



WATER CONSERVANCY BOARD TRAINING NOTEBOOK

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For the
Water Resources Program
Washington State Department of Ecology
Olympia, Washington



Water Conservancy Board Training Notebook

Note: This resource depicts hyperlinks from the Table of Contents to each section and subsection. At each location a hyperlink depicted as a contents list (☰) will return back to the Table of Contents. Additionally, throughout this resource are hyperlinks that will navigate to professional Internet Websites.

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Water Conservancy Board

Rules and Regulations

Laws and Agency Rules

<http://leg.wa.gov/lawsandagencyrules/Pages/default.aspx>

Statutes and Constitution:

[Revised Code of Washington](#) (RCW) — View the table of contents of the RCW. You can navigate the statutes by title, chapter, and section.

[RCW Dispositions](#) — Notes of which sections have been repealed, decodified, and recodified, arranged by title and chapter.

[Session Laws](#) — Enactments of the legislature, compiled year by year, beginning with the 1854 territorial legislature.

[State Constitution](#) — The plan for the operation of Washington State government, describing the three branches of government (executive, legislative and judicial) and defining the rights of the people. The online version of the State Constitution is updated once a year.

Agency Rules and Rulemaking:

[Washington Administrative Code](#) (WAC) — Regulations of executive branch agencies are issued by authority of statutes. Like legislation and the Constitution, regulations are a source of primary law in Washington State. The WAC codifies the regulations and arranges them by subject or agency. The online version of the WAC is updated twice a month.

[Washington State Register](#) (WSR) — The Washington State Register is a biweekly publication. It includes notices of proposed and expedited rules, emergency and permanently adopted rules, public meetings, and requests for public input, notices of rules review, and executive orders of the governor, court rules, and summary of attorney general opinions, juvenile disposition standards, the state maximum interest rate, an index, and WAC to WSR table.

Legislative Procedural Rules:

[House Rules](#)

[Senate Rules](#)

[Reed's Parliamentary Rules](#)

Reference Tables Relating Bills to Laws:

The following cross reference tables are available on the [Bill/Law Cross Reference](#) page.



RCW to Bill Table — A list of RCWs and which bills this session propose changes. The table also notes the action to be taken, for example, amend, add, repeal.

Bill to RCW Table — A list of bills this session and which RCWs they propose to change. The table also notes the action to be taken, for example, amend, add, repeal.

[Sections Affected Table](#) — A list of RCW sections and which Session Law affected that section. The table notes which section of the Session Law affects the RCW and notes the action taken, for example, amend, add, repeal.

Session Law Chapter to Bill Tables — A set of tables that list the Session Law chapters and the corresponding bill numbers, in Session Law and bill number order.

Revised Code of Washington (RCW)

<https://app.leg.wa.gov/rcw/>

The Revised Code of Washington (RCW) is the compilation of all permanent laws now in force. It is a collection of Session Laws (enacted by the Legislature, and signed by the Governor, or enacted via the initiative process), arranged by topic, with amendments added and repealed laws removed. It does not include temporary laws such as appropriations acts. The official version of the RCW is published by the [Statute Law Committee](#) and the [Code Reviser](#).

The online version of the RCW is updated twice a year, once in the early fall following the legislative session, and again at the end of the year if a ballot measure that changes the law passed at the general election. Copies of the RCW as they existed each year since 1973 are available in the [RCW Archive](#).

The Selected Titles version of the Revised Code of Washington is located [here](#).

There are several ways to find RCWs. Please see the links and information below:

[RCW Dispositions](#)

[Search RCWs](#)



Chapter [90.80](#) RCW:
WATER CONSERVANCY BOARDS

Sections

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90.80.030	Petition for board creation—Required information—Approval or denial—Description of training requirements.
90.80.035	Water conservancy boards for water resource inventory areas—Multicounty water conservancy boards—Petition for creation.
90.80.040	Rules—Minimum training requirements and continuing education.
90.80.050	Corporate powers—Board composition—Members' terms, expenses—Alternates—Eligibility to be appointed.
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90.80.060	Board powers—Funding.
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90.80.120	Conflicts of interest.
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90.80.135	Application of public records act.
90.80.140	Transfers approved under chapter 90.03 or 90.44 RCW not affected.
90.80.150	Information required to be maintained on the department's web site.

RCW [90.80.005](#)

Findings.

The legislature finds:

(1) Voluntary water right transfers can reallocate water use in a manner that will result in more efficient use of water resources;



(2) Voluntary water right transfers can help alleviate water shortages, save capital outlays, reduce development costs, and provide an incentive for investment in water conservation efforts by water right holders; and

(3) The state should expedite the administrative process for water right transfers by authorizing the establishment of water conservancy boards.

RCW [90.80.010](#)

Definitions.

The following definitions apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Alternate" means an individual: (a) Who is appointed by the county legislative authority or authorities under RCW [90.80.050](#)(3); (b) who is trained under the requirements of RCW [90.80.040](#); and (c) who, while serving as a replacement for an absent or recused commissioner: (i) May serve and vote as a commissioner; (ii) is subject to any requirement applicable to a commissioner; and (iii) counts toward a quorum.

(2) "Board" means a water conservancy board created under this chapter.

(3) "Commissioner" means an individual who is appointed by the county legislative authority or authorities as a member of a water conservancy board under RCW [90.80.050](#)(1), or an alternate appointed under RCW [90.80.050](#)(3) while serving as a replacement for an absent or recused commissioner.

(4) "Department" means the department of ecology.

(5) "Director" means the director of the department of ecology.

(6) "Record of decision" means the conclusion reached by a water conservancy board regarding an application for a transfer filed with the board.

(7) "Transfer" means a transfer, change, amendment, or other alteration of a part or all of a water right authorized under RCW [90.03.380](#), [90.03.390](#), or [90.44.100](#).

RCW [90.80.020](#)

Water conservancy boards—Creation.

(1) The county legislative authority of a county may create a water conservancy board, subject to approval by the director, for the purpose of expediting voluntary water transfers within the county.

(2) A water conservancy board may be initiated by: (a) A resolution of the county legislative authority; (b) a resolution presented to the county legislative authority calling for the creation of a board by the legislative authority of an irrigation district, public utility district that operates a public water system, a reclamation district, a city operating a public water system, or a water-sewer district that operates a public water system; (c) a resolution by the governing body of a cooperative or mutual corporation that operates a public water system serving one hundred or more accounts; (d) a petition signed by five or more water rights holders, including their addresses, who divert water for use within the county; or (e) any combination of (a)



through (d) of this subsection. The resolution or petition must state the need for the board, include proposed bylaws or rules and procedures that will govern the operation of the board, identify the geographic boundaries where there is an initial interest in transacting water sales or transfers, and describe the proposed method for funding the operation of the board.

(3) After receiving a resolution or petition to create a board, a county legislative authority shall determine its sufficiency. If the county legislative authority finds that the resolution or petition is sufficient, or if the county is initiating the creation of a board upon its own motion, it shall hold at least one public hearing on the proposed creation of the board. Notice of the hearing shall be published at least once in a newspaper of general circulation in the county not less than ten days nor more than thirty days before the date of the hearing. The notice shall describe the time, date, place, and purpose of the hearing, as well as the purpose of the board. Following the hearing, the county legislative authority may adopt a resolution approving the creation of the board if it finds that the board's creation is in the public interest.

RCW [90.80.030](#)**Petition for board creation—Required information—Approval or denial—Description of training requirements.**

(1) The county legislative authority shall forward a copy of the resolution or petition calling for the creation of the board, a copy of the resolution approving the creation of the board, and a summary of the public testimony presented at the public hearing to the director following the adoption of the resolution calling for the board's creation.

(2) The director shall approve or deny the creation of a board within forty-five days after the county legislative authority has submitted all information required under subsection (1) of this section. The director must determine whether the creation of the board would further the purposes of this chapter and is in the public interest. The director shall include a description of the necessary training requirements for commissioners in the notice of approval sent to the county legislative authority.

RCW [90.80.035](#)**Water conservancy boards for water resource inventory areas—Multicounty water conservancy boards—Petition for creation.**

(1) If a county is the only county having lands comprising a water resource inventory area as defined in chapter 173-500 WAC, the county may elect to establish a water conservancy board for the water resource inventory area, rather than for the entire county.

(2) Counties having lands within a water resource inventory area may jointly petition the department for establishment of a water conservancy board for the water resource inventory area. Counties may jointly petition the department to establish boards serving multiple counties or one or more water resource inventory areas. For any of these multicounty options, the counties must reach their joint determination on the decision to file the petition, on the proposed bylaws, and on other matters relating to the establishment and operation of the



board in accordance with the provisions of this chapter and chapter [39.34](#) RCW, the interlocal cooperation act. Each county must meet the requirements of RCW [90.80.020](#)(2). The counties must jointly determine the sufficiency of a petition under RCW [90.80.020](#)(3) and each county legislative authority must hold a hearing in its county.

(3) If establishment of a multicounty water conservancy board under any of the options provided in subsection (2) of this section is approved by the department, the counties must jointly appoint the board commissioners and jointly appoint members to fill vacancies as they occur, and may jointly appoint alternates in accordance with the provisions of this chapter and chapter [39.34](#) RCW.

(4) A board established for more than one county or for one or more water resource inventory areas has the same powers as other boards established under this chapter. The board has no jurisdiction outside the boundaries of the water resource inventory area or areas or the county or counties, as applicable, for which it has been established, except as provided in this chapter.

(5) The counties establishing a board for a multiple county area must designate a lead county for purposes of providing a single point of contact for communications with the department. The lead county shall forward the information required in RCW [90.80.030](#)(1) for each county.

RCW [90.80.040](#)

Rules—Minimum training requirements and continuing education.

The director of the department may, as deemed necessary by the director, adopt rules in accordance with chapter [34.05](#) RCW necessary to carry out this chapter, including minimum requirements for the training and continuing education of commissioners. Training courses for commissioners shall include an overview of state water law and hydrology. Prior to commissioners taking action on proposed water right transfers, the commissioners shall comply with training requirements that include state water law and hydrology.

RCW [90.80.050](#)

Corporate powers—Board composition—Members' terms, expenses—Alternates—Eligibility to be appointed.

(1) A water conservancy board constitutes a public body corporate and politic and a separate unit of local government in the state. Each board shall consist of three commissioners appointed by the county legislative authority or authorities as applicable for six-year terms. The county legislative authority or authorities shall stagger the initial appointment of commissioners so that the first commissioners who are appointed shall serve terms of two, four, and six years, respectively, from the date of their appointment. The county legislative authority or authorities may appoint two additional commissioners, for a total of five. If the county or counties elect to appoint five commissioners, the initial terms of the additional



commissioners shall be for three and five-year terms respectively. All vacancies shall be filled for the unexpired term.

(2) The county legislative authority or authorities shall consider, but are not limited in appointing, nominations to the board by people or entities petitioning or requesting the creation of the board. The county legislative authority or authorities shall ensure that at least one commissioner is an individual water right holder who diverts or withdraws water for use within the area served by the board. The county legislative authority or authorities must appoint one person who is not a water right holder, except as provided in subsection (5) of this section. If the county legislative authority or authorities choose not to appoint five commissioners, and as of May 10, 2001, there is no commissioner on an existing board who is not a water right holder, the county or counties are not required to appoint a new commissioner until the first vacancy occurs. In making appointments to the board, the county legislative authority or authorities shall choose from among persons who are residents of the county or counties or a county that is contiguous to the county that the water conservancy board is to serve.

(3) The county legislative authority or authorities may appoint up to two alternates to serve in a reserve capacity as replacements for absent or recused commissioners, and while serving in that capacity an alternate may serve for all or any portion of a meeting of the board. Alternates do not hold an appointed commissioner position on a board as set forth under subsection (1) of this section. An alternate shall be appointed to serve a six-year term.

(4) No commissioner may participate in a record of decision of a board until he or she has successfully completed the necessary training required under RCW [90.80.040](#). Commissioners shall serve without compensation, but are entitled to reimbursement for necessary travel expenses in accordance with RCW [43.03.050](#) and [43.03.060](#) and costs incident to receiving training.

(5) For the purposes [of] determining a person's eligibility to be appointed as a commissioner who is not a water right holder under this section, a person is not considered to be a water right holder: (a) By virtue of the person's receiving water from a municipal water supplier as defined in RCW [90.03.015](#), or (b) if the only water right held by the person is a right to the type of residential use of water that is exempted from permit requirements by RCW [90.44.050](#) and that right is for water from a well located in a county with a population that is not greater than one hundred fifty thousand people.

RCW [90.80.055](#)

Additional board powers.

(1) Except as provided in subsection (2) of this section, a board shall operate on a countywide basis or on an area-wide basis in the case of a board with jurisdiction in more than one county or water resource inventory area, and have the following powers, in addition to any other powers granted in this chapter:



(a) Except as provided in subsection (2) of this section, a board may act upon applications for the same kinds of transfers that the department itself is authorized to act upon, including an application to establish a trust water right under chapter [90.38](#) or [90.42](#) RCW. A board may not act upon an application for the type of transfer within an irrigation district as described in RCW [90.03.380](#)(3). If a board receives an application for a transfer between two irrigation districts as described in RCW [90.03.380](#)(2), the board must, before publication of notice of the application, receive the concurrence specified in that section.

(b) A board may act upon an application to transfer a water right claim filed under chapter [90.14](#) RCW. In acting upon such an application, the board must make a tentative determination as to the validity and extent of the right, if any, embodied in the claim and may only issue a record of decision regarding a transfer of such a claim to the extent it is tentatively determined to be valid. Neither the board's tentative determination, nor the director's acceptance of such a tentative determination, constitutes an adjudication of the right under RCW [90.03.110](#) through [90.03.240](#) or [90.44.220](#), and such a determination does not preclude or prejudice a subsequent challenge to the validity, priority, or quantity of the right in a general adjudication under those sections.

(c) A board may establish a water right transfer information exchange through which all or part of a water right may be listed for sale or lease. The board may also accept and post notices in the exchange from persons interested in acquiring or leasing water rights from willing sellers.

(d) The director shall assign a representative of the department to provide technical assistance to each board. If requested by the board, the representative shall work with the board as it reviews applications for formal acceptance, prepares draft records of decision, and considers other technical or legal factors affecting the board's development of a final record of decision. A board may request and accept additional technical assistance from the department. A board may also request and accept assistance and support from the county government or governments of the county or counties in which it operates.

(2) The jurisdiction of a board shall not apply within the boundaries of a federal Indian reservation or to lands held in trust for an Indian band, tribe, or nation by the federal government.

RCW [90.80.057](#)

Quorum.

For purposes of carrying out the official business of a board, a quorum consists of the physical presence of two of the three members of a three-member board or three of the five members of a five-member board. A board may operate with one or two vacant positions as long as it meets the quorum requirement.



RCW [90.80.060](#)**Board powers—Funding.**

(1) A water conservancy board may acquire, purchase, hold, lease, manage, occupy, and sell real and personal property or any interest therein, enter into and perform all necessary contracts, appoint and employ necessary agents and employees and fix their compensation, employ contractors including contracts for professional services, sue and be sued, and do any and all lawful acts required and expedient to carry out the purposes of this chapter.

(2) A board constitutes an independently funded entity, and may provide for its own funding as determined by the commissioners. The board may accept grants and may adopt fees for processing applications for transfers of water rights to fund the activities of the board. A board may not impose taxes or acquire property by the exercise of eminent domain.

RCW [90.80.065](#)**Dissolution of board.**

A water conservancy board may be formally dissolved by the county or jointly by the counties as applicable in which it operates by adoption of a resolution of the county legislative authority or authorities. Notice of the dissolution must be provided to the director. The department may petition the county legislative authority of the county or the lead county for a board to request that the board be dissolved for repeated statutory violations or demonstrated inability to perform the functions for which the board was created.

RCW [90.80.070](#)**Applications for water transfers—Notice—Record of decision—Review—Alternate serving as commissioner.**

(1) A person proposing a transfer of a water right may elect to file an application with a water conservancy board, if a board has been established for the geographic area where the water is or would be diverted, withdrawn, or used. If the person has already filed an application with the department, the person may request that the department convey the application to the conservancy board with jurisdiction and the department must promptly forward the application. A board is not required to process an application filed with the board. If a board decides that it will not process an application, it must return the application to the applicant and must inform the applicant that the application may be filed with the department. An application to the board for a transfer shall be made on a form provided by the department. A board may require an applicant to submit within a reasonable time additional information as may be required by the board in order to review and act upon the application. At a minimum, the application shall include information sufficient to establish to the board's satisfaction that a right to the quantity of water being transferred exists, and a description of any applicable limitations on the right to use water, including the point of diversion or withdrawal, place of use, source of supply, purpose of use, quantity of use permitted, time of use, period of use, and the place of storage.



(2) The applicant for any proposed water right transfer may apply to a board for a record of decision on a transfer if the water proposed to be transferred is currently diverted, withdrawn, or used within the geographic area in which the board has jurisdiction, or would be diverted, withdrawn, or used within the geographic area in which the board has jurisdiction if the transfer is approved. In the case of a proposed water right transfer in which the water is currently diverted or withdrawn or would be diverted or withdrawn outside the geographic boundaries of the county or the water resource inventory area where the use is proposed to be made, the board shall hold a public hearing in the county of the diversion or withdrawal or proposed diversion or withdrawal. The board shall provide for prominent publication of notice of the hearing in a newspaper of general circulation published in the county in which the hearing is to be held for the purpose of affording an opportunity for interested persons to comment upon the application. If an application is for a transfer of water out of the water resource inventory area that is the source of the water, the board shall consult with the department regarding the application.

(3) After an application for a transfer is filed with the board, the board shall publish notice of the application and send notice to state agencies in accordance with the requirements of RCW [90.03.280](#). In addition, the board shall send notice of the application to any Indian tribe with reservation lands that would be, but for RCW [90.80.055](#)(2), within the area in which the board has jurisdiction. The board shall also provide notice of the application to any Indian tribe that has requested that it be notified of applications. Any person may submit comments and other information to the board regarding the application. The comments and information may be submitted in writing or verbally at any public meeting of the board to discuss or decide on the application. The comments must be considered by the board in making its record of decision.

(4) If a majority of the board determines that the application is complete, and that the transfer is in accordance with RCW [90.03.380](#), [90.03.390](#), or [90.44.100](#), the board must issue a record of decision approving the transfer, subject to review by the director. In making its record of decision, the board must consider among other things whether the proposed transfer can be made without detriment or injury to existing water rights, including rights established for instream flows. The board must include in its record of decision any conditions that are deemed necessary for the transfer to qualify for approval under the applicable laws of the state. The basis for the record of decision of the board must be documented in a report of examination. The board's proposed approval must clearly state that the applicant is not permitted to proceed to effect the proposed transfer until a final decision is made by the director. In making its record of decision, the board must consider among other things whether the proposed transfer can be made without detriment or injury to existing water rights, including rights established for instream flows.

(5) If a majority of the board determines that the application cannot be approved under the applicable laws of the state of Washington, the board must make a record of decision denying the application together with its report of examination documenting its record of



decision. The board's record of decision is subject to review by the director under RCW [90.80.080](#).

(6) When alternates appointed under the provisions of RCW [90.80.050](#)(3) are serving as commissioners on a board, a majority vote of the board must include at least one commissioner appointed under the provisions of RCW [90.80.050](#)(1).

(7) An alternate when serving as a commissioner in the review of an application before the board shall:

(a) Review the written record before the board and any exhibits provided for the review or provided at the hearing if a hearing was held;

(b) Review any audio or video recordings made of the proceedings on the application; and

(c) Conduct a site visit if a site visit by other commissioners acting on the application has been previously conducted.

(8) An alternate serving as a commissioner shall be guided by the conflict of interest standards applicable to all commissioners under RCW [90.80.120](#). The board shall provide notice of an alternate sitting as a commissioner to the applicant and other participants in proceedings before the board in a timely manner to provide sufficient time for any challenges for conflict of interest to be made prior to the board's decision on the application.

RCW [90.80.080](#)

Records of decision—Transmittal to department and others—Internet posting—Review.

(1) The board must provide a copy of its record of decision to the applicant. The board shall submit its record of decision on the transfer application to the department for review. The board shall also submit its report of examination to the department summarizing factual findings on which the board relied in reaching its record of decision and a copy of the files and records upon which the board's record of decision is based. The board shall also promptly transmit notice by mail to any person who objected to the transfer or who requested notice of the board's record of decision.

(2) Upon receipt of a board's record of decision, the department shall promptly post the text of the record of decision transmittal form on the department's internet site. The director shall review each record of decision made by a board for compliance with applicable state water law.

(3) Any party to a transfer, third party who alleges his or her water right will be impaired by the proposed transfer, or other person may file a letter of concern or support with the department and the department may consider the concern or support expressed in the letter. Such letters must be received by the department within thirty days of the department's receipt of the board's record of decision.

(4) The director shall review the record of decision of the board and shall affirm, reverse, or modify the action of the board within forty-five days of receipt. The forty-five day time period may be extended for an additional thirty days by the director or at the request of



the board or applicant. If the director fails to act within the prescribed time period, the board's record of decision becomes the decision of the department and is appealable as provided by RCW [90.80.090](#). If the director acts within the prescribed time period, the director's decision to affirm, modify, or reverse is appealable as provided by RCW [90.80.090](#), and the director's decision to remand is appealable as provided by *RCW [90.80.120](#)(2)(b).

RCW [90.80.090](#)**Appeals from director's decisions.**

The decision of the director to approve or deny an action to create a board, or to approve, deny, or modify a water right transfer either by action or inaction is appealable in the same manner as other water right decisions made pursuant to chapters [90.03](#) and [90.44](#) RCW.

RCW [90.80.100](#)**Damages arising from records of decisions on transfers—Immunity.**

Neither the county or counties, the department, a conservancy board, or its employees, nor individual conservancy board commissioners shall be subject to any cause of action or claim for damages arising out of records of decisions on transfers made by a board under this chapter.

RCW [90.80.110](#)**Approval of interties.**

Nothing in this chapter eliminates or lessens the requirements necessary for the approval of interties.

RCW [90.80.120](#)**Conflicts of interest.**

(1) A commissioner of a water conservancy board shall not engage in any act which is in conflict with the proper discharge of the official duties of a commissioner. A commissioner is deemed to have a conflict of interest if he or she:

- (a) Has an ownership interest in a water right subject to an application for approval before the board;
- (b) Receives or has a financial interest in an application submitted to the board or a project, development, or venture related to the approval of the application; or
- (c) Solicits, accepts, or seeks anything of economic value as a gift, gratuity, or favor from any person, firm, or corporation involved in the application.

(2) In the event of a recusal of an appointed commissioner, an alternate may serve as a commissioner on a board and may act upon the official board business for which the conflict of interest exists.

(3) The department shall return a record of decision to a conservancy board without action where the department determines that any member of a board has violated subsection (1) of this section.



(a) If a person seeking to rely on this section to disqualify a commissioner knows of the basis for disqualification before the time the board issues a record of decision, the person must request the board to have the commissioner recuse himself or herself from further involvement in processing the application, or be barred from later raising that challenge.

(b) If the commissioner does not recuse himself or herself or if the person becomes aware of the basis for disqualification after the board issues a record of decision but within the time period under RCW [90.80.080](#)(3) for filing objections with the department, the person must raise the challenge with the department. If the department determines that the commissioner should be disqualified under this section, the director must remand the record of decision to the board for reconsideration and resubmission of a record of decision. The disqualified commissioner shall not participate in any further board review of the application. The department's decision on whether to remand a record of decision under this section may only be appealed at the same time and in the same manner as an appeal of the department's decision to affirm, modify, or reverse the record of decision after remand.

(c) If the person becomes aware of the basis for disqualification after the time for filing objections with the department, the person may raise the challenge in an appeal of the department's final decision under RCW [90.80.090](#).

RCW [90.80.130](#)**Application of open public meetings act.**

Water conservancy board activities are subject to the open public meetings act, chapter [42.30](#) RCW and to *chapter [42.32](#) RCW. This includes announcing meetings in advance.

RCW [90.80.135](#)**Application of public records act.**

(1) A board is subject to the requirements of chapter [42.56](#) RCW. Each board must establish and maintain records of its proceedings and determinations. While in the possession of the board, all such records must be made available for inspection and copies must be provided to the public on request under the provisions of chapter [42.56](#) RCW.

(2) Upon the conclusion of its business involving a water right transfer application, a board must promptly send the original copies of all records relating to that application to the department for recordkeeping. A board may keep a copy of the original documents. After the records are transferred to the department, the responsibility for making the records available under chapter [42.56](#) RCW is transferred to the department.

RCW [90.80.140](#)**Transfers approved under chapter [90.03](#) or [90.44](#) RCW not affected.**

Nothing in this chapter affects transfers that may be otherwise approved under chapter [90.03](#) or [90.44](#) RCW.



RCW [90.80.150](#)**Information required to be maintained on the department's web site.**

The department shall maintain information on its web site concerning the boards formed or sought to be formed under the authority of this chapter, the transfer applications reviewed and other activities conducted by the boards, and the funding of such boards. Conservancy boards must provide information regarding their activities to the department to assist the department in updating this information at least biennially in even-numbered years.

Washington Administrative Code (WAC)

<https://app.leg.wa.gov/wac/>

Regulations of executive branch agencies are issued by authority of statutes. Like legislation and the Constitution, regulations are a source of primary law in Washington State. The WAC codifies the regulations and arranges them by subject or agency. The online version of the WAC is updated twice a month. Copies of the WAC as they existed each year since 2004 are available in the [WAC archive](#).

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Chapter 173-153 WAC

Water Conservancy Boards:**WAC 173-153-010**

What are the purpose and authority of this chapter? The purpose of this chapter is to establish procedures the department of ecology (ecology), water conservancy boards, applicants, concerned agencies, and the public will follow in implementing chapter [90.80](#) RCW. Chapter [90.80](#) RCW authorizes establishment of water conservancy boards and vests them with certain powers relating to water right transfers. RCW [90.80.040](#) authorizes the department to adopt rules necessary to carry out the purposes of the statute.

WAC 173-153-020

To what does this chapter apply? These procedures apply to the establishment of water conservancy boards in accordance with chapter [90.80](#) RCW and to:

- (1) How such boards will function when processing water right transfer applications that are filed with a board or that are transferred to a board from ecology at an applicant's request;
- (2) Reporting requirements of boards;



- (3) How ecology will support and interact with boards; and
- (4) How interested agencies and the public may participate in the board process.

WAC 173-153-030

How are terms defined in this rule? For the purposes of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

"Application" means an application made on an ecology form identified as an Application for Change/Transfer to Water Right, form number 040-1-97 for a transfer of a water right, including those transfers proposed under authority of RCW [90.03.380](#), [90.03.390](#) and [90.44.100](#). A board may supplement the application with additional forms or requests for additional documentation. These forms and documentation become a part of the application.

"Board" means a water conservancy board pursuant to chapter [90.80](#) RCW.

"Bylaws" means the internal operating procedures, policies, or other guidance adopted by a board and designated as the board's bylaws.

"Consumptive use" means use of water whereby there is a diminishment of the water source.

"Director" means the director of the department of ecology.

"Ecology" means the department of ecology.

"Ecology regional office" means the water resources program at the ecology regional office designated to a board as the office where the board shall interact as identified within this chapter.

"Geographic area" means an area within the state of Washington in which an established board would have authority to process water right transfer applications. This area is identified by the legislative authority or authorities of the county or counties seeking to establish the water conservancy board. The area may be a single county, more than one county, a single water resource inventory area, or more than one water resource inventory area. If the identified geographic area contains all or part of more than one county, the counties involved must identify a "lead county" for certain administrative purposes.

"Lead county" means the county legislative authority with which ecology will communicate for administrative purposes in cases where a water conservancy board's geographic area includes more than one county legislative authority.



"Nonwater right holder" means, solely for the purpose of satisfying RCW [90.80.050](#)(2) in regard to determining whether a potential water conservancy board commissioner is a "nonwater right holder," any party who:

- (1) Does not meet the criteria of a water right holder as defined in this section; or
- (2) Receives water solely through a water distributing entity.

"Record of decision" means the written conclusion reached by a water conservancy board regarding a transfer application, with documentation of each board commissioner's vote on the decision. The record of decision must be on a form provided by ecology and identified as a Record of Decision, form number 040-105.

"Report of examination" means the written explanation, factual findings, and analysis that support a board's record of decision. The report of examination is an integral part of the record of decision. The report of examination must be on a form provided by ecology and identified as Water Conservancy Board Report of Examination, form number 040-106.

"Source" means the water body from which water is or would be diverted or withdrawn under an existing water right which an applicant has proposed to be transferred.

"Transfer" means a transfer, change, amendment, or other alteration of part or all of a water right, as authorized under RCW [90.03.380](#), [90.03.390](#) or [90.44.100](#).

"Trust water right" means any water right acquired by the state under chapter [90.38](#) or [90.42](#) RCW, for management in the state's trust water rights program.

"Water conservancy board coordinator" means the person designated by the director or his or her designee to coordinate statewide water conservancy board activities, communication, and training, and to advocate for consistent statewide implementation of chapter [90.80](#) RCW and chapter [173-153](#) WAC.

"Water right holder" means, solely for the purpose of satisfying RCW [90.80.020](#) (2)(d) and [90.80.050](#)(2) in regard to determining whether the qualifications of petitioners to create a board and a potential water conservancy board commissioner are "water right holders," and as used within this rule, any individual who asserts that he or she has a water right and can provide appropriate documentation of a privately owned water right which is appurtenant to the land that they individually or through marital community property own or in which they have a majority interest. Exception to the definition of a water right holder for the purpose of determining a person's eligibility to be appointed as a commissioner is found in RCW [90.80.050](#)(5).



WAC 173-153-040

How is a water conservancy board created? All eligible entities identified in this section under subsection (1)(a) of this section are encouraged to consult with ecology when considering creation of a water conservancy board. In accordance with chapter [90.80](#) RCW, boards may have either three or five commissioners and must be established to serve an identified geographic area, as defined in WAC [173-153-030](#). A newly established board cannot include in the geographic area in which it will serve any area that overlaps with a geographic area served by an existing board.

- (1) Creation of a water conservancy board is accomplished by the following steps:
 - (a) A resolution or petition is proposed to or by the legislative authority or authorities of a county or counties;
 - (b) Public notice;
 - (c) Public hearing(s);
 - (d) Adoption of a resolution creating the board by the legislative authority or authorities of the county or counties;
 - (e) When a board is created by more than one county legislative authority, a lead county is designated;
 - (f) A petition is submitted to the director; and
 - (g) The director must approve the creation of a board.

Where is the resolution or petition calling for the creation of a board submitted?

- (2) A resolution or petition calling for creation of a water conservancy board must be submitted to the legislative authority or authorities of the county or counties in which the board would serve.

Who can initiate a petition calling for the creation of a board?

- (3) A resolution or petition may be initiated by the following entities:
 - (a) The legislative authority or authorities of the county or counties which would be served by the board;
 - (b) The legislative authority of an irrigation district, a public utility district that operates a public water system, a reclamation district, a city operating a public water system, or a water-sewer district that operates a public water system;
 - (c) The governing body of a cooperative or mutual corporation that operates a public water system serving one hundred or more accounts;
 - (d) Five or more water right holders, in the geographic area which would be served by the board, who divert or withdraw water for a beneficial use, or whose nonuse of water is due to a sufficient cause or an exemption pursuant to RCW [90.14.140](#); or
 - (e) Any combination of the above.



What information must be included in the proposed resolution or petition calling for the creation of a board?

(4) The resolution or petition must include:

- (a) A statement describing the need for the board;
- (b) Proposed bylaws that will govern the operation of the board;
- (c) Identification of the geographic area within which the board would serve; and
- (d) A description of the proposed method(s) for funding the operation of the

board.

What notice is given to the public regarding the proposed creation of a board?

(5) A public notice must be published in a newspaper of general circulation in the county or, if the board would serve more than one county, a public notice must be published in a newspaper of general circulation in each county in which the board would serve. The notice(s) must be published not less than ten days and not more than thirty days before the date of a public hearing on the proposed creation of the board. The notice(s) shall describe the:

- (a) Time;
- (b) Date;
- (c) Place;
- (d) Purpose of the hearing; and
- (e) Purpose of the board.

Notice must be sent to the ecology regional office at the time of publication of the public notice, and an effort shall be made to ensure that any watershed planning unit and Indian tribe with an interest in water rights in the area to be served by the board also receives the notice.

How many public hearings must be held for the creation of a board?

(6) At least one public hearing on the proposed creation of the board must be held by the legislative authority of each county in which the board would serve.

What must be included in the adopted resolution which establishes a board?

(7) If the legislative authority or authorities of the county or counties decide to establish a board after the public hearing(s) a resolution must be adopted by the legislative authority or authorities of the county or counties, approving the creation of the board. The resolution must describe or include:

- (a) The need for the board;
- (b) The geographic area to be served by the board;
- (c) The method or methods which will be used to fund the board;
- (d) Whether the proposed board will consist of three or five commissioners;
- (e) The designated lead county if a board is proposed which would serve in more than one county; and
- (f) A finding that the creation of the board is in the public interest.



What is included in a petition to ecology for the creation of a board?

(8) The petition submitted to ecology to create the board must include the following:

(a) A copy of the resolution or petition to or by the legislative authority or authorities of the county or counties calling for the creation of a board. If a board is proposed which would serve in more than one county, the resolution shall be provided by the lead county as designated under subsection (7)(e) of this section. If five petitioners meeting the definition of a water right holder in the county or counties which initiate the petition, the petition must also include the names and addresses of the petitioners;

(b) A summary of the public testimony presented during the public hearing(s) conducted by the legislative authority or authorities of the county or counties in response to the resolution or petition to create a board. The summary shall be clearly identified and include the date of the hearing;

(c) A copy of the resolution adopted by the legislative authority or authorities of the county or counties approving the creation of a water conservancy board. The resolution must include all elements described in subsection (7) of this section; and

(d) A copy of the board's proposed bylaws.

What is the process for the director to approve or deny the creation of a water conservancy board?

(9) Upon submission to the water conservancy board coordinator of the required documentation pursuant to subsection (8) of this section, the director will determine whether the creation of a water conservancy board will further the purposes of the law and be in the public interest. The public interest includes, but is not limited to, whether ecology has sufficient staffing resources to provide the necessary training, monitoring, and technical assistance to the board and to make timely responses to the board's records of decisions.

(10) The director's determination regarding creation of the board shall be made within forty-five days of receiving all items listed in subsection (8) of this section.

(11) If creation of a board is approved, ecology will include in its notice of approval any unique conditions or provisions under which the approval is made, if any, and a description of the initial training requirements for board commissioners as outlined in WAC [173-153-050](#).

WAC 173-153-042**How are water conservancy board commissioners and alternates appointed and the length of their terms determined?****How do counties notify ecology of board commissioner's and alternate's appointments and terms?**

(1) Upon approval of a new board by ecology, or upon approval of restructuring the number of commissioners on an existing board, the legislative authority of the county or the



lead county shall submit to ecology's water conservancy board coordinator a written statement identifying the individuals appointed to the board. The statement must include:

(a) The name, mailing address, and phone number or other contact information of the commissioners and/or alternates;

(b) The terms of office of the commissioners; these terms of office must be staggered as described in RCW [90.80.050](#)(1).

What happens when a board commissioner's term expires or a board position becomes vacant?

(2) Upon the expiration of a board commissioner's or alternate's term, the appropriate legislative authority or authorities of the county or counties shall either:

(a) Reappoint the incumbent commissioner or alternate; or

(b) Appoint a new commissioner or alternate to the board. A written statement including the information as described in subsection (1) of this section shall be submitted to ecology's water conservancy board coordinator.

(3) In the event a board position becomes vacant, the legislative authority or authorities of the county or counties shall appoint a new commissioner in accordance with RCW [90.80.050](#)(2). A statement as described in subsection (1) of this section must be submitted to ecology's water conservancy board coordinator. The new commissioner or alternate shall fill the vacancy only for the remainder of the unexpired term and, upon completion of the unexpired term, may be reappointed, as described in subsection (2) of this section, to serve a full six-year term.

(4) If a board commissioner or alternate is reappointed to a position previously held by that commissioner or alternate within one year of resigning the position or within one year of the expiration of the commissioner's or alternate's term of service, then the original appointment date will be considered as the appointment date of record.

What are the terms of board commissioners and alternates?

(5) Initial terms of commissioners appointed to a newly created board shall be staggered as described in RCW [90.80.050](#). All alternate positions shall be for six-year terms.

(6) Upon the expiration of the initially appointed commissioners' terms, all subsequent appointments shall be for six-year terms.

(7) The initial terms of office of board commissioners on a restructured board shall be staggered as set forth in RCW [90.80.050](#). As each of the commissioners' term of office expires, newly or reappointed commissioners shall all be appointed to six-year terms.

How would an appointed board commissioner or alternate resign the position?

(8) A board commissioner or alternate may resign the board position by submitting a letter of resignation to the appointing county or counties. A copy of the resignation letter must



be submitted to the water conservancy board coordinator by either the resigning board commissioner or alternate or by the board.

What is the responsibility of a board in notification of board vacancies?

(9) It is the responsibility of the board to notify the appointing county(ies) and the water conservancy board coordinator that there is a board commissioner vacancy.

(10) The appointing county(ies) and the board will determine and conduct a process to fill the commissioner vacancy in accordance with subsection (3) of this section.

WAC 173-153-043

How can a board's authority be revoked or the board dissolved?

Revocation:

(1)(a) Ecology may revoke legal authority of a board to make any decisions regarding water right transfers for reasons which include, but are not limited to, the following:

(i) If the board fails to issue a record of decision for a period of two years or more from the date the board was approved or from the date that the last record of decision was issued; or

(ii) If the board demonstrates a pattern of ignoring statutory and regulatory requirements in its processing of applications or in its records of decision; or

(iii) If requested by the legislative authority or authorities of the county or counties that called for the board's formation.

(b) The board will be allowed thirty days to respond to any revocation before it becomes effective. Ecology may reverse the revocation based upon the board response.

Dissolution:

(2)(a) The legislative authority of a county or lead county may adopt a resolution to dissolve a board.

(b) Ecology may petition the legislative authority of the county or lead county, with a copy to the board, for dissolution of a board.

(c) Upon resolution by the legislative authority of the county or lead county to approve the dissolution of a board, the board will be allowed thirty days after the date of the resolution to respond to the petition for dissolution.

(d) The resolution by a county or lead county to approve the dissolution of a board will become effective thirty days after adoption of the resolution.

(e) The legislative authority of the county or lead county may reverse the dissolution based upon the board's response.

WAC 173-153-045

What is the process for restructuring a board?

(1) A board may be restructured as to the number of commissioners on the board and the geographic area of its jurisdiction.

(2) A board, a county legislative authority, or a lead county legislative authority may request to restructure an existing board within its geographical jurisdiction. It is suggested that the legislative authority or authorities of the county or counties and the existing board communicate and work cooperatively during the board restructuring process.

(3) If a request is made to restructure an existing board to a multicounty board, WRIA board, or multi-WRIA board, the county legislative authority with the existing board must determine if the restructured board would include geographic areas within an additional county or counties. If the restructure includes a geographic area of another county, the county legislative authority or all county legislative authorities of the affected counties must agree:

- (a) To the number of board commissioners serving on the board;
- (b) Whether the commissioners and alternates currently appointed to and serving on the existing board or boards shall continue in that capacity;
- (c) That areas within the county may be included within the geographic jurisdiction of the multicounty, WRIA, or multi-WRIA board.

(4) If the county legislative authorities included in the restructuring cannot agree to the terms of the restructure using an existing board, the county or counties in which a county legislative authority already has an established board may dissolve the existing board and work cooperatively with the other county legislative authority or county legislative authorities to establish a new board.

(5) The legislative authority or authorities of the pertinent county or counties shall hold a public hearing and adopt a resolution including:

- (a) The manner of restructuring and the need for restructuring the board;
- (b) The number of commissioners to serve on the board;
- (c) The proposed geographic area of jurisdiction of the board;
- (d) If the proposed geographic area of jurisdiction is restructured to include more than one county legislative authority, the legislative authorities of each county included within the restructuring shall identify a lead county; and

(e) A summary of the public testimony presented during the public hearing(s) conducted by the legislative authority or authorities of the county or counties in response to the resolution to restructure a board. The summary shall be clearly identified and include the date of the hearing.

(6) Upon submission to the water conservancy board coordinator of the required documentation pursuant to subsection (3) of this section, the director will determine whether the restructuring of a board will further the purposes of the law and be in the public interest as described in WAC [173-153-040](#)(10).

(7) The director's determination to approve or deny restructuring of the board shall be made within forty-five days of receiving all items listed in subsection (5) of this section.



(8) If the board restructuring is approved, ecology will include in its notice of approval any unique conditions or provisions under which the approval is made, if any, and shall identify the date the restructuring of the board will take effect. The director shall also identify any additional training required of the board if it assumes jurisdiction of a new geographic area.

WAC 173-153-050**What are the training requirements for board commissioners and alternates?****What training is required for newly appointed board commissioners and alternates?**

(1) Every commissioner and alternate of a board shall complete a training program provided by ecology:

(a) Before participating in any decision concerning a water right transfer application being considered by the board;

(b) Within one year of appointment to the board by the county legislative authority. If the training program is offered and is not completed within one year of appointment to the board, ecology may inform the county and request the county to seek the commissioner's resignation;

(c) Not more than one year prior to the commissioner's or alternate's appointment to the board by the county legislative authority. If the training program is completed by board administrative staff or other participating noncommissioners more than one year prior to subsequent appointment to the board, the commissioner will be required to repeat the training.

(2) Attendance at a training session for new commissioners shall be limited to board commissioners, their administrative staff, board alternates, and individuals providing training. Due to the complexity of the training and the need to provide adequate time to focus on questions from board commissioners, the number of participants attending each training session shall be left to the discretion of the water conservancy board coordinator. Training for new commissioners shall be scheduled depending on, but not limited to:

(a) Whether ecology has sufficient staffing resources to provide the necessary training; and/or

(b) Whether there are sufficient numbers of board commissioners and/or alternates needing training.

(3) Successful completion of the training program will:

(a) Consist of at least thirty-two hours of instruction, from or sponsored by ecology, regarding hydrology, state water law, state water policy, administrative and judicial case law developments, field practices, evaluation of existing water rights, and practical experience working with ecology staff on applications for water right transfers;

(b) Require demonstrating an understanding of course materials during training, and demonstrating sufficient mastery of the training curriculum through an examination administered by an ecology employee upon completion of training; and



(c) Only be recognized and tracked by ecology for appointed commissioners and alternates.

(4) If a board is restructured to modify the geographic area, the director may require additional training of all board commissioners.

(5) Upon a water conservancy board commissioner's or alternate's successful completion of the training, ecology will certify such completion in writing to the county or lead county of the geographic area served by the board. A copy of this letter shall also be sent to the board.

Are there continuing education requirements for board commissioners and alternates?

(6) After completing one year of service on a water conservancy board, each following year prior to the anniversary of their appointment date to the board, commissioners and alternates must complete an additional eight hours of continuing education provided or approved by ecology. Each commissioner and alternate shall complete the minimum continuing education requirement before participating in any decision concerning a water right transfer application being considered by a board.

(7) The anniversary date for a board commissioner or alternate serving on more than one board concurrently will be determined by the earliest of all combined board appointment dates.

(8) If less than six months has passed between the termination of service as a commissioner or alternate and appointment to any board as a commissioner or alternate, any current continuing education credit received during the last twelve months of the period of service with the previous board will apply to the new term under the new date of appointment in accordance with WAC [173-153-042](#). If a period of greater than six months has passed between the termination of service as a commissioner or alternate and appointment to any other board as a commissioner or alternate, any current continuing education credit received during the period of service with the previous board will not apply to the new term under the new date of appointment.

(9) Each board commissioner and alternate must ensure his or her own eligibility and remain current on continuing education. Eligibility of a board commissioner or alternate could become a basis for ecology's reversal of a record of decision or an appeal by a third party of ecology's final administrative order.

(10) Ecology may, at its discretion, and in response to requests, provide continuing education training periodically. Ecology may also combine training for more than one board. Attendance at continuing education sessions provided by ecology water resources program shall generally be limited to board commissioners, administrative staff to boards, board alternates, and individuals providing training. Ecology may, at its discretion, and in response to requests, invite other identified entities to participate in continuing education sessions.



How can a board commissioner or alternate receive credit for continuing education not provided or sponsored by ecology water resources program?

(11) Continuing education training requirements may be fulfilled through training not provided or sponsored by ecology's water resources program. However, such training will be accepted only if it is reported to ecology on a form provided by ecology and identified as the Water Conservancy Board Training Credit Request Form, form number 040-104, and approved at ecology's discretion.

(12) To receive continuing education credit for participating in a training activity sponsored by another entity other than ecology water resources program, a Water Conservancy Board Training Credit Request Form, form number 040-104:

- (a) Must be used;
- (b) Must be submitted to the water conservancy board coordinator at ecology;
- (c) Must include all required information. If the form is incomplete, it will be returned to the commissioner or alternate requesting the credit;
- (d) Must include documentation of course attendance. If attendance documentation is not provided, a written summary of the training activity and information learned must be included;
- (e) Must provide enough information to justify the hours requested;
- (f) Will only be accepted by ecology after completion of the commissioner's or alternate's participation in the training activity.

(13) The complete training credit request form identified under subsection (12) of this section will be reviewed as expeditiously as possible by ecology. The hours credited to the commissioner or alternate will be documented by ecology in a letter to the commissioner or alternate requesting the training credit. A copy of the letter will be sent to the ecology designated regional representative and the water conservancy board.

(14) The approved credit hours count toward a commissioner's or alternate's eligibility only upon the receipt by the commissioner or alternate of written confirmation from ecology.

(15) The hours credited in subsection (13) of this section are effective based on the date of the letter issued by ecology approving the training.

(16) Training means that the commissioner or alternate participates in a forum specifically intended for learning from another person such as an author, instructor, speaker, or presenter.

(17) Reasonable and appropriate continuing education subjects that directly relate to water conservancy board authorities and responsibilities include, but are not limited to:

- (a) State water law;
- (b) State water policy;
- (c) Administrative and judicial case law developments;
- (d) Field practices;
- (e) Evaluation of existing water rights;
- (f) Hydrology;

- (g) Technical writing;
- (h) Other related topics.

(18) Reasonable and appropriate continuing education activities that directly relate to water conservancy board authorities and responsibilities include, but are not limited to:

- (a) Seminars;
- (b) Conferences;
- (c) Classes;
- (d) Presentations given by others;

(e) Readings. Readings may include books on water resource issues or law, proceedings and papers associated with conferences related to subjects included in subsection (17) of this section;

- (f) Field experiences; and

(g) Research completed for a presentation, speech, or instruction given by the board commissioner or alternate.

(19) Examples of activities not considered reasonable and appropriate continuing education include, but are not limited to:

(a) Meetings in which the commissioner or alternate acts as a member of a committee, or integral participant in proceedings, appeals, or litigation;

(b) Presentations, speeches, or instruction personally made by, or readings authored by, the commissioner or alternate requesting the training credit;

(c) Work done by a commissioner or alternate as part of the direct responsibilities of the water conservancy board such as:

- (i) Field examinations;
- (ii) Investigation of a water right change application;
- (iii) Discussions of applications;
- (iv) Technical assistance received specific to an application; and
- (v) Litigation initiated by a water conservancy board, or a board

commissioner or alternate or litigation initiated by an entity against the water conservancy board or board commissioner or alternate;

(d) Topics that do not directly relate to water conservancy board authorities and responsibilities.

(20) Board commissioners are encouraged to report to the water conservancy board coordinator all relevant continuing education received. Ecology will track all training received and reported by board commissioners and alternates as required in subsections (11) through (19) of this section. Any continuing education hours received and reported beyond the required eight hours annually will be documented and kept on file at ecology. Continuing education in excess of the required eight hours cannot be carried over to the next year.



WAC 173-153-060

What is the scope of authority of a water conservancy board?

(1) A board has authority to:

(a) Evaluate water right transfer applications and issue records of decision and reports of examination for water right transfers;

(b) Act upon the transfer of water rights to the state trust water right program, when doing so is associated with an application to transfer a water right. Boards are encouraged to immediately contact ecology for technical assistance when acting on changes involving trust water rights;

(c) Establish and maintain a water right transfer information exchange program regarding the sale and lease of water rights; and

(d) Perform other activities as may be authorized under chapter [90.80](#) RCW, subject to other applicable state laws and regulations.

How does a board process a water right change application?

(2) A board may accept for processing an application to transfer a surface or groundwater right if the water right is currently diverted, withdrawn, or used within or, if approved, would be diverted, withdrawn, or used within the boundaries of the geographic area in which the board has jurisdiction, exceptions to this are stated in subsection (7) of this section. The application may be for a permanent or temporary use.

(a) The board should promptly request from the department a copy of the water right file related to the water right transfer application filed with the board. The department will comply with the request at no charge to the board.

(b) The board shall investigate the application and determine whether the proposal should be approved or denied and, if approved, under what conditions, if any, the approval should be granted.

(c) As part of the process described in subsection (2)(b) of this section, boards should determine whether a watershed planning unit is involved in planning related to the source of water that would be affected by the application being considered. If so, the board should notify the planning unit of the application, and consider comments from the watershed planning unit prior to issuing its record of decision.

(3) Decisions on applications must be made by a board in the order in which the applications were originally accepted by the board. Exceptions are outlined in RCW [90.03.380](#) and chapter [173-152](#) WAC.

(4) Boards must take into consideration the effect of a proposed transfer on the availability of water for, or possible impairment of, previously filed transfer applications for water from the same source regardless of the order in which applications are processed. This includes any applications for transfers filed with ecology or any other water conservancy board. Ecology will cooperate with boards to resolve any problems associated with conflicting applications.



(5) Neither the annual quantity nor the instantaneous quantity of water tentatively determined by the board to be associated with a water right may be increased. Uses may not be added and the acreage irrigated may not be expanded, except in the circumstances allowed in RCW [90.03.380](#), in which the annual consumptive use under the water right is not increased.

(6) As described in RCW [90.66.065](#), under a family farm permit, surplus waters made available through water-use efficiency may, subject to laws including WAC [173-152-110](#), be transferred to any purpose of use that is a beneficial use of water.

(7) Any water right or portion of a water right that has not previously been put to actual beneficial use cannot be transferred, except as authorized by RCW [90.44.100](#), or RCW [90.03.395](#) and [90.03.397](#).

Where can an applicant file a water right change application?

(8) If a board has been established in an area where an applicant wishes to apply for a water right transfer, applicants have the option of applying either directly to ecology or to a board.

What happens if two boards have overlapping jurisdictions?

(9) Overlapping jurisdiction occurs because boards may transfer rights into and out of their geographic area. Water conservancy boards may negotiate inter-board agreements to determine which board will act in instances of overlapping jurisdiction. Boards are advised to research applicable law, including chapter [39.34](#) RCW, the Interlocal Cooperation Act, prior to entering into any agreement. Any such agreement must be filed with the water conservancy board coordinator within fifteen days of its effective date.

(10) In circumstances in which more than one board may have authority to process water right transfers in a particular area, but the boards have not negotiated an inter-board agreement as specified in subsection (9) of this section, an applicant may file an application with either board. For example, if one board has authority to transfer the applicant's water right out of its jurisdiction, while another board has authority to transfer the water right into its jurisdiction, the applicant can apply to either board.

WAC 173-153-070

What does an applicant need to know about filing an application for transfer of a water right?

How are applications accepted for processing by a board?

(1) Ecology will provide water right transfer application forms and applicant instructions to boards, which will make them available to the public upon request. All applications to a board must be made using the water right application for change/transfer form supplied by ecology, form number 040-1-97.

(2) Boards and ecology shall inform all applicants that the decision to file a transfer application with a board rather than directly with ecology is solely at the discretion of the applicant, provided a board is active in the area addressed by the transfer application.



(3) A water right transfer application is considered filed when it is received by a board commissioner, or a designated administrative support person for a board at the location designated by the board.

(4) A separate application must be filed for each water right that is proposed to be transferred.

(5) A majority vote of a quorum of a board is required to accept a complete application for processing.

What must a complete application include?

(6) Boards shall require that applications submitted directly to them are complete and legible. A complete application shall:

(a) Contain the information requested on the application form as applicable.

(b) Include all required signatures.

(c) Be accompanied by such maps and drawings, in duplicate, and such other data or fees, as may be required by the board. Such accompanying data shall be considered as part of the application as described in RCW [90.03.260](#).

(7) A board may request that an applicant provide additional information as part of the application by requiring, for example, that the applicant complete additional forms supplemental to the standard application or that applicant prepare and/or provide specific reports regarding aspects of the application.

How is an application number assigned to a water right transfer application filed with a board?

(8) The board shall assign a unique number to a water right transfer application upon acceptance of the application by the board.

(9) The number assigned by the board to the water right transfer application shall be written in ink within the "office use only" space provided on the application for the application number.

(10) The water right transfer application, public notice, record of decision, and report of examination produced by the board in processing the application shall reference the board-assigned number.

(11) The unique application number is assigned in accordance with the following three-part format:

(a) The first part of the board-assigned application number will identify the board that has accepted the application as follows:

(i) Boards having jurisdiction within a geographic area that is based upon a county boundary or the boundary of multiple counties will begin all application numbers with the first four letters of the name of the county or of the lead county. For example, a board with jurisdiction within Kittitas County will begin each application number with the letters "KITI."



(ii) Boards that have jurisdiction within a geographic area that is based upon a water resource inventory area (WRIA) or multiple WRIAs will use the number of the WRIA of jurisdiction or, in the case of multi-WRIA boards, the WRIA of jurisdiction associated with the water right.

(b) The second part of the board-assigned application number will be the last two digits of the year in which the application was accepted. For example, applications that are accepted during the year 2003 will use the digits "03."

(c) The third part of the board-assigned application number will be a sequential two-digit number beginning with the number "01" for the first application accepted after the effective date of this rule and beginning with number "01" for the first application accepted by the board during each subsequent calendar year.

(d) A dash (-) will be used to separate the three parts of the application number as provided within (a), (b), and (c) of this subsection. For instance, the first application accepted by the Kittitas County water conservancy board during the year 2003 will be assigned number KITT-03-01.

Can applications before a board also be considered filed with ecology?

(12) The board must forward the complete original application form upon which the board has legibly written the board-assigned application number in the "office use only" space to the ecology designated regional representative within five business days of the date the board accepts the application for processing.

(13) Within thirty business days from the date ecology receives the application from the board, ecology will assign a state water right change application number to the application and inform the board of the assigned number. The number assigned by ecology will be used for ecology's internal administrative purposes, including the recording of the application within the state water right record. The ecology-assigned number need not be used by the board in processing the application, including within the public notice.

(14) Ecology will open and maintain a file regarding the application for permanent recordkeeping. The application will not be considered as part of ecology's active application processing workload while the application is being processed by the board, but upon receipt of the application by ecology, the application is considered to be dual-filed with both the board and ecology. The application will retain a place in line with ecology based upon the date of acceptance by the board without payment of state examination fees as long as the board is processing the application.

