

# Title 399 WAC

## COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT, DEPARTMENT OF (PUBLIC WORKS BOARD)

### Chapters

- 399-10 General provisions.
- 399-20 Public records.
- 399-30 Public works loans and pledges.
- 399-40 Compliance with State Environmental Policy Act.
- 399-50 Ethics in public service.

### Chapter 399-10 WAC GENERAL PROVISIONS

#### WAC

- 399-10-010 Organization and operation of the public works board.
- 399-10-020 Board meetings.
- 399-10-030 Communications with the board.

**WAC 399-10-010 Organization and operation of the public works board.** (1) The public works board is a thirteen-member board appointed by the governor under RCW 43.155.030.

(2) The governor appoints one of the general public members as chair. The board may elect other officers for terms deemed necessary.

(3) The department of community, trade, and economic development provides staff support and office space to the board at P.O. Box 48319, Olympia, Washington 98504-8319; phone (360) 753-2200.

The board's Internet site is: [WWW.CRAB.WA.GOV/PWTF](http://WWW.CRAB.WA.GOV/PWTF)

[Statutory Authority: RCW 43.155.040 (4) and (5). 98-24-010, § 399-10-010, filed 11/19/98, effective 12/20/98. Statutory Authority: RCW 43.155.040(4). 95-11-093, § 399-10-010, filed 5/19/95, effective 6/19/95; 93-22-014, § 399-10-010, filed 10/26/93, effective 11/26/93. Statutory Authority: 1985 c 446 § 10. 85-24-072 (Order 85-17), § 399-10-010, filed 12/4/85.]

**WAC 399-10-020 Board meetings.** (1) The board holds regular meetings on the first Tuesday of each month. In the month of August meetings are held on the first and third Tuesdays.

(2) Notice of the times and places of the regular meetings will be published annually in a January edition of the Washington State Register. A copy of the schedule of regular meetings may also be obtained upon request from the board.

(3) Special meetings of the board may be called at any time by the chair of the board or by a majority of the board members. Notice of such meetings will be as provided by law.

[Statutory Authority: RCW 43.155.040 (4) and (5). 98-24-010, § 399-10-020, filed 11/19/98, effective 12/20/98. Statutory Authority: RCW 43.155.040(4). 93-22-014, § 399-10-020, filed 10/26/93, effective

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11/26/93. Statutory Authority: 1985 c 446 § 10. 85-24-072 (Order 85-17), § 399-10-020, filed 12/4/85.]

### WAC 399-10-030 Communications with the board.

Any and all written communications with the board, including but not limited to requests for information or copies of agency records, or submittals of any nature, must be addressed to the public works board, in care of the chair, as stated in WAC 399-10-010(3). The board's telephone number and Internet address are listed in the same section.

[Statutory Authority: RCW 43.155.040 (4) and (5). 98-24-010, § 399-10-030, filed 11/19/98, effective 12/20/98. Statutory Authority: RCW 43.155.040(4). 93-22-014, § 399-10-030, filed 10/26/93, effective 11/26/93. Statutory Authority: 1985 c 446 § 10. 85-24-072 (Order 85-17), § 399-10-030, filed 12/4/85.]

### Chapter 399-20 WAC PUBLIC RECORDS

#### WAC

- 399-20-010 Purpose.
- 399-20-020 Definitions.
- 399-20-030 Public records available.
- 399-20-040 Public records officer.
- 399-20-050 Records index.
- 399-20-060 Office hours.
- 399-20-070 Requests for public records.
- 399-20-080 Copying.
- 399-20-090 Exemptions.
- 399-20-100 Review of denials of public records requests.
- 399-20-110 Protection of public records.
- 399-20-120 Adoption of form.

**WAC 399-20-010 Purpose.** This chapter is intended to ensure that the board complies with chapter 42.17 RCW, the Public Disclosure Act, especially RCW 42.17.250 through 42.17.348, which address disclosure of public records.

[Statutory Authority: RCW 43.155.040 (4) and (5). 98-24-010, § 399-20-010, filed 11/19/98, effective 12/20/98. Statutory Authority: 1985 c 446 § 10. 85-24-072 (Order 85-17), § 399-20-010, filed 12/4/85.]

**WAC 399-20-020 Definitions.** The following definitions shall apply to this chapter:

(1) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by the board regardless of physical form or characteristics.

(2) "Writing" means handwriting, typewriting, printing, photostating and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, symbols, or combinations thereof, and all paper, maps, magnetic or paper tapes, photographic films and

prints, magnetic or punched cards, discs, drums and other documents.

(3) "Board" means the public works board, created in chapter 43.155 RCW, and also refers to the board's officers and staff, where appropriate.

(4) "Department" means the department of community, trade, and economic development, and shall refer to the department's staff, where appropriate.

[Statutory Authority: RCW 43.155.040 (4) and (5). 98-24-010, § 399-20-020, filed 11/19/98, effective 12/20/98. Statutory Authority: RCW 43.155.040(4). 95-11-093, § 399-20-020, filed 5/19/95, effective 6/19/95. Statutory Authority: 1985 c 446 § 10. 85-24-072 (Order 85-17), § 399-20-020, filed 12/4/85.]

**WAC 399-20-030 Public records available.** All public records of the board are deemed to be available for public inspection and copying, except as otherwise provided by RCW 42.17.260 and 42.17.310 as now or hereafter amended, and by WAC 399-20-090.

[Statutory Authority: RCW 43.155.040 (4) and (5). 98-24-010, § 399-20-030, filed 11/19/98, effective 12/20/98. Statutory Authority: 1985 c 446 § 10. 85-24-072 (Order 85-17), § 399-20-030, filed 12/4/85.]

**WAC 399-20-040 Public records officer.** The board shall designate a staff member to be the public records officer. The public records officer shall be responsible for implementation of the board's rules and regulations regarding inspection and copying of public records, and for ensuring compliance by the staff with the public records disclosure requirements of chapter 42.17 RCW.

[Statutory Authority: RCW 43.155.040 (4) and (5). 98-24-010, § 399-20-040, filed 11/19/98, effective 12/20/98. Statutory Authority: 1985 c 446 § 10. 85-24-072 (Order 85-17), § 399-20-040, filed 12/4/85.]

