

Chapter 79.105
AQUATIC LANDS—GENERAL

Sections

- 79.105.010 Aquatic lands—Findings.
- 79.105.030 Aquatic lands—Management guidelines.
- 79.105.040 Application to existing property rights—Application of shoreline management act.
- 79.105.050 Fostering use of aquatic environment—Limitation.
- 79.105.100 Sale and lease of state-owned aquatic lands—Blank forms of applications.
- 79.105.110 Who may purchase or lease—Application—Fees.
- 79.105.120 Survey to determine areas subject to sale or lease.
- 79.105.130 Reconsideration of official acts.
- 79.105.140 Assignment of contracts or leases.
- 79.105.150 Deposit, use of proceeds from sale or lease of aquatic lands or valuable materials therefrom—Aquatic lands enhancement project grant requirements—Aquatic lands enhancement account.
- 79.105.160 Aquatic lands—Court review of actions.
- 79.105.200 Use and occupancy fee in lieu of lease—Construction of section.
- 79.105.210 Aquatic lands—Preservation and enhancement of water-dependent uses—Leasing authority.
- 79.105.240 Determination of annual rent rates for lease of aquatic lands for water-dependent uses.
- 79.105.250 Log storage rents.
- 79.105.260 Rent for leases in effect October 1, 1984.
- 79.105.270 Aquatic lands—Leases/rents for nonwater-dependent uses.
- 79.105.290 Aquatic lands—Rents for multiple uses.
- 79.105.300 Aquatic lands—Lease for water-dependent use—Rental for nonwater-dependent use.
- 79.105.310 Aquatic lands—Rent for improvements.
- 79.105.320 Aquatic lands—Administrative review of proposed rent.
- 79.105.330 Aquatic lands—Security for leases for more than one year.
- 79.105.340 Aquatic lands—Payment of rent.
- 79.105.350 Aquatic lands—Interest rate.
- 79.105.360 Adoption of rules.
- 79.105.400 Authority to exchange state-owned tidelands and shorelands—Rules—Limitation.
- 79.105.410 Gifts of aquatic land—Procedures and criteria.
- 79.105.420 Management of certain aquatic lands by port district—Agreement—Rent—Model management agreement.
- 79.105.430 Private recreational docks—Mooring buoys.
- 79.105.500 Aquatic land dredged material disposal sites—Findings.
- 79.105.510 Aquatic land dredged material disposal site account.
- 79.105.520 Fees for use of aquatic land dredged material disposal sites authorized.
- 79.105.600 Archaeological activities on state-owned aquatic lands—Agreements, leases, or other conveyances.
- 79.105.610 Puget Sound partners.
- 79.105.620 City use of state-owned aquatic lands for publicly owned marina—Reduced fee lease—Expiration date.
- 79.105.630 Administering funds—Preference to an evergreen community.
- 79.105.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.
- 79.105.901 Severability—1984 c 221.
- 79.105.902 Effective date—1984 c 221.

79.105.010 Aquatic lands—Findings.

The legislature finds that state-owned aquatic lands are a finite natural resource of great value and an irreplaceable public heritage. The legislature recognizes that the state owns these aquatic lands in fee and has delegated to the department the responsibility to manage these lands for the benefit of the public. The legislature finds that water-dependent industries and activ-

ities have played a major role in the history of the state and will continue to be important in the future. The legislature finds that revenues derived from leases of state-owned aquatic lands should be used to enhance opportunities for public recreation, shoreline access, environmental protection, and other public benefits associated with the aquatic lands of the state. The legislature further finds that aquatic lands are faced with conflicting use demands. [2005 c 155 § 139; 1984 c 221 § 1. Formerly RCW 79.90.450.]

79.105.030 Aquatic lands—Management guidelines.

The management of state-owned aquatic lands shall be in conformance with constitutional and statutory requirements. The manager of state-owned aquatic lands shall strive to provide a balance of public benefits for all citizens of the state. The public benefits provided by state-owned aquatic lands are varied and include:

- (1) Encouraging direct public use and access;
- (2) Fostering water-dependent uses;
- (3) Ensuring environmental protection;
- (4) Utilizing renewable resources.

Generating revenue in a manner consistent with subsections (1) through (4) of this section is a public benefit. [2005 c 155 § 140; 1984 c 221 § 2. Formerly RCW 79.90.455.]

79.105.040 Application to existing property rights—Application of shoreline management act.

Nothing in *this chapter or RCW 79.120.040 or 79.120.060 shall modify or affect any existing legal rights involving the boundaries of, title to, or vested property rights in aquatic lands or waterways. Nothing in *this chapter shall modify, alter, or otherwise affect the applicability of chapter 90.58 RCW. [2005 c 155 § 157; 1984 c 221 § 20. Formerly RCW 79.90.545.]

NOTES:

*Reviser's note: The reference to "this chapter" referred to chapter 79.90 RCW, which was recodified and/or repealed in its entirety by 2005 c 155.

79.105.050 Fostering use of aquatic environment—Limitation.

The department shall foster the commercial and recreational use of the aquatic environment for production of food, fibre, income, and public enjoyment from state-owned aquatic lands and from associated waters, and to this end the department may develop and improve production and harvesting of seaweeds and sealife attached to or growing on aquatic land or contained in aquaculture containers, but nothing in this section alters the responsibility of other state agencies for their normal management of fish, shellfish, game, and water. [2005 c 155 § 141; 2003 c 334 § 541; 1971 ex.s. c 234 § 8. Formerly RCW 79.90.456, 79.68.080.]

NOTES:

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

79.105.100 Sale and lease of state-owned aquatic lands—Blank forms of applications.

The department shall prepare, and furnish to applicants, blank forms of applications for the purchase of state-owned tidelands or shorelands, otherwise permitted by RCW 79.125.200 to be sold, and the purchase of valuable material situated thereon, and the lease of state-owned tidelands, shorelands, and harbor areas, which forms shall contain such instructions as will inform and aid the applicants. [2005 c 155 § 104; 1982 1st ex.s. c 21 § 15. Formerly RCW 79.90.090.]

79.105.110 Who may purchase or lease—Application—Fees.

Any person desiring to purchase any state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, or to purchase any valuable material situated thereon, or to lease any state-owned aquatic lands, shall file with the department an application, on the proper form which shall be accompanied by reasonable fees to be prescribed by the board in its rules, in an amount sufficient to defray the cost of performing or otherwise providing for the processing, review, or inspection of the applications or activities permitted pursuant to the applications for each category of services performed. These fees shall be credited to the resource management cost account fund in the general fund. [2005 c 155 § 105; 1982 1st ex.s. c 21 § 16. Formerly RCW 79.90.100.]

79.105.120 Survey to determine areas subject to sale or lease.

The department may cause any state-owned aquatic lands to be surveyed for the purpose of ascertaining and determining the area subject to sale or lease. [2005 c 155 § 108; 1982 1st ex.s. c 21 § 18. Formerly RCW 79.90.120.]

79.105.130 Reconsideration of official acts.

The department may review and reconsider any of its official acts relating to state-owned aquatic lands until such time as a lease, contract, or deed is made, executed, and finally issued, and the department may recall any lease, contract, or deed issued for the purpose of correcting mistakes or errors, or supplying omissions. [2005 c 155 § 138; 1982 1st ex.s. c 21 § 47. Formerly RCW 79.90.410.]

79.105.140 Assignment of contracts or leases.

All contracts of purchase of state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, and all leases of state-owned tidelands, shorelands, or beds of navigable waters issued by the department shall be assignable in writing by the contract holder or lessee. The assignee shall be subject to the provisions of law applicable to the purchaser or lessee of whom they are the assignee, and shall have the same rights in all respects as the original purchaser or lessee of the lands, but only if the assignment is first approved by the department and entered upon the records in the department. [2005 c 155 § 135; 1982 1st ex.s. c 21 § 43. Formerly RCW 79.90.370.]

79.105.150 Deposit, use of proceeds from sale or lease of aquatic lands or valuable materials therefrom—Aquatic lands enhancement project grant requirements—Aquatic lands enhancement account.

(1) After deduction for management costs as provided in RCW 79.64.040 and payments to towns under RCW 79.115.150(2), all moneys received by the state from the sale or lease of state-owned aquatic lands and from the sale of valuable material from state-owned aquatic lands shall be deposited in the aquatic lands enhancement account which is hereby created in the state treasury. After appropriation, these funds shall be used solely for aquatic lands enhancement projects; for the purchase, improvement, or protection of aquatic lands for public purposes; for providing and improving access to the lands; and for volunteer cooperative fish and game projects. During the 2009-2011 fiscal biennium, the aquatic lands enhancement account may also be used for scientific research as part of the adaptive management process. During the 2009-11 fiscal biennium, the legislature may transfer from the aquatic lands enhancement account to the state general fund such amounts as reflect excess fund balance of the account.

(2) In providing grants for aquatic lands enhancement projects, the recreation and conservation funding board shall:

(a) Require grant recipients to incorporate the environmental benefits of the project into their grant applications;

(b) Utilize the statement of environmental benefits, consideration, except as provided in RCW 79.105.610, of whether the applicant is a Puget Sound partner, as defined in RCW 90.71.010, whether a project is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310, and except as otherwise provided in RCW 79.105.630, and effective one calendar year following the development and statewide availability of model evergreen community management plans and ordinances under RCW 35.105.050, whether the applicant is an entity that has been recognized, and what gradation of recognition was received, in the evergreen community recognition program created in RCW 35.105.030 in its prioritization and selection process; and

(c) Develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the grants.

(3) To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270.

(4) The department shall consult with affected interest groups in implementing this section.

(5) After January 1, 2010, any project designed to address the restoration of Puget Sound may be funded under this chapter only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310. [2010 1st sp.s. c 37 § 949; 2009 c 564 § 959; 2008 c 299 § 28; 2007 c 341 § 32. Prior: 2005 c 518 § 946; 2005 c 155 § 121; 2004 c 276 § 914; 2002 c 371 § 923; 2001 c 227 § 7; 1999 c 309 § 919; 1997 c 149 § 913; 1995 2nd sp.s. c 18 § 923; 1994 c 219 § 12; 1993 sp.s. c 24 § 927; 1987 c 350 § 1; 1985 c 57 § 79; 1984

c 221 § 24; 1982 2nd ex.s. c 8 § 4; 1969 ex.s. c 273 § 12; 1967 ex.s. c 105 § 3; 1961 c 167 § 9. Formerly RCW 79.90.245, 79.24.580.]

NOTES:

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Effective date—2009 c 564: See note following RCW 2.68.020.

Short title—2008 c 299: See note following RCW 35.105.010.

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

Severability—Effective date—2004 c 276: See notes following RCW 43.330.167.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Findings—Intent—2001 c 227: See note following RCW 43.41.270.

Severability—Effective date—1999 c 309: See notes following RCW 41.06.152.

Severability—Effective date—1997 c 149: See notes following RCW 43.08.250.

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

Finding—1994 c 219: See note following RCW 43.88.030.

Severability—Effective dates—1993 sp.s. c 24: See notes following RCW 28A.310.020.

Effective date—1987 c 350: "This act shall take effect July 1, 1989." [1987 c 350 § 3.]

Effective date—1985 c 57: See note following RCW 18.04.105.

Severability—Effective date—1984 c 221: See RCW 79.105.901 and 79.105.902.

79.105.160 Aquatic lands—Court review of actions.

Any applicant to purchase or lease any state-owned aquatic lands, or any valuable materials on state-owned aquatic lands, and any person whose property rights or interest will be affected by the sale or lease, feeling himself or herself aggrieved by any order or decision of the board, or the commissioner, concerning the order or decision, may appeal in the manner provided in RCW 79.02.030. [2005 c 155 § 137; 2003 c 334 § 606; 1982 1st ex.s. c 21 § 46. Formerly RCW 79.90.400.]

NOTES:

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

79.105.200 Use and occupancy fee in lieu of lease—Construction of section.

(1) The department may require the payment of a use and occupancy fee in lieu of a lease where improvements have been placed without authorization on state-owned aquatic lands.

(2) Nothing in this section shall be construed to prevent the assertion of public ownership rights in any publicly owned aquatic lands, or the leasing of the aquatic lands when the leasing is not contrary to the statewide public interest. [2005 c 155 § 516; 1982 1st ex.s. c 21 § 102. Formerly RCW 79.94.170.]

79.105.210 Aquatic lands—Preservation and enhancement of water-dependent uses—Leasing authority.

(1) The management of state-owned aquatic lands shall preserve and enhance water-dependent uses. Water-dependent uses shall be favored over other uses in state-owned aquatic

land planning and in resolving conflicts between competing lease applications. In cases of conflict between water-dependent uses, priority shall be given to uses which enhance renewable resources, water-borne commerce, and the navigational and biological capacity of the waters, and to statewide interests as distinguished from local interests.

(2) Nonwater-dependent use of state-owned aquatic lands is a low-priority use providing minimal public benefits and shall not be permitted to expand or be established in new areas except in exceptional circumstances where it is compatible with water-dependent uses occurring in or planned for the area.

(3) The department shall consider the natural values of state-owned aquatic lands as wildlife habitat, natural area preserve, representative ecosystem, or spawning area prior to issuing any initial lease or authorizing any change in use. The department may withhold from leasing lands which it finds to have significant natural values, or may provide within any lease for the protection of such values.

(4) The power to lease state-owned aquatic lands is vested in the department, which has the authority to make leases upon terms, conditions, and length of time in conformance with the state Constitution and chapters 79.105 through 79.140 RCW.

(5) State-owned aquatic lands shall not be leased to persons or organizations which discriminate on the basis of race, color, creed, religion, sex, age, or physical or mental handicap. [2005 c 155 § 143; 1984 c 221 § 3. Formerly RCW 79.90.460.]

79.105.240 Determination of annual rent rates for lease of aquatic lands for water-dependent uses.

Except as otherwise provided by this chapter, annual rent rates for the lease of state-owned aquatic lands for water-dependent uses shall be determined as follows:

(1)(a) The assessed land value, exclusive of improvements, as determined by the county assessor, of the upland tax parcel used in conjunction with the leased area or, if there are no such uplands, of the nearest upland tax parcel used for water-dependent purposes divided by the parcel area equals the upland value.

(b) The upland value times the area of leased aquatic lands times thirty percent equals the aquatic land value.

(2) As of July 1, 1989, and each July 1st thereafter, the department shall determine the real capitalization rate to be applied to water-dependent aquatic land leases commencing or being adjusted under subsection (3)(a) of this section in that fiscal year. The real capitalization rate shall be the real rate of return, except that until June 30, 1989, the real capitalization rate shall be five percent and thereafter it shall not change by more than one percentage point in any one year or be more than seven percent or less than three percent.

(3) The annual rent shall be:

(a) Determined initially, and redetermined every four years or as otherwise provided in the lease, by multiplying the aquatic land value times the real capitalization rate; and

(b) Adjusted by the inflation rate each year in which the rent is not determined under (a) of this subsection.

(4) If the upland parcel used in conjunction with the leased area is not assessed or has an assessed value inconsistent with the purposes of the lease, the nearest comparable upland parcel used for similar purposes shall be substituted and the lease payment determined in the same manner as provided in this section.

(5) For the purposes of this section, "upland tax parcel" is a tax parcel, some portion of which has upland characteristics. Filled tidelands or shorelands with upland characteristics which abut state-owned aquatic land shall be considered as uplands in determining aquatic land values.

(6) The annual rent for filled state-owned aquatic lands that have the characteristics of uplands shall be determined in accordance with RCW 79.105.270 in those cases in which the state owns the fill and has a right to charge for the fill.

(7) For all new leases for other water-dependent uses, issued after December 31, 1997, the initial annual water-dependent rent shall be determined by the methods in subsections (1) through (6) of this section. [2005 c 155 § 147; 2003 c 310 § 1; 1998 c 185 § 2; 1984 c 221 § 7. Formerly RCW 79.90.480.]

NOTES:

Effective date—2003 c 310: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 2003]." [2003 c 310 § 2.]

Findings—Report—1998 c 185: "(1) The legislature finds that the current method for determining water-dependent rental rates for aquatic land leases may not be achieving the management goals in RCW 79.90.455. The current method for setting rental rates, as well as alternatives to the current methods, should be evaluated in light of achieving management goals for aquatic lands leases. The legislature further finds that there should be no further increases in water-dependent rental rates for marina leases before the completion of this evaluation.

(2) The department of natural resources shall study and prepare a report to the legislature on alternatives to the current method for determination of water-dependent rent set forth in RCW 79.90.480. The report shall be prepared with the assistance of appropriate outside economic expertise and stakeholder involvement. Affected stakeholders shall participate with the department by providing information necessary to complete this study. For each alternative, the report shall:

- (a) Describe each method and the costs and benefits of each;
- (b) Compare each with the current method of calculating rents;
- (c) Provide the private industry perspective;
- (d) Describe the public perspective;
- (e) Analyze the impact on state lease revenue;
- (f) Evaluate the impacts of water-dependent rates on economic development in economically distressed counties; and
- (g) Evaluate the ease of administration.

(3) The report shall be presented to the legislature by November 1, 1998, with the recommendations of the department clearly identified. The department's recommendations shall include draft legislation as necessary for implementation of its recommendations." [1998 c 185 § 1.]

79.105.250 Log storage rents.

(1) Until June 30, 1989, the log storage rents per acre shall be the average rents the log storage leases in effect on July 1, 1984, would have had under the formula for water-dependent leases as set out in RCW 79.105.240, except that the aquatic land values shall be thirty percent of the assessed value of the abutting upland parcels exclusive of improvements, if they are assessed. If the abutting upland parcel is not assessed, the nearest assessed upland parcel shall be used.

(2) On July 1, 1989, and every four years thereafter, the base log storage rents established under subsection (1) of this section shall be adjusted in proportion to the change in average water-dependent lease rates per acre since the date the log storage rates were last established under this section.

(3) The annual rent shall be adjusted by the inflation rate each year in which the rent is not determined under subsection (1) or (2) of this section.

(4) If the lease provides for seasonal use so that portions of the leased area are available for public use without charge part of the year, the annual rent may be discounted to reflect such public use in accordance with rules adopted by the board. [2005 c 155 § 148; 1984 c 221 § 8. Formerly RCW 79.90.485.]

79.105.260 Rent for leases in effect October 1, 1984.

(1) For leases in effect on October 1, 1984, the rent shall remain at the annual rate in effect on September 30, 1984, until the next lease anniversary date, at which time rent established under RCW 79.105.240 or 79.105.250 shall become effective. If the first rent amount established is an increase of more than one hundred dollars and is more than thirty-three percent above the rent in effect on September 30, 1984, the annual rent shall not increase in any year by more than thirty-three percent of the difference between the previous rent and the rent established under RCW 79.105.240 or 79.105.250. If the first rent amount established under RCW 79.105.240 or 79.105.250 is more than thirty-three percent below the rent in effect on September 30, 1984, the annual rent shall not decrease in any year by more than thirty-three percent of the difference between the previous rent and the rent established under RCW 79.105.240 or 79.105.250. Thereafter, notwithstanding any other provision of this title, the annual rental established under RCW 79.105.240 or 79.105.250 shall not increase more than fifty percent in any year.

(2) This section applies only to leases of state-owned aquatic lands subject to RCW 79.105.240 or 79.105.250. [2005 c 155 § 149; 1984 c 221 § 9. Formerly RCW 79.90.490.]