(15) Ecology shall not act on the application unless it is notified by the board that the board has declined to process the application and upon receiving a written request from the applicant that ecology process the application. Upon written request from the applicant that ecology process the application, the required state examination fee will be due. Ecology shall notify the applicant that examination fees are due to ecology. The applicant must submit the



required state examination fee within sixty days after the written request to ecology to process the application. Ecology will not process an application until all fees are paid.

(16) The applicant may voluntarily withdraw the application from the board by making such request to the board in written form. The board shall forward a copy of the applicant's request to withdraw the application to the ecology designated regional representative. The application is considered withdrawn from ecology upon the withdrawal of the application from the board. Ecology will remove the application from its line and reject the application.

How can responsibility for processing an application previously filed with ecology be transferred to a board?

(17) If an application has previously been filed with ecology, the applicant may make a request that ecology convey the application to the board with geographic jurisdiction. Such a request must be in written form. A copy of the written request to ecology must be sent to the board at the same time. Ecology will comply with the request by providing all related file documents to the appropriate board. The original application will continue to be on file and maintained at ecology but will not be considered as part of ecology's active workload while the application is being processed by the board.

(18) The board shall notify ecology if it accepts the application for processing. Upon acceptance for processing by the board, the application will retain its place in line at ecology and be considered dual-filed with both the board and ecology. Ecology will remove the application from its active workload. The board will assign an application number in accordance with subsection (11) of this section and inform the ecology designated regional representative in writing of the board's application number within five business days of accepting the application.

(19) If an application previously filed directly with ecology is accepted for processing by a board, the board shall ensure that a public notice of the application consistent with WAC [173-153-080](#) is made, regardless of whether the application was previously subject to public notice by ecology.

Can a board decide not to accept an application for processing, or decide to discontinue processing an application?

(20) By a majority vote of a quorum of a board, a board may decline to process or may discontinue processing an application at any time. The board must inform the applicant of its decision in writing within fourteen business days of making the decision. The board must, at the same time, send the ecology regional office a copy of the board's written notice to the applicant. If the basis of the board's decision to decline processing the application is not sufficiently clear from the written notice, and the applicant filed a written request that ecology process the application, ecology may request a further written explanation regarding the board's decision not to process or finish processing the application. The board must provide this additional written explanation within thirty days of ecology's request.



(21) If a board declines to process or discontinues processing an application, it must return the application to the applicant and must inform the applicant that the application may be filed with ecology and advise the applicant of the appropriate ecology office where the application should be filed.

Who must receive copies of applications being processed by a board?

(22) Boards must ensure that copies of applications accepted by them for processing are provided to interested parties in compliance with existing laws. To assist the boards in this, ecology will provide a list of parties which have identified themselves to ecology as interested in the geographic area of the board. Additional interested parties, including Indian tribes, may request copies of applications from boards.

(23) A notice of each application accepted by a board shall be provided to any Indian tribe that has reservation lands or trust lands contiguous with or encompassed within the geographic area of the board's jurisdiction.

WAC 173-153-080

What public notice is given on a water right transfer application before a board?

(1) Upon acceptance by a board of a water right transfer application in accordance with this chapter, the board shall publish a public notice of the proposed water right transfer in accordance with RCW [90.03.280](#). This notice must be published at least once a week for two consecutive weeks in the legal notice section of a newspaper of general circulation in the project area of the county or counties where the application proposes to use, divert, withdraw and/or store water. Ecology must provide the board with a list of newspapers generally acceptable for the publication of public notices. The board should consider publishing an additional public notice in other areas that could be affected by the transfer proposal. The public notice of each individual application for transfer must include the following information:

- (a) The applicant's name and city or county of residence;
- (b) The board's assigned water right change application number;
- (c) The water right priority date;
- (d) A description of the water right to be transferred, including the number of any water right document, that embodies the water right such as a permit, certificate or claim filed under chapter [90.14](#) RCW, the location of the point of diversion or withdrawal; the place of use; the purpose(s) of use; the period of use; if for irrigation purposes, the total acres irrigated; and the instantaneous rate and annual quantities as stated on the water right document;
- (e) A description of the proposed transfer(s) to be made, including, when applicable, the proposed location of point(s) of diversion or withdrawal; the proposed place(s) of use; the proposed purpose(s) of use; if for irrigation purposes, the total number of acres to be irrigated; and the instantaneous rate and annual quantities of water associated with the



proposed water right transfer including the description of a transfer that includes only a portion of a water right;

(f) The manner and time limit for filing protests with ecology under RCW [90.03.470](#) and WAC [508-12-170](#); and

(g) The manner for providing written and oral comments or other information to the board, including the board's mailing address and the place, date, and time of any public meeting or hearing scheduled to consider, discuss, or decide the application.

(2) The board may require the applicant to review and confirm the information in the public notice prior to publication. If the board does so, the applicant assumes responsibility for any errors contained in the description of the application published in the public notice.

How does the board verify that proper public notice of the application was made?

(3) The board must send a copy of the public notice to the ecology designated regional representative at the same time the public notice is submitted for publication.

(4) Before issuing a decision on an application, the board must first receive a notarized affidavit of publication from each newspaper in which the public notice regarding the application was published, and the board must verify that publication occurred correctly. The board must also allow at least thirty days following the last date of publication of the notice, to allow for protests or objections to be filed with ecology before the board issues a record of decision.

How are errors or omissions in the public notice corrected? When does a public notice need to be republished?

(5) The public notice must be republished in all newspapers of original publication when an applicant substantively amends an application for a transfer of a water right subsequent to publication of the notice, or when the publication contains a substantive error or omission occurs in the publication. All parties who were sent the original application as required by WAC [173-153-070](#)(22) and/or the original public notice must be sent corrected copies of any amended transfer application and/or an amended public notice. For the purposes of this subsection, the term "substantive error or omission" for publication purposes, refers to any item identified in subsection (1) of this section that is omitted from or inadequately characterized in the public notice. An application is considered substantively amended if it expands the intent of the original proposal or results in a substantial change, such as an alteration to the proposed point of diversion or withdrawal, proposed purpose(s) of use, or to the proposed place of use.

WAC 173-153-080

What public notice is given on a water right transfer application before a board?

(1) Upon acceptance by a board of a water right transfer application in accordance with this chapter, the board shall publish a public notice of the proposed water right transfer in



accordance with RCW [90.03.280](#). This notice must be published at least once a week for two consecutive weeks in the legal notice section of a newspaper of general circulation in the project area of the county or counties where the application proposes to use, divert, withdraw and/or store water. Ecology must provide the board with a list of newspapers generally acceptable for the publication of public notices. The board should consider publishing an additional public notice in other areas that could be affected by the transfer proposal. The public notice of each individual application for transfer must include the following information:

- (a) The applicant's name and city or county of residence;
 - (b) The board's assigned water right change application number;
 - (c) The water right priority date;
 - (d) A description of the water right to be transferred, including the number of any water right document, that embodies the water right such as a permit, certificate or claim filed under chapter [90.14](#) RCW, the location of the point of diversion or withdrawal; the place of use; the purpose(s) of use; the period of use; if for irrigation purposes, the total acres irrigated; and the instantaneous rate and annual quantities as stated on the water right document;
 - (e) A description of the proposed transfer(s) to be made, including, when applicable, the proposed location of point(s) of diversion or withdrawal; the proposed place(s) of use; the proposed purpose(s) of use; if for irrigation purposes, the total number of acres to be irrigated; and the instantaneous rate and annual quantities of water associated with the proposed water right transfer including the description of a transfer that includes only a portion of a water right;
 - (f) The manner and time limit for filing protests with ecology under RCW [90.03.470](#) and WAC [508-12-170](#); and
 - (g) The manner for providing written and oral comments or other information to the board, including the board's mailing address and the place, date, and time of any public meeting or hearing scheduled to consider, discuss, or decide the application.
- (2) The board may require the applicant to review and confirm the information in the public notice prior to publication. If the board does so, the applicant assumes responsibility for any errors contained in the description of the application published in the public notice.

How does the board verify that proper public notice of the application was made?

- (3) The board must send a copy of the public notice to the ecology designated regional representative at the same time the public notice is submitted for publication.
- (4) Before issuing a decision on an application, the board must first receive a notarized affidavit of publication from each newspaper in which the public notice regarding the application was published, and the board must verify that publication occurred correctly. The board must also allow at least thirty days following the last date of publication of the notice, to allow for protests or objections to be filed with ecology before the board issues a record of decision.



How are errors or omissions in the public notice corrected? When does a public notice need to be republished?

(5) The public notice must be republished in all newspapers of original publication when an applicant substantively amends an application for a transfer of a water right subsequent to publication of the notice, or when the publication contains a substantive error or omission occurs in the publication. All parties who were sent the original application as required by WAC [173-153-070](#)(22) and/or the original public notice must be sent corrected copies of any amended transfer application and/or an amended public notice. For the purposes of this subsection, the term "substantive error or omission" for publication purposes, refers to any item identified in subsection (1) of this section that is omitted from or inadequately characterized in the public notice. An application is considered substantively amended if it expands the intent of the original proposal or results in a substantial change, such as an alteration to the proposed point of diversion or withdrawal, proposed purpose(s) of use, or to the proposed place of use.

WAC 173-153-090

How can protests and letters of concern or support on a water right transfer application be submitted to a board?

Where is a protest submitted regarding a water right transfer application before a board?

(1) A protest against granting a proposed water right change or transfer, as identified in RCW [90.03.470](#)(12), must be received by ecology, with the statutory protest fee, within thirty days of the last date of publication of the public notice.

(2) Ecology shall provide a copy of the protest to the appropriate board within five days of receipt of the protest.

(3) In accordance with WAC [508-12-170](#) and [508-12-220](#), a board will thoroughly investigate all pertinent protests of a transfer application before the board.

(4) Ecology shall consider all pertinent protests during its review of the board's record of decision on the application.

(5) Persons inquiring of the board or ecology regarding protest procedures shall be directed to file the protest with ecology.

(6) A board must immediately forward to ecology any protests it receives including the statutory protest fee.

What is included in a valid protest?

(7) A protest must include:

- (a) The name, address and phone number (if any) of the protesting party;
- (b) Clear identification of the transfer application being protested; and
- (c) A statement identifying the basis for the protest.



(d) The statutory protest fee.

What is the difference between a protest and a letter of concern or support?

(8) Any protest received more than thirty days after the last date of publication of the public notice, or without the required fee, will be filed as a letter of concern.

(9) A letter of support is any comment addressing the benefit of the project proposed in an application.

(10) A party who provides a letter of concern or support regarding an application to a water conservancy board is not considered to be a protesting party unless the party has also filed a valid protest with ecology in compliance with this section.

Will a protest or letter of concern be considered?

(11) Boards must accept and consider any oral or written comments or protests in evaluating an application, in accordance with chapter [90.80](#) RCW, this chapter, and board bylaws.

WAC 173-153-100

How does a water conservancy board operate?

(1) Water conservancy board meetings must be in compliance with the Open Public Meetings Act, chapter [42.30](#) RCW. Additionally, minutes of the meetings must be recorded pursuant to chapter [42.32](#) RCW and such minutes must be made available for public review upon request.

(2) At the beginning of any meeting or hearing in which any application to change or transfer a water right is to be discussed, or upon which a decision is to be made, those individuals in attendance must be informed that any known allegations of conflict of interest must be expressed in that meeting or hearing or their right to do so may be forfeited in accordance with RCW [90.80.120](#) (2)(a).

(3) A board may adopt and amend its own bylaws through which board meetings, operations, and processes are governed.

How can a board be contacted by the public?

(4) Each board must designate at least one primary contact person for communicating with ecology and other entities. The board must inform the water conservancy board coordinator of:

- (a) The name of the primary contact;
- (b) How to contact that person; and
- (c) Any changes to the contact information for the primary contact of the board.

(5) Boards are subject to the Public Records Act, chapter [42.17](#) RCW and as described in RCW [90.80.135](#).

WAC 173-153-110

What is involved in the examination of an application before a board?

(1) Boards shall base their records of decision and reports of examination regarding a transfer application on applicable state laws and regulations. In addition to specific water law, boards must also consult and consider other relevant state laws, including, but not limited to, the Growth Management Act (chapter [36.70A](#) RCW).

(2) Generally, a board should conduct a field examination of the site(s) identified in the transfer application, and clarify any unclear information by contacting and discussing the information with the applicant or other appropriate persons.

(3) All relevant information must be identified, discussed, and considered in the board's examination. This may include the need for a board to collect pertinent detailed hydrological or hydrogeological information regarding the site(s) involved in the proposal. Any person providing an engineering, hydrologic, geologic and/or hydrogeological analysis on behalf of an applicant with an application before a board must be licensed in accordance with chapter [18.43](#) or [18.220](#) RCW, as applicable. The analysis must be certified by the individual's professional stamp.

(4) A board may require an applicant to provide additional information at the applicant's expense, if that information is necessary to render an adequately informed record of decision on an application.

How are comments and protests considered during the examination of the water right transfer application?

(5) Boards may also request that commenters or protestors provide additional information regarding their comments if such information is necessary to render an adequately informed record of decision on an application. Boards may also discuss the concerns raised in comments and protests with the persons who filed them.

(6) Boards must consider all comments and protests received about a pending application, whether or not additional information is provided by the protestor or commenter.

(7) Ecology, as is the case with any public agency, may provide formal written or oral comments regarding the application under discussion at a public meeting of the board. However, if ecology does provide formal comments in the context of a public meeting, the comments shall not be taken as giving either technical assistance or direction to the board, any more than any other comments would be so considered.

What other entities should be consulted when a board examines an application?

(8) When public interest applies to the application evaluation or when there may be existing rights that could be impaired, boards shall determine whether an Indian tribe, watershed planning unit, or other governmental body is directly involved in planning or water management related to the source of water that would be affected by the application. If this is



found to be the case, the board should consult the tribe, watershed planning unit, or other governmental body in the board's effort to obtain information concerning the application.

What other information must a board consider in its examination of the application?

(9) Boards must evaluate an application, including all information obtained by the board that is associated with the application, and determine whether or not the transfer as proposed is in accordance with applicable state laws and regulations. The board must also make a tentative determination as to the extent and validity of the water right proposed to be transferred, as well as whether the transfer can be made without injury or detriment to existing rights. The board must evaluate a transfer proposal pursuant to RCW [90.44.100](#) as to whether the proposed transfer is detrimental to the public interest. Public interest shall not be considered when deciding whether to grant an application for change pursuant to RCW [90.03.380](#) exclusively.

(10) Boards shall ensure that the requirements of the State Environmental Policy Act (SEPA), chapter [43.21C](#) RCW, and the SEPA rules, chapter [197-11](#) WAC, have been met before finalizing a record of decision. If a board concludes it is appropriate under WAC [197-11-922](#) through [197-11-944](#), the board may be the lead agency for SEPA compliance.

(11) A board shall consult with ecology if it encounters new, unusual, or controversial issues in the course of examining an application. Ecology will provide assistance as to how to proceed in accordance with existing state laws, rules, and current ecology policies and administrative practices.

(12) When a board receives an application to transfer a water right that is located in an area subject to an ongoing general water rights adjudication process, the board shall consult with ecology prior to taking any action on the application. Ecology will seek guidance from the pertinent superior court regarding the court's role in administering the water rights that are subject to the adjudication. Ecology shall then advise the board on whether and how the board may process applications.

WAC 173-153-120

What assistance is available to water conservancy boards?

(1) The director, or his or her designee, shall assign a representative of ecology to be available to provide technical assistance to each board as provided in RCW [90.80.055](#) (1)(d).

(2) Upon request by a board, an ecology representative will provide technical assistance as the board:

- (a) Reviews applications for formal acceptance;
- (b) Prepares draft records of decision and reports of examination;
- (c) Considers technical factors; and
- (d) Considers legal factors affecting the board's development of a record of

decision.

(3) A board may request and accept additional technical assistance from ecology.



(4) A board may also request and accept assistance and support from the government or governments of the county or counties in which it operates, as well as from other interested parties.

(5) Ecology recognizes that boards are independent entities with the legal right to make records of decision on water right transfer applications without seeking assistance from ecology. However, should a board desire assistance from ecology in processing an application or regarding its administrative functions, ecology will provide technical assistance upon request of the board. This technical assistance may address issues involved in application processing, including procedural requirements and administrative functions, and can include specific information regarding approaches to resolving particular issues. However, in deference to the independent status of boards, such technical assistance shall be solely in the form of guidance and shall not dictate or otherwise direct any board to reach a specific conclusion regarding any aspect of application processing or of a board's administrative functions.

(6) Technical assistance and training provided to a board is not subject to the Open Public Meetings Act.

WAC 173-153-130

How are records of decision and reports of examination made by a water conservancy board?

(1) Records of decision and reports of examination are adopted by a majority vote of a board, pursuant to RCW [90.80.070](#)(4). A board's record of decision and report of examination must be in writing, and the record of decision and report of examination become part of the public record.

(2) When a board proposes to deny an application, in whole or in part, the board must issue to both the applicant and ecology a record of decision and report of examination denying the transfer, or a portion of the transfer, subject to review and final determination by ecology.

(3) When a board proposes to approve an application, the board must issue to both the applicant and ecology a record of decision and a report of examination approving the transfer, subject to review and final approval by ecology.

What is included in a record of decision?

(4) The record of decision must be prepared on a form provided by ecology and identified as the Record of Decision, form number 040-105, and must include the conclusion of the board as to whether the application is denied or approved and a record of the individual vote or abstention of each participating commissioner or that a commissioner has recused him or herself.

What is included in a report of examination?

(5) It is the responsibility of the water conservancy board to ensure that all relevant issues identified during its evaluation of the application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the



board's deliberations. These discussions must be fully documented in the report of examination.

(6) The report of examination will consist of a form provided by ecology and identified as Water Conservancy Board Report of Examination, form number 040-106, documenting and summarizing the basic facts associated with the decision. This shall include:

(a) Within a section entitled "background":

(i) A description of the water right proposed for transfer, including the board-assigned water right change application number, and the board's tentative determination as to the validity and quantification of the right, as well as the historical water use information that was considered by the board;

(ii) An explanation of how the board complied with the State Environmental Policy Act; and

(iii) A description of any previous change decisions associated with the water right.

(b) Within a section entitled "comments and protests": A description of any protests, and written or oral comments, including:

(i) The names and addresses of the protestors or commenters;

(ii) A description of the issues raised; and

(iii) The board's analysis regarding each issue raised.

(c) Within a section entitled "investigation":

(i) A description of the project proposed by the applicant, including any issues related to development, such as the applicant's proposed development schedule and an analysis of the effect of the proposed transfer on other water rights, pending applications for changes or transfers, and instream flows established under state law;

(ii) A narrative description of any other water rights or other water uses associated with both the current and proposed place of use and an explanation of how those other rights or uses will be exercised in conjunction with the right proposed to be transferred;

(iii) If the proposed transfer is authorized under RCW [90.44.100](#), an analysis of the transfer as to whether it is detrimental to the public interest, including impacts on any watershed planning activity. Public interest shall not be considered if the proposed transfer is authorized pursuant to RCW [90.03.380](#) exclusively;

(iv) Any information indicating that an existing water right or portion of a water right has been relinquished or abandoned due to nonuse and the basis for the determination;

(v) A description of the results of any geologic, hydrogeologic, or other scientific investigations that were considered by the board and how this information contributed to the board's conclusions;

(d) Within a section entitled "conclusions": A list of conclusions that the board drew from the information compiled regarding the transfer proposal. Conclusions must, at a minimum, describe:



- (i) Whether, and to what extent, a valid water right exists;
- (ii) Any relinquishment or abandonment of the water right associated with the water right transfer application as discussed in subsection (6)(d)(i) of this section;
- (iii) The result, as adopted by the board, of any hydraulic analysis done related to the proposed water right transfer;
- (iv) The board's conclusions of issues raised by any comments and protests received;
- (v) Whether the transfer proposal will impair existing rights of others; and
- (vi) If the proposed transfer is authorized pursuant to RCW [90.44.100](#), whether it is detrimental to the public interest. Public interest shall not be considered if the proposed transfer is authorized pursuant to RCW [90.03.380](#) exclusively;
- (e) Within a section entitled "decision": A complete description of the board's decision, fully and comprehensively addressing the entire application proposal;
- (f) Within a section entitled "provisions":
 - (i) Any conditions and limitations recommended as part of an approved transfer, and/or any other corrective action necessary to maintain the water use in compliance with state laws and regulations;
 - (ii) Any requirement to mitigate adverse effects of the project. Mitigation may be proposed by the applicant or the board and be required in the board's decision; and
 - (iii) A schedule for development and completion of the water right transfer, if approved in part or in whole, that includes a definite date for completion of the transfer and application of the water to an authorized beneficial use.
- (7) Ecology may request additional information from the water conservancy board regarding the application and the board's decision, in addition to the requirements of subsection (6) of this section.
- (8) A board's record of decision must clearly state that the applicant is not permitted to proceed to act on the proposal until ecology makes a final decision affirming, in whole or in part, the board's recommendation. However, if ecology does not act on a board's recommendation within the time frame established in RCW [90.80.080](#), the applicant is allowed to initiate the water right transfer pursuant to the board's record of decision after that period of time has expired. It is advised that the applicant not proceed until the appeal period of ecology's decision is complete, in compliance with WAC [173-153-180](#).

WAC 173-153-140

What is the process for notifying parties of a record of decision and report of examination?

Who is notified of a board's record of decision and report of examination?

- (1) Ecology shall identify to all boards the ecology designated regional representative for receipt of each board's records of decision. Boards shall hand deliver or send by mail records of decision and reports of examination to:

- (a) The applicant;
- (b) The ecology regional office;
- (c) Any person who protested the transfer;
- (d) Any person who requested notice of the board's record of decision;
- (e) Any tribe with reservation or trust lands contiguous with or wholly or partly within the area of jurisdiction of the board; and
- (f) Any commenting agency or tribe.

How is the record of decision and report of examination transmitted?

(2) Within fifteen business days of a board's decision, the board shall simultaneously mail a copy of the record of decision and the report of examination to all parties identified in subsection (1) of this section. A paper copy of the following shall simultaneously be mailed or delivered to the ecology designated regional representative:

- (a) The record of decision;
- (b) The report of examination;
- (c) The application;
- (d) Public notices; and
- (e) Attachments to the application.

The board shall state to the parties receiving the record of decision and report of examination that it has been simultaneously sent to ecology. Whenever boards have the capacity to do so, they must transmit a signed electronic copy of the record of decision and report of examination to the ecology regional office on the same day that copies of the decision are mailed or hand-delivered.

(3) As stated in WAC [173-153-130](#), boards must fully document their process of arriving at a record of decision regarding water right transfer applications. Once the board has concluded its work on a water right transfer application, the board must submit to ecology, within fourteen days after the completion of ecology's review period, any remaining original documents not previously submitted to ecology in accordance with subsection (2) of this section, and any documents received or developed by the board related to its deliberations regarding the application upon which it has made a decision. All documents submitted shall be clearly marked with the board-assigned water right change application number on the water right transfer application pursuant to WAC [173-153-070](#)(7). As noted, the original versions of these documents must be provided to ecology; copies are not acceptable for submission. These documents must be sent to the ecology regional office designated by ecology. The board may retain a copy of all of the above-mentioned documents. After the board completes its business on a water right transfer application, and upon submission to ecology of all records related to the application file, ecology shall be responsible for public records requests related to that file.

(4) Any comments received by a board regarding its record of decision within thirty days after ecology's final decision must be forwarded to ecology within five business days of the board's receipt of such comments by the board. For the purposes of this subsection, the term

"receipt" refers to the act of a board commissioner or designated administrative support person for the board picking up the board's mail. These comments must be submitted by the board to the ecology regional office.

WAC 173-153-150

What is ecology's review process of a board's record of decision?

(1) Upon receipt of a record of decision and report of examination, ecology shall document and acknowledge the date of receipt of such documents in writing to the issuing board. Ecology will post on its internet site, generally within five business days, the record of decision, documenting the vote and signature of all board commissioners who participated in the decision, and the report of examination. For boards with the capacity to send signed documents electronically, ecology will post the record of decision and the report of examination generally within three business days of receiving the electronic version. The posted document will be referenced by both the board-assigned application number and by the ecology-assigned application number.

How does ecology review the record of decision?

(2) Ecology will review all records of decisions made by water conservancy boards. Upon receipt of a record of decision made by a board, ecology will review:

- (a) The record of decision for compliance with state water laws and regulations;
- (b) The record developed by the board in processing the application; and
- (c) Any other relevant information.

(3) In reviewing a board's decision, ecology may consider any letters of concern or support received within thirty days of the date ecology receives the board's record of decision.

(4) Ecology will not evaluate the internal operations of a board as it reviews a board's record of decision. Exceptions are to the extent that such review is necessary to determine whether the board's decision was in compliance with state laws and regulations concerning water right transfers, including possible cases of a conflict of interest as identified in RCW [90.80.120](#).

What are ecology's potential review responses and how are the responses made?

(5)(a) Ecology may affirm, reverse, or modify the records of decision based upon the report of examination issued by boards.

(b) If ecology determines that a board's submitted decision was not adopted in accordance with WAC [173-153-130](#)(1), which addresses the adoption of a decision by the board; WAC [173-153-050](#) (1) and (6), which address training requirements of board commissioners; RCW [90.80.070](#) (4) through (8), which address the minimum number of commissioners required to adopt a decision on an application and the requirements for an alternate commissioner to participate in the decision; or, RCW [90.80.055](#), which addresses additional board powers, the submitted record of decision, report of examination, and



supporting documents shall be returned to the board without action. Ecology's forty-five-day review period shall not begin until the board has satisfied all requirements in the adoption of a record of decision listed in this subsection and resubmitted the decision in accordance with WAC [173-153-140](#).

(c) Ecology's decision will be made in the form of a written administrative order and must be issued within forty-five days of receipt of the board's record of decision by the ecology regional office, except that the forty-five-day time period may be extended an additional thirty days by ecology's director, or his or her designee, or at the request of the board or applicant in accordance with RCW [90.80.080](#). If ecology does not act on the record of decision within the forty-five-day time period, or within the extension period, the board's record of decision becomes final.

(6) Ecology may issue an order affirming a board's decision. If ecology modifies the record of decision made by a board, ecology shall issue and send to the applicant and the board an order containing its modification of the record of decision. The order shall specify which part(s) of the record of decision ecology has modified. If ecology reverses the record of decision by the board, ecology shall send the applicant and the board an order reversing the record of decision with a detailed explanation of the reasons for the reversal.

Under what conditions may ecology remand a record of decision to a board?

(7) Ecology may consider conflict of interest issues during its final review of a board's record of decision. In accordance with chapter [90.80](#) RCW, if ecology determines that a commissioner should have been disqualified from participating in a decision on a particular application under review, the director, or his or her designee, must remand the record of decision to the board for reconsideration and resubmission of the record of decision. Upon ecology's remand, the disqualified commissioner shall not participate in any further board review of that particular application.

(8) Ecology's decision on whether to remand a record of decision under this section may only be appealed at the same time and in the same manner as an appeal of ecology's decision to affirm, modify, or reverse the record of decision after remand.

Can a board withdraw its record of decision from ecology?

(9) If ecology has not yet formally acted on a record of decision by a board, a board may withdraw the record of decision during the period allowed for ecology's review. If a board withdraws a record of decision, ecology shall remove the record of decision from its internet site and post a notice that the decision has been withdrawn. All of the associated documents submitted to ecology by the board with the record of decision will be returned to the board. A board may withdraw the record of decision under the following conditions:

(a) The board must follow chapter [42.30](#) RCW, the Open Public Meetings Act, in making a decision to withdraw the record of decision;



(b) The decision to withdraw the record of decision must be adopted by a majority of the quorum of the board; and

(c) The board must send a notice of withdrawal of a record of decision to ecology on a form provided by ecology and identified as Decision to Withdraw a Record of Decision, form number 040-107.

Who is notified of ecology's order relating to a record of decision?

(10) Ecology will send its order to all parties on the same day. The order must be sent by mail, within five business days of ecology reaching its decision, to:

- (a) The board;
- (b) The applicant;
- (c) Any person who protested;
- (d) Persons who requested notice of ecology's decision;
- (e) The Washington department of fish and wildlife;
- (f) Any affected Indian tribe; and
- (g) Any affected agency.

What is the process should ecology fail to act on a record of decision?

(11) Except as specified in subsection (5) of this section, if ecology fails to act within the specified time after receipt of the board's record of decision, the board's record of decision becomes the final order of ecology. If a board concludes that the time allowed for ecology to issue its order has lapsed, the board shall notify ecology, the applicant, any protestors, and any parties that have expressed interest to the board about the application that the time period has lapsed. If ecology agrees that the review period has lapsed, ecology will send an order to the board, and all entities listed in subsection (10) of this section, stating that the record of decision is final. If ecology disagrees with the board's conclusion, ecology shall work with the board to establish the beginning date of the review period based upon the date of receipt of the record of decision and report of examination by the ecology regional office.

WAC 173-153-160

When is a board-approved water right transfer that has been affirmed by ecology complete?

Who provides documentation of the transfer when it is completed?

(1) When an affirmed transfer has been completed and the transferred water right has been put to beneficial use, the person authorized to transfer the water right must submit satisfactory evidence to ecology showing the transfer has been completed in accordance with ecology's order authorizing the transfer of the water right. Upon verification of the extent of development as authorized, ecology will issue a change certificate, superseding permit, or a superseding certificate to the water right holder(s) to document that the approved transfer was accomplished. When evaluating the proposed water right transfer application, the board will

consider and address in the report of examination any issues pertaining to completion of the development or the application of the water to a beneficial use of water as it is proposed to be changed.

Who receives a copy of the document identifying the perfection of the transfer approval?

(2) When a document, as described in subsection (1) of this section, is issued to the applicant, ecology shall provide a copy to the appropriate board for its records, if requested by the board. The document shall also be recorded, at the applicant's expense, by the county or counties in which the water is authorized for use.

What happens if the approved transfer is not completed within the development schedule or if the change authorization is canceled?

(3) If development of the approved transfer is not completed in accordance with the development schedule that accompanies the approval, extensions may be requested in accordance with RCW [90.03.320](#), and will be evaluated by ecology.

(4) If the person authorized to transfer a water right fails to accomplish the transfer in accordance with the authorization, or any subsequent extensions granted by ecology, and does not receive an extension from ecology, or fails to comply with the requirements of the transfer authorization, ecology will cancel the transfer authorization. Upon cancellation of the transfer authorization, ecology will evaluate the water right to make a tentative determination as to the present validity of the water right and the conditions under which the water right can legally be exercised.

WAC 173-153-170

What are a board's reporting requirements? Boards are required to submit reports to ecology on their activities at the end of October of each year. The reports must be submitted to the water conservancy board coordinator on a form provided by ecology each year and must include information about board activities during the previous twelve months. The reports shall contain the following information:

Water right transfer application data:

- (1) Information about applications to the board, to include:
 - (a) The number of applications filed with the board, identified by water resources inventory area (WRIA);
 - (b) The number of records of decision withdrawn from ecology by the board;
 - (c) The number of records of decision approving or partially approving an application;
 - (d) The number of records of decision denying an application;
 - (e) The number of records of decision remanded back to the board from ecology;

- (f) The number of applications received by the board, distinguishing between requests to transfer surface water and groundwater;
- (g) The number of applications to transfer a water right documented by a claim;
- (h) The number of applications to transfer a water right documented by a certificate;
- (i) The number of applications proposing transfer related to trust water;
- (j) The number of applications filed directly with the board, and the number transferred from ecology to the board; and
- (k) The number of hearings held within other counties other than the county or counties which established the board, when water rights were proposed to be transferred from one county to another.

Operational information about the boards:

- (2) Information about the operations of the board, to include:
 - (a) The chair of the board;
 - (b) The primary contact of the board;
 - (c) The board address, phone, and/or email;
 - (d) The board commissioners' names and their terms of office;
 - (e) The regular meeting location, if any;
 - (f) The regular meeting schedule, if any;
 - (g) Any changes in membership of the board, including background and contact information for any new commissioners;
 - (h) Current fees and changes to previously set fees;
 - (i) Training received other than from ecology;
 - (j) Ownership of property by the board;
 - (k) Water marketing activities;
 - (l) Number of staff employed by the board, and number of staff that provide volunteer service to the board; and
 - (m) Any litigation in which the board is involved.

WAC 173-153-180

What actions may be appealed under this chapter? Any person aggrieved by ecology's decision to approve or disapprove the establishment or restructuring of a board, or by an ecology order to affirm, reverse modify, or remand a record of decision made by a board, may appeal the decision or order to the state pollution control hearings board in accordance with chapter [43.21B](#) RCW.

WAC 173-153-190

Existing rights are not affected.

Nothing in this chapter is intended to impair any existing water rights.



WAC 173-153-200

Will ecology review this chapter in the future to determine if changes are necessary? This chapter may be reviewed by ecology whenever new information, changing conditions, or statutory modifications make it prudent to consider revisions. In carrying out such a review, ecology shall consult with existing boards.



Water Conservancy Board Responsibilities

Board Responsibilities

Suggestions for Writing Bylaws: These suggestions are provided by Department of Ecology to assist Water Conservancy Boards when adopting or revising their bylaws. Bylaws are finalized and adopted by the Water Conservancy Board Commissioners as the operational guidance for that board. Department of Ecology has no review authority for board bylaws or internal operations.

Public Information:

- Where will the board receive mail?
- How can someone contact the board?
- Will the board have regular meeting dates?
- Where will the board post information? (i.e. agendas, applicant list, contact information)
- Where is the board headquarters located?
- Filing an application with the board: How, where, and what is required?
- How is an application accepted? Received? (i.e. only at an open public meeting of the board, through the mail, etc.)
- How will the board run their meetings? Limitations to oral testimony and/or application comments?
- Does the board have a form for public comments?
- What are the applicant's responsibilities?
- How are meetings conducted?
- In what papers will public notices be published?

Funds:

- Where is banking done?
- How are funds managed?
- Will the board have a treasurer and what are the responsibilities of a treasurer on the board?
- What fees must the board charge to operate?
- Do we need a tax ID number?
- What is the board's policy for reimbursement of expenses to board members?
- What constitutes reimbursement for travel/training? What approval will be needed for reimbursement?



Board Rules:

- Will the board appoint a chair? Will the person be the primary contact? Speak for the board? A lead to call special meetings?
- Will the board need a recorder? Will the person record the minutes?
- Does the board want to have someone to follow new developments in new legislation, rules, guidance, policies?
- Does the board want to assign a lead for SEPA?
- Who will respond to requests for public information?
- Will the board want to be involved in how an alternate is chosen?
- Who will be responsible for mailing?
- How are files maintained?
- Does the board want to hire staff?

Miscellaneous:

- When is business of the board complete? Is it based on Department of Ecology's final decision? When will they send all original records to Department of Ecology?
- How will the board handle dispute resolution within the board?
- Does the board want to require additional training beyond the minimum provided in statute and rule?

Bylaws Template: Note to preparer: This bylaw template is provided to assist the board. Responsibility for the contents rests solely with the board. This template for bylaws is provided to water conservancy boards as a guide only and is not intended to be comprehensive. The document language may be altered, changed, amended, added to, or deleted to meet the needs of each individual board.

THE BYLAWS OF THE [BOARD NAME] WATER CONSERVANCY BOARD

Section 1.0 Authorization for [Board Name] Water Conservancy Board

1.1 As approved by Resolution [resolution number] of the [County Name] County Commissioners, dated [resolution date], the [Board Name] Water Conservancy Board (hereafter "Board") is established under Chapter 90.80 RCW as a public corporate and politic and a separate unit of local government in the state. Conduct and operations of the Board shall be in compliance with Chapter 90.80 RCW. The Board shall process and make decisions on water right change applications in compliance with applicable water law and subject to review by the Director of the Washington State Department of Ecology.

Section 2.0 Board purpose and objectives

2.1 The Board shall expedite the administrative process for voluntary water right transfers by or among water right holders thereby providing greater operational control to local water managers and water right holders.

2.2 Voluntary water right transfers allows for the reallocation of the use of water in a manner that provides the opportunity for more efficient management of water resources, reduction of water shortages, the savings in capital outlays, and reduction of development costs, as well as provides an incentive for investment in water conservation efforts by water right holders.

Section 3.0 Board commissioner roles, responsibilities, and delegations

3.1 The Board shall consist of [3 or 5] commissioners as decided and appointed by the [County Name] County Commissioners to serve six-year terms. Up to two alternate positions may be established by appointment at the discretion of the county commissioners.

3.2 The Board commissioners must identify a primary contact of the Board as a point of contact for the public, the Department of Ecology (hereafter “Ecology”), and all interested parties. The Board shall provide any changes of the primary contact to Ecology for publication on the Internet.

3.3 The Board commissioners shall [elect, rotate, other] the positions of [chair, vice chair, secretary, treasurer, etc.] [identify how often - annually, two-years, when turnover occurs, etc]]

3.4 The chair of the board shall be responsible for maintaining parliamentary procedure protocol throughout the meeting using [general rule of parliamentary procedure, Roberts rules of order, etc.]. Board commissioners and meeting attendees may speak when recognized by the chair.

3.5 The duties of the [chair, vice chair, secretary, treasurer, etc.] shall include [primary contact, lead meetings, set agenda, call special mtgs, follow new leg, rules, policies? SEPA lead? negotiating contracts? etc.]

3.6 The duties of the [chair, vice chair, secretary, treasurer, etc.] shall include [primary contact, lead meetings, set agenda, call special mtgs, follow new leg, rules, policies? SEPA lead? maintain current balance sheet? treasurer's report, minute taking, negotiating contracts? etc.]

3.7 The duties of the [chair, vice chair, secretary, treasurer, etc.] shall include [primary contact, lead meetings, set agenda, call special mtgs, follow new leg, rules, policies? SEPA lead? maintain current balance sheet? treasurer's report, minute taking, negotiating contracts? etc.]

3.8 The Board [may or will] contract for administrative services through [a formal interview, bid process, etc.] , The administrative services may include [meeting minutes, develop meeting agendas, serve as primary contact for Board, maintain Board records, and other tasks respond to public records requests, prepare application packets and other materials for the bd, and other admin tasks identified by bd]

3.9 The Board [may or will] contract for [any other services your Board may contract for e.g., attorneys]. The services may include [identify tasks of contractor].

3.10 Board commissioners and alternates serve without compensation except as noted in Section 4.0.

3.11 A Board commissioner or alternate who has an ownership in a water right subject to an application for transfer of change filed with the Board shall not participate in the Board's decision making process, including deliberations, discussions, considerations, reviews, evaluations, and final actions as stated in RCW 42.30.020(3).

3.12 Board commissioners or alternates may not represent or advocate for a water right change applicant before the Board and will make objective decisions based on water law, unless otherwise recused from taking action on the water right change application with respect to RCW 90.80.120.

Section 4.0 Funding

4.1 As allowed under RCW 90.80.060, the Board may accept grants and may adopt fees for processing applications for transfers of water rights to fund the activities of the Board. As allowed the Board sets the following fee schedule:

[\$Amount] – Identify how your Board wants to set a fee schedule and how much. Look at the overall economy of the county, what applicants can generally afford, the costs your Board expects such as copies, travel expenses, paying for contracted services, etc. Examples of a fee schedule might be one of the following

- a. Application fee with application + processing fee*
- b. Application fee with application + processing fee + public notice costs*
- c. A flat rate and return any unused portion to the applicant*
- d. Sliding fee scale based on cfs or gpm.*
- e. Other creative ways of setting fees.*

4.2 Funds collected by the Board shall be managed:



Identify how you want to manage your funds such as:

Identify bank where funds are located?

Who will manage the treasury of the Board? The treasurer, admin support?

Signature authority for writing checks?

Who deposits the checks?

Do we want the county to manage it for us and are they willing?

Do we need a tax identification number (check with IRS or state auditor)?

4.3 Funds collected by the Board may be used in accordance with RCW 90.80.060 and to fund the activities of the Board. Those activities include reimbursement for necessary travel expenses and costs incident to receiving training as allowed under RCW 90.80.050(4).

4.4 Board commissioners and alternate shall request [in writing, other?] reimbursement from the Board presented at an open public meeting. With approval of a [majority or majority of the quorum] of the Board, the Board may reimburse the Board commissioner or alternate.

4.5 The written request for reimbursement shall include:

- a. Travel - Per diem and travel expenses in accordance with RCW 43.03.0650 and 43.03.060 and shall not exceed per diem rates as set by the Washington State Office of Financial Management. The written request shall identify the purpose for the travel as it relates to the work of the Board. Any hotel receipts shall accompany the written request.
- b. **With the original receipt, Board commissioners and alternates may be reimbursed for costs incurred for equipment and items purchased for the exclusive use of the Board.**

4.6 Funds collected by the Board are considered public funds and shall be maintained and tracked by the Board. The Board will respond to requests about the Board's funding from the state auditor and other public records requests as required by law.

4.7 All financial transactions, including funding for board operations, shall be approved during a public board meeting and implemented by the Board.

Section 5.0 Board Operations

5.1 The Board will meet [mtg dates and time, e.g. every 3rd Tuesday at 4 p.m.] at [location with address]. The Board shall publish its meeting schedule annually as required by Chapter 42.30 RCW, the Open Public Meetings Act, in a newspaper with general circulation in [County Name] County.



5.2 As required under WAC 173-153-100, at the beginning of any meeting or hearing in which any application to change or transfer a water right is to be discussed, or upon which a decision is to be made, those individuals in attendance must be informed that any known allegations of conflict of interest must be expressed in that meeting or hearing or their right to do so may be forfeited in accordance with RCW 90.80.120(2)(a).

5.3 Applications for water right changes and transfers and all other correspondence should be submitted to the Board at [Name and address where to submit applications] or at an open public meeting of the Board.

5.4 The Board can be contacted as follows: [Name, address, phone, email, fax]. The Board will provide this information to Ecology as required under WAC 173-153-100(4).

5.5 Applications will be accepted for processing by the Board upon submittal of:

- a. A complete and legible state water right change application form.
- b. An application form with all required signatures.
- c. Duplicate copies of a map of the project.
- d. A separate application for each water right to be changed.
- e. *Application fee, if applicable*
- f. *The number of copies requested by the board (e.g., one each for board members, interested parties, Ecology, etc.)*
- g. *Additional information as requested by the Board, including a supplemental application form requesting.*

5.6 The Board [Pick One or fill in your own]

- *Will review all documents, conduct all pertinent investigations, and write the report of examination independently. The Board may request the applicant to provide additional information or seek assistance from a hydrogeologist or other professional in order to provide the information needed by the Board to make a record of decision.*
- *Will require the applicant to participate in the investigation and provide a draft report of examination to the Board. The Board will review the report and may amend the report as necessary to meet statutory and regulatory requirements.*

5.7 By a majority vote of the quorum, the Board may decline to process an application or discontinue processing an application at any time. The Board will notify the applicant in writing of the decision including the option of filing with Ecology. This notification must be made within 14 business days of making the decision.



5.8 All records of the Board shall be maintained by [position on board responsible for record keeping] in [location of Board files and records].

5.9 Records of each Board meeting shall be [tape records and transcribed or documented in notes taken by XXXXXX] and made available within the Boards records.

5.10 Meetings of the board will follow the general rules of parliamentary procedure.

5.11 Applications accepted by the Board for processing will be [assigned to a board commissioner living closest to the project; assigned on a rotational basis to each member; assigned to a requesting members, etc.]

5.12 The Board shall provide the original application to Ecology for its files, keep copies for the board, and provide notice or copies of the application to the Washington State Department of Fish and Wildlife, Tribes, and other interested parties as identified by Ecology or interested parties who have made themselves known directly to the Board.

5.13 The Board shall publish public notice in the [Newspaper Names] newspaper(s) with general circulation within the county. For water right applications proposing transfers across county lines, the Board will publish in [Newspaper Names].

5.14 Upon making a record of decision on a water right transfer application, the Board shall give Ecology all original documents including the record of decision, report of examination, affidavit of publication, maps, photos, notes, emails, reports, protests or comments received, and all other documentation used to make the final record of decision. The Board [will or will not] maintain copies of records of decision or reports of examination including [maps, photos, and documents related to the water right].

5.15 The Board's work on the application is complete [upon Ecology's final decision, upon the end of the appeal period, upon transferring all original documents to Ecology (but what about withdrawals?), etc.]

Section 6.0 Public information

6.1 Public records requests for the Board may be submitted to the address identified in section 5.2. The Board will respond to requests in compliance with Chapter 42.56 RCW, Public Records Act.

6.2 Public comments regarding an application for change currently before the Board may be submitted verbally or in writing at any open public meeting of the Board to discuss or decide on the application in reference to RCW 90.80.070(3).



6.3 The applicant has sole discretion whether to apply with the Board or with Ecology.

6.4 Applications for water transfers, filed with the Board, shall be made on a form provided by Ecology and shall contain sufficient information as required by the Board to act upon the application. The application shall include information sufficient to establish to the Board's satisfaction that the application's right to the quantity of water being transferred, a description of any applicable limitations on the right to use water, including, among other, the point of diversion or withdrawal, place of use, source of supply, purpose of use, quantity of use, season of use and if applicable, place of storage.

6.5 The Board is available to respond to inquiries [at a public meeting of the board; by contacting the primary contact of the board, etc.]

Section 7.0 Amendments to the bylaws

7.1 These bylaws may be altered, amended, or repealed by a majority vote of the Board at a regular or special meeting of the Board.

Section 8.0 Effective date

8.1 These bylaws shall take effect immediately upon approval by a majority of the Board.

The [Board Name] Water Conservancy Board bylaws were reviewed and approved at an open public meeting of the Board on [date of meeting].

Chair

Commissioner

Commissioner

Commissioner

Commissioner

State Auditor Resources

BARS GAAP Manual Links: The following is the table of contents to the BARS GAAP Manual. Each hyperlink will redirect to the online Office of the Washington State Auditor website and connect to the BARS GAAP Manual.

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Local Government Resources: <http://mrsc.org/Home.aspx>

Financial Intelligence Tool: <https://portal.sao.wa.gov/FIT/>



Member Responsibilities

Training Credit Request Form:



Water Resources Program **Water Conservancy Board** **Training Credit Request**

FOR ECOLOGY USE (Date Stamp)
Training Hours Credited: _____

Send completed form to: Department of Ecology, Water Resources Program,
Water Conservancy Board Coordinator, 1250 W. Alder St., Union Gap, WA 98903-0009

Board Member Information:		
Name:	Phone No:	Other No:
Board Name:	Appointment Date:	
Email Address (optional):		
Training Activity Information:		
Title of Training Activity:		
Training Location	City:	State:
Training Activity Date(s):	Total Hours:	
Content/Description: (Attach course documentation if available or summary of activity)		
How does this training relate to your work on the Water Conservancy Board?		
Sponsor of activity: <input type="checkbox"/> Other State Agency <input type="checkbox"/> Federal Government <input type="checkbox"/> Educational Institute <input type="checkbox"/> Other: (Please list agency):		
Instructor type: <input type="checkbox"/> Contractor Instructor <input type="checkbox"/> Author of Reading Material <input type="checkbox"/> Ecology Employee <input type="checkbox"/> State Employee <input type="checkbox"/> Federal Employee <input type="checkbox"/> College Instructor <input type="checkbox"/> Other/Unknown Instructor's or Author's Name (if known):		
Signature:		
Date	Printed Name	Signature



Legislative Training

Guide for Reading a Legislative Measure

Washington State Legislative Measure:

	BILL NUMBER: Each bill is assigned a number for identification.
SENATE BILL 7999	PRIME SPONSOR: The member of the Legislature who first introduced the bill.
State of Washington 59th Legislature 2005 Regular Session By Senators <u>Green</u> and <u>Blue</u> (by request of Department of _____)	CO-SPONSOR(S): The member(s) of the Legislature who join the prime sponsor in introducing the legislation.
Read first time 01/10/2005. Referred to Committee on Government Operations & Elections. 1 AN ACT Relating to the board of accountancy; amending RCW 2 18.04.180; adding a new section to chapter 18.04 RCW; repealing RCW 3 18.04.183 and 18.04.320; and providing an effective date.	AGENCY REQUEST: Indicates that bill was requested by an executive branch agency (legislative sponsor still required).
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:	REFERRAL: The date the bill was introduced and to which committee it was referred.
5 Sec. 1. RCW 18.04.180 and 2004 c 159 s 3 are each amended to read 6 as follows:	BILL TITLE: Identifies the subject of the legislation and how it affects the Revised Code of Washington (RCW).
7 (1) The board shall issue a license to a holder of a 8 certificate/valid license issued by another state that entitles the 9 holder to practice public accountancy, provided that: 10 (a) Such state makes similar provision to grant reciprocity to a 11 holder of a valid certificate or license in this state; 12 (b) The applicant meets the CPE requirements of RCW 18.04.215(5); 13 (c) The applicant meets the good character requirements of RCW 14 18.04.105(1) (a); and 15 (d) The applicant passed the examination required for issuance of 16 his or her certificate or license with grades that would have been 17 passing grades at that time in this state and meets all current 18 requirements in this state for issuance of a license at the time 19 application is made; or at the time of the issuance of the applicant's 20 license in the other state, met all the requirements then applicable in 21 this state; or has three years of experience within the five years 22 immediately preceding application or had five years of experience 23 within the ten years immediately preceding application in the practice 24 of public accountancy that meets the requirements prescribed by the 25 board.	ENACTING CLAUSE: This states who intends to make this bill a law. It will either be by the people of the state or by the Legislature.
26 (2) The board may accept NASBA's designation of the applicant as 27 substantially equivalent to national standards as meeting the 28 requirement of subsection (1) (d) of this section. 29 (3) A licensee who has been granted a license under the reciprocity 30 provisions of this section shall notify the board within ((thirty)) 31 sixty days if the license or certificate issued in the other 32 jurisdiction has lapsed or if the status of the license or certificate 33 issued in the other jurisdiction becomes otherwise invalid.	AMENDATORY HEADING: Also known as the "jingle," recites both the most recent session law and RCW citation being
34 35 NEW SECTION. Sec. 2. A new section is added to chapter 18.04 RCW 36 to read as follows: 37 Each member of the board shall be compensated in accordance with 38 RCW 43.03.240 and shall be reimbursed for travel expenses incurred in 39 the discharge of such duties in accordance with RCW 43.03.050 and 40 43.03.060.	EXISTING LAW: The text of the current RCW to be amended.
41 NEW SECTION. Sec. 3. The following acts or parts of acts are each 42 repealed: 43 (1) RCW 18.04.183 (Accountants from foreign countries) and 2001 c 44 294 s 9, 1999 c 378 s 3, & 1992 c 103 s 18; and 45 (2) RCW 18.04.320 (Actions against license--Procedures) and 1986 c 46 295 s 13, 1983 c 234 s 14, & 1949 c 226 s 31.	DELETED LANGUAGE: Lined-out phrases are proposed deletions to existing law.
47 NEW SECTION. Sec. 4. This act takes effect July 1, 2006. 48 49	NEW LANGUAGE: Underlined phrases are proposed new language to existing law.
---END---	NEW SECTION: Proposed new language to be added as a new section to the existing RCW.
	REPEALER: The section of a bill that lists which RCW sections are to be removed from state law by the proposed legislation.
	EFFECTIVE DATE: The date the bill becomes a law.

SB 7999

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Office of the Code Reviser/Senate Production Services-Revised 11/09/20



Types of Measures:

Bill: A proposed law presented to the Legislature for consideration; it may originate in either house.

Joint Memorial: A message or petition addressed to the president, Congress, or the head of any other agency of the federal or state government, asking for consideration of some matter of concern to the state or region. Proposed amendments to the U.S. Constitution are also in the form of joint memorials.

Joint Resolution: An act of the legislature which proposes an amendment to the state constitution for reference to the people for acceptance or rejection. Joint resolutions must receive a two-thirds affirmative vote in each house.

Concurrent Resolution: A resolution relating to the internal operation of the legislature, in which one house concurs in the action of the other; it may originate in either house.

Floor Resolution: A resolution adopted by either house usually honoring or commemorating an individual, organization, or event. It also may call for some type of action.

Initiative: A legislative power vested in the people. There are two types: (1) initiative to the people, which goes directly to the voters without consideration by the legislature; and (2) initiative to the legislature, which is considered by the legislature at its next regular session, and if not enacted, is placed on the next general election ballot.

Definitions of Terms:

Amendment: Any change in a bill, resolution or memorial. A committee amendment is an amendment proposed in a committee meeting. A floor amendment is an amendment proposed on the floor of a legislative chamber.

Striking Amendment: Amendment removing everything after the title and inserting a whole new bill.

HB: Abbreviation for House Bill.

SB: Abbreviation for Senate Bill.

S (Substitute): A new bill is proposed by a committee to replace the original one. The substitution must be approved by the entire body.



E (Engrossed): Incorporates amendments that were passed by the house of origin (where the bill was introduced).

Scope and Object: If an amendment offered to a proposed bill does not relate closely to the content of the bill, a member may raise “scope and object.” The president then rules if the amendment is “in order” or “out of order.”

Enacted: When a bill is passed by both houses of the legislature and signed by the governor.

New Section: Proposed new language to be added as a new section to existing law.

Veto: Partial or complete rejection of a bill by the governor. The governor has the power to veto sections of bills but cannot make any additions.

Override: The legislature can override the governor’s veto with a two-thirds vote of both houses.

How a Bill Becomes a Law

Washington State Legislative Process: For more information, see [Legislative Process Overview](#), [Reed's Parliamentary Rules](#), and [Civic Education Page](#).

1. A bill may be introduced in either the Senate or House of Representatives by a member.
2. It is referred to a committee for a hearing. The committee studies the bill and may hold public hearings on it. It can then pass, reject, or take no action on the bill.
3. The committee report on the passed bill is read in open session of the House or Senate, and the bill is then referred to the Rules Committee.
4. The Rules Committee can either place the bill on the second reading calendar for debate before the entire body, or take no action.
5. At the second reading, a bill is subject to debate and amendment before being placed on the third reading calendar for final passage.
6. After passing one house, the bill goes through the same procedure in the other house.
7. If amendments are made in the other house, the first house must approve the changes.
8. When the bill is accepted in both houses, it is signed by the respective leaders and sent to the governor.
9. The governor signs the bill into law or may veto all or part of it. If the governor fails to act on the bill, it may become law without a signature.

Washington State Legislative Process Overview: The Washington State Legislature is made up of two houses (or chambers), the [Senate](#) and the [House of Representatives](#). Washington has 49 [legislative districts](#), each of which elects a Senator and two Representatives. Senators serve four-year terms and Representatives serve two-year terms. The Senate and House of



Representatives meet in session each year to create new laws, change existing laws, and enact budgets for the State.

The legislative cycle is two years long. Within that two-year cycle, there are two kinds of legislative sessions: regular sessions and extraordinary, or special, sessions. Regular sessions are mandated by the State Constitution and begin the second Monday in January each year. In the odd-numbered year, for example, 2005, the regular session is 105 days; in the even-numbered year, for example, 2006, it is 60 days. Extraordinary sessions are called by the Governor to address specific issues, usually the budget. There can be any number of extraordinary sessions within the two-year cycle, and they can last no more than 30 days. To see the legislative calendar for the most recent session, go to the [Cut-off Calendar](#) on the Agendas, Schedules, and Calendars page.

