

Chapter 79.110 RCW
AQUATIC LANDS—EASEMENTS AND RIGHTS-OF-WAY

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RCW 79.110.001 Intent—2005 c 155. See RCW 79.105.001.

EASEMENTS FOR REMOVAL
OF VALUABLE MATERIALS

RCW 79.110.010 Certain aquatic lands subject to easements for removal of valuable materials. All tidelands and shorelands originally belonging to the state, and which were granted, sold, or leased at any time after June 15, 1911, and which contain any valuable materials or are contiguous to or in proximity of state lands or other tidelands or shorelands which contain any valuable materials, shall be subject to the right of the state or any grantee or lessee who has acquired the other lands, or any valuable materials thereon, after June 15, 1911, to acquire the right-of-way over the lands so granted, sold, or leased, for private railroads, skid roads, flumes, canals, watercourses, or other easements for the purpose of, and to be used in, transporting and moving valuable materials from the other lands, over and across the lands so granted or leased in accordance with the provisions of RCW 79.36.370. [2005 c 155 § 201; 2003 c 334 § 607; 1982 1st ex.s. c 21 § 48. Formerly RCW 79.91.010.]

Intent—2003 c 334: See note following RCW 79.02.010.

RCW 79.110.020 Certain aquatic lands subject to easements for removal of valuable materials—Private easements subject to common use in removal of valuable materials. Every right-of-way for a private railroad, skid road, canal, flume, or watercourse, or other easement, over and across any state-owned tidelands or shorelands, for the purpose of, and to be used in, transporting and moving valuable materials of the land, granted after June 15, 1911, shall be subject to joint and common use in accordance with the provisions of RCW 79.36.380. [2005 c 155 § 202; 1982 1st ex.s. c 21 § 49. Formerly RCW 79.91.020.]

RCW 79.110.030 Certain state and aquatic lands subject to easements for removal of valuable materials—Reasonable facilities and service for transporting must be furnished. Any person having acquired a right-of-way or easement as provided in RCW 79.110.010 and 79.110.020 over any state-owned tidelands or shorelands or over or across beds of any navigable water or stream for the purpose of transporting or moving valuable materials and being engaged in such business, or any grantee or lessee thereof acquiring after June 15,

1911, state lands or tidelands or shorelands containing valuable materials, where the land is contiguous to or in proximity of the right-of-way or easement, shall accord to the state or any person acquiring after June 15, 1911, valuable materials upon any such lands, proper and reasonable facilities and service for transporting and moving valuable materials under reasonable rules and upon payment of just and reasonable charges in accordance with the provisions of RCW 79.36.390. [2005 c 155 § 203; 2003 c 334 § 608; 1982 1st ex.s. c 21 § 50. Formerly RCW 79.91.030.]

Intent—2003 c 334: See note following RCW 79.02.010.

RCW 79.110.040 Certain state and aquatic lands subject to easements for removal of valuable materials—Duty of utilities and transportation commission. Should the owner or operator of any private railroad, skid road, flume, canal, watercourse, or other right-of-way or easement provided for in RCW 79.110.020 and 79.110.030 fail to agree with the state or any grantee or lessee, as to the reasonable and proper rules and charges, concerning the transportation and movement of valuable materials from those lands contiguous to or in proximity to the lands over which the private right-of-way or easement is operated, the state or any grantee or lessee, owning and desiring to have the valuable materials transported or moved, may apply to the Washington state utilities and transportation commission for an inquiry into the reasonableness of the rules, investigate the rules, and make binding reasonable, proper, and just rates and regulations in accordance with the provisions of RCW 79.36.400. [2005 c 155 § 204; 2003 c 334 § 609; 1982 1st ex.s. c 21 § 51. Formerly RCW 79.91.040.]

Intent—2003 c 334: See note following RCW 79.02.010.

RCW 79.110.050 Certain state and aquatic lands subject to easements for removal of valuable materials—Penalty for violation of orders. Any person owning or operating any right-of-way or easement subject to the provisions of RCW 79.110.020 through 79.110.040, over and across any state-owned tidelands or shorelands or across any beds of navigable waters, and violating or failing to comply with any rule or order made by the utilities and transportation commission, after inquiry, investigation, and a hearing as provided in RCW 79.110.040, shall be subject to the same penalties provided in RCW 79.36.410. [2005 c 155 § 205; 2003 c 334 § 610; 1982 1st ex.s. c 21 § 52. Formerly RCW 79.91.050.]

Intent—2003 c 334: See note following RCW 79.02.010.