**WAC 399-20-050 Records index.** (1) The board will make available to any person upon request a current index which provides identifying information as to the following records:

(a) Those statements of policy and interpretations of policy, statutes and regulations which have been adopted by the board;

(b) Administrative staff manuals and instructions to staff that affect a member of the public;

(c) Planning policies and goals, and interim and final planning decisions;

(d) Factual staff reports and studies, factual consultant's reports and studies, specific reports and studies and any other factual information derived from tests, studies, reports or surveys, whether conducted by public employees or others; and

(e) Correspondence and materials relating to any responsibilities of the board.

(2) The current index promulgated by the board shall be available to all persons under the same rules and on the same conditions as are applied to the public records available for inspection and copying.

[Statutory Authority: 1985 c 446 § 10. 85-24-072 (Order 85-17), § 399-20-050, filed 12/4/85.]

**WAC 399-20-060 Office hours.** Public records are available for inspection and copying during the department's

[Title 399 WAC—p. 2]

normal office hours, which are 8:00 a.m. to noon and from 1:00 p.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, or closure due to natural disaster, inclement weather, or local emergency.

[Statutory Authority: RCW 43.155.040 (4) and (5). 98-24-010, § 399-20-060, filed 11/19/98, effective 12/20/98. Statutory Authority: 1985 c 446 § 10. 85-24-072 (Order 85-17), § 399-20-060, filed 12/4/85.]

**WAC 399-20-070 Requests for public records.** The Public Disclosure Act, chapter 42.17 RCW, requires agencies to prevent unreasonable invasions of privacy, to protect public records from damage or disorganization, and to prevent excessive interference with essential functions of the board. Therefore, members of the public may inspect, copy, or obtain copies of public records if they comply with the following procedures:

(1) A request must be made in writing on the form adopted by the board which shall be in WAC 399-20-120. The form is available at the board's offices, or by writing or calling the board.

(2) The form must be completed in full and presented or mailed to the public records officer at the board's offices during normal office hours.

(3) The public records officer will assist the member of the public in appropriately identifying the public record requested.

[Statutory Authority: RCW 43.155.040 (4) and (5). 98-24-010, § 399-20-070, filed 11/19/98, effective 12/20/98. Statutory Authority: 1985 c 446 § 10. 85-24-072 (Order 85-17), § 399-20-070, filed 12/4/85.]

**WAC 399-20-080 Copying.** No fee is charged for the inspection of public records. The board may charge a fee of fifteen cents per page for providing copies of public records, when copies of more than ten pages are provided, and for use of the department's copy equipment.

[Statutory Authority: RCW 43.155.040 (4) and (5). 98-24-010, § 399-20-080, filed 11/19/98, effective 12/20/98. Statutory Authority: 1985 c 446 § 10. 85-24-072 (Order 85-17), § 399-20-080, filed 12/4/85.]

**WAC 399-20-090 Exemptions.** (1) The public records officer will determine whether a requested record is exempt from disclosure under chapter 42.17 RCW.

(2) If a requested record is determined to be exempt in part, the public records officer will delete the exempt portions of the record before making it available for inspection or copying. The public records officer will fully justify any deletion in writing.

(3) Whenever the public records officer denies a public records request, a written statement specifying the reason for the denial shall be provided.

(4) The Public Disclosure Act requires agencies to respond promptly to requests for public records. Within five business days after receiving a public records request, the public records officer must respond by either:

(a) Providing the record;

(b) Acknowledging the request and stating a reasonable estimate of the time the board will need to respond; or

(c) Denying the request.

The board may require additional time to respond for reasons consistent with RCW 42.17.320.

[Statutory Authority: RCW 43.155.040 (4) and (5). 98-24-010, § 399-20-090, filed 11/19/98, effective 12/20/98. Statutory Authority: 1985 c 446 § 10. 85-24-072 (Order 85-17), § 399-20-090, filed 12/4/85.]

**WAC 399-20-100 Review of denials of public records requests.** Agencies are required to establish a mechanism for the prompt review of decisions denying the inspection or copying of public records. In any case where a public record is denied in whole or in part the chair, or designee, shall immediately review the matter and either affirm or reverse the denial. The review is deemed complete at the end of the second business day following the denial of inspection or copying and constitutes final agency action for purposes of judicial review.

[Statutory Authority: RCW 43.155.040 (4) and (5). 98-24-010, § 399-20-100, filed 11/19/98, effective 12/20/98. Statutory Authority: 1985 c 446 § 10. 85-24-072 (Order 85-17), § 399-20-100, filed 12/4/85.]

**WAC 399-20-110 Protection of public records.** To protect the board's public records any person inspecting or copying the records must comply with the following requirements:

- (1) Public records may not be removed from the board's offices;
- (2) Persons inspecting public records must do so in the presence of a designated board or department employee;
- (3) Persons inspecting or copying public records must not mark or deface them in any manner;
- (4) Public records maintained in a file jacket, or in chronological order must not be dismantled except for the purposes of copying and then only by a designated board or department employee;
- (5) Only board or department employees will have access to file cabinets, shelves, vaults, or other storage areas.

[Statutory Authority: RCW 43.155.040 (4) and (5). 98-24-010, § 399-20-110, filed 11/19/98, effective 12/20/98. Statutory Authority: 1985 c 446 § 10. 85-24-072 (Order 85-17), § 399-20-110, filed 12/4/85.]

**WAC 399-20-120 Adoption of form.** The board hereby adopts for use by all persons requesting inspection or copying of its records, the form set out below, entitled "request for public records."

In order to request copies of our public records, please complete the attached form and return it with the proper payment to the address below. We will forward to you those requested copies which are not exempt from disclosure when we receive this form. Thank you.

REQUEST FOR  
PUBLIC RECORDS

Public Works Board  
PO Box 48319  
Olympia, WA 98504-8319 (360) 753-2200

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NAME OF REQUESTOR: \_\_\_\_\_ PHONE: \_\_\_\_\_

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STREET ADDRESS: \_\_\_\_\_

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CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

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DATE OF REQUEST (M/D/Y): \_\_\_\_\_ TIME: \_\_\_\_\_ A.M.  
P.M.