79.105.270 Aquatic lands—Leases/rents for nonwater-dependent uses.

Leases for nonwater-dependent uses of state-owned aquatic lands shall be charged the fair market rental value of the leased lands, determined in accordance with appraisal techniques specified by rule. However, rents for nonwater-dependent uses shall always be more than the amount that would be charged as rent for a water-dependent use of the same parcel. [2005 c 155 § 150; 1984 c 221 § 11. Formerly RCW 79.90.500.]

79.105.290 Aquatic lands—Rents for multiple uses.

If water-dependent and nonwater-dependent uses occupy separate portions of the same leased parcel of state-owned aquatic land, the rental rate for each use shall be that established for the use by this chapter, prorated in accordance with the proportion of the whole parcel that each use occupies. If water-dependent and nonwater-dependent uses occupy the same portion of a leased parcel of state-owned aquatic land, the rental rate for

the parcel shall be subject to negotiation with the department taking into account the proportion of the improvements each use occupies. [2005 c 155 § 152; 1984 c 221 § 12. Formerly RCW 79.90.505.]

79.105.300 Aquatic lands—Lease for water-dependent use—Rental for nonwater-dependent use.

If a parcel leased for water-dependent uses is used for an extended period of time, as defined by rule of the department, for a nonwater-dependent use, the rental for the nonwater-dependent use shall be negotiated with the department. [1984 c 221 § 13. Formerly RCW 79.90.510.]

79.105.310 Aquatic lands—Rent for improvements.

(1) Except as agreed between the department and the lessee prior to construction of the improvements, rent shall not be charged under any lease of state-owned aquatic lands for improvements, including fills, authorized by the department or installed by the lessee or its predecessor before June 1, 1971, so long as the lands remain under a lease or succession of leases without a period of three years in which no lease is in effect or a bona fide application for a lease is pending.

This page left intentionally blank.

(2) If improvements were installed under a good faith belief that a state-owned aquatic lands lease was not necessary, rent shall not be charged for the improvements if, within ninety days after specific written notification by the department that a lease is required, the owner either applies for a lease or files suit to determine if a lease is required. [2005 c 155 § 153; 1984 c 221 § 14. Formerly RCW 79.90.515.]

79.105.320 Aquatic lands—Administrative review of proposed rent.

The manager shall, by rule, provide for an administrative review of any state-owned aquatic land rent proposed to be charged. The rules shall require that the lessee or applicant for release file a request for review within thirty days after the manager has notified the lessee or applicant of the rent due. For leases issued by the department, the final authority for the review rests with the board. For leases managed under RCW 79.105.420, the final authority for the review rests with the appropriate port commission. If the request for review is made within thirty days after the manager's final determination as to the rental, the lessee may pay rent at the preceding year's rate pending completion of the review, and shall pay any additional rent or be entitled to a refund, with interest thirty days after announcement of the decision. The interest rate shall be fixed by rule adopted by the board and shall not be less than six percent per annum. Nothing in this section abrogates the right of an aggrieved party to pursue legal remedies. For purposes of this section, "manager" is the department except where state-owned aquatic lands are managed by a port district, in which case "manager" is the port district. [2005 c 155 § 154; 1991 c 64 § 1; 1984 c 221 § 15. Formerly RCW 79.90.520.]

79.105.330 Aquatic lands—Security for leases for more than one year.

For any lease for a term of more than one year, the department may require that the rent be secured by insurance, bond, or other security satisfactory to the department in an amount not exceeding two years' rent. The department may require additional security for other lease provisions. The department shall not require cash deposits exceeding one-twelfth of the annual rental. [1984 c 221 § 16. Formerly RCW 79.90.525.]

79.105.340 Aquatic lands—Payment of rent.

If the annual rent charged for the use of a parcel of state-owned aquatic lands exceeds four thousand dollars, the lessee may pay on a prorated quarterly basis. If the annual rent exceeds twelve thousand dollars, the lessee may pay on a prorated monthly basis. [1984 c 221 § 17. Formerly RCW 79.90.530.]

79.105.350 Aquatic lands—Interest rate.

The interest rate and all interest rate guidelines shall be fixed by rule adopted by the board and shall not be less than six percent per annum. [2005 c 155 § 155; 1991 c 64 § 2; 1984 c 221 § 18. Formerly RCW 79.90.535.]

79.105.360 Adoption of rules.

The department shall adopt such rules as are necessary to carry out the purposes of RCW 79.105.010, 79.105.030, 79.105.050, 79.105.210, 79.105.220, 79.105.240 through 79.105.260, 79.105.270, 79.105.290 through 79.105.350, 79.105.400, 79.105.420, 79.130.070, and 79.135.100, specifically including criteria for determining under RCW 79.105.240(4) when an abutting upland parcel has been inappropriately assessed and for determining the nearest comparable upland parcel used for water-dependent uses. [2005 c 155 § 156; 1984 c 221 § 19. Formerly RCW 79.90.540.]

79.105.400 Authority to exchange state-owned tidelands and shorelands—Rules—Limitation.

The department may exchange state-owned tidelands and shorelands with private and other public landowners if the exchange is in the public interest and will actively contribute to the public benefits established in RCW 79.105.030. The board shall adopt rules which establish criteria for determining when a proposed exchange is in the public interest and actively contributes to the public benefits established in RCW 79.105.030. The department may not exchange state-owned harbor areas or waterways. [2005 c 155 § 142; 1995 c 357 § 1. Formerly RCW 79.90.457.]

79.105.410 Gifts of aquatic land—Procedures and criteria.

(1) The department is authorized to accept gifts of aquatic land within the state, including tidelands, shorelands, harbor areas, and the beds of navigable waters, which shall become part of the state-owned aquatic land base. Consistent with RCW 79.105.030, the department must develop procedures and criteria that state the manner in which gifts of aquatic land, received after July 27, 2003, may occur. No gift of aquatic land may be accepted until: (a) An appraisal of the value of the land has been prepared; (b) an environmental site assessment has been conducted; and (c) the title property report has been examined and approved by the attorney general of the state. The results of the appraisal, the site assessment, and the examination of the title property report must be submitted to the board before the department may accept a gift of aquatic land.

(2) The authorization to accept gifts of aquatic land within the state extends to aquatic land accepted as gifts prior to July 27, 2003. [2005 c 155 § 163; 2003 c 176 § 1. Formerly RCW 79.90.580.]

79.105.420 Management of certain aquatic lands by port district—Agreement—Rent—Model management agreement.

(1) Upon request of a port district, the department and port district may enter into an agreement authorizing the port district to manage state-owned aquatic lands abutting or used in conjunction with and contiguous to uplands owned, leased, or otherwise managed by a port district, for port purposes as provided in Title 53 RCW. The agreement shall include, but not be limited to, provisions defining the specific area to be managed, the

term, conditions of occupancy, reservations, periodic review, and other conditions to ensure consistency with the state Constitution and the policies of this chapter. If a port district acquires operating management, lease, or ownership of real property which abuts state-owned aquatic lands currently under lease from the state to a person other than the port district, the port district shall manage state-owned aquatic lands if: (a) The port district acquires the leasehold interest in accordance with state law, or (b) the current lessee and the department agree to termination of the current lease to accommodate management by the port. The administration of state-owned aquatic lands covered by a management agreement shall be consistent with the aquatic land policies of chapters 79.105 through 79.140 RCW and the implementing rules adopted by the department. The administrative procedures for management of the lands shall be those of Title 53 RCW.

(2) No rent is due the state for the use of state-owned aquatic lands managed under this section for water-dependent or water-oriented uses. If a port district manages state-owned aquatic lands under this section and either leases or otherwise permits any person to use the lands, the rental fee attributable to the state-owned aquatic land only shall be comparable to the rent charged lessees for the same or similar uses by the department. However, a port district need not itemize for the lessee any charges for state-owned aquatic lands improved by the port district for use by carriers by water. If a port leases state-owned aquatic lands to any person for nonwater-dependent use, eighty-five percent of the revenue attributable to the rent of the state-owned aquatic land only shall be paid to the state.

(3) Upon application for a management agreement, and so long as the application is pending and being diligently pursued, no rent is due the department for the lease by the port district of state-owned aquatic lands included within the application for water-dependent or water-oriented uses.

(4) The department and representatives of the port industry shall develop a proposed model management agreement which shall be used as the basis for negotiating the management agreements required by this section. The model management agreement shall be reviewed and approved by the board. [2005 c 155 § 146; 1984 c 221 § 6. Formerly RCW 79.90.475.]

79.105.430 Private recreational docks—Mooring buoys.

(1) The abutting residential owner to state-owned shorelands, tidelands, or related beds of navigable waters, other than harbor areas, may install and maintain without charge a dock on the areas if used exclusively for private recreational purposes and the area is not subject to prior rights, including any rights of upland, tideland, or shoreland owners as provided in RCW 79.125.400, 79.125.460, 79.125.410, and 79.130.010. The dock cannot be sold or leased separately from the upland residence. The dock cannot be used to moor boats for commercial or residential use. This permission is subject to applicable local, state, and federal rules and regulations governing location, design, construction, size, and length of the dock. Nothing in this subsection (1) prevents the abutting owner from obtaining a lease if otherwise provided by law.

(2) The abutting residential owner to state-owned shorelands, tidelands, or related beds of navigable waters, other than harbor areas, may install and maintain a mooring buoy without charge if the boat that is moored to the buoy is used for private recreational purposes, the area is not subject to prior rights, including any rights of upland, tideland, or shoreland owners as provided in RCW 79.125.400, 79.125.460, 79.125.410, and 79.130.010, and the buoy will not obstruct the use of mooring buoys previously authorized by the department.

(a) The buoy must be located as near to the upland residence as practical, consistent with applicable rules and regulations and the provisions of this section. The buoy must be located, or relocated if necessary, to accommodate the use of lawfully installed and maintained buoys.

(b) If two or more residential owners, who otherwise qualify for free use under the provisions of this section, are in dispute over assertion of rights to install and maintain a mooring buoy in the same location, they may seek formal settlement through adjudication in superior court for the county in which the buoy site is located. In the adjudication, preference must be given to the residential owner that first installed and continually maintained and used a buoy on that site, if it meets all applicable rules, regulations, and provisions of this section, and then to the owner of the residential property nearest the site. Nothing in this section requires the department to mediate or otherwise resolve disputes between residential owners over the use of the same site for a mooring buoy.

(c) The buoy cannot be sold or leased separately from the abutting residential property. The buoy cannot be used to moor boats for commercial or residential use, nor to moor boats over sixty feet in length.

(d) If the department determines that it is necessary for secure moorage, the abutting residential owner may install and maintain a second mooring buoy, under the same provisions as the first, the use of which is limited to a second mooring line to the boat moored at the first buoy.

(e) The permission granted in this subsection (2) is subject to applicable local, state, and federal rules and regulations governing location, design, installation, maintenance, and operation of the mooring buoy, anchoring system, and moored boat. Nothing in this subsection (2) prevents a boat owner from obtaining a lease if otherwise provided by law. This subsection (2) also applies to areas that have been designated by the commissioner or the fish and wildlife commission as aquatic reserves.

(3) This permission to install and maintain a recreational dock or mooring buoy may be revoked by the department, or the department may direct the owner of a recreational dock or mooring buoy to relocate their dock or buoy, if the department makes a finding of public necessity to protect waterward access, ingress rights of other landowners, public health or safety, or public resources. Circumstances prompting a finding of public necessity may include, but are not limited to, the dock, buoy, anchoring system, or boat posing a hazard or obstruction to navigation or fishing, contributing to degradation of aquatic habi-

tat, or contributing to decertification of shellfish beds otherwise suitable for commercial or recreational harvest. The revocation may be appealed as provided for under RCW 79.105.160.

(4) Nothing in this section authorizes a boat owner to abandon a vessel at a recreational dock, mooring buoy, or elsewhere. [2005 c 155 § 106; 2002 c 304 § 1; 2001 c 277 § 1; 1989 c 175 § 170; 1983 2nd ex.s. c 2 § 2. Formerly RCW 79.90.105.]

NOTES:

Effective date—1989 c 175: See note following RCW 34.05.010.

79.105.500 Aquatic land dredged material disposal sites—Findings.

The legislature finds that the department provides, manages, and monitors aquatic land dredged material disposal sites on state-owned aquatic lands for materials dredged from rivers, harbors, and shipping lanes. These disposal sites are approved through a cooperative planning process by the departments of natural resources and ecology, the United States army corps of engineers, and the United States environmental protection agency in cooperation with the Puget Sound partnership. These disposal sites are essential to the commerce and well-being of the citizens of the state of Washington. Management and environmental monitoring of these sites are necessary to protect environmental quality and to assure appropriate use of state-owned aquatic lands. The creation of an aquatic land dredged material disposal site account is a reasonable means to enable and facilitate proper management and environmental monitoring of these disposal sites. [2007 c 341 § 58; 2005 c 155 § 158; 1987 c 259 § 1. Formerly RCW 79.90.550.]

NOTES:

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Effective date—1987 c 259: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1987." [1987 c 259 § 5.]

79.105.510 Aquatic land dredged material disposal site account.

The aquatic land dredged material disposal site account is established in the state treasury. The account shall consist of funds appropriated to the account; funds transferred or paid to the account pursuant to settlements; court or administrative agency orders or judgments; gifts and grants to the account; and all funds received by the department from users of aquatic land dredged material disposal sites. After appropriation, moneys in the fund may be spent only for the management and environmental monitoring of aquatic land dredged material disposal sites. The account is subject to the allotment procedure provided under chapter 43.88 RCW. [2005 c 155 § 159; 1991 sp.s. c 13 § 63; 1987 c 259 § 2. Formerly RCW 79.90.555.]

NOTES:

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Effective date—1987 c 259: See note following RCW 79.105.500.

79.105.520 Fees for use of aquatic land dredged material disposal sites authorized.

The department shall estimate the costs of site management and environmental monitoring at aquatic land dredged material disposal sites and may, by rule, establish fees for use of the sites in amounts no greater than necessary to cover the estimated costs. All such revenues shall be placed in the aquatic land dredged material disposal site account under RCW 79.105.510. [2005 c 155 § 160; 1987 c 259 § 3. Formerly RCW 79.90.560.]

NOTES:

Effective date—1987 c 259: See note following RCW 79.105.500.

79.105.600 Archaeological activities on state-owned aquatic lands—Agreements, leases, or other conveyances.

After consultation with the *director of community, trade, and economic development, the department may enter into agreements, leases, or other conveyances for archaeological activities on state-owned aquatic lands. The agreements, leases, or other conveyances may contain those conditions as are required for the department to comply with its legal rights and duties. All agreements, leases, or other conveyances, shall be issued in accordance with the terms of chapters 79.105 through 79.140 RCW. [2005 c 155 § 161; 1995 c 399 § 210; 1988 c 124 § 9. Formerly RCW 79.90.565.]

NOTES:

***Reviser's note:** The "director of community, trade, and economic development" was renamed the "director of commerce" by 2009 c 565.

Severability—Intent—Application—1988 c 124: See RCW 27.53.901 and notes following RCW 27.53.030.

79.105.610 Puget Sound partners.

When administering funds under this chapter, the *inter-agency committee for outdoor recreation shall give preference only to Puget Sound partners, as defined in RCW 90.71.010, in comparison to other entities that are eligible to be included in the definition of Puget Sound partner. Entities that are not eligible to be a Puget Sound partner due to geographic location, composition, exclusion from the scope of the Puget Sound action agenda developed by the Puget Sound partnership under RCW 90.71.310, or for any other reason, shall not be given less preferential treatment than Puget Sound partners. [2007 c 341 § 33.]

NOTES:

***Reviser's note:** Chapter 241, Laws of 2007 changed the name of the interagency committee for outdoor recreation to the recreation and conservation funding board.

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

79.105.620 City use of state-owned aquatic lands for publicly owned marina—Reduced fee lease—Expiration date. (Expires July 1, 2029.)

(1)(a) A city with a population between twenty thousand and twenty-five thousand on June 12, 2008, and that currently operates a publicly owned marina may enter into a reduced fee lease authorizing the city to use state-owned aquatic lands for

the purpose of operating a publicly owned marina. The office of financial management's population estimate must be used to determine a city's population for purposes of this section. The lease period may not exceed twenty years.

(b) No rent is due the state for the use of state-owned aquatic lands for the first ten years under such a lease. During subsequent years under such a lease, rent is due for only those lands that have been included under a previous aquatic land lease for the marina. The lease may not be renewed, extended, or put into holdover.

(2) A city choosing to enter into a lease as provided in subsection (1) of this section must do so within one year of June 12, 2008. Prior to entering into such a lease, the city must be in good standing with the department and must have paid all amounts owed the department including any accrued interest.

(3) State-owned aquatic lands that may be included in the lease are limited only to those lands included in the most recent expired lease with the city for the marina, along with any state-owned aquatic lands immediately adjacent to those lands. Only those marina operations conducted directly by the city may be included within the leased area.

(4) If a city chooses to enter into an agreement as provided in subsection (1) of this section, the city is not eligible to apply for grants from the aquatic lands enhancement account created under RCW 79.105.150 for the first ten years of the lease.

(5) Upon expiration of the twenty-year lease, the city may enter into a new lease for the use of state-owned aquatic lands or vacate the lands as agreed to in the expiring lease. To ensure the consistent statewide application of aquatic land management principles, the new lease must be completed in accordance with all applicable sections of this title.

(6) This section expires July 1, 2029. [2008 c 132 § 1.]

79.105.630 Administering funds—Preference to an evergreen community.

When administering funds under this chapter, the recreation and conservation funding board shall give preference only to an evergreen community recognized under RCW 35.105.030 in comparison to other entities that are eligible to receive evergreen community designation. Entities not eligible for designation as an evergreen community shall not be given less preferential treatment than an evergreen community. [2008 c 299 § 33.]

NOTES:

Short title—2008 c 299: See note following RCW 35.105.010.

79.105.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.

See RCW 79.135.900 through 79.135.904.

79.105.901 Severability—1984 c 221.

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. [1984 c 221 § 31. Formerly RCW 79.90.901.]

79.105.902 Effective date—1984 c 221.

This act shall take effect on October 1, 1984. [1984 c 221 § 32. Formerly RCW 79.90.902.]

Chapter 79.110 AQUATIC LANDS—EASEMENTS AND RIGHTS OF WAY

Sections

- 79.110.010 Certain aquatic lands subject to easements for removal of valuable materials.
- 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.
- 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.
- 79.110.040 Certain state and aquatic lands subject to easements for removal of valuable materials—Duty of utilities and transportation commission.
- 79.110.050 Certain state and aquatic lands subject to easements for removal of valuable materials—Penalty for violation of orders.
- 79.110.060 Certain state and aquatic lands subject to easements for removal of valuable materials—Application for right of way.
- 79.110.070 Certain state and aquatic lands subject to easements for removal of valuable materials—Forfeiture for nonuser.
- 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.
- 79.110.110 Railroad bridge rights of way across navigable streams.
- 79.110.120 Public bridges or trestles across waterways and aquatic lands—Recovery of reasonable direct administrative costs—Report to the legislature.
- 79.110.130 Common carriers may bridge or trestle state waterways.
- 79.110.140 Location and plans of bridge or trestle to be approved—Future alterations.
- 79.110.200 Right of way for utility pipelines, transmission lines, etc.
- 79.110.210 Right of way for utility pipelines, transmission lines, etc.—Procedure to acquire.
- 79.110.220 Right of way for utility pipelines, transmission lines, etc.—Appraisal—Certificate—Reversion for nonuser.
- 79.110.230 Use of state-owned aquatic lands for public utility lines.
- 79.110.240 Charge for term of easement—Recovery of costs.
- 79.110.300 Right of way for irrigation, diking, and drainage purposes.
- 79.110.310 Right of way for irrigation, diking, and drainage purposes—Procedure to acquire.
- 79.110.320 Right of way for irrigation, diking, and drainage purposes—Appraisal—Certificate.
- 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.
- 79.110.350 Grant of such easements and rights of way as applicant may acquire in private lands by eminent domain.
- 79.110.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.