RCW 79.110.060 Certain state and aquatic lands subject to easements for removal of valuable materials—Application for right-of-way. Any person engaged in the business of logging or lumbering, quarrying, mining, or removing sand, gravel, or other valuable materials from land, and desirous of obtaining a right-of-way or easement provided for in RCW 79.110.010 through 79.110.030 over and across any state-owned tidelands or shorelands, or beds of navigable

waters or any lands sold or leased by the state since June 15, 1911, shall file with the department upon a form to be furnished for that purpose, a written application for the right-of-way in accordance with the provisions of RCW 79.36.350. [2005 c 155 § 206; 2003 c 334 § 611; 1982 1st ex.s. c 21 § 53. Formerly RCW 79.91.060.]

Intent—2003 c 334: See note following RCW 79.02.010.

RCW 79.110.070 Certain state and aquatic lands subject to easements for removal of valuable materials—Forfeiture for nonuser. Any right-of-way or easement granted under the provisions of RCW 79.110.010 through 79.110.030 which has never been used, or for a period of two years has ceased to be used for the purpose for which it was granted, shall be deemed forfeited. The forfeiture of any such right-of-way previously granted or granted under the provisions of RCW 79.110.010 through 79.110.030, shall be rendered effective by the mailing of a notice of the forfeiture to the grantee at the grantee's last known post office address and by posting a copy of the certificate, or other record of the grant, in the department's Olympia office with the word "canceled" and the date of the cancellation. [2005 c 155 § 207; 1982 1st ex.s. c 21 § 54. Formerly RCW 79.91.070.]

RIGHTS-OF-WAY FOR ROADS,
BRIDGES, AND TRESTLES

RCW 79.110.100 United States of America, state agency, county, or city right-of-way for roads and streets over, and wharves over and upon aquatic lands. Any county or city or the United States of America or any state agency desiring to locate, establish, and construct a road or street over and across any aquatic lands, or wharf over any state-owned tidelands or shorelands, shall by resolution of the legislative body of the county, or city council or other governing body of the city, or proper agency of the United States of America or state agency, file a petition with the department for a right-of-way for the road or street or wharf in accordance with the provisions of RCW 79.36.440.

The department may grant the petition if it deems it in the best interest of the state and upon payment for the right-of-way and any damages to the affected aquatic lands. [2005 c 155 § 208; 2003 c 334 § 612; 1982 1st ex.s. c 21 § 55. Formerly RCW 79.91.080.]

Intent—2003 c 334: See note following RCW 79.02.010.

RCW 79.110.110 Railroad bridge rights-of-way across navigable streams. Any railroad company organized under the laws of the territory or state of Washington, or under any other state or territory of the United States, or under any act of the congress of the United States, and authorized to do business in the state and to construct and operate railroads, shall have the right to construct bridges across the navigable streams within this state over which the line or lines of its railway shall run for the purpose of being made a part of the railway line, or for the more convenient use thereof, if

the bridges are constructed so as not to interfere with, impede, or obstruct navigation on the streams. However, payment for any right-of-way and any damages to those aquatic lands affected must be paid first. [2005 c 155 § 209; 1982 1st ex.s. c 21 § 56. Formerly RCW 79.91.090.]

RCW 79.110.120 Public bridges or trestles across waterways and aquatic lands—Recovery of reasonable direct administrative costs—Report to the legislature. (1) Counties, cities, towns, and other municipalities shall have the right to construct bridges and trestles across waterways heretofore or hereafter laid out under the authority of the state of Washington, and over and across any tidelands, shorelands, bedlands, or harbor areas owned and managed by the state adjacent thereto over which the projected line or lines of highway will run, if such bridges or trestles are constructed in good faith for the purpose of being made a part of the constructed line of such a highway, upon payment for any natural resource damages to those aquatic lands affected not already covered by an approved state or federal regulatory mitigation plan. Such a right shall be granted by easement and no charge may be made to the county, city, town, or other municipality, for such an easement. The department may recover only its reasonable direct administrative costs incurred in processing and approving the request or application, and reviewing plans for construction of the bridge or trestle.

(2) For purposes of this section, "direct administrative costs" means the cost of hours worked directly on an application or request, based on salaries and benefits, plus travel reimbursement and other actual out-of-pocket costs. Direct administrative costs recovered by the department must be deposited into the resource management cost account.

(3) By December 1, 2008, the department must deliver a report to the legislature regarding the collection of administrative fees as described in this section. [2005 c 58 § 1; 1982 1st ex.s. c 21 § 57. Formerly RCW 79.91.100.]