The members of the House and Senate offer legislation, or [bills](#), for consideration. The ideas for bills come from a number of places: something has happened in the last year that inspires new legislation (for instance, the change in people's perception of crime gave rise to the youth violence bills that were offered during the 1994 Session), a member wishes to address an issue that is specific to his or her district, the Legislature decides to tackle a major issue (such as regulatory reform), changes in technology dictate a change in the State's laws, etc.

Once a member introduces a bill, the legislative process begins. The process has a number of specific steps. If the bill makes it through all the steps in the chamber in which it was introduced (the "first house"), it goes to the other chamber (or "second house") and goes through the same steps there. Each step is identified and explained below.

Prefiling: Members can prefile bills for introduction in the month before session begins. Prefiled bills are officially introduced the first day of the session.

Introduction, or First Reading: The first thing that happens to bills on the "floor" is introduction and referral to committee. This is also referred to as the bill's first reading. (Bills must have three readings in each house in order to pass the Legislature.)

Leadership determines to which committees bills will be referred; this is usually determined by the bill's subject matter. Bills that require an appropriation or that raise revenue must also go to a fiscal committee for review.

To see which bills will be introduced for the upcoming legislative day, go to the [Agendas, Schedules, and Calendars](#) page and display House Introductions or Senate Introductions.



Committee Action: The chair of each committee works with leadership and staff to schedule bills to be heard by the committee. Committees hold three kinds of meetings: (1) work sessions, where issues are determined and reviewed; (2) public hearings, where testimony from interested parties is taken; and (3) executive sessions, where the committee decides how it will report the bill to the whole house. Not all bills get scheduled for hearing, so a good number of bills never get any further than committee.

Bills can be reported in several fashions, the most usual being do pass (pass the bill just as it is), do pass as amended (pass the bill as amended by the committee), and do pass substitute (the committee offers a different version to take the place of the original bill). The members on the prevailing side sign the "majority" report; those members who disagree with the majority sign the "minority" report. Not all bills coming out of committee have minority reports. To see a list of bills reported out of House or Senate committee each day, go to [Standing Committee Reports](#).

As a bill moves through the committee process, the staff prepares the "bill report." The bill report includes a legislative history of the bill, background on the issue, a summary of the legislation, the names of those who testified on the bill, and a summary of the testimony for and against the bill. The bill report is edited as the bill moves through the process. When the bill moves to the opposite house, that house prepares a bill report as well. A bill that has finally passed the Legislature would have House, Senate, and Final bill reports.

At the start of the session, both houses agree on dates by which bills have to be reported out of committee in order to be eligible for further consideration by the Legislature. There is a "cut-off" date for bills to be out of committee in the first house and one for bills to be out of committee in the second house.

Rules Committee: Once a bill has been reported by the appropriate committee(s), the floor acts on the committee report and then passes the bill to the Rules Committee. Usually, the floor adopts the committee's recommendation.

The Rules Committee is where leadership exercises the most control over the process. The Rules Committee is made up of members from both parties. Each member on the committee gets to select two or three bills that will move on to the next step in the process. Which bills a member selects could be the result of a party caucus, or another member approaching that member, or a piece of legislation about which the member feels strongly.

Rules Review /Rules White: The first step in the Rules Committee process is called Rules Review in the House and Rules White in the Senate (the report that lists the bills in this step in the



Senate is printed on white paper). Rules Committee members review the bills and decide whether or not to move them on to the next step.

Rules Consideration /Rules Green: The next step is called Rules Consideration in the House and Rules Green in the Senate (the report is printed on green paper). Sometimes bills skip this step and go to the calendar for second reading. It is another step that allows leadership to control the process.

Calendars/Bill Report Books: The Rules Committee decides which bills will be scheduled for second reading. Those bills that will probably require some debate are placed on the regular calendar. Those that are probably not controversial may be placed on the suspension calendar in the House, the consent calendar in the Senate. The Rules Committee also decides whether a bill will be placed on the regular calendar or the suspension/consent calendar.

Each house prepares documents that list the bills scheduled to be heard on the floor. The House prepares "bill report books" (containing an order of contents and the bill report of each bill on the calendar) and "floor calendars" (a list of the bills, a brief description for each, and the committee action on each). The Senate prepares "calendars" (with an order of contents and the bill report of each bill), and "flash calendars" (the list with the brief descriptions and committee actions). The Senate flash calendar lists only those bills that were "pulled" from Rules at the last Rules Committee meeting. To see which bills are on the calendar in either house, go to [House Floor Activity Report](#) or [Senate Floor Activity Report](#).

Second Reading: It is on second reading that the chamber discusses the merits of the legislation. It is here, too, where members can offer amendments to the bill. Most bills that get this far get their second reading in the couple of weeks following the committee cut-off. If a bill has been amended in committee or on the floor in the first house, it is ordered engrossed. Engrossing a bill means incorporating the amendments into the body of the bill so that the second house gets one document. If a bill has been amended in the second house, it is returned to the first house with the amendments attached so that the first house can decide whether or not it wishes to agree with the changes the second house made.

Third Reading: Third reading is where the roll call vote on final passage is taken. If the bill finally passes, it continues in the process. If the bill fails on final passage, it goes no further. Under certain circumstances, the chamber may decide to reconsider the vote that was taken; in that case, the chamber has twenty-four hours to make a motion to reconsider the bill.

If the bill passes third reading in the second house and the second house did not amend the bill, the bill has passed the Legislature.



At the start of the session, both houses agree on "cut-off" dates by which bills have to be finally passed out of the first house and finally passed out of the second house.

Concurrence, Dispute, and Conference Committees: If the bill has been amended by the second house, the first house has to decide whether it will concur in the amendments or not.

Leadership decides which bills returned from the second house will be discussed and places those bills on the concurrence calendar (House) or concurring calendar (Senate). If the first house concurs in the amendments, the bill has passed the Legislature.

If the first house disagrees with the second house, it can ask the second house to recede from the amendments. If the second house recedes, the bill has passed the Legislature.

If the two houses cannot resolve their differences, one of them can ask for a conference committee. Members from each house meet to discuss the differences. If they agree on what is to be done, the conference committee makes a report. Both houses must adopt the conference committee report for the bill to pass the Legislature. If one house does not adopt the conference committee report (whether by vote or inaction), the bill has not passed. The House Floor Activity Report and the Senate Floor Activity Report list the bills on the concurrence, dispute, and conference calendars.

Enrolling: Once a bill has finally passed the Legislature, it is enrolled. A certificate proclaiming that it has passed is attached and, if necessary, the amendments from the second house or conference committee are incorporated into the body of the bill. The bill is signed by the Speaker of the House, the Chief Clerk of the House, the President of the Senate, and the Secretary of the Senate and is sent to the Governor for his or her action.

Governor's actions: The Governor reviews the bill. The Governor may decide to sign it, veto part of it, or veto all of it. If the Governor vetoes part or all of it, the Legislature may vote to override the veto. (That happens rarely.) If the governor does not act on a bill after the allotted number of days, it is as if it was signed. From the Governor's desk, bills go to the Secretary of State who assigns a session law chapter number. The Chapter to Bill Table (available on the [Bill/Law Cross Reference](#) page) lists the bills that have passed the Legislature, the chapter numbers assigned by the Secretary of State, vetoes, short descriptions, and the effective dates.

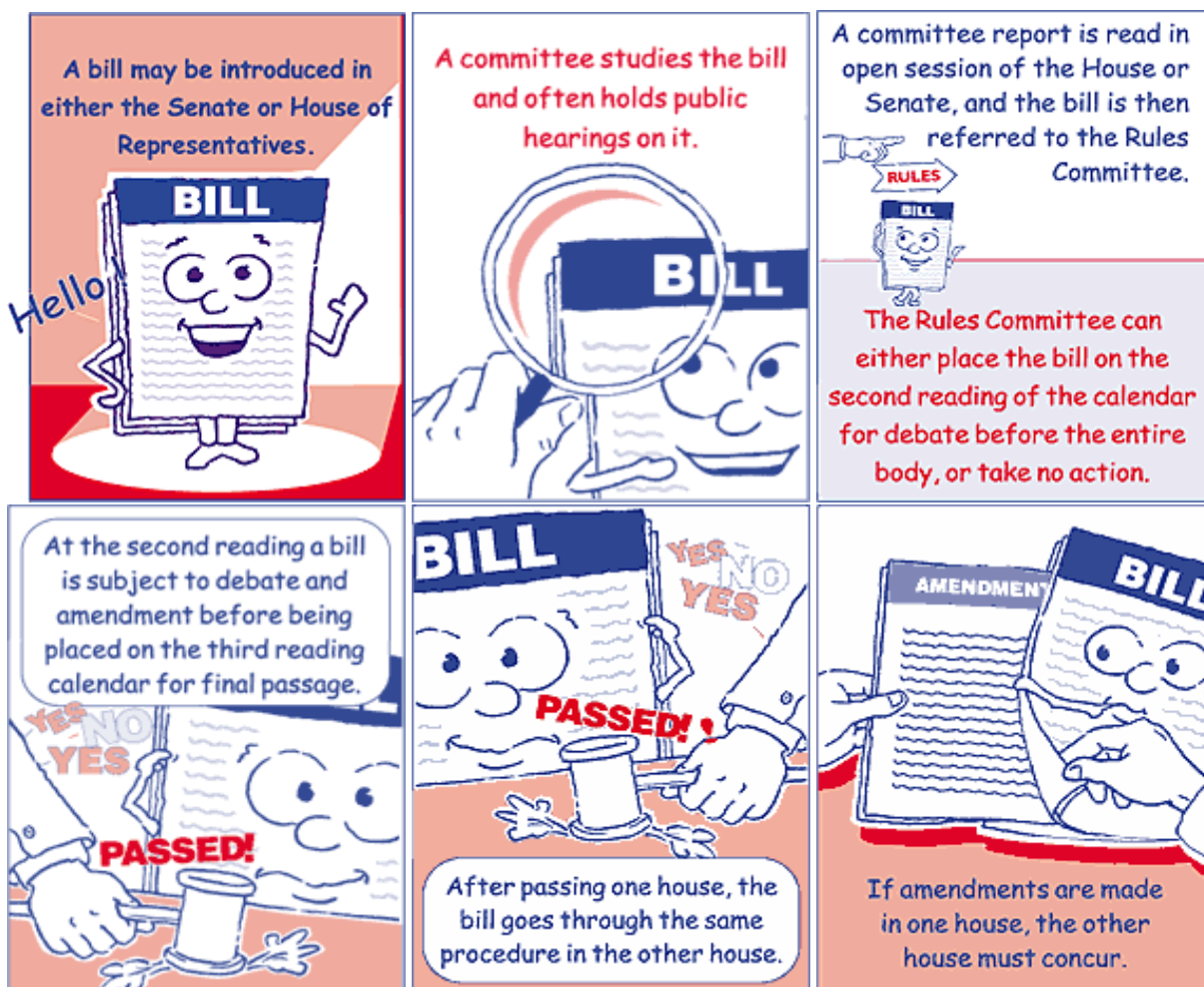
Carryover: The Legislature works within the framework of a two-year cycle. For instance, the 2005-06 Session is the 59th Session of the Legislature. There will be a least two regular sessions, a "long" session in 2005 (105 days) and a "short" session in 2006 (60 days). There could also be any number of special sessions, none of which can last longer than 30 days.

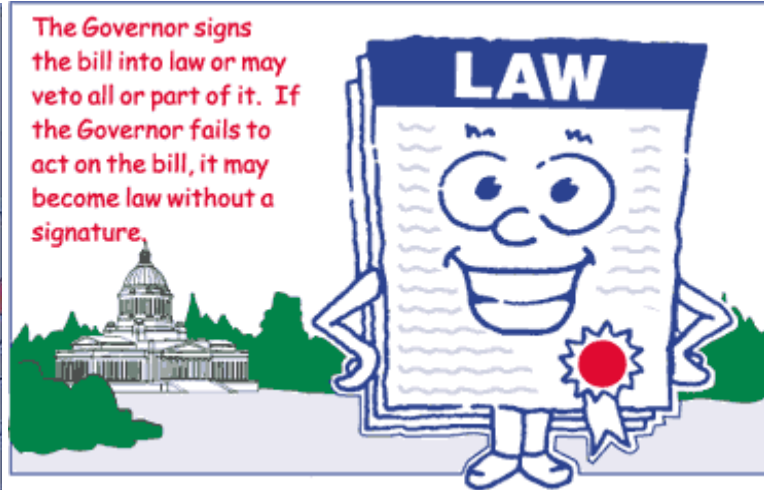


Therefore, just because a bill did not make it all the way through during the regular session in the odd-numbered year (for example, 2005) does not mean it is "dead." At the end of the session, all bills in the second house are returned to the first house; so a House bill in committee in the Senate when session ends is returned to the House. At the start of the next session, be it a special session or the next regular session, bills from the previous session are reintroduced and retained in their present position.

"Carryover" bills can be taken up again in subsequent sessions during the biennium. The Legislature has a lot of latitude with these bills. The first house can place the bill on the calendar for third reading and send it right back to the second house, or it can make the bill go to committee and through the whole process again.

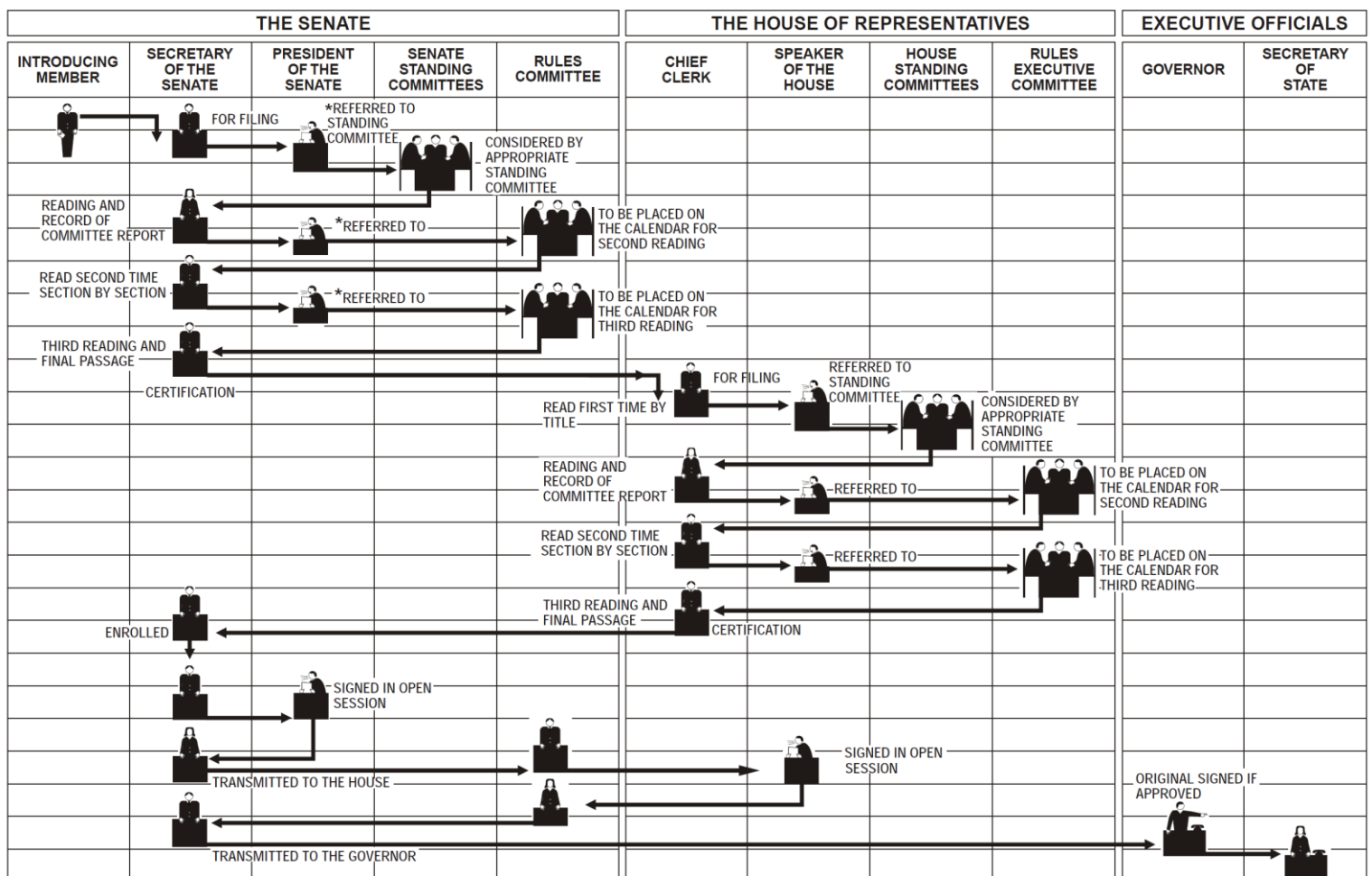
This is in addition to the new bills introduced during the current session. This procedure can make it difficult to keep track of bills during a special session or the second regular session. If a bill does not make it through the process by the end of the two-year cycle, it is "dead."





The Course of a Bill

Washington State Legislative Measure:



The above procedure for a noncommittee bill introduced in the Senate is the simplest possible, neither veto nor amendment has occurred. If such a bill is introduced in the House, the Chief Clerk would perform essentially the same functions as the Secretary of the Senate as indicated above, and the action of the Senate thereon would occur after passage thereof by the House.

GIVES BILL CHAPTER NUMBER IN SESSION LAWS PERMANENTLY FILED



How to Testify in Committee

Click [Legislative Meeting Schedules and Calendars](#) for individual committee agendas and daily and weekly meeting schedules.

"Open" Legislature: Washington State has one of the most open legislatures in the country. A bill has a public hearing before Senate and House committees before being considered on the floor of the House and Senate. Your opportunity to testify comes at the committee hearings. If you cannot appear before a committee, contact your legislator making your position on a bill known. You can do so by writing a letter, sending an e-mail, calling the legislator's Olympia office, or by calling the Legislative Hotline at 800.562.6000.

[Senate Committees](#) usually meet in hearing rooms in the John A. Cherberg Building and [House Committees](#) usually meet in the John L. O'Brien Building. Both buildings are adjacent to the Legislative Building in Olympia.

Committee Hearings: Legislative hearings are conducted informally. The rules are somewhat relaxed, but are intended to help preserve decorum and allow respectful, courteous debate. (Reminders of hearing room rules are [here](#) for the House and [here](#) for the Senate.) Anyone can testify; you do not need formal training.

To find out when a hearing is scheduled:

- Click [Schedules of committee hearings](#) to obtain electronic copy of the weekly and daily schedules.
- Go to the Legislative Information Center, 110 Legislative Building, to get paper copies.
- Call the toll-free Legislative Hotline number (1.800.562.6000).
- Inquire in person or by phone in the Legislative Information Center 110 Legislative Building (360-786-7573).
- Subscribe to the [Legislature's Committee E-mail Notification Service](#).

The Legislative Information Center also has copies of bills for distribution. Be sure to ask for any pending amendments or substitutes to particular bills. LIC will make copies for free for the first 30 pages; after 30 pages the charge is 15 cents per page.

Notices of interim committee hearings are sent out by committees between legislative sessions and are available via the Legislature's Committee E-mail Notification Service (Listserv).

Before the Hearing: Are You a Lobbyist? Generally, if you are testifying on a bill or issues and represent only yourself, you will not be required to register as a lobbyist.

A [Public Disclosure Commission](#) (PDC) brochure outlines guidelines on this subject:



You do not have to register and report if you:

1. appear only before public meetings of legislative committees or state agencies, or
2. do not receive pay, expenses or other consideration for lobbying and make no expenditure for on behalf of a legislator, elected official or state employee in connection with lobbying, or
3. restrict your lobbying to four days during any three-month period and spend no more than \$35 for or on behalf of a legislator, elected official or state employee.

A copy of the PDC brochure is available through the Legislative Information Center, or you may check with the PDC if you're uncertain. The PDC provides [online information for lobbyists](#) as well.

Prepare Your Remarks. Time is usually limited, so be brief and direct. Written testimony should not be read at committee hearings. Committee staff will distribute copies of written testimony to members of the committee if you bring a sufficient number -- one for each member. Writing your comments in outline form will be helpful when you speak, and you should summarize your written testimony.

Avoid Duplication. If other persons will be offering similar testimony at the hearing, try to coordinate your testimony and avoid duplication. Well organized testimony is the most effective.

At the Meeting:

- Be punctual; usually there is only one public hearing at which testimony is taken on a particular bill.
- Sign-in is now done electronically in all committees. You may:
 - (1) Go to one of the Committee Sign-In kiosks located in the main hallway of the Cherberg Building and the O'Brien Building, each Senate and House hearing room, or the first floor of the Legislative Building and the Pritchard Building; or
 - (2) Access the [Committee Sign-In Program](#) from a web-enabled device (smartphone, laptop or tablet), only while on campus and connected to the Legislature's WSLPublic wireless Internet network
- Click [Committee Electronic Sign-In Instructions](#) to obtain more detailed instructions or for information on how to create an optional Committee Sign-In account.
- Check to see if copies of proposed amendments or substitute bills are available.
- Take your written materials to the committee staff for distribution.
- Talk to the committee staff if you are going to be using the presentation equipment.

How the Meeting Is Conducted: Be present at the beginning of the hearing. The committee chair will open the hearing on a particular bill. Frequently, opening comments will be made by



the bill's sponsor or by committee staff. Sometimes, however, the chair will ask for testimony from proponents and opponents immediately.

The chair will organize the hearing to ensure

1. that the committee members hear relevant information,
2. that interested persons are given the opportunity to express their positions, and
3. that the hearing does not exceed the time available.

Most committee hearings are limited to two hours and may have several matters pending. The chair will attempt to be fair and provide each person an opportunity to testify. It may be necessary, however, to restrict testimony so that everyone is given an opportunity to express his or her opinions. You may be called to testify with others to save time.

Making Your Remarks:

1. Begin by introducing yourself to the chair and committee members and stating your purpose. For example,

"Mr. or Madam Chair and members of the committee, I am John Doe from Spokane. I am here representing myself. I support this bill because . . ."

2. In your opening remarks, make it clear whether you are representing other citizens or a separate group.
3. Be brief and be sure your remarks are clear. Avoid being too technical and do not repeat previously made remarks. You do not need to be nervous or worried about how you present your testimony.
4. Be prepared for questions and comments from committee members. These are designed to gain additional information, but don't answer if you are not sure of the answer. Tell the members you will send a written answer to the committee, and then follow through.
5. Restrict yourself to your testimony. Abstain from other overt demonstrations such as clapping, cheering, booing, etc.

How to Submit Written Testimony: If you are unable to attend a committee meeting, you may use the following method for submitting written testimony:

In the House. Email your written testimony directly to all committee members as well as to the Committee Chair or the Chair's LA. Be sure to include the bill number and your position on the bill. A list of Committee Chairs can be found at this website: <http://app.leg.wa.gov/Rosters/CommitteeMembersByCommittee/House>.

In the Senate. You may email your written testimony directly to committee members as well as to the Committee Chair or the Chair's LA. Be sure to include the bill number and your position



on the bill. Another option is to email your written testimony to committee staff, as an alternative or in addition to submitting testimony to committee members. A list of Senate committees and staff can be found at this website:

<http://leg.wa.gov/Senate/Committees/Pages/default.aspx>.

Your District Members: Please refer to [How to comment on a bill](#) for instructions on submitting bill comments directly to members in your district.



OPMA and PRA Questions and Answers on Open Government Trainings Act

About the OPMA and PRA

Public Records Act: The Washington Public Records Act is one of the strongest open government laws in the nation and reflects the desire of Washington citizens to know what their government is doing. A transparent and accessible government is essential to a successful free society, and fosters trust and confidence in government.

Strong “sunshine laws” are crucial to assuring government accountability and transparency. In Washington State, those laws provide for open public records and open public meetings. Since Washington voters approved the Public Disclosure Act more than 40 years ago, a growing number of exemptions have been added to public records laws.

Also, under the Open Public Meetings Act, some parts of open public meetings may be closed to the public, but only if certain requirements are met.

To assist the public and public agencies in understanding and implementing the sunshine laws, the Office of the Attorney General provides several resources.

The Attorney General's Ombuds Function: The Office of the Attorney General provides an Ombuds function that works with other assistant attorneys general as they advise their clients and coordinates with and offers training to local government on open government issues.

Open Government Training: The Office of the Attorney General provides open government training materials and resources to assist agencies in complying with the laws.

Open Government Resource Manual: The Attorney General’s Open Government Resource Manual was produced by the Attorney General’s Office with the assistance of attorneys representing media and requesters, and local and state government organizations. The manual is a comprehensive, easy-to-read overview intended to help clarify provisions of the law and may prevent future disagreements. This manual provides a general summary and is not intended to provide a complete discussion of every detail of the Public Records Act or Open Public Meetings Act.

2018 Model Rules: The Legislature directed the Attorney General’s Office to develop model rules. The model rules are non-binding best practices to assist records requestors and agencies. The model rules are designed to reduce litigation and assist smaller local governments and citizen requestors by allowing them to avoid “re-inventing the wheel” on



recurring issues, have been adopted and published in the Washington Administrative Code (WAC), chapter 44-14. The model rules were updated in 2018

Open Public Meetings Act Chapter 42.30 RCW

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RCW [42.30.010](#)

Legislative declaration.

The legislature finds and declares that all public commissions, boards, councils, committees, subcommittees, departments, divisions, offices, and all other public agencies of this state and



subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly. The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

RCW [42.30.020](#)**Definitions.**

As used in this chapter unless the context indicates otherwise:

(1) "Public agency" means:

(a) Any state board, commission, committee, department, educational institution, or other state agency which is created by or pursuant to statute, other than courts and the legislature;

(b) Any county, city, school district, special purpose district, or other municipal corporation or political subdivision of the state of Washington;

(c) Any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions, and agencies;

(d) Any policy group whose membership includes representatives of publicly owned utilities formed by or pursuant to the laws of this state when meeting together as or on behalf of participants who have contracted for the output of generating plants being planned or built by an operating agency.

(2) "Governing body" means the multimember board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.

(3) "Action" means the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions. "Final action" means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.

(4) "Meeting" means meetings at which action is taken.

RCW [42.30.030](#)**Meetings declared open and public.**

All meetings of the governing body of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in this chapter.



RCW [42.30.035](#)**Minutes.**

The minutes of all regular and special meetings except executive sessions of such boards, commissions, agencies or authorities shall be promptly recorded and such records shall be open to public inspection.

RCW [42.30.040](#)**Conditions to attendance not to be required.**

A member of the public shall not be required, as a condition to attendance at a meeting of a governing body, to register his or her name and other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

RCW [42.30.050](#)**Interruptions—Procedure.**

In the event that any meeting is interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are interrupting the meeting, the members of the governing body conducting the meeting may order the meeting room cleared and continue in session or may adjourn the meeting and reconvene at another location selected by majority vote of the members. In such a session, final disposition may be taken only on matters appearing on the agenda.

Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the governing body from establishing a procedure for readmitting an individual or individuals not responsible for disturbing the orderly conduct of the meeting.

RCW [42.30.060](#)**Ordinances, rules, resolutions, regulations, etc., adopted at public meetings—Notice—Secret voting prohibited.**

(1) No governing body of a public agency shall adopt any ordinance, resolution, rule, regulation, order, or directive, except in a meeting open to the public and then only at a meeting, the date of which is fixed by law or rule, or at a meeting of which notice has been given according to the provisions of this chapter. Any action taken at meetings failing to comply with the provisions of this subsection shall be null and void.

(2) No governing body of a public agency at any meeting required to be open to the public shall vote by secret ballot. Any vote taken in violation of this subsection shall be null and void, and shall be considered an "action" under this chapter.

RCW [42.30.070](#)**Times and places for meetings—Emergencies—Exception.**

The governing body of a public agency shall provide the time for holding regular meetings by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body. Unless otherwise provided for in the act under which the public agency was formed, meetings of the governing body need not be held within the boundaries of the territory over which the public agency exercises jurisdiction. If at any time any regular meeting falls on a holiday, such regular meeting shall be held on the next business day. If, by reason of fire, flood, earthquake, or other emergency, there is a need for expedited action by a governing body to meet the emergency, the presiding officer of the governing body may provide for a meeting site other than the regular meeting site and the notice requirements of this chapter shall be suspended during such emergency. It shall not be a violation of the requirements of this chapter for a majority of the members of a governing body to travel together or gather for purposes other than a regular meeting or a special meeting as these terms are used in this chapter: PROVIDED, That they take no action as defined in this chapter.

RCW [42.30.075](#)**Schedule of regular meetings—Publication in state register—Notice of change—"Regular" meetings defined.**

State agencies which hold regular meetings shall file with the code reviser a schedule of the time and place of such meetings on or before January of each year for publication in the Washington state register. Notice of any change from such meeting schedule shall be published in the state register for distribution at least twenty days prior to the rescheduled meeting date. For the purposes of this section "regular" meetings shall mean recurring meetings held in accordance with a periodic schedule declared by statute or rule.

RCW [42.30.077](#)**Agendas of regular meetings—Online availability.**

Public agencies with governing bodies must make the agenda of each regular meeting of the governing body available online no later than twenty-four hours in advance of the published start time of the meeting. An agency subject to provisions of this section is not required to post an agenda if it does not have a web site or if it employs fewer than ten full-time equivalent employees. Nothing in this section prohibits subsequent modifications to agendas nor invalidates any otherwise legal action taken at a meeting where the agenda was not posted in accordance with this section. Nothing in this section modifies notice requirements or shall be construed as establishing that a public body or agency's online posting of an agenda as required by this section is sufficient notice to satisfy public notice requirements established under other laws. Failure to post an agenda in accordance with this section shall not provide a basis for awarding attorney fees under RCW [42.30.120](#) or commencing an action for mandamus or injunction under RCW [42.30.130](#).

RCW [42.30.080](#)

Special meetings.

(1) A special meeting may be called at any time by the presiding officer of the governing body of a public agency or by a majority of the members of the governing body by delivering written notice personally, by mail, by fax, or by electronic mail to each member of the governing body. Written notice shall be deemed waived in the following circumstances:

(a) A member submits a written waiver of notice with the clerk or secretary of the governing body at or prior to the time the meeting convenes. A written waiver may be given by telegram, fax, or electronic mail; or

(b) A member is actually present at the time the meeting convenes.

(2) Notice of a special meeting called under subsection (1) of this section shall be:

(a) Delivered to each local newspaper of general circulation and local radio or television station that has on file with the governing body a written request to be notified of such special meeting or of all special meetings;

(b) Posted on the agency's web site. An agency is not required to post a special meeting notice on its web site if it (i) does not have a web site; (ii) employs fewer than ten full-time equivalent employees; or (iii) does not employ personnel whose duty, as defined by a job description or existing contract, is to maintain or update the web site; and

(c) Prominently displayed at the main entrance of the agency's principal location and the meeting site if it is not held at the agency's principal location.

Such notice must be delivered or posted, as applicable, at least twenty-four hours before the time of such meeting as specified in the notice.

(3) The call and notices required under subsections (1) and (2) of this section shall specify the time and place of the special meeting and the business to be transacted. Final disposition shall not be taken on any other matter at such meetings by the governing body.

(4) The notices provided in this section may be dispensed with in the event a special meeting is called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, when time requirements of such notice would make notice impractical and increase the likelihood of such injury or damage.

RCW [42.30.090](#)

Adjournments.

The governing body of a public agency may adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting the clerk or secretary of the governing body may declare the meeting adjourned to a stated time and place. He or she shall cause a written notice of the adjournment to be given in the same manner as provided in RCW [42.30.080](#) for special meetings, unless such notice is waived as provided for special meetings. Whenever any meeting is adjourned a copy of the order or notice of adjournment shall be conspicuously posted immediately after the time of the adjournment on or near the door of the place where the



regular, adjourned regular, special, or adjourned special meeting was held. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, bylaw, or other rule.

RCW [42.30.100](#)**Continuances.**

Any hearing being held, noticed, or ordered to be held by a governing body at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the governing body in the same manner and to the same extent set forth in RCW [42.30.090](#) for the adjournment of meetings.

RCW [42.30.110](#)**Executive sessions.**

(1) Nothing contained in this chapter may be construed to prevent a governing body from holding an executive session during a regular or special meeting:

- (a)(i) To consider matters affecting national security;
- (ii) To consider, if in compliance with any required data security breach disclosure under RCW [19.255.010](#) and [42.56.590](#), and with legal counsel available, information regarding the infrastructure and security of computer and telecommunications networks, security and service recovery plans, security risk assessments and security test results to the extent that they identify specific system vulnerabilities, and other information that if made public may increase the risk to the confidentiality, integrity, or availability of agency security or to information technology infrastructure or assets;
- (b) To consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price;
- (c) To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price. However, final action selling or leasing public property shall be taken in a meeting open to the public;
- (d) To review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs;
- (e) To consider, in the case of an export trading company, financial and commercial information supplied by private persons to the export trading company;
- (f) To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge;



(g) To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee. However, subject to RCW [42.30.140](#)(4), discussion by a governing body of salaries, wages, and other conditions of employment to be generally applied within the agency shall occur in a meeting open to the public, and when a governing body elects to take final action hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, that action shall be taken in a meeting open to the public;

(h) To evaluate the qualifications of a candidate for appointment to elective office. However, any interview of such candidate and final action appointing a candidate to elective office shall be in a meeting open to the public;

(i) To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.

This subsection (1)(i) does not permit a governing body to hold an executive session solely because an attorney representing the agency is present. For purposes of this subsection (1)(i), "potential litigation" means matters protected by RPC 1.6 or RCW [5.60.060](#)(2)(a) concerning:

(i) Litigation that has been specifically threatened to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party;

(ii) Litigation that the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity; or

(iii) Litigation or legal risks of a proposed action or current practice that the agency has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency;

(j) To consider, in the case of the state library commission or its advisory bodies, western library network prices, products, equipment, and services, when such discussion would be likely to adversely affect the network's ability to conduct business in a competitive economic climate. However, final action on these matters shall be taken in a meeting open to the public;

(k) To consider, in the case of the state investment board, financial and commercial information when the information relates to the investment of public trust or retirement funds and when public knowledge regarding the discussion would result in loss to such funds or in private loss to the providers of this information;

(l) To consider proprietary or confidential nonpublished information related to the development, acquisition, or implementation of state purchased health care services as provided in RCW [41.05.026](#);

(m) To consider in the case of the life sciences discovery fund authority, the substance of grant applications and grant awards when public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information;



(n) To consider in the case of a health sciences and services authority, the substance of grant applications and grant awards when public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information;

(o) To consider information regarding staff privileges or quality improvement committees under RCW [70.41.205](#).

(2) Before convening in executive session, the presiding officer of a governing body shall publicly announce the purpose for excluding the public from the meeting place, and the time when the executive session will be concluded. The executive session may be extended to a stated later time by announcement of the presiding officer.

RCW [42.30.120](#)**Violations—Personal liability—Civil penalty—Attorneys' fees and costs.**

(1) Each member of the governing body who attends a meeting of such governing body where action is taken in violation of any provision of this chapter applicable to him or her, with knowledge of the fact that the meeting is in violation thereof, shall be subject to personal liability in the form of a civil penalty in the amount of five hundred dollars for the first violation.

(2) Each member of the governing body who attends a meeting of a governing body where action is taken in violation of any provision of this chapter applicable to him or her, with knowledge of the fact that the meeting is in violation thereof, and who was previously assessed a penalty under subsection (1) of this section in a final court judgment, shall be subject to personal liability in the form of a civil penalty in the amount of one thousand dollars for any subsequent violation.

(3) The civil penalty shall be assessed by a judge of the superior court and an action to enforce this penalty may be brought by any person. A violation of this chapter does not constitute a crime and assessment of the civil penalty by a judge shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.

(4) Any person who prevails against a public agency in any action in the courts for a violation of this chapter shall be awarded all costs, including reasonable attorneys' fees, incurred in connection with such legal action. Pursuant to RCW [4.84.185](#), any public agency which prevails in any action in the courts for a violation of this chapter may be awarded reasonable expenses and attorney fees upon final judgment and written findings by the trial judge that the action was frivolous and advanced without reasonable cause.

RCW [42.30.130](#)**Violations—Mandamus or injunction.**

Any person may commence an action either by mandamus or injunction for the purpose of stopping violations or preventing threatened violations of this chapter by members of a governing body.



RCW [42.30.140](#)**Chapter controlling—Application.**

If any provision of this chapter conflicts with the provisions of any other statute, the provisions of this chapter shall control: PROVIDED, That this chapter shall not apply to:

(1) The proceedings concerned with the formal issuance of an order granting, suspending, revoking, or denying any license, permit, or certificate to engage in any business, occupation, or profession or to any disciplinary proceedings involving a member of such business, occupation, or profession, or to receive a license for a sports activity or to operate any mechanical device or motor vehicle where a license or registration is necessary; or

(2) That portion of a meeting of a quasi-judicial body which relates to a quasi-judicial matter between named parties as distinguished from a matter having general effect on the public or on a class or group; or

(3) Matters governed by chapter [34.05](#) RCW, the Administrative Procedure Act; or

(4)(a) Collective bargaining sessions with employee organizations, including contract negotiations, grievance meetings, and discussions relating to the interpretation or application of a labor agreement; or (b) that portion of a meeting during which the governing body is planning or adopting the strategy or position to be taken by the governing body during the course of any collective bargaining, professional negotiations, or grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings while in progress.

RCW [42.30.200](#)**Governing body of recognized student association at college or university—Chapter applicability to.**

The multimember student board which is the governing body of the recognized student association at a given campus of a public institution of higher education is hereby declared to be subject to the provisions of the open public meetings act as contained in this chapter, as now or hereafter amended. For the purposes of this section, "recognized student association" shall mean any body at any of the state's colleges and universities which selects officers through a process approved by the student body and which represents the interests of students. Any such body so selected shall be recognized by and registered with the respective boards of trustees and regents of the state's colleges and universities: PROVIDED, That there be no more than one such association representing undergraduate students, no more than one such association representing graduate students, and no more than one such association representing each group of professional students so recognized and registered at any of the state's colleges or universities.



RCW [42.30.205](#)**Training.**

(1) Every member of the governing body of a public agency must complete training on the requirements of this chapter no later than ninety days after the date the member either:

(a) Takes the oath of office, if the member is required to take an oath of office to assume his or her duties as a public official; or

(b) Otherwise assumes his or her duties as a public official.

(2) In addition to the training required under subsection (1) of this section, every member of the governing body of a public agency must complete training at intervals of no more than four years as long as the individual is a member of the governing body or public agency.

(3) Training may be completed remotely with technology including but not limited to internet-based training.

RCW [42.30.210](#)**Assistance by attorney general.**

The attorney general's office may provide information, technical assistance, and training on the provisions of this chapter.

RCW [42.30.900](#)**Short title.**

This chapter may be cited as the "Open Public Meetings Act of 1971".

RCW [42.30.910](#)**Construction—1971 ex.s. c 250.**

The purposes of this chapter are hereby declared remedial and shall be liberally construed.

Open Public Meetings Act

Chapter 3 from the Open Government Resource Manual: <http://www.atg.wa.gov/Open-Government-Internet-Manual/Chapter-3>

Chapter last revised: October 31, 2016

3.1 Introduction

The Open Public Meetings Act ("OPMA"), [chapter 42.30 RCW](#), was passed by the Legislature in 1971 as a part of a nationwide effort to make government affairs more open, accessible and responsive. It was modeled on a California law known as the "Brown Act" and a similar Florida statute. The OPMA and the Public Records Act (PRA), [chapter 42.56 RCW](#), create important and powerful tools enabling the people to inform themselves about their government, both state and local.



3.2 The Courts Will Interpret the OPMA to Accomplish Its Stated Intent

As with all laws, the courts will interpret the OPMA to accomplish the Legislature's intent. [RCW 42.30.010](#) declares the OPMA's purpose in a strongly worded statement:

The legislature finds and declares that all public commissions, boards, councils, committees, subcommittees, departments, divisions, offices, and all other public agencies of this state and subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly. The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

The OPMA also provides that, "The purposes of this chapter are hereby declared remedial and shall be liberally construed." [RCW 42.30.910](#). Exceptions to the openness requirements of the OPMA (such as the grounds for executive sessions) are narrowly construed. [Miller v. City of Tacoma](#) (1999).

3.3 Entities Subject to the OPMA

The OPMA requires that meetings of the "governing body" of a "public agency" be open to the public. [RCW 42.30.030](#).

A. "Public Agency"

A "public agency" is defined in [RCW 42.30.020\(1\)](#) to include:

- Any state board, commission, committee, department, educational institution, or other state agency that is created by statute;
- Any county, city, school district, special purpose district, or other municipal corporation or political subdivision of the state;
- Any "subagency" of a public agency that is created by statute, ordinance, or other legislative act, such as planning commissions and library or park boards.

A "public agency" for purposes of the OPMA does *not* include:

- Any court;
- The Legislature.

[RCW 42.30.020\(1\)\(a\)](#).

B. "Subagency"

The OPMA also applies to the governing bodies of any "subagency" of state and local government agencies. Although a "subagency" is not defined in the OPMA, a subagency must be "created by a statute, ordinance, or other legislative act." [RCW 42.30.020\(1\)\(c\)](#). Case law and attorney general opinions suggest that, to be a subagency, the entity established by



legislative act must have some policy or rule making authority. See [Loeffelholz v. Citizens for Leaders with Ethics & Accountability Now](#) (2004); [1983 Att’y Gen. Op. No. 1](#); [1971 Att’y Gen. Op. No. 33](#).

C. Other Entities

The courts have interpreted the OPMA to apply to "an association or organization created by or pursuant to statute which serves a statewide public function." [West v. Wash. Ass’n of Cnty. Officials](#) (2011).

The OPMA may also apply to the “functional equivalent” of a public agency, though the courts have yet to address that issue squarely. In a 1991 opinion, the Attorney General suggested a four-part test to be used in determining whether an entity is a “public agency” and subject to the OPMA: “(1) whether the organization performs a governmental function; (2) the level of government funding; (3) the extent of government involvement or regulation; and (4) whether the organization was created by the government.” [1991 Att’y Gen. Op. No. 5](#). The courts have applied these factors to determine whether an entity is the “functional equivalent” of a public agency for purposes of the Public Records Act. [Telford v. Thurston County Board of Commissioners](#) (1999); [Clarke v. Tri-Cities Animal Care & Control Shelter](#) (2008); [Woodland Park Zoo v. Fortgang](#) (2016). However, the courts have yet to apply this test to that question for purposes of the OPMA.

3.4 “Governing Body”

A. Definition

A “governing body” is defined in the OPMA as “the multimember board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.” [RCW 42.30.020\(2\)](#).

All local public agencies and some state agencies have governing bodies and those governing bodies are subject to the OPMA. Examples of governing bodies of local public agencies include the city council, county council, port commission and school board; examples of governing bodies of state agencies include the Gambling Commission, the Utilities and Transportation Commission and the Public Disclosure Commission.

Some agencies do not have governing bodies. For example, many state agencies, such as the Department of Labor and Industries, the Department of Licensing, the Department of Social and Health Services, the Department of Employment Security, and the Washington State Patrol are governed by an individual, not a multimember body, and thus are not subject to the OPMA. See [Salmon for All v. Department of Fisheries](#) (1992), in which the Court held that the Department



of Fisheries was not subject to the OPMA because it was governed by an individual, the director.

With subagencies, the governing body of the subagency is often the subagency itself, as in the example of a county planning commission or city parks board.

B. Committees of a Governing Body

The definition of governing body includes “any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.” [RCW 42.30.020\(2\)](#). In 2015, the State Supreme Court concluded that: (1) a “committee thereof” means committees created by a governing body pursuant to its executive authority, regardless of whether the committee includes members of the governing body; and (2) a committee acts on behalf of the governing body “when it exercises actual or de facto decision-making authority for the governing body.” [Citizens Alliance v. San Juan County](#) (2015). A committee is not exercising such authority when it is simply conducting internal discussions or providing advice or information to the governing body. *Id.*; see also [Clark v. City of Lakewood](#) (2001). It is not clear whether a committee of a governing body is required to give notice for all of its meetings when it is only at some of its meetings that it is acting so as to come within the definition of “governing body.” Nevertheless, it would be pragmatic for such committees that sometimes engage in such activities - acting on behalf of the governing body, conducting hearings, or taking testimony or public comment - to conduct all their business in open meetings.

Case Example: The seven-member city council is considering the purchase of public art. The council agrees that public input would assist the selection process. Some councilmembers believe that the creation of an arts commission that would adopt policies for the city’s acquisition of public art would “get politics out of the world of art.” Other councilmembers express concern that an arts commission will control too much of the process without significant council input. Three resolutions are drafted for council consideration:

The first establishes a city arts commission and details the method of selecting the members, including three city councilmembers and two citizen members, who would serve specific terms. The commission is directed to establish policies for the selection and placement of public art in the city. Its recommended policies will be subject to city council approval. It is directed to obtain public input before the adoption of the recommended policies. As funding becomes available, it will make recommendations to the city council regarding the purchase of works of public art and their location in the city.

The second resolution establishes a public arts committee of the city council consisting of three members of the council. Five interested citizens will be asked to participate in its determination



of worthy projects. The citizens would serve at the pleasure of the council. The public arts committee is directed to develop a list of citizens who have expressed interest in public art and to hold hearings seeking public comment regarding any recommendations that the committee might make to the full city council.

The third resolution recognizes the existence of a citizen's committee known as "Public Art Now!" that was formed by a councilmember. The committee would be authorized to use city's meeting rooms. The council would welcome the committee's advice regarding the selection and placement of public art and its recommendations would be considered at any public hearing when the council decided to purchase works of art.

What would be the consequences under the OPMA of the adoption of each resolution?

Resolution: The city arts commission is probably a "subagency" under the OPMA. It has been created by legislative act and its governing body is directed to develop policy for the city. As such, all of its meetings would be subject to the OPMA's requirements.

The public arts committee is probably a "committee" of the governing body, the city council. It is not a separate entity (subagency). Since it will be obtaining public input, at least some of its meetings would be subject to the OPMA. However, it is advisable that it hold all its meetings in open session.

"Public Art Now!" is not subject to the OPMA. The city council did not establish it or grant it any authority.

3.5 OPMA Meeting Procedures

A. "Action," "Final Action" and "Meeting"

In its definition section, the OPMA first defines "action" before defining a "meeting" as a meeting "at which action is taken." [RCW 42.30.020\(4\)](#). "Action" is defined to mean "the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions." [RCW 42.30.020\(3\)](#). "Final action" is defined as "a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance." *Id.* It is not necessary for a governing body to take "final action" for there to be a "meeting" that is subject to the requirements of the OPMA; mere "action," such as a discussion of agency business, is sufficient. However, it is not "action" for members of a governing body to individually review material in advance of a meeting at which a public contract was awarded. [Equitable Shipyards, Inc. v. State](#) (1980).



A “meeting” occurs when, with a collective intent to meet, a majority of the members of a governing body collectively transact the governing body’s official business. [*Citizens Alliance v. San Juan County*](#) (2015).

Ordinarily, a quorum (majority) of the members of a governing body must be present at a meeting for the governing body to be able to transact agency business. [*Citizens Alliance v. San Juan County*](#) (2015). As such, a meeting that would be subject to the OPMA occurs if a majority of the members of a governing body were to discuss or consider agency business, no matter where that discussion or consideration might occur. “Action” by less than a quorum is generally not subject to the OPMA. [*Eugster v. City of Spokane*](#) (2005); [*Citizens Alliance v. San Juan County*](#) (2015). However, as discussed above, a committee of a governing body that includes less than a quorum of the body may be subject to the OPMA in certain circumstances.

Physical presence by the members of a governing body is not necessary for there to be a “meeting.” For example, an email exchange among a quorum of a governing body in which “action” takes place is a “meeting” under the OPMA. [*Wood v. Battle Ground School Dist.*](#) (2001). Since an email exchange among a quorum of the members of a governing body is not open to the public, such an exchange in which “action” takes place would violate the OPMA. In contrast, mere passive receipt of emails does not constitute participation in a meeting. [*Wood v. Battle Ground School Dist.*](#) (2001); [*Citizens Alliance v. San Juan County*](#) (2015).

It is generally agreed that an agency may authorize one or more of its members to attend a meeting by telephone or video-conferencing, using technologies such as Skype or WebEx, when a speaker phone or video screen is available at the official location of the meeting so the governing body and the public can hear the member’s input and the member can hear what is said at the meeting. See also [*Wood v. Battle Ground School Dist.*](#) (2001) (physical presence not required in order for meeting to occur); [*2014 Att’y Gen. Op. No. 7*](#) (discussion of videoconferencing)

A quorum of members of a governing body may attend a meeting of another organization’s provided that the body takes no “action.” [*2006 Att’y Gen. Op. No. 6*](#). For example, a majority of a city council could attend a meeting of a regional chamber of commerce or a county commission meeting provided that the council members did not discuss city business or do anything else that constitutes an “action.”

The OPMA expressly permits the members of the governing body to travel together or engage in other activity, such as attending social functions, so long as they do not take “action.” [*RCW 42.30.070*](#).



Case example: The five-member school board attends the annual convention of the State School Association. Over dinner, three members discuss some of the ideas presented during the convention, but refrain from any conversation about how they might apply them to the school district. All five travel together to and from the convention and the only discussion is over whether they are lost.

Resolution: No violation occurred but the board members must be careful. The example is offered to highlight the level of awareness members of a governing body must have. It is not unusual for such situations to arise. For instance, the dinner discussion was among a majority of the members so a discussion about school district business would have been "action" and, without the required notice, would be in violation of the OPMA.

B. Types of Meetings Not Covered by the OPMA

The OPMA does not apply to certain types of meetings. [RCW 42.30.140](#) provides that the OPMA does not apply to:

- Meetings involved with the issuing, denying, suspending, or revoking business, professional, and certain other licenses, including disciplinary proceedings
- Quasi-judicial proceedings
- Meetings involving matters subject to the Administrative Procedure Act, [chapter 34.05 RCW](#)
- Collective bargaining negotiations and related discussions, and meetings involved with planning for such negotiations and for grievance and mediation proceedings

The exact wording of [RCW 42.30.140](#) should be consulted to determine whether an exemption applies.

When a governing body engages in any of these exempt activities, it is not required to comply with the OPMA, although other public notice requirements may apply. Some exempt activities, such as quasi-judicial matters or hearings governed by the Administrative Procedure Act ([chapter 34.05 RCW](#)), have their own notice requirements. Quasi-judicial matters are those where the governing body is required to determine the rights of individuals based on legal principles. Common examples of quasi-judicial proceedings are certain local land use decisions, such as site-specific rezones, conditional use permits, and variances.

Case example: During a break in the regular meeting, the city council gets together in the chambers to decide what they should do with regard to the union's latest offer. They authorize the negotiator to accept the offer on wages if the union will accept the seniority amendments. When they return to the meeting, nothing is said about the discussion or decision.

Answer: The OPMA specifically exempts the discussion and decisions about the collective bargaining strategy or position from its requirements. Since it was exempt, the discussion was not required to be open.



The OPMA does not provide grounds for exempting public records from disclosure. See [Am. Civil Liberties Union v. City of Seattle](#) (2004). An independent exemption under the Public Records Act or other statute must exist to exempt records from disclosure. See [Chapter 2.1](#). Therefore, even though collective bargaining matters can be discussed in a closed session, this is not a basis for withholding public records reviewed in the executive session relating to that topic.

C. Public Notice of Meetings

Under the OPMA, public agencies must give notice of regular and special meetings. See [Chapter 3.6](#) for details.

D. Secret Votes Prohibited

"Secret" votes - where individual votes are not divulged - are prohibited, and any votes taken in violation of the OPMA are null and void. [RCW 42.30.060\(2\)](#). The votes of the members of a governing body should be publicly announced at the time the vote is taken.

E. Attendance at Meetings

The OPMA provides that any member of the public may attend the meetings of the governing body of a public agency. The agency may not require people to sign in, complete questionnaires, or establish other conditions to attendance. [RCW 42.30.040](#). For instance, an agency could not limit attendance to those persons subject to its jurisdiction. The OPMA does not address whether an agency is required to hold its meeting at a location that would permit every person to attend. However, it seems clear that the courts would discourage any attempt to deliberately schedule a meeting at a location that was too small to permit full attendance or that was locked. [RCW 42.30.050](#).

A person may record (audio or video) a meeting provided that it does not disrupt the meeting. [1998 Att'y Gen. Op. No. 15](#). A stationary audio or video recording device would not normally disrupt a meeting.

If those in attendance are disruptive and make further conduct of the meeting unfeasible, those creating the disruption may be removed. [RCW 42.30.050](#); [In re Recall of Kast](#) (2001). If order cannot be restored to the meeting by the removal of persons disrupting the meeting, the meeting room may be cleared and the meeting continued, or the meeting may be reconvened in another location. However, members of the media are entitled to attend the adjourned meeting and the governing body is limited to act only on those matters on the agenda. The governing body may also authorize readmitting persons not responsible for disrupting the meeting. *Id.*

Case example: The school board schedules a special meeting to discuss a controversial policy question. It becomes obvious that the regular meeting room is too small for all of those trying to attend the meeting. The board announces that the meeting will be adjourned to an auditorium in the same building. The chair announces that those who wish to speak should sign in on the sheet on the table. She states that given the available time, speakers will be limited to three minutes each. At one point, the meeting is adjourned to remove an apparently intoxicated person who had been interrupting the comments of speakers.

Resolution: While the OPMA allows the public to attend all meetings, it does not allow for the possibility of insufficient space. Presumably, if a nearby location is available, the governing body should move there to allow attendance by adjourning the meeting to that location and posting a notice on the door ([RCW 42.30.090](#)). The chair can require those who wish to speak (but not all attendees) to sign in. The sign-in requirement for speaking does not restrict attendance, only participation. Since the OPMA does not require the governing body to allow public participation, the time for each speaker can also be limited. The governing body can maintain order by removing those who are disruptive.

F. Right to Speak at Meetings

The OPMA does not require a governing body to allow public comment at a public meeting. If a governing body does allow public comment, it has authority to limit the time of speakers to a uniform amount (such as three minutes) and the topics speakers may address.

3.6 The OPMA Requires Notice of Meetings

A “meeting” under the OPMA is either a “regular” meeting or a “special” meeting, with different notice requirements for each. So, for example, a meeting designated as a “retreat,” “study session,” or “workshop” is, for OPMA purposes, either a regular or a special meeting, depending on how it is held.