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 ac-

quired 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.]

NOTES:

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

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.]

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.]

NOTES:

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

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.]

NOTES:

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

This page left intentionally blank.

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.]

NOTES:

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

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.]

NOTES:

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

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.]

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 legis-

lative 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.]

NOTES:

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

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.]

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.]

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.]

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.]

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.]

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.]

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.]

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.]

79.110.240 Charge for term of easement—Recovery of costs.

(1) Until July 1, 2017, 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 increase in the most recently published consumer price index, all urban consumers, for the Seattle-Everett SMSA, over the consumer price index for 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) By December 31, 2016, 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. [2008 c 55 § 2; 2005 c 155 § 162; 2002 c 152 § 3. Formerly RCW 79.90.575.]

NOTES:

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.]

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.]

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.]

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.]

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.]

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.]

NOTES:

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

79.110.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.

See RCW 79.135.900 through 79.135.904.

Chapter 79.115 AQUATIC LANDS—HARBOR AREAS

Sections

79.115.010	Harbor lines and areas to be established.
79.115.020	Relocation of harbor lines by the harbor line commission.
79.115.030	Commission on harbor lines may change, relocate, or reestablish harbor lines.
79.115.040	Modification of harbor lines in Port Gardner Bay.
79.115.050	Seizure or sale of improvements for taxes.
79.115.100	Terms of harbor area leases.
79.115.110	Construction or extension of docks, wharves, etc., in harbor areas—New lease.
79.115.120	Re-leases of harbor areas.
79.115.130	Procedure to re-lease harbor areas.
79.115.140	Regulation of wharfage, dockage, and other tolls.
79.115.150	Harbor areas and tidelands within towns—Distribution of rents to municipal authorities.
79.115.900	Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.

79.115.010 Harbor lines and areas to be established.

(1) It is the duty of the board acting as the harbor line commission to locate and establish harbor lines and determine harbor areas, as required by Article XV, section 1 of the state Constitution, where harbor lines and harbor areas have not previously been located and established.

(2) The board shall locate and establish outer harbor lines beyond which the state shall never sell or lease any rights whatever to private persons, and to locate and establish the inner harbor line, thereby defining the width of the harbor area between such harbor lines. The harbor area shall be forever reserved for landings, wharves, streets, and other conveniences of navigation and commerce. [2005 c 155 § 301; 1982 1st ex.s. c 21 § 69. Formerly RCW 79.92.010.]

79.115.020 Relocation of harbor lines by the harbor line commission.

Whenever it appears that the inner harbor line of any harbor area has been so established as to overlap or fall inside the government meander line, or for any other good cause, the board acting as the harbor line commission is empowered to relocate and reestablish said inner harbor line so erroneously established, outside of the meander line. All tidelands or shorelands within the inner harbor line so reestablished and relocated, shall belong to the state and may be sold or leased as other first-class tidelands or shorelands in accordance with the provisions of RCW 79.125.200. However, in all other cases, authority to relocate the inner harbor line or outer harbor line, or both, shall first be obtained from the legislature. [2005 c 155 § 302; 1982 1st ex.s. c 21 § 70. Formerly RCW 79.92.020.]

79.115.030 Commission on harbor lines may change, relocate, or reestablish harbor lines.

The commission on harbor lines is authorized to change, relocate, or reestablish harbor lines. [2010 c 45 § 1; 2005 c 155 § 303; 2004 c 219 § 1; 1989 c 79 § 1; 1982 1st ex.s. c 21 § 71. Formerly RCW 79.92.030.]

79.115.040 Modification of harbor lines in Port Gardner Bay.

The harbor line commission shall modify harbor lines in Port Gardner Bay as necessary to facilitate the conveyance through exchange authorized in RCW 79.125.800. [2005 c 155 § 304; 1987 c 271 § 5. Formerly RCW 79.92.035.]

NOTES:

Severability—1987 c 271: See note following RCW 79.130.050.

79.115.050 Seizure or sale of improvements for taxes.

Whenever improvements have been made on state-owned tidelands, shorelands, or beds of navigable waters, in front of cities or towns, prior to the location of harbor lines in front of the cities or towns, and the reserved harbor area as located include the improvements, no seizure or sale of the improvements for taxes shall be had until six months after the lands have been leased or offered for lease. However, this section shall not affect or impair the lien for taxes on the improvements. [2005 c 155 § 136; 1982 1st ex.s. c 21 § 45. Formerly RCW 79.90.390.]

79.115.100 Terms of harbor area leases.

Applications, leases, and bonds of lessees shall be in such a form as the department shall prescribe. Every lease shall provide that the rental shall be payable to the department, and for cancellation by the department upon sixty days' written notice for any breach of the conditions. Every lessee shall furnish a bond, with surety satisfactory to the department, with such penalty as the department may prescribe, but not less than five hundred dollars, conditioned upon the faithful performance of the terms of the lease and the payment of the rent when due. If the department at any time deems any bond insufficient, it may require the lessee to file a new and sufficient bond within thirty days after receiving notice to do so.

Applications for leases of harbor areas upon tidal waters shall be accompanied by plans and drawings and other data concerning the proposed wharves, docks, or other structures or improvements as the department shall require. Every lease of harbor areas shall provide that, wharves, docks, or other conveniences of navigation and commerce adequate for the public needs, to be specified in the lease, shall be constructed within the time as may be fixed in each case by the department. In no case shall the construction be commenced more than two years from the date of the lease and shall be completed within such reasonable time as the department shall fix, any of which times may be extended by the department either before or after their expiration, and the character of the improvements may be changed either before or after completion with the approval of the department. However, if in its opinion improvements existing upon such harbor area or the tidelands adjacent thereto are adequate for public needs of commerce and navigation, the department shall require the maintenance of existing improvements and need not require further improvements. [2005 c 155 § 305; 1982 1st ex.s. c 21 § 74. Formerly RCW 79.92.060.]

79.115.110 Construction or extension of docks, wharves, etc., in harbor areas—New lease.

If the owner of any harbor area lease upon tidal waters desires to construct any wharf, dock, or other convenience of navigation or commerce, or to extend, enlarge, or substantially improve any existing structure used in connection with the harbor area, and deems the required expenditure not warranted by the lessee's right to occupy the harbor area during the remainder of the term of their lease, the lease owner may make application to the department for a new lease of the harbor area for a period not exceeding thirty years. Upon the filing of an application accompanied by proper plans, drawings, or other data, the department shall investigate the application and if the department determines that the proposed work or improvement is in the public interest and reasonably adequate for the public needs, it shall by order fix the terms and conditions and the rate of rental for a new lease, the rate of rental shall be a fixed percentage, during the term of the lease, on the true and fair value in money of the harbor area determined by the department. The department may propose modifications of the proposed wharf, dock, or other convenience or extensions, enlargements, or improvements. The department shall, within ninety days from the filing of an application notify the applicant in writing of the terms and conditions upon which a new lease will be granted, and of the rental to be paid, and if the applicant shall within ninety days elect to accept a new lease of the harbor area upon the terms and conditions, and at the rental prescribed by the department, the department shall make a new lease for the harbor area for the term applied for and the existing lease shall be surrendered and canceled. [2005 c 155 § 306; 2000 c 11 § 27; 1982 1st ex.s. c 21 § 75. Formerly RCW 79.92.070.]

79.115.120 Re-leases of harbor areas.

Upon the expiration of any harbor area lease upon tidal waters, the lessee may apply for a re-lease of the harbor area for a period not exceeding thirty years. The application shall be accompanied with maps showing the existing improvements upon the harbor area and the adjacent tidelands and with proper plans, drawings, and other data showing any proposed extensions or improvements of existing structures. Upon the filing of an application the department shall investigate the application and if it determines that the character of the wharves, docks, or other conveniences of commerce and navigation are reasonably adequate for the public needs and in the public interest, it shall by order fix and determine the terms and conditions upon which the re-lease shall be granted and the rate of rental to be paid, which rate shall be a fixed percentage during the term of the lease on the true and fair value in money of the harbor area as determined by the department. [2005 c 155 § 307; 2000 c 11 § 28; 1982 1st ex.s. c 21 § 76. Formerly RCW 79.92.080.]

79.115.130 Procedure to re-lease harbor areas.

Upon completion of the valuation of any tract of harbor area applied for under RCW 79.115.120, the department shall notify the applicant of the terms and conditions upon which the re-lease will be granted and of the rental fixed. The applicant or the applicant's successor in interest shall have the option for the period of sixty days from the date of the service of notice in which to accept a lease on the terms and conditions and at the rental so fixed and determined by the department. If the terms and conditions and rental are accepted a new lease shall be granted for the term applied for. If the terms and conditions are not accepted by the applicant within the period of time, or within such further time, not exceeding three months, as the department shall grant, the lease shall be deemed rejected by the applicant, and the department shall give eight weeks' notice by publication once a week in one or more newspapers of general circulation in the county in which the harbor area is located, that a lease of the harbor area will be sold on the terms and conditions and at the rental, at a time and place specified in the notice (which shall not be more than three months from the date of the first publication of the notice) to the person offering at the public sale to pay the highest sum as a cash bonus at the time of sale of the lease. Notice of the sale shall be served upon the applicant at least six weeks prior to the date of sale. The person paying the highest sum as a cash bonus shall be entitled to lease the harbor area. However, if the lease is not sold at the public sale the department may at any time or times again fix the terms, conditions, and rental, and again advertise the lease for sale as provided in this section and upon similar notice. Further, upon failure to secure any sale of the lease as prescribed in this section, the department may issue revocable leases without requirement of improvements for one year periods at a minimum rate of two percent. [2005 c 155 § 308; 1985 c 469 § 61; 1982 1st ex.s. c 21 § 77. Formerly RCW 79.92.090.]

79.115.140 Regulation of wharfage, dockage, and other tolls.

The state of Washington retains and reserves the right to regulate the rates of wharfage, dockage, and other tolls to be imposed by the lessee or the lessee's assigns upon commerce for any of the purposes for which the leased area may be used and the right to prevent extortion and discrimination in such use. [2005 c 155 § 309; 1982 1st ex.s. c 21 § 78. Formerly RCW 79.92.100.]

79.115.150 Harbor areas and tidelands within towns—Distribution of rents to municipal authorities.

(1) Where any leased harbor area or tideland is situated within the limits of a town, whether or not the harbor area or tideland lies within a port district, the rents from the leases shall be paid by the state treasurer to the municipal authorities of the town to be expended for water-related improvements.

(2) The state treasurer is authorized and directed to make payments to the respective towns on the first days of July and January of each year, of all moneys payable under the terms of this section. [2005 c 155 § 310; 1984 c 221 § 25; 1983 c 153 § 1; 1982 2nd ex.s. c 8 § 2; 1982 1st ex.s. c 21 § 79. Formerly RCW 79.92.110.]

NOTES:

Severability—Effective date—1984 c 221: See RCW 79.105.901 and 79.105.902.

Effective date—1983 c 153: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1983." [1983 c 153 § 2.]

Effective date—1982 2nd ex.s. c 8 § 2: "Section 2 of this act shall take effect July 1, 1983." [1982 2nd ex.s. c 8 § 3.]

79.115.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.

See RCW 79.135.900 through 79.135.904.

Chapter 79.120**AQUATIC LANDS—WATERWAYS AND STREETS****Sections**

79.120.010	First class tidelands and shorelands to be platted—Public waterways and streets.
79.120.020	Streets, waterways, etc., validated.
79.120.030	Approval of plans/authorize construction on state-owned aquatic lands.
79.120.040	Permits to use waterways.
79.120.050	Excavation of waterways—Waterways open to public—Tide gates or locks.
79.120.060	Vacation of waterways—Extension of streets.
79.120.900	Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.

79.120.010 First class tidelands and shorelands to be platted—Public waterways and streets.

It is the duty of the department simultaneously with the establishment of harbor lines and the determination of harbor areas in front of any city or town, or as soon as practicable, to survey and plat all first-class tidelands and shorelands not pre-

viously platted, and in platting the tidelands and shorelands to lay out streets which shall be dedicated to public use, subject to the control of the cities or towns in which they are situated.

The department shall also establish one or more public waterways not less than fifty nor more than one thousand feet wide, beginning at the outer harbor line and extending inland across the tidelands belonging to the state. These waterways shall include within their boundaries, as nearly as practicable, all navigable streams running through the tidelands, and shall be located at other places as in the judgment of the department may be necessary for the present and future convenience of com-

This page left intentionally blank.

merce and navigation. All waterways shall be reserved from sale or lease and remain as public highways for watercraft until vacated as provided for in this chapter.

The department shall appraise the value of platted tidelands and shorelands and enter the appraisals in its records. [2005 c 155 § 401; 1982 1st ex.s. c 21 § 80. Formerly RCW 79.93.010.]

79.120.020 Streets, waterways, etc., validated.

All alleys, streets, avenues, boulevards, waterways, and other public places and highways located and platted on the first-class tidelands and shorelands, or harbor areas, as provided by law, and not vacated as provided by law, are validated as public highways and dedicated to the use of the public for the purposes for which they were intended, subject to vacation as provided for in this chapter. [2005 c 155 § 402; 1982 1st ex.s. c 21 § 81. Formerly RCW 79.93.020.]

79.120.030 Approval of plans/authorize construction on state-owned aquatic lands.

The department has the power to approve plans for and authorize the construction of slopes, with rock, riprap, or other protection, upon any state-owned aquatic lands incident to the improvement of any abutting or adjacent street or avenue by any city or town in this state. [2005 c 155 § 403; 1982 1st ex.s. c 21 § 82. Formerly RCW 79.93.030.]

79.120.040 Permits to use waterways.

If the United States government has established pierhead lines within a waterway created under the laws of this state at any distance from the boundaries established by the state, structures may be constructed in that strip of waterway between the waterway boundary and the nearest pierhead line only with the consent of the department and upon such plans, terms, and conditions and for such term as determined by the department. However, no permit shall extend for a period longer than thirty years.

The department may cancel any permit upon sixty days' notice for a substantial breach by the permittee of any of the permit conditions.

If a waterway is within the territorial limits of a port district, the duties assigned by this section to the department may be exercised by the port commission of the port district as provided in RCW 79.105.420.

Nothing in this section shall confer upon, create, or recognize in any abutting owner any right or privilege in or to any strip of waterway abutting any street and between prolongations of the lines of the street, but the control of and the right to use the strip is reserved to the state of Washington, except as authorized by RCW 79.105.420. [2005 c 155 § 404; 1984 c 221 § 21; 1982 1st ex.s. c 21 § 83. Formerly RCW 79.93.040.]

NOTES:

Severability—Effective date—1984 c 221: See RCW 79.105.901 and 79.105.902.

Application to existing property rights: RCW 79.105.040.

79.120.050 Excavation of waterways—Waterways open to public—Tide gates or locks.

All waterways excavated through any state-owned tidelands or shorelands by virtue of the provisions of chapter 99, Laws of 1893, so far as they run through the tidelands or shorelands, are declared to be public waterways, free to all citizens upon equal terms, and subject to the jurisdiction of the proper authorities, as otherwise provided by law. However, where tide gates or locks are considered by the contracting parties excavating any waterways to be necessary to the efficiency of the waterway, the department may, in its discretion, authorize tide gates or locks to be constructed and may authorize the parties constructing the waterway to operate them and collect a reasonable toll from vessels passing through the tide gates or locks. Further, the state of Washington or the United States of America can, at any time, appropriate the tide gates or locks upon payment to the parties erecting them of the reasonable value of the tide gates or locks at the date of the appropriation, reasonable value to be ascertained and determined as in other cases of condemnation of private property for public use. [2005 c 155 § 405; 1982 1st ex.s. c 21 § 84. Formerly RCW 79.93.050.]

79.120.060 Vacation of waterways—Extension of streets.

If a waterway established under the laws of this state, or any portion of the waterway, has not been excavated, or is not used for navigation, or is not required in the public interest to exist as a waterway, the waterway or a portion of the waterway may be vacated by written order of the commissioner upon request by ordinance or resolution of the city council of the city in which such waterway is located or by resolution of the port commission of the port district in which the waterway is located. If the waterway or a portion of the waterway which is vacated is navigable water of the United States, or otherwise within the jurisdiction of the United States, a copy of the resolution or ordinance, together with a copy of the vacation order of the commissioner shall be submitted to the United States army corps of engineers for their approval, and if they approve, the waterway or a portion of the waterway is vacated. However, if a port district owns property abutting the waterway and the provisions of this section are otherwise satisfied, the waterway, or the portion of the waterway that abuts the port district property, shall be vacated.

Upon vacation of a waterway, the commissioner shall notify the city in which the waterway is located, and the city has the right, if otherwise permitted by RCW 79.125.200, to extend across the portions so vacated any existing streets, or to select portions of the waterway as the city may desire for street purposes, in no case to exceed one hundred fifty feet in width for any one street. The selection shall be made within sixty days subsequent to the receipt of notice of the vacation of the portion of the waterway.

If the city fails to make a selection within the time, or selects only a portion of the waterway, the title of the remaining portions of the vacated waterway shall vest in the state, unless the waterway is located within the territorial limits of a port district, in which event, if otherwise permitted by RCW

79.125.200, the title shall vest in the port district. The title is subject to any railroad or street railway crossings existing at the time of the vacation. [2005 c 155 § 406; 1984 c 221 § 22; 1982 1st ex.s. c 21 § 85. Formerly RCW 79.93.060.]

NOTES:

Severability—Effective date—1984 c 221: See RCW 79.105.901 and 79.105.902.

Application to existing property rights: RCW 79.105.040.

79.120.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.

See RCW 79.135.900 through 79.135.904.

Chapter 79.125

AQUATIC LANDS—TIDELANDS AND SHORELANDS

Sections

- 79.125.010 Location of line dividing tidelands from shorelands in tidal rivers.
- 79.125.020 First-class tidelands and shorelands to be platted.
- 79.125.030 Second-class tidelands and shorelands may be platted.
- 79.125.040 Tidelands and shorelands—Plats—Record.
- 79.125.050 Date of sale limited by time of appraisal.
- 79.125.060 First or second-class tidelands and shorelands—Appraisal—Record.
- 79.125.070 Tidelands and shorelands—Notice of filing plat and record of appraisal—Appeal.
- 79.125.080 Tidelands and shorelands—Petition for replat—Replating and reappraisal—Vacation by replat.
- 79.125.090 Tidelands and shorelands—Dedication of replat—All interests must join.
- 79.125.100 Tidelands and shorelands—Vacation procedure cumulative.
- 79.125.110 Tidelands and shorelands—Effect of replat.
- 79.125.210 Sale of second-class tidelands.
- 79.125.220 Second-class tidelands or shorelands—Lease for booming purposes.
- 79.125.230 Second-class tidelands or shorelands separated from uplands by navigable water—Sale.
- 79.125.240 Sale procedure—Terms of payment—Deferred payments, rate of interest.
- 79.125.250 Sale procedure—Certificate to governor of payment in full—Deed.
- 79.125.260 Sale procedure—Reservation in contract.
- 79.125.270 Sale procedure—Form of contract—Forfeiture—Extension of time.
- 79.125.280 Subdivision of leases—Fee.
- 79.125.290 First-class tidelands and shorelands—Sale of remaining lands.
- 79.125.300 Tidelands or shorelands—Failure to re-lease tidelands or shorelands—Appraisal of improvements.
- 79.125.310 Effect of mistake or fraud.
- 79.125.400 First-class tidelands and shorelands—Lease—Preference right of upland owner—How exercised.
- 79.125.410 First-class unplatted tidelands and shorelands—Lease preference right to upland owners—Lease for booming purposes.
- 79.125.420 Tidelands and shorelands—Vacation by replat—Preference right of tideland or shoreland owner.
- 79.125.430 Tidelands or shorelands—Preference rights, time limit on exercise.
- 79.125.440 Tidelands or shorelands—Accretions—Lease.
- 79.125.450 Second-class shorelands on navigable lakes—Sale.
- 79.125.460 Second-class shorelands—Sale or lease when in best public interest—Preference right of upland owner—Procedure upon determining sale or lease not in best public interest or where transfer made for public use—Platting.
- 79.125.500 Second-class shorelands—Boundary of shorelands when water lowered—Certain shorelands granted to city of Seattle.