RCW 79.110.130 Common carriers may bridge or trestle state waterways. Any person authorized by any state or municipal law or ordinance to construct and operate railroads, interurban railroads, or street railroads as common carriers within this state, shall have the right to construct bridges or trestles across waterways laid out under the authority of the state of Washington, over which the projected line or lines of railroad will run. The bridges or trestles shall be constructed in good faith for the purpose of being made a part of the constructed line of the railroad, and may also include a roadway for the accommodation of vehicles and foot passengers. Full payment for any right-of-way and any damages to those aquatic lands affected by the right-of-way shall first be made. [2005 c 155 § 211; 1982 1st ex.s. c 21 § 58. Formerly RCW 79.91.110.]

RCW 79.110.140 Location and plans of bridge or trestle to be approved—Future alterations. The location and plans of any bridge, draw bridge, or trestle proposed to be constructed under RCW 79.110.110 through 79.110.130 shall be submitted to and approved by

the department before construction is commenced. However, in case the portion of the waterway, river, stream, or watercourse, at the place to be crossed is navigable water of the United States, or otherwise within the jurisdiction of the United States, the location and plans shall also be submitted to and approved by the United States army corps of engineers before construction is commenced. When plans for any bridge or trestle have been approved by the department and the United States army corps of engineers, it is unlawful to deviate from the plans either before or after the completion of the structure, unless the modification of the plans has previously been submitted to, and received the approval of the department and the United States army corps of engineers, as the case may be. Any structure authorized and approved as indicated in this section shall remain within the jurisdiction of the respective officer or officers approving the structure, and shall be altered or changed from time to time at the expense of the municipality owning the highway, or at the expense of the common carriers, at the time owning the railway or road using the structure, to meet the necessities of navigation and commerce in such a manner as may be from time to time ordered by the respective officer or officers at the time having jurisdiction of the structure, and the orders may be enforced by appropriate action at law or in equity at the suit of the state. [2005 c 155 § 212; 1982 1st ex.s. c 21 § 59. Formerly RCW 79.91.120.]

RIGHTS-OF-WAY FOR UTILITY LINES

RCW 79.110.200 Right-of-way for utility pipelines, transmission lines, etc. A right-of-way through, over, and across any tidelands, shorelands, beds of navigable waters, oyster reserves belonging to the state, or the reversionary interest of the state in oyster lands may be granted to any person or the United States of America, constructing or proposing to construct, or which has constructed, any telephone line, ditch, flume, or pipeline for the domestic water supply of any municipal corporation or transmission line for the purpose of generating or transmitting electricity for light, heat, or power. [2005 c 155 § 213; 1982 1st ex.s. c 21 § 60. Formerly RCW 79.91.130.]

RCW 79.110.210 Right-of-way for utility pipelines, transmission lines, etc.—Procedure to acquire. In order to obtain the benefits of the grant made in RCW 79.110.200, the person or the United States of America constructing or proposing to construct, or which has constructed, a telephone line, ditch, flume, pipeline, or transmission line, shall file, with the department, a map accompanied by the field notes of the survey and location of the telephone line, ditch, flume, pipeline, or transmission line, and shall make payment as provided in RCW 79.110.220. The land within the right-of-way shall be limited to an amount necessary for the construction of the telephone line, ditch, flume, pipeline, or transmission line sufficient for the purposes required, together with sufficient land on either side thereof for ingress and egress to maintain and repair the telephone line, ditch, flume, pipeline, or transmission line. The grant shall also include the right to cut all standing timber outside the right-of-way marked as danger trees located on public lands upon full payment of the

appraised value. [2005 c 155 § 214; 1982 1st ex.s. c 21 § 61.
Formerly RCW 79.91.140.]

RCW 79.110.220 Right-of-way for utility pipelines, transmission lines, etc.—Appraisal—Certificate—Reversion for nonuser. On the filing of the plat and field notes, as provided in RCW 79.110.210, the land applied for and any improvements included in the right-of-way applied for, if any, shall be appraised as in the case of an application to purchase state lands. Upon full payment of the appraised value of the state-owned aquatic land applied for, or upon payment of an annual rental when the department deems a rental to be in the best interests of the state, and upon full payment of the appraised value of any danger trees and improvements, if any, the department shall issue to the applicant a certificate of the grant of right-of-way stating the terms and conditions and shall enter the certificate in the abstracts and records in the department's Olympia office, and thereafter any sale or lease of the lands affected by the right-of-way shall be subject to the easement of the right-of-way. However, should the person or the United States of America securing the right-of-way ever abandon the use of the right-of-way for the purposes for which it was granted, the right-of-way shall revert to the state, or the state's grantee. [2005 c 155 § 215; 1982 1st ex.s. c 21 § 62. Formerly RCW 79.91.150.]