A. Regular Meetings

The OPMA requires agencies to identify the time and place their governing bodies will hold regular meetings, which are defined as “recurring meetings held in accordance with a periodic schedule declared by statute or rule.” [RCW 42.30.075](#). State agencies subject to the OPMA must publish their schedule in the [Washington State Register](#), while local agencies (such as cities and counties) must adopt the schedule “by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body.” [RCW 42.30.075](#); [RCW 42.30.070](#). Although the OPMA does not require local agency governing bodies to meet inside the boundaries of their jurisdiction, there is general agreement that agencies should not schedule meetings at locations that effectively exclude the public. Other statutes may require certain entities to hold their meetings at particular locations, such as [RCW 36.32.080](#), which



requires a board of county commissioners to hold regular meetings at the county seat, or at the alternate locations specified in that statute.

If a scheduled regular meeting falls on a holiday, it must be held on the next business day. [RCW 42.30.070](#).

The OPMA requires agencies with governing bodies to make the agenda of regular meetings available online at least 24 hours in advance of the meeting. [RCW 42.30.077](#). This requirement does not apply if the agency does not have a website or if it employs fewer than 10 full-time equivalent employees. Also, an agency can modify the agenda after it is posted online. A failure to comply with the notice requirement with respect to a regular meeting will not invalidate an otherwise legal action taken at the meeting.

Other laws and local governing body rules may require additional regular meeting notice and publication and/or posting of a preliminary agenda. See, e.g., [RCW 35.23.221](#), [RCW 35A.12.160](#).

B. Special Meetings

Whenever an agency has a meeting at a time other than a scheduled regular meeting, it is conducting a "special meeting." [RCW 42.30.080](#). For each special meeting, the OPMA requires at least 24 hours' written notice to:

- the members of the governing body, delivered personally, or by mail, fax, or email;
- media representatives (newspaper, radio, and television) who have filed a written request for notices of a particular special meeting or of all special meetings, delivered personally, or by mail, fax, or email; and
- the public, by posting on the agency website and by prominently posting it at the main entrance of the agency's principal location and at the meeting site if the meeting will not be held at the agency's principal location.

An agency is not required to post the public notice on its website if it does not have one, if it has fewer than 10 full-time equivalent employees, or if doesn't employ personnel whose job it is to maintain the website.

The OPMA does not provide any guidance as to whether the media's written request for notice must be renewed; it is advisable, however, to periodically renew such requests to ensure that they contain the proper contact information for the notice and have not been misplaced or inadvertently overlooked due to changes in agency personnel.

The notice of a special meeting must specify the time and place of the meeting and "the business to be transacted," which would normally be an agenda. At a special meeting, final disposition by the agency is limited to the matters identified as the business to be conducted in



the notice. The statutory language suggests that the governing body could discuss, but not finally dispose of, matters not included in the notice of the special meeting.

A member of the governing body may waive the required notice by filing a written waiver or by simply appearing at the special meeting. [*Estey v. Dempsey*](#) (1985). The failure to provide notice to a member of the governing body can only be asserted by the person who should have received the notice, not by any person affected by action at the meeting. [*Kirk v. Pierce County Fire Protection Dist. No. 21*](#) (1981).

C. Emergency Meetings

The OPMA provides that, in the event of an emergency such as a fire, flood, or earthquake, meetings may be held at a site other than the regular meeting site, and the notice requirements of the OPMA are suspended during the emergency. [RCW 42.30.070](#). An agency should, however, provide special-meeting notice of an emergency meeting, if practicable. [RCW 42.30.080\(4\)](#).

The courts have found that an agency must be confronted with a true emergency that requires immediate action, such as a natural disaster, for its governing body to hold an emergency meeting that does not comply with the OPMA. It has been held that a strike by teachers did not justify an "emergency" meeting by the school board. [*Mead School Dist. No. 354 v. Mead Education Ass'n*](#) (1975).

D. Adjournments, Cancellations and Continuances

The OPMA establishes procedures for a governing body to adjourn a regular or special meeting and continue that meeting to a time and place identified in an order of adjournment. [RCW 42.30.090](#). Less than a quorum of a governing body may adjourn and continue a meeting under these procedures, or the clerk or secretary of the body may do so if no members are present. Notice of the meeting adjournment must be the same that is required for special meetings in [RCW 42.30.080](#), and a copy of the order or notice of adjournment must be posted on or near the door of the place where the meeting was held. Although the OPMA does not address cancellations, presumably the same process could be followed in cancelling a meeting. Public hearings held by a governing body may be continued to a subsequent meeting of the governing body following the procedures for adjournment in [RCW 42.30.090](#). [RCW 42.30.100](#). See also [adjournment discussion](#) in [MRSC's Open Public Meetings Act publication](#).

3.7 Executive Sessions Are Allowed for Specific Topics, Following OPMA Procedures

"Executive session" is not expressly defined in the OPMA, but the term is commonly understood to mean that part of a regular or special meeting of a governing body that is closed to the public. A governing body may hold an executive session only for specified purposes, which are identified in [RCW 42.30.110\(1\)\(a\)-\(m\)](#), and only during a regular or special



meeting. Nothing, however, prevents a governing body from holding a meeting, which complies with the OPMA's procedural requirements, for the sole purpose of having an executive session.

Attendance at an executive session need not be limited to the members of the governing body. Persons other than the members of the governing body may attend the executive session at the invitation of that body. Those invited should have some relationship to the matter being addressed in the closed session, or they should be in attendance to otherwise provide assistance to the governing body. For example, staff of the governing body or of the governmental entity may be needed to present information or to take notes or minutes. However, minutes are not required to be taken at an executive session. [RCW 42.32.030](#).

Because an executive session is an exception to the OPMA's overall provisions requiring open meetings, a court will narrowly construe the grounds for an executive session in favor of requiring an open meeting. [Miller v. City of Tacoma](#) (1999).

A. Procedures for Holding an Executive Session

To convene an executive session, the governing body's presiding officer must announce: (1) the purpose of the executive session, and (2) the time when the executive session will end. The announcement is to be given to those in attendance at the meeting. [RCW 42.30.110\(2\)](#).

The announced purpose of the executive session must be one of the statutorily identified purposes for which an executive session may be held. The announcement therefore must contain enough information to identify the purpose as falling within one of those identified in [RCW 42.30.110\(1\)](#). It would not be sufficient, for example, for a mayor to declare simply that the council will now meet in executive session to discuss "personnel matters." Discussion of personnel matters, in general, is not an authorized purpose for holding an executive session; only certain specific issues relating to personnel may be addressed in executive session. See [RCW 42.30.110\(1\)\(f\), \(g\)](#).

Another issue that may arise concerning these procedural requirements for holding an executive session involves the estimated length of the session. If the governing body concludes the executive session *before* the time that was stated it would conclude, it should not reconvene in open session until the time stated. Otherwise, the public may, in effect, be excluded from that part of the open meeting that occurs between the close of the executive session and the time when the presiding officer announced the executive session would conclude.



If the executive session is not over at the stated time, it may be extended only if the presiding officer announces to the public at the meeting place that it will be extended to a stated time.

Case Example: Three members of a five-member school board meet privately, without calling a meeting, to exchange opinions of candidates for the school superintendent position. They justify this private meeting on the ground that the board may meet in executive session to discuss the qualifications of applicants for the superintendent position, under [RCW 42.30.110\(1\)\(g\)](#). Have these school board members complied with [RCW 42.30.110](#)?

Resolution: Clearly, they have not. Although a governing body may discuss certain matters in closed session under this statute, that closed session must occur during an open regular or special meeting and it may be commenced only by following the procedures in [RCW 42.30.110\(2\)](#). The public must know the board is meeting in executive session and why. Although, as discussed above, some matters are not subject to the Open Public Meetings Act under [RCW 42.30.140](#); however, the above example is not one of them.

B. Grounds for Holding an Executive Session

An executive session may be held only for one of the purposes identified in [RCW 42.30.110\(1\)](#), as follows:

(a) Matters Affecting National Security

After September 11, 2001, state and local agencies have an increased role in national security. Therefore, discussions by agency governing bodies of security matters relating to possible terrorist activity should come within the scope of this executive session provision.

(b) Acquisition of Real Estate by Lease or Purchase

This provision has two elements: (1) the governing body must be considering either selecting real property for purchase or lease or it must be considering purchasing or leasing specific property; and (2) public knowledge of the governing body's consideration would likely cause an increase in the price of the real property.

For the purposes of this provision, the consideration of the purchase of real property can involve condemnation of the property, including the amount of compensation to be offered for the property. [Port of Seattle v. Rio](#) (1977).

However, it remains unclear exactly what the scope is of “considering” the acquisition of real property. Since this subsection recognizes that the process of purchasing or leasing real property or selecting real property to purchase or lease may, in some circumstances, justify an executive session, it implies that the governing body may need to reach some consensus in closed session as to the price to be offered or the particular property to be selected. See [Port of Seattle](#) (1977). However, the Washington Supreme Court in [Miller v. City of Tacoma](#) (1999) emphasized that “only the action explicitly specified by the exemption [“consider”] may take place in executive session.” See also [Feature Realty, Inc. v. City of Spokane](#) (2003). Taken



literally, this limitation would preclude a governing body in executive session from actually selecting a piece of property to acquire or setting a price at which the body would be willing to purchase property, because such action would be beyond the power to merely “consider.” Yet, the purpose of an executive session under this subsection would be defeated if the governing body would be required to vote in open session to select the property or to decide how much it would be willing to pay for the property, where public knowledge of these matters would likely increase its price.

(c) Sale or Lease of Agency Property

This subsection, the reverse of the previous one, also has two elements: (1) the governing body must be considering the minimum price at which real property belonging to the agency will be offered for sale or lease; and (2) public knowledge of the governing body's consideration will likely cause a decrease in the price of the property.

This provision also states that final action selling or leasing public property must be taken in an open meeting. That statement may seem unnecessary, since all final actions must be taken in a meeting open to the public. However, its possible purpose may be to indicate that, although the decision to sell or lease the property must be in open session, the governing body may decide in executive session the minimum price at which it will do so. A contrary interpretation would seemingly defeat the purpose of this subsection. But see [Miller v. City of Tacoma](#) (1999) and discussion in [Chapter 3.9B\(b\)](#) above.

Governing bodies should exercise caution when meeting in closed session under this and the preceding provision so that they are not doing so when there would be no likelihood of increased price if the matter were considered in open session.

(d) Performance of Publicly Bid Contracts

This subsection indicates that when a public agency and a contractor performing a publicly bid contract are negotiating concerning how the contract is being performed, the governing body may “review” those negotiations in executive session *if* public knowledge of the review would likely cause an increase in contract costs.

(e) Consideration of Certain Information by an Export Trading Company

This provision, which authorizes consideration in executive session of financial and commercial information supplied by private persons to an export trading company, applies to export trading companies that can be created by port districts under [chapter 53.31 RCW](#). Under [RCW 53.31.050](#), financial and commercial information supplied by private persons to an export trading company must be kept confidential.

(f) Complaints or Charges Against Public Officer or Employee



This provision authorizes executive sessions to receive and evaluate complaints or charges brought against a public officer or employee. It should be distinguished from subsection (g), discussed below, concerning reviewing the performance of a public employee in executive session. For purposes of meeting in executive session under this provision, a charge or complaint must have been brought against a public officer or employee. The complaint or charge could come from within the agency or from the public. Bringing the complaint or charge triggers the opportunity for the officer or employee to request that a public hearing or open meeting be held regarding the complaint or charge.

(g) Evaluating Qualifications or Performance of a Public Employee/Official

There are two different purposes under this provision for which a governing body may meet in executive session. For both purposes, the references to "public employment" and to "public employee" include within their scope public offices and public officials, so that a governing body may evaluate in executive sessions persons who apply for appointive office positions, such as state university president or city manager, as well as for employee positions.

The first purpose involves evaluating the qualifications of applicants for public employment. This could include personal interviews with an applicant, discussions concerning an applicant's qualifications for a position, and discussions concerning salaries, wages, and other conditions of employment personal to the applicant. The authority to "evaluate" applicants in closed session allows a governing body to discuss the qualifications of applicants, not to choose which one to hire. Although this subsection expressly mandates that "final action hiring" an applicant for employment be taken in open session, this does not mean that the governing body may take preliminary votes in an executive session that eliminate candidates from consideration. [*Miller v. City of Tacoma*](#) (1999).

The second part of this provision concerns reviewing the performance of a public employee. This provision would be used typically either where the governing body is considering a promotion or a salary or wage increase for an individual employee or where it may be considering disciplinary action based on an employee's performance. It should be distinguished from subsection (f), which concerns specific complaints or charges brought against an employee and which, at the request of the employee, must be discussed in open session.

The result of a governing body's closed session review of the performance of an employee may be that the body will take some action either beneficial or adverse to the officer or employee. That action, whether raising a salary or disciplining an officer or employee, must be made in open session.

When a discussion involves salaries, wages, or conditions of employment to be "generally applied" in the agency, it must take place in open session. However, if that discussion involves



collective bargaining negotiations or strategies, it is not subject to the OPMA and may be held in closed session without being subject to the procedural requirements for an executive session in [RCW 42.30.110\(2\)](#). See [RCW 42.30.140\(4\)](#).

Case Example: A school board selecting a superintendent may evaluate qualifications of applicants in an executive session under this provision. Under this provision, the board must confine its executive session discussion to applicant evaluations only, and must make decisions in a meeting open to the public. For more information, see the Attorney General's Office "[Open Public Meetings Act Guidance on Frequently Asked Questions About Processes to Fill Vacant Positions by Public Agency Governing Boards and Some Suggested Practice Tips](#)" (June 1, 2016).

(h) Evaluating Candidates for Elective Office

This provision applies when an elected governing body is filling a vacant position on that body. Examples of such bodies include a board of county commissioners, a city council, a school board, and the boards of special purpose districts, such as fire protection and water-sewer districts. Under this provision, an elected governing body may evaluate the qualifications of an applicant for a vacant position on that body in executive session. However, unlike when it is filling other positions, the governing body may interview an applicant for a vacancy in an elective office only in open session. As with all other appointments, the vote to fill the position must also be in open session.

For more information, see the Attorney General's Office "[Open Public Meetings Act Guidance on Frequently Asked Questions About Processes to Fill Vacant Positions by Public Agency Governing Boards and Some Suggested Practice Tips](#)" (June 1, 2016).

(i) Litigation, Potential Litigation, or Enforcement Actions

An agency must meet three basic requirements before it can invoke this provision to meet in closed session. First, "legal counsel representing the agency" must attend the executive session to discuss the enforcement action, or the litigation or potential litigation. This is the only executive session provision that requires the attendance of someone other than the members of the governing body. The legal counsel may be the "regular" legal counsel for the agency, such as a city attorney or the county prosecutor, or it may be legal counsel hired specifically to represent the agency in particular litigation.

Second, the discussion with the legal counsel either must concern an agency enforcement action or it must concern litigation or "potential litigation" to which the agency, the governing body, or one of its members acting in an official capacity is or is likely to become a party. Discussions concerning enforcement actions or existing litigation could, for example, involve matters such as strategy or settlement.



This provision for an executive session defines “potential litigation” as matters that are protected by attorney-client privilege concerning:

- Litigation that has been specifically threatened to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party;
- Litigation that the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity; or
- Litigation or legal risks of a proposed action or current practice that the agency has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency.

This definition permits discussions by an agency governing body of actions that involve a genuine legal risk to the agency. This allows a governing body to freely consider the legal implications of a proposed decision without the concern that it might be jeopardizing some future litigation position.

The third requirement for meeting in closed session under this subsection is that public knowledge of the discussion would likely result in adverse legal or financial consequence to the agency. In [Port of Seattle v. Rio](#) (1977), the Court of Appeals stated that a closed executive session with legal counsel to discuss settlement or avoidance of litigation is proper because “A public agency should neither be given an advantage, nor placed at a disadvantage in litigation.” The Washington Supreme Court, in [Recall of Lakewood City Council](#) (2001), held that a governing body is not required to determine beforehand whether disclosure of the discussion with legal counsel would likely have adverse consequences; it is sufficient if the agency, from an objective standard, should know that the discussion is not benign and will likely result in adverse consequences.

Since the purpose of this executive session provision is only to allow the governing body to *discuss* litigation or enforcement matters with legal counsel, the governing body is not authorized to take final action regarding such matters in an executive session. Case law suggests that a governing body may do no more than discuss litigation or enforcement matters and may therefore be precluded from decisions in the context of such a discussion in order to advance the litigation or enforcement action. In [Feature Realty, Inc. v. City of Spokane](#) (2003), the federal Ninth Circuit Court of Appeals invalidated a “collective positive decision” of a governing body in executive session to approve a settlement agreement. The *Feature Realty* court relied on the Washington Supreme Court’s holding in [Miller v. City of Tacoma](#) (1999) that a governing body can only take an action in executive session “explicitly specified” in an exemption to the OPMA.

This provision is, in practice, often used as a justification for executive sessions, particularly because “potential litigation” is susceptible to a broad reading. Indeed, many things a public



agency does will subject it to the possibility of a lawsuit. However, a court will construe “potential litigation” or any other grounds for an executive session narrowly and in favor of requiring open meetings. [Miller v. City of Tacoma](#) (1999). To avoid a reading of this subsection that may be broader than that intended by the Legislature — and to avoid a suit alleging a violation of the OPMA — it is important for a governing body to look at the facts of each situation in the context of all the requirements of this subsection.

Case Example: A board of county commissioners is considering adopting a stringent adult entertainment ordinance, and a company that had announced its intention to locate a nude dancing establishment in the county states that it will sue the county if it passes this ordinance. The commissioners call an executive session to discuss with the prosecuting attorney this “potential litigation.” Specifically, they intend to discuss with the prosecuting attorney his opinion as to the proposed ordinance’s constitutionality. May the commissioners meet in executive session to discuss this?

Resolution: The county commissioners may discuss with their legal counsel in executive session the constitutionality of the proposed ordinance, particularly in light of the threatened legal challenge. They want to have a strong position coming into the litigation. The company’s knowledge of their discussion would give it an unfair advantage in framing the constitutional theories in support of its threatened suit against the county. Also, the prosecuting attorney may not feel he can be totally candid with the commissioners in open session.

The company, on the other hand, may argue that the commissioners are not discussing the potential litigation, but rather are only discussing the ordinance. The commissioners should always be aware of the constitutionality of the actions they take. But, that does not mean the commissioners have the authority to meet in executive session any time they are proposing legislation that may implicate constitutional issues. However, given the circumstances here — specifically that the company threatened to sue - the commissioners’ position should prevail. Consistent with the definition of “potential litigation” added by the Legislature in 2001, the county commissioners may discuss the “legal risks of a proposed action,” in this case, the legal risks of adopting a stringent adult entertainment ordinance, particularly when the company has threatened litigation if the county adopts the ordinance.

(j) Western Library Network Prices, Products, Equipment, and Services

This provision for executive session no longer has any applicability, as the State Library Commission has been abolished and the Western Library Network statutes have been repealed. See [RCW 27.04.900](#) and former [chapter 27.26 RCW](#).

(k) State Investment Board Consideration of Financial and Commercial information



This provision allows the State Investment Board, established and governed by [chapter 43.33A RCW](#), to consider commercial and financial information relating to the investment of public trust or retirement funds in closed session, if discussion in open session would result in loss to those funds or to the private providers of the information.

(l) Information Related to State Purchased Health Care Services

This provision allows executive sessions to consider proprietary or confidential nonpublished information related to the development, acquisition, or implementation of state purchased health care services as provided in [RCW 41.05.026](#).

(m) Life Sciences Discovery Fund Authority Grant Applications and Grant Awards

(n) Health Sciences and Services Authority Grant Applications and Grant Awards

The above two provisions allow executive sessions to “consider...the substance of grant applications and grant awards” related to the Life Sciences Discovery Fund Authority and the Health Sciences and Services Authority “when public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information.”

3.8 The OPMA Provides Remedies/Penalties for Violations

The OPMA’s standing requirements are very broad; any person may challenge an action based on a violation of the OPMA through a suit in superior court as provided in [RCW 42.30.120](#) and [RCW 42.30.130](#). See also [West v. Seattle Port Commission, et al.](#) (2016) (holding that West, a “person,” had standing to bring an OPMA challenge related to a series of confidential meetings between Port of Seattle and Port of Tacoma commissioners). Four distinct remedies are available to persons under the OPMA:

- Nullification of actions taken in illegal meetings ([RCW 42.30.060\(1\)](#))
- Civil penalties of \$500 per member of the governing body for the first knowing violation of the OPMA and \$1000 per member for any successive knowing violation ([RCW 42.30.120\(1\)](#) and (2))
- An award of costs and reasonable attorney fees for any person prevailing in an action alleging an OPMA violation ([RCW 42.30.120\(2\)](#))
- Mandamus or injunction to stop OPMA violations or prevent threatened violations ([RCW 42.30.130](#))

If the court determines that a public agency has taken action in violation of the OPMA, that action is null and void. [RCW 42.30.060\(1\)](#). If an agency’s action is null and void as a result of an OPMA violation, the agency must re-trace its steps by taking the action in accordance with the OPMA in order to make that action valid. See [Henry v. Town of Oakville](#) (1981); [Feature Realty v. City of Spokane](#) (2003) (agency re-tracing of steps must be done in public). But if the OPMA violation occurs early in the governing body’s consideration of a matter, subsequent actions



taken in compliance with the OPMA, including the final action, are valid. [OPAL v. Adams County](#) (1996); see [also 1971 Att’y Gen. Op. No. 33](#) at 40.

If a court determines that a governing body violated the OPMA, each member of the governing body who attended the meeting with knowledge that the meeting was in violation of the OPMA is subject to a \$500 civil penalty. [RCW 42.30.120](#). A violation of the OPMA is not a criminal offense.

A court must award all costs, including attorney fees, to a party who is successful in asserting an OPMA violation against an agency. [RCW 42.30.120\(2\)](#). If the court finds that the lawsuit against the agency is frivolous, the agency may recover its attorney fees and expenses. The only statutory remedy is an action filed in superior court. [RCW 42.30.120\(2\)](#).

Also, an OPMA violation may provide a sufficient legal basis for a recall effort against a local elected official. See, e.g., [In re Recall of Lakewood City Council Members](#) (2001); [In re Recall of Kast](#) (2001).

Case example: In July 2016 and prior to a regular meeting, two members of a three-member board of county commissioners communicate by email about an ordinance to be considered at the upcoming regular meeting. At that meeting, the board discusses and then adopts the ordinance the two commissioners had discussed by email. After making a PRA request for the commissioners’ emails, a county resident challenges the validity of the ordinance based on an alleged violation of the OPMA when the two commissioners discussed the ordinance by email.

Answer: The email discussion by the two commissioners was “action” under the OPMA, and, since it did not occur in a meeting open to the public, it was a violation of the OPMA. The two commissioners are personally liable for the \$500 penalty if they knew the email discussion was in violation of the OPMA. It seems unlikely that the commissioners would not have known that their email discussion was in violation of the OPMA, and so they will likely be subject to that penalty.

The ordinance adopted by the commissioners after discussion in an open meeting should not be invalidated based on the improper email discussion. The board discussed the ordinance and voted on it in open session, in compliance with the OPMA. So, despite the earlier OPMA violation, the board subsequently complied with the OPMA in adopting the ordinance.

3.9 The OPMA Requires Training

All members of state and local governing bodies must receive training on the requirements of the OPMA. [RCW 42.30.205](#). The training must be completed within 90 days after a governing body member takes the oath of office or otherwise assumes the duties of the position. The

training must be repeated at intervals of no longer than four years, as long as an individual is a member of the governing body. The law does not specify the training that must be received or the manner in which it is to be received, other than to state that it may be taken online. For information on the training requirement and for access to training developed by the Office of the Attorney General, see the Attorney General's [Open Government Training Web page](#).

MRSC Checklists and Practice Tips for OPMA

Agency Obligations—A Starting Point:

OPMA – AGENCY OBLIGATIONS: A STARTING POINT

PRACTICE TIPS

For Local Government Success



The basic requirement of the Open Public Meetings Act (OPMA) is that meetings of governing bodies be open and public. Use these practice tips to guide your agency's OPMA compliance.* For more information and resources visit www.mrsc.org/opmapra.

Basic Requirements

- **All meetings open and public.** All meetings of governing bodies of public agencies must be open to the public, except for certain exceptions outlined in the OPMA. [RCW 42.30.030](#).
- **Quorum.** Generally, a meeting occurs when a quorum (majority) of the governing body is in attendance and action is taken, which includes discussion or deliberation as well as voting. [RCW 42.30.020\(2\) & \(3\)](#).
- **Attendees.** All persons must be permitted to attend and attendees cannot be required to register their names or other information as a condition of attendance. Disruptive and disorderly attendees may be removed. [RCW 42.30.040 & .050](#).
- **No secret ballots.** Votes may not be taken by secret ballot. [RCW 42.30.060\(2\)](#).
- **Adoption of ordinances.** Ordinances, resolutions, rules, regulations, and orders must be adopted at a public meeting or they are invalid. [RCW 42.30.060\(1\)](#).

Position in Agency

Required to Comply

Member of a governing body <ul style="list-style-type: none"> <input type="checkbox"/> City or Town Councilmember or Mayor <input type="checkbox"/> County Commissioner or County Councilmember <input type="checkbox"/> Special Purpose District Commissioner/Board Member 	Yes
Member of a subagency created by ordinance or legislative act, e.g.: <ul style="list-style-type: none"> <input type="checkbox"/> Planning Commission <input type="checkbox"/> Library Board <input type="checkbox"/> Parks Board <input type="checkbox"/> Civil Service Commission 	Yes
Member of a committee <ul style="list-style-type: none"> <input type="checkbox"/> Committees that act on behalf of (exercise actual or de facto decision-making authority for) the governing body, conduct hearings, or take testimony or public comment <input type="checkbox"/> Committees that are purely advisory 	Yes No
Agency staff	No

Penalties for Noncompliance

- **Actions null and void.** Any action taken at a meeting which fails to comply with the provisions of the OPMA is null and void. [RCW 42.30.060\(1\)](#).
- **Personal liability.** Potential personal liability of \$500 for any member of a governing body who attends a meeting knowing that it violates the OPMA and \$1,000 for any subsequent OPMA violation. [RCW 42.30.120\(1\)\(2\)](#).
- **Agency liability.** Any person who prevails against an agency in any action in the courts for a violation of the OPMA will be awarded all costs, including attorney fees, incurred in connection with such legal action. [RCW 42.30.120\(2\)](#).

OPMA Training Requirements

- Every member of a governing body of a public agency must complete training requirements on the OPMA within 90 days of assuming office or taking the oath of office. [RCW 42.30.205\(1\)](#).
- In addition, every member of a governing body must complete training at intervals of no more than four years as long as they remain in office. [RCW 42.30.205\(2\)](#).



Notice Requirements:

OPMA – NOTICE REQUIREMENTS

PRACTICE TIPS

For Local Government Success



Under the Open Public Meetings Act (OPMA), to ensure that agency deliberations and other actions are conducted and taken openly, agencies are required to provide sufficient public notice of their meetings. Use these practice tips as a starting guide for OPMA notice requirements.* *For more information and resources visit www.mrsc.org/opmapra.*

	Regular Meetings (RCW 42.30.070)	Special Meetings (RCW 42.30.080)
Definition	Held in accordance with a schedule fixed by ordinance, resolution, bylaws, or other rule.	Anything other than a regular meeting. May be called by the presiding officer or a majority of the members of the governing body.
Notice and Agendas	<p>Agendas must be made available on the agency's website at least 24 hours in advance of the meeting unless the agency:</p> <ol style="list-style-type: none"> Doesn't have a website; or Employs fewer than 10 full-time equivalent employees. <p>There are no other notice requirements for regular meetings in the OPMA. However, other relevant laws apply to some local governments. For example, cities and towns are required to establish a procedure for notifying the public of the preliminary agenda for the forthcoming council meeting and any upcoming hearings (although not necessarily online). RCW 35A.12.160; RCW 35.22.288; RCW 35.23.221; RCW 35.27.300. There are no similar requirements for counties or special purpose districts related to preliminary agendas.</p>	<p>The special meeting notice must specify the date, time, and place of the special meeting, and the business to be transacted.</p> <ul style="list-style-type: none"> Personal notice. Written notice must be delivered personally, by mail, fax, or e-mail at least 24 hours before the meeting to: <ol style="list-style-type: none"> Each member of the governing body, unless the member submits a written waiver of notice in advance with the clerk, or the member is actually present at the meeting; and Each member of the news media who has on file with the governing body a written request for notice of special meetings. Website notice. Notice must be posted on the agency's website 24 hours in advance of the meeting, unless the agency: <ol style="list-style-type: none"> Doesn't have a website; or Employs less than 10 full-time equivalent employees; or Doesn't employ personnel whose duty, as defined by a job description or existing contract, is to maintain or update the website. Notice at agency's principal location. Notice must be prominently displayed at the main entrance of the agency's principal location and the meeting site if the meeting isn't held at the agency's principal location.
Emergencies	In an emergency situation (e.g., fire, flood, earthquake, or other emergency), a meeting may be held at a site other than the regular meeting site, and the notice requirements under the OPMA are suspended during such an emergency.	The notices required for special meetings aren't required if a special meeting is called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, when time requirements of such notice would make notice impractical and increase the likelihood of such injury or damage.
Holidays	Regular meetings shall not be held on holidays. If a regular meeting falls on a holiday, the meeting must be held on the next business day.	Although not specifically addressed by the OPMA, we recommend that special meetings not be held on holidays out of consideration for public participation.
Business Transacted	There are no restrictions on the type of business that may be transacted at regular meetings.	Final disposition cannot be taken on any matter not listed in the special meeting notice.



Executive Sessions:

OPMA – EXECUTIVE SESSIONS

CHECKLIST

For Local Government Success



The Open Public Meetings Act (OPMA) requires specific steps be taken in order to hold an executive session. Use this checklist to guide your agency's compliance with the OPMA related to executive sessions.*

	Requirement	Completed
Meeting	An executive session can only be held as part of a regular or special meeting.	<input type="checkbox"/>
Purpose	The presiding officer announces in open session the purpose of the executive session.	<input type="checkbox"/>
End Time	The presiding officer announces in open session the time the executive session will end.	<input type="checkbox"/>
Legal Counsel	Legal counsel is present during the executive session, if required.	<input type="checkbox"/>
Confidentiality	At the start of the executive session, participants are reminded that discussions are confidential.	<input type="checkbox"/>
Topics	Local governments can discuss the following topics set forth in RCW 42.30.110(1) in executive session:	
	<ul style="list-style-type: none"> Matters affecting national security. RCW 42.30.110(1)(a)(i). 	<input type="checkbox"/>
	<ul style="list-style-type: none"> Infrastructure and security of agency computer and telecommunications network. RCW 42.30.110(1)(ii). See back of page. Note: Requires presence of legal counsel. 	<input type="checkbox"/>
	<ul style="list-style-type: none"> Real estate sale, purchase, or lease if a likelihood that disclosure would increase price. RCW 42.30.110(1)(b), (c). If agency is seller/lessor, only minimum price may be discussed & factors influencing price must be discussed in public session. <i>Columbia Riverkeeper v. Port of Vancouver</i>. 	<input type="checkbox"/>
	<ul style="list-style-type: none"> Consideration of the minimum offering price for sale or lease of real estate if there's a likelihood that disclosure would decrease the price. RCW 42.30.110(1)(c). See back of page. Note: Final action selling or leasing public property must be taken in open session. 	<input type="checkbox"/>
	<ul style="list-style-type: none"> Negotiations on the performance of a publicly bid contract. RCW 42.30.110(1)(d). See back of page. 	<input type="checkbox"/>
	<ul style="list-style-type: none"> Complaints or charges brought against a public officer or employee. RCW 42.30.110(1)(f). Note: At accused's request, discussion must be in open session. 	<input type="checkbox"/>
	<ul style="list-style-type: none"> Qualifications of an applicant for public employment. RCW 42.30.110(1)(g). See back of page. 	<input type="checkbox"/>
	<ul style="list-style-type: none"> Performance of a public employee. RCW 42.30.110(1)(g). See back of page. 	<input type="checkbox"/>
	<ul style="list-style-type: none"> Qualifications of an applicant/candidate for appointment to elective office. RCW 42.30.110(1)(h). See back of page. 	<input type="checkbox"/>
	<ul style="list-style-type: none"> Agency enforcement actions. RCW 42.30.110(1)(i). See back of page. Note: Requires presence of legal counsel. 	<input type="checkbox"/>
	<ul style="list-style-type: none"> Current or potential litigation. RCW 42.30.110(1)(i). See back of page. Note: Requires presence of legal counsel. 	<input type="checkbox"/>
	<ul style="list-style-type: none"> Legal risks of current or proposed action. RCW 42.30.110(1)(i). See back of page. Note: Requires presence of legal counsel. 	<input type="checkbox"/>
Extended End Time	If the executive session is not completed by the originally announced end time, the presiding officer announces the extended end time in open session before returning to executive session.	<input type="checkbox"/>
Resumption	Open session is not resumed until after the announced end time.	<input type="checkbox"/>



Electronic Communications:

OPMA – ELECTRONIC COMMUNICATIONS

PRACTICE TIPS

For Local Government Success



These practice tips are intended to provide practical information to local government officials and staff about electronic communications and requirements under the Open Public Meetings Act (OPMA), [chapter 42.30 RCW](#). Electronic communications between members of an agency's governing body can implicate the OPMA, and these practice tips will help guide you in identifying and addressing key issues in this regard.* *For more information and resources visit www.mrsc.org/opmapra.*

An Email Exchange Can Constitute a Meeting

If you, as a member of the governing body (e.g., city council, board of commissioners, planning commission), communicate with other members of the governing body by email, keep in mind that email exchanges involving a majority of members of the governing body can constitute a "meeting" under the OPMA. This principle also applies to text messaging and instant messaging.

What types of email exchanges can constitute a meeting? If a majority of the members of the governing body takes "action" on behalf of the agency through an email exchange, that would constitute a meeting under the OPMA. Note that taking "action" under the OPMA can occur through mere discussion of agency business, and that any "action" may be taken only in a meeting open to the public. The participants in the email exchange don't have to be participating in that exchange at the same time, as a "serial" or "rolling" meeting can occur in violation of the OPMA. However, the participants must collectively intend to meet to conduct agency business.

1

Recommendations: As a member of the governing body, consider the following tips to avoid potential OPMA violations:

- Passive receipt of information via email is permissible, but discussion of issues via email by the governing body can constitute a meeting.
- An email message to a majority or more of your colleagues on the governing body is allowable when the message is to provide only documents or factual information, such as emailing a document to all members for their review prior to the next meeting.
- If you want to provide information or documents via email to a majority of members of the governing body, especially regarding a matter that may come before the body for a vote, have the first line of the email clearly state: "For informational purposes only. Do not reply."
- Unless for informational purposes only, don't send an email to all or a majority of the governing body, and don't use "reply all" when the recipients are all or a majority of the members of the governing body.
- Alternatively, rather than emailing materials to your colleagues on the governing body in preparation for a meeting, have a designated staff member email the documents or provide hard copies to each member. It's permissible, for example, for a staff member to communicate via email with members of the governing body in preparation for a meeting, but the staff member needs to take care not to share any email replies with the other members of the governing body as part of that email exchange.



2	<p>Phone Calls and Voice Messages Can Constitute a Meeting</p> <p>As with email exchanges, if a majority of the members of the governing body is taking "action" (see above) on behalf of the agency through phone calls or a voice mail exchange, that would constitute a meeting. Such a "telephone tree" occurs, for example, when members call each other to form a majority decision. As above, the calls and messages can constitute a serial or rolling meeting if the members collectively intend to meet and conduct agency business.</p>
3	<p>Key Consideration Related to Conferring to Call a Special Meeting</p> <p>Under RCW 42.30.080, a special meeting (in contrast to a regular meeting) may be called at any time by the presiding officer of the governing body or by a majority of the members of the governing body. In order to give effect to this authority granted under RCW 42.30.080, we believe it's permissible for a majority of the members of the governing body to confer outside of a public meeting for the sole purpose of discussing whether to call a special meeting. This includes conferring for that purpose via phone, email or other electronic means.</p>
4	<p>Use of Social Media Can Implicate the OPMA</p> <p>Question: If members of the governing body use social media (e.g., through a Facebook page or Twitter feed) to host a discussion about issues related to the agency, and the discussion includes comments from members of the governing body, could that violate the OPMA?</p> <p>Answer: If the discussion includes comments from a majority of the members of the governing body, that discussion could constitute a public meeting under the OPMA. There's no authority under the OPMA regarding what would constitute adequate public notice – if that's even possible – for this kind of virtual meeting, so it's best to avoid this type of discussion on social media.</p> <p>Recommendation: Social media can be an effective tool to solicit comments from the public, but social media shouldn't be used by your agency's governing body to collectively formulate policy.</p>
5	<p>Failure to Comply with the OPMA Can Be Costly</p> <p>Violation of the OPMA can result in personal liability for officials who knowingly violate the OPMA and in invalidation of agency actions taken at a meeting at which an OPMA violation occurred. Attorney fees and court costs are awarded to successful OPMA plaintiffs. OPMA violations can also lead to a loss of public trust in the agency's commitment to open government.</p>

Public Records Act Chapter 42.56 RCW

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<u>42.56.330</u>	Public utilities and transportation.
<u>42.56.335</u>	Public utility districts and municipally owned electrical utilities— Restrictions on access by law enforcement authorities.
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<u>42.56.380</u>	Agriculture and livestock.
<u>42.56.390</u>	Emergency or transitional housing.
<u>42.56.400</u>	Insurance and financial institutions.
<u>42.56.403</u>	Property and casualty insurance statements of actuarial opinion.
<u>42.56.410</u>	Employment security department records, certain purposes.
<u>42.56.420</u>	Security.
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<u>42.56.440</u>	Veterans' discharge papers—Exceptions.
<u>42.56.450</u>	Check cashers and sellers licensing applications.
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<u>42.56.510</u>	Duty to disclose or withhold information—Otherwise provided.
<u>42.56.520</u>	Prompt responses required.
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<u>42.56.565</u>	Inspection or copying by persons serving criminal sentences—Injunction.
<u>42.56.570</u>	Explanatory pamphlet—Advisory model rules—Consultation and training services.
<u>42.56.580</u>	Public records officers.
<u>42.56.590</u>	Personal information—Notice of security breaches.
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42.56.610	Certain information from dairies and feedlots limited—Rules.
42.56.615	Enumeration data used by the office of financial management for population estimates.
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42.56.630	Registration information of members of cooperatives to produce and process medical marijuana.
42.56.640	Vulnerable individuals, in-home caregivers for vulnerable populations.
42.56.645	Release of public information—2017 c 4 (Initiative Measure No. 1501).
42.56.650	Health carrier data.
42.56.655	Explosives exemption report.
42.56.660	Agency employee records.
42.56.665	Agency employee records—Civil liability.
42.56.670	Agency employee records—Model policies.
42.56.675	Agency employee records—Lists of names.
42.56.900	Purpose—2005 c 274 §§ 402-429.
42.56.904	Intent—2007 c 391.

RCW [42.56.001](#)

Finding, purpose.

The legislature finds that *chapter [42.17](#) RCW contains laws relating to several discrete subjects. Therefore, the purpose of chapter 274, Laws of 2005 is to recodify some of those laws and create a new chapter in the Revised Code of Washington that contains laws pertaining to public records.

RCW [42.56.010](#)

Definitions.

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

(1) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

(2) "Person in interest" means the person who is the subject of a record or any representative designated by that person, except that if that person is under a legal disability, "person in interest" means and includes the parent or duly appointed legal representative.



(3) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW [40.14.100](#) and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives. This definition does not include records that are not otherwise required to be retained by the agency and are held by volunteers who:

- (a) Do not serve in an administrative capacity;
- (b) Have not been appointed by the agency to an agency board, commission, or internship; and
- (c) Do not have a supervisory role or delegated agency authority.

(4) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

RCW [42.56.020](#)

Short title.

This chapter may be known and cited as the public records act.

RCW [42.56.030](#)

Construction.

The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.

RCW [42.56.040](#)

Duty to publish procedures.



(1) Each state agency shall separately state and currently publish in the Washington Administrative Code and each local agency shall prominently display and make available for inspection and copying at the central office of such local agency, for guidance of the public:

(a) Descriptions of its central and field organization and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain copies of agency decisions;

(b) Statements of the general course and method by which its operations are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure;

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(e) Each amendment or revision to, or repeal of any of the foregoing.

(2) Except to the extent that he or she has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published or displayed and not so published or displayed.

RCW [42.56.050](#)

Invasion of privacy, when.

A person's "right to privacy," "right of privacy," "privacy," or "personal privacy," as these terms are used in this chapter, is invaded or violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public. The provisions of this chapter dealing with the right to privacy in certain public records do not create any right of privacy beyond those rights that are specified in this chapter as express exemptions from the public's right to inspect, examine, or copy public records.

RCW [42.56.060](#)

Disclaimer of public liability.

No public agency, public official, public employee, or custodian shall be liable, nor shall a cause of action exist, for any loss or damage based upon the release of a public record if the public agency, public official, public employee, or custodian acted in good faith in attempting to comply with the provisions of this chapter.

RCW [42.56.070](#)

Documents and indexes to be made public—Statement of costs.

(1) Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of subsection (8) of this section, this chapter, or other statute which exempts or prohibits



disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by this chapter, an agency shall delete identifying details in a manner consistent with this chapter when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.

(2) For informational purposes, each agency shall publish and maintain a current list containing every law, other than those listed in this chapter, that the agency believes exempts or prohibits disclosure of specific information or records of the agency. An agency's failure to list an exemption shall not affect the efficacy of any exemption.

(3) Each local agency shall maintain and make available for public inspection and copying a current index providing identifying information as to the following records issued, adopted, or promulgated after January 1, 1973:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the agency;

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

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

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

(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

(4) A local agency need not maintain such an index, if to do so would be unduly burdensome, but it shall in that event:

(a) Issue and publish a formal order specifying the reasons why and the extent to which compliance would unduly burden or interfere with agency operations; and

(b) Make available for public inspection and copying all indexes maintained for agency use.

(5) Each state agency shall, by rule, establish and implement a system of indexing for the identification and location of the following records:

(a) All records issued before July 1, 1990, for which the agency has maintained an index;

(b) Final orders entered after June 30, 1990, that are issued in adjudicative proceedings as defined in RCW [34.05.010](#) and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;



(c) Declaratory orders entered after June 30, 1990, that are issued pursuant to RCW [34.05.240](#) and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(d) Interpretive statements as defined in RCW [34.05.010](#) that were entered after June 30, 1990; and

(e) Policy statements as defined in RCW [34.05.010](#) that were entered after June 30, 1990.

Rules establishing systems of indexing shall include, but not be limited to, requirements for the form and content of the index, its location and availability to the public, and the schedule for revising or updating the index. State agencies that have maintained indexes for records issued before July 1, 1990, shall continue to make such indexes available for public inspection and copying. Information in such indexes may be incorporated into indexes prepared pursuant to this subsection. State agencies may satisfy the requirements of this subsection by making available to the public indexes prepared by other parties but actually used by the agency in its operations. State agencies shall make indexes available for public inspection and copying. State agencies may charge a fee to cover the actual costs of providing individual mailed copies of indexes.

(6) A public record may be relied on, used, or cited as precedent by an agency against a party other than an agency and it may be invoked by the agency for any other purpose only if:

(a) It has been indexed in an index available to the public; or

(b) Parties affected have timely notice (actual or constructive) of the terms thereof.

(7) Each agency may establish, maintain, and make available for public inspection and copying a statement of the actual costs that it charges for providing photocopies or electronically produced copies, of public records and a statement of the factors and manner used to determine the actual costs. Any statement of costs may be adopted by an agency only after providing notice and public hearing.

(a)(i) In determining the actual cost for providing copies of public records, an agency may include all costs directly incident to copying such public records including:

(A) The actual cost of the paper and the per page cost for use of agency copying equipment; and

(B) The actual cost of the electronic production or file transfer of the record and the use of any cloud-based data storage and processing service.

(ii) In determining other actual costs for providing copies of public records, an agency may include all costs directly incident to:

(A) Shipping such public records, including the cost of postage or delivery charges and the cost of any container or envelope used; and

(B) Transmitting such records in an electronic format, including the cost of any transmission charge and use of any physical media device provided by the agency.



(b) In determining the actual costs for providing copies of public records, an agency may not include staff salaries, benefits, or other general administrative or overhead charges, unless those costs are directly related to the actual cost of copying the public records. Staff time to copy and send the requested public records may be included in an agency's costs.

(8) This chapter shall not be construed as giving authority to any agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall not do so unless specifically authorized or directed by law: PROVIDED, HOWEVER, That lists of applicants for professional licenses and of professional licensees shall be made available to those professional associations or educational organizations recognized by their professional licensing or examination board, upon payment of a reasonable charge therefor: PROVIDED FURTHER, That such recognition may be refused only for a good cause pursuant to a hearing under the provisions of chapter [34.05](#) RCW, the administrative procedure act.

RCW [42.56.080](#)**Identifiable records—Facilities for copying—Availability of public records.**

(1) A public records request must be for identifiable records. A request for all or substantially all records prepared, owned, used, or retained by an agency is not a valid request for identifiable records under this chapter, provided that a request for all records regarding a particular topic or containing a particular keyword or name shall not be considered a request for all of an agency's records.

(2) Public records shall be available for inspection and copying, and agencies shall, upon request for identifiable public records, make them promptly available to any person including, if applicable, on a partial or installment basis as records that are part of a larger set of requested records are assembled or made ready for inspection or disclosure. Agencies shall not deny a request for identifiable public records solely on the basis that the request is overbroad. Agencies shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate RCW [42.56.070](#)(8) or [42.56.240](#)(14), or other statute which exempts or prohibits disclosure of specific information or records to certain persons. Agency facilities shall be made available to any person for the copying of public records except when and to the extent that this would unreasonably disrupt the operations of the agency. Agencies shall honor requests received in person during an agency's normal office hours, or by mail or email, for identifiable public records unless exempted by provisions of this chapter. No official format is required for making a records request; however, agencies may recommend that requestors submit requests using an agency provided form or web page.

(3) An agency may deny a request that is one of multiple requests from the requestor to the agency within a twenty-four hour period, if the agency establishes that



responding to the multiple requests would cause excessive interference with other essential functions of the agency. For purposes of this subsection, "bot request" means a request for public records that an agency reasonably believes was automatically generated by a computer program or script.

RCW [42.56.090](#)

Times for inspection and copying—Posting on web site.

Public records shall be available for inspection and copying during the customary office hours of the agency, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives for a minimum of thirty hours per week, except weeks that include state legal holidays, unless the person making the request and the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives or its representative agree on a different time. Customary business hours must be posted on the agency or office's web site and made known by other means designed to provide the public with notice.

RCW [42.56.100](#)

Protection of public records—Public access.

Agencies shall adopt and enforce reasonable rules and regulations, and the office of the secretary of the senate and the office of the chief clerk of the house of representatives shall adopt reasonable procedures allowing for the time, resource, and personnel constraints associated with legislative sessions, consonant with the intent of this chapter to provide full public access to public records, to protect public records from damage or disorganization, and to prevent excessive interference with other essential functions of the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives. Such rules and regulations shall provide for the fullest assistance to inquirers and the most timely possible action on requests for information. Nothing in this section shall relieve agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives from honoring requests received by mail for copies of identifiable public records.

If a public record request is made at a time when such record exists but is scheduled for destruction in the near future, the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives shall retain possession of the record, and may not destroy or erase the record until the request is resolved.



RCW [42.56.110](#)**Destruction of information relating to employee misconduct.**

Nothing in this chapter prevents an agency from destroying information relating to employee misconduct or alleged misconduct, in accordance with RCW [41.06.450](#), to the extent necessary to ensure fairness to the employee.

RCW [42.56.120](#)**Charges for copying.**

(1) No fee shall be charged for the inspection of public records or locating public documents and making them available for copying, except as provided in RCW [42.56.240](#)(14) and subsection (3) of this section. A reasonable charge may be imposed for providing copies of public records and for the use by any person of agency equipment or equipment of the office of the secretary of the senate or the office of the chief clerk of the house of representatives to copy public records, which charges shall not exceed the amount necessary to reimburse the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives for its actual costs directly incident to such copying. When calculating any fees authorized under this section, an agency shall use the most reasonable cost-efficient method available to the agency as part of its normal operations. If any agency translates a record into an alternative electronic format at the request of a requestor, the copy created does not constitute a new public record for purposes of this chapter. Scanning paper records to make electronic copies of such records is a method of copying paper records and does not amount to the creation of a new public record.

(2) (a) Agency charges for actual costs may only be imposed in accordance with the costs established and published by the agency pursuant to RCW [42.56.070](#)(7), and in accordance with the statement of factors and manner used to determine the actual costs. In no event may an agency charge a per page cost greater than the actual cost as established and published by the agency.

(b) An agency need not calculate the actual costs it charges for providing public records if it has rules or regulations declaring the reasons doing so would be unduly burdensome. To the extent the agency has not determined the actual costs of copying public records, the agency may not charge in excess of:

(i) Fifteen cents per page for photocopies of public records, printed copies of electronic public records when requested by the person requesting records, or for the use of agency equipment to photocopy public records;

(ii) Ten cents per page for public records scanned into an electronic format or for the use of agency equipment to scan the records;

(iii) Five cents per each four electronic files or attachment uploaded to email, cloud-based data storage service, or other means of electronic delivery; and

(iv) Ten cents per gigabyte for the transmission of public records in an electronic format or for the use of agency equipment to send the records electronically. The



agency shall take reasonable steps to provide the records in the most efficient manner available to the agency in its normal operations; and

(v) The actual cost of any digital storage media or device provided by the agency, the actual cost of any container or envelope used to mail the copies to the requestor, and the actual postage or delivery charge.

(c) The charges in (b) of this subsection may be combined to the extent that more than one type of charge applies to copies produced in response to a particular request.

(d) An agency may charge a flat fee of up to two dollars for any request as an alternative to fees authorized under (a) or (b) of this subsection when the agency reasonably estimates and documents that the costs allowed under this subsection are clearly equal to or more than two dollars. An additional flat fee shall not be charged for any installment after the first installment of a request produced in installments. An agency that has elected to charge the flat fee in this subsection for an initial installment may not charge the fees authorized under (a) or (b) of this subsection on subsequent installments.

(e) An agency shall not impose copying charges under this section for access to or downloading of records that the agency routinely posts on its public internet web site prior to receipt of a request unless the requestor has specifically requested that the agency provide copies of such records through other means.

(f) A requestor may ask an agency to provide, and if requested an agency shall provide, a summary of the applicable charges before any copies are made and the requestor may revise the request to reduce the number of copies to be made and reduce the applicable charges.

(3)(a)(i) In addition to the charge imposed for providing copies of public records and for the use by any person of agency equipment copying costs, an agency may include a customized service charge. A customized service charge may only be imposed if the agency estimates that the request would require the use of information technology expertise to prepare data compilations, or provide customized electronic access services when such compilations and customized access services are not used by the agency for other agency purposes.

(ii) The customized service charge may reimburse the agency up to the actual cost of providing the services in this subsection.

(b) An agency may not assess a customized service charge unless the agency has notified the requestor of the customized service charge to be applied to the request, including an explanation of why the customized service charge applies, a description of the specific expertise, and a reasonable estimate cost of the charge. The notice also must provide the requestor the opportunity to amend his or her request in order to avoid or reduce the cost of a customized service charge.

(4) An agency may require a deposit in an amount not to exceed ten percent of the estimated cost of providing copies for a request, including a customized service charge. If an agency makes a request available on a partial or installment basis, the agency may charge for



each part of the request as it is provided. If an installment of a records request is not claimed or reviewed, the agency is not obligated to fulfill the balance of the request. An agency may waive any charge assessed for a request pursuant to agency rules and regulations. An agency may enter into any contract, memorandum of understanding, or other agreement with a requestor that provides an alternative fee arrangement to the charges authorized in this section, or in response to a voluminous or frequently occurring request.

RCW [42.56.130](#)**Other provisions not superseded.**

The provisions of RCW * [42.56.070](#) (7) and (8) and [42.56.120](#) that establish or allow agencies to establish the costs charged for photocopies or electronically produced copies of public records do not supersede other statutory provisions, other than in this chapter, authorizing or governing fees for copying public records.

RCW [42.56.140](#)**Public records exemptions accountability committee.**

(1) (a) The public records exemptions accountability committee is created to review exemptions from public disclosure, with thirteen members as provided in this subsection.

(i) The governor shall appoint two members, one of whom represents the governor and one of whom represents local government.

(ii) The attorney general shall appoint two members, one of whom represents the attorney general and one of whom represents a statewide media association.

(iii) The state auditor shall appoint one member.

(iv) The president of the senate shall appoint one member from each of the two largest caucuses of the senate.

(v) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives.

(vi) The governor shall appoint four members of the public, with consideration given to diversity of viewpoint and geography.

(b) The governor shall select the chair of the committee from among its membership.

(c) Terms of the members shall be four years and shall be staggered, beginning August 1, 2007.

(2) The purpose of the public records exemptions accountability committee is to review public disclosure exemptions and provide recommendations pursuant to subsection (7)(d) of this section. The committee shall develop and publish criteria for review of public exemptions.

(3) All meetings of the committee shall be open to the public.

(4) The committee must consider input from interested parties.

(5) The office of the attorney general and the office of financial management shall provide staff support to the committee.



(6) Legislative members of the committee shall be reimbursed for travel expenses in accordance with RCW [44.04.120](#). Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses in accordance with RCW [43.03.050](#) and [43.03.060](#).

(7) (a) Beginning August 1, 2007, the code reviser shall provide the committee by August 1st of each year with a list of all public disclosure exemptions in the Revised Code of Washington.

(b) The committee shall develop a schedule to accomplish a review of each public disclosure exemption. The committee shall publish the schedule and publish any revisions made to the schedule.

(c) The chair shall convene an initial meeting of the committee by September 1, 2007. The committee shall meet at least once a quarter and may hold additional meetings at the call of the chair or by a majority vote of the members of the committee.

(d) For each public disclosure exemption, the committee shall provide a recommendation as to whether the exemption should be continued without modification, modified, scheduled for sunset review at a future date, or terminated. By November 15th of each year, the committee shall transmit its recommendations to the governor, the attorney general, and the appropriate committees of the house of representatives and the senate.

RCW [42.56.141](#)

Public records exemptions accountability committee—Wolf depredation information exemption. (*Expires June 30, 2022.*)

By December 1, 2021, the public records exemptions accountability committee, in addition to its duties in RCW [42.56.140](#), must prepare and submit a report to the legislature that includes recommendations on whether the exemptions created in section 1, chapter 246, Laws of 2017 should be continued or allowed to expire. The report should focus on whether the exemption continues to serve the intent of the legislature in section 1, chapter 246, Laws of 2017 to provide protections of personal information during the period the state establishes and implements new policies regarding wolf management. The committee must consider whether the development of wolf management policy, by the time of the report, has diminished risks of threats to personal safety so that the protection of personal information in section 1, chapter 246, Laws of 2017 is no longer an ongoing necessity.

RCW 42.56.150

Training—Local elected and statewide elected officials.

(1) Each local elected official and statewide elected official, and each person appointed to fill a vacancy in a local or statewide office, must complete a training course regarding the provisions of this chapter, and also chapter [40.14](#) RCW for records retention.