- 79.125.510 Second-class shorelands—Survey/platting—Selection for slips, docks, wharves, etc.—Filing of plat.
- 79.125.520 Second-class shorelands—Platting of certain shorelands of Lake Washington for use as harbor area—Effect.
- 79.125.530 Platting of certain shorelands of Lake Washington for use as harbor area—Selection for slips, docks, wharves, etc.—Vesting of title.
- 79.125.600 Sale procedure—Fixing date, place, and time of sale—Notice—Publication and posting.
- 79.125.610 List of state-owned tidelands and shorelands permitted to be sold.
- 79.125.620 Sale procedure—Additional advertising expense.
- 79.125.630 Reoffer—Continuance.
- 79.125.640 Sale at public auction—Minimum price—Sales by leaseholder.
- 79.125.650 Highest responsible bidder—Determination.
- 79.125.660 Sale procedure—Conduct of sales—Deposits—Bid bonds—Memorandum of purchase.
- 79.125.670 Sale procedure—Readvertisement of lands not sold.
- 79.125.680 Sale procedure—Confirmation of sale.
- 79.125.700 Sale of state-owned tidelands or shorelands to municipal corporation or state agency—Authority to execute agreements, deeds, etc.
- 79.125.710 Grant of lands for city park or playground purposes.
- 79.125.720 Exchange of lands to secure city parks and playgrounds.
- 79.125.730 Director of ecology to assist city parks.
- 79.125.740 Certain tidelands reserved for recreational use and taking of fish and shellfish.
- 79.125.750 Access to and from tidelands reserved for recreational use and taking of fish and shellfish.
- 79.125.760 Use of certain tidelands, shorelands, and abutting bedlands—Grant to the United States—Purposes—Limitations.
- 79.125.770 Tidelands and shorelands—Use of lands granted to United States—Application—Proof of upland use—Conveyance.
- 79.125.780 Tidelands and shorelands—Use of lands granted to United States—Easements over tidelands or shorelands to United States.
- 79.125.790 Tidelands and shorelands—Use of lands granted to United States—Reversion on cessation of use.
- 79.125.800 United States Navy base—Exchange of property—Procedure.
- 79.125.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.

79.125.010 Location of line dividing tidelands from shorelands in tidal rivers.

The department is authorized to locate in all navigable rivers in this state which are subject to tidal flow, the line dividing the tidelands in the river from the shorelands in the river, and the classification or the location of the dividing line shall be final and not subject to review, and the department shall enter the location of the line upon the plat of the tidelands and shorelands affected. [2005 c 155 § 532; 1982 1st ex.s. c 21 § 118. Formerly RCW 79.94.330.]

79.125.020 First-class tidelands and shorelands to be platted.

It is the duty of the department simultaneously with the establishment of harbor lines and the determination of harbor areas in front of any city or town or as soon as practicable to survey and plat all first-class tidelands and shorelands not previously platted as provided in RCW 79.120.010. [2005 c 155 § 501; 1982 1st ex.s. c 21 § 87. Formerly RCW 79.94.020.]

79.125.030 Second-class tidelands and shorelands may be platted.

The department may survey and plat any second-class tidelands and shorelands not previously platted. [2005 c 155 § 502; 1982 1st ex.s. c 21 § 88. Formerly RCW 79.94.030.]

79.125.040 Tidelands and shorelands—Plats—Record.

The department shall prepare plats showing all tidelands and shorelands, surveyed, platted, and appraised by it in the respective counties, on which shall be marked the location of all tidelands and shorelands, with reference to the lines of the United States survey of the abutting upland, and shall prepare a record of its proceedings, including a list of the tidelands and shorelands surveyed, platted, or replatted, and appraised by it and its appraisal of the tidelands and shorelands, which plats and books shall be in triplicate and the department shall file one copy of the plats and records in the department's Olympia office, and file one copy in the office of the county auditor of the county where the lands platted, or replatted, and appraised are situated, and file one copy in the office of the city engineer of the city in which, or within two miles of which, the lands platted, or replatted, are situated. [2005 c 155 § 503; 1982 1st ex.s. c 21 § 89. Formerly RCW 79.94.040.]

79.125.050 Date of sale limited by time of appraisal.

In no case shall any state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, be offered for sale unless the lands have been appraised by the department within ninety days prior to the date fixed for the sale. [2005 c 155 § 107; 1982 1st ex.s. c 21 § 17. Formerly RCW 79.90.110.]

79.125.060 First or second-class tidelands and shorelands—Appraisal—Record.

In appraising tidelands or shorelands, the department shall appraise each lot, tract, or piece of land separately, and shall maintain a description of each lot, tract, or piece of first or second-class tidelands or shorelands, its full appraised value, the area and rate per acre at which it was appraised, and if any lot is covered in whole or in part by improvements in actual use for commerce, trade, residence, or business, on or prior to, the date of the plat or replat, the department shall enter the name of the owner, or reputed owner, the nature of the improvements, the area covered by the improvements, the portion of each lot, tract, or piece of land covered, and the appraised value of the land covered, with and exclusive of, the improvements. [2005 c 155 § 504; 1982 1st ex.s. c 21 § 90. Formerly RCW 79.94.050.]

79.125.070 Tidelands and shorelands—Notice of filing plat and record of appraisal—Appeal.

(1) The department shall, before filing in the department's Olympia office the plat and record of appraisal of any tidelands or shorelands platted and appraised by it, publish a notice once each week for four consecutive weeks in a newspaper published and of general circulation in the county where the lands covered by the plat and record are situated, stating that the plat and

record, describing it, is complete and subject to inspection at the department's Olympia office, and will be filed on a certain day to be named in the notice.

(2) Any person entitled to purchase under RCW 79.125.200 and claiming a preference right of purchase of any of the tidelands or shorelands platted and appraised by the department, and who feels aggrieved at the appraisal fixed by the department upon the lands, or any part thereof, may within sixty days after the filing of the plat and record in the department's Olympia office (which shall be done on the day fixed in the notice), appeal from the appraisal to the superior court of the county in which the tidelands or shorelands are situated, in the manner provided for taking appeals from orders or decisions under RCW 79.105.160.

(3) The prosecuting attorney of any county, or city attorney of any city, in which the aquatic lands are located, shall at the request of the governor, appeal on behalf of the state, or the county, or city, from any appraisal in the manner provided in this section. Notice of the appeal shall be served upon the commissioner, and the department must immediately notify all persons entitled to purchase under RCW 79.125.200 and claiming a preference right to purchase the lands subject to the appraisal.

(4) Any party, other than the state or the county or city appealing, shall execute a bond to the state with sufficient surety, to be approved by the department, in the sum of two hundred dollars conditioned for the payment of costs on appeal.

(5) The superior court to which an appeal is taken shall hear evidence as to the value of the lands appraised and enter an order confirming, or raising, or lowering the appraisal appealed from, and the clerk of the court shall file a certified copy in the department's Olympia office. The appraisal fixed by the court shall be final. [2005 c 155 § 505; 1982 1st ex.s. c 21 § 91. Formerly RCW 79.94.060.]

79.125.080 Tidelands and shorelands—Petition for replat—Replating and reappraisal—Vacation by replat.

Whenever all of the owners and other persons having a vested interest in those tidelands or shorelands embraced within any plat of tidelands or shorelands or within any portion of any plat in which there are unsold state-owned tidelands or shorelands, shall file a petition with the department accompanied by proof of service of the petition upon the city council, or other governing body, of the city or town in which the tidelands or shorelands described in the petition are situated, or upon the legislative body of the county in which the tidelands or shorelands outside of any incorporated city or town are situated, asking for a replat of the tidelands or shorelands, the department is authorized and empowered to replat the tidelands or shorelands described in the petition, and all unsold tidelands or shorelands situated within the replat shall be reappraised as provided for the original appraisal of tidelands or shorelands. However, any streets or alleys embraced within the plat or portion of plat, va-

cated by the replat shall vest in the owner or owners of the abutting lands. [2005 c 155 § 509; 1982 1st ex.s. c 21 § 95. Formerly RCW 79.94.100.]

79.125.090 Tidelands and shorelands—Dedication of replat—All interests must join.

If in the preparation of a replat provided for in RCW 79.125.080 by the department, it becomes desirable to appropriate any tidelands or shorelands previously sold for use as streets, alleys, waterways, or other public places, all persons interested in the title to the tidelands or shorelands desired for public places shall join in the dedication of the replat before it shall become effective. [2005 c 155 § 510; 1982 1st ex.s. c 21 § 96. Formerly RCW 79.94.110.]

79.125.100 Tidelands and shorelands—Vacation procedure cumulative.

RCW 79.125.080, 79.125.090, and 79.125.420 are intended to afford a method of procedure, in addition to other methods provided in this title for the vacation of streets, alleys, waterways, and other public places platted on tidelands or shorelands. [2005 c 155 § 512; 1982 1st ex.s. c 21 § 98. Formerly RCW 79.94.130.]

79.125.110 Tidelands and shorelands—Effect of replat.

A replat of tidelands or shorelands platted shall be in full force and effect and shall constitute a vacation of streets, alleys, waterways, and other dedicated public places, when otherwise permitted by RCW 79.125.200, and the dedication of new streets, alleys, waterways, and other public places appearing upon the replat, when the replat is recorded and filed as in the case of original plats. [2005 c 155 § 513; 1982 1st ex.s. c 21 § 99. Formerly RCW 79.94.140.]

79.125.210 Sale of second-class tidelands.

All second-class tidelands shall be offered for sale, when otherwise permitted under RCW 79.125.200 to be sold, and sold in the same manner as state lands, other than capitol building lands, but for not less than five dollars per lineal chain, measured on the United States meander line bounding the inner shore limit of the tidelands, and shall pay one-tenth of the purchase price on the date of sale. [2005 c 155 § 508; 1982 1st ex.s. c 21 § 94. Formerly RCW 79.94.090.]

79.125.220 Second-class tidelands or shorelands—Lease for booming purposes.

(1) The department is authorized to lease any second-class tidelands or shorelands, whether reserved from sale, or from lease for other purposes, by or under authority of law, or not, except any oyster reserve containing oysters in merchantable quantities, to any person, for booming purposes, for any term not exceeding ten years from the date of the lease, for annual rental and upon terms and conditions as the department may fix and determine, and may also provide for forfeiture and termination of any lease at any time for failure to pay the fixed rental or for any violation of the terms or conditions.

(2) The lessee of any lands for booming purposes shall receive, hold, and sort the logs and other timber products of all persons requesting the service and upon the same terms and without discrimination, and may charge and collect tolls for the service not to exceed seventy-five cents per thousand feet scale measure on all logs, spars, or other large timber and reasonable rates on all other timber products, and shall be subject to the same duties and liabilities, so far as the duties and liabilities are applicable, as are imposed upon boom companies organized under the laws of the state. However, failure to use any lands leased under the provisions of this section for booming purposes for a period of one year shall work a forfeiture of the lease, and the lands shall revert to the state without any notice to the lessee upon the entry of a declaration of forfeiture in the records of the department.

(3) At the expiration of any lease issued under the provisions of this section, the lessee shall have the preference right to re-lease the lands covered by the lessee's original lease for a further term, not exceeding ten years, at the rental and upon the terms and conditions as may be prescribed by the department. [2005 c 155 § 528; 1982 1st ex.s. c 21 § 114. Formerly RCW 79.94.290.]

79.125.230 Second-class tidelands or shorelands separated from uplands by navigable water—Sale.

Second-class tidelands and shorelands that are separated from the upland by navigable waters shall be sold, when otherwise permitted under RCW 79.125.200 to be sold, but in no case at less than five dollars per acre. An applicant to purchase the tidelands or shorelands shall, at the applicant's own expense, survey and file with the application a plat of the surveys of the land applied for, which survey shall be connected with, and the plat shall show, two or more connections with the United States survey of the uplands, and the applicant shall file the field notes of the survey of the land with the application. The department shall examine and test the plat and field notes of the survey, and if found incorrect or indefinite, it shall cause the survey to be corrected or may reject the survey and cause a new survey to be made. [2005 c 155 § 526; 1982 1st ex.s. c 21 § 112. Formerly RCW 79.94.270.]

79.125.240 Sale procedure—Terms of payment—Deferred payments, rate of interest.

All state-owned tidelands and shorelands, otherwise permitted under RCW 79.125.200 to be sold, shall be sold on the following terms: One-tenth to be paid on the date of sale; one-tenth to be paid one year from the date of the issuance of the contract of sale; and one-tenth annually thereafter until the full purchase price has been made; but any purchaser may make full payment at any time. All deferred payments shall draw interest at the rate as may be fixed by rule adopted by the board, and the rate of interest, as so fixed at the date of each sale, shall be stated in all advertising for and notice of the sale and in the contract of sale. The first installment of interest shall become due and payable one year after the date of the contract of sale and all interest

shall become due and payable annually on that date, and all remittances for payment of either principal or interest shall be forwarded to the department. [2005 c 155 § 122; 1982 1st ex.s. c 21 § 31. Formerly RCW 79.90.250.]

79.125.250 Sale procedure—Certificate to governor of payment in full—Deed.

When the entire purchase price of any state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, shall have been fully paid, the department shall certify the fact to the governor, and shall cause a deed signed by the governor and attested by the secretary of state, with the seal of the state attached, to be issued to the purchaser and to be recorded in the department, and no fee shall be required for any deed issued by the governor other than the fee provided for in this chapter. [2005 c 155 § 123; 1982 1st ex.s. c 21 § 32. Formerly RCW 79.90.260.]

79.125.260 Sale procedure—Reservation in contract.

Each and every contract for the sale of, and each deed to, state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, shall contain the reservation contained in RCW 79.11.210. [2005 c 155 § 124; 2003 c 334 § 601; 1982 1st ex.s. c 21 § 33. Formerly RCW 79.90.270.]

NOTES:

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

79.125.270 Sale procedure—Form of contract—Forfeiture—Extension of time.

The purchaser of state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, except in cases where the full purchase price is paid at the time of the purchase, shall enter into and sign a contract with the state to be signed by the commissioner on behalf of the state, with the seal of the commissioner's office attached, and in a form to be prescribed by the attorney general, and under those terms and conditions provided in RCW 79.11.200. [2005 c 155 § 125; 1982 1st ex.s. c 21 § 34. Formerly RCW 79.90.280.]

79.125.280 Subdivision of leases—Fee.

Whenever the holder of any contract to purchase any state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, or the holder of any lease of any lands, except for mining of valuable minerals, or coal, or extraction of petroleum or gas, shall surrender the contract or lease to the department with the request to have it divided into two or more contracts or leases, the department may divide the contract or lease and issue new contracts or leases. However, no new contract or lease shall issue while there is due and unpaid any rental, taxes, or assessments on the land held under the contract or lease, nor in any case where the department is of the opinion that the state's security would be impaired or endangered by the proposed division. For all new contracts or leases a fee as determined by the board for each new contract or lease issued, shall be paid by the applicant and the fee shall be paid into the state

treasury to the resource management cost account in the general fund, pursuant to RCW 79.64.020. [2005 c 155 § 133; 1982 1st ex.s. c 21 § 41. Formerly RCW 79.90.350.]

79.125.290 First-class tidelands and shorelands—Sale of remaining lands.

Any first-class tidelands or shorelands remaining unsold, and where there is no pending application for purchase under claim of any preference right, when otherwise permitted under RCW 79.125.200 to be sold, shall be sold on the same terms and in the same manner as provided for the sale of state lands for not less than the appraised value fixed at the time of the application to purchase, and the department whenever it deems it advisable and for the best interest of the state may reappraise the lands in the same manner as provided for the appraisal of state lands. [2005 c 155 § 507; 1982 1st ex.s. c 21 § 93. Formerly RCW 79.94.080.]

79.125.300 Tidelands or shorelands—Failure to re-lease tidelands or shorelands—Appraisal of improvements.

(1) In case any lessee of tidelands or shorelands, for any purpose except mining of valuable minerals or coal, or extraction of petroleum or gas, or the lessee's successor in interest, shall after the expiration of any lease, fail to purchase, when otherwise permitted under RCW 79.125.200 to be purchased, or re-lease from the state the tidelands or shorelands formerly covered by the lease, when the lands are offered for sale or re-lease, then and in that event the department shall appraise and determine the value of all improvements existing upon the tidelands or shorelands at the expiration of the lease which are not capable of removal without damage to the land, including the cost of filling and raising the property above high tide, or high water, whether filled or raised by the lessee or the lessee's successors in interest, or by virtue of any contract made with the state, and also including the then value to the land of all existing local improvements paid for by the lessee or the lessee's successors in interest. In case the lessee or the lessee's successor in interest is dissatisfied with the appraised value of the improvements as determined by the department, the lessee shall have the right of appeal to the superior court of the county where the tidelands or shorelands are situated, within the time and according to the method prescribed in RCW 79.105.160 for taking appeals from decisions of the department.

(2) In case the tidelands or shorelands are leased, or sold, to any person other than such lessee or the lessee's successor in interest, within three years from the expiration of the former lease, the bid of the subsequent lessee or purchaser shall not be accepted until payment is made by the subsequent lessee or purchaser of the appraised value of the improvements as determined by the department, or as may be determined on appeal, to the former lessee or the former lessee's successor in interest.

(3) In case the tidelands or shorelands are not leased, or sold, within three years after the expiration of the former lease, then in that event, the improvements existing on the lands at the time of any subsequent lease, shall belong to the state and be

considered a part of the land, and shall be taken into consideration in appraising the value, or rental value, of the land and sold or leased with the land. [2005 c 155 § 531; 1982 1st ex.s. c 21 § 117. Formerly RCW 79.94.320.]

79.125.310 Effect of mistake or fraud.

Any sale or lease of state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, made by mistake, or not in accordance with law, or obtained by fraud or misrepresentation, shall be void, and the contract of purchase or lease, issued shall be of no effect, and the holder of the contract or lease, shall be required to surrender the contract or lease to the department, which, except in the case of fraud on the part of the purchaser, or lessee, shall cause the money paid on account of the surrendered contract or lease to be refunded to the holder, provided the money has not been paid into the state treasury. [2005 c 155 § 134; 1982 1st ex.s. c 21 § 42. Formerly RCW 79.90.360.]