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PUBLIC RECORDS OR INFORMATION REQUESTED: \_\_\_\_\_

Completed by Public Works Board Staff

NUMBER OF COPIES, IF REQUESTED:	NUMBER OF COPIES PROVIDED:
APPOINTMENT TO VIEW RECORDS:	AMOUNT RECEIVED FOR COPIES: \$
(Preferred Dates) (1st) DATE: _____ TIME: _____ (2nd) DATE: _____ TIME: _____ (3rd) DATE: _____ TIME: _____	APPOINTMENT CONFIRMED: DATE: _____ TIME: _____ STAFF: _____
IF SPECIAL EQUIPMENT REQUIRED FOR VIEWING RECORDS, PLEASE DESCRIBE:	

AGREEMENTS: I have read, understand, and will comply with the rules of the public works board governing the inspection and copying of public records. I also agree that any list of individuals and/or information provided me by the board shall not be used for any commercial purpose by myself or by any organizations I represent. I will protect the list of individuals and/or information from access by anyone who may use it for the purposes of contacting the individuals named therein or otherwise personally affecting them in furtherance of any profit-seeking activity.

SIGNATURE OF REQUESTOR: \_\_\_\_\_ DATE: \_\_\_\_\_

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ACKNOWLEDGEMENT OF RECEIPT

DATE: \_\_\_\_\_ TIME: \_\_\_\_\_ A.M.  
P.M.

SIGNATURE OF STAFF RECIPIENT: \_\_\_\_\_

REASON IF AGENCY IS UNABLE TO COMPLY: \_\_\_\_\_

WAC 399-20-120 (11/85)

(FOR BOARD USE ONLY)

Number of copies . . . .  
 Number of pages . . . .  
 Per page charge \$ .15  
 for in excess of  
 ten pages  
 Total charge \$ . . . .

[Statutory Authority: RCW 43.155.040 (4) and (5). 98-24-010, § 399-20-120, filed 11/19/98, effective 12/20/98. Statutory Authority: 1985 c 446 § 10. 85-24-072 (Order 85-17), § 399-20-120, filed 12/4/85.]

**Chapter 399-30 WAC  
PUBLIC WORKS LOANS AND PLEDGES**

<b>WAC</b>	
399-30-010	Purpose.
399-30-020	Definitions.
399-30-030	Loan and financing guarantee applications.
399-30-032	What are the requirements for meeting the Growth Management Act under RCW 43.155.070 (1)(d)?
399-30-033	How will the board address a "public health need" under RCW 43.155.070 (1)(d)?
399-30-034	How will the board address "substantial environmental degradation" as found in RCW 43.155.070 (1)(d)?
399-30-040	Application evaluation procedure and board deliberations.
399-30-042	Application evaluation procedure and board deliberations—Capital planning support.
399-30-045	Emergency loan program.
399-30-050	Recommendations to the legislature.
399-30-060	Loan and financing guarantee contracts.
399-30-065	Emergency loan and financing guarantee contracts.

**WAC 399-30-010 Purpose.** (1) The public works board makes low-interest or interest-free loans to local govern-

ments from the public works assistance account or other sources to assist local governments in financing public works projects. The board may also pledge money to the repayment of all or a portion of the principal or interest on obligations issued by local governments to finance public works projects.

(2) The purpose of this chapter is to describe how local governments may apply to the board for financial assistance, and to provide for the review of the applications.

[Statutory Authority: RCW 43.155.040 (4) and (5), 98-24-010, § 399-30-010, filed 11/19/98, effective 12/20/98. Statutory Authority: 1985 c 446 § 10, 85-24-072 (Order 85-17), § 399-30-010, filed 12/4/85.]

**WAC 399-30-020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means the public works board.

(2) "Department" means the department of community, trade, and economic development.

(3) "Financing guarantees" means the pledge of money in the public works assistance account, or money to be received by the public works assistance account, to the repayment of all or a portion of the principal of or interest on obligations issued by local governments to finance public works projects.

(4) "Local governments" means cities, towns, counties, special purpose districts, and any other municipal corporations or quasi-municipal corporations in the state excluding school districts and port districts.

(5) "Public works project" means a project of a local government for the planning, acquisition, construction, repair, reconstruction, replacement, rehabilitation, or improvement of bridges, roads, domestic water systems, sanitary sewer systems, storm sewer systems, and solid waste/recycling systems.

(6) "Emergency public works project" means a public works project made necessary by a natural disaster, or an immediate and emergent threat to the public health and safety due to unforeseen or unavoidable circumstances.

[Statutory Authority: RCW 43.155.040 (4) and (5), 98-24-010, § 399-30-020, filed 11/19/98, effective 12/20/98. Statutory Authority: RCW 43.155.040, 89-10-041 (Order 89-01), § 399-30-020, filed 4/28/89. Statutory Authority: 1985 c 446 § 10, 85-24-072 (Order 85-17), § 399-30-020, filed 12/4/85.]

**WAC 399-30-030 Loan and financing guarantee applications.** (1) Any local government in the state of Washington may apply for a loan or financing guarantee to assist in financing critical public works projects.

(2) All applicants must meet the following conditions:

(a) Applicant cities and counties must be imposing a real estate excise tax under RCW 82.46.010(2) at a rate of at least one-quarter of one percent;

(b) Applicant local governments must have developed a long-term plan for financing public works needs as further described in the loan application package under "capital facilities planning."

(3) Direct costs eligible for public works loans are those costs directly attributable to a specific project and include:

(a) Work done by employees of the applicant, or by other government employees under an inter-local agreement or contract limited to: Engineering, environmental review, design activities, acquisition of rights of way or property, construction inspection activities, roadway seal coating (if bids from private sector contractors have been solicited and compared with the inter-local agreement proposal), and the cleaning, sterilization, or bacteriological testing of water system components prior to public use.

(i) Salaries and wages (at actual or average rates) covering productive labor hours of the local government employees (excluding the administrative organization of the operating unit involved). The cost of services rendered by employees generally classified as administrative are considered a direct cost only when such employees are assigned for short periods of time to perform on a full-time basis the types of services described above and when similar procedures are followed;

(ii) Employee benefits relating to direct labor are considered a direct cost of construction projects. The following items may be included as employee benefits:

(A) F.I.C.A. (Social Security) - employer's share;

(B) Retirement benefits;

(C) Hospital, health, dental, and other welfare insurance;

(D) Life insurance;

(E) Industrial and medical insurance;

(F) Vacation;

(G) Holiday;

(H) Sick leave; and

(I) Military leave and jury duty.