RCW 79.110.230 Use of state-owned aquatic lands for public utility lines. (1) The use of state-owned aquatic lands for public utility lines owned by a governmental entity shall be granted by an agreement, permit, or other instrument if the use is consistent with the purposes of RCW 79.105.010, 79.105.030, 79.105.050, 79.105.210, 79.105.400, and 79.130.070 and does not obstruct navigation or other public uses. The department may recover only its administrative costs incurred in processing and approving the request or application, and reviewing plans for construction of public utility lines as determined under RCW 79.110.240. Administrative costs recovered by the department must be deposited into the resource management cost account.

(2) The use of state-owned aquatic lands for local public utility lines owned by a nongovernmental entity will be granted by easement if the use is consistent with the purpose of RCW 79.105.010, 79.105.030, 79.105.050, 79.105.210, 79.105.400, and 79.130.070 and does not obstruct navigation or other public uses. The total charge for the easement will be determined under RCW 79.110.240.

(3) Nothing in this section limits the ability of the department to obtain payment for commodity costs, such as lost revenue from renewable resources, resulting from the granted use of state-owned aquatic lands for public utility lines. [2008 c 55 § 1; 2005 c 155 § 216. FORMERLY PART OF RCW 79.90.470.]

RCW 79.110.240 Charge for term of easement—Recovery of costs.

(1) Until July 1, 2030, the charge for the term of an easement granted under RCW 79.110.230(2) will be determined as follows and will be paid in advance upon grant of the easement:

(a) Five thousand dollars for individual easement crossings that are no longer than one mile in length;

(b) Twelve thousand five hundred dollars for individual easement crossings that are more than one mile but less than five miles in length; or

(c) Twenty thousand dollars for individual easement crossings that are five miles or more in length.

(2) The charge for easements under subsection (1) of this section must be adjusted annually by the rate of yearly change in the most recently published Seattle-Tacoma-Bremerton consumer price index, all urban consumers (CPI-U), over the consumer price index for the same period of the preceding year, as compiled by the bureau of labor statistics, United States department of labor for the state of Washington rounded up to the nearest fifty dollars.

(3) The term of the easement is thirty years or a period of less than thirty years if requested by the person or entity seeking the easement.

(4) In addition to the charge for the easement under subsection (1) of this section, the department may recover its administrative costs incurred in receiving an application for the easement, approving the easement, and reviewing plans for and construction of the public utility lines. For the purposes of this subsection, "administrative costs" is equivalent to twenty percent of the fee for the easement as determined under subsection (1) of this section and adjusted under subsection (2) of this section. For public utility lines owned by a governmental entity, the administrative costs will be calculated based on the length of the easement and the fee that it would be charged if it were subject to the easement charges in this section. When multiple public utility lines are owned by the same entity and are authorized under the same easement, the administrative fee for the easement shall be equal to twenty percent of the easement fee for the single longest public utility line. Administrative costs recovered by the department must be deposited into the resource management cost account.

(5) Applicants under RCW 79.110.230(2) providing a residence with an individual service connection for electrical, natural gas, cable television, or telecommunications service are not required to pay the charge for the easement under subsection (1) of this section but shall pay administrative costs under subsection (4) of this section.

(6) A final decision on applications for an easement must be made within one hundred twenty days after the department receives the completed application and after all applicable regulatory permits for the aquatic easement have been acquired. This subsection applies to applications submitted before June 13, 2002, as well as to applications submitted on or after June 13, 2002. Upon request of the applicant, the department may reach a decision on an application within sixty days and charge an additional fee for an expedited processing. The fee for an expedited processing is ten percent of the combined total of the easement charge and administrative costs.

(7) Beginning December 31, 2021, every four years the legislature shall review the granting of easements on state-owned aquatic lands under this chapter and determine whether all applications for easements are processed within one hundred twenty days for normal processing of applications and sixty days for expedited processing of applications, and whether the granting of easements on state-owned aquatic lands generates reasonable income for the aquatic lands enhancement account. [2017 c 19 § 1; 2008 c 55 § 2; 2005 c 155 § 162; 2002 c 152 § 3. Formerly RCW 79.90.575.]