**79.125.400 First-class tidelands and shorelands—
Lease—Preference right of upland owner—
How exercised.**

(1) Upon platting and appraisal of first-class tidelands or shorelands as provided in this chapter, if the department deems it for the best public interest to offer the first-class tidelands or shorelands for lease, the department shall notify the owner of record of uplands fronting upon the tidelands or shorelands to be offered for lease if the upland owner is a resident of the state, or the upland owner is a nonresident of the state, shall mail to the upland owner's last known post office address, as reflected in the county records, a copy of the notice notifying the owner that the state is offering the tidelands or shorelands for lease, giving a description of those lands and the department's appraised fair market value of the tidelands or shorelands for lease, and notifying the owner that the upland owner has a preference right to apply to lease the tidelands or shorelands at the appraised value for the lease for a period of sixty days from the date of service of mailing of the notice.

(2) If at the expiration of sixty days from the service or mailing of the notice, as provided in subsection (1) of this section, there being no conflicting applications filed, and the owner of the uplands fronting upon the tidelands or shorelands offered for lease, has failed to avail themselves of their preference right to apply to lease or to pay to the department the appraised value for lease of the tidelands or shorelands described in the notice, the tidelands or shorelands may be offered for lease to any person and may be leased in the manner provided for in the case of lease of state lands.

(3) If at the expiration of sixty days two or more claimants asserting a preference right to lease have filed applications to lease any tract, conflicting with each other, the conflict between the claimants shall be equitably resolved by the department as the best interests of the state require in accord with the procedures prescribed by chapter 34.05 RCW. However, any contract purchaser of lands or rights therein, which upland qualifies the

owner for a preference right under this section, shall have first priority for the preference right. [2005 c 155 § 506; 2000 c 11 § 29; 1982 1st ex.s. c 21 § 92. Formerly RCW 79.94.070.]

79.125.410 First-class unplatted tidelands and shorelands—Lease preference right to upland owners—Lease for booming purposes.

(1) The department is authorized to lease to the abutting upland owner any unplatted first-class tidelands or shorelands.

(2) The department shall, prior to the issuance of any lease under the provisions of this section, fix the annual rental for the tidelands or shorelands and prescribe the terms and conditions of the lease. No lease issued under the provisions of this section shall be for a longer term than ten years, and every lease shall be subject to termination upon ninety days' notice to the lessee in the event that the department shall decide that it is in the best interest of the state that the tidelands or shorelands be surveyed and platted. At the expiration of any lease issued under the provisions of this section, the lessee or the lessee's successors or assigns shall have a preference right to re-lease the lands covered by the original lease or any portion of the lease, if the department deems it to be in the best interests of the state to re-lease the lands, for succeeding periods not exceeding five years each at the rental and upon the terms and conditions as may be prescribed by the department.

(3) In case the abutting uplands are not improved and occupied for residential purposes and the abutting upland owner has not filed an application for the lease of the lands, the department may lease the lands to any person for booming purposes under the terms and conditions of this section. However, failure to use for booming purposes any lands leased under this section for such purposes for a period of one year shall work a forfeiture of the lease and the land shall revert to the state without any notice to the lessee upon the entry of a declaration of forfeiture in the records of the department. [2005 c 155 § 527; 1982 1st ex.s. c 21 § 113. Formerly RCW 79.94.280.]

79.125.420 Tidelands and shorelands—Vacation by replat—Preference right of tideland or shoreland owner.

If any platted street, alley, waterway, or other public place is vacated by a replat as provided for in RCW 79.125.080 and 79.125.090, or any new street, alley, waterway, or other public place is so laid out as to leave unsold tidelands or shorelands between a new street, alley, waterway, or other public place, and tidelands or shorelands previously sold, the owner of the adjacent tidelands or shorelands shall have the preference right for sixty days after the final approval of the plat to purchase the unsold tidelands or shorelands so intervening at the appraised value, if otherwise permitted under RCW 79.125.200 to be sold. [2005 c 155 § 511; 1982 1st ex.s. c 21 § 97. Formerly RCW 79.94.120.]

79.125.430 Tidelands or shorelands—Preference rights, time limit on exercise.

All preference rights to purchase tidelands or shorelands, when otherwise permitted by RCW 79.125.200 to be purchased, awarded by the department, or by the superior court in case of appeal from the award of the department, shall be exercised by the parties to whom the award is made within thirty days from the date of the service of notice of the award by registered mail, by the payment to the department of the sums required by law to be paid for a contract, or deed, as in the case of the sale of state lands, other than capitol building lands, and upon failure to make the payment the preference rights shall expire. [2005 c 155 § 529; 1982 1st ex.s. c 21 § 115. Formerly RCW 79.94.300.]

79.125.440 Tidelands or shorelands—Accretions—Lease.

Any accretions that may be added to any tract or tracts of tidelands or shorelands previously sold, or that may be sold, by the state, shall belong to the state and shall not be sold, or offered for sale, unless otherwise permitted by this chapter to be sold, and unless the accretions are surveyed under the direction of the department. However, the owner of the adjacent tidelands or shorelands shall have the preference right to purchase the lands produced by accretion, when otherwise permitted by RCW 79.125.200 to be sold, for thirty days after the owner of the adjacent tidelands or shorelands shall have been notified by registered mail of the owner's preference right to purchase the accreted lands. [2005 c 155 § 530; 1982 1st ex.s. c 21 § 116. Formerly RCW 79.94.310.]

79.125.450 Second-class shorelands on navigable lakes—Sale.

(1) The legislature finds that maintaining public lands in public ownership is often in the public interest. However, when second-class shorelands on navigable lakes have minimal public value, the sale of those shorelands to the abutting upland owner may not be contrary to the public interest. However, the purpose of this section is to remove the prohibition contained in RCW 79.125.200 regarding the sale of second-class shorelands to abutting owners, whose uplands front on the shorelands. Nothing contained in this section shall be construed to otherwise affect the rights of interested parties relating to public or private ownership of shorelands within the state.

(2) Notwithstanding the provisions of RCW 79.125.200, the department may sell second-class shorelands on navigable lakes to abutting owners whose uplands front upon the shorelands in cases where the board has determined that these sales would not be contrary to the public interest. These shorelands shall be sold at fair market value, but not less than five percent of the fair market value of the abutting upland, less improvements, to a maximum distance of one hundred and fifty feet landward from the line of ordinary high water.

(3) Review of the decision of the department regarding the sale price established for a shoreland to be sold pursuant to this section may be obtained by the upland owner by filing a petition

with the board of tax appeals created in accordance with chapter 82.03 RCW within thirty days after the mailing of notification by the department to the owner regarding the price. The board of tax appeals shall review the cases in an adjudicative proceeding as described in chapter 34.05 RCW, the administrative procedure act, and the board's review shall be de novo. Decisions of the board of tax appeals regarding fair market values determined pursuant to this section shall be final unless appealed to the superior court pursuant to RCW 34.05.510 through 34.05.598. [2005 c 155 § 520. Prior: 1989 c 378 § 3; 1989 c 175 § 171; 1982 1st ex.s. c 21 § 106. Formerly RCW 79.94.210.]

NOTES:

Effective date—1989 c 175: See note following RCW 34.05.010.

79.125.460 Second-class shorelands—Sale or lease when in best public interest—Preference right of upland owner—Procedure upon determining sale or lease not in best public interest or where transfer made for public use—Platting.

(1) If application is made to purchase or lease any second-class shorelands and the department deems it for the best public interest to offer second-class shorelands for sale or lease, the department shall cause a notice to be served upon the abutting upland owner if the owner is a resident of the state, or if the upland owner is a nonresident of the state, shall mail to the owner's last known post office address, as reflected in the county records a copy of a notice notifying the owner that the state is offering the shorelands for sale or lease, giving a description of the department's appraised fair market value of the shorelands for sale or lease, and notifying the upland owner that he or she has a preference right to purchase, if the purchase is otherwise permitted under RCW 79.125.200, or lease the shorelands at the appraised value for a period of thirty days from the date of the service or mailing of the notice. If at the expiration of the thirty days from the service or mailing of the notice, as provided in this section, the abutting upland owner has failed to exercise the preference right to purchase, as otherwise permitted under RCW 79.125.200, or lease, or to pay to the department the appraised value for sale or lease of the shorelands described in the notice, then in that event, except as otherwise provided in this section, the shorelands may be offered for sale, when otherwise permitted under RCW 79.125.200, or offered for lease, and sold or leased in the manner provided for the sale or lease of state lands, as otherwise permitted under this chapter.

(2) The department shall authorize the sale or lease, whether to abutting upland owners or others, only if the sale or lease would be in the best public interest and is otherwise permitted under RCW 79.125.200. It is the intent of the legislature that whenever it is in the best public interest, the second-class shorelands managed by the department shall not be sold but shall be maintained in public ownership for the use and benefit of the people of the state.

(3) In all cases where application is made for the lease of any second-class shorelands adjacent to upland, under the provisions of this section, the shorelands shall be leased per lineal chain frontage.

(4) If, following an application by the abutting upland owner to either purchase as otherwise permitted under RCW 79.125.200 or to obtain an exclusive lease at appraised full market value or rental, the department deems that the sale or lease is not in the best public interest, or if property rights in state-owned second-class shorelands are at any time withdrawn, sold, or assigned in any manner authorized by law to a public agency for a use by the general public, the department shall within one hundred and eighty days from receipt of the application to purchase or lease, or on reaching a decision to withdraw, sell, or assign such shorelands to a public agency, and: (a) Make a formal finding that the body of water adjacent to the shorelands is navigable; (b) find that the state or the public has an overriding interest inconsistent with a sale or exclusive lease to a private person, and specifically identify the interest and the factor or factors amounting to the inconsistency; and (c) provide for the review of the decision in accordance with the procedures prescribed by chapter 34.05 RCW.

(5) Notwithstanding subsections (1) through (4) of this section, the department may cause any of the shorelands to be platted as is provided for the platting of first-class shorelands, and when so platted the lands shall be sold, when otherwise permitted under RCW 79.125.200 to be sold, or leased in the manner provided for the sale or lease of first-class shorelands. [2005 c 155 § 525; 1982 1st ex.s. c 21 § 111. Formerly RCW 79.94.260.]

79.125.500 Second-class shorelands—Boundary of shorelands when water lowered—Certain shorelands granted to city of Seattle.

In every case where the state of Washington had prior to June 13, 1913, sold to any purchaser from the state any second-class shorelands bordering upon navigable waters of this state by description where the water boundary of the purchased shorelands is not defined, the water boundary shall be the line of ordinary navigation in the water; and whenever the waters have been or shall be lowered by any action done or authorized either by the state of Washington or the United States, the water boundary shall be the line of ordinary navigation as the water boundary shall be found in the waters after the lowering, and there is granted and confirmed to every purchaser, the purchaser's heirs and assigns, all the lands. However, this section and RCW 79.125.510 shall not apply to the portions of the second-class shorelands which shall, as provided by RCW 79.125.510, be selected by the department for harbor areas, slips, docks, wharves, warehouses, streets, avenues, parkways and boulevards, alleys, or other public purposes. Further, all shorelands and the bed of Lake Washington from the southerly margin of the plat of Lake Washington shorelands southerly along the westerly shore of the lake to a line three hundred feet south of and parallel with the east and west center line of section 35, township 24 north, range 4 east, W.M., are reserved for public uses and are granted and donated to the city of Seattle for public park, parkway, and boulevard purposes, and as a part of its public park, parkway, and boulevard system and any diversion or

attempted diversion of the lands so donated from such purposes shall cause the title to the lands to revert to the state. [2005 c 155 § 521; 1982 1st ex.s. c 21 § 107. Formerly RCW 79.94.220.]

79.125.510 Second-class shorelands—Survey/platting—Selection for slips, docks, wharves, etc.—Filing of plat.

It is the duty of the department to survey the second-class shorelands and in platting the survey to designate for public use all of the shorelands as in the opinion of the department is available, convenient, or necessary to be selected for the use of the public as harbor areas, sites for slips, docks, wharves, warehouses, streets, avenues, parkways and boulevards, alleys, and other public purposes.

Upon the filing of the plat in the department's Olympia office, the title to all harbor areas so selected shall remain in the state, the title to all selections for streets, avenues, and alleys shall vest in any city or town within the corporate limits of which they are situated, otherwise in the county in which they are situated, the title to and control of any lands so selected and designated upon the plat for parkways and boulevard purposes shall, if the lands lie outside of the corporate limits of any city or town and if the lands form a part of the general parkway and boulevard system of a first-class city lie in the city, and the title to all selections for slips, docks, wharves, warehouses, and other public purposes shall vest in the port district if they are situated in a port district, otherwise in the county in which they are situated. [2005 c 155 § 522; 1982 1st ex.s. c 21 § 108. Formerly RCW 79.94.230.]

79.125.520 Second-class shorelands—Platting of certain shorelands of Lake Washington for use as harbor area—Effect.

It is the duty of the department to plat for the public use harbor area in front of the portions of the shorelands of Lake Washington sold as second-class shorelands by the state of Washington as in the opinion of the department are necessary for the use of the public as harbor area. However, this section and RCW 79.125.530 shall not be construed to authorize the department to change the location of any inner or outer harbor line or the boundaries or location of, or to replat any harbor area platted under and by virtue of sections 1 and 2, chapter 183, Laws of 1913, and the title to all shorelands purchased from the state as second-class shorelands is confirmed to the purchaser, the purchaser's heirs and assigns, out to the inner harbor line established and platted under sections 1 and 2, chapter 183, Laws of 1913, or which shall be established and platted under RCW 79.125.510 and 79.125.530, and all reservations shown upon the plat made and filed pursuant to sections 1 and 2, chapter 183, Laws of 1913, are declared null and void, except reservations shown for harbor area, and reservations in the harbor area, and reservations across shorelands for traversed streets which were extensions of streets existing across shorelands at the time of filing of such plat. The department shall in platting the harbor area make a new plat showing all the harbor area on Lake Washington already platted under sections 1 and 2, chapter 183, Laws

of 1913, and under sections 1 and 2, chapter 150, Laws of 1917, and upon the adoption of any new plat by the board acting as the harbor line commission, and the filing of the plat in the department's Olympia office, the title to all the harbor areas so selected shall remain in the state of Washington, and the harbor areas shall not be sold, but may be leased as provided for by law relating to the leasing of the harbor area. [2005 c 155 § 523; 1982 1st ex.s. c 21 § 109. Formerly RCW 79.94.240.]

79.125.530 Platting of certain shorelands of Lake Washington for use as harbor area—Selection for slips, docks, wharves, etc.—Vesting of title.

Immediately after establishing the harbor area provided for in RCW 79.125.520, it is the duty of the department to make a plat designating all first and second-class shorelands, not sold by the state of Washington, and to select for the use of the public out of the shorelands, or out of harbor areas, sites for slips, docks, wharves, warehouses, streets, avenues, parkways, boulevards, alleys, commercial waterways, and other public purposes, insofar as the shorelands may be available for any or all public purposes.

Upon the filing of the plat of shorelands with the reservations and selections in the department's Olympia office, the title to all selections for streets, avenues, and alleys shall vest in any city or town within the corporate limits of which they are situated, otherwise in the county in which they are situated. The title to and control of any land so selected and designated upon the plat for parkway and boulevard purposes shall, if the lands lie outside the corporate limits of any city or town, and if the lands form a part of the general parkway and boulevard system of the first-class city, be in the city. The title to all selections for commercial waterway purposes shall vest in the commercial waterway district in which they are situated, or for which selected, and the title to all selections for slips, docks, wharves, warehouses, and other purposes shall vest in the port district if they are situated in a port district, otherwise in the county in which they are situated, and any sales of the shorelands when otherwise permitted by law shall be made subject to the selection and reservation for public use. [2005 c 155 § 524; 1982 1st ex.s. c 21 § 110. Formerly RCW 79.94.250.]

79.125.600 Sale procedure—Fixing date, place, and time of sale—Notice—Publication and posting.

(1) When the department decides to sell any state-owned tidelands or shorelands, otherwise permitted by RCW 79.125.200 to be sold, it shall be the duty of the department to fix the date, place, and the time of sale, and no sale shall be had on any day which is a legal holiday.

(2) The department shall give notice of the sale by advertisement published once a week for four consecutive weeks immediately preceding the date fixed for sale in the notice, in at least one newspaper published and of general circulation in the county in which the whole or any part of any lot, block, or tract

of land to be sold is situated, and by causing a copy of the notice to be posted in a conspicuous place in the department's Olympia office and the region headquarters administering the sale.

(3) The notice shall: (a) Specify the place and time of sale; (b) specify the appraised value; (c) describe with particularity each parcel of land to be sold; and (d) specify that the terms of sale will be posted in the region headquarters and the department's Olympia office. [2005 c 155 § 112; 1982 1st ex.s. c 21 § 23. Formerly RCW 79.90.170.]

79.125.610 List of state-owned tidelands and shorelands permitted to be sold.

The department shall print a list of all state-owned tidelands and shorelands otherwise permitted by RCW 79.125.200 to be sold, giving appraised value, character of the land, and other information as may be of interest to prospective buyers. The lists must be issued at least four weeks prior to the date of any sale. The department shall retain for free distribution in its office in Olympia and the regional offices sufficient copies of the lists, to be kept in a conspicuous place or receptacle on the counter of the general and regional office of the department, and, when requested to do so, shall mail copies of the list as issued to any applicant. [2005 c 155 § 113; 1982 1st ex.s. c 21 § 24. Formerly RCW 79.90.180.]

79.125.620 Sale procedure—Additional advertising expense.

The department is authorized to expend any sum in additional advertising of the sale as shall be determined to be in the best interests of the state. [2005 c 155 § 114; 1982 1st ex.s. c 21 § 25. Formerly RCW 79.90.190.]

79.125.630 Reoffer—Continuance.

Any sale that has been offered, and for which there are no bids received shall not be reoffered until it has been readvertised as specified in RCW 79.125.600, 79.125.610, and 79.125.620. If all sales cannot be offered within the specified time on the advertised date, the sale shall continue on the following day between the hours of ten o'clock a.m. and four o'clock p.m. [2005 c 155 § 115; 1982 1st ex.s. c 21 § 26. Formerly RCW 79.90.200.]

79.125.640 Sale at public auction—Minimum price—Sales by leaseholder.

All sales of state-owned tidelands and shorelands otherwise permitted by RCW 79.125.200 to be sold, shall be sold at public auction to the highest responsible bidder, on the terms prescribed by law and as specified in the notice provided, and no land shall be sold for less than the appraised value. Sales of aquaculture products by a leaseholder shall be as specified in RCW 79.135.040. [2005 c 155 § 116; 2005 c 113 § 2; 1990 c 163 § 1; 1982 1st ex.s. c 21 § 27. Formerly RCW 79.90.210.]

NOTES:

Reviser's note: This section was amended by 2005 c 113 § 2 and by 2005 c 155 § 116, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

79.125.650 Highest responsible bidder—Determination.

(1) To determine the "highest responsible bidder" under RCW 79.125.640, the department shall be entitled to consider, in addition to price, the following:

(a) The financial and technical ability of the bidder to perform the contract;

(b) Whether the bid contains material defects;

(c) Whether the bidder has previously or is currently complying with terms and conditions of any other contracts with the state or relevant contracts with entities other than the state;

(d) Whether the bidder was the "highest responsible bidder" for a sale within the previous five years but failed to complete the sale, such as by not entering into a resulting contract or by not paying the difference between the deposit and the total amount due. However, sales that were bid prior to January 1, 2003, may not be considered for the purposes of this subsection (1)(d);

(e) Whether the bidder has been convicted of a crime relating to the public lands or natural resources of the state of Washington, the United States, or any other state, tribe, or country, where "conviction" shall include a guilty plea, or unvacated forfeiture of bail;

(f) Whether the bidder is owned, controlled, or managed by any person, partnership, or corporation that is not responsible under this statute; and

(g) Whether the subcontractors of the bidder, if any, are responsible under this statute.