Employee benefits must be calculated as a percentage of direct labor dollars. The computation of predetermined percentage rates to be applied to current labor costs must be based on the average of total employee benefits and total labor costs for the prior fiscal year and adjusted by known current year variations.

(b) Contract engineering, planning, legal, and financial planning services. The board reserves the right to declare ineligible legal costs that are unreasonable and disproportionate to the project.

(c) Right-of-way acquisition costs including:

(i) Purchase of land and easements acquired for and devoted to the project;

(ii) Purchase of improvements;

(iii) Adjustment or reestablishment of improvements;

(iv) Salaries, expenses or fees of appraisers, negotiators or attorneys;

(v) Removal or demolition of improvement;

(vi) Other direct costs in connection with the acquisition.

Amounts received from the sale of excess real property or improvements and from any rentals will be reduced from the direct cost.

(d) Contract construction work.

(e) Direct vehicle and equipment charges at the actual rental cost paid for the equipment or, in the case of city or county-owned equipment, at the rental rates established by the local government's "equipment rental and revolving fund" following the methods prescribed by the division of municipal corporations. However, such costs must be charged on a uniform basis to equipment used for all projects

regardless of the source of funding. Cities with a population of eight thousand or less not using type of fund are allowed the same rates as used by the department of transportation.

(f) Direct materials and supplies.

(i) An overhead rate or "loading factor" is not considered an appropriate additive to the actual cost of materials and supplies used on construction projects unless the factor is readily and properly supportable by the governmental unit's accounting records.

(ii) The cost, or reasonable estimate thereof, of materials paid for as contract estimate items, but not used, will be considered a reduction of direct costs. Any material that is salvaged in connection with a project will be assigned a reasonable value and considered a reduction of direct costs.

(iii) Wetland plants and other materials used for wetland planting, wildlife habitat, or fish habitat may be provided to a public or nonprofit organization without a reduction of direct costs.

(g) Interdepartmental charges for work performed by the local government for the benefit of specific construction projects is limited to direct costs plus an allocation of indirect costs based on ten percent of direct labor dollars, excluding employee benefits.

(h) Other direct costs incurred for materials or services acquired for a specific project are eligible for participation by public works loan funds and may include, but are not limited to such items as:

- (i) Telephone charges;
- (ii) Reproduction and photogrammetry costs;
- (iii) Video and photography for project documentation;
- (iv) Computer usage; and
- (v) Printing and advertising.

(4) Other than work identified in subsection (3)(a) of this section, no government employee labor related costs, including force account work, are eligible for financing assistance or to be considered as local match under this chapter.

(5) Applications must be submitted in writing, on forms provided by the board for the current funding cycle.

(6) A responsible official of the applicant jurisdiction must sign and verify each application for financial assistance. The official must also provide the board with additional materials or information in support of the application when requested by the board or its staff.

[Statutory Authority: RCW 43.155.040 (4) and (5). 98-24-010, § 399-30-030, filed 11/19/98, effective 12/20/98. Statutory Authority: RCW 43.155.040(4). 92-03-052, § 399-30-030, filed 1/13/92, effective 2/13/92. Statutory Authority: 1985 c 446 § 10. 85-24-072 (Order 85-17), § 399-30-030, filed 12/4/85.]

**WAC 399-30-032 What are the requirements for meeting the Growth Management Act under RCW 43.155.070 (1)(d)?** (1) "Compliance with the Growth Management Act" means that at the time of application for financial assistance:

(a) A local government that is required to or chooses to plan under RCW 36.70A.040 has adopted a comprehensive plan and development regulations in conformance with the requirements of chapter 36.70A RCW, after it is required that the comprehensive plan and development regulations be adopted; and

(2001 Ed.)

(b) The local government has not been found out of compliance by a growth management hearings board; or

(c) A growth management hearings board has found a local government in compliance with the requirements of chapter 36.70A RCW, after previously finding the local government was not in compliance.

(2) Exceptions based on "public health need" or "substantial environmental degradation" shall not be used as a method to provide unrestricted access to financial assistance for local governments not in compliance with the law.

[Statutory Authority: RCW 43.155.040(4). 99-09-020, § 399-30-032, filed 4/14/99, effective 5/15/99.]

**WAC 399-30-033 How will the board address a "public health need" under RCW 43.155.070 (1)(d)?** "Public health need" means that a situation exists that causes or is about to cause a real, documented, acute public health need related to the state's air, water, or soil that contributes to injuries or deaths on public highways, or risk of a public health emergency due to contaminated domestic water, the failure of a sanitary sewer system, storm sewer system, or solid waste or recycling system; and the problem generally involves a discrete area including, but not limited to, a county, city, subdivision, or an area serviced by on-site wastewater disposal systems.

In determining whether a project is necessary to address a public health need, the board shall consider the following factors:

(1) For bridge or road projects - whether injury or fatal injury motor or nonmotorized vehicle traffic collisions at a specific site, roadway control section, or area have occurred at a rate to be in the top five percent of all such collisions within the applicant jurisdiction for the most recent three-year period; and whether the proposed public works project will eliminate or reduce the likelihood of such vehicle collisions. Applicants applying under this subsection may utilize jurisdiction-wide accident data, or break the data down into arterial or nonarterial roads, intersection or nonintersection, and for intersections, whether they are signalized or nonsignalized.

(2) For domestic water projects - whether a drinking water system regulated by the department of health has been contaminated or is in imminent danger of being contaminated to the extent of creating a public health risk and; whether the proposed public works project will eliminate or reduce the chance of contamination.

(3) For sanitary sewer projects - whether failure of existing wastewater system or systems, including on-site systems, has resulted in contamination being present on the surface of the ground in such quantities and locations so as to create a potential for public contact; or whether contamination of a commercial or recreational shellfish bed so as to create a public health risk associated with the consumption of the shellfish, or contamination of surface water so as to create a public health risk associated with recreational use; and whether the proposed public works project will eliminate or reduce the danger of such public health risk.