(2) Officials required to complete training under this section may complete their training before assuming office but must:



- (a) Complete training no later than ninety days after the date the official either:
 - (i) Takes the oath of office, if the official is required to take an oath of office to assume his or her duties as a public official; or
 - (ii) Otherwise assumes his or her duties as a public official; and
- (b) Complete refresher training at intervals of no more than four years for as long as he or she holds the office.
- (3) Training must be consistent with the attorney general's model rules for compliance with the public records act.
- (4) Training may be completed remotely with technology including but not limited to internet-based training.

RCW [42.56.152](#)**Training—Public records officers.**

- (1) Public records officers designated under RCW [42.56.580](#) and records officers designated under RCW [40.14.040](#) must complete a training course regarding the provisions of this chapter, and also chapter [40.14](#) RCW for records retention.
- (2) Public records officers must:
 - (a) Complete training no later than ninety days after assuming responsibilities as a public records officer or records manager; and
 - (b) Complete refresher training at intervals of no more than four years as long as they maintain the designation.
- (3) Training must be consistent with the attorney general's model rules for compliance with the public records act.
- (4) Training may be completed remotely with technology including but not limited to internet-based training.
- (5) Training must address particular issues related to the retention, production, and disclosure of electronic documents, including updating and improving technology information services.

RCW [42.56.155](#)**Assistance by attorney general.**

The attorney general's office may provide information, technical assistance, and training on the provisions of this chapter.

RCW [42.56.210](#)**Certain personal and other records exempt.**

- (1) Except for information described in *RCW [42.56.230](#)(3)(a) and confidential income data exempted from public inspection pursuant to RCW [84.40.020](#), the exemptions of this chapter are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records



sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(2) Inspection or copying of any specific records exempt under the provisions of this chapter may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(3) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

RCW [42.56.230](#)

Personal information.

The following personal information is exempt from public inspection and copying under this chapter:

(1) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients;

(2) (a) Personal information:

(i) For a child enrolled in licensed child care in any files maintained by the department of children, youth, and families;

(ii) For a child enrolled in a public or nonprofit program serving or pertaining to children, adolescents, or students, including but not limited to early learning or child care services, parks and recreation programs, youth development programs, and after-school programs;

(iii) For the family members or guardians of a child who is subject to the exemption under this subsection (2) if the family member or guardian has the same last name as the child or if the family member or guardian resides at the same address as the child and disclosure of the family member's or guardian's information would result in disclosure of the personal information exempted under (a)(i) and (ii) of this subsection; or

(iv) For substitute caregivers who are licensed or approved to provide overnight care of children by the department of children, youth, and families.

(b) Emergency contact information under this subsection (2) may be provided to appropriate authorities and medical personnel for the purpose of treating the individual during an emergency situation;

(3) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy;

(4) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would: (a) Be prohibited to such persons by RCW [84.08.210](#), [82.32.330](#), [84.40.020](#), [84.40.340](#), or any ordinance authorized



under RCW [35.102.145](#); or (b) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer;

(5) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial information as defined in RCW [9.35.005](#) including social security numbers, except when disclosure is expressly required by or governed by other law;

(6) Personal and financial information related to a small loan or any system of authorizing a small loan in RCW [31.45.093](#);

(7) (a) Any record used to prove identity, age, residential address, social security number, or other personal information required to apply for a driver's license or identicard.

(b) Information provided under RCW [46.20.111](#) that indicates that an applicant declined to register with the selective service system.

(c) Any record pertaining to a vehicle license plate, driver's license, or identicard issued under RCW [46.08.066](#) that, alone or in combination with any other records, may reveal the identity of an individual, or reveal that an individual is or was, performing an undercover or covert law enforcement, confidential public health work, public assistance fraud, or child support investigative activity. This exemption does not prevent the release of the total number of vehicle license plates, drivers' licenses, or identicards that, under RCW [46.08.066](#), an agency or department has applied for, been issued, denied, returned, destroyed, lost, and reported for misuse.

(d) Any record pertaining to a vessel registration issued under RCW [88.02.330](#) that, alone or in combination with any other records, may reveal the identity of an individual, or reveal that an individual is or was, performing an undercover or covert law enforcement activity. This exemption does not prevent the release of the total number of vessel registrations that, under RCW [88.02.330](#), an agency or department has applied for, been issued, denied, returned, destroyed, lost, and reported for misuse;

(8) All information related to individual claims resolution structured settlement agreements submitted to the board of industrial insurance appeals under RCW [51.04.063](#), other than final orders from the board of industrial insurance appeals.

Upon request by the legislature, the department of licensing shall provide a report to the legislature containing all of the information in subsection (7)(c) and (d) of this section that is subject to public disclosure;

(9) Voluntarily submitted information contained in a database that is part of or associated with enhanced 911 emergency communications systems, or information contained or used in emergency notification systems as provided under RCW [38.52.575](#) and [38.52.577](#);

(10) Until the person reaches eighteen years of age, information, otherwise disclosable under chapter [29A.08](#) RCW, that relates to a future voter, except for the purpose of processing and delivering ballots;

(11) All information submitted by a person to the state, either directly or through a state-licensed gambling establishment, or Indian tribes, or tribal enterprises that own gambling operations or facilities with class III gaming compacts, as part of the self-exclusion program



established in RCW [9.46.071](#) or [67.70.040](#) for people with a gambling problem or gambling disorder; and

(12) Names, addresses, or other personal information of individuals who participated in the bump-fire stock buy-back program under RCW [43.43.920](#).

RCW [42.56.235](#)**Religious affiliation exemption.**

All records that relate to or contain personally identifying information about an individual's religious beliefs, practices, or affiliation are exempt from disclosure under this chapter.

RCW [42.56.240](#)**Investigative, law enforcement, and crime victims.**

The following investigative, law enforcement, and crime victim information is exempt from public inspection and copying under this chapter:

(1) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy;

(2) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim, or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath;

(3) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter [9A.44](#) RCW or sexually violent offenses as defined in RCW [71.09.020](#), which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW [40.14.070](#)(2)(b);

(4) License applications under RCW [9.41.070](#); copies of license applications or information on the applications may be released to law enforcement or corrections agencies;

(5) Information revealing the specific details that describe an alleged or proven child victim of sexual assault under age eighteen, or the identity or contact information of an alleged or proven child victim of sexual assault who is under age eighteen. Identifying information includes the child victim's name, addresses, location, photograph, and in cases in which the child victim is a relative, stepchild, or stepsibling of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator. Contact information includes phone numbers, email addresses, social media profiles, and user names and passwords;



(6) Information contained in a local or regionally maintained gang database as well as the statewide gang database referenced in RCW [43.43.762](#);

(7) Data from the electronic sales tracking system established in RCW [69.43.165](#);

(8) Information submitted to the statewide unified sex offender notification and registration program under RCW [36.28A.040](#)(6) by a person for the purpose of receiving notification regarding a registered sex offender, including the person's name, residential address, and email address;

(9) Personally identifying information collected by law enforcement agencies pursuant to local security alarm system programs and vacation crime watch programs. Nothing in this subsection shall be interpreted so as to prohibit the legal owner of a residence or business from accessing information regarding his or her residence or business;

(10) The felony firearm offense conviction database of felony firearm offenders established in RCW [43.43.822](#);

(11) The identity of a state employee or officer who has in good faith filed a complaint with an ethics board, as provided in RCW [42.52.410](#), or who has in good faith reported improper governmental action, as defined in RCW [42.40.020](#), to the auditor or other public official, as defined in RCW [42.40.020](#);

(12) The following security threat group information collected and maintained by the department of corrections pursuant to RCW [72.09.745](#): (a) Information that could lead to the identification of a person's security threat group status, affiliation, or activities; (b) information that reveals specific security threats associated with the operation and activities of security threat groups; and (c) information that identifies the number of security threat group members, affiliates, or associates;

(13) The global positioning system data that would indicate the location of the residence of an employee or worker of a criminal justice agency as defined in RCW [10.97.030](#);

(14) Body worn camera recordings to the extent nondisclosure is essential for the protection of any person's right to privacy as described in RCW [42.56.050](#), including, but not limited to, the circumstances enumerated in (a) of this subsection. A law enforcement or corrections agency shall not disclose a body worn camera recording to the extent the recording is exempt under this subsection.

(a) Disclosure of a body worn camera recording is presumed to be highly offensive to a reasonable person under RCW [42.56.050](#) to the extent it depicts:

(i) (A) Any areas of a medical facility, counseling, or therapeutic program office where:

(I) A patient is registered to receive treatment, receiving treatment, waiting for treatment, or being transported in the course of treatment; or

(II) Health care information is shared with patients, their families, or among the care team; or



(B) Information that meets the definition of protected health information for purposes of the health insurance portability and accountability act of 1996 or health care information for purposes of chapter [70.02](#) RCW;

(ii) The interior of a place of residence where a person has a reasonable expectation of privacy;

(iii) An intimate image;

(iv) A minor;

(v) The body of a deceased person;

(vi) The identity of or communications from a victim or witness of an incident involving domestic violence as defined in RCW [10.99.020](#) or sexual assault as defined in RCW [70.125.030](#), or disclosure of intimate images as defined in RCW [9A.86.010](#). If at the time of recording the victim or witness indicates a desire for disclosure or nondisclosure of the recorded identity or communications, such desire shall govern; or

(vii) The identifiable location information of a community-based domestic violence program as defined in RCW [70.123.020](#), or emergency shelter as defined in RCW [70.123.020](#).

(b) The presumptions set out in (a) of this subsection may be rebutted by specific evidence in individual cases.

(c) In a court action seeking the right to inspect or copy a body worn camera recording, a person who prevails against a law enforcement or corrections agency that withholds or discloses all or part of a body worn camera recording pursuant to (a) of this subsection is not entitled to fees, costs, or awards pursuant to RCW [42.56.550](#) unless it is shown that the law enforcement or corrections agency acted in bad faith or with gross negligence.

(d) A request for body worn camera recordings must:

(i) Specifically identify a name of a person or persons involved in the incident;

(ii) Provide the incident or case number;

(iii) Provide the date, time, and location of the incident or incidents; or

(iv) Identify a law enforcement or corrections officer involved in the incident or incidents.

(e) (i) A person directly involved in an incident recorded by the requested body worn camera recording, an attorney representing a person directly involved in an incident recorded by the requested body worn camera recording, a person or his or her attorney who requests a body worn camera recording relevant to a criminal case involving that person, or the executive director from either the Washington state commission on African American affairs, Asian Pacific American affairs, or Hispanic affairs, has the right to obtain the body worn camera recording, subject to any exemption under this chapter or any applicable law. In addition, an attorney who represents a person regarding a potential or existing civil cause of action involving the denial of civil rights under the federal or state Constitution, or a violation of a



United States department of justice settlement agreement, has the right to obtain the body worn camera recording if relevant to the cause of action, subject to any exemption under this chapter or any applicable law. The attorney must explain the relevancy of the requested body worn camera recording to the cause of action and specify that he or she is seeking relief from redaction costs under this subsection (14)(e).

(ii) A law enforcement or corrections agency responding to requests under this subsection (14)(e) may not require the requesting individual to pay costs of any redacting, altering, distorting, pixelating, suppressing, or otherwise obscuring any portion of a body worn camera recording.

(iii) A law enforcement or corrections agency may require any person requesting a body worn camera recording pursuant to this subsection (14)(e) to identify himself or herself to ensure he or she is a person entitled to obtain the body worn camera recording under this subsection (14)(e).

(f) (i) A law enforcement or corrections agency responding to a request to disclose body worn camera recordings may require any requester not listed in (e) of this subsection to pay the reasonable costs of redacting, altering, distorting, pixelating, suppressing, or otherwise obscuring any portion of the body worn camera recording prior to disclosure only to the extent necessary to comply with the exemptions in this chapter or any applicable law.

(ii) An agency that charges redaction costs under this subsection (14)(f) must use redaction technology that provides the least costly commercially available method of redacting body worn camera recordings, to the extent possible and reasonable.

(iii) In any case where an agency charges a requestor for the costs of redacting a body worn camera recording under this subsection (14)(f), the time spent on redaction of the recording shall not count towards the agency's allocation of, or limitation on, time or costs spent responding to public records requests under this chapter, as established pursuant to local ordinance, policy, procedure, or state law.

(g) For purposes of this subsection (14):

(i) "Body worn camera recording" means a video and/or sound recording that is made by a body worn camera attached to the uniform or eyewear of a law enforcement or corrections officer while in the course of his or her official duties; and

(ii) "Intimate image" means an individual or individuals engaged in sexual activity, including sexual intercourse as defined in RCW [9A.44.010](#) and masturbation, or an individual's intimate body parts, whether nude or visible through less than opaque clothing, including the genitals, pubic area, anus, or postpubescent female nipple.

(h) Nothing in this subsection shall be construed to restrict access to body worn camera recordings as otherwise permitted by law for official or recognized civilian and accountability bodies or pursuant to any court order.

(i) Nothing in this section is intended to modify the obligations of prosecuting attorneys and law enforcement under *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed.



2d 215 (1963), *Kyles v. Whitley*, 541 U.S. 419, 115 S. Ct. 1555, 131 L. Ed.2d 490 (1995), and the relevant Washington court criminal rules and statutes.

(j) A law enforcement or corrections agency must retain body worn camera recordings for at least sixty days and thereafter may destroy the records in accordance with the applicable records retention schedule;

(15) Any records and information contained within the statewide sexual assault kit tracking system established in RCW [43.43.545](#);

(16) (a) Survivor communications with, and survivor records maintained by, campus-affiliated advocates.

(b) Nothing in this subsection shall be construed to restrict access to records maintained by a campus-affiliated advocate in the event that:

- (i) The survivor consents to inspection or copying;
- (ii) There is a clear, imminent risk of serious physical injury or death of the survivor or another person;
- (iii) Inspection or copying is required by federal law; or
- (iv) A court of competent jurisdiction mandates that the record be available for inspection or copying.

(c) "Campus-affiliated advocate" and "survivor" have the definitions in RCW [28B.112.030](#);

(17) Information and records prepared, owned, used, or retained by the Washington association of sheriffs and police chiefs and information and records prepared, owned, used, or retained by the Washington state patrol pursuant to chapter 261, Laws of 2017; and

(18) Any and all audio or video recordings of child forensic interviews as defined in chapter [26.44](#) RCW. Such recordings are confidential and may only be disclosed pursuant to a court order entered upon a showing of good cause and with advance notice to the child's parent, guardian, or legal custodian. However, if the child is an emancipated minor or has attained the age of majority as defined in RCW [26.28.010](#), advance notice must be to the child. Failure to disclose an audio or video recording of a child forensic interview as defined in chapter [26.44](#) RCW is not grounds for penalties or other sanctions available under this chapter.

RCW [42.56.250](#)

Employment and licensing.

*** CHANGE IN 2020 *** (SEE [1888-S2.SL](#)) ***

The following employment and licensing information is exempt from public inspection and copying under this chapter:

(1) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination;

(2) All applications for public employment other than for vacancies in elective office, including the names of applicants, resumes, and other related materials submitted with respect to an applicant;



(3) Professional growth plans (PGPs) in educator license renewals submitted through the eCert system in the office of the superintendent of public instruction;

(4) The following information held by any public agency in personnel records, public employment related records, volunteer rosters, or included in any mailing list of employees or volunteers of any public agency: Residential addresses, residential telephone numbers, personal wireless telephone numbers, personal email addresses, social security numbers, driver's license numbers, identicard numbers, and emergency contact information of employees or volunteers of a public agency, and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal email addresses, social security numbers, and emergency contact information of dependents of employees or volunteers of a public agency. For purposes of this subsection, "employees" includes independent provider home care workers as defined in RCW [74.39A.240](#);

(5) Information that identifies a person who, while an agency employee: (a) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter [49.60](#) RCW against the person; and (b) requests his or her identity or any identifying information not be disclosed;

(6) Investigative records compiled by an employing agency in connection with an investigation of a possible unfair practice under chapter [49.60](#) RCW or of a possible violation of other federal, state, or local laws or an employing agency's internal policies prohibiting discrimination or harassment in employment. Records are exempt in their entirety while the investigation is active and ongoing. After the agency has notified the complaining employee of the outcome of the investigation, the records may be disclosed only if the names of complainants, other accusers, and witnesses are redacted, unless a complainant, other accuser, or witness has consented to the disclosure of his or her name. The employing agency must inform a complainant, other accuser, or witness that his or her name will be redacted from the investigation records unless he or she consents to disclosure;

(7) Criminal history records checks for board staff finalist candidates conducted pursuant to RCW [43.33A.025](#);

(8) Photographs and month and year of birth in the personnel files of employees and workers of criminal justice agencies as defined in RCW [10.97.030](#). The news media, as defined in RCW [5.68.010](#)(5), shall have access to the photographs and full date of birth. For the purposes of this subsection, news media does not include any person or organization of persons in the custody of a criminal justice agency as defined in RCW [10.97.030](#);

(9) The global positioning system data that would indicate the location of the residence of a public employee or volunteer using the global positioning system recording device; and

(10) Until the person reaches eighteen years of age, information, otherwise disclosable under chapter [29A.08](#) RCW, that relates to a future voter, except for the purpose of processing and delivering ballots.



RCW [42.56.260](#)**Real estate transactions.**

(1) Subject to the time limitations in subsection (2) of this section, the following documents relating to an agency's real estate transactions are exempt from public inspection and copying under this chapter:

(a) Except as provided by chapter [8.26](#) RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property;

(b) Documents prepared for the purpose of considering the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price, including records prepared for executive session pursuant to RCW [42.30.110](#)(1)(b); and

(c) Documents prepared for the purpose of considering the minimum price of real estate that will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price, including records prepared for executive session pursuant to RCW [42.30.110](#)(1)(c).

(2) The exemptions in this section do not apply when disclosure is mandated by another statute or after the project or prospective project is abandoned or all properties that are part of the project have been purchased, sold, or leased. No appraisal may be withheld for more than three years.

RCW [42.56.270](#)**Financial, commercial, and proprietary information.**

*** CHANGE IN 2020 *** (SEE [5549-S2.SL](#)) ***

The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

(2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW [47.60.680](#) through [47.60.750](#); (b) highway construction or improvement as required by RCW [47.28.070](#); or (c) alternative public works contracting procedures as required by RCW [39.10.200](#) through [39.10.905](#);

(3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters [43.163](#) and [53.31](#) RCW, and by persons pertaining to export projects under RCW [43.23.035](#);

(4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters [43.325](#), [43.163](#), [43.160](#), [43.330](#), and [43.168](#) RCW, or during application for economic development loans or program services provided by any local agency;



(5) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter [31.24](#) RCW;

(6) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information;

(7) Financial and valuable trade information under RCW [51.36.120](#);

(8) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under *chapter [70.95H](#) RCW;

(9) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW [36.102.010](#);

(10) (a) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW [67.16.260](#)(1)(b), marijuana producer, processor, or retailer license, liquor license, gambling license, or lottery retail license;

(b) Internal control documents, independent auditors' reports and financial statements, and supporting documents: (i) Of house-banked social card game licensees required by the gambling commission pursuant to rules adopted under chapter [9.46](#) RCW; or (ii) submitted by tribes with an approved tribal/state compact for class III gaming;

(c) Valuable formulae or financial or proprietary commercial information records received during a consultative visit or while providing consultative services to a licensed marijuana business in accordance with RCW [69.50.561](#);

(11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services or the health care authority for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW [41.05.011](#);

(12) (a) When supplied to and in the records of the department of commerce:

(i) Financial and proprietary information collected from any person and provided to the department of commerce pursuant to RCW [43.330.050](#)(8); and

(ii) Financial or proprietary information collected from any person and provided to the department of commerce or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business;



(b) When developed by the department of commerce based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;

(c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;

(d) If there is no written contact for a period of sixty days to the department of commerce from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter;

(13) Financial and proprietary information submitted to or obtained by the department of ecology or the authority created under chapter [70.95N](#) RCW to implement chapter [70.95N](#) RCW;

(14) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under **chapter [43.350](#) RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information;

(15) Financial and commercial information provided as evidence to the department of licensing as required by RCW [19.112.110](#) or [19.112.120](#), except information disclosed in aggregate form that does not permit the identification of information related to individual fuel licensees;

(16) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department of natural resources under RCW [78.44.085](#);

(17) (a) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit;

(b) Farm plans developed under chapter [90.48](#) RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW [42.56.610](#) and [90.64.190](#);

(18) Financial, commercial, operations, and technical and research information and data submitted to or obtained by a health sciences and services authority in applications for, or delivery of, grants under RCW [35.104.010](#) through [35.104.060](#), to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

(19) Information gathered under chapter [19.85](#) RCW or RCW [34.05.328](#) that can be identified to a particular business;

(20) Financial and commercial information submitted to or obtained by the University of Washington, other than information the university is required to disclose under RCW [28B.20.150](#), when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the University



of Washington consolidated endowment fund or to result in private loss to the providers of this information;

(21) Market share data submitted by a manufacturer under RCW [70.95N.190](#)(4);

(22) Financial information supplied to the department of financial institutions, when filed by or on behalf of an issuer of securities for the purpose of obtaining the exemption from state securities registration for small securities offerings provided under RCW [21.20.880](#) or when filed by or on behalf of an investor for the purpose of purchasing such securities;

(23) Unaggregated or individual notices of a transfer of crude oil that is financial, proprietary, or commercial information, submitted to the department of ecology pursuant to RCW [90.56.565](#)(1)(a), and that is in the possession of the department of ecology or any entity with which the department of ecology has shared the notice pursuant to RCW [90.56.565](#);

(24) Financial institution and retirement account information, and building security plan information, supplied to the liquor and cannabis board pursuant to RCW [69.50.325](#), [69.50.331](#), [69.50.342](#), and [69.50.345](#), when filed by or on behalf of a licensee or prospective licensee for the purpose of obtaining, maintaining, or renewing a license to produce, process, transport, or sell marijuana as allowed under chapter [69.50](#) RCW;

(25) Marijuana transport information, vehicle and driver identification data, and account numbers or unique access identifiers issued to private entities for traceability system access, submitted by an individual or business to the liquor and cannabis board under the requirements of RCW [69.50.325](#), [69.50.331](#), [69.50.342](#), and [69.50.345](#) for the purpose of marijuana product traceability. Disclosure to local, state, and federal officials is not considered public disclosure for purposes of this section;

(26) Financial and commercial information submitted to or obtained by the retirement board of any city that is responsible for the management of an employees' retirement system pursuant to the authority of chapter [35.39](#) RCW, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the retirement fund or to result in private loss to the providers of this information except that (a) the names and commitment amounts of the private funds in which retirement funds are invested and (b) the aggregate quarterly performance results for a retirement fund's portfolio of investments in such funds are subject to disclosure;

(27) Proprietary financial, commercial, operations, and technical and research information and data submitted to or obtained by the liquor and cannabis board in applications for marijuana research licenses under RCW [69.50.372](#), or in reports submitted by marijuana research licensees in accordance with rules adopted by the liquor and cannabis board under RCW [69.50.372](#);

(28) Trade secrets, technology, proprietary information, and financial considerations contained in any agreements or contracts, entered into by a licensed marijuana business under RCW [69.50.395](#), which may be submitted to or obtained by the state liquor and cannabis board;

(29) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the Andy Hill cancer research endowment program in applications



for, or delivery of, grants under chapter [43.348](#) RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

(30) Proprietary information filed with the department of health under chapter [69.48](#) RCW; and

(31) Records filed with the department of ecology under chapter [70.375](#) RCW that a court has determined are confidential valuable commercial information under RCW [70.375.130](#).

RCW [42.56.280](#)

Preliminary drafts, notes, recommendations, intra-agency memorandums.

Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended are exempt under this chapter, except that a specific record is not exempt when publicly cited by an agency in connection with any agency action.

RCW [42.56.290](#)

Agency party to controversy.

Records that are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts are exempt from disclosure under this chapter.

RCW [42.56.300](#)

Archaeological sites.

(1) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites are exempt from disclosure under this chapter.

(2) Records, maps, and other information, acquired during watershed analysis pursuant to the forests and fish report under RCW [76.09.370](#), that identify the location of archaeological sites, historic sites, artifacts, or the sites of traditional religious, ceremonial, or social uses and activities of affected Indian tribes, are exempt from disclosure under this chapter in order to prevent the looting or depredation of such sites.

(3) Any site form, report, specific fields and tables relating to site form data within a database, or geographic information systems spatial layer obtained by any state agency or local government, or shared between any state agency, local government, or tribal government, is exempt from disclosure under this chapter, if the material is related to:

- (a) An archaeological site as defined in RCW [27.53.030](#);
- (b) Historical [Historic] archaeological resources as defined in RCW [27.53.030](#); or
- (c) Traditional cultural places.

(4) The local government or agency shall respond to requests from the owner of the real property for public records exempt under subsection (1), (2), or (3) of this section by providing

information to the requestor on how to contact the department of archaeology and historic preservation to obtain available locality information on archaeological and cultural resources.

RCW [42.56.310](#)

Library records.

Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, that discloses or could be used to disclose the identity of a library user is exempt from disclosure under this chapter.

RCW [42.56.320](#)

Educational information.

The following educational information is exempt from disclosure under this chapter:

- (1) Financial disclosures filed by private vocational schools under chapters [28B.85](#) and [28C.10](#) RCW;
 - (2) Financial and commercial information supplied by or on behalf of a person, firm, corporation, or entity under chapter [28B.95](#) RCW relating to the purchase or sale of tuition units and contracts for the purchase of multiple tuition units;
 - (3) Individually identifiable information received by the workforce training and education coordinating board for research or evaluation purposes;
 - (4) Except for public records as defined in RCW [40.14.010](#), any records or documents obtained by a state college, university, library, or archive through or concerning any gift, grant, conveyance, bequest, or devise, the terms of which restrict or regulate public access to those records or documents; and
 - (5) The annual declaration of intent filed by parents under RCW [28A.200.010](#) for a child to receive home-based instruction.
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RCW [42.56.330](#)

Public utilities and transportation.

The following information relating to public utilities and transportation is exempt from disclosure under this chapter:

- (1) Records filed with the utilities and transportation commission or attorney general under RCW [80.04.095](#) or [81.77.210](#) that a court has determined are confidential under RCW [80.04.095](#) or [81.77.210](#);
- (2) The addresses, telephone numbers, electronic contact information, and customer-specific utility usage and billing information in increments less than a billing cycle of the customers of a public utility contained in the records or lists held by the public utility of which they are customers, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, for the establishment, enforcement, or modification of a support order;



(3) The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program or service. Participants' names, general locations, and point of contact may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides;

(4) The personally identifying information of current or former participants or applicants in a paratransit or other transit service operated for the benefit of persons with disabilities or elderly persons;

(5) The personally identifying information of persons who acquire and use transit passes or other fare payment media including, but not limited to, stored value smart cards and magnetic strip cards, except that an agency may disclose personally identifying information to a person, employer, educational institution, or other entity that is responsible, in whole or in part, for payment of the cost of acquiring or using a transit pass or other fare payment media for the purpose of preventing fraud. As used in this subsection, "personally identifying information" includes acquisition or use information pertaining to a specific, individual transit pass or fare payment media.

(a) Information regarding the acquisition or use of transit passes or fare payment media may be disclosed in aggregate form if the data does not contain any personally identifying information.

(b) Personally identifying information may be released to law enforcement agencies if the request is accompanied by a court order;

(6) Any information obtained by governmental agencies that is collected by the use of a motor carrier intelligent transportation system or any comparable information equipment attached to a truck, tractor, or trailer; however, the information may be given to other governmental agencies or the owners of the truck, tractor, or trailer from which the information is obtained. As used in this subsection, "motor carrier" has the same definition as provided in RCW [81.80.010](#);

(7) The personally identifying information of persons who acquire and use transponders or other technology to facilitate payment of tolls. This information may be disclosed in aggregate form as long as the data does not contain any personally identifying information. For these purposes aggregate data may include the census tract of the account holder as long as any individual personally identifying information is not released. Personally identifying information may be released to law enforcement agencies only for toll enforcement purposes. Personally identifying information may be released to law enforcement agencies for other purposes only if the request is accompanied by a court order;

(8) The personally identifying information of persons who acquire and use a driver's license or identicard that includes a radio frequency identification chip or similar technology to facilitate border crossing. This information may be disclosed in aggregate form as long as the data does not contain any personally identifying information. Personally identifying information may be released to law enforcement agencies only for United States customs and border



protection enforcement purposes. Personally identifying information may be released to law enforcement agencies for other purposes only if the request is accompanied by a court order; and

(9) Personally identifying information included in safety complaints submitted under chapter [81.61](#) RCW.

RCW [42.56.335](#)**Public utility districts and municipally owned electrical utilities—Restrictions on access by law enforcement authorities.**

A law enforcement authority may not request inspection or copying of records of any person who belongs to a public utility district or a municipally owned electrical utility unless the authority provides the public utility district or municipally owned electrical utility with a written statement in which the authority states that it suspects that the particular person to whom the records pertain has committed a crime and the authority has a reasonable belief that the records could determine or help determine whether the suspicion might be true. Information obtained in violation of this section is inadmissible in any criminal proceeding.

RCW [42.56.350](#)**Health professionals.**

(1) The federal social security number of individuals governed under chapter [18.130](#) RCW maintained in the files of the department of health is exempt from disclosure under this chapter. The exemption in this section does not apply to requests made directly to the department from federal, state, and local agencies of government, and national and state licensing, credentialing, investigatory, disciplinary, and examination organizations.

(2) The current residential address and current residential telephone number of a health care provider governed under chapter [18.130](#) RCW maintained in the files of the department are exempt from disclosure under this chapter, if the provider requests that this information be withheld from public inspection and copying, and provides to the department of health an accurate alternate or business address and business telephone number. The current residential address and residential telephone number of a health care provider governed under RCW [18.130.040](#) maintained in the files of the department of health shall automatically be withheld from public inspection and copying unless the provider specifically requests the information be released, and except as provided for under *RCW [42.56.070](#)(9).

RCW [42.56.355](#)**Interstate medical licensure compact.**

(1) Information distributed to any Washington health profession board or commission by an interstate health professions licensure compact or member boards as described in RCW [18.71B.080](#)(6) of the interstate medical licensure compact is exempt from disclosure under this



chapter. This exemption does not prohibit the requestor from requesting these documents from the state of origin.

(2) This exemption does not pertain to any records created by Washington health profession boards or commissions from the documents described in subsection (1) of this section. Records created by Washington health profession boards or commissions from the documents described in subsection (1) of this section may be exempt under other sections of this chapter.

RCW [42.56.360](#)**Health care.**

*** CHANGE IN 2020 *** (SEE [6499-S.SL](#)) ***

(1) The following health care information is exempt from disclosure under this chapter:

(a) Information obtained by the pharmacy quality assurance commission as provided in RCW [69.45.090](#);

(b) Information obtained by the pharmacy quality assurance commission or the department of health and its representatives as provided in RCW [69.41.044](#), [69.41.280](#), and [18.64.420](#);

(c) Information and documents created specifically for, and collected and maintained by a quality improvement committee under RCW [43.70.510](#), [70.230.080](#), or [70.41.200](#), or by a peer review committee under RCW [4.24.250](#), or by a quality assurance committee pursuant to RCW [74.42.640](#) or [18.20.390](#), or by a hospital, as defined in RCW [43.70.056](#), for reporting of health care-associated infections under RCW [43.70.056](#), a notification of an incident under RCW [70.56.040](#)(5), and reports regarding adverse events under RCW [70.56.020](#)(2)(b), regardless of which agency is in possession of the information and documents;

(d) (i) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW [43.72.310](#);

(ii) If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this subsection (1)(d) as exempt from disclosure;

(iii) If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality;



- (e) Records of the entity obtained in an action under RCW [18.71.300](#) through [18.71.340](#);
 - (f) Complaints filed under chapter [18.130](#) RCW after July 27, 1997, to the extent provided in RCW [18.130.095](#)(1);
 - (g) Information obtained by the department of health under chapter [70.225](#) RCW;
 - (h) Information collected by the department of health under chapter [70.245](#) RCW except as provided in RCW [70.245.150](#);
 - (i) Cardiac and stroke system performance data submitted to national, state, or local data collection systems under RCW [70.168.150](#)(2)(b);
 - (j) All documents, including completed forms, received pursuant to a wellness program under RCW [41.04.362](#), but not statistical reports that do not identify an individual; and
 - (k) Data and information exempt from disclosure under RCW [43.371.040](#).
- (2) Chapter [70.02](#) RCW applies to public inspection and copying of health care information of patients.
- (3) (a) Documents related to infant mortality reviews conducted pursuant to RCW [70.05.170](#) are exempt from disclosure as provided for in RCW [70.05.170](#)(3).
- (b) (i) If an agency provides copies of public records to another agency that are exempt from public disclosure under this subsection (3), those records remain exempt to the same extent the records were exempt in the possession of the originating entity.
- (ii) For notice purposes only, agencies providing exempt records under this subsection (3) to other agencies may mark any exempt records as "exempt" so that the receiving agency is aware of the exemption, however whether or not a record is marked exempt does not affect whether the record is actually exempt from disclosure.
- (4) Information and documents related to maternal mortality reviews conducted pursuant to RCW [70.54.450](#) are confidential and exempt from public inspection and copying.

RCW [42.56.365](#)

Vital records. (*Effective January 1, 2021.*)

All or part of any vital records, reports, supporting documentation, vital statistics, data, or information contained therein under chapter [70.58A](#) RCW are not subject to public inspection and copying under this chapter.

RCW [42.56.370](#)

Client records of domestic violence programs, or community sexual assault programs or services for underserved populations.

Client records maintained by an agency that is a domestic violence program as defined in RCW [70.123.020](#) or [70.123.075](#) or a community sexual assault program or services for underserved populations as defined in RCW [70.125.030](#) are exempt from disclosure under this chapter.



RCW [42.56.380](#)**Agriculture and livestock.**

The following information relating to agriculture and livestock is exempt from disclosure under this chapter:

- (1) Business-related information under RCW [15.86.110](#);
- (2) Information provided under RCW [15.54.362](#);
- (3) Production or sales records required to determine assessment levels and actual assessment payments to commodity boards and commissions formed under chapters [15.24](#), [15.26](#), [15.28](#), [15.44](#), [15.65](#), [15.66](#), [15.74](#), [15.88](#), [15.115](#), [15.100](#), [15.89](#), and [16.67](#) RCW or required by the department of agriculture to administer these chapters or the department's programs;
- (4) Consignment information contained on phytosanitary certificates issued by the department of agriculture under chapters [15.13](#), [15.49](#), and [15.17](#) RCW or federal phytosanitary certificates issued under 7 C.F.R. 353 through cooperative agreements with the animal and plant health inspection service, United States department of agriculture, or on applications for phytosanitary certification required by the department of agriculture;
- (5) Financial and commercial information and records supplied by persons (a) to the department of agriculture for the purpose of conducting a referendum for the potential establishment of a commodity board or commission; or (b) to the department of agriculture or commodity boards or commissions formed under chapter [15.24](#), [15.28](#), [15.44](#), [15.65](#), [15.66](#), [15.74](#), [15.88](#), [15.115](#), [15.100](#), [15.89](#), or [16.67](#) RCW with respect to domestic or export marketing activities or individual producer's production information;
- (6) Information obtained regarding the purchases, sales, or production of an individual American ginseng grower or dealer, except for providing reports to the United States fish and wildlife service under RCW [15.19.080](#);
- (7) Information collected regarding packers and shippers of fruits and vegetables for the issuance of certificates of compliance under RCW [15.17.140](#)(2) and [15.17.143](#);
- (8) Financial statements obtained under RCW [16.65.030](#)(1)(d) for the purposes of determining whether or not the applicant meets the minimum net worth requirements to construct or operate a public livestock market;
- (9) Information submitted by an individual or business to the department of agriculture under the requirements of chapters [16.36](#), [16.57](#), and [43.23](#) RCW for the purpose of herd inventory management for animal disease traceability. This information includes animal ownership, numbers of animals, locations, contact information, movements of livestock, financial information, the purchase and sale of livestock, account numbers or unique identifiers issued by government to private entities, and information related to livestock disease or injury that would identify an animal, a person, or location. Disclosure to local, state, and federal officials is not public disclosure. This exemption does not affect the disclosure of information used in reportable animal health investigations under chapter [16.36](#) RCW once they are complete;



(10) Results of testing for animal diseases from samples submitted by or at the direction of the animal owner or his or her designee that can be identified to a particular business or individual;

(11) Records of international livestock importation that can be identified to a particular animal, business, or individual received from the United States department of homeland security or the United States department of agriculture that are not disclosable by the federal agency under federal law including 5 U.S.C. Sec. 552;

(12) Records related to the entry of prohibited agricultural products imported into Washington state or that had Washington state as a final destination received from the United States department of homeland security or the United States department of agriculture that are not disclosable by the federal agency under federal law including 5 U.S.C. Sec. 552;

(13) Information obtained from the federal government or others under contract with the federal government or records obtained by the department of agriculture, in accordance with RCW [15.135.100](#);

(14) Hop grower lot numbers and laboratory results associated with the hop grower lot numbers where this information is used by the department of agriculture to issue export documents; and

(15) Information or records obtained pursuant to a food and drug administration contract or commissioning agreement, in accordance with RCW [15.130.150](#).

RCW [42.56.390](#)

Emergency or transitional housing.

Names of individuals residing in emergency or transitional housing that are furnished to the department of revenue or a county assessor in order to substantiate a claim for property tax exemption under RCW [84.36.043](#) are exempt from disclosure under this chapter.

RCW [42.56.400](#)

Insurance and financial institutions.

*** CHANGE IN 2020 *** (SEE [6048-S.SL](#)) ***

*** CHANGE IN 2020 *** (SEE [5601-S2.SL](#)) ***

The following information relating to insurance and financial institutions is exempt from disclosure under this chapter:

(1) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW [7.68.110](#);

(2) Information obtained and exempted or withheld from public inspection by the health care authority under RCW [41.05.026](#), whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter [41.05](#) RCW;



- (3) The names and individual identification data of either all owners or all insureds, or both, received by the insurance commissioner under chapter [48.102](#) RCW;
- (4) Information provided under RCW [48.30A.045](#) through [48.30A.060](#);
- (5) Information provided under RCW [48.05.510](#) through [48.05.535](#), [48.43.200](#) through [48.43.225](#), [48.44.530](#) through [48.44.555](#), and [48.46.600](#) through [48.46.625](#);
- (6) Examination reports and information obtained by the department of financial institutions from banks under RCW [30A.04.075](#), from savings banks under RCW [32.04.220](#), from savings and loan associations under RCW [33.04.110](#), from credit unions under RCW [31.12.565](#), from check cashers and sellers under RCW [31.45.030](#)(3), and from securities brokers and investment advisers under RCW [21.20.100](#), all of which is confidential and privileged information;
- (7) Information provided to the insurance commissioner under RCW [48.110.040](#)(3);
- (8) Documents, materials, or information obtained by the insurance commissioner under RCW [48.02.065](#), all of which are confidential and privileged;
- (9) Documents, materials, or information obtained by the insurance commissioner under RCW [48.31B.015](#)(2) (l) and (m), [48.31B.025](#), [48.31B.030](#), and [48.31B.035](#), all of which are confidential and privileged;
- (10) Data filed under RCW [48.140.020](#), [48.140.030](#), [48.140.050](#), and [7.70.140](#) that, alone or in combination with any other data, may reveal the identity of a claimant, health care provider, health care facility, insuring entity, or self-insurer involved in a particular claim or a collection of claims. For the purposes of this subsection:
 - (a) "Claimant" has the same meaning as in RCW [48.140.010](#)(2).
 - (b) "Health care facility" has the same meaning as in RCW [48.140.010](#)(6).
 - (c) "Health care provider" has the same meaning as in RCW [48.140.010](#)(7).
 - (d) "Insuring entity" has the same meaning as in RCW [48.140.010](#)(8).
 - (e) "Self-insurer" has the same meaning as in RCW [48.140.010](#)(11);
- (11) Documents, materials, or information obtained by the insurance commissioner under RCW [48.135.060](#);
- (12) Documents, materials, or information obtained by the insurance commissioner under RCW [48.37.060](#);
- (13) Confidential and privileged documents obtained or produced by the insurance commissioner and identified in RCW [48.37.080](#);
- (14) Documents, materials, or information obtained by the insurance commissioner under RCW [48.37.140](#);
- (15) Documents, materials, or information obtained by the insurance commissioner under RCW [48.17.595](#);
- (16) Documents, materials, or information obtained by the insurance commissioner under RCW [48.102.051](#)(1) and [48.102.140](#) (3) and (7)(a)(ii);
- (17) Documents, materials, or information obtained by the insurance commissioner in the commissioner's capacity as receiver under RCW [48.31.025](#) and [48.99.017](#), which are records



under the jurisdiction and control of the receivership court. The commissioner is not required to search for, log, produce, or otherwise comply with the public records act for any records that the commissioner obtains under chapters [48.31](#) and [48.99](#) RCW in the commissioner's capacity as a receiver, except as directed by the receivership court;

(18) Documents, materials, or information obtained by the insurance commissioner under RCW [48.13.151](#);

(19) Data, information, and documents provided by a carrier pursuant to section 1, chapter 172, Laws of 2010;

(20) Information in a filing of usage-based insurance about the usage-based component of the rate pursuant to RCW [48.19.040](#)(5)(b);

(21) Data, information, and documents, other than those described in RCW [48.02.210](#)(2) as it existed prior to repeal by section 2, chapter 7, Laws of 2017 3rd sp. sess., that are submitted to the office of the insurance commissioner by an entity providing health care coverage pursuant to RCW [28A.400.275](#) as it existed on January 1, 2017, and RCW [48.02.210](#) as it existed prior to repeal by section 2, chapter 7, Laws of 2017 3rd sp. sess.;

(22) Data, information, and documents obtained by the insurance commissioner under RCW [48.29.017](#);

(23) Information not subject to public inspection or public disclosure under RCW [48.43.730](#)(5);

(24) Documents, materials, or information obtained by the insurance commissioner under chapter [48.05A](#) RCW;

(25) Documents, materials, or information obtained by the insurance commissioner under RCW [48.74.025](#), [48.74.028](#), [48.74.100](#)(6), [48.74.110](#)(2) (b) and (c), and [48.74.120](#) to the extent such documents, materials, or information independently qualify for exemption from disclosure as documents, materials, or information in possession of the commissioner pursuant to a financial conduct examination and exempt from disclosure under RCW [48.02.065](#);

(26) Nonpublic personal health information obtained by, disclosed to, or in the custody of the insurance commissioner, as provided in RCW [48.02.068](#);

(27) Data, information, and documents obtained by the insurance commissioner under RCW [48.02.230](#);

(28) Documents, materials, or other information, including the corporate annual disclosure obtained by the insurance commissioner under RCW [48.195.020](#);

(29) Findings and orders disapproving acquisition of a trust institution under RCW [30B.53.100](#)(3); and

(30) All claims data, including health care and financial related data received under RCW [41.05.890](#), received and held by the health care authority.

RCW [42.56.403](#)

Property and casualty insurance statements of actuarial opinion.



Documents, materials, and information obtained by the insurance commissioner under RCW [48.05.385](#)(2) are confidential and privileged and not subject to public disclosure under this chapter.

RCW [42.56.410](#)**Employment security department records, certain purposes.**

The following information related to employment security is exempt from disclosure under this chapter:

- (1) Records maintained by the employment security department and subject to chapter [50.13](#) or [50A.25](#) RCW if provided to another individual or organization for operational, research, or evaluation purposes are exempt from disclosure under this chapter; and
- (2) Any inventory or data map records created under RCW [50.13.120](#)(1)(b) that reveal the location of personal information or the extent to which it is protected.

RCW [42.56.420](#)**Security.**

The following information relating to security is exempt from disclosure under this chapter:

- (1) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the state or the United States and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:
 - (a) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; and
 - (b) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism;
- (2) Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans at a city, county, or state adult or juvenile correctional facility, or secure facility for persons civilly confined under chapter [71.09](#) RCW, the public disclosure of which would have a substantial likelihood of threatening the security of a city, county, or state adult or juvenile correctional facility, secure facility for persons civilly confined under chapter [71.09](#) RCW, or any individual's safety;
- (3) Information compiled by school districts or schools in the development of their comprehensive safe school plans under RCW [28A.320.125](#), to the extent that they identify specific vulnerabilities of school districts and each individual school;
- (4) Information regarding the public and private infrastructure and security of computer and telecommunications networks, consisting of security passwords, security access codes and



programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities, and other such information the release of which may increase risk to the confidentiality, integrity, or availability of security, information technology infrastructure, or assets;

(5) The system security and emergency preparedness plan required under RCW [35.21.228](#), [35A.21.300](#), [36.01.210](#), [36.57.120](#), [36.57A.170](#), and [81.112.180](#); and

(6) Personally identifiable information of employees, and other security information, of a private cloud service provider that has entered into a criminal justice information services agreement as contemplated by the United States department of justice criminal justice information services security policy, as authorized by 28 C.F.R. Part 20.

RCW [42.56.430](#)**Fish and wildlife. (Effective until June 30, 2022.)**

The following information relating to fish and wildlife is exempt from disclosure under this chapter:

(1) Commercial fishing catch data from logbooks required to be provided to the department of fish and wildlife under RCW [77.12.047](#), when the data identifies specific catch location, timing, or methodology and the release of which would result in unfair competitive disadvantage to the commercial fisher providing the catch data, however, this information may be released to government agencies concerned with the management of fish and wildlife resources;

(2) Sensitive fish and wildlife data. Sensitive fish and wildlife data may be released to the following entities and their agents for fish, wildlife, land management purposes, or scientific research needs: Government agencies, public utilities, and accredited colleges and universities. Sensitive fish and wildlife data may be released to tribal governments. Sensitive fish and wildlife data may also be released to the owner, lessee, or right-of-way or easement holder of the private land to which the data pertains. The release of sensitive fish and wildlife data must be subject to a confidentiality agreement, except upon release of sensitive fish and wildlife data to the owner, lessee, or right-of-way or easement holder of private land who initially provided the data. Sensitive fish and wildlife data does not include data related to reports of predatory wildlife as specified in RCW [77.12.885](#). Sensitive fish and wildlife data must meet at least one of the following criteria of this subsection as applied by the department of fish and wildlife:

(a) The nesting sites or specific locations of endangered species designated under RCW [77.12.020](#), or threatened or sensitive species classified by rule of the department of fish and wildlife;

(b) Radio frequencies used in, or locational data generated by, telemetry studies;
or

(c) Other location data that could compromise the viability of a specific fish or wildlife population, and where at least one of the following criteria are met:



- (i) The species has a known commercial or black market value;
 - (ii) There is a history of malicious take of that species and the species behavior or ecology renders it especially vulnerable;
 - (iii) There is a known demand to visit, take, or disturb the species; or
 - (iv) The species has an extremely limited distribution and concentration;
- (3) The following information regarding any damage prevention cooperative agreement, or nonlethal preventative measures deployed to minimize wolf interactions with pets and livestock:
- (a) The name, telephone number, residential address, and other personally identifying information of any person who has a current damage prevention cooperative agreement with the department, including a pet or livestock owner, and his or her employees or immediate family members, who agrees to deploy, or is responsible for the deployment of, nonlethal, preventative measures; and
 - (b) The legal description or name of any residential property, ranch, or farm, that is owned, leased, or used by any person included in (a) of this subsection;
- (4) The following information regarding a reported depredation by wolves on pets or livestock:
- (a) The name, telephone number, residential address, and other personally identifying information of:
 - (i) Any person who reported the depredation;
 - (ii) Any pet or livestock owner, and his or her employees or immediate family members, whose pet or livestock was the subject of a reported depredation; and
 - (iii) Any department of fish and wildlife employee, range rider contractor, or trapper contractor who directly:
 - (A) Responds to a depredation; or
 - (B) Assists in the lethal removal of a wolf; and
 - (b) The legal description, location coordinates, or name that identifies any residential property, or ranch or farm that contains a residence, that is owned, leased, or used by any person included in (a) of this subsection;
- (5) The personally identifying information of persons who acquire recreational licenses under RCW [77.32.010](#) or commercial licenses under chapter [77.65](#) or [77.70](#) RCW, except name, address of contact used by the department, and type of license, endorsement, or tag; however, the department of fish and wildlife may disclose personally identifying information to:
- (a) Government agencies concerned with the management of fish and wildlife resources;
 - (b) The department of social and health services, child support division, and to the department of licensing in order to implement RCW [77.32.014](#) and [46.20.291](#); and
 - (c) Law enforcement agencies for the purpose of firearm possession enforcement under RCW [9.41.040](#);



(6) Information that the department of fish and wildlife has received or accessed but may not disclose due to confidentiality requirements in the Magnuson-Stevens fishery conservation and management reauthorization act of 2006 (16 U.S.C. Sec. 1861(h)(3) and (i), and Sec. 1881a(b));

(7) The following tribal fish and shellfish harvest information, shared with the department of fish and wildlife:

- (a) Fisher name;
- (b) Fisher signature;
- (c) Total harvest value per species;
- (d) Total harvest value;
- (e) Price per pound; and
- (f) Tribal tax information; and

(8) The following commercial shellfish harvest information, shared with the department of fish and wildlife:

- (a) Individual farmer name;
- (b) Individual farmer signature;
- (c) Total harvest value per species;
- (d) Total harvest value;
- (e) Price per pound; and
- (f) Tax information.

RCW [42.56.440](#)

Veterans' discharge papers—Exceptions.

(1) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have not been commingled with other recorded documents are exempt from disclosure under this chapter. These records will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding that veteran's general power of attorney, or to anyone else designated in writing by that veteran to receive the records.

(2) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have been commingled with other records are exempt from disclosure under this chapter, if the veteran has recorded a "request for exemption from public disclosure of discharge papers" with the county auditor. If such a request has been recorded, these records may be released only to the veteran filing the papers, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(3) Discharge papers of a veteran filed at the office of the county auditor after June 30, 2002, are not public records, but will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding



the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(4) For the purposes of this section, next of kin of deceased veterans have the same rights to full access to the record. Next of kin are the veteran's widow or widower who has not remarried, son, daughter, father, mother, brother, and sister.

RCW [42.56.450](#)**Check cashers and sellers licensing applications.**

Information in an application for licensing or a small loan endorsement under chapter [31.45](#) RCW regarding the personal residential address, telephone number of the applicant, or financial statement is exempt from disclosure under this chapter.

RCW [42.56.460](#)**Fireworks and explosives.**

(1) All records obtained and all reports produced as required by state fireworks law, chapter [70.77](#) RCW, are exempt from disclosure under this chapter.

(2) All records obtained and all reports submitted as required by the Washington state explosives act, chapter [70.74](#) RCW, are exempt from disclosure under this chapter. Nothing in this subsection (2) shall be construed to restrict access to information related to the regulatory duties or actions of any agency.

RCW [42.56.470](#)**Correctional industries workers.**

All records, documents, data, and other materials obtained under the requirements of RCW [72.09.115](#) from an existing correctional industries class I work program participant or an applicant for a proposed new or expanded class I correctional industries work program are exempt from public disclosure under this chapter.

RCW [42.56.510](#)**Duty to disclose or withhold information—Otherwise provided.**

Nothing in RCW [42.56.250](#) and [42.56.330](#) shall affect a positive duty of an agency to disclose or a positive duty to withhold information which duty to disclose or withhold is contained in any other law.

RCW [42.56.520](#)**Prompt responses required.**

(1) Responses to requests for public records shall be made promptly by agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives. Within five business days of receiving a public record request, an agency, the



office of the secretary of the senate, or the office of the chief clerk of the house of representatives must respond in one of the ways provided in this subsection (1):

(a) Providing the record;

(b) Providing an internet address and link on the agency's web site to the specific records requested, except that if the requester notifies the agency that he or she cannot access the records through the internet, then the agency must provide copies of the record or allow the requester to view copies using an agency computer;

(c) Acknowledging that the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives has received the request and providing a reasonable estimate of the time the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives will require to respond to the request;

(d) Acknowledging that the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives has received the request and asking the requestor to provide clarification for a request that is unclear, and providing, to the greatest extent possible, a reasonable estimate of the time the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives will require to respond to the request if it is not clarified; or

(e) Denying the public record request.

(2) Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.

(3) (a) In acknowledging receipt of a public record request that is unclear, an agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives may ask the requestor to clarify what information the requestor is seeking.

(b) If the requestor fails to respond to an agency request to clarify the request, and the entire request is unclear, the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives need not respond to it. Otherwise, the agency must respond, pursuant to this section, to those portions of the request that are clear.

(4) Denials of requests must be accompanied by a written statement of the specific reasons therefor. Agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall establish mechanisms for the most prompt possible review of decisions denying inspection, and such review shall be deemed completed at the end of the second business day following the denial of inspection and shall constitute final agency action or final action by the office of the secretary of the senate or the office of the chief clerk of the house of representatives for the purposes of judicial review.



RCW [42.56.530](#)**Review of agency denial.**

Whenever a state agency concludes that a public record is exempt from disclosure and denies a person opportunity to inspect or copy a public record for that reason, the person may request the attorney general to review the matter. The attorney general shall provide the person with his or her written opinion on whether the record is exempt.

Nothing in this section shall be deemed to establish an attorney-client relationship between the attorney general and a person making a request under this section.

RCW [42.56.540](#)**Court protection of public records.**

The examination of any specific public record may be enjoined if, upon motion and affidavit by an agency or its representative or a person who is named in the record or to whom the record specifically pertains, the superior court for the county in which the movant resides or in which the record is maintained, finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions. An agency has the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested. However, this option does not exist where the agency is required by law to provide such notice.

RCW [42.56.550](#)**Judicial review of agency actions.**

(1) Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records. The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records.

(2) Upon the motion of any person who believes that an agency has not made a reasonable estimate of the time that the agency requires to respond to a public record request or a reasonable estimate of the charges to produce copies of public records, the superior court in the county in which a record is maintained may require the responsible agency to show that the estimate it provided is reasonable. The burden of proof shall be on the agency to show that the estimate it provided is reasonable.

(3) Judicial review of all agency actions taken or challenged under RCW [42.56.030](#) through [42.56.520](#) shall be de novo. Courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. Courts



may examine any record in camera in any proceeding brought under this section. The court may conduct a hearing based solely on affidavits.

(4) Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to award such person an amount not to exceed one hundred dollars for each day that he or she was denied the right to inspect or copy said public record.

(5) For actions under this section against counties, the venue provisions of RCW [36.01.050](#) apply.

(6) Actions under this section must be filed within one year of the agency's claim of exemption or the last production of a record on a partial or installment basis.

RCW [42.56.560](#)**Application of RCW [42.56.550](#).**

The procedures in RCW [42.56.550](#) govern denials of an opportunity to inspect or copy a public record by the office of the secretary of the senate or the office of the chief clerk of the House of Representatives.