(2) Whenever the department has reason to believe that the apparent high bidder is not a responsible bidder, the department may award the sale to the next responsible bidder or the department may reject all bids pursuant to RCW 79.125.680. [2005 c 155 § 117; 2003 c 28 § 1; 1990 c 163 § 2. Formerly RCW 79.90.215.]

79.125.660 Sale procedure—Conduct of sales—Deposits—Bid bonds—Memorandum of purchase.

(1) Sales by public auction under this chapter shall be conducted under the direction of the department or by its authorized representative. The department's representatives are referred to as auctioneers.

(2) On or before the time specified in the notice of sale each bidder shall deposit with the auctioneer, in cash or by certified check, cashier's check, or postal money order payable to the order of the department, or by bid guarantee in the form of bid bond acceptable to the department, an amount equal to the deposit specified in the notice of sale. The deposit shall include a specified amount of the appraised price for the valuable materials offered for sale, together with any fee required by law for the issuance of contracts or bills of sale. The deposit may, when prescribed in the notice of sale, be considered an opening bid of an amount not less than the minimum appraised price established in the notice of sale. The successful bidder's deposit will be retained by the auctioneer and the difference, if any, between the deposit and the total amount due shall on the day of the sale be paid in cash, certified check, cashier's check, draft, postal

money order, or by personal check made payable to the department. If a bid bond is used, the share of the total deposit due guaranteed by the bid bond shall, within ten days of the day of sale, be paid in cash, certified check, cashier's check, draft, or postal money order payable to the department. Other deposits, if any, shall be returned to the respective bidders at the conclusion of each sale.

(3) The auctioneer shall deliver to the purchaser a memorandum of the purchase containing a description of the land or materials purchased, the price bid, and the terms of the sale.

(4) The auctioneer shall at once send to the department the cash, certified check, cashier's check, draft, postal money order, or bid guarantee received from the purchaser, and a copy of the memorandum delivered to the purchaser, together with such additional report of the auctioneer's proceedings with reference to the sales as may be required by the department. [2005 c 155 § 118; 1982 1st ex.s. c 21 § 28. Formerly RCW 79.90.220.]

79.125.670 Sale procedure—Readvertisement of lands not sold.

If any tideland or shoreland, when otherwise permitted under RCW 79.125.200, offered for sale is not sold, it may again be advertised for sale, as provided in this chapter, whenever in the opinion of the department it is expedient to do so. Whenever any person applies to the department in writing to have the land offered for sale and agrees to pay at least the appraised value of the land and deposits with the department at the time of making the application a sufficient sum of money to pay the cost of advertising the sale, the land may be advertised again and offered for sale as provided in this chapter. [2005 c 155 § 119; 1982 1st ex.s. c 21 § 29. Formerly RCW 79.90.230.]

79.125.680 Sale procedure—Confirmation of sale.

(1) A sale of tidelands or shorelands otherwise permitted by RCW 79.125.200 to be sold shall be confirmed if:

(a) No affidavit showing that the interest of the state in such sale was injuriously affected by fraud or collusion, is filed with the department's Olympia office within ten days from the receipt of the report of the auctioneer conducting the sale;

(b) It appears from the report that the sale was fairly conducted, that the purchaser was the highest responsible bidder at the sale, and that the sale price is not less than the appraised value of the property sold;

(c) The department is satisfied that the lands sold would not, upon being readvertised and offered for sale, sell for a substantially higher price; and

(d) The payment required by law to be made at the time of making the sale has been made, and that the best interests of the state are being served.

(2) Upon confirming a sale, the department shall enter upon its records the confirmation of sale and issue to the purchaser a contract of sale or bill of sale as the case may be, as is provided for in this chapter. [2005 c 155 § 120; 1990 c 163 § 3; 1982 1st ex.s. c 21 § 30. Formerly RCW 79.90.240.]

**79.125.700 Sale of state-owned tidelands or shorelands to municipal corporation or state agency—
Authority to execute agreements, deeds, etc.**

The department may with the advice and approval of the board sell state-owned tidelands or shorelands at the appraised market value to any municipal corporation or agency of the state of Washington when the land is to be used solely for municipal or state purposes. However, the department shall with the advice and approval of the attorney general, execute agreements, writings, or relinquishments and certify to the governor such deeds as are necessary or proper to affect the sale or exchange. [2005 c 155 § 515; 1982 1st ex.s. c 21 § 101. Formerly RCW 79.94.160.]

79.125.710 Grant of lands for city park or playground purposes.

Whenever application is made to the department by any incorporated city or town or metropolitan park district for the use of any state-owned tidelands or shorelands within the corporate limits of the city or town or metropolitan park district for municipal park and/or playground purposes, the department shall cause the application to be entered in the records of its office, and shall then forward the application to the governor, who shall appoint a committee of five representative citizens of the city or town, in addition to the commissioner and the director of ecology, both of whom shall be ex officio members of the committee, to investigate the lands and determine whether they are suitable and needed for park or playground purposes; and, if they so find, the commissioner shall certify to the governor that the property shall be deeded, when in accordance with RCW 79.125.200 and 79.125.700, to the city or town or metropolitan park district and the governor shall then execute a deed in the name of the state of Washington, attested by the secretary of state, conveying the use of the lands to the city or town or metropolitan park district for park or playground purposes for so long as it shall continue to hold, use, and maintain the lands for park or playground purposes. [2005 c 155 § 517; 2003 c 334 § 447; 1988 c 127 § 33; 1939 c 157 § 1; RRS § 7993-1. Formerly RCW 79.94.175, 79.08.080.]

NOTES:

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

79.125.720 Exchange of lands to secure city parks and playgrounds.

In the event there are no state-owned tidelands or shorelands in any city or town or metropolitan park district suitable for the purposes of RCW 79.125.710 and the committee finds other lands which are suitable and needed for parks or playgrounds, the department is authorized to secure the lands by exchanging state-owned tidelands or shorelands of equal value in the same county, and the use of the lands so secured shall be conveyed to any city or town or metropolitan park district as provided for in RCW 79.125.710. In all exchanges the department is authorized and directed, with the assistance of the attorney general, to execute agreements, writings, relinquishments, and deeds as are necessary or proper for the purpose of carrying the exchanges into effect. Upland owners shall be notified of the

state-owned tidelands or shorelands to be exchanged. [2005 c 155 § 518; 2003 c 334 § 448; 1939 c 157 § 2; RRS § 7993-2. Formerly RCW 79.94.181, 79.08.090.]

NOTES:

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

79.125.730 Director of ecology to assist city parks.

The director of ecology, in addition to serving as an ex officio member of the committee, is authorized and directed to assist the city or town or metropolitan park district in the development and decoration of any lands so conveyed and to furnish trees, grass, flowers, and shrubs therefor. [2005 c 155 § 519; 1988 c 127 § 34; 1939 c 157 § 3; RRS § 7993-3. Formerly RCW 79.94.185, 79.08.100.]

79.125.740 Certain tidelands reserved for recreational use and taking of fish and shellfish.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Parcel No. 12. (Spencer Spit) The second-class tidelands, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1, 3, and 4, section 7, and lot 5, section 18 all in township 35 north, range 1 west, W.M., with a frontage of 118.80 lineal chains, more or less. [2005 c 155 § 533; 2003 c 39 § 42; 1994 c 264 § 66; 1983 1st ex.s. c 46 § 181; 1982 1st ex.s. c 21 § 124. Formerly RCW 79.94.390.]

NOTES:

Tidelands—Upland owner use: "The state department of fisheries is authorized to permit designated portions of the following described tidelands to be used by the upland owners thereof for the purpose of building and maintaining docks: Tidelands of the second class owned by the state of Washington situated in front of, adjacent to, or abutting upon, the entire west side of lot 1, section 5, Township 34 North, Range 2 West, W.M., to the northernmost tip of said lot, and lots 2 and 3, section 8, Township 34 North, Range 2 West, W.M. (Cattle Point)." [1967 ex.s. c 128 § 1.]

79.125.750 Access to and from tidelands reserved for recreational use and taking of fish and shellfish.

The director of fish and wildlife may take appropriate action to provide public and private access, including roads and docks, to and from the tidelands described in RCW 79.125.740. [2005 c 155 § 534; 1994 c 264 § 67; 1982 1st ex.s. c 21 § 125. Formerly RCW 79.94.400.]

79.125.760 Use of certain tidelands, shorelands, and abutting bedlands—Grant to the United States—Purposes—Limitations.

The use of any tidelands, shorelands, and abutting bedlands covered with less than four fathoms of water at ordinary low tide belonging to the state, and adjoining and bordering on any tract, piece, or parcel of land, which may have been reserved or acquired, or which may be reserved or acquired, by the government of the United States, for the purposes of erecting and maintaining forts, magazines, arsenals, dockyards, navy yards, prisons, penitentiaries, lighthouses, fog signal stations, aviation fields, or other aids to navigation, may be granted to the United States, upon payment for the rights, so long as the upland adjoining the tidelands or shorelands shall continue to be held by the government of the United States for any of the public purposes above mentioned. However, this grant shall not extend to or include any aquatic lands covered by more than four

fathoms of water at ordinary low tide; and shall not be construed to prevent any citizen of the state from using the lands for the taking of food fishes so long as the fishing does not interfere with the public use of them by the United States. [2005 c 155 § 535; 1982 1st ex.s. c 21 § 126. Formerly RCW 79.94.410.]

79.125.770 Tidelands and shorelands—Use of lands granted to United States—Application—Proof of upland use—Conveyance.

Whenever application is made to the department by any department of the United States government for the use of any state-owned tidelands or shorelands and adjoining and bordering on any upland held by the United States for any of the purposes mentioned in RCW 79.125.760, upon proof being made to the department, that the uplands are so held by the United States for such purposes, and upon payment for the land, it shall cause the fact to be entered in the records of the department and the department shall certify the fact to the governor who will execute a deed in the name of the state, attested by the secretary of state, conveying the use of the lands, for such purposes, to the United States, so long as it shall continue to hold for the public purposes the uplands adjoining the tidelands and shorelands. [2005 c 155 § 536; 1982 1st ex.s. c 21 § 127. Formerly RCW 79.94.420.]

79.125.780 Tidelands and shorelands—Use of lands granted to United States—Easements over tidelands or shorelands to United States.

Whenever application is made to the department, by any department of the United States government, for the use of any state-owned tidelands or shorelands, for any public purpose, and the department shall be satisfied that the United States requires or may require the use of the tidelands or shorelands for the public purposes, the department may reserve the tidelands or shorelands from public sale and grant the use of them to the United States, upon payment for the land, so long as it may require the use of them for the public purposes. In such a case, the department shall execute an easement to the United States, which grants the use of the tidelands or shorelands to the United States, so long as it shall require the use of them for the public purpose. [2005 c 155 § 537; 1982 1st ex.s. c 21 § 128. Formerly RCW 79.94.430.]

79.125.790 Tidelands and shorelands—Use of lands granted to United States—Reversion on cessation of use.

Whenever the United States shall cease to hold and use any uplands for the use and purposes mentioned in RCW 79.125.760, or shall cease to use any tidelands or shorelands for the purpose mentioned in RCW 79.125.780, the grant or easement of the tidelands or shorelands shall be terminated, and the tidelands or shorelands shall revert to the state without resort to any court or tribunal. [2005 c 155 § 538; 1982 1st ex.s. c 21 § 129. Formerly RCW 79.94.440.]

79.125.800 United States Navy base—Exchange of property—Procedure.

The department is authorized to deed, by exchanges of property, to the United States Navy those tidelands necessary to facilitate the location of the United States Navy base in Everett. In carrying out this authority, the department shall request that the governor execute the deed in the name of the state attested to by the secretary of state. The department will follow the requirements outlined in RCW 79.17.050 in making the exchange. The department must exchange the state's tidelands for lands of equal value, and the land received in the exchange must be suitable for natural preserves, recreational purposes, or have commercial value. The lands must not have been previously used as a waste disposal site. Choice of the site must be made with the advice and approval of the board. [2003 c 334 § 615; 1987 c 271 § 4. Formerly RCW 79.94.450.]

NOTES:

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

Severability—1987 c 271: See note following RCW 79.130.050.

79.125.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.

See RCW 79.135.900 through 79.135.904.

Chapter 79.130

AQUATIC LANDS—BEDS OF NAVIGABLE WATERS

Sections

- 79.130.010 Lease of beds of navigable waters.
- 79.130.020 Lease of beds of navigable waters—Terms and conditions of lease—Forfeiture for nonuser.
- 79.130.030 Lease of beds of navigable waters—Improvements—Federal permit—Forfeiture—Plans and specifications.
- 79.130.040 Lease of beds of navigable waters—Preference right to re-lease.
- 79.130.050 United States Navy base—Legislative findings and declaration.
- 79.130.060 Lease of bedlands in Port Gardner Bay for dredge spoil site—Conditions.
- 79.130.070 Exchange of bedlands—Cowlitz river.
- 79.130.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.

79.130.010 Lease of beds of navigable waters.

(1) Except as provided in RCW 79.130.060, the department may lease to the abutting tidelands or shorelands owner or lessee, the beds of navigable waters lying below the line of extreme low tide in waters where the tide ebbs and flows, and below the line of navigability in lakes and rivers claimed by the state and defined in Article XVII, section 1 of the state Constitution.

(2) In case the abutting tidelands or shorelands or the abutting uplands are not improved or occupied for residential or commercial purposes, the department may lease the beds to any person for a period not exceeding ten years for booming purposes.

(3) Nothing in this chapter shall change or modify any of the provisions of the state Constitution or laws of the state which provide for the leasing of harbor areas and the reservation of lands lying in front of harbor areas. [2005 c 155 § 601; 1987 c 271 § 2; 1982 1st ex.s. c 21 § 130. Formerly RCW 79.95.010.]

NOTES:

Severability—1987 c 271: See note following RCW 79.130.050.

79.130.020 Lease of beds of navigable waters—Terms and conditions of lease—Forfeiture for nonuser.

(1) The department shall, prior to the issuance of any lease under the provisions of this chapter, fix the annual rental and prescribe the terms and conditions of the lease. However, in fixing the rental, the department shall not take into account the value of any improvements placed upon the lands by the lessee.

(2) No lease issued under the provisions of this chapter shall be for a term longer than thirty years from the date thereof if in front of second-class tidelands or shorelands; or a term longer than ten years if in front of unplatted first-class tidelands or shorelands leased under the provisions of RCW 79.125.410, in which case the lease shall be subject to the same terms and conditions as provided for in the lease of the unplatted first-class tidelands or shorelands. Failure to use those beds leased under the provisions of this chapter for booming purposes, for a period of two years shall work a forfeiture of the lease and the land shall revert to the state without notice to the lessee upon the entry of a declaration of forfeiture in the records of the department. [2005 c 155 § 602; 1982 1st ex.s. c 21 § 131. Formerly RCW 79.95.020.]

79.130.030 Lease of beds of navigable waters—Improvements—Federal permit—Forfeiture—Plans and specifications.

The applicant for a lease under the provisions of this chapter shall first obtain from the United States army corps of engineers or other federal regulatory agency, a permit to place structures or improvements in the navigable waters and file with the department a copy of the permit. No structures or improvements shall be constructed beyond a point authorized by the army corps of engineers or the department and any construction beyond authorized limits will work a forfeiture of all rights granted by the terms of any lease issued under the provisions of this chapter. The applicant shall also file plans and specifications of any proposed improvements to be placed upon the areas with the department, the plans and specifications to be the same as provided for in the case of the lease of harbor areas. [2005 c 155 § 603; 1982 1st ex.s. c 21 § 132. Formerly RCW 79.95.030.]

79.130.040 Lease of beds of navigable waters—Preference right to re-lease.

At the expiration of any lease issued under the provisions of this chapter, the lessee or the lessee's successors or assigns, shall have a preference right to re-lease all or part of the area covered by the original lease if the department deems it to be in the best interest of the state to re-lease the area. Such re-lease

shall be for the term as specified by the provisions of this chapter, and at the rental and upon the conditions as may be prescribed by the department. However, if the preference right is not exercised, the rights and obligations of the lessee, the department, and any subsequent lessee shall be the same as provided in RCW 79.125.300 relating to failure to re-lease tidelands or shorelands. Any person who prior to June 11, 1953, had occupied and improved an area subject to lease under this chapter and has secured a permit for the improvements from the United States army corps of engineers, or other federal regulatory agency, shall have the rights and obligations of a lessee under this section upon the filing of a copy of the permit together with plans and specifications of the improvements with the department. [2005 c 155 § 604; 1982 1st ex.s. c 21 § 133. Formerly RCW 79.95.040.]

79.130.050 United States Navy base—Legislative findings and declaration.

The legislature recognizes the importance of economic development in the state of Washington, and finds that the location of a United States Navy base in Everett, Washington will enhance economic development. The legislature finds that the state should not assume liability or risks resulting from any action taken by the United States Navy, now or in the future associated with the dredge disposal program for that project known as confined aquatic disposal (CAD). The legislature also recognizes the importance of improving water quality and cleaning up pollution in Puget Sound. The legislature declares these actions to be a public purpose necessary to protect the health, safety, and welfare of its citizens, and to promote economic growth and improve environmental quality in the state of Washington. The United States Navy proposes to commence the Everett home port project immediately. [2005 c 155 § 605; 1987 c 271 § 1. Formerly RCW 79.95.050.]

NOTES:

Severability—1987 c 271: "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." [1987 c 271 § 6.]

79.130.060 Lease of bedlands in Port Gardner Bay for dredge spoil site—Conditions.

(1) Upon application by the United States Navy, and upon verification of the legal description and compliance with the intent of this chapter, the commissioner is authorized to lease bedlands in Port Gardner Bay for a term of thirty years so the United States Navy can utilize a dredge spoil site solely for purposes related to construction of the United States Navy base at Everett.

(2) The lease shall reserve for the state uses of the property and associated waters which are not inconsistent with the use of the bed by the Navy as a disposal site. The lease shall include conditions under which the Navy:

(a) Will agree to hold the state of Washington harmless for any damage and liability relating to, or resulting from, the use of the property by the Navy; and

(b) Will agree to comply with all terms and conditions included in the applicable state of Washington section 401 water quality certification issued under the authority of the federal clean water act (33 U.S.C. Sec. 1251, et seq.), all terms and conditions of the army corps of engineers section 404 permit (33 U.S.C. Sec. 1344), and all requirements of statutes, regulations, and permits relating to water quality and aquatic life in Puget Sound and Port Gardner Bay, including all reasonable and appropriate terms and conditions of any permits issued under the authority of the Washington state shoreline management act (chapter 90.58 RCW) and any applicable shoreline master program.

(3) The ability of the state of Washington to enforce the terms and conditions specified in subsection (2)(b) of this section shall include, but not be limited to: (a) The terms and conditions of the lease; (b) the section 401 water quality certification under the clean water act, 33 U.S.C. Sec. 1251, et seq.; (c) the comprehensive environmental response, compensation, and liability act, 42 U.S.C. Sec. 9601, et seq.; (d) the resource conservation and recovery act, 42 U.S.C. Sec. 6901, et seq.; or (e) any other applicable federal or state law. [2005 c 155 § 606; 1987 c 271 § 3. Formerly RCW 79.95.060.]

