55.100 or eliminate the necessity of obtaining a permit for such
26 removal from other state or federal agencies as otherwise required by
27 law.

28 EXPLANATORY NOTE

29 RCW 75.20.100 was recodified as RCW 77.55.100 pursuant to 2000
30 c 107 § 129.

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

33 The following described tidelands, being public lands of the state,
34 are withdrawn from sale or lease and reserved as public areas for

1 recreational use and for the taking of fish and shellfish for personal
2 use as defined in RCW (~~(75.08.011)~~) 77.08.010:

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

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

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

16 The tidelands of the second class, owned by the state of
17 Washington, situate in front of, adjacent to or abutting upon lots 6
18 and 7, and that portion of lot 5, section 1, township 26 north, range
19 1 west, W.M., lying south of a line running due west from a point on
20 the government meander line which is S 22° E 1.69 chains from an angle
21 point in said meander line which is S 15° W 1.20 chains, more or less,
22 from the point of intersection of the north line of said lot 5 and said
23 meander line, with a frontage of 40.31 lineal chains, more or less.

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

29 Parcel No. 4. (Shine) The tidelands of the second class, owned by
30 the state of Washington, situate in front of, adjacent to, or abutting
31 upon lots 1, 2, 3 and that portion of lot 4 lying north of the south
32 8.35 chains thereof as measured along the government meander line, all
33 in section 35, township 28 north, range 1 east, W.M., with a frontage
34 of 76.70 lineal chains, more or less.

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

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

8 Subject to easements for rights of way for state road granted
9 through the filing of state road plats No. 374 December 15, 1930, No.
10 661, March 29, 1949, and No. 666 August 25, 1949, records of department
11 of public lands.

12 Parcel No. 6. (Nemah) Those portions of the tidelands of the
13 second class, owned by the state of Washington, situate in front of,
14 adjacent to, or abutting upon lots 5, 6, and 7, section 3 and lots 1,
15 2, and 3, section 4, township 12 north, range 10 west, W.M., lots 1, 2,
16 3, and 4, section 34, section 27 and lots 1, 2, 3 and 4, section 28,
17 township 13 north, range 10 west, W.M., lying easterly of the easterly
18 line of the Nemah Oyster reserve and easterly of the easterly line of
19 a tract of tidelands of the second class conveyed through deed issued
20 July 28, 1938, pursuant to the provisions of chapter 24, Laws of 1895,
21 under application No. 9731, with a frontage of 326.22 lineal chains,
22 more or less.

23 Parcels No. 7 and 8. (Penn Cove) The unplatted tidelands of the
24 first class, and tidelands of the second class, owned by the state of
25 Washington, situate in front of, adjacent to, or abutting upon lots 1
26 and 2, section 33, lots 1, 2, 3, and 4, section 32, lots 2 and 3 and
27 the B.P. Barstow D.L.C. No. 49, sections 30 and 31 and that portion of
28 the R.H. Lansdale D.L.C. No. 54 in section 30, lying west of the east
29 3.00 chains thereof as measured along the government meander line, all
30 in township 32 north, range 1 east, W.M., with a frontage of 260.34
31 lineal chains, more or less.

32 Excepting, however, the tidelands above the line of mean low tide
33 in front of said lot 1, section 32 which were conveyed as tidelands of
34 the second class through deed issued December 29, 1908, application No.
35 4957, records of department of public lands.

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

1 Parcel No. 9. (South of Penn Cove) The tidelands of the second
2 class, owned by the state of Washington, situate in front of, adjacent
3 to, or abutting upon lots 2, 3 and 4, section 17 and lots 1, 2 and 3,
4 section 20, township 31 north, range 2 east, W.M., with a frontage of
5 129.97 lineal chains, more or less.

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

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

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

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

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

29 EXPLANATORY NOTE

30 RCW 75.08.011 was repealed by 2000 c 107 § 125. RCW 77.08.010
31 has the same definition of "personal use" that appeared in RCW
32 75.08.011.

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

35 (1) Geoducks shall be sold as valuable materials under the

1 provisions of chapter 79.90 RCW. After confirmation of the sale, the
2 department of natural resources may enter into an agreement with the
3 purchaser for the harvesting of geoducks. The department of natural
4 resources may place terms and conditions in the harvesting agreements
5 as the department deems necessary. The department of natural resources
6 may enforce the provisions of any harvesting agreement by suspending or
7 canceling the harvesting agreement or through any other means contained
8 in the harvesting agreement. Any geoduck harvester may terminate a
9 harvesting agreement entered into pursuant to this subsection if
10 actions of a governmental agency, beyond the control of the harvester,
11 its agents, or its employees, prohibit harvesting, for a period
12 exceeding thirty days during the term of the harvesting agreement,
13 except as provided within the agreement. Upon such termination of the
14 agreement by the harvester, the harvester shall be reimbursed by the
15 department of natural resources for the cost paid to the department on
16 the agreement, less the value of the harvest already accomplished by
17 the harvester under the agreement.