RCW [42.56.565](#)**Inspection or copying by persons serving criminal sentences—Injunction.**

(1) A court shall not award penalties under RCW [42.56.550](#)(4) to a person who was serving a criminal sentence in a state, local, or privately operated correctional facility on the date the request for public records was made, unless the court finds that the agency acted in bad faith in denying the person the opportunity to inspect or copy a public record.

(2) The inspection or copying of any nonexempt public record by persons serving criminal sentences in state, local, or privately operated correctional facilities may be enjoined pursuant to this section.

(a) The injunction may be requested by: (i) An agency or its representative; (ii) a person named in the record or his or her representative; or (iii) a person to whom the requests specifically pertains or his or her representative.

(b) The request must be filed in: (i) The superior court in which the movant resides; or (ii) the superior court in the county in which the record is maintained.

(c) In order to issue an injunction, the court must find that:

(i) The request was made to harass or intimidate the agency or its employees;

(ii) Fulfilling the request would likely threaten the security of correctional facilities;



(iii) Fulfilling the request would likely threaten the safety or security of staff, inmates, family members of staff, family members of other inmates, or any other person;
or

(iv) Fulfilling the request may assist criminal activity.

(3) In deciding whether to enjoin a request under subsection (2) of this section, the court may consider all relevant factors including, but not limited to:

(a) Other requests by the requestor;
(b) The type of record or records sought;
(c) Statements offered by the requestor concerning the purpose for the request;
(d) Whether disclosure of the requested records would likely harm any person or vital government interest;

(e) Whether the request seeks a significant and burdensome number of documents;

(f) The impact of disclosure on correctional facility security and order, the safety or security of correctional facility staff, inmates, or others; and

(g) The deterrence of criminal activity.

(4) The motion proceeding described in this section shall be a summary proceeding based on affidavits or declarations, unless the court orders otherwise. Upon a showing by a preponderance of the evidence, the court may enjoin all or any part of a request or requests. Based on the evidence, the court may also enjoin, for a period of time the court deems reasonable, future requests by:

(a) The same requestor; or

(b) An entity owned or controlled in whole or in part by the same requestor.

(5) An agency shall not be liable for penalties under RCW [42.56.550](#)(4) for any period during which an order under this section is in effect, including during an appeal of an order under this section, regardless of the outcome of the appeal.

RCW [42.56.570](#)

Explanatory pamphlet—Advisory model rules—Consultation and training services.

(1) The attorney general's office shall publish, and update when appropriate, a pamphlet, written in plain language, explaining this chapter.

(2) The attorney general, by February 1, 2006, shall adopt by rule advisory model rules for state and local agencies, as defined in RCW [42.56.010](#), addressing the following subjects:

(a) Providing fullest assistance to requestors;
(b) Fulfilling large requests in the most efficient manner;
(c) Fulfilling requests for electronic records; and
(d) Any other issues pertaining to public disclosure as determined by the attorney general.

(3) The attorney general, in his or her discretion, may from time to time revise the model rules.



(4) Local agencies should consult the advisory model rules when establishing local ordinances for compliance with the requirements and responsibilities of this chapter.

(5) The attorney general must establish a consultation program to provide information for developing best practices for local agencies requesting assistance in compliance with this chapter including, but not limited to: Responding to records requests, seeking additional public and private resources for developing and updating technology information services, and mitigating liability and costs of compliance. The attorney general may develop the program in conjunction with the advisory model rule and may collaborate with the chief information officer, the state archivist, and other relevant agencies and organizations in developing and managing the program.

(6) The state archivist must offer and provide consultation and training services for local agencies on improving record retention practices.

RCW [42.56.580](#)**Public records officers.**

(1) Each state and local agency shall appoint and publicly identify a public records officer whose responsibility is to serve as a point of contact for members of the public in requesting disclosure of public records and to oversee the agency's compliance with the public records disclosure requirements of this chapter. A state or local agency's public records officer may appoint an employee or official of another agency as its public records officer.

(2) For state agencies, the name and contact information of the agency's public records officer to whom members of the public may direct requests for disclosure of public records and who will oversee the agency's compliance with the public records disclosure requirements of this chapter shall be published in the state register at the time of designation and maintained thereafter on the code reviser web site for the duration of the designation.

(3) For local agencies, the name and contact information of the agency's public records officer to whom members of the public may direct requests for disclosure of public records and who will oversee the agency's compliance within the public records disclosure requirements of this chapter shall be made in a way reasonably calculated to provide notice to the public, including posting at the local agency's place of business, posting on its internet site, or including in its publications.

RCW [42.56.590](#)**Personal information—Notice of security breaches. (*Effective until March 1, 2020.*)**

*** CHANGE IN 2020 *** (SEE [6187.SL](#)) ***

(1) (a) Any agency that owns or licenses data that includes personal information shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of this state whose personal information was, or is reasonably believed to have been, acquired by an unauthorized person and the personal information was not secured. Notice is not required if the breach of the security of the system



is not reasonably likely to subject consumers to a risk of harm. The breach of secured personal information must be disclosed if the information acquired and accessed is not secured during a security breach or if the confidential process, encryption key, or other means to decipher the secured information was acquired by an unauthorized person.

(b) For purposes of this section, "agency" means the same as in RCW [42.56.010](#).

(2) Any agency that maintains data that includes personal information that the agency does not own shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

(3) The notification required by this section may be delayed if the data owner or licensee contacts a law enforcement agency after discovery of a breach of the security of the system and a law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.

(4) For purposes of this section, "breach of the security of the system" means unauthorized acquisition of data that compromises the security, confidentiality, or integrity of personal information maintained by the agency. Good faith acquisition of personal information by an employee or agent of the agency for the purposes of the agency is not a breach of the security of the system when the personal information is not used or subject to further unauthorized disclosure.

(5) For purposes of this section, "personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements:

- (a) Social security number;
- (b) Driver's license number or Washington identification card number; or
- (c) Full account number, credit or debit card number, or any required security code, access code, or password that would permit access to an individual's financial account.

(6) For purposes of this section, "personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(7) For purposes of this section, "secured" means encrypted in a manner that meets or exceeds the national institute of standards and technology (NIST) standard or is otherwise modified so that the personal information is rendered unreadable, unusable, or undecipherable by an unauthorized person.

(8) For purposes of this section and except under subsections (9) and (10) of this section, notice may be provided by one of the following methods:

- (a) Written notice;
- (b) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in 15 U.S.C. Sec. 7001; or



(c) Substitute notice, if the agency demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars, or that the affected class of subject persons to be notified exceeds five hundred thousand, or the agency does not have sufficient contact information. Substitute notice shall consist of all of the following:

- (i) Email notice when the agency has an email address for the subject persons;
- (ii) Conspicuous posting of the notice on the agency's web site page, if the agency maintains one; and
- (iii) Notification to major statewide media.

(9) An agency that maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with the timing requirements of this section is in compliance with the notification requirements of this section if it notifies subject persons in accordance with its policies in the event of a breach of security of the system.

(10) A covered entity under the federal health insurance portability and accountability act of 1996, 42 U.S.C. Sec. 1320d et seq., is deemed to have complied with the requirements of this section with respect to protected health information if it has complied with section 13402 of the federal health information technology for economic and clinical health act, Public Law 111-5 as it existed on July 24, 2015. Covered entities shall notify the attorney general pursuant to subsection (14) of this section in compliance with the timeliness of notification requirements of section 13402 of the federal health information technology for economic and clinical health act, Public Law 111-5 as it existed on July 24, 2015, notwithstanding the notification requirement in subsection (15) of this section.

(11) Any waiver of the provisions of this section is contrary to public policy, and is void and unenforceable.

(12) (a) Any individual injured by a violation of this section may institute a civil action to recover damages.

(b) Any agency that violates, proposes to violate, or has violated this section may be enjoined.

(c) The rights and remedies available under this section are cumulative to each other and to any other rights and remedies available under law.

(13) Any agency that is required to issue notification pursuant to this section shall meet all of the following requirements:

- (a) The notification must be written in plain language; and
- (b) The notification must include, at a minimum, the following information:
 - (i) The name and contact information of the reporting agency subject to this section;
 - (ii) A list of the types of personal information that were or are reasonably believed to have been the subject of a breach;



(iii) The toll-free telephone numbers and addresses of the major credit reporting agencies if the breach exposed personal information.

(14) Any agency that is required to issue a notification pursuant to this section to more than five hundred Washington residents as a result of a single breach shall, by the time notice is provided to affected individuals, electronically submit a single sample copy of that security breach notification, excluding any personally identifiable information, to the attorney general. The agency shall also provide to the attorney general the number of Washington residents affected by the breach, or an estimate if the exact number is not known.

(15) Notification to affected individuals and to the attorney general must be made in the most expedient time possible and without unreasonable delay, no more than forty-five calendar days after the breach was discovered, unless at the request of law enforcement as provided in subsection (3) of this section, or due to any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

RCW [42.56.592](#)

Personal information—Covered entities. (*Effective March 1, 2020.*)

A covered entity under the federal health insurance portability and accountability act of 1996, Title 42 U.S.C. Sec. 1320d et seq., is deemed to have complied with the requirements of this chapter with respect to protected health information if it has complied with section 13402 of the federal health information technology for economic and clinical health act, P.L. 111-5 as it existed on July 24, 2015. Covered entities shall notify the attorney general pursuant to RCW [42.56.590](#)(7) in compliance with the timeliness of notification requirements of section 13402 of the federal health information technology for economic and clinical health act, P.L. 111-5 as it existed on July 24, 2015, notwithstanding the timeline in RCW [42.56.590](#)(7).

RCW [42.56.594](#)

Personal information—Consumer protection. (*Effective March 1, 2020.*)

(1) Any waiver of the provisions of RCW [42.56.590](#) or [42.56.592](#) is contrary to public policy, and is void and unenforceable.

(2) (a) Any consumer injured by a violation of RCW [42.56.590](#) may institute a civil action to recover damages.

(b) Any agency that violates, proposes to violate, or has violated RCW [42.56.590](#) may be enjoined.

(c) The rights and remedies available under RCW [42.56.590](#) are cumulative to each other and to any other rights and remedies available under law.

RCW [42.56.600](#)

Mediation communications.

Records of mediation communications that are privileged under chapter [7.07](#) RCW are exempt from disclosure under this chapter.



RCW [42.56.610](#)**Certain information from dairies and feedlots limited—Rules.**

The following information in plans, records, and reports obtained by state and local agencies from dairies, animal feeding operations, and concentrated animal feeding operations, not required to apply for a national pollutant discharge elimination system permit is disclosable only in ranges that provide meaningful information to the public while ensuring confidentiality of business information regarding: (1) Number of animals; (2) volume of livestock nutrients generated; (3) number of acres covered by the plan or used for land application of livestock nutrients; (4) livestock nutrients transferred to other persons; and (5) crop yields. The department of agriculture shall adopt rules to implement this section in consultation with affected state and local agencies.

RCW [42.56.615](#)**Enumeration data used by the office of financial management for population estimates.**

Actual enumeration data collected under RCW [35.13.260](#), [35A.14.700](#), [36.13.030](#), and chapter [43.62](#) RCW shall be used and retained only by the office of financial management and only for the purposes of RCW [35.13.260](#), [35A.14.700](#), [36.13.030](#), and chapter [43.62](#) RCW. The enumeration data collected is confidential, is exempt from public inspection and copying under this chapter, and in accordance with RCW [43.41.435](#), must be destroyed after it is used.

RCW [42.56.620](#)**Marijuana research licensee reports.**

Reports submitted by marijuana research licensees in accordance with rules adopted by the state liquor and cannabis board under RCW [69.50.372](#) that contain proprietary information are exempt from disclosure under this chapter.

RCW [42.56.625](#)**Medical marijuana authorization database.**

Records in the medical marijuana authorization database established in RCW [69.51A.230](#) containing names and other personally identifiable information of qualifying patients and designated providers are exempt from disclosure under this chapter.

RCW [42.56.630](#)**Registration information of members of cooperatives to produce and process medical marijuana.**

(1) Registration information submitted to the state liquor and cannabis board under RCW [69.51A.250](#) including the names of all participating members of a cooperative, copies of each member's recognition card, location of the cooperative, and other information required



for registration by the state liquor and cannabis board is exempt from disclosure under this chapter.

(2) The definitions in this section apply throughout this section unless the context clearly requires otherwise.

(a) "Cooperative" means a cooperative established under RCW [69.51A.250](#) to produce and process marijuana only for the medical use of members of the cooperative.

(b) "Recognition card" has the same meaning as provided in RCW [69.51A.010](#).

RCW [42.56.640](#)

Vulnerable individuals, in-home caregivers for vulnerable populations.

(1) Sensitive personal information of vulnerable individuals and sensitive personal information of in-home caregivers for vulnerable populations is exempt from inspection and copying under this chapter.

(2) The following definitions apply to this section:

(a) "In-home caregivers for vulnerable populations" means: (i) Individual providers as defined in RCW [74.39A.240](#), (ii) home care aides as defined in RCW [18.88B.010](#), and (iii) family child care providers as defined in RCW [41.56.030](#).

(b) "Sensitive personal information" means names, addresses, GPS [global positioning system] coordinates, telephone numbers, email addresses, social security numbers, driver's license numbers, or other personally identifying information.

(c) "Vulnerable individual" has the meaning set forth in RCW [9.35.005](#).

RCW [42.56.645](#)

Release of public information—2017 c 4 (Initiative Measure No. 1501).

[(1)] Nothing in chapter 4, Laws of 2017 shall prevent the release of public information in the following circumstances:

(a) The information is released to a governmental body, including the state's area agencies on aging, and the recipient agrees to protect the confidentiality of the information;

(b) The information concerns individuals who have been accused of or disciplined for abuse, neglect, exploitation, abandonment, or other acts involving the victimization of individuals or other professional misconduct;

(c) The information is being released as part of a judicial or quasi-judicial proceeding and subject to a court's order protecting the confidentiality of the information and allowing it to be used solely in that proceeding;

(d) The information is being provided to a representative certified or recognized under RCW [41.56.080](#), or as necessary for the provision of fringe benefits to public employees, and the recipient agrees to protect the confidentiality of the information;

(e) The disclosure is required by federal law;



(f) The disclosure is required by a contract between the state and a third party, and the recipient agrees to protect the confidentiality of the information;

(g) The information is released to a person or entity under contract with the state to manage, administer, or provide services to vulnerable residents, or under contract with the state to engage in research or analysis about state services for vulnerable residents, and the recipient agrees to protect the confidentiality of the information; or

(h) Information about specific public employee(s) is released to a bona fide news organization that requests such information to conduct an investigation into, or report upon, the actions of such specific public employee(s).

(2) Nothing in chapter 4, Laws of 2017 shall prevent an agency from providing contact information for the purposes of RCW [74.39A.056](#)(3) and [74.39A.250](#). Nothing in chapter 4, Laws of 2017 shall prevent an agency from confirming the licensing or certification status of a caregiver on an individual basis to allow consumers to ensure the licensing or certification status of an individual caregiver.

RCW [42.56.650](#)

Health carrier data.

(1) Any data submitted by health carriers to the health benefit exchange for purposes of establishing standardized health plans under RCW [43.71.095](#) are exempt from disclosure under this chapter. This subsection applies to health carrier data in the custody of the insurance commissioner for purposes of consulting with the health benefit exchange under RCW [43.71.095](#)(1).

(2) Any data submitted by health carriers to the health care authority for purposes of RCW [41.05.410](#) are exempt from disclosure under this chapter.

RCW [42.56.655](#)

Explosives exemption report.

By December 1, 2023, the public records exemptions accountability committee, in addition to its duties in RCW [42.56.140](#), must prepare and submit a report to the legislature that includes recommendations on whether the exemption created in RCW [42.56.460](#)(2) should be continued, modified, or terminated. No recommendations or action from the committee or the legislature will result in the continuation of the exemption created in RCW [42.56.460](#)(2).

RCW [42.56.660](#)

Agency employee records. (*Effective July 1, 2020.*)

(1) Except by court order issued pursuant to subsection (3) of this section, an agency may not disclose as a response to a public records request made pursuant to this chapter records concerning an agency employee, as defined in subsection (5) of this section, if:



(a) The requestor is a person alleged in the claim of workplace sexual harassment or stalking to have harassed or stalked the agency employee who is named as the victim in the claim; and

(b) After conducting an investigation, the agency issued discipline resulting from the claim of workplace sexual harassment or stalking to the requestor described under (a) of this subsection.

(2) (a) When the requestor is someone other than a person described under subsection (1) of this section, the agency must immediately notify an agency employee upon receipt of a public records request for records concerning that agency employee if the agency conducted an investigation of the claim of workplace sexual harassment or stalking involving the agency employee and the agency issued discipline resulting from the claim.

(b) Upon notice provided in accordance with (a) of this subsection, the agency employee may bring an action in a court of competent jurisdiction to enjoin the agency from disclosing the records. The agency employee shall immediately notify the agency upon filing an action under this subsection. Except for the five-day notification required under RCW [42.56.520](#), the time for the employing agency to process a request for records is suspended during the pendency of an action filed under this subsection. Upon notice of an action filed under this subsection, the agency may not disclose such records unless by an order issued in accordance with subsection (3) of this section, or if the action is dismissed without the court granting an injunction.

(3) (a) A court of competent jurisdiction, following sufficient notice to the employing agency, may order the release of some or all of the records described in subsections (1) and (2) of this section after finding that, in consideration of the totality of the circumstances, disclosure would not violate the right to privacy under RCW [42.56.050](#) for the agency employee. An agency that is ordered in accordance with this subsection to disclose records is not liable for penalties, attorneys' fees, or costs under RCW [42.56.550](#) if the agency has complied with this section.

(b) For the purposes of this section, it is presumed to be highly offensive to a reasonable person under RCW [42.56.050](#) to disclose, directly or indirectly, records concerning an agency employee who has made a claim of workplace sexual harassment or stalking with the agency, or is named as a victim in the claim, to persons alleged in the claim to have sexually harassed or stalked the agency employee named as the victim and where the agency issued discipline resulting from the claim after conducting an investigation. The presumption set out under this subsection may be rebutted upon showing of clear, cogent, and convincing evidence that disclosure of the requested record or information to persons alleged in the claim to have sexually harassed or stalked the agency employee named as the victim in the claim is not highly offensive.

(4) Nothing in this section restricts access to records described under subsections (1) and (2) of this section where the agency employee consents in writing to disclosure.

(5) For the purposes of this section:



(a) "Agency" means a state agency, including every state office, department, division, bureau, board, commission, or other state agency.

(b) "Agency employee" means a state agency employee who has made a claim of workplace sexual harassment or stalking with the employing agency, or is named as the victim in the claim.

(c) "Records concerning an agency employee" do not include work product created by the agency employee as part of his or her official duties.

RCW [42.56.665](#)**Agency employee records—Civil liability. *(Effective July 1, 2020.)***

(1) Any person who requests and obtains a record concerning an agency employee, as described in RCW [42.56.660](#), is subject to civil liability if he or she uses the record or information in the record to harass, stalk, threaten, or intimidate that agency employee, or provides the record or information in the record to a person, knowing that the person intends to use it to harass, stalk, threaten, or intimidate that agency employee.

(2) Any person liable under subsection (1) of this section may be sued in superior court by any aggrieved party, or in the name of the state by the attorney general or the prosecuting authority of any political subdivision. The court may order an appropriate civil remedy. The plaintiff may recover up to one thousand dollars for each record used in violation of this section, as well as costs and reasonable attorneys' fees.

(3) For the purposes of this section:

(a) "Agency" means a state agency, including every state office, department, division, bureau, board, commission, or other state agency.

(b) "Agency employee" means a state agency employee who has made a claim of workplace sexual harassment or stalking with the employing agency, or is named as the victim in the claim.

(c) "Record concerning an agency employee" does not include work product created by the agency employee as part of his or her official duties.

RCW [42.56.670](#)**Agency employee records—Model policies. *(Effective July 1, 2020.)***

By January 1, 2020, the attorney general, in consultation with state agencies, shall create model policies for the implementation of chapter 373, Laws of 2019.

RCW [42.56.675](#)**Agency employee records—Lists of names. *(Effective July 1, 2020.)***

A state agency may not disclose lists of the names of agency employees, as defined under RCW [42.56.660](#), maintained by the agency in order to administer RCW [42.56.660](#).



RCW [42.56.900](#)**Purpose—2005 c 274 §§ 402-429.**

The purpose of sections 402 through 429 of this act is to reorganize the public inspection and copying exemptions in *RCW [42.17.310](#) through [42.17.31921](#) by creating smaller, discrete code sections organized by subject matter. The legislature does not intend that this act effectuate any substantive change to any public inspection and copying exemption in the Revised Code of Washington.

RCW [42.56.904](#)**Intent—2007 c 391.**

It is the intent of the legislature to clarify that no reasonable construction of chapter [42.56](#) RCW has ever allowed attorney invoices to be withheld in their entirety by any public entity in a request for documents under that chapter. It is further the intent of the legislature that specific descriptions of work performed be redacted only if they would reveal an attorney's mental impressions, actual legal advice, theories, or opinions, or are otherwise exempt under chapter 391, Laws of 2007 or other laws, with the burden upon the public entity to justify each redaction and narrowly construe any exception to full disclosure. The legislature intends to clarify that the public's interest in open, accountable government includes an accounting of any expenditure of public resources, including through liability insurance, upon private legal counsel or private consultants.

Public Records Act

Chapter 1 from the Open Government Resource Manual: <http://www.atg.wa.gov/Open-Government-Internet-Manual/Chapter-1>

PUBLIC RECORDS ACT – GENERAL AND PROCEDURAL PROVISIONS

Chapter last revised: October 28, 2016

1.1 The Public Records Act (PRA) is Interpreted in Favor of Disclosure

The PRA was enacted by initiative to provide the people with broad rights of access to public records. The PRA declares that it must be "liberally construed" to promote the public policy of open government:

The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed to promote this public policy and to assure that the public interest will be fully protected. In the event of a conflict between [the PRA] and any other act, the provisions of [the PRA] shall govern. [RCW 42.56.030](#).



Courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. [RCW 42.56.550\(3\)](#).

Courts interpret the PRA liberally to promote the purpose of informing people about governmental decisions and promote government accountability. [WAC 44-14-01003](#) (summarizing how PRA is interpreted by courts).

1.2 “Public Record” Is Defined Broadly

The definition of a public record (other than a record of the Legislature) contains three elements. [RCW 42.56.010\(3\) and \(4\)](#); [WAC 44-14-03001](#). First, the record must be a “writing,” which is broadly defined in [RCW 42.56.010\(4\)](#) to include any recording of any communication, image or sound. A writing includes not only conventional documents, but also videos, photos, and electronic records including emails and computer data.

Second, the writing must relate to the conduct of government or the performance of any governmental or proprietary function. Virtually every document a government agency has relates in some way to the conduct of government business or functions. “Proprietary” refers to where an agency function is similar to a private business function or venture.

Third, the writing must be prepared, owned, used or retained by the agency. [West v. Thurston County](#), (2012); [Nissen v. Pierce County](#) (2015). A writing may include data compiled for the issuance of a report (as well as the report itself), even though the agency had not intended to make the underlying data public. [Yacobellis v. City of Bellingham](#) (1989); see also [O’Neill v. City of Shoreline](#) (2010) (agency must produce non-exempt metadata when it is requested). An agency need not possess a record for it to be a “public record.” [Concerned Ratepayers v. Pub. Util. Dist. No. 1](#) (1999) (records held by out-of-state private vendor were “public records” because they were “used” by agency); see also [Forbes v. City of Gold Bar](#) (2012); [O’Neill v. City of Shoreline](#) (2010) (agency records on city officials’ personal computers subject to PRA); [Nissen v. Pierce County](#) (2015) (agency records on personal cell phones). Although this element is broad, it is not limitless. Compare [1983 Att’y Gen. Op. No. 9](#) (list of customers of public utility district is a public record) with [1989 Att’y Gen. Op. No. 11](#) (registry of municipal bondholders is not public record because it was compiled by trust company and never prepared, possessed or used by county).

The PRA applies only to “public records.” [Oliver v. Harborview Med. Ctr.](#) (1980); [Nissen v. Pierce County](#) (2015). The definition of “public record” is to be liberally construed to promote full access to public records. *Id.*



Case Example: A public agency hires a consultant to help resolve a specific problem. The consultant prepares a report and transmits the report to the agency. After reviewing the report and before receiving a public records request for the report, the agency returns all copies to the consultant. Is the report a public record?

Resolution: Yes, because the agency “used” the report. A record outside the possession of the agency can be a “public record.” The agency should require the consultant to return the report to the agency for public records processing (reviewing for exempt information, redacting, copying, etc.). See [Concerned Ratepayers v. PUD No. 1](#). (1999).

1.3 The PRA Applies to State and Local Agencies

As noted above, only the records of an “agency” are covered by the PRA. The PRA’s definition of “agency” is broad and covers all state agencies and all local agencies. [RCW 42.56.010\(1\)](#); [WAC 44-14-01001](#). Courts have interpreted that definition to include a city’s design and development department ([Overlake Fund v. City of Bellevue](#) (1991)); a county prosecutor’s office ([Dawson v. Daly](#) (1993)); a city’s parks department ([Yacobellis v. City of Bellingham](#) (1989)); and a public hospital district ([Cornu-Labat v. Hospital Dist. No. 2 of Grant County](#) (2013)). Some non-governmental agencies (such as an association of counties) that perform governmental or quasi-governmental functions can be considered the functional equivalent of an “agency” if they meet certain criteria. [2002 Att’y Gen. Op. No. 2](#); [Telford v. Thurston County Board of Commissioners](#) (1999); [Clarke v. Tri-Cities Animal Care Control Shelter](#) (1999). If the non-governmental entity does not satisfy the criteria demonstrating it is the functional equivalent of a public agency, the entity is not subject to the PRA. [Woodland Park Zoo v. Fortgang](#) (2016). Under the exceptional circumstances of one case, certain records of a contractor acting as the functional equivalent of a public employee were subject to a PRA request. [Cedar Grove Composting Incorporated v. City of Marysville](#) (2015). Whether a group of public agencies operating together by agreement can be sued as separate legal entity under the PRA can be a mixed question of law and fact. [Worthington v. WestNet](#) (2014). The PRA applies in a more limited form to the [Washington State Legislature](#). Information about accessing legislative documents is available [here](#).

The PRA does not apply to court case files; but those files are available through common law rights of access and court rules. [Nast v. Michels](#) (1986); see also [Cowles Publishing Co. v. Murphy](#) (1981); [Yakima County v. Yakima Herald-Republic](#) (2011) and [City of Federal Way v. Koenig](#) (2009). However, one court of appeals held that a request for judge’s oaths to the superior court administrator was a disclosure request to be answered under the PRA. [Smith v. Okanogan County](#) (2000). Records held by entities that are part of the judicial branch of government are also not subject to the PRA. [West v. Washington State Association of District and Municipal Court Judges](#) (2016). Records that are held by other agencies (non-judicial entities), even if they relate to court activities, are available under the PRA from those agencies



unless they are subject to a protective order. See, e.g., [Morgan v. Federal Way](#) (2009) and [Yakima County v. Yakima Herald-Republic](#) (2011). As noted, court rules govern access to court case files and administrative records. The [Washington State Courts website](#) has more information. See [General Rule \(GR\) 31](#) and [General Rule \(GR\) 31.1](#) and [these links](#) on the court's website.

1.4 An Agency's PRA Processes Must Assist Requesters

A. General PRA Procedures

- The PRA requires agencies to implement several procedures for processing PRA requests. They include:
- Appointing a public records officer and making that information available to the public.[RCW 42.56.580](#).
- Adopting procedures for handling PRA requests.[RCW 42.56.040](#).
- Publishing a list of exemptions to and prohibitions from disclosure.[RCW 42.56.070](#).
- Maintaining an index of records, with certain exceptions.[RCW 42.56.070](#).
- Adopting a PRA copying fee schedule.[RCW 42.56.070](#); [RCW 42.56.120](#).
- Providing a review procedure for denial of records.[RCW 42.56.520](#).

Agencies are to establish procedures to assist records requesters. [RCW 42.56.040](#); [RCW 42.56.580](#); [RCW 42.56.070\(1\)](#); [RCW 42.56.100](#); [Resident Action Council v. Seattle Housing Authority](#) (2013). A state agency is required to adopt rules to assist the public in obtaining information about that agency, and local agencies must make that information available at the central office. [RCW 42.56.040](#). See also [WAC 44-14-01002](#). The Attorney General's Office provides Model Rules for agencies to consider adopting for their procedures. See [Ch. 44-14 WAC](#) (last revised 2007).

These PRA rules must provide for the "fullest assistance to" requesters and the "most timely possible action" on requests. [RCW 42.56.100](#); [Resident Action Council v. Seattle Housing Authority](#) (2013). An agency may not use its rules to create an exemption or other basis to withhold a record. [Hearst Corp. v. Hoppe](#) (1978). Agencies should have reasonable practices to allow them to promptly locate and produce requested documents if they are reasonably identifiable.

B. Public Records Officers

Agencies are required to appoint a public records officer and make the officer's contact information publicly available. [RCW 42.56.580](#). A list of state agency public records officers is available at the [Office of the Code Reviser](#). [WAC 44-14-020](#). The officer serves as the point of contact for a PRA request. The public records officer may have other persons assist in responding to requests. [WAC 44-14-02002](#).



1.5 Agencies Must Retain Records Once Disclosure is Requested

Other state laws require state and local agencies to retain certain records for varying lengths of time depending on the content. See generally [chapter 40.14 RCW](#), [state](#) and [local](#) government retention schedules, and [WAC 44-14-03005](#). An agency is not liable under the PRA for not producing records that did not exist at the time of the request. [Kozol v. Department of Corrections](#) (2016). The PRA does not require production of records destroyed in accordance with state records retention schedules. [Bldg. Indus. Ass'n of Wash v. McCarthy](#) (2009). The fact that records do not exist because an agency inadvertently lost them before any request for their disclosure does not constitute a PRA violation. [West v. Department of Natural Resources](#) (2011). However, if an agency keeps a record longer than required — that is, if the agency still possesses a record that it could have lawfully destroyed under a retention schedule — the record is still a “public record” subject to disclosure. [RCW 42.56.010\(3\)](#) (“public record” includes writing “retained” by agency).

[RCW 42.56.100](#) also addresses the situation when a record scheduled for destruction is the subject of a pending request. The agency must suspend any planned destruction and retain requested records until the public records request is resolved. [RCW 42.56.100](#) requires agencies to adopt and enforce reasonable rules to protect public records from damage or disorganization. [Chapter 40.14 RCW](#) governs records retention by public agencies.

1.6 The PRA Imposes Some Requirements on Requesters

The Attorney General’s Model Rules for public records provide detailed information on the public records request process. See chapter [44-14 WAC](#).

A. Purpose of Request

A person making a public records request is not required to give a reason for the request, unless the request is for lists of individuals. [Dawson v. Daly](#) (1993); [Yacobellis v. City of Bellingham](#) (1992). An agency may ask if a request for “lists of individuals” is “for commercial purposes.” [RCW 42.56.070\(9\)](#). See also [1988 Att’y Gen. Op. No. 12](#) (access to list of individuals may be conditioned upon non-commercial use). The limitation on commercial-use requests has three elements: (1) “list of individuals,” (2) for a “commercial purpose,” and (3) disclosure is not “specifically authorized or directed by law.” The word “individuals” refers to “natural persons - as opposed to business entities, committees, or groups.” [1975 Att’y Gen. Op. No. 15](#). A “list of individuals” can have other fields in it (such as addresses) and still be a “list of individuals.” [1980 Att’y Gen. Op. No. 1](#). “Commercial purpose” has its ordinary meaning and includes a business activity by any form of business enterprise intended to generate profits, revenue or financial benefit. [SEIU Healthcare 775NW v. State](#) (2016) (interpreting what is a commercial purpose). An agency has an obligation to avoid disclosing lists of individuals for commercial purposes and may require a requester to sign a declaration describing the purpose of the request and stating that he or she will not use records listing individuals for a commercial



purpose. Merely requiring the requester to affirm the request is not made for commercial purpose may not be enough depending on the circumstances and the agency may have an obligation to investigate depending on the nature of the request. Id; . see also [1988 Att’y Gen. Op. No. 12](#). An example of a disclosure “specifically authorized or directed by law” is [RCW 84.40.020](#), which requires a county assessor’s real property tax rolls to be available for public inspection. [1980 Att’y Gen. Op. No. 1](#).

B. Identity of Requester

[RCW 42.56.080](#) provides that agencies may not distinguish between requesters and must make records available to “any person.” However, the PRA recognizes that other statutes may limit which persons may receive records. [RCW 42.56.080](#). For example, an agency may need to determine whether a particular requester is authorized to receive requested health care records pursuant to [RCW 70.02.030](#). Also, a court order (including an injunction under [RCW 42.56.565](#) or [RCW 71.09.120\(3\)](#) barring an inmate or sexually violent predator from receiving a record) may restrict an agency from releasing records to particular persons. [RCW 42.56.080](#); [WAC 44-14-04003\(1\)](#). Or, an agency may need to know the identity of a requester asking for a list of individuals to verify the lack of a prohibited commercial purpose. [RCW 42.56.070\(9\)](#); [RCW 42.56.080](#); [SEIU Healthcare 775NW v. State](#) (2016). For requests falling within the 2016 law, an agency may need to know the identity of a person requesting a body worn camera recording. [RCW 42.56.080](#) (as amended in 2016); [RCW 42.56.240](#) (as amended in 2016). Therefore, depending upon the records requested and the laws that govern those records, sometimes an agency may consider the identity of a requester or need more information from a requester.

C. Form of Request

No particular form of public records request is required by the PRA. See [RCW 42.56.080](#); [RCW 42.56.100](#); [Hangartner v. City of Seattle](#) (2004); [WAC 44-14-03006](#). However, a request must provide “fair notice” to the agency that it is a PRA request. [Wood v. Lowe](#) (2000); [Germeau v. Mason County](#) (2012). It must provide notice that it is a request made under the PRA, although it need not cite the PRA statute. [Hangartner v. City of Seattle](#) (2004); see also [WAC 44-14-04002\(1\)](#). A party seeking public records under the PRA must, “at a minimum, provide notice that the request is made pursuant to the [PRA] and identify the documents with reasonable clarity to allow the agency to locate them.” [Wright v. State](#) (2013). The PRA specifically allows persons to make requests by mail ([RCW 42.56.100](#)), which includes email under current technology and practices.

Oral requests are not prohibited by the PRA, but they can be problematic. A written request is advisable for several reasons. It confirms the date on which the record is requested. It also clarifies what is being requested. Identification of the requesting party, with address and telephone number, will also facilitate a request for clarification by the agency of any ambiguous



request or allow the agency to determine if a person has the right to a record that would normally be exempt. See [WAC 44-14-03006](#). For these reasons, if a requester makes an oral request, an agency may need to follow up to confirm the request in writing.

Many agencies use public records requests forms, and make those forms available on their websites or at their offices. These forms typically identify what information the agency needs in order to process a request and search for records at that agency and thus can help expedite the request process. An agency's rules for submitting public records requests must be reasonable and provide the fullest assistance to a requester. [RCW 42.56.100](#). Some laws outside the PRA require written requests for certain types of records.

D. "Identifiable Records" Requirement

To obtain records under the PRA, a requester must ask for existing "identifiable public records." [RCW 42.56.080](#); [WAC 44-14-04002\(2\)](#).

A record must exist at the time of a request to be subject to required disclosure. A requester cannot have a "standing" request for records that may be available in the future. [Sargent v. Seattle Police Dep't](#) (2011). An agency is not required to create a record to respond to a PRA request. [Smith v. Okanogan County](#) (2000); [Fisher Broadcasting v. Seattle](#) (2014); [Benton County v. Zink](#) (2015). However, electronic databases may present unique issues. For example, there is not always a simple answer to when an agency is producing an existing document as compared to creating a new record. [Fisher Broadcasting v. Seattle](#) (2014). An agency needs to look at the specific facts of each case. [Fisher Broadcasting v. Seattle](#) (2014). An agency does not have broad duties to respond to questions, do research, or give information that is not an identifiable public record. [Limstrom v. Ladenburg](#) (2002).

A requester satisfies the "identifiable record" requirement when he or she provides a "reasonable description" of the record enabling the agency to locate the requested records. [Bonamy v. City of Seattle](#) (1998); [Hangartner v. City of Seattle](#) (2004); [Wright v. State](#) (2013); [WAC 44-14-04002](#). The request must be for identifiable records or classes of records, so the agency can search for potentially responsive records. [Fisher Broadcasting v. Seattle](#) (2014). A public records request must identify the records sought with "reasonable clarity." [Wright v. State](#) (2013).

However, the requester need not identify the record with precision. A requester is not required to use the exact name of the record in a PRA request.

An agency has a duty that its procedures provide the "fullest assistance" to inquirers, [RCW 42.56.100](#), which may include assisting persons to fairly identify the documents requested. Agencies can ask a requester to clarify an unclear request. [RCW 42.56.520](#).



Case Example: A person sends an email to an agency asking how it handles employment discrimination claims. A second person requests a copy of the agency's policy for handling employment discrimination claims. Which of these requests is for "identifiable public records"? Resolution: The second request is a request of "identifiable records" (the written policy). The first request is not for "identifiable records" but rather for information; therefore, the agency is not obligated to respond to the first request under the Public Records Act.

E. Submitting PRA Requests

Requesters should send their PRA requests to the agency that has the records they seek. An agency can adopt rules explaining that requests are to be directed to a specific person (such as the public records officer) or to a specific address, provided that the requester has notice of the requirement. See [RCW 42.56.040](#); [RCW 42.56.070\(1\)](#); [RCW 42.56.100](#); [Parmelee v. Clarke](#) (2008). This process ensures that the request is received in a manner that enables the agency to timely respond and to give the fullest assistance to a requester.

A requester should review the agency's procedures to see what agency address to use to submit the request. The request should be submitted to the agency's public records officer to promote the promptest response.

1.7 Agencies Have Duties in Responding to Requests

An overview of an agency's duties to process and respond to requests is available in [WAC 44-14-04003](#) and [WAC 44-14-04004](#), respectively.

A. Initial Response Within Five Business Days

An agency must respond to a request for public records within five business days of receipt of the request. [RCW 42.56.520](#). Under [RCW 1.12.040](#), the time allowed excludes the day of receipt from the computation. The initial response to the request must do at least one of the following: (1) produce the requested records by making them available for inspection at agency offices or by mailing or emailing copies to the requester; (2) provide an Internet address and link on the agency's website to the requested records; (3) acknowledge receipt of the request and give a reasonable estimate of the time needed; or, 4) deny all or part of the request in writing. [RCW 42.56.520](#). Each type of initial response is discussed below.

A request for voluminous records does not excuse an agency's initial response within five business days, even if it may take longer to produce the records. [Zink v. City of Mesa](#) (2007) (requiring strict compliance). See discussion in [Chapter 1.7D](#) below regarding estimates of time for further response. While the PRA requires a written response only for denials of records (see also [RCW 42.56.210\(3\)](#)), agencies should nevertheless respond (or confirm a verbal response) in writing (by email or letter) in order to have a contemporaneous record of the response in case of a dispute. Also, if an agency does not find responsive records, it should explain, in at least



general terms, the places searched. [Neighborhood Alliance v. Spokane County](#) (2011); see also [Fisher Broadcasting v. Seattle](#) (2014) (agency should show it attempted to be helpful).

Under case law, the failure to respond within the five business days is a violation of the PRA and entitles the requester to seek an award of attorneys' fees and statutory penalties. [West v. Department of Natural Resources](#) (2011).

B. Adequate Search

An agency must conduct an adequate search for requested records. [Neighborhood Alliance v. Spokane County](#) (2011); [Fisher Broadcasting v. Seattle](#) (2014); [Block v. City of Gold Bar](#) (2015); [Kozol v. Department of Corrections](#) (2016). The search must be reasonably calculated to uncover all relevant documents. *Id.* See also [Nissen v. Pierce County](#) (2015) (searches for agency employees' relevant records on non-agency devices).

An agency is not required to go outside its own records in its search. [Limstrom v. Ladenburg](#) (2002); [Bldg. Indus. Ass'n of Wash. v. McCarthy](#) (2009). As noted, a requester must identify the documents with sufficient clarity to allow the agency to locate them. [Hangartner v. City of Seattle](#) (2004); [Hobbs v. State](#) (2014). An agency can ask a requester to clarify the request to assist in the search.

C. Producing Records

The PRA states broadly that an agency shall make available for inspection and copying all public records, unless a specific exemption or other statute applies. [RCW 42.56.070](#)(1). (The exemptions from disclosure are discussed below in [Chapter 2](#)). A requester has a right to inspect and copy records, but is not required to do both. [WAC 44-14-07001](#)(4). For example, a person may choose to inspect all public records on a certain subject but ask for a copy of only some of the records inspected. Also, a requester may ask for copies of records without first inspecting the records at agency offices.

Agencies can produce records in installments over time. [RCW 42.56.550](#)(6). However, even though some of the records requested may be readily available, the agency is not required to respond to a request in piecemeal fashion. [Ockerman v. King County Dept. of Dev. & Envtl. Servs.](#) (2000).

Internet Link

Records can be made available for inspection and copying by providing a link to the records on the agency's website although, if the requester cannot access records through the Internet, the agency must provide either copies or access to the records from an agency computer. [RCW 42.56.520](#). ("When an agency has made records available on its website, members of the public with computer access should be encouraged to preserve taxpayer resources by accessing those



records online.") Agencies are encouraged to make commonly requested records available on agency websites. Laws of 2010 c. 69 (see notes following [RCW 42.56.520](#)).

Inspection at Agency Offices

Public records must be made available for inspection and copying at agency offices during the normal business hours of the agency for at least 30 hours per week (except in weeks that include state legal holidays) unless the requester and the agency agree on a different time. [RCW 42.56.090](#). The agency's customary business hours must be posted on the agency's website and also made known to the public by other means. [Id.](#)

There is no charge for inspecting records at an agency office. [RCW 42.56.070](#); [WAC 44-14-07001\(1\)](#). Requesters who choose to inspect records at agency offices may ask to bring in their own copying equipment, which an agency may allow if its business is not disrupted and if redaction of records is not needed. Typically if copies are requested during an inspection, an agency promptly processes the request for copies and notifies the requester when the documents are ready. If the amount of requested documents is not voluminous, and if staff resources permit, the agency often may copy the documents while the requester waits. Use of an agency's copying facilities should not "unreasonably disrupt the operations of the agency." [RCW 42.56.080](#).

Charging for Records

Under the PRA, no one may be charged a fee for the inspection of public records. [RCW 42.56.070](#); [WAC 44-14-07001\(1\)](#). Consequently, no agency may charge a person for the time to search for records for inspection.

A requester can ask the agency to make copies of requested records and the agency can charge for the copies. The PRA sets out the parameters for agency copying charges at [RCW 42.56.120](#), [RCW 42.56.070](#) and [RCW 42.56.130](#). Effective June 9, 2016, charges for the costs involved in producing and redacting copies of certain body worn camera recordings are governed by [RCW 42.56.240](#). See further details of such recordings in [Chapter 2.2D5](#). Other laws outside the PRA may set copying charges that supersede those in the PRA. [RCW 42.56.130](#).

While the PRA does not require an agency to make a copy of a record available electronically when an electronic copy is requested, the agency is to consider if it is reasonable and feasible to do so as part of providing the fullest assistance to requesters. [Mitchell v. Department of Corrections](#) (2011). An agency is not required to scan a paper copy into an electronic copy. [Mechling v. Monroe](#) (2009); [Benton County v. Zink](#) (2016).

Expenses for copying records must be limited to "actual" costs of copying as set by the agency. [RCW 42.56.070\(7\)](#) allows for costs to include actual per page costs or "other costs" directly incident to copying records. [RCW 42.56.120](#) provides that a reasonable charge may be



assessed for providing copies of public records and use of agency equipment, not to exceed the amount necessary to reimburse the agency. These costs may include the paper, ink, storage media (such as a CD) and cost per page for the use of copying equipment, together with staff salary expense incurred in copying. The costs may include scanning fees. [WAC 44-14-05002](#), [WAC 44-14-07003](#). The agency may also charge the actual cost of postage and any shipping or mailing container. General administrative or overhead charges may not be included in copying costs.

If an agency has not calculated its actual copying cost per page, it is limited to a charge of 15 cents per page. [RCW 42.56.120](#); [WAC 44-14-07001\(2\)](#). An agency can use an outside vendor to make the copies and assess those copying costs to the requester. [Benton County v. Zink](#) (2016); [WAC 44-14-07001\(5\)](#). An agency is not required to charge a fee for copying records but may waive its fees either on its own initiative or at the invitation of the requester. [WAC 44-14-07005](#).

An agency may require a deposit of up to 10 percent of the estimated cost before copying records. [RCW 42.56.120](#). Records may be provided in installments, and an agency may assess copying charges per installment. [RCW 42.56.120](#). If an installment of records is not paid for or inspected, the agency need not continue its response to the request. [RCW 42.56.120](#). Agency charges for copies and other costs are to be published by the agency, and those are often in a “fee schedule”. [RCW 42.56.070\(7\)](#).

Case Example: A person requests the opportunity to inspect and copy certain documents from an agency. The agency responds that some of the information in the records is exempt. The agency offers to allow inspection of redacted documents (with the exempt information deleted) if the requester will pay the costs of copying the redacted documents and the cost of the employee who must locate, redact and copy the documents. Is the agency's offer consistent with RCW 42.56.120 and .070(7) and (8)?

Resolution: No agency may charge for the right to inspect a document. Accordingly, it cannot ask the requester to pay the costs of locating and redacting records to make them available for inspection. An agency may charge for copies in accordance with its fee schedule, and the fees are limited to staff costs incurred in making copies, plus mailing/delivery costs.

D. Reasonable Time Estimate

The PRA recognizes that an agency may need more than five business days to complete a request. [Forbes v. City of Gold Bar](#) (2012); [Hobbs v. State](#) (2014). In those situations, the agency must estimate the additional time needed to respond based upon time needed to: (1) clarify a request; (2) “locate and assemble” records to respond to the request; (3) contact a third party affected by the request; or (4) determine whether any records are covered by an



exemption and should not be disclosed in whole or in part. [RCW 42.56.520](#). See also [WAC 44-14-04002](#) and [WAC 44-14-04003](#). Each basis for needing additional time is discussed below.

The PRA does not require an agency to provide a written explanation of its time estimate. [Ockerman v. King County Dept. of Dev. & Envtl. Servs](#) (2000). An agency may extend its initial estimate of time when more time is needed than first anticipated. [Andrews v. Wash. State Patrol](#) (2014). The “operative” word for the estimate of time is “reasonable.” [Forbes v. City of Gold Bar](#) (2012).

To provide a “reasonable” estimate, an agency should not use the same estimate for every request. [WAC 44-14-04003](#). An agency should roughly calculate the time it will take to respond to the request and send estimates of varying lengths, as appropriate for different requests. *Id.* There is no standard amount of time for fulfilling a request so reasonable estimates should vary. *Id.*

The PRA authorizes lawsuits challenging the reasonableness of an agency’s time estimate. [RCW 42.56.550\(2\)](#). The burden of proof is on the agency to show that its estimate was reasonable. *Id.* When a person prevails against an agency in an action seeking the right to receive a response to a public records request within a reasonable time, that person is entitled to an award of attorney fees and costs incurred in the action. [RCW 42.56.550\(4\)](#).

Requesting Clarification

An agency may need additional time to clarify the request if the request cannot be understood or does not ask for identifiable records. An agency may also need time to clarify by confirming the identity of a requester or to obtain other information from the requester in order to comply with laws or court orders governing access to the requested records. Clarification of the intent of the request may be needed if the request is for a prohibited commercial purpose. [SEIU Healthcare 775NW v. State](#) (2016).

The purpose of the PRA is best served by communications between agencies and requesters. [Hobbs v. State](#) (2014); [WAC 44-14-04003\(3\)](#). A requester’s failure to clarify a request excuses the agency from responding to the unclarified request. [RCW 42.56.520](#); see also [White v. Skagit County and Island County](#) (2015).

Locating and Assembling Records

An agency may need additional time to locate and assemble records. And, the PRA recognizes that agencies have essential functions in addition to providing public records. [RCW 42.56.100](#); [WAC 44-14-04001](#); [Zink v. City of Mesa](#) (2007). The Model Rules comment at [WAC 44-14-04001](#) (cited in [Forbes v. City of Gold Bar](#) (2012)) describes in part:



Requesters should keep in mind that all agencies have essential functions in addition to providing public records. Agencies also have greatly differing resources. The act recognizes that agency public records procedures should prevent "excessive interference" with the other "essential functions" of the agency. [RCW 42.56.100]. Therefore, while providing public records is an essential function of an agency, it is not required to abandon its other, nonpublic records functions. Agencies without a full-time public records officer may assign staff part-time to fulfill records requests, provided the agency is providing the "fullest assistance" and the "most timely possible" action on the request. The proper level of staffing for public records requests will vary among agencies, considering the complexity and number of requests to that agency, agency resources, and the agency's other functions.

A court reviewing an agency's estimate of time for assembling records may consider "the circumstances" related to the request. [Bartz v. Department of Corrections](#) (2013). For example, the Bartz court considered the volume of potentially responsive records that needed to be reviewed, the agency's need to seek clarification, the agency's reasonable explanation for the timeframe, and the fact the agency provided records in installments. The court in [Ockerman v. King County Dept. of Dev. & Envtl. Servs.](#) (2000) considered that the records were in multiple locations and were being used by the prosecutor's office in litigation. The court in [Forbes v. City of Gold Bar](#) (2012) described the city's response as "reasonable in light of the difficulty the city had in retrieving the information and the efforts it expended to recover the information," and referenced the Model Rules. The court in [West v. Department of Licensing](#) (2014) considered that the request was "complex and broad." And the court in [Andrews v. Wash. State Patrol](#) (2014) said an agency may extend its time estimate if locating records takes more time than initially anticipated. However, while an agency may provide a reasonable estimate of time to produce requested records, an agency cannot use the estimated date as an excuse to withhold records that are no longer exempt (for example, when investigations are completed earlier than estimated). [Wade's Eastside Gun Shop v. Department of Labor and Industries](#) (2016).

Contacting Third Parties

An agency may need additional time to contact third parties. The PRA permits agencies to notify third parties about a PRA request in order to allow them to seek a court order restricting disclosure of the requested records. [RCW 42.56.540](#); [Doe v. Washington State Patrol](#) (2016). [RCW 42.56.540](#) gives agencies the "option" of notifying persons named in a record or to whom a record pertains, that the record has been requested, unless the law requires such notice. An agency may give such persons a "reasonable" amount of time (a "realistic opportunity") to obtain an injunction against producing records before complying with a request for non-exempt records. [Wade's Eastside Gun Shop v. Department of Labor and Industries](#) (2016). An agency should notify affected third parties promptly after identifying that they may have an interest in the disclosure of requested records so the agency does not create



unnecessary delay. [Wade's Eastside Gun Shop v. Department of Labor and Industries](#) (2016); see also [WAC 44-14-04003\(11\)](#) (describing that the practice of many agencies is to give a 10-day deadline for a person to obtain an injunction restricting disclosure). If no court order is obtained during the allotted time, the agency must produce the records.

Reviewing for Exempt Content

An agency may need additional time to review records for exempt content. Agencies are not relieved of their duties to respond to requests for public records because an exemption applies. [RCW 42.56.210](#). An agency must determine if all or only part of a record is exempt. If only part of a record is exempt, an agency must withhold or redact only the exempt information and disclose the rest of the document. [Hearst Corp. v. Hoppe](#) (1978); see also [WAC 44-14-04004\(4\)\(b\)\(i\)](#). If an entire document is exempt or if redaction is not required under RCW 42.56.210(1) or other laws, an agency must still provide the requester the basis for the exemption. (See more detailed discussion of exemptions in [Chapter 2](#)).

E. Denials

When denying access to records in whole or in part, agencies must do so in writing and specify the reasons for the denial. [RCW 42.56.520](#); [RCW 42.56.210\(3\)](#). The written response must identify the specific statutes relied upon by the agency to withhold the record or part of a record from production and must briefly explain how the exemptions apply to the records requested. [RCW 42.56.210\(3\)](#); [City of Lakewood v. Koenig](#) (2014); see also [White v. Skagit County and Island County](#) (2015).

In order to comply with the PRA and to create an adequate record for a reviewing court, the agency's denial must identify any individual records withheld in their entirety. [Progressive Animal Welfare Soc'y v. University of Wash.](#) (1994) (PAWS II); see also [WAC 44-14-04004\(4\)\(b\)\(ii\)](#). If challenged, an agency is not limited by the grounds in its initial written denial and it may argue additional reasons for nondisclosure on judicial review. [PAWS II](#).

F. No Liability for Good Faith Response

A good faith decision by a public agency to comply with the PRA and release a public record relieves the agency or any public official or employee from liability arising from the disclosure. [RCW 42.56.060](#). This immunity applies to claims by third parties for damages arising from the release of the records. For example, a third party named in a public record cannot successfully sue a public agency under the PRA for a good faith release of that record on the basis that the disclosure violated the subject's privacy. There may be rights to sue under other statutes which may impose confidentiality requirements for certain types of records. The protection from liability by [RCW 42.56.060](#) does not apply to the failure to disclose information that should have been disclosed. In that situation, a court may award penalties and attorneys' fees under [RCW](#)



[42.56.550\(4\)](#) to a prevailing party even if the agency acts in good faith. [Amren v. City of Kalama](#) (1997).

1.8 Agency Decisions May Be Reviewed Internally and In Court

A. Review by Agency of Its Own Denial

Agencies must establish procedures to promptly review decisions denying access to records in whole or in part. [RCW 42.56.520](#). Final agency action that grants a requester the right to seek judicial review is deemed complete at the end of the second business day after an agency's denial of the right to inspect any portion of a record. This means that a requester may file a court case two business days after the initial denial regardless of whether the agency has completed its internal review. [WAC 44-14-08001](#); [WAC 44-14-08004](#). A requester should consult an agency's rules or procedures describing its internal reviews. And, a requester and an agency can agree to extend the time to permit an internal review. Note that an agency may cure a PRA violation by voluntarily remedying an alleged problem while the request remains open and the agency is actively engaging in efforts to fully respond to the request, so it is in the requester's interest to promptly communicate concerns about an agency's response. [Hobbs v. State](#) (2014).

B. Attorney General Review of Denial by State Agency

A requester may ask the Attorney General to review a state agency's claim that a record is exempt from disclosure. [RCW 42.56.530](#). The Office of the Attorney General will respond in writing whether the record is exempt. The right of review by the Attorney General does not extend to a delay in producing records or failure to respond to the request. [RCW 42.56.530](#) does not allow the Attorney General to formally review denials of requests by local agencies; however, the Attorney General's Office may provide information and technical assistance under [RCW 42.56.155](#). The review is nonbinding and a requester is not required to seek review before going to court.