Findings—2002 c 152: "The legislature finds that local public utilities provide essential services to all of the residents of the state and that the construction and improvement of local utility infrastructure is critical to the public health, safety, and welfare, community and economic development, and installation of modern and reliable communication and energy technology. The legislature further finds that local utility lines must cross state-owned aquatic lands in order to reach all state residents and that, for the benefit of such residents, the state should permit the crossings, consistent with all applicable state environmental laws, in a nondiscriminatory, economic, and timely manner. The legislature further finds that this act and the valuation methodology in section 3 of this act applies only to the uses listed in section 2 of this act, and does not establish a precedent for valuation for any other uses on state-owned aquatic lands." [2002 c 152 § 1.]

Severability—2002 c 152: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 152 § 4.]

RIGHTS-OF-WAY FOR IRRIGATION, DIKING, AND DRAINAGE/OVERFLOW RIGHTS

RCW 79.110.300 Right-of-way for irrigation, diking, and drainage purposes. A right-of-way through, over, and across any state-owned tidelands or shorelands is granted to any irrigation district, or irrigation company duly organized under the laws of this state, and to any person, or the United States of America, constructing or proposing to construct an irrigation ditch or pipeline for irrigation, or to any diking and drainage district or any diking and drainage improvement district proposing to construct a dike or drainage ditch. [2005 c 155 § 217; 1982 1st ex.s. c 21 § 63. Formerly RCW 79.91.160.]

RCW 79.110.310 Right-of-way for irrigation, diking, and drainage purposes—Procedure to acquire. In order to obtain the benefits of the grant provided for in RCW 79.110.300, the irrigation district, irrigation company, person, or the United States of America, constructing or proposing to construct an irrigation ditch or pipeline for irrigation, or the diking and drainage district or diking and drainage improvement district constructing or proposing to construct any dike or drainage ditch, shall file with the department a map accompanied by the field notes of the survey and location of the proposed irrigation ditch, pipeline, dike, or drainage ditch, and shall pay to the state as provided in RCW 79.110.320, the amount of the appraised value of the lands used for or included within the right-of-way. The land within the right-of-way shall be limited to an amount necessary for the construction of the irrigation ditch, pipeline, dike, or drainage ditch for the purposes required, together with sufficient land on either side for ingress and egress to maintain and repair the irrigation ditch, pipeline, dike, or drainage ditch. [2005 c 155 § 218; 1982 1st ex.s. c 21 § 64. Formerly RCW 79.91.170.]

RCW 79.110.320 Right-of-way for irrigation, diking, and drainage purposes—Appraisal—Certificate. Upon the filing of the plat and field notes as in RCW 79.110.310, the lands included within the right-of-way applied for shall be appraised as in the case of an application to purchase the lands, at full market value. Upon full payment of the appraised value of the lands the department shall issue to the applicant a certificate of right-of-way, and enter the certificate in the department records. Any subsequent sale or lease by the state of the lands affected by the right-of-way shall be subject to the certificate of right-of-way. [2005 c 155 § 219; 1982 1st ex.s. c 21 § 65. Formerly RCW 79.91.180.]

RCW 79.110.330 Grant of overflow rights. The department has the power and authority to grant to any person, the right, privilege, and authority to perpetually back and hold water upon or over any state-owned tidelands or shorelands, and to overflow and inundate the lands, whenever the department deems it necessary for the purpose of erecting, constructing, maintaining, or operating any water power plant, reservoir, or works for impounding water for power purposes, irrigation, mining, or other public use in accordance with the provisions of RCW 79.36.570. [2005 c 155 § 220; 2003 c 334 § 613; 1982 1st ex.s. c 21 § 66. Formerly RCW 79.91.190.]

Intent—2003 c 334: See note following RCW 79.02.010.

RCW 79.110.340 Construction of RCW 79.110.010 through 79.110.220 and 79.110.240 through 79.110.330 relating to rights-of-way and overflow rights. RCW 79.110.010 through 79.110.220 and 79.110.240 through 79.110.330, relating to the acquiring of rights-of-way and overflow rights through, over, and across state-owned aquatic lands, shall not be construed as exclusive or as affecting the right of municipal and public service corporations to acquire lands belonging to or under the control of the state, or rights-of-way or other rights, by condemnation proceedings. [2005 c 155 § 221; 1982 1st ex.s. c 21 § 67. Formerly RCW 79.91.200.]

RCW 79.110.350 Grant of such easements and rights-of-way as applicant may acquire in private lands by eminent domain. The department may grant to any person easements and rights in tidelands and shorelands and oyster reserves owned by the state as the applicant may acquire in privately or publicly owned lands through proceedings in eminent domain in accordance with the provisions of RCW 79.36.355. [2005 c 155 § 222; 2003 c 334 § 614; 1982 1st ex.s. c 21 § 68. Formerly RCW 79.91.210.]

Intent—2003 c 334: See note following RCW 79.02.010.