(4) For storm sewer projects - whether failure of an existing storm sewer system has caused or is in imminent danger of causing localized flooding which disrupts critical

public services; causes disease, illness, or attraction of rodents so as to create a public health risk; or contamination of a commercial or recreational shellfish bed so as to create a public health risk associated with the consumption of the shellfish, or contamination of surface water so as to create a public health risk associated with recreational use and; whether the proposed public works project will eliminate or reduce the danger of localized flooding which disrupts critical public services or causes a public health risk.

(5) For solid waste or recycling projects - whether failure of an existing solid waste or recycling system has caused or is in danger of causing ground water contamination; causes disease, illness, or attraction of rodents so as to create a public health risk and; whether the proposed public works project will eliminate or reduce the danger of such public health risk.

(6) For all projects - whether more efficient operation of an existing system, changing public access, or modifying other regulatory standards (e.g., reduced speed limits, water conservation measures, rodent control, restricted shellfish harvesting) is likely to provide the same or similar level of resolution.

(7) For all projects - whether the public health problem is caused by failure to maintain or periodically replace, reconstruct, or rehabilitate a public works system.

(8) For all projects - other factors the board finds on the record are significant in light of facts and circumstances unique to the project.

(9) The factors enumerated in subsection (1) of this section must be addressed in a letter of request, with supporting documentation, addressed to the chair of the board and signed by the public official who signed the application for financial assistance.

(10) The factors enumerated in subsections (2) through (5) of this section must be addressed in a letter of request, with supporting documentation, addressed to the secretary of the Washington state department of health and signed by the public official who signed the application for financial assistance. A determination of a public health need may be made by the secretary, or designee, and addressed to the same public official. The board will consider the determination of the secretary. The board will also consider information presented on factors enumerated in subsections (6) through (8) of this section, which must be documented in a manner acceptable to the board.

[Statutory Authority: RCW 43.155.040(4), 99-09-020, § 399-30-033, filed 4/14/99, effective 5/15/99.]

**WAC 399-30-034 How will the board address "substantial environmental degradation" as found in RCW 43.155.070 (1)(d)?** "Substantial environmental degradation" means a situation causes or is about to cause real, documented, substantial environmental degradation that contributes to violations of the state's air quality, water quality, or soil contaminate standards, interferes with beneficial uses of the air, water, or land, and the problem generally involves a discrete area including, but not limited to, a county, city, subdivision, or an area serviced by on-site wastewater disposal systems.

[Title 399 WAC—p. 6]

In determining whether a project is necessary to address substantial environmental degradation, the board shall consider the following factors:

(1) For bridge and road projects - whether motorized or nonmotorized vehicle traffic has caused substantial environmental degradation of the air, water, or soils of the state at the site for which a proposed public works project is the subject of a financial assistance application, and; whether the proposed public works project will eliminate or reduce the chance of such vehicle-caused critical substantial environmental degradation.

(2) For domestic water projects - whether a drinking water system regulated by the department of health has caused substantial environmental degradation of the air, water, or soil of the state including, but not limited to: Causing disease or illness to humans, the attraction of rodents, or the killing of fish and shellfish that reside in the waters of the state, and; whether the proposed public works project will eliminate or reduce the chance of substantial environmental degradation.

(3) For sanitary sewer projects - whether failure of an existing wastewater system, including individual on-site systems, has caused substantial environmental degradation of the air, water, or soil of the state including, but not limited to: Causing disease or illness to humans, the attraction of rodents, or the killing of fish and shellfish that reside in the waters of the state, and; whether the proposed public works project will eliminate or reduce such substantial environmental degradation.

(4) For storm sewer systems - whether of an existing storm sewer system has caused substantial environmental degradation of the air, water, or soil of the state including, but not limited to: Causing disease or illness to humans, the attraction of rodents, or the killing of fish and shellfish that reside in the waters of the state, and; whether the proposed public works project will eliminate or reduce such substantial environmental degradation.

(5) For solid waste or recycling projects - whether failure of an existing solid waste system or recycling system has caused substantial environmental degradation of the air, water, or soil of the state including, but not limited to: Causing disease or illness to humans, the attraction of rodents, or the killing of fish and shellfish that reside in the waters of the state, and; whether the proposed public works project will eliminate or reduce such substantial environmental degradation.

(6) For all projects - whether more efficient operation of an existing system, changing public access, or modifying other regulatory standards (e.g., reduced speed limits, water conservation measures, rodent control, restricted shellfish harvesting) is likely to provide the same or similar level of resolution.

(7) For all projects - whether the substantial environmental degradation is caused by failure to maintain or periodically replace, reconstruct, or rehabilitate a public works system.

(8) For all projects - other factors the board finds on the record are significant in light of facts and circumstances unique to the project. Fish passage, water quality, or water quantity issues directly impacting salmonid fish survival in a

(2001 Ed.)

watershed which is designated as a candidate for listing, proposed for listing, threatened listing, or endangered listing under the federal Endangered Species Act may be considered significant and unique to a project.

(9) The factors enumerated in subsections (1) through (5) of this section must be addressed in a letter of request, with supporting documentation, to the director of the Washington state department of ecology and signed by the public official who signed the application for financial assistance. A determination of substantial environmental degradation may be made by the director or designee and addressed to the same public official. The board will consider the determination of the director. The board will also consider information presented on factors enumerated in subsections (6) through (8) of this section, which must be documented in a manner acceptable to the board.

[Statutory Authority: RCW 43.155.040(4), 99-09-020, § 399-30-034, filed 4/14/99, effective 5/15/99.]

**WAC 399-30-040 Application evaluation procedure and board deliberations.** (1) The board will consider and prioritize, or disapprove, all applications for loans or financing guarantees at regular or special meetings of the board. The applicant will be notified of meetings at which its application will be considered.

(2) Applications will be evaluated and prioritized in accordance with the following procedures:

(a) Staff will log in all applications as received.

(b) Staff will review all applications for compliance with the minimum qualification requirements of WAC 399-30-030(2). Jurisdictions whose applications do not meet the minimum qualification requirements will be notified in writing of the disqualification.