NOTES:

Severability—1987 c 271: See note following RCW 79.130.050.

79.130.070 Exchange of bedlands—Cowlitz river.

(1) The department is authorized to exchange bedlands abandoned through rechanneling of the Cowlitz river near the confluence of the Columbia river so that the state obtains clear title to the Cowlitz river as it now exists or where it may exist in the future through the processes of erosion and accretion.

(2) The department is also authorized to exchange bedlands and enter into boundary line agreements to resolve any disputes that may arise over the location of state-owned lands now comprising the dike that was created in the 1920s.

(3) For purposes of chapter 150, Laws of 2001, "Cowlitz river near the confluence of the Columbia river" means those tidelands and bedlands of the Cowlitz river fronting and abutting sections 10, 11, and 14, township 7 north, range 2 west, Willamette Meridian and fronting and abutting the Huntington Donation Land Claim No. 47 and the Blakeny Donation Land Claim No. 43, township 7 north, range 2 west, Willamette Meridian.

(4) Nothing in chapter 150, Laws of 2001 shall be deemed to convey to the department the power of eminent domain. [2003 c 334 § 454; 2001 c 150 § 2. Formerly RCW 79.90.458, 79.08.260.]

NOTES:

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

Findings—2001 c 150: "(1) The legislature finds that in the 1920s the Cowlitz river near the confluence of the Columbia river in Longview, Washington was diverted from its original course by dredging and construction of a dike. As a result, a portion of the original bed of the Cowlitz river became a nonnavigable body of shallow water. Another portion of the original bed of the Cowlitz river became part of a dike and is indistinguishable from existing islands. The main channel of the Cowlitz river was diverted over uplands to the south of the original bed and has continued as a navigable channel.

(2) The legislature finds that continued ownership of the nonnavigable portion of the original bed of the Cowlitz river near the confluence of the Columbia river no longer serves the state's interest in navigation. Ownership of the existing navigable bed of the Cowlitz river would better serve the state's interest in navigation. It is also in the state's interest to resolve any disputes that have arisen because state-owned land is now indistinguishable from privately owned land within the dike." [2001 c 150 § 1.]

Severability—2001 c 150: "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." [2001 c 150 § 3.]

79.130.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.

See RCW 79.135.900 through 79.135.904.

**Chapter 79.135
AQUATIC LANDS—OYSTERS, GEODUCKS,
SHELLFISH, OTHER AQUACULTURAL USES,
AND MARINE AQUATIC PLANTS**

Sections

- 79.135.010 Bush act/Callow act lands.
- 79.135.020 Sale of reserved or reversionary rights in tidelands.
- 79.135.030 Wrongful taking of shellfish from public lands—Civil remedies.
- 79.135.100 Aquatic lands used for aquaculture production and harvesting—Rents and fees—Limitations on leases.
- 79.135.110 Leasing beds of tidal waters for shellfish cultivation or other aquaculture use.
- 79.135.120 Leasing lands for shellfish cultivation or other aquaculture use—Who may lease—Application—Deposit.
- 79.135.130 Leasing lands for shellfish cultivation or other aquaculture use—Inspection and report by director of fish and wildlife—Rental and term—Commercial harvest of subtidal hardshell clams by hydraulic escalating.
- 79.135.140 Leasing lands for shellfish cultivation or other aquaculture use—Survey and boundary markers.
- 79.135.150 Renewal lease—Application.
- 79.135.160 Leasing lands for shellfish cultivation or other aquaculture use—Reversion for use other than cultivation of shellfish.
- 79.135.170 Leasing lands for shellfish cultivation or other aquaculture use—Abandonment—Application for other lands.
- 79.135.200 Geoduck harvest/cultivation—Survey of navigable waters by private party—Record of survey.
- 79.135.210 Geoduck harvesting—Agreements, regulation.
- 79.135.220 Geoduck harvesting—Designation of aquatic lands.
- 79.135.230 Intensive management plan for geoducks.
- 79.135.300 Lease of tidelands set aside as oyster reserves.
- 79.135.310 Inspection by director of fish and wildlife.
- 79.135.320 Vacation of reserve—Lease of lands—Designated state oyster reserve lands.
- 79.135.400 Seaweed—Marine aquatic plants defined.
- 79.135.410 Seaweed—Personal use limit—Commercial harvesting prohibited—Exception—Import restriction.
- 79.135.420 Seaweed—Harvest and possession violations—Penalties and damages.
- 79.135.430 Seaweed—Enforcement.
- 79.135.900 Savings—1982 1st ex.s. c 21.
- 79.135.901 Captions—1982 1st ex.s. c 21.
- 79.135.902 Severability—1982 1st ex.s. c 21.
- 79.135.903 Effective date—1982 1st ex.s. c 21 §§ 176 and 179.
- 79.135.904 Effective date—1982 1st ex.s. c 21.

79.135.010 Bush act/Callow act lands.

(1) A person in possession of real property conveyed by the state of Washington pursuant to the authority of chapter 24, Laws of 1895 (Bush act) or chapter 25, Laws of 1895 (Callow act), wherein such lands are subject to a possibility of reversion, shall heretofore have and are granted the further right to use all of the property for the purpose of cultivating and propagating clams and any shellfish.

(2) The rights granted under subsection (1) of this section do not include the right to use subtidal portions of Bush act and Callow act lands for the harvest and cultivation of any species of shellfish that had not commenced prior to December 31, 2001.

(3) For the purposes of this section, harvest and cultivation of any species of shellfish shall not be deemed to have commenced unless the subtidal portions of the land had been planted with that species of shellfish prior to December 31, 2001.

(4) No vested rights in shellfish cultivation may be impaired by any of the provisions of chapter 123, Laws of 2002, nor is anything other than what is stated in subsection (2) of this section intended to grant any further rights in the subtidal lands than what was originally included under the intent of the Bush and Callow acts. [2002 c 123 § 2. Formerly RCW 79.90.570.]

NOTES:

Findings—2002 c 123: "The legislature declares that shellfish farming provides a consistent source of quality food, offers opportunities of new jobs, increases farm income stability, and improves balance of trade. The legislature also finds that many areas of the state of Washington are scientifically and biologically suitable for shellfish farming, and therefore the legislature has encouraged and promoted shellfish farming activities, programs, and development with the same status as other agricultural activities, programs, and development within the state. It being the policy of this state to encourage the development and expansion of shellfish farming within the state and to promote the development of a diverse shellfish farming industry, the legislature finds that the uncertainty surrounding reversionary clauses contained in Bush act and Callow act deeds is interfering with this policy. The legislature finds that uncertainty of the grant of rights for the claim and other shellfish culture as contained in chapter 166, Laws of 1919 must be fully and finally resolved. It is not the intent of this act to impair any vested rights in shellfish cultivation or current shellfish aquaculture activities to which holders of Bush act and Callow act lands are entitled." [2002 c 123 § 1.]

79.135.020 Sale of reserved or reversionary rights in tidelands.

Upon an application to purchase the reserved and reversionary rights of the state in any tidelands sold under the provisions of chapter 24, Laws of 1895, or chapter 25, Laws of 1895, or chapter 165, Laws of 1919, or either the reserved or reversionary right if only one exists, being filed in the department's Olympia office by the owner of the tidelands, accompanied by an abstractor's certificate, or other evidence of the applicant's title to the lands, the department, if it finds the applicant is the owner of the tidelands, is authorized to inspect, appraise, and sell, if otherwise permitted under RCW 79.125.200, for not less than the appraised value, such reserved or reversionary rights of the state to the applicant, and upon payment of the purchase price to cause a deed to be issued as in the case of the sale of state lands, or upon the payment of one-fifth of the purchase price, to issue a contract of sale, providing that the remainder of

the purchase price may be paid in four equal annual installments, with interest on deferred payments at the rate of six percent per annum, or sooner at the election of the contract holder, which contract shall be subject to cancellation by the department for failure to comply with its provisions, and upon the completion of the payments as provided in the contract to cause a deed to the lands described in the contract to be issued to the holder as in the case of the sale of state lands. [2005 c 155 § 713; 1982 1st ex.s. c 21 § 145. Formerly RCW 79.96.120.]

79.135.030 Wrongful taking of shellfish from public lands—Civil remedies.

(1) If a person wrongfully takes shellfish or causes shellfish to be wrongfully taken from the public lands and the wrongful taking is intentional and knowing, the person is liable for damages of treble the fair market retail value of the amount of shellfish wrongfully taken. If a person wrongfully takes shellfish from the public lands under other circumstances, the person is liable for damages of double the fair market value of the amount of shellfish wrongfully taken.

(2) For purposes of this section, a person "wrongfully takes" shellfish from public lands if the person takes shellfish: (a) Above the limits of any applicable laws that govern the harvest of shellfish from public lands; (b) without reporting the harvest to the department of fish and wildlife or the department where the reporting is required by law or contract; (c) outside the area or above the limits that an agreement or contract from the department allows the harvest of shellfish from public lands; or (d) without a lease or purchase of the shellfish where the lease or purchase is required by law prior to harvest of the shellfish.

(3) The remedies in this section are for civil damages and shall be proved by a preponderance of the evidence. The department may file a civil action in Thurston county superior court or the county where the shellfish were taken against any person liable under this section. Damages recovered under this section shall be applied in the same way as received under geoduck harvesting agreements authorized by RCW 79.135.210.

(4) For purposes of the remedies created by this section, the amount of shellfish wrongfully taken by a person may be established either:

(a) By surveying the aquatic lands to reasonably establish the amount of shellfish taken from the immediate area where a person is shown to have been wrongfully taking shellfish;

(b) By weighing the shellfish on board any vessel or in possession of a person shown to be wrongfully taking shellfish; or

(c) By any other evidence that reasonably establishes the amount of shellfish wrongfully taken.

The amount of shellfish established by (a) or (b) of this subsection shall be presumed to be the amount wrongfully taken unless the defendant shows by a preponderance of evidence that the shellfish were lawfully taken or that the defendant did not take the shellfish presumed to have been wrongfully taken. Whenever there is reason to believe that shellfish in the possession of any person were wrongfully taken, the department or the

department of fish and wildlife may require the person to proceed to a designated off-load point and to weigh all shellfish in possession of the person or on board the person's vessel.

(5) This civil remedy is supplemental to the state's power to prosecute any person for theft of shellfish, for other crimes where shellfish are involved, or for violation of rules of the department of fish and wildlife. [2005 c 155 § 714; 1994 c 264 § 73; 1990 c 163 § 9. Formerly RCW 79.96.130.]

79.135.100 Aquatic lands used for aquaculture production and harvesting—Rents and fees—Limitations on leases.

(1) If state-owned aquatic lands are used for aquaculture production or harvesting, rents and fees shall be established through competitive bidding or negotiation.

(2) After an initial twenty-three acres are leased, the department is prohibited from offering leases that would permit the intertidal commercial aquaculture of geoducks on more than fifteen acres of state-owned aquatic lands a [per] year until December 1, 2014.

(3) Any intertidal leases entered into by the department for geoduck aquaculture must be conditioned in such a way that the department can engage in monitoring of the environmental impacts of the lease's execution, without unreasonably diminishing the economic viability of the lease, and that the lease tracts are eligible to be made part of the studies conducted under RCW 28B.20.475.

(4) The department must notify all abutting landowners and any landowner within three hundred feet of the lands to be leased of the intent of the department to lease any intertidal lands for the purposes of geoduck aquaculture. [2007 c 216 § 3; 1984 c 221 § 10. Formerly RCW 79.90.495.]

79.135.110 Leasing beds of tidal waters for shellfish cultivation or other aquaculture use.

(1) The beds of all navigable tidal waters in the state lying below extreme low tide, except as prohibited by Article XV, section 1 of the state Constitution shall be subject to lease for the purposes of planting and cultivating oyster beds, or for the purpose of cultivating clams or other edible shellfish, or for other aquaculture use, for periods not to exceed thirty years.

(2) Nothing in this section shall prevent any person from leasing more than one parcel, as offered by the department. [2005 c 155 § 701; 1993 c 295 § 1; 1982 1st ex.s. c 21 § 134. Formerly RCW 79.96.010.]

79.135.120 Leasing lands for shellfish cultivation or other aquaculture use—Who may lease—Application—Deposit.

Any person desiring to lease tidelands or beds of navigable waters for the purpose of planting and cultivating oyster beds, or for the purpose of cultivating clams and other edible shellfish, shall file with the department, on a proper form, an application in writing signed by the applicant and accompanied by a map of the lands desired to be leased, describing the lands by metes and bounds tied to at least two United States government

corners, and by the reference to local geography as shall suffice to convey a knowledge of the location of the lands with reasonable accuracy to persons acquainted with the vicinity, and accompanied by a deposit of ten dollars. The deposit shall be returned to the applicant in case a lease is not granted. [2005 c 155 § 702; 1982 1st ex.s. c 21 § 135. Formerly RCW 79.96.020.]

79.135.130 Leasing lands for shellfish cultivation or other aquaculture use—Inspection and report by director of fish and wildlife—Rental and term—Commercial harvest of subtidal hardshell clams by hydraulic escalating.

(1) The department, upon the receipt of an application for a lease for the purpose of planting and cultivating oyster beds or for the purpose of cultivating clams or other edible shellfish, shall notify the director of fish and wildlife of the filing of the application describing the tidelands or beds of navigable waters applied for. The director of fish and wildlife shall cause an inspection of the lands applied for to be made and shall make a full report to the department of the director's findings as to whether it is necessary, in order to protect existing natural oyster beds, and to secure adequate seeding of the lands, to retain the lands described in the application for lease or any part of the lands, and in the event the director deems it advisable to retain the lands or any part of the lands for the protection of existing natural oyster beds or to guarantee the continuance of an adequate seed stock for existing natural oyster beds, the lands shall not be subject to lease. However, if the director determines that the lands applied for or any part of the lands may be leased, the director shall so notify the department and the director shall cause an examination of the lands to be made to determine the presence, if any, of natural oysters, clams, or other edible shellfish on the lands, and to fix the rental value of the lands for use for oyster, clam, or other edible shellfish cultivation. In the report to the department, the director shall recommend a minimum rental for the lands and an estimation of the value of the oysters, clams, or other edible shellfish, if any, then present on the lands applied for. The lands approved by the director for lease may then be leased to the applicant for a period of not less than five years nor more than ten years at a rental not less than the minimum rental recommended by the director of fish and wildlife. In addition, before entering upon possession of the land, the applicant shall pay the value of the oysters, clams, or other edible shellfish, if any, then present on the land as determined by the director, plus the expense incurred by the director in investigating the quantity of oysters, clams, or other edible shellfish, present on the land applied for.

(2) When issuing new leases or reissuing existing leases the department shall not permit the commercial harvest of subtidal hardshell clams by means of hydraulic escalating when the upland within five hundred feet of any lease tract is zoned for residential development. [2005 c 155 § 703; 1994 c 264 § 68; 1987 c 374 § 1; 1982 1st ex.s. c 21 § 136. Formerly RCW 79.96.030.]

79.135.140 Leasing lands for shellfish cultivation or other aquaculture use—Survey and boundary markers.

Before entering into possession of any leased tidelands or beds of navigable waters, the applicant shall have the lands surveyed by a registered land surveyor, and the applicant shall furnish to the department and to the director of fish and wildlife, a map of the leased premises signed and certified by the registered land surveyor. The lessee shall also mark the boundaries of the leased premises by piling monuments or other markers of a permanent nature as the director of fish and wildlife may direct. [2005 c 155 § 704; 1994 c 264 § 69; 1982 1st ex.s. c 21 § 137. Formerly RCW 79.96.040.]

79.135.150 Renewal lease—Application.

The department may, upon the filing of an application for a renewal lease, inspect the tidelands or beds of navigable waters, and if the department deems it in the best interests of the state to re-lease the lands, the department shall issue to the applicant a renewal lease for a further period not exceeding thirty years and under the terms and conditions as may be determined by the department. However, in the case of an application for a renewal lease it shall not be necessary for the lands to be inspected and reported upon by the director of fish and wildlife. [2005 c 155 § 705; 1994 c 264 § 70; 1993 c 295 § 2; 1982 1st ex.s. c 21 § 138. Formerly RCW 79.96.050.]

79.135.160 Leasing lands for shellfish cultivation or other aquaculture use—Reversion for use other than cultivation of shellfish.

All leases of tidelands and beds of navigable waters for the purpose of planting and cultivating oysters, clams, or other edible shellfish shall expressly provide that if at any time after the granting of the lease, the described lands shall cease to be used for the purpose of oyster beds, clam beds, or other edible shellfish beds, they shall revert to and become the property of the state and that the lands are leased only for the purpose of cultivating oysters, clams, or other edible shellfish thereon, and that the state reserves the right to enter upon and take possession of the lands if at any time the lands are used for any other purpose than the cultivation of oysters, clams, or other edible shellfish. [2005 c 155 § 706; 1982 1st ex.s. c 21 § 139. Formerly RCW 79.96.060.]

79.135.170 Leasing lands for shellfish cultivation or other aquaculture use—Abandonment—Application for other lands.

If from any cause any lands leased for the purpose of planting and cultivating oysters, clams, or other edible shellfish become unfit and valueless for any such purposes, the lessee or the lessee's assigns, upon certifying the fact under oath to the department, together with the fact that the lessee has abandoned the land, shall be entitled to make application for other lands for such purposes. [2005 c 155 § 707; 1982 1st ex.s. c 21 § 140. Formerly RCW 79.96.070.]

79.135.200 Geoduck harvest/cultivation—Survey of navigable waters by private party—Record of survey.

Beds of navigable waters held under contract or deed from the state of Washington upon which a private party is harvesting or cultivating geoduck shall be surveyed by the private party and a record of survey filed in compliance with chapter 58.09 RCW prior to harvest. Property corners will be placed in sufficient quantity and location to aid in relocation of the oyster tract lines occurring or extending below extreme low tide. Buoys on anchors must be placed intervisibly along and at angle points on any ownership boundaries that extend below extreme low tide, for the harvest term. The survey of privately owned beds of navigable waters will be established on the Washington coordinate system in compliance with chapter 58.20 RCW and property corners labeled with their coordinates on the record of survey. [2002 c 123 § 3. Formerly RCW 79.96.140.]

NOTES:

Findings—2002 c 123: See note following RCW 79.135.010.

79.135.210 Geoduck harvesting—Agreements, regulation.

(1) Except as provided in RCW 79.135.040, geoducks shall be sold as valuable materials under the provisions of *chapter 79.90 RCW. After confirmation of the sale, the department may enter into an agreement with the purchaser for the harvesting of geoducks. The department may place terms and conditions in the harvesting agreements as the department deems necessary. The department may enforce the provisions of any harvesting agreement by suspending or canceling the harvesting agreement or through any other means contained in the harvesting agreement. Any geoduck harvester may terminate a harvesting agreement entered into pursuant to this subsection if actions of a governmental agency, beyond the control of the harvester, its agents, or its employees, prohibit harvesting, for a period exceeding thirty days during the term of the harvesting agreement, except as provided within the agreement. Upon termination of the agreement by the harvester, the harvester shall be reimbursed by the department for the cost paid to the department on the agreement, less the value of the harvest already accomplished by the harvester under the agreement.