C. Third-Party Action to Prevent Disclosure

A third party who is named in a record, or who is the subject of a record, may seek an injunction to prevent the production of a record. [RCW 42.56.540](#); [Doe v. Washington State Patrol](#) (2016). An agency may also seek a judicial determination on whether a record should be disclosed. [Soter v. Cowles Publishing Co.](#) (2007). The action to prevent disclosure may be filed in the superior court where that party resides or where the record is kept. *Id.* The requester is a necessary (required) party. [Burt v. Department of Corrections](#) (2010).

The burden of proof is on the party seeking to block disclosure. [Confederated Tribes of the Chehalis Reservation v. Johnson](#) (1998). An injunction requires proving both that a PRA exemption applies and that disclosure "would clearly not be in the public interest and would



substantially and irreparably damage any person, or ... vital governmental functions.” [Morgan v. City of Federal Way](#) (2009). See also [Progressive Animal Welfare Soc'y v. University of Wash.](#) (1994) (PAWS II).

Additional procedures may apply to injunctions regarding public records requests from inmates or sexually violent predators. [RCW 42.56.565](#); [RCW 71.09.120\(3\)](#).

D. Filing Suit to Enforce the PRA

A records requester may go to court to obtain the requested records, or to challenge a response to a request or the reasonableness of an agency's estimate of the time to provide the records. [RCW 42.56.550](#); see generally [WAC 44-14-04004\(4\)](#) and [-08004\(5\)](#). Note that an agency may cure a PRA violation by voluntarily remedying an alleged problem while the request remains open and the agency is actively engaging in efforts to fully respond to the request. Therefore, prior to going to court it is in the requester's interest to promptly communicate with an agency if a requester has concerns about the agency's action or inaction. [Hobbs v. State](#) (2014).

A person who has been finally denied the opportunity to inspect or copy a record requested under the PRA may file a lawsuit in the superior court of the county in which a record is kept (or, if the case is against a county, in the adjoining county). [RCW 42.56.550](#). See also [WAC 44-14-08004](#). The agency has the burden to prove that a specific exemption applies to the record or part of the record withheld from disclosure. *Id.*; [Hearst Corp. v. Hoppe](#) (1978). A court will interpret exemptions narrowly and in favor of disclosure, [RCW 42.56.030](#), and will order the disclosure of a non-exempt record “even though such examination may cause inconvenience or embarrassment to public officials or others” (language now codified at [RCW 42.56.550\(3\)](#)).

A person may also go to superior court and ask a judge to determine whether the agency's estimate of time to provide the records is “reasonable.” [RCW 42.56.550\(2\)](#). The burden of proof is on the agency to prove its estimate is “reasonable.” *Id.* See also [WAC 44-14-08004\(4\)](#). The court's review of the agency's decision is de novo (meaning that the court reviews the matter on its own, without regard to the decision of the agency). [RCW 42.56.550\(3\)](#). The procedure for judicial review is set forth in [RCW 42.56.550](#). Procedures may include a “show cause” hearing, but cases under the PRA may also be resolved through summary judgment. [Spokane Research and Defense Fund v. City of Spokane](#) (“Spokane Research IV”) (2005). The court's rules will also govern the proceedings. More information about PRA court procedures is in [RCW 42.56.550](#) and the Model Rules at [WAC 44-14-08004](#). Court procedures are also described in the court's [Civil Rules](#). Some courts have adopted local rules for PRA proceedings. See, e.g., [Thurston County Local Rule 16](#). And, a [brochure](#) on the [courts' website](#) explains civil proceedings in superior court for parties unrepresented by attorneys (self-represented persons or “pro se” parties).



Requesters must start these PRA actions against agencies within a year of when the agency claims an exemption or when it last produces records on an installment basis. [RCW 42.56.550\(6\)](#). Under [Belenski v. Jefferson County](#) (2016), the one-year statute of limitations begins on an agency's final, definitive response to a public records request and applies to all possible agency responses under the PRA. See also [Rental Housing Association of Puget Sound v. City of Des Moines](#) (2009); [Klinkert v. Washington State Criminal Justice Commission](#) (2015); and, [White v. City of Lakewood](#) (2016). In Belenski the State Supreme Court also described that the one-year statute of limitations could be “equitably tolled” (not run) if the facts show there was a dishonest response by an agency that intentionally withholds presumably disclosable records.

An agency may file a lawsuit to seek a court determination of its obligations under the PRA. [Benton County v. Zink](#) (2016).

E. Attorneys' Fees, Costs, and Daily Penalty

A party who "prevails" against an agency in a lawsuit seeking either to disclose a record or to receive an appropriate response within a reasonable time is entitled to recover costs and reasonable attorneys' fees (with the exception of actions involving disclosure of body worn camera recordings governed by the procedures in [RCW 42.56.240](#) as amended in 2016). [RCW 42.56.550\(4\)](#). In addition, the court may award a statutory penalty of up to \$100 for each day that the agency denied the requester the right to inspect or get a copy of a public record (with the exception of actions involving disclosure of body worn camera recordings governed by the procedures in [RCW 42.56.240](#) as amended in 2016). *Id.* The daily penalty range is \$0 to \$100. See also [WAC 44-14-08004\(7\)](#). Penalties may not be awarded to an inmate unless the court finds the agency acted in bad faith. [RCW 42.56.565](#).

A requester is the "prevailing party" if the final court hearing the matter determines that the record or portion of a record “should have been disclosed on request,” [Spokane Research & Defense Fund v. City of Spokane \(“Spokane Research IV”\)](#) (2005), or that some other violation of the PRA occurred. [Doe I v. Washington State Patrol](#) (1996). The requester also prevails if the agency “voluntarily” provides the records improperly withheld after being sued. The award of reasonable attorneys' fees incurred to a prevailing party is mandatory (with the exception of actions involving disclosure of body worn camera recordings governed by the procedures in [RCW 42.56.240](#) as amended in 2016), although the amount is within the court's discretion. [Progressive Animal Welfare Soc'y v. University of Wash.](#) (1994); [Doe I v. Washington State Patrol](#) (1996); [Lindberg v. Kitsap Cy.](#) (1996); [Amren v. City of Kalama](#) (1997). A pro se party (a non-attorney representing himself or herself) is not entitled to an award of attorneys' fees. [Mitchell v. Department of Corrections](#) (2011).



Penalties are not mandatory and can be awarded and computed within the court's discretion. [RCW 42.56.550\(4\)](#); [Wade's Eastside Gun Shop v. Department of Labor and Industries](#) (2016). A court is to consider a nonexclusive list of factors when assessing a penalty. [Yousoufian v. Office of Ron Sims](#) (2004); [Neighborhood Alliance v. Spokane County](#) (2011). There are factors that can increase (aggravate) a penalty and factors that can decrease (mitigate) a penalty.

1.9 Other PRA Provisions

Other provisions of the PRA include:

Training. Public records officers and elected local and elected statewide officials must receive PRA training within 90 days of assuming their duties, and must receive refresher training no later than four years later. [RCW 42.56.152](#). The Attorney General's Office has an [Open Government Training Web page](#) with more resources and information.

Exemptions. [Chapter 2](#) of this manual describes public records exemptions. An agency must publish and maintain a list of exemptions applicable to its records. [RCW 42.56.070\(2\)](#).

Indexing. There are certain records indexing requirements, and the requirements depend upon whether the agency is a state or local agency. [RCW 42.56.070](#). The requirement to keep indices of public records set forth in [RCW 42.56.070\(3\)](#) is excused if a local agency makes an affirmative finding that maintaining such an index would be "unduly burdensome." [RCW 42.56.070\(4\)](#). A state agency must have a rule on its system for indexing certain types of records as listed in [RCW 42.56.070\(5\)](#), including records it indexed before 1990. A public record may be "relied on, used, or cited as precedent by an agency against a party" only if that record has been included in an index available to the public or if the affected party has timely actual or constructive notice of that record. [RCW 42.56.070\(6\)](#). See also [WAC 44-14-03003](#).

Data Breaches. [RCW 42.56.590](#) provides procedures for notice of security breaches of data with personal information.

Attorney General's Office Assistance. The Attorney General's Office may provide Model Rules, as well as other information, technical assistance, and training. [RCW 42.56.155](#); [RCW 42.56.570](#).

MRSC Checklists and Practice Tips for PRA

Agency Obligations: A Starting Point:

PRA – AGENCY OBLIGATIONS: A STARTING POINT CHECKLIST For Local Government Success	
The Public Records Act (PRA) establishes basic procedural requirements that each agency must adopt. Use this checklist as a start for PRA compliance.* <i>For more information and resources visit www.mrsc.org/opmapra.</i>	
<input type="checkbox"/>	Assign and Publicly Identify a Public Records Officer (PRO) Post the PRO's contact information at the agency's place of business, on the agency's website (if any), and in any relevant publications. RCW 42.56.580 .
<input type="checkbox"/>	Adopt a Local Public Records Act Policy The local PRA policy should outline reasonable regulations for the agency's handling of public records requests, such as the agency's response process when it receives a records request. The policy must be prominently displayed. RCW 42.56.040 .
<input type="checkbox"/>	Publish a List of Exemptions and Prohibitions Found Outside the PRA Publish a list of exemptions and prohibitions to disclosure other than those listed in the PRA. RCW 42.56.070 . Examples of these other types of exemptions and prohibitions can be found in Appendix C of MRSC's <i>Public Records Act</i> publication.
<input type="checkbox"/>	Maintain an Index of Public Records Maintain a current index of many types of agency records unless to do so would be unduly burdensome for the agency. If it's unduly burdensome, the agency must adopt a formal order specifying the reasons why and the extent to which compliance would unduly burden or interfere with agency operations. RCW 42.56.070 .
<input type="checkbox"/>	Adopt a PRA Fee Schedule Establish fees for PRA costs, including costs for hard copies, electronic copies, and mailing costs. RCW 42.56.070 and RCW 42.56.120 .
<input type="checkbox"/>	Provide for a Review Procedure for any Denial of Records An agency must provide for review of a denial to inspect records. The review can be conducted by the PRO's supervisor, the agency's attorney, or any individual designated by the agency. Review is deemed complete two business days after the initial denial. RCW 42.56.520 .
<input type="checkbox"/>	PRA Training Requirements <ul style="list-style-type: none"> • Every local elected official and every local government PRO must receive records training (PRA training concerning chapter 42.56 RCW and records retention training concerning chapter 40.14 RCW). • This training must be completed no later than 90 days after these elected officials and PROs take their oath of office or assume their duties. They must also receive "refresher" training at intervals of no more than four years.



How to Perform an Adequate Search:

PRA – HOW TO PERFORM AN ADEQUATE SEARCH FOR RECORDS

PRACTICE TIPS

For Local Government Success



The Public Records Act (PRA), chapter 42.56 RCW, requires that agencies perform an adequate search to locate records responsive to a public records request. The PRA itself doesn't provide detailed provisions on how to conduct an adequate search. Rather, such requirements can be found in court decisions interpreting the PRA, including *Neighborhood Alliance v. Spokane County* (2011); *Block v. Gold Bar* (2015), and *Nissen v. Pierce County* (2015). These practice tips are based on such case law. Use these tips to guide your agency's search for responsive records.* For more information and resources visit www.mrsc.org/opmapra.

Adopt a Standard Methodology to Search for Records (This methodology will apply to each search.)

- 1 **Records organization.** Understand how each department within your agency organizes and retains its records.
- 2 **Implement an effective system for locating and collecting responsive records.** With an effective system in place, an agency can more efficiently find records responsive to a PRA request and more easily defend itself against a challenge that its search for records was inadequate, especially in situations in which the agency finds no records responsive to a PRA request.
 - a. How does the agency inform applicable staff and officials about a PRA request?
TIP: Consider having the Public Records Officer (PRO) email the records request to applicable staff and officials and require them to actively respond regarding whether they have responsive records via the "voting" function in Microsoft Outlook (or equivalent).
 - b. Who searches for the records?
TIP: If the PRO searches for records, consider developing a "tip sheet" identifying locations to search for commonly-requested records, listing commonly-used search terms, and providing other key information (see below).

Specific Search Tips for Processing PRA Requests

(These tips are generally applicable to all requests and some are particularly useful for non-routine requests.)

- 1 **Be clear on what the requester is seeking.**
 - In determining the scope of the search, take care not to interpret the request too narrowly.
 - If the request is unclear, seek clarification from the requester.
 - Document any communication the agency has with the requester.
- 2 **Inform staff and officials of PRA requests in a timely manner.**
 - As soon as possible after receiving a PRA request, alert all agency staff and officials who may possess or know about any records responsive to the request.
 - Consider providing a PRA "hold memo" to applicable staff and officials regarding all responsive records, including those records scheduled for destruction under the agency's records management protocol.
 - The PRO should work closely with the agency's legal counsel, as needed, early and throughout the process so the legal counsel can provide guidance on any issues as they arise.
- 3 **Ask the right staff the right questions.**
 - Create a list of individual staff, officials, and departments that may have responsive records; meet with those staff and officials to discuss the PRA request.
 - Brainstorm and list potential record types and locations.
 - Develop search terms to use in locating responsive records.
- 4 **Search every place a record is reasonably likely to be located.**
 - Think through whether records may be located in multiple records systems (e.g., agency and personal computers and other e-devices, hard copy files, voicemails) and search those locations if responsive records may exist there.
 - If responsive public records are reasonably likely to be located in an employee's or official's personal files, devices, or accounts, the employee or official must search those locations and provide the records to the agency.
 - If the requester provides the agency with suggested search terms, don't limit your agency's search only to those terms. Instead, conduct the search based on all search terms that are reasonably likely to uncover all responsive records.
 - Reasonableness and adequacy of search are key: the agency must show that it made good faith search efforts that were **reasonably calculated to uncover all responsive records**.
- 5 **Follow any obvious leads as they are uncovered.**
- 6 **Document, document, document your search. (Show your work.)**
 - Document which search terms were used and which locations were searched.
 - If challenged, the agency can include such search details in affidavits defending the agency's search.
 - Documenting search efforts at the time of the search avoids having to reconstruct the search at a later date, maintains accurate search information, and reduces the time and effort required by staff to show the search was adequate.
 - Effectively track PRA requests, searches, and responses through electronic means (e.g., software) and/or on a combined records request/search/tracking form.
- 7 **Consider informing the requester of the locations searched and the search terms used.**



Electronic Records—PRA and Records Retention Practice Tips:

ELECTRONIC RECORDS – PRA AND RECORDS RETENTION

PRACTICE TIPS

For Local Government Success



These practice tips are intended to provide practical information to local government officials and staff about electronic records and requirements under the Public Records Act (PRA) ([chapter 42.56 RCW](#)) and records retention law ([chapter 40.14 RCW](#)). The tips are based on real-world experiences, as played out in our courts and otherwise.* For more information and resources visit www.mrsc.org/opmapra.

Key Initial Point

In the context of these practice tips, it's important to keep in mind that the vast majority of records – including electronic records – that agencies deal with are public records. That said, it's also important to recognize that: (1) not all records prepared, owned, used, or retained by an agency are public records; and (2) not all public records have retention value.

Key Terms as Used in These Practice Tips

Electronic record: An electronic record (e-record) is a record you can access through an electronic device. E-records include documents, emails, voice messages, texts, tweets, instant messages, photos, and videos.

Electronic device: An electronic device (e-device) is any device you can use to access e-records. E-devices include desktop computers, laptops, smart phones, other cell phones, and tablets.

Remember These General Principles for Electronic Records

1. **Think before you "POUR."** Regardless of the e-device you use to create or access an e-record, if that e-record, no matter its form, is prepared, owned, used, or retained by the agency, relates to the conduct of government or the performance of any governmental or proprietary function, it's a public record. Remember, agencies act exclusively through their employees and officials. Thus, the work product you send (and receive) while acting in the scope of your employment – regardless of whether it resides on a personal device or an agency device – is a public record.
2. **Establish agency policies/procedures.** Agencies should adopt effective policies and/or procedures related to e-communications and e-devices, including appropriate use and retention requirements.
3. **Failure to comply can be costly.** Knowledge of, and compliance with, the rules that apply to production and retention of e-records and use of e-devices is essential, because even inadvertent mistakes can result in serious consequences for your agency.

What kind of consequences? If a PRA requester wins in court, an agency will be subject to daily penalties ranging from \$0-\$100 per day (the trial court decides the amount, and can impose penalties per day *and* per page), and the court will award attorney fees and costs to the requester. In the context of records retention requirements, it's a felony to willfully and unlawfully destroy public records. Also, lack of compliance commonly leads to lost productivity because agency resources are diverted from other tasks to defend the agency's actions, as well as to a loss of public trust in the agency's commitment to open government. See, e.g., [RCW 42.56.550](#) (PRA penalties), [chapter 40.16 RCW](#) (injury to and misappropriation of a public record).

4. **Be aware of metadata.** Metadata is data about data, or hidden information, about e-records that's automatically created by software programs, and which describes the history, tracking, and/or management of an e-record. Metadata is subject to the PRA, but a requester must specifically ask for metadata for an agency to be required to produce it. See, e.g., *O'Neill v. City of Shoreline*, 170 Wn.2d 138, 147-52 (2010).

E-DEVICE Should I Use My Agency E-Device or My Personal E-Device for Agency Business?

It's best to use only agency-issued e-devices to conduct agency business. By doing so, you allow your agency to properly retain its public records and locate those records in response to a PRA request. Also, you eliminate the basis for a search of your personal e-devices in response to a PRA request (see below).

But What If I Happen to Use a Non-Agency E-Device to Conduct Agency Business?

Preferred option: If agency staff and officials will be using e-devices to conduct agency business off-site and/or remotely, we recommend that your agency set-up a remote system that allows agency personnel to securely access the agency's network via non-agency devices.

Alternative option if your agency doesn't have such a remote access system: If you don't have the option of accessing your agency's system remotely as above described, it's critical to ensure that agency and non-agency e-records are easily distinguishable and not mixed together on your non-agency e-device. This can be done, for example, by keeping all of your agency related e-files in a separate folder.

But keep in mind ... If you use a non-agency e-device to conduct agency business, that device could be subject to a search in response to a PRA request.

Don't I Have Privacy Rights Related to My Personal E-Devices?

Yes, but public employees and officials have no constitutional right to privacy in a *public* record. As an alternative to submitting your personal e-device to the agency for a responsive records search, you have the option of conducting your own search of your device. If you do conduct your own search, work with your agency's legal counsel on drafting a detailed affidavit describing the extent of your search and if personal records have been withheld, provide sufficient facts to show these records are not public records and, thus, not responsive.



TEXT MESSAGE

Can I Send Agency-Related Text Messages from a Cell Phone or Smartphone?

Yes, remember that work-related texts sent and received by employees and officials when acting within the scope of their employment are a public record, even if located on a personal phone. If you use texting (or instant messaging) to conduct agency business, key considerations for you and your agency relate to who has custody and control of the record, and how to access and retain such records. Commonly, the service provider (e.g., phone company) will retain texts only for a limited time (e.g., 5-10 days).

Recommendation: If texting is used to conduct agency business, consider adopting and enforcing an agency policy that limits texting to those for whom it's truly necessary (e.g., for specified law enforcement and emergency management functions). The policy should address whether work-related texting is allowed from personal phones. If such texting is allowed on personal phones, the agency should have a plan for obtaining those public records. Consider investing in capture tools (i.e., software) to capture all texts on agency devices and retain those that have retention value.

EMAIL

Should I Use My Agency Email Account or My Personal Email Account for Agency Business?

It's best to use only an agency-issued email account for agency business. Just like use of agency e-devices, use of agency email accounts allows your agency to properly retain its emails and locate them in response to a PRA request. This principle applies as well for other e-communications related to agency business (e.g., texts, instant messages, tweets).

But What If I Receive an Email on My Personal Email Account That Relates to Agency Business?

If this occurs, forward that email to your agency email account and advise the sender that you don't use your personal email address to conduct agency business, and to send any future agency-related emails to your agency email address.

But What If My Agency Doesn't Have Agency-Issued Email Accounts?

Urge your agency to establish an email system that allows the agency to assign individual addresses to each official and staff member. If the agency doesn't set up an agency email system, you should create a separate email account that's used solely for agency business (e.g., commissioner-jones@gmail.com, councilmember-robertson@msn.com).

And keep in mind ... If you use a non-agency email address/account, consult with your agency's public records officer and legal counsel to address issues such as determining how those records will be retained in compliance with records retention law, and how the records will be located and made available in response to a PRA request.

VOICE MAIL

Do I Have to Keep Voice Mail Messages?

If a voice mail message relates to agency business and it has retention value, that message needs to be captured electronically and, if that's not possible, the content of the message needs to be saved in some other manner.

Recommendation: The agency should have a voice message system that allows it to capture voice mail messages electronically, such as through an integrated voice mail and email system, so all voice messages are created also as e-files that become part of the email system. If that's not possible, it's recommended that the agency save voice mail messages through some other means.

SOCIAL MEDIA

What Are Some Public Records Considerations Related to Social Media?

Facebook and Twitter, for example, can be effective tools to connect with the public. But, if your agency is going to create social media accounts, public records considerations need to be thought through and addressed. Unless the agency is posting only secondary copies of agency records to, for example, the agency's Facebook page or Twitter feed, it's advisable to presume that all posts, comments, and tweets are public records and to consider how to manage posts and tweets, retain such records, and use software tools to capture those records.

Recommendation: Don't use your personal Facebook page, Twitter feed, or blog for agency business. It's advisable for agencies to have clear and enforceable policies regarding such activities. Also, if you're an incumbent elected official who is a candidate, don't mix your election activities with agency business.



Electronic Records – PRA and Records Retention Do's and Don'ts:

ELECTRONIC RECORDS – PRA AND RECORDS RETENTION

DO'S AND DON'TS

For Local Government Success



These Do's and Don'ts are intended to provide summary guidance related to use of electronic records and electronic devices in compliance with the Public Records Act (PRA) ([chapter 42.56 RCW](#)) and records retention law ([chapter 40.14 RCW](#)). For a more thorough analysis of these issues, please review our related guide: *Electronic Records – PRA and Records Retention Practice Tips*, which can be found along with other information at www.mrsc.org/opmapra.

	Do	Don't
Agency Computer	Do use your agency computer to conduct agency business. This allows your agency to retain records appropriately and locate such records in response to a PRA request.	Don't delete records from your agency computer (or any computer) unless you're certain the records aren't public records, or the records are past their required record retention period . (If you have any doubt about deleting records, check with your agency's legal counsel.)
Personal Computers	Do use your personal computer to remotely access your agency's file server and email server (if your agency allows for such remote access).	Don't use your personal computer to conduct agency business unless you do so by accessing your agency's server(s) remotely. If that's not possible and you use your personal computer to conduct agency business, make sure that you: <ul style="list-style-type: none"> • Retain all public records with retention value; and • Provide those records to your agency so the agency can retain the records appropriately and make them available if a PRA request is made for such records.
Agency Email Account	Do use your agency email account to conduct agency business. This allows your agency to retain its records appropriately and to locate such records in response to a PRA request.	Don't delete emails sent or received from your agency email account unless you're certain the emails aren't public records, or the emails are past their required record retention period . (If you have any doubt about deleting emails, check with your agency's legal counsel.)
Personal Email Account	Do forward any agency-related emails received on your personal email account to your agency email account. Do instruct the sender that you don't conduct agency business via your personal email account(s), and to send all emails related to agency business to your agency email address.	Don't use your personal email account for agency business, unless your agency doesn't provide agency email accounts. If you must use a personal email account for agency business, set-up a unique email account solely for agency business, clearly segregate agency-related emails from personal emails, and provide all agency-related emails to your agency so those records can be retained appropriately and made available if a PRA request is made for such records.
Texting on Agency Devices and Personal Devices	Do follow your agency policy related to texting. If your agency doesn't have a policy, make sure you're retaining all agency-related text messages for their full retention period. If you send or receive agency-related text messages via a non-agency device, provide those messages to your agency so they can be retained appropriately and made available if a PRA request is made for such records.	Don't text in violation of your agency's policy. Don't use texting for agency-related business without a clear understanding of how those messages are being retained by the provider (e.g., phone company) and by your agency. Text messages, like emails, can be public records that must be retained by your agency. Such records need to be provided if responsive to a PRA request; this is true even for text messages on your personal phone.
Voice Mail Messages on Agency Phones and Personal Phones	Do, if possible, capture all agency-related voice mail messages through an integrated voice mail and email system. If that's not possible, save voice mails with retention value through other means.	Don't delete all agency-related voice mails once you have listened to them. Like email and text messages, voice mails can be public records that must be retained by your agency, and such records may need to be provided in response to a PRA request.
Agency Social Media	Do try to post only secondary copies of content on agency social media sites. That way, the agency won't have to separately retain all of the content of the social media sites. If that's not possible, your agency should consider purchasing software that captures and archives social media sites.	Don't set up and use an agency social media site, and don't edit and delete content on your agency's social media site(s), without complying with records retention and PRA requirements.
Personal Social Media	Do abstain from discussing agency business via your personal social media accounts. If you post or exchange agency-related communications via your personal site, make sure you comply with records retention and PRA requirements.	Don't conduct agency business via your personal social media site. Agency-related records can be public records, subject to retention requirements and the PRA, even if the records are located on your personal social media site. If you're an incumbent elected official who is a candidate, don't mix your election activities with agency business via use of social media.



Responding to a Public Records Request

Five Day Response Requirements: State and local government agencies are required by [RCW 42.56.520](#) to respond to a public records request within five business days of receiving the request by doing one of the following:

- Providing for inspection and/or copying of the records requested.
- Providing an internet address and link to the specific records requested on the agency's website (if the individual does not have internet access, then the agency must provide copies or allow the requester to view the records using an agency computer).
- Acknowledging receipt of the request and providing a reasonable estimate of the time necessary to respond.
- Acknowledging receipt of the request and requesting clarification for a request that is unclear and providing, to the greatest extent possible, a reasonable estimate of time necessary to respond if the request is not clarified. Note that, if the requestor does not respond to the agency's clarification request and *the entire request is unclear*, an agency need not further respond to the request. If portions of the request are clear, however, the agency must respond to those portions.
- Denying the request. If a request is denied, a written statement must accompany the denial setting out the specific reasons for the denial.

When is Additional Response Time Allowed?: Often, an agency cannot provide a full response within five business days of receipt; the PRA allows an agency to take additional time to respond based upon factors such as the need to:

- Clarify the intent of the request
- Locate and assemble the information requested
- Notify third parties or agencies affected by the request
- Determine whether any of the information is exempt and whether a denial should be made as to all, or part, of the request

What Public Records Requests May be Denied?: Not all requests are considered valid requests for public records; for example, the following may be denied:

- Requests for information ([Bonamy v. Seattle](#) (1998)).
- Requests for all or substantially all records of an agency not relating to a particular topic ([RCW 42.56.080\(1\)](#)).
- Automatically generated (bot) requests received from the same requestor within a 24-hour period if the bot requests cause excessive interference with the other essential functions of the agency ([RCW 42.56.080\(3\)](#)).



Public Records Request Response Example Letter 1:

[insert date]

[insert name and address]

RE: Public Records Request--*[insert general description of request]*

Dear *[insert name]* :

The *[insert name of county]* Water Conservancy Board (Board) is in receipt of your public records request, dated *[insert date of request]* and received *[insert date request actually received]*. It is our understanding that you have requested copies of *[insert the general description of the records that have been requested]*.

Copies of the records that you have requested will be available for you one (1) week from today's date. Consistent with the Public Records Act, RCW Chapter 42.17, the Board charges a per page copy fee of ten cents (\$0.10). *See* RCW 42.17.300. Therefore, upon receipt of *[example: \$5.10 (51 total pages copied)]* the Board will provide you with copies of the records you have requested. After receipt of payment, these copies will be available to you in our office at *[provide relevant address]* or at your request we will mail the copies directly to you.

If you have any concerns or questions, do not hesitate to contact me.

Sincerely,

[insert name of person from the Board responding and any relevant title]



Public Records Request Response Example Letter 2:

[insert date]

[insert name and address]

RE: Public Records Request--*[insert general description of request]*

Dear *[insert name]*:

This letter is in response to your public records request of *[insert date of request]* received by the *[insert name of county]* Water Conservancy Board (Board).

Due to the size and complexity of your request, the records will not be ready for your review until *[provide a reasonable estimate of time necessary to gather and produce records]*. Please contact me to schedule a date and time for that review. All requests are handled pursuant to the Revised Code of Washington (RCW) Chapter 42.17.

If after your inspection of the records you would like any copies, the Board charges a per page cost for copies, as well as a reasonable charge for reimbursing the Board for its actual costs directly incident to such copying. RCW 42.17.300.

If you have any questions, do not hesitate to contact me.

Sincerely,

[insert name of person from the Board responding and any relevant title]

Public Records Request Response Example Letter 3:

[insert date]

[insert name and address]

RE: Public Records Request--*[insert general description of request]*

Dear *[insert name]*:

This letter is in response to the public records request you made with the *[insert name of county]* Water Conservancy Board (Board) dated *[insert date of request]*. All requests received by the Board are handled pursuant to the Revised Code of Washington (RCW) Chapter 42.17. Please be advised that we do charge fifteen cents (\$0.15) per page for duplication of records, but records may be inspected free of charge. *See* RCW 42.17.300. Also, RCW 42.17.270 requires that all requested documents must be identifiable.

The records responsive to your request are available for your review. Please contact me in order to schedule a time and date for your inspection of the requested records.

Feel free to contact me if you have any other questions.

Sincerely,

[insert name of person from the Board responding and any relevant title]



Open Government Trainings Act

Bob Ferguson, Attorney General of Washington: The Open Government Trainings Act, Chap. 66, 2014 Laws (Engrossed Senate Bill 5964) was enacted by the 2014 Washington State Legislature, effective July 1, 2014. Here is a guide.

1. Why did the Legislature enact this new law?

Answer: The bill was introduced at the request of the Attorney General, with bipartisan support. A 2012 Auditor's Office report noted more than 250 "open government-related issues" among local governments. These included issues concerning the Open Public Meetings Act (OPMA) at RCW 42.30. In addition, in recent years the courts have imposed some significant monetary penalties against state and local public agencies due to their non-compliance with the Public Records Act (PRA) at RCW 42.56. Most violations are not malicious or intentional; they are often the result of insufficient training and knowledge. The comments to the Attorney General's Office advisory Model Rules on the PRA, and case law, have recognized that PRA training for records officers is a best practice. See, for example, WAC 44-14-00005.

The Legislature passed ESB 5964 in March 2014 and the Governor signed it on March 27, 2014. The Act is designed to foster open government by making open government education a recognized obligation of public service. The Act is also designed to reduce liability by educating agency officials and staff on the laws that govern them, in order to achieve greater compliance with those laws. Thus, the Act is a risk management requirement for public agencies. The Act provides for open public meetings and records trainings. In sum, the Act is intended to improve trust in government and at the same time help prevent costly lawsuits to government agencies.
[Section 1]

2. What is the Act called?

Answer: The Open Government Trainings Act. *[Section 6]*

3. When is the Act effective?

Answer: July 1, 2014. *[Section 7]*

4. What is a quick summary of the Act's requirements?

Answer: The Act requires basic open government training for local and statewide officials and records officers. Training covers two subjects: public records and records retention ("records training"), and open public meetings. *[Sections 1-4]* Whether you are required to take trainings on one or both subjects depends on what governmental position you fill.

5. What is the Attorney General's Office role?



Answer: The Attorney General’s Office may provide information, technical assistance, and training. [Section 5] See also RCW 42.56.570 and RCW 42.30.210. The office maintains and provides a public web page with training videos as well as training resources.

The office is also providing other assistance such as this Q & A guidance. The Assistant Attorney General for Open Government (ombudsman) is also available as a resource. See Q & A Nos. 13 and 22.

6. Who is subject to the Act’s training requirements?

Answer:

► Members of governing bodies.

Members of a governing body of a public agency subject to the OPMA must receive **open public meetings training (OPMA training concerning RCW 42.30)**. “Public agency” and “governing body” are defined in the OPMA. RCW 42.30.020.

They include members of city councils, boards of county commissioners, school boards, fire district boards, state boards and commissions, and other public agency boards, councils and commissions subject to the OPMA. Effective July 1, 2014, those members must receive OPMA training no later than 90 days after they take their oath of office or assume their duties. They can take the training before they are sworn in or assume their duties of office. They must also receive “refresher” training at intervals of no more than four years, so long as they are a member of a governing body. [Section 2]

Note: *If a member of a “governing body” is also an elected local or statewide official, he or she must receive both open public meetings and records trainings (see next bullet).*

► Elected local and statewide officials.

Every local elected official, and every statewide elected official, must receive **records training (PRA training concerning RCW 42.56, plus records retention training concerning RCW 40.14)**. Effective July 1, 2014, they must receive this training no later than 90 days after they take their oath of office or assume their duties. They can take the training before they are sworn in or assume their duties of office. They must also receive “refresher” training at intervals of no more than four years. [Section 3]

► Records officers.

Public records officers for state and local agencies, and state agency records (retention) officers designated under RCW 40.14.040, must receive **records training (PRA training concerning RCW 42.56 and records retention training concerning RCW 40.14)**. Effective July 1, 2014, they must receive this training no later than 90 days after they assume their duties. They must also receive “refresher” training at intervals of no more than four years. [Section 4]

Note: While Section 4(2) of the bill refers to “public records officers” in the training schedule, the act’s training requirements were intended to apply to both public records officers under the PRA and to state agency records officers designated under RCW 40.14.



► Others.

Other public agency officials and employees who are not listed in the Act are not required to receive training. However, this Act sets only minimum training. Agencies may wish to provide or arrange for additional or more frequent training, or training for additional staff.

Training is essential because even one unintentional mistake can amount to a violation of the PRA or OPMA. PRA training reduces risks of lawsuits. As the State Supreme Court has explained, “An agency’s compliance with the Public Records Act is only as reliable as the weakest link in the chain. If an agency employee along the line fails to comply, the agency’s response will be incomplete, if not illegal.” *Progressive Animal Welfare Society v. University of Washington*, 125 Wn.2d 243 (1995). And the Supreme Court has held that PRA training can reduce PRA penalties. *Yousoufian v. Office of Ron Sims*, 168 Wn.2d 244 (2010).

As a consequence, an agency may want persons who are not listed in the Act to receive training. How much training each employee receives may depend on his or her role. For example, an agency may want all employees to be trained on the basics of records management, search requirements, how to identify a request for records, and what is a public record. An agency could include basic records training in all its new employee orientations, covering both PRA and records retention.

Other employees may benefit from additional training. For example, public records officers may have other designated staff to assist them in responding to records requests. Thus, records training would be useful for those staff. And, that records training for those who regularly assist public records officers may be more detailed or frequent than, say, that provided to a board member.

Or, while a local government agency is not required to formally designate a records retention officer under RCW 40.14.040, as a practical matter, the agency may have staff who is key in maintaining records using the local government records schedules. Therefore, those local government agencies may want to provide or arrange for those staff to receive training on RCW 40.14.

Or, a board may have a staff member or clerk who posts meeting notices and agendas, and maintains minutes, so that person may likely benefit from training on the open public meetings requirements under the OPMA.

And, regular refresher training may be appropriate for any of these employees, depending upon the person’s governmental position and developments in the law.



In sum, while training is not required for governmental positions not listed in the Act, the Attorney General's Office encourages agencies to consider that persons in other positions are subject to or working with these laws, and would likely benefit from receiving training, if feasible. Training on the laws is a best practice, even if not specifically required by the Act. Education helps support transparency in government and reduces risk to agencies.

7. Who is not subject to the Act's training requirements?

Answer: As noted in Q & A No. 6, public agency employees and officials not listed in the Act are not required to receive training. The courts and the State Legislature are also not required to receive training (unless the person also holds another governmental position where training is required, for example, serving on a governing body subject to the OPMA). Even so, the Act does not restrict them from receiving or participating in open government training.

Others not subject to the Act include board members, officials or employees of purely private organizations. Examples are nonprofit boards, homeowners associations, or other private entities that are not a public agency or the functional equivalent of a public agency.

8. What if I am in my elected position (an incumbent) on July 1, 2014, and I am not up for re-election in 2014? How does the training schedule work for me? What if I already received training in 2014?

Answer: Even if not specifically required by the Act, we recommend that incumbents in office on July 1, 2014 receive training for each of the required sections of law during 2014, if they have not already received such training. If they have already received training in 2014 for the required sections of law, we suggest they document it. (See Q & A No. 17). Then, calendar refresher trainings at intervals of no later than four years (as long as you are a member of the governing body or public agency). We suggest this approach for several reasons.

First, the training will help establish a "culture of compliance" with open government laws in the agency if officials and others subject to the Act demonstrate they have recently received or are quickly willing to receive the training.

Second, it will help set a similar "base year" for scheduling four-year refresher trainings if several officials in a public agency are required to receive that training.

Third, it is a good idea for an elected official to receiving training in 2014, even if the training covers some of the same topics previously reviewed during an earlier year's orientation or training. Given the public interest in these laws, it is good to keep them in the forefront of the official's or employee's base knowledge. And, there may be new developments in the statutes or court decisions that were not covered in a prior training.



Finally, the sooner training is received and documented, the sooner that information will be available to a court or others if needed. Since 2010, the State Supreme Court has said it will consider PRA training in assessing penalties for public records violations specified in the PRA. (See more discussion under Q & A No. 20 discussing non-compliance with the Act.)

9. What if I am in my elected position (an incumbent) on July 1, 2014, and I am seeking re-election in 2014? How does the training schedule work for me?

Answer: Incumbents who are re-elected in November 2014 must receive training no later than 90 days after they take their new oath of office or otherwise assume their duties. However, they can take the training sooner. Therefore, they could either take the training some time by the end of 2014 (perhaps with other officials and staff receiving training in 2014), or they could wait to take the training within 90 days after they take their oath of office or otherwise assume their duties of office if re-elected in November.

Then, refresher training must be taken no later than every four years (as long as you are a member of the governing body or public agency).

10. What if I am in my position as an incumbent public records officer or records officer on July 1, 2014? How does the training schedule work for me?

Answer: If you were in your position prior to July 1, 2014, and you have already received training in 2014, we recommend you document it. However, if you did not receive any records training in 2014, we recommend you receive training this year, given the reasons and approach stated in Q & A No. 8, and document that training. (See Q & A No. 17). Then, 2014 becomes your “base year” from which you schedule the refresher trainings that are required no more than four years later (as long as you are in the records officer position).

If you are appointed on or after July 1, 2014, you will need to receive training no later than 90 days after assuming your duties, and then receive refresher trainings no more than four years later.

You can receive more frequent trainings, too, if feasible. More frequent trainings are not restricted in the Act.

11. What must the training include?

Answer:

- Open public meetings training should cover the basics of the OPMA. *[Section 2]*
The Act does not provide further details. However, for example, the training could cover the purpose of the act, requirements for regular and special meetings, public notice, executive sessions, and penalties. The training may also include the requirement to maintain minutes and have them open for public inspection, as described in another law at RCW 42.32.030.



The Attorney General's Office online OPMA video and OPMA Power Point cover the basics of the OPMA and satisfy this requirement.

- Records training – PRA.

Training on the Public Records Act should cover the basics of the PRA at RCW 42.56.

Training must be consistent with the Attorney General's Office Model Rules. *[Sections 3, 4]*

The Act does not provide further details.

However, for example, the training could cover the purpose of the PRA, what is a "public record," basic public records procedures, how an agency responds to requests, searches, what an agency must do before withholding information in a record from the public, and penalties. The training might also cover an agency's particular PRA procedures set out in its rules or policies.

The Attorney General's Office online PRA video and PRA Power Point cover the basics of the PRA and satisfy this requirement.

Records training – records retention. Record retention training should cover the basics of RCW 40.14. *[Sections 3, 4]*

The Act does not provide further details. However, for example, the training could cover basic retention requirements, what is a records retention schedule, and a brief description of what schedule(s) apply to the agency. For board members, it may also specifically cover how to manage emails and other electronic records. For a records officer, the training may be much more detailed, addressing more specifically the agency's records retention schedules and categories of records.

The Washington State Archives records retention training covers the basics of records retention and satisfies this requirement. The four-year "refresher" training should cover the basic requirements in effect at the time of the training. It is a good idea to cover any recent developments in the law since the last training. Under the Act, the refresher trainings must occur at intervals of no more than four years.

There may be options an agency wants to consider for giving refresher training. For example, it may be useful to have a refresher training once a year such as at a board meeting or staff workshop. In that way, officials and employees subject to these laws can receive ongoing refreshers as well as updates on the laws, without needing to individually calendar the four-year cycle.

12. Who will provide the training?



Answer: That choice is up to each agency official and employee, depending on the agency's needs and resources. The Attorney General's Office has provided a web page with training information. That web page includes resources for PRA and OPMA training. Examples include Power Point presentations, videos, manuals, and links to other training resources. The web page also provides links to the Washington State Archives online training materials and other information describing records retention requirements. Other training options are available as well. See Q & A No. 13.

13. What are the training options for an official or employee?

Answer: There are many options to receive training. To illustrate, an official or employee could take training in any of the following ways:

In-House Training at the Agency.

- In-house training provided by the agency's legal counsel, assigned Assistant Attorney General, or agency staff familiar with the requirements of the law.
- Training through videos or Power Points at a board meeting or staff meeting or workshop, perhaps with someone available to answer follow-up questions.
- Training as part of the orientation for new members and new staff.
- Internet or Remote-Technology Based Training. [Sections 2, 3, 4]
- Online or internet-based training, webinar training, or training via Skype.
- The training resources provided on the Attorney General's Office training web page includes videos and links to training materials. The Attorney General's Office OPMA and PRA videos and two Power Point presentations linked there satisfy the OPMA and PRA training requirements. The State Archives records retention training linked there satisfies the records retention training requirements.
- Training from Public Agencies or Public Agency Associations.
- Training offered by or at other public agencies or associations.
- For example, training may be provided by a school board association, a fire district association, a public records officer association, and similar entities.
- The Attorney General's Office is also examining whether its training videos can be made available online on the State of Washington Department of Enterprise Services "Learning Management System" website for state employees.

Outside Training.

- Training from an outside private trainer.
- For example, a resource for local governments is the Municipal Research and Services Center.
- The Washington State Bar Association may also provide Continuing Legal Education (CLE) programs, particularly on the PRA and OPMA. These may be useful for persons who are attorneys who must receive training under the Act and who are also required by the WSBA to obtain CLE credits.



Washington State Archives - Records Retention Training.

- The Washington State Archives provides guidance and support to state and local government agencies in public records management by offering education and training opportunities.
- Information about the State Archives training for state agencies and local agencies is available online.
- Another option is to ask the State Archives staff to provide records retention training or to guide the agency to other useful records retention training resources. An agency can contact the State Archives by email at recordsmanagement@sos.wa.gov or by telephone at (360) 586-4901.

Attorney General's Office In-Person Training. *[Section 5]*

- Ask the Assistant Attorney General for Open Government to provide PRA or OPMA training.
- *Note:* There may be minimum audience size, travel and other factors to consider.

Other Training.

- Consider other training options that cover the open public meetings and records training requirements.

The Act was designed to be flexible so an agency official or employee could select a training option that best fits his/her needs, governmental position, and agency resources.

14. What does it mean when the Act says that the PRA training must be consistent with the Attorney General's Office PRA Model Rules?

Answer: The Attorney General has, in chapter 44-14 WAC, adopted "Model Rules" on PRA compliance to provide information to agencies and to requestors about "best practices" for complying with the PRA. While the PRA Model Rules are advisory (RCW 42.56.570), they are also noted as a training tool in the Act. *[Sections 3, 4]*. We believe they are used and referenced by many agencies today. As such, they are a good training foundation from which an agency can conduct or design PRA training. The Model Rules are also available on the office's Open Government Training web page.

The Attorney General's Office PRA training video available on our web page is consistent with the Model Rules.

15. Does the Act require the Attorney General's Office to approve or certify training?

Answer: No.

16. Are there a minimum number of hours required for training?

Answer: No.

However, basic training for the OPMA and PRA should probably last no less than 15 – 20 minutes each, and basic records retention training should probably last 10-15 minutes. More detailed and longer training may be appropriate for some positions. For example, records officers may want to receive more detailed training on the PRA and records retention schedules, and/or receive training more often than once every four years.

17. Should an official or employee document the training? If so, how?

Answer: The Act does not require training to be documented. Even so, we recommend officials and employees subject to the Act document this training, and we recommend that their agencies assist them. An agency will want to have training information available to a court or to others if needed. (See Q & A No. 20 regarding possible consequences of non-compliance.)

The Act also contains no requirements describing how to document training. Every agency may be different in how it maintains its employees' or officials' training records. Or, if the training is conducted at a board meeting, the minutes can reflect that the training was provided and who attended. The minutes would also qualify as documentation.

The AGO has prepared sample documentation forms (a sample certificate and a sample training roster) which are available on the open government training web page. Other forms or methods of documenting training are fine as well.

If an incumbent official or staff member has already received training during 2014, we recommend the official or staff member, or agency, document that training, too, if they have not already done so.

18. Is an official, employee or agency required under the Act to report completed trainings or provide training documentation or data to the Attorney General's Office?

Answer: No.

19. What is the training cost to the official, employee or agency?

Answer: The cost depends on what trainings the officials or employees take. They may incur travel costs on behalf of their agency, but if they take online training, the "cost" is primarily only their time. There is no cost to take the online trainings available on the Attorney General's Office website; they are free. There is no cost to take the State Archives online trainings on records retention; they are also free.

Many agencies that currently arrange for training on these open government laws, or other topics, already either use their own staff to conduct the trainings (such as their attorneys) or



seek out other trainings from other organizations/associations. Thus, those are the types of costs currently taken into account by agencies.

20. What is the penalty for an official's or employee's non-compliance with the Act?

Answer: The Act does not provide any new penalties for an official or staff member not receiving required training. The Act does not provide any new penalties for an agency not providing training. The Act does not create a new cause of action in court regarding training under the OPMA, PRA, or records retention laws. Remember, the Act is intended to reduce liability, not create new lawsuits. *[See, e.g., Section 1]*

However, under current case law, a court can consider whether agency staff received training when it is determining whether to assess a penalty for violations of other sections of the PRA (as specified in the PRA). That is, under current case law, evidence of training can mitigate an agency's exposure to penalties; absence of training can aggravate penalties.

21. What is the bottom line?

Answer: In sum, training is required by the new Act effective July 1, 2014. And, under current law and guidance, training is also in the agency's and the public's best interests. That is, it is already a best practice for officials and other employees who work with those open government laws to receive training, so they can better comply. The new Act simply takes that best practice one step further, by requiring training for many officials and records officers.

22. Who can we contact for more information?

Answer: You may contact the Attorney General's Office:

Nancy Krier

Assistant Attorney General for Open Government

(360) 586-7842

Nancyk1@atg.wa.gov

Attorney General's Office Open Government Training Page:

<http://www.atg.wa.gov/OpenGovernmentTraining.aspx>

Information about State Archives records management and retention training for state and local agencies is available at: <http://www.sos.wa.gov/archives/RecordsManagement/>

Agencies can contact the State Archives by email at recordsmanagement@sos.wa.gov or by telephone at (360) 586-4901.



How to Take the Open Government Training

WA State Attorney General Online Training:

1. Click [here](#) to access the “Washington State Attorney General’s Office Open Government Training Web Page.”

2. Scroll down to the “Open Government Training Curriculum.”

3. Select the training lesson(s) you need to take. In sum, within 90 days of appointment/taking office and at intervals of no more than 4 years thereafter:

- Members of multimember governing bodies need to take open public meetings training. (Lesson 3). The members who are elected local or statewide officials must also take records training. (Lessons 2 and 4).
- Other elected local and elected statewide officials must take records training. (Lessons 2 & 4).
- Records officers must take records training. (Lessons 2 & 4).
- Although not required, other public officials and public employees can take the trainings as well.

4. View the online training lesson(s).

5. When you are done, and as last step, it is recommended that you document the training you received. *More details are below.*

► If you need open meetings training (RCW 42.30.205): Watch the Open Public Meetings Act (RCW 42.30) Lesson 3 video (16 minutes) or review the PowerPoint/PDF below the video.

► If you need records training (RCW 42.56.150 and RCW 42.56.152): Watch the Public Records Act (RCW 42.56) Lesson 2 video (30 minutes) or review the PowerPoint/PDF below the video. [If you are a public records officer, you are encouraged to review both presentations (the video and the PowerPoint/PDF), and/or look for additional trainings on producing and disclosing electronic documents and updating/improving technology information, if you need such training or a refresher. See RCW 42.56.152(5) and 2017 Supplement to Q & A.] + And

Watch the Records Retention and Management (RCW 40.14) Lesson 4 webinar video (39 minutes), also linked in the lesson. The video is “A Primer for Public Records,” provided by the Washington Secretary of State - State Archives. [If you are a public records officer, you are encouraged to review additional materials/trainings on the State Archives records management website particularly with respect to retention of electronic documents, if you need such training or a refresher. See RCW 42.56.152(5) and 2017 Supplement to Q & A.]

► Last step: If you want to document the training (recommended):



You can use the sample certificate under “Last Step” at the bottom of the AGO Open Government Training Web Page. Alternatively, your agency may have other methods to document training.

For more training information, see RCW 42.30.205, RCW 42.56.150, RCW 42.56.152; Q & A, & 2017 Supplement to Q & A. If you want more information generally on open government, see the “Other Resources” and other materials linked on the Open Government Training Web Page.

Introduction to Water Law

Water Rights 101

Water—A Public Resource: Waters of the state belong to the public and can't be owned by any one individual or group. Instead, a person or group may be granted a right to use a volume of water, for a defined purpose, in a specific place.

Department of Ecology is responsible for managing the water resources of the state, including issuing the right to use water as well as protecting the instream resources for the benefit of the public. Ecology manages a portfolio of over 230,000 active water right certificates, permits, applications, and claims to help meet the state's many water supply needs. Many of these permits have been in existence since the late 1800s. Before a water right permit can be issued, the proposed use must meet a four-part test:

1. Water must be available (both physically **and** legally)
2. Water must be used beneficially
3. Water use must be in the public's interest
4. Water use must not impair another existing use

Washington State follows the doctrine of prior appropriation, which means that the first users have rights senior to those issued later. This is called "first in time, first in right." If a water shortage occurs, senior rights are satisfied first and the junior right holders can be curtailed. When a water right permit is issued, it is a permit to develop a water right. It is not a water right until the water has been put to full use and Ecology can issue a certificate of water right. A water right will remain in good standing as long as you continue to exercise the right.

Commonly Used Terms:

Permit — an authorization to use a specific amount of water with a defined place, season, and purpose.

Certificate — documentation of a "perfected" water right put to full beneficial use, recorded in the appropriate county, attached to a property deed.

Adjudicated Certificate — a certificate that has been validated by a local superior court in a water rights [adjudication](#).

Claim — a claim to a water right that predates the water permitting system (prior to 1917 for surface water and prior to 1945 for groundwater); these rights can only be confirmed in an adjudication. Read more about [water right claims](#).



Trust Water Right — a water right placed into the [Trust Water Rights Program](#) that is protected from relinquishment due to non-use.

Washington Water Rights

Statutes: The following list of water rights related statutes and regulations highlights those that are most relevant to local governments. This is not intended to be a comprehensive list. The statutes for water rights are codified in [Title 90 RCW](#). Below is a list of selected chapters.

- [Ch. 90.03 RCW](#) - Water Code (surface waters) - Includes determinations of water rights
- [Ch. 90.14 RCW](#) - Water rights - Registration - Waiver and relinquishment, etc.
- [Ch. 90.16 RCW](#) - Appropriation of water for public and industrial purposes
- [Ch. 90.22 RCW](#) - Minimum water flows and levels
- [Ch. 90.28 RCW](#) - Miscellaneous rights and duties
- [Ch. 90.40 RCW](#) - Water rights of United States
- [Ch. 90.42 RCW](#) - Water resource management - Addresses trust water rights and water banking
- [Ch. 90.44 RCW](#) - Regulation of public groundwaters - In particular, see [RCW 90.44.105](#) - Consolidation of rights for exempt wells
- [Ch. 90.66 RCW](#) - Family farm water act

Regulations:

- [Ch. 173-152 WAC](#) - Water Rights
- [Ch. 173-153 WAC](#) - Water Conservancy Boards

Selected Court Decisions: The following list of case summaries highlights key court decisions on water rights issues affecting local governments. This is not intended to be a comprehensive list of all cases.

The state legislature enacted new laws in January 2018 ([ESSB 6091](#)) directly affecting this holding. For more information, see [Legislature Addresses Whatcom County v. Hirst](#).

[Whatcom County v. Hirst](#), 186 Wn.2d. 648 (10/6/ 2016) – In *Hirst*, the Washington Supreme Court ruled that Whatcom County’s comprehensive plan and development regulations failed to protect water resources, in violation of the Growth Management Act (GMA). The court held that the GMA requires local jurisdictions to make an independent determination about water availability before it can approve development that requires a water source. And this process needs to be set forth in its planning documents. Whatcom County could not rely upon the Department of Ecology’s instream flow rule (the “Nooksack Rule”) to satisfy this duty. The Nooksack Rule closed many watersheds in the county to further appropriations, but did not regulate permit-exempt wells allowed pursuant to [RCW 90.44.050](#) in most areas. Evidence was



presented that instream flows were not being met for a good part of the year, yet development relying on permit-exempt wells was continuing unchecked in much of the county.

[Foster v. Dept. of Ecology](#), 184 Wn.2d 465 (2015)

The court reversed DOE's approval of a water right permit issued to the city of Yelm. The court held that DOE exceeded its statutory authority by applying the "overriding considerations of public interest" exception of [RCW 90.54.020\(3\)\(a\)](#) to permit the city to withdraw water that would impair the minimum flows of river basin streams, because the minimum flows constituted prior appropriations and the exception may not be applied to permanently impair senior water rights with earlier priority. This exception, by its terms, permits only temporary impairment of minimum flows. And, municipal water needs are not the kind of "extraordinary circumstances" required for the exception.

[Swinomish Indian Tribal Community v. Dept. of Ecology](#), 178 Wn.2d 571 (2013)

The court held that the "overriding considerations" exception of [RCW 90.54.020\(3\)\(a\)](#) did not provide the department with the authority to reserve out-of-stream year-round noninterruptible beneficial uses that would impair minimum instream flows set by administrative rule, because such a reading would conflict with provisions of the state water code establishing that the minimum instream flows established by the original rule were appropriations creating an existing water right that could not be impaired merely by weighing the benefits that would flow from future beneficial uses and without following the legal requirements for making a valid appropriation of water.

[Five Corners Family Farmers v. State](#), 173 Wn.2d 296 (2011)

[RCW 90.44.050](#) requires a permit for groundwater withdrawals and also provides exemptions from that requirement for certain uses, one of which is for stock-watering purposes. The court held that withdrawals of groundwater for stock-watering purposes under this exemption are not limited to any particular quantity by [RCW 90.44.050](#).

[Lummi Indian Nation v. State](#), 170 Wn.2d 247 (2010)

The state supreme court rejected a constitutional challenge to the 2003 amendments to municipal water law ([SESSHB 1338](#)), which, among other things, explicitly defined certain nongovernmental water suppliers as municipal and made that definition retroactive. The court held that these amendments did not violate the separation of powers doctrine or facially violate due process.