(c) Staff will perform an evaluation of all applications which meet the requirements of WAC 399-30-030(2). Applications will be scored according to the number of points awarded for responses provided in the statements of local management efforts and project need.

(i) Not less than sixty points, of a one hundred point total, will be assigned to responses to questions identified in the application as relating to local management effort.

(ii) The remaining forty points will be assigned to responses to questions identified in the application as relating to project need.

(d) Staff will provide the board with evaluation and scoring of the applications. All application materials will be available to the board for their deliberations. The board will approve a ranked list of projects based on the information provided to them by the staff and the applications.

(e) The board may adjust the ranked list in consideration of the following factors:

(i) Geographical balance;

(ii) Economic distress;

(iii) Type of projects;

(iv) Type of jurisdiction;

(v) Other criteria that the board considers advisable.

(f) Staff will verify critical information on each project as required by the board.

(g) In order to ensure fairness to all jurisdictions with applications pending before the board, the board will not

accept oral or written testimony from any applicant while deliberating loan priorities, other than specific responses to information requests initiated by the board as provided in (h) of this subsection.

(h) The board may consult with officials of jurisdictions having projects submitted for funding on any issue it wishes to address.

(3) Applicants will be notified in writing of board decisions.

[Statutory Authority: RCW 43.155.040 (4) and (5), 98-24-010, § 399-30-040, filed 11/19/98, effective 12/20/98. Statutory Authority: RCW 43.155.040(4), 95-11-093, § 399-30-040, filed 5/19/95, effective 6/19/95; 93-22-015, § 399-30-040, filed 10/26/93, effective 11/26/93; 92-03-052, § 399-30-040, filed 1/13/92, effective 2/13/92. Statutory Authority: RCW 43.155.040, 88-10-009 (Order 88-02), § 399-30-040, filed 4/22/88; 87-17-013 (Order 87-16), § 399-30-040, filed 8/10/87; 86-18-009 (Resolution No. 86-12), § 399-30-040, filed 8/21/86. Statutory Authority: 1985 c 446 § 10, 86-03-051 (Resolution No. 85-17), § 399-30-040, filed 1/15/86.]

**WAC 399-30-042 Application evaluation procedure and board deliberations—Capital planning support.** (1)

The board will consider and approve, or disapprove, all applications for capital planning support loans at regular or special meetings of the board. The applicant will be notified of meetings at which its application will be considered.

(2) All applications will be evaluated in accordance with the following procedures:

(a) Staff will log in all applications as received.

(b) Staff will review all applications for compliance with the minimum qualification requirements of WAC 399-30-030(2). Jurisdictions whose applications do not meet the minimum requirements will be notified in writing of the disqualification.

(c) Staff will perform an evaluation of applications which meet the requirements of WAC 399-30-030(2) to determine if the application is consistent with the policies contained in the capital planning support loan application.

(d) Those applications found to be consistent with board policies may be recommended to the board for funding. All application materials will be available to the board for its deliberations. The board will approve a list of projects based on the information provided to it by the staff and the applications.

(e) The board may then adjust the list in consideration of the following factors:

(i) Geographical balance;

(ii) Economic distress;

(iii) Other criteria that the board considers advisable.

(f) Staff will verify critical information on each project as required by the board.

(g) The board may consult on any issue it wishes to address, with officials of jurisdictions having projects submitted for funding.

(3) Applicants will be notified in writing of board decisions.

[Statutory Authority: RCW 43.155.040 (4) and (5), 98-24-010, § 399-30-042, filed 11/19/98, effective 12/20/98. Statutory Authority: RCW 43.155.040(4), 92-03-052, § 399-30-042, filed 1/13/92, effective 2/13/92. Statutory Authority: RCW 43.155.040, 88-17-080 (Order 88-03), § 399-30-042, filed 8/22/88.]

**WAC 399-30-045 Emergency loan program.** This section implements RCW 43.155.060 and 43.155.065. The board may make low-interest or interest free loans to local governments for emergency public works projects. The emergency loan program is to financially assist eligible communities experiencing the loss of critical public works services or facilities due to an emergency, and that can demonstrate a substantial fiscal need.

(1) Eligible local governments. Applicants must meet the conditions as identified under WAC 399-30-030(2).

(2) Eligible uses of funds. Financial assistance received shall be used for the purpose of restoring the services and/or repair of the public works facilities involved in the emergency. Assistance provided may be used to help fund all or part of an emergency public works project less any reimbursement from any of the following:

- (a) Federal disaster or emergency funds, including funds from the Federal Emergency Management Agency;
- (b) State disaster or emergency funds;
- (c) Insurance settlements; or
- (d) Litigation.

Assisted local governments must reimburse the department any moneys received from the sources listed above. The local government is obligated to make reimbursement for four years after formal project closeout. Local governments eligible to receive moneys must use their best efforts to seek reimbursement in a timely manner.

(3) Availability of funds. Funding will be made available on a first-come first-served basis. Only those funds specifically appropriated by the legislature from the public works assistance account shall be used to make emergency loans. That amount shall not exceed five percent of the total amount appropriated from this account in any biennium.

(4) Application process. Local governments must apply on the form provided by the board. Applications will be processed in the order received.

(5) Board deliberations—Emergency loan applications.

(a) The board will consider and approve or disapprove all eligible applications for emergency financial assistance at regular or special meetings of the board. The applicant will be notified of meetings at which its application will be considered.

(b) All applications will be accepted, evaluated, and prioritized in accordance with the following procedures:

(i) Applications will be accepted only when emergency funding is available.

(ii) Staff will review applications and verify that the applicant is eligible for assistance as set forth in RCW 43.155.070(1).

(iii) Staff will provide the board an evaluation of whether an emergency loan is needed based upon the information documented by the applicant and staff.

(iv) Site visits to the location of the emergency public works project will be carried out at the discretion of the board or staff.

(6) Loan terms. The board shall determine the term and interest rate(s) of emergency loans annually.

(7) Exceptions to public works trust fund policies and procedures. Except as provided in this chapter or specified in annual program guidelines, the emergency program shall fol-

low all general administrative program policies as set for the public works trust fund.