18 (2) Harvesting agreements under this title for the purpose of
19 harvesting geoducks shall require the harvester and the harvester's
20 agent or representatives to comply with all applicable commercial
21 diving safety standards and regulations promulgated and implemented by
22 the federal occupational safety and health administration established
23 under the federal occupational safety and health act of 1970 as such
24 law exists or as hereafter amended (84 Stat. 1590 et seq.; 29 U.S.C.
25 Sec. 651 et seq.): PROVIDED, That for the purposes of this section and
26 RCW ((~~75.24.100~~)) 77.60.070 as now or hereafter amended, all persons
27 who dive for geoducks are deemed to be employees as defined by the
28 federal occupational safety and health act. All harvesting agreements
29 shall provide that failure to comply with these standards is cause for
30 suspension or cancellation of the harvesting agreement: PROVIDED
31 FURTHER, That for the purposes of this subsection if the harvester
32 contracts with another person or entity for the harvesting of geoducks,
33 the harvesting agreement shall not be suspended or canceled if the
34 harvester terminates its business relationship with such entity until
35 compliance with this subsection is secured.

1 EXPLANATORY NOTE

2 RCW 75.24.100 was recodified as RCW 77.60.070 pursuant to 2000
3 c 107 § 130.

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

6 The interagency committee for outdoor recreation shall provide
7 necessary grants and loan administration support to the salmon recovery
8 funding board as provided in RCW (~~(75.46.160)~~) 77.85.120. The
9 committee shall also be responsible for tracking salmon recovery
10 expenditures under RCW (~~(75.46.180)~~) 77.85.140. The committee shall
11 provide all necessary administrative support to the board, and the
12 board shall be located with the committee. The committee shall provide
13 necessary information to the salmon recovery office.

14 EXPLANATORY NOTE

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

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

19 Unless the context clearly requires otherwise, the definitions in
20 this section apply throughout this chapter.

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

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

27 (3) "Carrying passengers for hire" means carrying passengers in a
28 vessel on waters of the state for valuable consideration, whether given
29 directly or indirectly or received by the owner, agent, operator, or
30 other person having an interest in the vessel. This shall not include
31 trips where expenses for food, transportation, or incidentals are
32 shared by participants on an even basis. Anyone receiving compensation
33 for skills or money for amortization of equipment and carrying
34 passengers shall be considered to be carrying passengers for hire on
35 waters of the state.

- 1 (4) "Commission" means the state parks and recreation commission.
- 2 (5) "Darkness" means that period between sunset and sunrise.
- 3 (6) "Environmentally sensitive area" means a restricted body of
4 water where discharge of untreated sewage from boats is especially
5 detrimental because of limited flushing, shallow water, commercial or
6 recreational shellfish, swimming areas, diversity of species, the
7 absence of other pollution sources, or other characteristics.
- 8 (7) "Guide" means any individual, including but not limited to
9 subcontractors and independent contractors, engaged for compensation or
10 other consideration by a whitewater river outfitter for the purpose of
11 operating vessels. A person licensed under RCW (~~77.32.211 or~~
12 ~~75.28.780~~) 77.65.480 or 77.65.440 and acting as a fishing guide is not
13 considered a guide for the purposes of this chapter.
- 14 (8) "Marina" means a facility providing boat moorage space, fuel,
15 or commercial services. Commercial services include but are not
16 limited to overnight or live-aboard boating accommodations.
- 17 (9) "Motor driven boats and vessels" means all boats and vessels
18 which are self propelled.
- 19 (10) "Muffler" or "muffler system" means a sound suppression device
20 or system, including an underwater exhaust system, designed and
21 installed to abate the sound of exhaust gases emitted from an internal
22 combustion engine and that prevents excessive or unusual noise.
- 23 (11) "Operate" means to steer, direct, or otherwise have physical
24 control of a vessel that is underway.
- 25 (12) "Operator" means an individual who steers, directs, or
26 otherwise has physical control of a vessel that is underway or
27 exercises actual authority to control the person at the helm.
- 28 (13) "Observer" means the individual riding in a vessel who is
29 responsible for observing a water skier at all times.
- 30 (14) "Owner" means a person who has a lawful right to possession of
31 a vessel by purchase, exchange, gift, lease, inheritance, or legal
32 action whether or not the vessel is subject to a security interest.
- 33 (15) "Person" means any individual, sole proprietorship,
34 partnership, corporation, nonprofit corporation or organization,
35 limited liability company, firm, association, or other legal entity
36 located within or outside this state.
- 37 (16) "Personal flotation device" means a buoyancy device, life

1 preserver, buoyant vest, ring buoy, or buoy cushion that is designed to
2 float a person in the water and that is approved by the commission.

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

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

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

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

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

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

20 (b) A stationary or portable mechanical device on land, a dock,
21 pier, float, barge, vessel, or other location convenient to boaters,
22 designed to remove sewage waste from holding tanks on vessels.

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

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

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

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

35 (26) "Whitewater river outfitter" means any person who is
36 advertising to carry or carries passengers for hire on any whitewater
37 river of the state, but does not include any person whose only service

1 on a given trip is providing instruction in canoeing or kayaking
2 skills.