(2) Harvesting agreements under this title for the purpose of harvesting geoducks shall require the harvester and the harvester's agent or representatives to comply with all applicable commercial diving safety standards and regulations promulgated and implemented by the federal occupational safety and health administration established under the federal occupational safety and health act of 1970 as the law exists or as amended (84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq.). However, for the purposes of this section and RCW 77.60.070, all persons who dive for geoducks are deemed to be employees as defined by the federal occupational safety and health act. All harvesting agreements shall provide that failure to comply with these standards is cause for suspension or cancellation of the harvesting agreement. Further, for the purposes of this subsection if the harvester contracts with another person or entity for the harvesting of geoducks, the harvesting agreement shall not be suspended or

canceled if the harvester terminates its business relationship with such an entity until compliance with this subsection is secured. [2005 c 155 § 708; 2005 c 113 § 3; 2003 c 39 § 43; 1990 c 163 § 4; 1982 1st ex.s. c 21 § 141. Formerly RCW 79.96.080.]

NOTES:

Reviser's note: *(1) Chapter 79.90 RCW was recodified and/or repealed in its entirety by 2005 c 155.

(2) This section was amended by 2005 c 113 § 3 and by 2005 c 155 § 708, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

This page left intentionally blank.

79.135.220 Geoduck harvesting—Designation of aquatic lands.

The department shall designate the areas of state-owned aquatic lands that are available for geoduck harvesting by licensed geoduck harvesters in accordance with *chapter 79.90 RCW. [2005 c 155 § 709; 1990 c 163 § 5; 1983 1st ex.s. c 46 § 129; 1979 ex.s. c 141 § 5. Formerly RCW 79.96.085, 75.28.286.]

NOTES:

*Reviser's note: Chapter 79.90 RCW was recodified and/or repealed in its entirety by 2005 c 155.

Commercial harvesting of geoducks: RCW 77.60.070, 77.65.410.

79.135.230 Intensive management plan for geoducks.

The department may enter into agreements with the department of fish and wildlife for the development of an intensive management plan for geoducks including the development and operation of a geoduck hatchery. [2005 c 155 § 718; 1994 c 264 § 74; 1984 c 221 § 26. Formerly RCW 79.96.906.]

NOTES:

Severability—Effective date—1984 c 221: See RCW 79.105.901 and 79.105.902.

79.135.300 Lease of tidelands set aside as oyster reserves.

The department is authorized to lease first or second-class tidelands which have been or that are set aside as state oyster reserves in the same manner as provided elsewhere in this chapter for the lease of those lands. [2005 c 155 § 710; 1982 1st ex.s. c 21 § 142. Formerly RCW 79.96.090.]

79.135.310 Inspection by director of fish and wildlife.

The department, upon the receipt of an application for the lease of any first or second-class state-owned tidelands that are set aside as state oyster reserves, shall notify the director of fish and wildlife of the filing of the application describing the lands applied for. It is the duty of the director of fish and wildlife to inspect the reserve for the purpose of determining whether the reserve or any part of the reserve should be retained as a state oyster reserve or vacated. [2005 c 155 § 711; 1994 c 264 § 71; 1982 1st ex.s. c 21 § 143. Formerly RCW 79.96.100.]

79.135.320 Vacation of reserve—Lease of lands—Designated state oyster reserve lands.

(1) In the event that the fish and wildlife commission approves the vacation of the whole or any part of a reserve, the department may vacate and offer for lease the parts or all of the reserve as it deems to be for the best interest of the state, and all moneys received for the lease of the lands shall be paid to the department.

(2) Notwithstanding RCW 77.60.020, subsection (1) of this section, or any other provision of state law, the state oyster reserves in Eld Inlet, Hammersley Inlet, or Totten Inlet, situated in Mason or Thurston counties shall permanently be designated as state oyster reserve lands. [2005 c 155 § 712; 2001 c 273 § 4; 2000 c 11 § 30; 1994 c 264 § 72; 1982 1st ex.s. c 21 § 144. Formerly RCW 79.96.110.]

79.135.400 Seaweed—Marine aquatic plants defined.

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

"Marine aquatic plants" means saltwater marine plant species that are dependent upon the marine aquatic or tidal environment, and exist in either an attached or free-floating state. Marine aquatic plants include but are not limited to seaweed of the classes Chlorophyta, Phaeophyta, and Rhodophyta. [1993 c 283 § 2. Formerly RCW 79.96.200, 79.01.800.]

NOTES:

Findings—1993 c 283: "The legislature finds that the plant resources of marine aquatic ecosystems have inherent value and provide essential habitat. These resources are also becoming increasingly valuable as economic commodities and may be declining. The legislature further finds that the regulation of harvest of these resources is currently inadequate to afford necessary protection." [1993 c 283 § 1.]

79.135.410 Seaweed—Personal use limit—Commercial harvesting prohibited—Exception—Import restriction.

(1) The maximum daily wet weight harvest or possession of seaweed for personal use from all state-owned aquatic lands and all privately owned tidelands is ten pounds per person. The department in cooperation with the department of fish and wildlife may establish seaweed harvest limits of less than ten pounds for conservation purposes. This section shall in no way affect the ability of any state agency to prevent harvest of any species of marine aquatic plant from lands under its control, ownership, or management.

(2) Except as provided under subsection (3) of this section, commercial harvesting of seaweed from state-owned aquatic lands, and all privately owned tidelands is prohibited. This subsection shall in no way affect commercial seaweed aquaculture.

(3) Upon mutual approval by the department and the department of fish and wildlife, seaweed species of the genus *Macrocystis* may be commercially harvested for use in the herring spawn-on-kelp fishery.

(4) Importation of seaweed species of the genus *Macrocystis* into Washington state for the herring spawn-on-kelp fishery is subject to the fish and shellfish disease control policies of the department of fish and wildlife. *Macrocystis* shall not be imported from areas with fish or shellfish diseases associated with organisms that are likely to be transported with *Macrocystis*. The department shall incorporate this policy on *Macrocystis* importation into its overall fish and shellfish disease control policies. [2005 c 155 § 715; 2003 c 334 § 442; 1996 c 46 § 1; 1994 c 286 § 1; 1993 c 283 § 3. Formerly RCW 79.96.210, 79.01.805.]

NOTES:

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

Effective date—1994 c 286: "This act shall take effect July 1, 1994." [1994 c 286 § 6.]

Findings—1993 c 283: See note following RCW 79.135.400.

79.135.420 Seaweed—Harvest and possession violations—Penalties and damages.

(1) It is unlawful to exceed the harvest and possession restrictions imposed under RCW 79.135.410.

(2) A violation of this section is a misdemeanor, and a violation taking place on state-owned aquatic lands is subject to the provisions of RCW 79.02.300.

(3) A person committing a violation of this section on private tidelands which he or she owns is liable to the state for treble the amount of damages to the seaweed resource, and a person trespassing on privately owned tidelands and committing a violation of this section is liable to the private tideland owner for treble the amount of damages to the seaweed resource. Damages recoverable include, but are not limited to, damages for the market value of the seaweed, for injury to the aquatic ecosystem, and for the costs of restoration. In addition, the person is liable for reimbursing the injured party for the party's reasonable costs, including but not limited to investigative costs and reasonable attorneys' fees and other litigation-related costs. [2005 c 155 § 716. Prior: 2003 c 334 § 443; 2003 c 53 § 380; 1994 c 286 § 2; 1993 c 283 § 4. Formerly RCW 79.96.220, 79.01.810.]

NOTES:

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

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

Effective date—1994 c 286: See note following RCW 79.135.410.

Findings—1993 c 283: See note following RCW 79.135.400.

79.135.430 Seaweed—Enforcement.

The department of fish and wildlife and law enforcement authorities may enforce the provisions of RCW 79.135.410 and 79.135.420. [2005 c 155 § 717; 2003 c 334 § 444; 1994 c 286 § 3; 1993 c 283 § 5. Formerly RCW 79.96.230, 79.01.815.]

NOTES:

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

Effective date—1994 c 286: See note following RCW 79.135.410.

Findings—1993 c 283: See note following RCW 79.135.400.

79.135.900 Savings—1982 1st ex.s. c 21.

The enactment of this act including all repeals, decodifications, and amendments shall not be construed as affecting any existing right acquired under the statutes repealed, decodified, or amended or under any rule, regulation, or order issued pursuant thereto; nor as affecting any proceeding instituted thereunder. [1982 1st ex.s. c 21 § 181. Formerly RCW 79.96.901.]

79.135.901 Captions—1982 1st ex.s. c 21.

Chapter and section headings as used in this act do not constitute any part of the law. [1982 1st ex.s. c 21 § 182. Formerly RCW 79.96.902.]

79.135.902 Severability—1982 1st ex.s. c 21.

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. [1982 1st ex.s. c 21 § 184. Formerly RCW 79.96.903.]

79.135.903 Effective date—1982 1st ex.s. c 21 §§ 176 and 179.

Sections 176 (amending RCW 79.01.525) and 179 (creating a new section providing for an aquatic lands joint legislative committee) of this act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1982 1st ex.s. c 21 § 185. Formerly RCW 79.96.904.]

79.135.904 Effective date—1982 1st ex.s. c 21.

Except as provided in *RCW 79.96.904, this act shall take effect July 1, 1983. [1982 1st ex.s. c 21 § 186. Formerly RCW 79.96.905.]

NOTES:

*Reviser's note: RCW 79.96.904 was recodified as RCW 79.135.903 pursuant to 2005 c 155 § 1010.

Chapter 79.140**AQUATIC LANDS—VALUABLE MATERIALS****Sections**

- 79.140.100 Valuable materials from Columbia river—Agreements with Oregon.
- 79.140.110 Material removed for channel or harbor improvement or flood control—Use for public purpose.
- 79.140.130 Prior appraisal required.
- 79.140.140 Bill of sale for valuable material sold separately.
- 79.140.150 Sale of rock, gravel, sand, silt, and other valuable materials.
- 79.140.160 Sale of rock, gravel, sand, and silt—Application—Terms of lease or contract—Bond—Payment—Reports.
- 79.140.170 Sale of rock, gravel, sand, and silt—Investigation, audit of books of person removing.
- 79.140.180 Contract for sale of rock, gravel, etc.—Royalties—Consideration of flood protection value.
- 79.140.190 Leases and permits for prospecting and contracts for mining valuable minerals and specific materials from aquatic lands.
- 79.140.200 Option contracts for prospecting and leases for mining and extraction of coal from aquatic lands.
- 79.140.210 Mount St. Helens dredge spoils or materials.

79.140.100 Valuable materials from Columbia river—Agreements with Oregon.

The department is authorized and empowered to confer with and enter into any agreements with the public authorities of the state of Oregon, which in the judgment of the department will assist the state of Washington and the state of Oregon in securing the maximum revenues for sand, gravel, or other valuable materials taken from the bed of the Columbia river where the river forms the boundary line between the states. [2005 c 155 § 109; 1991 c 322 § 24; 1982 1st ex.s. c 21 § 19. Formerly RCW 79.90.130.]

NOTES:

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

79.140.110 Material removed for channel or harbor improvement or flood control—Use for public purpose.

When gravel, rock, sand, silt, or other material from any state-owned aquatic lands is removed by any public agency or under public contract for channel or harbor improvement, or flood control, use of the material may be authorized by the department for a public purpose on land owned or leased by the state or any municipality, county, or public corporation. However, when no public land site is available for deposit of the material, its deposit on private land with the landowner's permission is authorized and may be designated by the department to be for a public purpose. Prior to removal and use, the state agency, municipality, county, or public corporation contemplating or arranging the use shall first obtain written permission from the department. No payment of royalty shall be required for the gravel, rock, sand, silt, or other material used for the public purpose, but a charge will be made if the material is subsequently sold or used for some other purpose. Further, the department may authorize the public agency or private landowner to dispose of the material without charge when necessary to implement disposal of material. No charge shall be required for any use of the material obtained under the provisions of this chapter when used solely on an authorized site. No charge shall be required for any use of the material obtained under the provisions of this chapter if the material is used for public purposes by local governments. Public purposes include, but are not limited to, construction and maintenance of roads, dikes, and levies. Nothing in this section shall repeal or modify the provisions of *RCW 77.55.100 or eliminate the necessity of obtaining a permit for the removal from other state or federal agencies as otherwise required by law. [2005 c 155 § 110; 2003 c 39 § 41; 1991 c 337 § 1; 1982 1st ex.s. c 21 § 21. Formerly RCW 79.90.150.]

NOTES:

*Reviser's note: RCW 77.55.100 was repealed by 2005 c 146 § 1006. For later enactment, see RCW 77.55.021.

79.140.130 Prior appraisal required.

In no case shall any valuable materials situated within or upon any tidelands, shorelands, or beds of navigable waters belonging to the state, be offered for sale unless the same shall have been appraised by the department of natural resources within ninety days prior to the date fixed for the sale. [2005 c 155 § 809. FORMERLY PART OF RCW 79.90.110.]

79.140.140 Bill of sale for valuable material sold separately.

When valuable materials are sold separate from state-owned aquatic lands and the purchase price is paid in full, the department shall cause a bill of sale, signed by the commissioner and attested by the seal of the commissioner's office, setting forth the time within which the material shall be removed. The bill of sale shall be issued to the purchaser and shall be recorded in the department's Olympia office, upon the payment of the fee provided for in this chapter. [2005 c 155 § 126; 1982 1st ex.s. c 21 § 35. Formerly RCW 79.90.290.]

79.140.150 Sale of rock, gravel, sand, silt, and other valuable materials.

The department, upon application by any person or when determined by the department to be in the best interest of the state, may enter into a contract or lease providing for the removal and sale of rock, gravel, sand, and silt, or other valuable materials located within or upon beds of navigable waters, or upon any state-owned tidelands or shorelands and providing for payment to be made by such royalty as the department may fix, by negotiation, by sealed bid, or at public auction. If application is made for the purchase of any valuable material situated within or upon state-owned aquatic lands the department shall inspect and appraise the value of the material in the application. [2005 c 155 § 127; 1991 c 322 § 26; 1982 1st ex.s. c 21 § 36. Formerly RCW 79.90.300.]

NOTES:

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

79.140.160 Sale of rock, gravel, sand, and silt—Application—Terms of lease or contract—Bond—Payment—Reports.

Each application made pursuant to RCW 79.140.150 shall set forth the estimated quantity and kind of materials desired to be removed and shall be accompanied by a map or plat showing the area from which the applicant wishes to remove the materials. The department may in its discretion include in any lease or contract entered into pursuant to RCW 79.140.150 through 79.140.170, terms and conditions deemed necessary by the department to protect the interests of the state. In each lease or contract the department shall provide for a right of forfeiture by the state, upon a failure to operate under the lease or contract or pay royalties or rent for periods therein stipulated, and the department shall require a bond with a surety company authorized to transact a surety business in this state, as surety to secure the performance of the terms and conditions of the contract or lease including the payment of royalties. The right of forfeiture shall be exercised by entry of a declaration of forfeiture in the records of the department. The amount of rock, gravel, sand, or silt taken under the contract or lease shall be reported monthly by the purchaser to the department and payment made on the basis of the royalty provided in the lease or contract. [2005 c 155 § 128; 1982 1st ex.s. c 21 § 37. Formerly RCW 79.90.310.]

79.140.170 Sale of rock, gravel, sand, and silt—Investigation, audit of books of person removing.

The department may inspect and audit books, contracts, and accounts of each person removing rock, gravel, sand, or silt pursuant to any lease or contract under RCW 79.140.150 and 79.140.160 and make such other investigation and secure or receive any other evidence necessary to determine whether or not the state is being paid the full amount payable to it for the removal of the materials. [2005 c 155 § 129; 1982 1st ex.s. c 21 § 38. Formerly RCW 79.90.320.]

**79.140.180 Contract for sale of rock, gravel, etc.—
Royalties—Consideration of flood protection
value.**

Whenever, pursuant to RCW 79.15.300, the department enters into a contract for the sale and removal of rock, gravel, sand, or silt out of a riverbed, the department shall, when establishing a royalty, take into consideration flood protection value to the public that will arise as a result of the removal. [2005 c 155 § 130; 2003 c 334 § 602; 1984 c 212 § 10. Formerly RCW 79.90.325, 79.01.135.]

NOTES:

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

**79.140.190 Leases and permits for prospecting and
contracts for mining valuable minerals and
specific materials from aquatic lands.**

The department may issue permits and leases for prospecting, placer mining contracts, and contracts for the mining of valuable minerals and specific materials, except rock, gravel, sand, silt, coal, or hydrocarbons, upon and from any state-owned aquatic lands, or which have been sold and the minerals reserved by the state in tracts not to exceed six hundred forty acres or an entire government-surveyed section. The procedures contained at RCW 79.14.300 through 79.14.450, inclusive, shall apply. [2005 c 155 § 131; 2003 c 334 § 603; 1987 c 20 § 16; 1982 1st ex.s. c 21 § 39. Formerly RCW 79.90.330.]

NOTES:

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

**79.140.200 Option contracts for prospecting and leases
for mining and extraction of coal from
aquatic lands.**

The department is authorized to execute option contracts for prospecting purposes and leases for the mining and extraction of coal from any state-owned aquatic lands or from which it may acquire title, or from any aquatic lands sold or leased by the state the minerals of which have been reserved by the state. The procedures contained at RCW 79.14.470 through 79.14.580, inclusive, shall apply. [2005 c 155 § 132; 2003 c 334 § 604; 1982 1st ex.s. c 21 § 40. Formerly RCW 79.90.340.]

NOTES:

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

79.140.210 Mount St. Helens dredge spoils or materials.

(1)(a) The legislature finds and declares that an extraordinary volume of material washed down onto beds of navigable waters and shorelands in the Toutle river, Coweeman river, and portions of the Cowlitz river following the eruption of Mount St. Helens in 1980.

(b) The legislature further finds that the owners of private lands located near the impacted rivers were authorized to sell, transfer, or otherwise dispose of any dredge spoils removed from the river between the years of 1980 and 1995 without the necessity of any charge by the department.

(c) The legislature further finds that the dredging activities following the eruption of Mount St. Helens are no longer adequate to protect engineered structures on the affected rivers or

the public health and safety of the communities located in proximity to the affected rivers. Future river dredging will be necessary as part of managing the post-eruption state of the rivers, and with the commencement of new dredging activities, the underlying conditions leading to the previous authority for private landowners to dispose of the dredged materials without the necessity of any charge by the department are replicated.

(d) The legislature further finds that just as between the years of 1980 and 1995, the dredge spoils placed upon adjacent publicly and privately owned property in the affected areas, if further disposed, will be of nominal value to the state and that it is in the best interests of the state to allow further disposal without charge.

(2) All dredge spoil or materials removed from the state-owned beds and shores of the Toutle river, Coweeman river, and that portion of the Cowlitz river from two miles above the confluence of the Toutle river to its mouth deposited on adjacent public and private lands before December 31, 2035, as a result of dredging the affected rivers for navigation and flood control purposes that as of June 10, 2010, have not been sold, transferred, or otherwise disposed of by owners of the lands, may be sold, transferred, or otherwise disposed of by owners of the lands without the necessity of any charge by the department and free and clear of any interest of the department. [2010 c 57 § 1; 2009 c 426 § 1.]

NOTES:

Retroactive application—2010 c 57: "This act applies to all dredge spoil or materials removed from the state-owned beds and shores of the Toutle river, Coweeman river, and that portion of the Cowlitz river from two miles above the confluence of the Toutle river to its mouth deposited on adjacent public and private lands as a result of dredging the affected rivers for navigation and flood control purposes following the eruption of Mount St. Helens in 1980 that, as of June 10, 2010, have not been sold, transferred, or otherwise disposed of by owners of the lands. To this extent, this act applies retroactively, but in all other respects it applies prospectively." [2010 c 57 § 2.]