[Statutory Authority: RCW 43.155.040 (4) and (5). 98-24-010, § 399-30-045, filed 11/19/98, effective 12/20/98. Statutory Authority: RCW 43.155.040(4). 92-03-052, § 399-30-045, filed 1/13/92, effective 2/13/92. Statutory Authority: RCW 43.155.040. 89-10-041 (Order 89-01), § 399-30-045, filed 4/28/89.]

**WAC 399-30-050 Recommendations to the legislature.** (1) Prior to November 1, 1986, and in each subsequent year, the board will develop and submit to the appropriate fiscal committees of the senate and house of representatives a prioritized list of projects which the board recommends for funding by the legislature.

(2) In addition to the requirements of RCW 43.155.070(4), the list will include such supporting material as the board considers necessary to meet the purposes of this chapter.

(3) Before November 1 of each year, the board will develop and submit to the chairs of the appropriate fiscal committees of the senate and house of representatives a description of the emergency loans made under this program.

[Statutory Authority: RCW 43.155.040 (4) and (5). 98-24-010, § 399-30-050, filed 11/19/98, effective 12/20/98. Statutory Authority: RCW 43.155.040(4). 92-03-052, § 399-30-050, filed 1/13/92, effective 2/13/92. Statutory Authority: RCW 43.155.040. 89-10-041 (Order 89-01), § 399-30-050, filed 4/28/89. Statutory Authority: 1985 c 446 § 10. 85-24-072 (Order 85-17), § 399-30-050, filed 12/4/85.]

**WAC 399-30-060 Loan and financing guarantee contracts.** (1) The board will only execute loan agreements or otherwise financially obligate funds from the public works assistance account after the legislature approves the list and accompanying appropriation.

(2) After the legislature has appropriated funds from the public works assistance account for a specific list of public works projects, the loan funds will be disbursed to the applicant local government through a contract. The contract will offer terms and conditions as the board determines are reasonable, based on the following standards:

(a) The amount loaned to a local government must not exceed ninety percent of eligible proposed project costs.

(b) The local government's financial participation funds must be from locally generated revenues or federal or state shared revenues that can be allocated at the discretion of the local government.

(c) The interest rate and local share requirements for loans will be determined annually by the board.

(d) Loans must not exceed twenty years, or the useful life of the improvements, whichever is shorter.

(3) The local government and the department must execute a final contract before any funds are disbursed.

(4) The local government must complete a scope of work form for a loan or financing guarantee and return it to the department within ninety days after the department offers a loan or financing guarantee.

(5) The local government must execute any loan or financing guarantee contracts offered within ninety days after the department offers the contract.



(6) The local government must begin work on a public works project prior to October 1 of the year in which the loan or financing guarantee is offered.

(7) The local government must complete work on the public works project within the time specified in the loan agreement, unless a written request for extension is approved by the board.

(8) The board or department will not reimburse local governments for any funds spent on public works projects financed through the public works assistance account before a contract agreement has been formally executed. Funds spent before the contract is executed may be used toward local participation requirements if they are for eligible activities under WAC 399-30-030 and are consistent with the executed loan agreement.

[Statutory Authority: RCW 43.155.040 (4) and (5). 98-24-010, § 399-30-060, filed 11/19/98, effective 12/20/98. Statutory Authority: RCW 43.155.040(4). 92-03-052, § 399-30-060, filed 1/13/92, effective 2/13/92. Statutory Authority: RCW 43.155.040. 88-23-095 (Order 88-08, Resolution No. 86-12), § 399-30-060, filed 11/22/88; 86-18-009 (Resolution No. 86-12), § 399-30-060, filed 8/21/86. Statutory Authority: 1985 c 446 § 10. 85-24-072 (Order 85-17), § 399-30-060, filed 12/4/85.]

**WAC 399-30-065 Emergency loan and financing guarantee contracts.** (1) After the legislature has appropriated funds from the public works assistance account for emergency loans, the loan funds will be disbursed to the applicant local government pursuant to a contract. The contract will offer terms and conditions the board determines are reasonable, based on the following standards:

(a) The local government's financial participation funds must be from locally generated revenues or federal or state shared revenues that can be allocated at the discretion of the local government.

(b) Loans must not exceed twenty years, or the useful life of the improvements, whichever is shorter.

(2) The local government and the department must execute a final contract before any funds are disbursed.

(3) The local government must complete a scope of work form for a loan or financing guarantee and return it to the department within ninety days after the department offers a loan or a financing guarantee contract.

(4) The local government must execute any loan or financing guarantee contracts offered within ninety days after the department offers the contract.

(5) The local government must begin work on an emergency public works project within ninety days after the contract is executed.

(6) The local government must complete work on an emergency public works project within twelve months after the contract is executed, unless a written request for extension is approved by the board.

(7) The board or department will not reimburse local governments for any funds spent on emergency public works projects financed through the public works assistance account before a contract agreement has been formally executed. However, if the local government has formally declared an emergency, the board may approve reimbursement of eligible costs of correcting the emergency incurred after an emergency was declared.

(2001 Ed.)

Any unreimbursed eligible costs for the project may be used toward local participation requirements, if any.

(8) All public works projects must comply with the competitive bid requirement of RCW 43.155.060 to the extent feasible and practicable.

[Statutory Authority: RCW 43.155.040 (4) and (5). 98-24-010, § 399-30-065, filed 11/19/98, effective 12/20/98. Statutory Authority: RCW 43.155.040(4). 92-03-052, § 399-30-065, filed 1/13/92, effective 2/13/92. Statutory Authority: RCW 43.155.040. 89-10-041 (Order 89-01), § 399-30-065, filed 4/28/89.]

## Chapter 399-40 WAC

### COMPLIANCE WITH STATE ENVIRONMENTAL POLICY ACT

#### WAC

399-40-010	Purpose.
399-40-020	Statement.

**WAC 399-40-010 Purpose.** The purpose of this chapter is to comply with RCW 43.21C.120, which requires all agencies of government in the state of Washington, consistent with the rules and guidelines adopted under RCW 43.21C.110, to adopt rules pertaining to the integration of policies and procedures of the State Environmental Policy Act of 1971, into the various programs under their jurisdiction for implementation.

[Statutory Authority: 1985 c 446 § 10. 85-24-072 (Order 85-17), § 399-40-010, filed 12/4/85.]