3 (27) "Whitewater rivers of the state" means those rivers and
4 streams, or parts thereof, within the boundaries of the state as listed
5 in RCW 79A.60.470 or as designated by the commission under RCW
6 79A.60.495.

7 EXPLANATORY NOTE

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

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

12 All taxes collected by the department of revenue under this chapter
13 shall be deposited in the state general fund except for the excise tax
14 on anadromous game fish, which shall be deposited in the wildlife fund,
15 and, during the period January 1, 2000, to December 31, 2005, twenty-
16 five forty-sixths of the revenues derived from the excise tax on sea
17 urchins collected under RCW 82.27.020 shall be deposited into the sea
18 urchin dive fishery account created in RCW (~~(75.30.210)~~) 77.70.150, and
19 twenty-five forty-sixths of the revenues derived from the excise tax on
20 sea cucumbers collected under RCW 82.27.020 shall be deposited into the
21 sea cucumber dive fishery account created in RCW (~~(75.30.250)~~)
22 77.70.190.

23 EXPLANATORY NOTE

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

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

28 (1) By January 1, 1996, the Washington conservation commission
29 shall develop, in consultation with other state agencies, tribes, and
30 local governments, a consolidated application process for permits for
31 a watershed restoration project developed by an agency or sponsored by
32 an agency on behalf of a volunteer organization. The consolidated

1 process shall include a single permit application form for use by all
2 responsible state and local agencies. The commission shall encourage
3 use of the consolidated permit application process by any federal
4 agency responsible for issuance of related permits. The permit
5 application forms to be consolidated shall include, at a minimum,
6 applications for: (a) Approvals related to water quality standards
7 under chapter 90.48 RCW; (b) hydraulic project approvals under chapter
8 ((75.20)) 77.55 RCW; and (c) section 401 water quality certifications
9 under 33 U.S.C. Sec. 1341 and chapter 90.48 RCW.

10 (2) If a watershed restoration project is also a fish habitat
11 enhancement project that meets the criteria of RCW ((75.20.350(1)))
12 77.55.290(1), the project sponsor shall instead follow the permit
13 review and approval process established in RCW ((75.20.350)) 77.55.290
14 with regard to state and local government permitting requirements. The
15 sponsor shall so notify state and local permitting authorities.

16 EXPLANATORY NOTE

17 Chapter 75.20 RCW was recodified as chapter 77.55 RCW by 2000
18 c 107.

19 RCW 75.20.350 was recodified as RCW 77.55.290 pursuant to 2000
20 c 107 § 129.

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

23 Whenever an application for a permit to make beneficial use of
24 public waters is approved relating to a stream or other water body for
25 which minimum flows or levels have been adopted and are in effect at
26 the time of approval, the permit shall be conditioned to protect the
27 levels or flows. No agency may establish minimum flows and levels or
28 similar water flow or level restrictions for any stream or lake of the
29 state other than the department of ecology whose authority to establish
30 is exclusive, as provided in chapter 90.03 RCW and RCW 90.22.010 and
31 90.54.040. The provisions of other statutes, including but not limited
32 to RCW ((75.20.100)) 77.55.100 and chapter 43.21C RCW, may not be
33 interpreted in a manner that is inconsistent with this section. In
34 establishing such minimum flows, levels, or similar restrictions, the
35 department shall, during all stages of development by the department of

1 ecology of minimum flow proposals, consult with, and carefully consider
2 the recommendations of, the department of fish and wildlife, the
3 department of community, trade, and economic development, the
4 department of agriculture, and representatives of the affected Indian
5 tribes. Nothing herein shall preclude the department of fish and
6 wildlife, the department of community, trade, and economic development,
7 or the department of agriculture from presenting its views on minimum
8 flow needs at any public hearing or to any person or agency, and the
9 department of fish and wildlife, the department of community, trade,
10 and economic development, and the department of agriculture are each
11 empowered to participate in proceedings of the federal energy
12 regulatory commission and other agencies to present its views on
13 minimum flow needs.

14 EXPLANATORY NOTE

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

17 **Sec. 49.** RCW 90.58.147 and 1998 c 249 s 4 are each amended to read
18 as follows:

19 (1) A public or private project that is designed to improve fish or
20 wildlife habitat or fish passage shall be exempt from the substantial
21 development permit requirements of this chapter when all of the
22 following apply:

23 (a) The project has been approved by the department of fish and
24 wildlife;

25 (b) The project has received hydraulic project approval by the
26 department of fish and wildlife pursuant to chapter ((75.20)) 77.55
27 RCW; and

28 (c) The local government has determined that the project is
29 substantially consistent with the local shoreline master program. The
30 local government shall make such determination in a timely manner and
31 provide it by letter to the project proponent.

32 (2) Fish habitat enhancement projects that conform to the
33 provisions of RCW ((75.20.350)) 77.55.290 are determined to be
34 consistent with local shoreline master programs.

EXPLANATORY NOTE

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Chapter 75.20 RCW was recodified as chapter 77.55 RCW by 2000
c 107.
RCW 75.20.350 was recodified as RCW 77.55.290 pursuant to 2000
c 107 § 129.

Passed by the Senate March 6, 2003.

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