**WAC 399-40-020 Statement.** Pursuant to WAC 197-11-800(16), the public works board has reviewed its authorized activities and has found them all to be exempt under the provisions of chapter 197-11 WAC.

[Statutory Authority: RCW 43.155.040(4). 92-03-051, § 399-40-020, filed 1/13/92, effective 2/13/92. Statutory Authority: 1985 c 446 § 10. 85-24-072 (Order 85-17), § 399-40-020, filed 12/4/85.]

## Chapter 399-50 WAC

### ETHICS IN PUBLIC SERVICE

#### WAC

399-50-010	Definitions.
399-50-020	Interest in contracts, projects, or loans.
399-50-030	Interest in transactions.
399-50-040	Disclosure of recusal.

**WAC 399-50-010 Definitions.** (1) Unless another definition is given, words used in this chapter have the same meaning as in chapter 42.52 RCW, Ethics in public service.

(2) "Annual construction roster" means the prioritized list of projects recommended for funding, which is developed and submitted to the legislature before November 1 of each year under RCW 43.155.070(4).

(3) "Beneficial interest" means the right to enjoy profit, benefit, or advantage from a contract or other property and also has the meaning given to it in Washington case law. Ownership interest in a mutual fund or similar investment pooling fund in which the owner has no management powers does not constitute a beneficial interest in the entities in which the fund or pool invests.

[Title 399 WAC—p. 9]

(4) "Project" means public works project as defined in RCW 43.155.020(5).

[Statutory Authority: Chapter 42.52 RCW and RCW 43.155.040(4). 00-11-021, § 399-50-010, filed 5/9/00, effective 6/9/00.]

**WAC 399-50-020 Interest in contracts, projects, or loans.** (1) When a member of the public works board is beneficially interested, directly or indirectly, in a contract, project, or loan that may be made by, through, or under the supervision of the board, in whole or in part, or when the member accepts, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in such contract, project, or loan, the member shall:

(a) Recuse him or herself from board discussion regarding the specific contract, project, or loan;

(b) Recuse him or herself from the board vote on the specific contract, project, or loan; and

(c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific contract, project, or loan.

(2) The prohibition against discussion set forth in subsection (1)(a) and (c) of this section shall not prohibit the member of the board from using his or her general expertise to educate and provide general information on the subject area to the other members.

(3) Under subsection (1) of this section, "any other person" has a beneficial interest in a contract, project, or loan when the other person bids, applies for, or otherwise seeks to be awarded the contract, project, or loan.

#### Example 1

*Board member Sam Jones is an engineering consultant. Jones performs consulting work on a regular basis for the Evergreen County public works department. The board is asked to approve an emergency public works loan for Evergreen County. Jones should recuse himself from voting on or discussing this action because he receives compensation from a "person" (Evergreen County) beneficially interested in the proposed loan.*

#### Example 2

*Board member Ima Kozy is the President and CEO of a firm that constructs roads and utilities. The board is asked to approve a list of loans for construction projects in various locations around the state. One of the projects is in the City of Destiny, where Ima's firm frequently responds to solicitation for bids. If Ima wants her firm to be able to bid on the Destiny project, she should recuse herself from voting on this list or discussing this action.*

*If Ima does vote to approve the list or participates in discussing it, she will be prohibited by RCW 42.52.030 from receiving a direct or indirect beneficial interest in the loan contract to Destiny, or from accepting compensation from another person beneficially interested in the contract. Thus, neither she nor her firm may bid on the project.*

[Statutory Authority: Chapter 42.52 RCW and RCW 43.155.040(4). 00-11-021, § 399-50-020, filed 5/9/00, effective 6/9/00.]

**WAC 399-50-030 Interest in transactions.** (1) When a member of the public works board either owns a beneficial interest in or is an officer, agent, employee or member of an entity or individual engaged in a transaction involving the board, the member shall:

(a) Recuse him or herself from board discussion regarding the specific transaction;

(b) Recuse him or herself from the board vote on the specific transaction; and

(c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific transaction.

(2) The prohibition against discussion and voting set forth in subsection (1)(a) and (c) of this section shall not prohibit the member of the board from using his or her general expertise to educate and provide general information on the subject area to the other members.

(3)(a) "Transaction involving the board" means a proceeding, application, submission, request for a ruling or other determination, contract, project or proposed project, loan, claim, case, or other similar matter that the member in question believes, or has reason to believe:

(i) Is, or will be, the subject of board action; or

(ii) Is one to which the board is or will be a party; or

(iii) Is one in which the board has a direct and substantial proprietary interest.

(b) "Transaction involving the board" does not include the following: Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by a member; or a claim, case, lawsuit, or similar matter if the member did not participate in the underlying transaction involving the board that is the basis for the claim, case, or lawsuit. Rulemaking is not a "transaction involving the board."

(4) "Board action" means any action on the part of the board, including, but not limited to:

(a) A decision, determination, finding, ruling, or order; and

(b) A grant, payment, award, license, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

#### Example 3

*Board member Alice Lester is a director of the Starburst Sewer District. During presentation of the annual construction roster, the board is asked to consider adding projects to the roster based on various criteria developed by staff. The board's choice of criteria will determine which additional projects will be funded. A sewer improvement project for the Starburst Sewer District is among those that may be added to the roster, depending on which criteria are selected. Lester should disclose her affiliation with Starburst and recuse herself from discussing on or voting on the criteria for funding additional projects, because she is an officer of an entity interested in a transaction before the board, specifically determination of funding criteria that will affect Starburst Sewer District.*

[Statutory Authority: Chapter 42.52 RCW and RCW 43.155.040(4). 00-11-021, § 399-50-030, filed 5/9/00, effective 6/9/00.]

**WAC 399-50-040 Disclosure of recusal.** A board member shall disclose to the public the reasons for his or her recusal from any board action at the time of the recusal. A board member shall disclose to the public the nature of any interest the member has in a project on the annual construction roster or other aggregated list or roster of ten or more contracts, projects, or loans at the time the roster or list is considered by the board. Board staff shall record each such recusal or disclosure and the basis therefor.

[Statutory Authority: Chapter 42.52 RCW and RCW 43.155.040(4). 00-11-021, § 399-50-040, filed 5/9/00, effective 6/9/00.]