[Pacific Land Partners, LLC v. Dep't of Ecology](#), 150 Wn. App. 740, review denied, 167 Wn.2d 1007 (2009)

A property owner challenged a Pollution Control Hearings Board decision upholding an administrative order that water rights on the property had been relinquished due to nonuse for



a beneficial purpose. The board found that the property owner did not beneficially use his water right within five years of his acquisition of the right and that the property owner did not prove any statutory exceptions to nonuse. The court affirmed the board's decision.

[*City of Union Gap v. Dept. of Ecology*](#), 148 Wn. App. 519 (2008)

The owner of a water right relinquishes that right to the state if the water right is not used beneficially for five years. But the owner does not relinquish that right, despite nonuse, if it is claimed for some "determined future development" or for "municipal water supply purposes." Here, a developer bought water rights intending to sell them to a city. The court concluded that the sale did not take place within the required five-year period before the developer relinquished the water rights. Nor did the developer satisfy the requirements of either the "determined future development" or the "municipal water supply purposes" exceptions to the general rule of relinquishment after five years of nonuse of the water rights.

[*City of West Richland v. Dep't of Ecology*](#), 124 Wn. App. 683 (2004)

The city and a water conservancy board challenged a Pollution Control Hearings Board decision rejecting a proposed transfer of a property owner's unperfected groundwater rights acquired under the Family Farm Water Act (FFWA), chapter 90.66 RCW, to the municipality for use as a municipal water supply, mainly lawn irrigation. The court held that the FFWA does not allow the proposed change of the property owner's water rights from agricultural use to municipal use.

[*Dept. of Ecology v. Campbell & Gwinn*](#), 146 Wn.2d 1 (2002)

RCW 90.44.050, which provides an exemption from groundwater permit requirements for withdrawal of groundwater for domestic uses of 5,000 gallons or less per day, applies regardless of whether the water would be used for single or group domestic uses. As such, the exemption did not apply to permit 5,000 gallons per day to be withdrawn for domestic uses on each lot in developer's 20-lot development.

[*Postema v. Pollution Control Hearings Board*](#), 142 Wn.2d 68 (2000)

Hydraulic continuity between groundwater and a surface water source with unmet minimum flows or that is closed to further appropriation is not, in and of itself, a basis on which to deny a groundwater appropriation permit.

[*R.D. Merrill Company v. Pollution Control Hearings Board*](#), 137 Wn.2d 118 (1999)

Under RCW 90.44.100, a groundwater permit may be amended to change the location from which the water is drawn, or to change the manner or place of use of the water, notwithstanding the fact that the water has not actually been applied to a beneficial use. But, under that statute, a groundwater permit may not be amended to change the purpose for which the water is used.



[*Dept. of Ecology v. Theodoratus*](#), 135 Wn.2d 582 (1998)

A final certificate of water right, i.e., a vested water right, may not be issued based upon the capacity of a developer's water delivery system, but rather may be obtained only in the amount of water actually put to beneficial use.

[*Okanogan Wilderness League, Inc. v. Town of Twisp and Dept. of Ecology*](#), 133 Wn.2d 769 (1997)

Under RCW 90.03.380, a change in diversion point (here, from a surface point to wells drawing groundwater) may be granted only to the extent that the water right was put to beneficial use, was not abandoned or otherwise extinguished, and did not cause detriment or injury to other right holders. Under the common law theory of abandonment of water rights, the court held that long periods of nonuse raised a rebuttable presumption of intent to abandon a water right. The presumption that a municipal corporation has intentionally relinquished a water right by not exercising the right for a significant period of time is not rebutted by evidence of the municipality's continuous existence and need for a water supply.

[*Dept. of Ecology v. Acquavella*](#), 131 Wn.2d 746 (1997), and related cases: [*Dept. of Ecology v. Yakima Reservation Irrigation District*](#), 121 Wn.2d 257 (1993); [*Dept. of Ecology v. Acquavella*](#), 100 Wn.2d 651 (1983)

These cases deal with a general adjudication of water rights in the Yakima River Basin that began in 1977.

[*Hillis v. Dept. of Ecology*](#), 131 Wn.2d 373 (1997)

DOE delayed the decision on a groundwater application by a developer until it conducted a watershed assessment of all applications. The court found the agency was faced with a large number of permit applications, that the watershed assessment would aid the agency in expediting all permit applications, and that the agency had received funding specifically for a watershed assessment. Therefore, the agency's decision to delay the developer's permit was not a violation of the Administrative Procedure Act (APA). However, its decision to create procedures and priorities were new requirements or qualifications that required the agency to conduct APA rule-making procedures.

[*Hubbard v. Dept. of Ecology*](#), 86 Wn. App. 119 (1997)

Permits to draw water from wells in the river basin must be conditioned on maintenance of the river's minimum flow rates if DOE decides the local groundwater source is significantly connected with the river. The Pollution Control Hearings Board did not err in finding there is significant continuity between the applicant's underground water source and the river.



[Rettkowski v. Department of Ecology](#), 122 Wn.2d 219 (1993)

The court held that DOE did not possess the statutory power to determine the priorities of water rights in the basin. The authority to adjudicate and enforce such water rights is specifically granted to the superior courts by Ch. 90.03 RCW. The court also held that the Pollution Control Hearings Board could not adjudicate priorities between water users. The court determined that the only method of ascertaining the priorities of the water rights in the basin was through a "general adjudication." A general adjudication of water rights pursuant to Ch. 90.03 RCW necessitates that all water claimants be joined in a single action in superior court to determine their rights and priorities to the water.

[Neubert v. Yakima-Tieton Irrigation Dist.](#), 117 Wn.2d 232 (1991)

The court determined that a district resolution establishing a water access preference for frost protection water users over general water users improperly interfered with existing water rights. The landowners' water rights were governed by the doctrine of appropriation under which an appropriated water right is established and maintained by the purposeful application of a given quantity of water to a beneficial use upon the land. Therefore, because frost protection was a beneficial use, the right to use water for that purpose was within the landowners' existing water rights.

[Dept. of Ecology v. Abbott](#), 103 Wn.2d 686 (1985)

The court held that the 1917 water code established prior appropriation as the dominant water law in Washington. After 1917, new water rights could have only been acquired through compliance with the permit system and existing water rights not put to beneficial use were relinquished. RCW 90.03.005 et seq. The permit system, which had been modified over time to require a permit for all water put to beneficial use, allowed the state to efficiently implement the state water policy. RCW 90.03.250.

Attorney General Opinions:

The following list of attorney general opinions highlights key opinions on water rights issues affecting local governments. This is not intended to be a comprehensive list.

- [AGO 2009 No. 6](#) - Water - Water Rights - Wells - Interlocal Cooperation Act
- [AGO 2005 No. 17](#) - Water - Water Rights - Department of Ecology - Rules and Regulations
- [AGO 1997 No. 6](#) - Water - Water Rights - Wells - Status in Water Rights system of exempt ground Water withdrawals
- [AGO 1996 No. 19](#) - Water - Department Of Ecology - Department of Health - Cities - Counties - Districts - Interpretation of legislation recognizing interties between public water supply systems
- [AGO 1992 No. 17](#) - Growth Management Act - Department of Health - Board of Health - Buildings - Counties - State Building Code - Water - Requirement of Adequate Water Supply Before a Building Permit is Issued



Tentative Determination

Impacts from Court Rulings: Like many areas of water law, municipal water law is shaped by court rulings. Historically the law granted utilities and municipal suppliers water rights based on system capacity (their “pumps and pipes”) rather than beneficial use. A Washington State Supreme Court case in 1998, [Ecology v. Theodoratus](#), threw into question whether these rights were valid because they were not based on beneficial use like most other water rights. In response to this uncertainty, the Legislature passed the [Municipal Water Law](#) in 2003 to clearly define municipal water suppliers and help clarify the status of their rights.

Two subsequent state Supreme Court cases, one in [2010](#) and another in [2015](#), upheld the constitutionality of the Municipal Water Law. A central issue in the cases was that the Municipal Water Law allows us to recognize municipal rights based on system capacity. The court affirmed this but stipulated that municipal suppliers must show reasonable diligence, or potential, to grow into their full water right.

Under current law, rights under “pumps and pipes” certificates are considered to be in good standing and remain as such. However, if a municipal supplier applies to change their right, we must conduct an analysis to determine how much of the right has been beneficially used or is likely to be beneficially used in the future. This is called a tentative determination of extent and validity, which could have two outcomes:

- If Department of Ecology finds that the right has been used in full or is likely to be needed fully in the future, then they will certificate the entire water right.
- If Department of Ecology determines that part of the right has not been fully used and the water supplier has not shown reasonable diligence to use it fully in the future, they may reduce the water right accordingly.

Beneficial Use

Ecology v. Grimes (121 Wn.2d 459 1993): “Beneficial Use is a term of art in water law, and encompasses two principal elements of a water right. First, it refers to the purposes, or type of activities, for which water may be used...Second, beneficial use determines the measure of a water right. The owner of a water right is entitled to the amount of water necessary for its purpose...”

Meanings: The term “beneficial use” has 2 meanings. The first relates to the types of water use that are deemed to be beneficial, such that one can establish water rights to be able to accomplish them. The second relates to the measure of a water right. To perfect a right, one has to put it to beneficial use. Also, to maintain a right, one generally has to continue to put water to beneficial use. And, one only has the right to use a quantity of water that is deemed to



be beneficial, i.e. not in excess of the amount of water that is reasonably needed to carry out the allowed use.

RCW 90.03.010: The power of the state to regulate and control the waters within the state shall be exercised as hereinafter in this chapter provided. . . [A]ll waters within the state belong to the public, and any right thereto, or to the use thereof, shall be hereafter acquired only by appropriation for a beneficial use and . . . as between appropriations, the first in time shall be the first in right. . . .

RCW 90.03.290: The department shall make and file as part of the record in the matter, written findings of fact concerning all things investigated, and if it shall find that there is water available for appropriation for a beneficial use, and the appropriation thereof as proposed in the application will not impair existing rights or be detrimental to the public welfare, it shall issue a permit stating the amount of water to which the applicant shall be entitled and the beneficial use or uses to which it may be applied. . . .

RCW 90.14.031: "Beneficial use" shall include, but not be limited to, use for domestic water, irrigation, fish, shellfish, game and other aquatic life, municipal, recreation, industrial water, generation of electric power, and navigation.

RCW 90.54.020(1): Uses of water for domestic, stock watering, industrial, commercial, agricultural, irrigation, hydroelectric power production, mining, fish and wildlife maintenance and enhancement, recreational, and thermal power production purposes, and preservation of environmental and aesthetic values, and all other uses compatible with the enjoyment of the public waters of the state, are declared to be beneficial.

RCW 90.03.015(4): "Municipal water supply purposes" means a beneficial use of water: (a) For residential purposes through fifteen or more residential service connections . . .; (b) for governmental or governmental proprietary purposes by a city, town, public utility district, county, sewer district, or water district; or . . .

RCW 90.03.550: Beneficial uses of water under a municipal water supply purposes water right may include water withdrawn or diverted under such a right and used for:

(1) Uses that benefit fish and wildlife, water quality, or other instream resources or related habitat values; or

(2) Uses that are needed to implement environmental obligations called for by a watershed plan . . . or a comprehensive watershed plan adopted under RCW 90.54.040(1). . . .



Acquavella III, (131 Wn.2d 746 1997): Quantification of a water right must be determined based on actual beneficial use – and not on the capacity of the irrigation district’s delivery system. A water right must be perfected through actual beneficial use, and not system capacity.

Ecology v. Theodoratus (135 Wn.2d 582 1998): Until 1990s, Ecology had issued certificates to municipal suppliers with quantities based on “pumps and pipes.”

Mr. T appealed permit extension with condition stating that certificate would be issued based on actual use. Supreme Court ruled in favor of Ecology and held that that certificates must only be issued based on actual use, because that is the only measure of beneficial use for perfection and quantification of a water right.

RCW 90.14.010: The future growth and development of the state is dependent upon effective management and efficient use of the state's water resources. The purpose of this chapter is to provide adequate records for efficient administration of the state's waters, and to cause a return to the state of any water rights which are no longer exercised by putting said waters to beneficial use. The legislature finds that:

(3) A strong beneficial use requirement as a condition precedent to the continued ownership of a right to withdraw or divert water is essential to the orderly development of the state;

(4) Enforcement of the state's beneficial use policy is required by the state's rapid growth;

(5) All rights to divert or withdraw water, except riparian rights which do not diminish the quantity of water remaining in the source such as boating, swimming, and other recreational and aesthetic uses must be subjected to the beneficial use requirement. . . .

RCW 90.14.180: Any person hereafter entitled to divert or withdraw waters of the state through an appropriation authorized under RCW 90.03.330, 90.44.080, or 90.44.090 who abandons the same, or who voluntarily fails, without sufficient cause, to beneficially use all or any part of said right to withdraw for any period of five successive years shall relinquish such right or portion thereof, and such right or portion thereof shall revert to the state. . . .

Acquavella III (131 Wn.2d 746 1997): The validity and extent of a water right is determined based on (a) ascertaining maximum historical beneficial use; and (b) ascertaining whether any of the perfected quantity was extinguished due to nonuse under the statutory relinquishment or common law abandonment.

Ecology v. Grimes (121 Wn.2d 459 1993): “Reasonable use of water is determined by analysis of the factors of water duty and waste.” Water use must be “reasonably efficient,” and “[l]ocal custom and the relative efficiency of irrigation systems in common use are important elements, but must be considered in connection with other statutorily mandated factors. . . .”



Methow Valley Irrig. Dist v. Ecology (PCHB No. 02-074): PCHB upheld Ecology enforcement order limiting MVID's water use because of waste. Water right holder can be required to use less water than specified under their water right.

RCW 90.03.005: Based on the tenet of water law which precludes wasteful practices in the exercise of rights to the use of waters, [Ecology] shall reduce these practices to the maximum extent practicable, taking into account sound principles of water management, the benefits and costs of improved water use efficiency, and the most effective use of public and private funds.

RCW 90.44.110: No public groundwaters that have been withdrawn shall be wasted without economical beneficial use. . . In the issuance of an original permit, or of an amendment to an original permit or certificate of vested right to withdraw and appropriate public groundwaters under the provisions of this chapter, [Ecology] may . . . specify for the proposed well or wells or other works a manner of construction adequate to accomplish the provisions of this section.

RCW 90.03.380(1): The right to the use of water which has been applied to a beneficial use in the state shall be and remain appurtenant to the land or place upon which the same is used: PROVIDED, HOWEVER, That the right may be transferred to another or to others and become appurtenant to any other land or place of use . . . if such change can be made without detriment or injury to existing rights.

RCW 90.44.100(1): Upon the issuance by the department of an amendment to the appropriate permit or certificate of groundwater right, the holder of a valid right to withdraw public groundwaters may . . . construct wells or other means of withdrawal at a new location in substitution for or in addition to those at the original location, or the holder may change the manner or the place of use of the water.

Relinquishment and Abandonment

Chapter [90.14](#) RCW:

WATER RIGHTS—REGISTRATION—WAIVER AND RELINQUISHMENT, ETC.

Sections

90.14.010	Purpose.
90.14.020	Legislative declaration.
90.14.031	Definitions.
90.14.041	Claim of right to withdraw, divert or use ground or surface waters—Filing statement of claim required—Exemptions.
90.14.043	Claim of right to withdraw, divert or use ground or surface waters—Claim upon certification by board—Procedure—Cut-off date for accepting petitions.
90.14.044	Existing water rights not impaired.
90.14.051	Statement of claim—Contents—Short form.
90.14.061	Statement of claim—Filing procedure—Processing of claim—Fee.
90.14.065	Statement of claim—Amendment—Surface water right claim change or transfer—Review of department of ecology's determination.
90.14.068	Statement of claim—New filing period.
90.14.071	Failure to file claim waives and relinquishes right.
90.14.081	Filing of claim not deemed adjudication of right—Prima facie evidence.
90.14.091	Definitions—Water rights notice—Form.
90.14.101	Notice of chapter provisions—How given—Requirements.
90.14.111	Water rights claims registry.
90.14.121	Penalty for overstating claim.
90.14.130	Reversion of rights to state due to nonuse—Notice by order—Relinquishment determinations—Appeal.
90.14.140	"Sufficient cause" for nonuse defined—Rights exempted.
90.14.150	Rights arising from permit to withdraw public waters not affected—Extensions.
90.14.160	Relinquishment of right for abandonment or failure to beneficially use without sufficient cause—Prior rights acquired through appropriation, custom or general adjudication.
90.14.170	Relinquishment of right for abandonment or failure to beneficially use without sufficient cause—Rights acquired due to ownership of land abutting stream, lake, or watercourse.



90.14.180	Relinquishment of right for abandonment or failure to beneficially use without sufficient cause—Future rights acquired through appropriation.
90.14.190	Water resources decisions—Appeals—Attorneys' fees.
90.14.200	Implementation and enforcement of chapter—Proceedings under RCW 90.14.130 deemed adjudicative—Application of RCW sections to specific proceedings.
90.14.210	Chapter applies to all rights to withdraw groundwaters.
90.14.215	Chapter not applicable to trust water rights under chapter 90.38 or 90.42 RCW.
90.14.220	No rights to be acquired by prescription or adverse use.
90.14.230	Rules and regulations.
90.14.240	Water rights tracking system account.
90.14.900	Effective date—1967 c 233.
90.14.910	Severability—1967 c 233.

RCW [90.14.010](#)**Purpose.**

The future growth and development of the state is dependent upon effective management and efficient use of the state's water resources. The purpose of this chapter is to provide adequate records for efficient administration of the state's waters, and to cause a return to the state of any water rights which are no longer exercised by putting said waters to beneficial use.

RCW [90.14.020](#)**Legislative declaration.**

The legislature finds that:

- (1) Extensive uncertainty exists regarding the volume of private claims to water in the state;
- (2) Such uncertainty seriously retards the efficient utilization and administration of the state's water resources, and impedes the fullest beneficial use thereof;
- (3) A strong beneficial use requirement as a condition precedent to the continued ownership of a right to withdraw or divert water is essential to the orderly development of the state;
- (4) Enforcement of the state's beneficial use policy is required by the state's rapid growth;
- (5) All rights to divert or withdraw water, except riparian rights which do not diminish the quantity of water remaining in the source such as boating, swimming, and other recreational and aesthetic uses must be subjected to the beneficial use requirement;

(6) The availability for appropriation of additional water as a result of the requirements of this chapter will accelerate growth, development, and diversification of the economy of the state;

(7) Water rights will gain sufficient certainty of ownership as a result of this chapter to become more freely transferable, thereby increasing the economic value of the uses to which they are put, and augmenting the alienability of titles to land.

RCW [90.14.031](#)**Definitions.**

Unless a different meaning is plainly required by the context, the following words and phrases as used in RCW [90.14.031](#) through [90.14.121](#) shall have the following meanings:

(1) "Person" shall mean an individual, partnership, association, public or private corporation, city or other municipality, county, or a state agency, and the United States of America when claiming water rights established under the laws of the state of Washington.

(2) "Beneficial use" shall include, but not be limited to, use for domestic water, irrigation, fish, shellfish, game and other aquatic life, municipal, recreation, industrial water, generation of electric power, and navigation.

RCW [90.14.041](#)**Claim of right to withdraw, divert or use ground or surface waters—Filing statement of claim required—Exemptions.**

All persons using or claiming the right to withdraw or divert and make beneficial use of public surface or ground waters of the state, except as provided in this section, RCW [90.14.043](#), and [90.14.068](#), shall file with the department of ecology not later than June 30, 1974, a statement of claim for each water right asserted on a form provided by the department. Neither this section nor RCW [90.14.068](#) apply to any water rights which are based on the authority of a permit or certificate issued by the department of ecology or one of its predecessors. Further, RCW [90.14.068](#) does not apply to the beneficial uses of water which are the subject of statements of claim in the water rights claims registry prior to September 1, 1997, or which are exempted from permit and application requirements by RCW [90.44.050](#) and neither this section nor RCW [90.14.068](#) requires that statements of claims for such uses be filed during the filing period established by RCW [90.14.068](#).

RCW [90.14.043](#)**Claim of right to withdraw, divert or use ground or surface waters—Claim upon certification by board—Procedure—Cut-off date for accepting petitions.**

(1) Notwithstanding any time restrictions imposed by the provisions of chapter [90.14](#) RCW, a person may file a claim pursuant to RCW [90.14.041](#) if such person obtains a certification from the pollution control hearings board as provided in this section.



(2) A certification shall be issued by the pollution control hearings board if, upon petition to the board, it is shown to the satisfaction of the board that:

(a) Waters of the state have been applied to beneficial use continuously (with no period of nonuse exceeding five consecutive years) in the case of surface water beginning not later than June 7, 1917, and in the case of groundwater beginning not later than June 7, 1945, or

(b) Waters of the state have been applied to beneficial use continuously (with no period of nonuse exceeding five consecutive years) from the date of entry of a court decree confirming a water right and any failure to register a claim resulted from a reasonable misinterpretation of the requirements as they related to such court decreed rights.

(3) The board shall have jurisdiction to accept petitions for certification from any person through September 1, 1985, and not thereafter.

(4) A petition for certification shall include complete information on the claim pursuant to RCW [90.14.051](#) (1) through (8), and any such information as the board may require.

(5) The department of ecology is directed to accept for filing any claim certified by the board as provided in subsection (2) of this section. The department of ecology, upon request of the board, may provide assistance to the board pertinent to any certification petition.

(6) A certification by the pollution control hearings board or a filing with the department of ecology of a claim under this section shall not constitute a determination or confirmation that a water right exists.

(7) The provisions of RCW [90.14.071](#) shall have no applicability to certified claims filed pursuant to this section.

(8) This section shall have no applicability to groundwaters resulting from the operations of reclamation projects.

RCW [90.14.044](#)

Existing water rights not impaired.

The provisions of chapter 435, Laws of 1985 authorizing the acceptance of a petition for certification filed during the period beginning on July 28, 1985, and ending on midnight, September 1, 1985, shall not affect or impair in any respect whatsoever any water right existing prior to July 28, 1985.

RCW [90.14.051](#)

Statement of claim—Contents—Short form.

The statement of claim for each right shall include substantially the following:

- (1) The name and mailing address of the claimant.
- (2) The name of the watercourse or water source from which the right to divert or make use of water is claimed, if available.
- (3) The quantities of water and times of use claimed.



(4) The legal description, with reasonable certainty, of the point or points of diversion and places of use of waters.

(5) The purpose of use, including, if for irrigation, the number of acres irrigated.

(6) The approximate dates of first putting water to beneficial use for the various amounts and times claimed in subsection (3).

(7) The legal doctrine or doctrines upon which the right claimed is based, including if statutory, the specific statute.

(8) The sworn statement that the claim set forth is true and correct to the best of claimant's knowledge and belief.

Except, however, that any claim for diversion or withdrawal of surface or ground water for those uses described in the exemption from the permit requirements of RCW [90.44.050](#) may be filed on a short form to be provided by the department. Such short form shall only require inclusion of sufficient data to identify the claimant, source of water, purpose of use and legal description of the land upon which the water is used: PROVIDED, That the provisions of RCW [90.14.081](#) pertaining to evidentiary value of filed claims shall not apply to claims submitted in short form: AND PROVIDED FURTHER, That claimants for such minimal uses may, at their option, file statements of claim on the standard form used by all other claimants.

RCW [90.14.061](#)

Statement of claim—Filing procedure—Processing of claim—Fee.

Filing of a statement of a claim shall take place and be completed upon receipt by the department of ecology, at its office in Olympia, of an original statement signed by the claimant or his or her authorized agent, and two copies thereof. Any person required to file hereunder may file through a designated representative. A company, district, public or municipal corporation, or the United States when furnishing to persons water pertaining to water rights required to be filed under RCW [90.14.041](#), shall have the right to file one claim on behalf of said persons on a form prepared by the department for the total benefits of each person served; provided that a separate claim shall be filed by such company, district, public or private corporation, or the United States for each operating unit of the filing entity providing such water and for each water source. Within thirty days after receipt of a statement of claim the department shall acknowledge the same by a notation on one copy indicating receipt thereof and the date of receipt, together with the wording of the first sentence of RCW [90.14.081](#), and shall return said copy by certified or registered mail to the claimant at the address set forth in the statement of claim. No statement of claim shall be accepted for filing by the department of ecology unless accompanied by a two dollar filing fee.



RCW [90.14.065](#)**Statement of claim—Amendment—Surface water right claim change or transfer—Review of department of ecology's determination.**

(1)(a) Any person or entity, or successor to such person or entity, having a statement of claim on file with the water rights claims registry may submit to the department of ecology for filing an amendment to such a statement of claim if the submitted amendment is based on:

(i) An error in estimation of the quantity of the applicant's water claim prescribed in RCW [90.14.051](#) if the applicant provides reasons for the failure to claim such right in the original claim;

(ii) A change in circumstances not foreseeable at the time the original claim was filed, if such change in circumstances relates only to the manner of transportation or diversion of the water and not to the use or quantity of such water; or

(iii) The amendment is ministerial in nature.

(b) The department shall accept any such submission and file the same in the registry unless the department by written determination concludes that the requirements of (a)(i), (ii), or (iii) of this subsection have not been satisfied.

(2) In addition to subsection (1) of this section, a surface water right claim may be changed or transferred in the same manner as a permit or certificate under RCW [90.03.380](#), and a water right claim for groundwater may be changed or transferred as provided under RCW [90.03.380](#) and [90.44.100](#).

(3) Any person aggrieved by a determination of the department may obtain a review thereof by filing a petition for review with the pollution control hearings board within thirty days of the date of the determination by the department. The provisions of RCW [90.14.081](#) shall apply to any amendment filed or approved under this section.

RCW [90.14.068](#)**Statement of claim—New filing period.**

(1) A new period for filing statements of claim for water rights is established. The filing period shall begin September 1, 1997, and shall end at midnight June 30, 1998. Each person or entity claiming under state law a right to withdraw or divert and beneficially use surface water under a right that was established before *the effective date of [the] water code established by chapter 117, Laws of 1917, and any person claiming under state law a right to withdraw and beneficially use groundwater under a right that was established before **the effective date of the groundwater code established by chapter 263, Laws of 1945, shall register the claim with the department during the filing period unless the claim has been filed in the state water rights claims registry before July 27, 1997. A person who claims such a right and fails to register the claim as required is conclusively deemed to have waived and relinquished any right, title, or interest in the right. A statement filed during this filing period shall be filed as provided in RCW [90.14.051](#) and [90.14.061](#) and shall be subject to the provisions of this chapter regarding statements of claim. This reopening of the period for filing statements of claim shall not affect



or impair in any respect whatsoever any water right existing prior to July 27, 1997. A water right embodied in a statement of claim filed under this section is subordinate to any water right embodied in a permit or certificate issued under chapter [90.03](#) or [90.44](#) RCW prior to the date the statement of claim is filed with the department and is subordinate to any water right embodied in a statement of claim filed in the water rights claims registry before July 27, 1997.

(2) The department of ecology shall, at least once each week during the month of August 1997 and at least once each month during the filing period, publish a notice regarding this new filing period in newspapers of general circulation in the various regions of the state. The notice shall contain the substance of the following notice:

WATER RIGHTS NOTICE

Each person or entity claiming a right to withdraw or divert and beneficially use surface water under a right that was established before June 7, 1917, or claiming a right to withdraw and beneficially use groundwater under a right that was established before June 7, 1945, under the laws of the state of Washington must register the claim with the department of ecology, Olympia, Washington. The claim must be registered on or after September 1, 1997, and not later than five o'clock on June 30, 1998.

FAILURE TO REGISTER THE CLAIM WILL RESULT IN A WAIVER AND RELINQUISHMENT OF THE WATER RIGHT OR CLAIMED WATER RIGHT

Registering a claim is NOT required for:

1. A water right that is based on the authority of a permit or certificate issued by the department of ecology or one of its predecessors;
2. A water right that is based on the exemption from permitting requirements provided by RCW [90.44.050](#) for certain very limited uses of groundwater; or
3. A water right that is based on a statement of claim that has previously been filed in the state's water rights claims registry during other registration periods.

For further information, for a copy of the law establishing this filing period, and for an explanation of the law and its requirements, contact the department of ecology, Olympia, Washington.

The department shall also prepare, make available to the public, and distribute to the communications media information describing the types of rights for which statements of claim need not be filed, the effect of filing, the effect of RCW [90.14.071](#), and other information relevant to filings and statements of claim.

(3) The department of ecology shall ensure that employees of the department are readily available to respond to inquiries regarding filing statements of claim and that all of the

information the department has at its disposal that is relevant to an inquiry regarding a particular potential claim, including information regarding other rights and claims in the vicinity of the potentially claimed right, is available to the person making the inquiry. The department shall dedicate additional staff in each of the department's regional offices and in the department's central office to ensure that responses and information are provided in a timely manner during each of the business days during the month of August 1997 and during the new filing period.

(4) To assist the department in avoiding unnecessary duplication, the department shall provide to a requestor, within ten working days of receiving the request, the records of any water right claimed, listed, recorded, or otherwise existing in the records of the department or its predecessor agencies, including any report of a referee in a water rights adjudication. This information shall be provided as required by this subsection if the request is provided in writing from the owner of the water right or from the holder of a possessory interest in any real property for water right records associated with the property or if the requestor is an attorney for such an owner. The information regarding water rights in the area served by a regional office of the department shall also be provided within ten working days to any requestor who requests to review the information in person in the department's regional office. The information held by the headquarters office of the department shall also be provided within ten working days to any requestor who requests to review the information in person in the department's headquarters office. The requirements of this subsection that records and information be provided to requestors within ten working days may not be construed as limiting in any manner the obligations of the department to provide public access to public records as required by chapter [42.56](#) RCW.

(5) This section does not apply to claims for the use of groundwater withdrawn in an area that is, during the period established by subsection (2) of this section, the subject of a general adjudication proceeding for water rights in superior court under RCW [90.03.110](#) through [90.03.245](#) and the proceeding applies to groundwater rights. This section does not apply to claims for the use of surface water withdrawn in an area that is, during the period established by subsection (2) of this section, the subject of a general adjudication proceeding for water rights in superior court under RCW [90.03.110](#) through [90.03.245](#) and the proceeding applies to surface water rights.

(6) This section does not apply to claims for the use of water in a groundwater area or subarea for which a management program adopted by the department by rule and in effect on July 27, 1997, establishes acreage expansion limitations for the use of groundwater.

RCW [90.14.071](#)

Failure to file claim waives and relinquishes right.

Except as provided in *section 5 of this act or as exempted from filing by RCW [90.14.041](#), any person claiming the right to divert or withdraw waters of the state as set forth in RCW [90.14.041](#), who fails to file a statement of claim as provided in RCW [90.14.041](#), [90.14.043](#), or



[90.14.068](#) and in RCW [90.14.051](#) and [90.14.061](#), shall be conclusively deemed to have waived and relinquished any right, title, or interest in said right.

RCW [90.14.081](#)

Filing of claim not deemed adjudication of right—Prima facie evidence.

The filing of a statement of claim does not constitute an adjudication of any claim to the right to use of waters as between the water use claimant and the state, or as between one or more water use claimants and another or others. A statement of claim filed pursuant to RCW [90.14.061](#) shall be admissible in a general adjudication of water rights as prima facie evidence of the times of use and the quantity of water the claimant was withdrawing or diverting as of the year of the filing, if, but only if, the quantities of water in use and the time of use when a controversy is mooted are substantially in accord with the times of use and quantity of water claimed in the statement of claim. A statement of claim shall not otherwise be evidence of the priority of the claimed water right.

RCW [90.14.091](#)

Definitions—Water rights notice—Form.

For the purpose of RCW [90.14.031](#) through [90.14.121](#) the following words and phrases shall have the following meanings:

- (1) "Statement of taxes due" means the statement required under RCW [84.56.050](#).
- (2) "Notice in writing" means a notice substantially in the following form:

WATER RIGHTS NOTICE

Every person, including but not limited to an individual, partnership, association, public or private corporation, city or other municipality, county, state agency and the state of Washington, and the United States of America, when claiming water rights established under the laws of the state of Washington, are hereby notified that all water rights or claimed water rights relating to the withdrawal or diversion of public surface or ground waters of the state, except those water rights based upon authority of a permit or certificate issued by the department of ecology or one of its predecessors, must be registered with the department of ecology, Olympia, Washington not later than June 30, 1974. FAILURE TO REGISTER AS REQUIRED BY LAW WILL RESULT IN A WAIVER AND RELINQUISHMENT OF SAID WATER RIGHT OR CLAIMED WATER RIGHT. For further information contact the Department of Ecology, Olympia, Washington, for a copy of the act and an explanation thereof.



RCW [90.14.101](#)**Notice of chapter provisions—How given—Requirements.**

To insure that all persons referred to in RCW [90.14.031](#) and [90.14.041](#) are notified of the registration provisions of this chapter, the department of ecology is directed to give notice of the registration provisions of this chapter as follows:

(1) It shall cause a notice in writing to be placed in a prominent and conspicuous place in all newspapers of the state having a circulation of more than fifty thousand copies for each week day, and in at least one newspaper published in each county of the state, at least once each year for five consecutive years.

(2) It shall cause a notice substantially the same as a notice in writing to be broadcast by each commercial television station operating in the United States and viewed in the state, and by at least one commercial radio station operating from each county of the state having such a station regularly at six month intervals for five consecutive years.

(3) It shall cause a notice in writing to be placed in a prominent and conspicuous location in each county courthouse in the state.

(4) The county treasurer of each county shall enclose with each mailing of one or more statements of taxes due issued in 1972 a copy of a notice in writing and a declaration that it shall be the duty of the recipient of the statement of taxes due to forward the notice to the beneficial owner of the property. A sufficient number of copies of the notice and declaration shall be supplied to each county treasurer by the director of ecology before the fifteenth day of January, 1972. In the implementation of this subsection the department of ecology shall provide reimbursement to the county treasurer for the reasonable additional costs, if any there may be, incurred by said treasurer arising from the inclusion of a notice in writing as required herein.

(5) It shall provide copies of the notice in writing to the press services with offices located in Thurston county during January of the years 1970, 1971, 1972, 1973, and 1974. The director of the department may also in his or her discretion give notice in any other manner which will carry out the purposes of this section. Where notice in writing is given pursuant to subsections (1) and (3) of this section, RCW [90.14.041](#), [90.14.051](#), and [90.14.071](#) shall be set forth and quoted in full.

RCW [90.14.111](#)**Water rights claims registry.**

The department of ecology is directed to establish a registry entitled the "Water Rights Claims Registry". All claims set forth pursuant to RCW [90.14.041](#), [90.14.051](#) and [90.14.061](#) shall be filed in the registry alphabetically and consecutively by control number, and by such other manner as deemed appropriate by the department.



RCW [90.14.121](#)**Penalty for overstating claim.**

The filing of a statement of claim pursuant to RCW [90.14.061](#) which knowingly provides for an overstatement of a right either in quantities of water or times of use claimed shall constitute a misdemeanor punishable by a fine of not more than two hundred fifty dollars or by imprisonment for not more than ninety days, or both.

RCW [90.14.130](#)**Reversion of rights to state due to nonuse—Notice by order—Relinquishment determinations—Appeal.**

When it appears to the department of ecology that a person entitled to the use of water has not beneficially used his or her water right or some portion thereof, and it appears that said right has or may have reverted to the state because of such nonuse, as provided by RCW [90.14.160](#), [90.14.170](#), or [90.14.180](#), the department of ecology shall notify such person by order: PROVIDED, That where a company, association, district, or the United States has filed a blanket claim under the provisions of *RCW [90.14.060](#) for the total benefits of those served by it, the notice shall be served on such company, association, district or the United States and not upon any of its individual water users who may not have used the water or some portion thereof which they were entitled to use. The order shall contain: (1) A description of the water right, including the approximate location of the point of diversion, the general description of the lands or places where such waters were used, the water source, the amount involved, the purpose of use, and the apparent authority upon which the right is based; (2) a statement that unless sufficient cause be shown on appeal the water right will be declared relinquished; and (3) a statement that such order may be appealed to the pollution control hearings board. Any person aggrieved by such an order may appeal it to the pollution control hearings board pursuant to RCW [43.21B.310](#). The order shall be served by registered or certified mail to the last known address of the person and be posted at the point of division or withdrawal. The order by itself shall not alter the recipient's right to use water, if any.

RCW [90.14.140](#)**"Sufficient cause" for nonuse defined—Rights exempted. *(Effective until June 30, 2021.)***

(1) For the purposes of RCW [90.14.130](#) through [90.14.180](#), "sufficient cause" shall be defined as the nonuse of all or a portion of the water by the owner of a water right for a period of five or more consecutive years where such nonuse occurs as a result of:

- (a) Drought, or other unavailability of water;
- (b) Active service in the armed forces of the United States during military crisis;
- (c) Nonvoluntary service in the armed forces of the United States;
- (d) The operation of legal proceedings;
- (e) Federal or state agency leases of or options to purchase lands or water rights which preclude or reduce the use of the right by the owner of the water right;



(f) Federal laws imposing land or water use restrictions either directly or through the voluntary enrollment of a landowner in a federal program implementing those laws, or acreage limitations, or production quotas;

(g) Temporarily reduced water need for irrigation use where such reduction is due to varying weather conditions, including but not limited to precipitation and temperature, that warranted the reduction in water use, so long as the water user's diversion and delivery facilities are maintained in good operating condition consistent with beneficial use of the full amount of the water right;

(h) Temporarily reduced diversions or withdrawals of irrigation water directly resulting from the provisions of a contract or similar agreement in which a supplier of electricity buys back electricity from the water right holder and the electricity is needed for the diversion or withdrawal or for the use of the water diverted or withdrawn for irrigation purposes;

(i) Water conservation measures implemented under the Yakima river basin water enhancement project, so long as the conserved water is reallocated in accordance with the provisions of P.L. 103-434;

(j) Reliance by an irrigation water user on the transitory presence of return flows in lieu of diversion or withdrawal of water from the primary source of supply, if such return flows are measured or reliably estimated using a scientific methodology generally accepted as reliable within the scientific community;

(k) The reduced use of irrigation water resulting from crop rotation. For purposes of this subsection, crop rotation means the temporary change in the type of crops grown resulting from the exercise of generally recognized sound farming practices. Unused water resulting from crop rotation will not be relinquished if the remaining portion of the water continues to be beneficially used; or

(l) Waiting for a final determination from the department of ecology on a change application filed under RCW [90.03.250](#), [90.03.380](#), or [90.44.100](#).

(2) Notwithstanding any other provisions of RCW [90.14.130](#) through [90.14.180](#), there shall be no relinquishment of any water right:

(a) If such right is claimed for power development purposes under chapter [90.16](#) RCW and annual license fees are paid in accordance with chapter [90.16](#) RCW;

(b) If such right is used for a standby or reserve water supply to be used in time of drought or other low flow period so long as withdrawal or diversion facilities are maintained in good operating condition for the use of such reserve or standby water supply;

(c) If such right is claimed for a determined future development to take place either within fifteen years of July 1, 1967, or the most recent beneficial use of the water right, whichever date is later;

(d) If such right is claimed for municipal water supply purposes under chapter [90.03](#) RCW;

(e) If such waters are not subject to appropriation under the applicable provisions of RCW [90.40.030](#);



(f) If such right or portion of the right is leased to another person for use on land other than the land to which the right is appurtenant as long as the lessee makes beneficial use of the right in accordance with this chapter and a transfer or change of the right has been approved by the department in accordance with RCW [90.03.380](#), [90.03.383](#), [90.03.390](#), or [90.44.100](#);

(g) If such a right or portion of the right is authorized for a purpose that is satisfied by the use of agricultural industrial process water as authorized under RCW [90.46.150](#);

(h) If such right is a trust water right under chapter [90.38](#) or [90.42](#) RCW;

(i) If such a right is involved in an approved local water plan created under RCW [90.92.090](#), provided the right is subject to an agreement not to divert under RCW [90.92.050](#), or provided the right is banked under RCW [90.92.070](#).

(3) In adding provisions to this section by chapter 237, Laws of 2001, the legislature does not intend to imply legislative approval or disapproval of any existing administrative policy regarding, or any existing administrative or judicial interpretation of, the provisions of this section not expressly added or revised.

RCW [90.14.150](#)

Rights arising from permit to withdraw public waters not affected—Extensions.

Nothing in this chapter shall be construed to affect any rights or privileges arising from any permit to withdraw public waters or any application for such permit, but the department of ecology shall grant extensions of time to the holder of a preliminary permit only as provided by RCW [90.03.290](#).

RCW [90.14.160](#)

Relinquishment of right for abandonment or failure to beneficially use without sufficient cause—Prior rights acquired through appropriation, custom or general adjudication.

Any person entitled to divert or withdraw waters of the state through any appropriation authorized by enactments of the legislature prior to enactment of chapter 117, Laws of 1917, or by custom, or by general adjudication, who abandons the same, or who voluntarily fails, without sufficient cause, to beneficially use all or any part of said right to divert or withdraw for any period of five successive years after July 1, 1967, shall relinquish such right or portion thereof, and said right or portion thereof shall revert to the state, and the waters affected by said right shall become available for appropriation in accordance with RCW [90.03.250](#).

RCW [90.14.170](#)

Relinquishment of right for abandonment or failure to beneficially use without sufficient cause—Rights acquired due to ownership of land abutting stream, lake, or watercourse.

Any person entitled to divert or withdraw waters of the state by virtue of his or her ownership of land abutting a stream, lake, or watercourse, who abandons the same, or who voluntarily fails, without sufficient cause, to beneficially use all or any part of said right to withdraw or

divert said water for any period of five successive years after July 1, 1967, shall relinquish such right or portion thereof, and such right or portion thereof shall revert to the state, and the waters affected by said right shall become available for appropriation in accordance with the provisions of RCW [90.03.250](#).

RCW [90.14.180](#)

Relinquishment of right for abandonment or failure to beneficially use without sufficient cause—Future rights acquired through appropriation.

Any person hereafter entitled to divert or withdraw waters of the state through an appropriation authorized under RCW [90.03.330](#), [90.44.080](#), or [90.44.090](#) who abandons the same, or who voluntarily fails, without sufficient cause, to beneficially use all or any part of said right to withdraw for any period of five successive years shall relinquish such right or portion thereof, and such right or portion thereof shall revert to the state, and the waters affected by said right shall become available for appropriation in accordance with RCW [90.03.250](#). All certificates hereafter issued by the department of ecology pursuant to RCW [90.03.330](#) shall expressly incorporate this section by reference.

RCW [90.14.190](#)

Water resources decisions—Appeals—Attorneys' fees.

Any person feeling aggrieved by any decision of the department of ecology may have the same reviewed pursuant to RCW [43.21B.310](#). In any such review, the findings of fact as set forth in the report of the department of ecology shall be prima facie evidence of the fact of any waiver or relinquishment of a water right or portion thereof. If the hearings board affirms the decision of the department, a party seeks review in superior court of that hearings board decision pursuant to chapter [34.05](#) RCW, and the court determines that the party was injured by an arbitrary, capricious, or erroneous order of the department, the court may award reasonable attorneys' fees.

RCW [90.14.200](#)

Implementation and enforcement of chapter—Proceedings under RCW [90.14.130](#) deemed adjudicative—Application of RCW sections to specific proceedings.

- (1) All matters relating to the implementation and enforcement of this chapter by the department of ecology shall be carried out in accordance with chapter [34.05](#) RCW, the Administrative Procedure Act, except where the provisions of this chapter expressly conflict with chapter [34.05](#) RCW. Proceedings held pursuant to RCW [90.14.130](#) are adjudicative proceedings within the meaning of chapter [34.05](#) RCW. Final decisions of the department of ecology in these proceedings are subject to review in accordance with chapter [43.21B](#) RCW.
- (2) RCW [90.14.130](#) provides nonexclusive procedures for determining a relinquishment of water rights under RCW [90.14.160](#), [90.14.170](#), and [90.14.180](#). RCW [90.14.160](#), [90.14.170](#), and [90.14.180](#) may be applied in, among other proceedings, general adjudication proceedings



initiated under RCW [90.03.110](#) or [90.44.220](#): PROVIDED, That nothing herein shall apply to litigation involving determinations of the department of ecology under RCW [90.03.290](#) relating to the impairment of existing rights.

RCW [90.14.210](#)

Chapter applies to all rights to withdraw groundwaters.

The provisions of this chapter shall apply to all rights to withdraw groundwaters of the state, whether authorized by chapter [90.44](#) RCW or otherwise.

RCW [90.14.215](#)

Chapter not applicable to trust water rights under chapter [90.38](#) or [90.42](#) RCW.

This chapter shall not apply to trust water rights held or exercised by the department of ecology under chapter [90.38](#) or [90.42](#) RCW.

RCW [90.14.220](#)

No rights to be acquired by prescription or adverse use.

No rights to the use of surface or ground waters of the state affecting either appropriated or unappropriated waters thereof may be acquired by prescription or adverse use.

RCW [90.14.230](#)

Rules and regulations.

The department of ecology is authorized to promulgate such rules and regulations as are necessary to carry out the provisions of this chapter.

RCW [90.14.240](#)

Water rights tracking system account.

The water rights tracking system account is created in the state treasury. Twenty percent of the fees collected by the department of ecology according to RCW [90.03.470](#) must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used by the department of ecology for the development, implementation, and management of a water rights tracking system, including a water rights mapping system and a water rights database.

RCW [90.14.900](#)

Effective date—1967 c 233.

The effective date of this act is July 1, 1967.

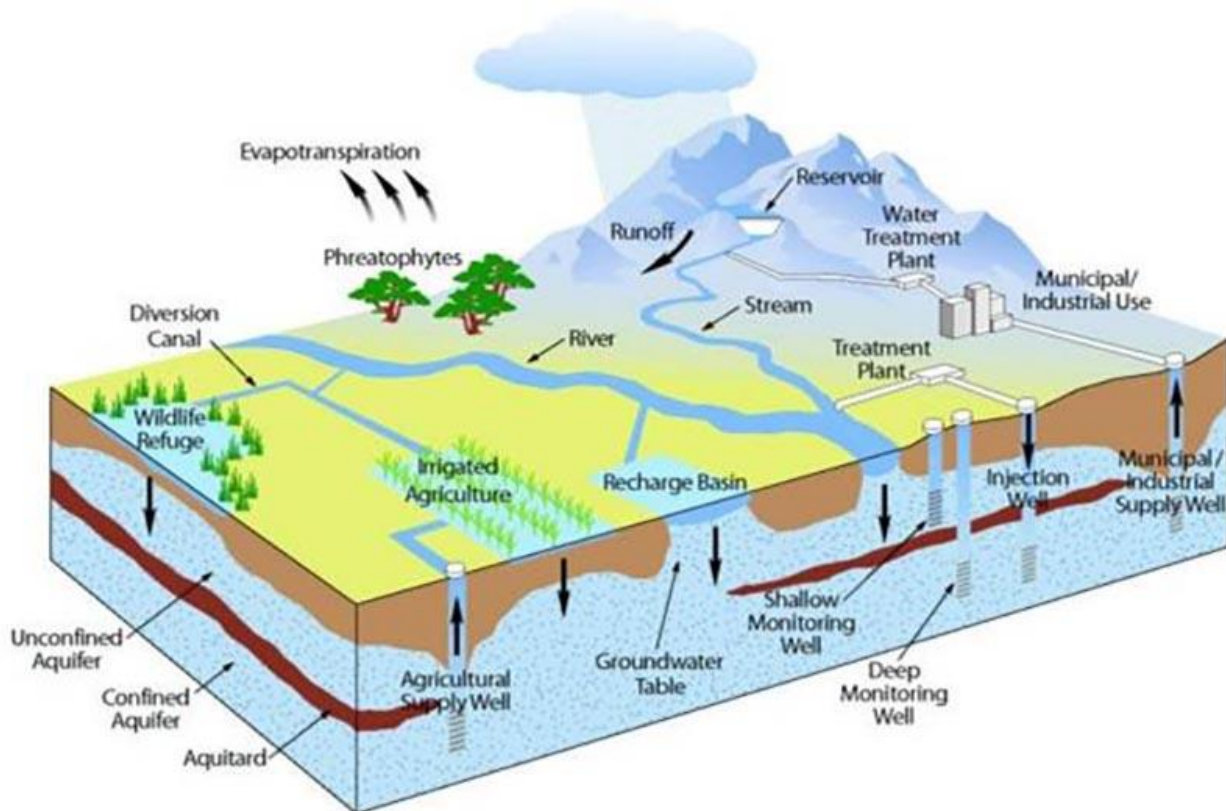


RCW [90.14.910](#)**Severability—1967 c 233.**

If any provisions of this act or the application thereof to any person or circumstance is held invalid, the act can be given effect without the invalid provision or application; and to this end the provisions of this act are declared to be severable. This act shall be liberally construed to effectuate its purpose.

Hydrogeology

Groundwater Diagram: This landform cross-section shows the role of groundwater in the water cycle. Groundwater is a key part of the system. Aquifers provide water for drinking water wells, irrigation, and industrial uses. Groundwater also recharges lakes, rivers, and streams at certain times of year. And in turn, groundwater is recharged by precipitation, irrigation, and the interconnection with lakes, rivers, and streams, as demonstrated in this model.



Trust Water Rights

Program:

Trust Water Rights Program allows us to hold water rights for future uses without the risk of relinquishment. Water rights held in trust contribute to streamflows and groundwater recharge, while retaining their original priority date.

The Trust Water Rights Program provides flexibility to:

- Bank — We facilitate [water banking](#) to address water supply challenges.
- "Park" water rights — Individual water right holders can temporarily donate or "park" their water right when they are not using it, to avoid relinquishment.

Water Banks: Water banks are a tool to facilitate the voluntary exchange of water rights. They're becoming more common throughout Washington as it becomes increasingly difficult to obtain new water rights to meet growing demands. Water banks exist in many forms and in most western states. Although the approaches may differ, they all share a common goal: to move water between buyers and sellers to where it is needed most.

While anyone may purchase a full or partial water right directly from a willing seller, water banks can streamline the process, provide protection from relinquishment, and allow for greater flexibility. This is especially helpful when a large water right is reallocated to several smaller uses over a large area, which often takes many years to complete. In other cases, water banking is used more like a water swap to transfer one water right to one new water use when the existing right cannot be directly changed to the new use.

Temporary Donations: Water right holders can "park" or donate all or part of their water right. Most donations are temporary but water rights can also be permanently donated through a deed conveying the water right to us. Donating has the following benefits:

- Donors receive the same amount back at the end of the temporary donation period
- No risk of relinquishing the water held in trust
- Donation may qualify as a charitable tax deduction

To temporarily donate a water right (or portion of a right), a water right holder submits [the donation form](#) to Department of Ecology and provides proof that the water right has been used in the last five years. A letter is then sent to the water right holder accepting the water right into the Trust Water Rights Program.

Water Banks: Water banks



State Environmental Policy Act (SEPA)

Determination of Non-significance

SEPA Overview: The [State Environmental Policy Act](#) (SEPA) process identifies and analyzes environmental impacts associated with governmental decisions. These decisions may be related to issuing permits for private projects, constructing public facilities, or adopting regulations, policies, and plans.

The SEPA review process helps agency decision-makers, applicants, and the public understand how the entire proposal will affect the environment. SEPA can be used to modify or deny a proposal to avoid, reduce, or compensate for probable impacts. We oversee the rules and guidance for the state and we provide technical assistance to agencies, applicants, and citizens as they participate in the SEPA review process. We also serve as the SEPA lead or co-lead agency for some proposals.

WAC 197-11-340:

Determination of nonsignificance (DNS).

(1) If the responsible official determines there will be no probable significant adverse environmental impacts from a proposal, the lead agency shall prepare and issue a determination of nonsignificance (DNS) substantially in the form provided in WAC [197-11-970](#). If an agency adopts another environmental document in support of a threshold determination (Part Six), the notice of adoption (WAC [197-11-965](#)) and the DNS shall be combined or attached to each other.

(2) When a DNS is issued for any of the proposals listed in (2)(a), the requirements in this subsection shall be met. The requirements of this subsection do not apply to a DNS issued when the optional DNS process in WAC [197-11-355](#) is used.

(a) An agency shall not act upon a proposal for fourteen days after the date of issuance of a DNS if the proposal involves:

- (i) Another agency with jurisdiction;
- (ii) Demolition of any structure or facility not exempted by WAC [197-11-800](#) (2)(f) or [197-11-880](#);
- (iii) Issuance of clearing or grading permits not exempted in Part Nine of these rules;

- (iv) A DNS under WAC [197-11-350](#) (2), (3) or [197-11-360](#)(4); or
- (v) A GMA action.

(b) The responsible official shall send the DNS and environmental checklist to agencies with jurisdiction, the department of ecology, and affected tribes, and each local agency or political subdivision whose public services would be changed as a result of implementation of the proposal, and shall give notice under WAC [197-11-510](#).



(c) Any person, affected tribe, or agency may submit comments to the lead agency within fourteen days of the date of issuance of the DNS.

(d) The date of issue for the DNS is the date the DNS is sent to the department of ecology and agencies with jurisdiction and is made publicly available.

(e) An agency with jurisdiction may assume lead agency status only within this fourteen-day period (WAC [197-11-948](#)).

(f) The responsible official shall reconsider the DNS based on timely comments and may retain or modify the DNS or, if the responsible official determines that significant adverse impacts are likely, withdraw the DNS or supporting documents. When a DNS is modified, the lead agency shall send the modified DNS to agencies with jurisdiction.

(3) (a) The lead agency shall withdraw a DNS if:

(i) There are substantial changes to a proposal so that the proposal is likely to have significant adverse environmental impacts;

(ii) There is significant new information indicating, or on, a proposal's probable significant adverse environmental impacts; or

(iii) The DNS was procured by misrepresentation or lack of material disclosure; if such DNS resulted from the actions of an applicant, any subsequent environmental checklist on the proposal shall be prepared directly by the lead agency or its consultant at the expense of the applicant.

(b) Subsection (3)(a)(ii) shall not apply when a nonexempt license has been issued on a private project.

(c) If the lead agency withdraws a DNS, the agency shall make a new threshold determination and notify other agencies with jurisdiction of the withdrawal and new threshold determination. If a DS is issued, each agency with jurisdiction shall commence action to suspend, modify, or revoke any approvals until the necessary environmental review has occurred (see also WAC [197-11-070](#)).



Tribal Information

Relations between Washington State and federally-recognized Indian Tribes are guided by the [Centennial Accord](#).

This Accord dated August 4, 1989, provides a framework for that government-to-government relationship and implementation procedures to assure execution of that relationship.

Each Party to this Accord respects the sovereignty of the other. The respective sovereignty of the state and each federally recognized tribe provide paramount authority for that party to exist and to govern. The parties share in their relationship particular respect for the values and culture represented by tribal governments. Further, the parties share a desire for a complete Accord between the State of Washington and the federally recognized tribes in Washington reflecting a full government-to- government relationship and will work with all elements of state and tribal governments to achieve such an accord.

[Washington State Tribal Directory](#)

The Governor's Office of Indian Affairs maintains a Washington State Tribal Directory which is regularly updated.

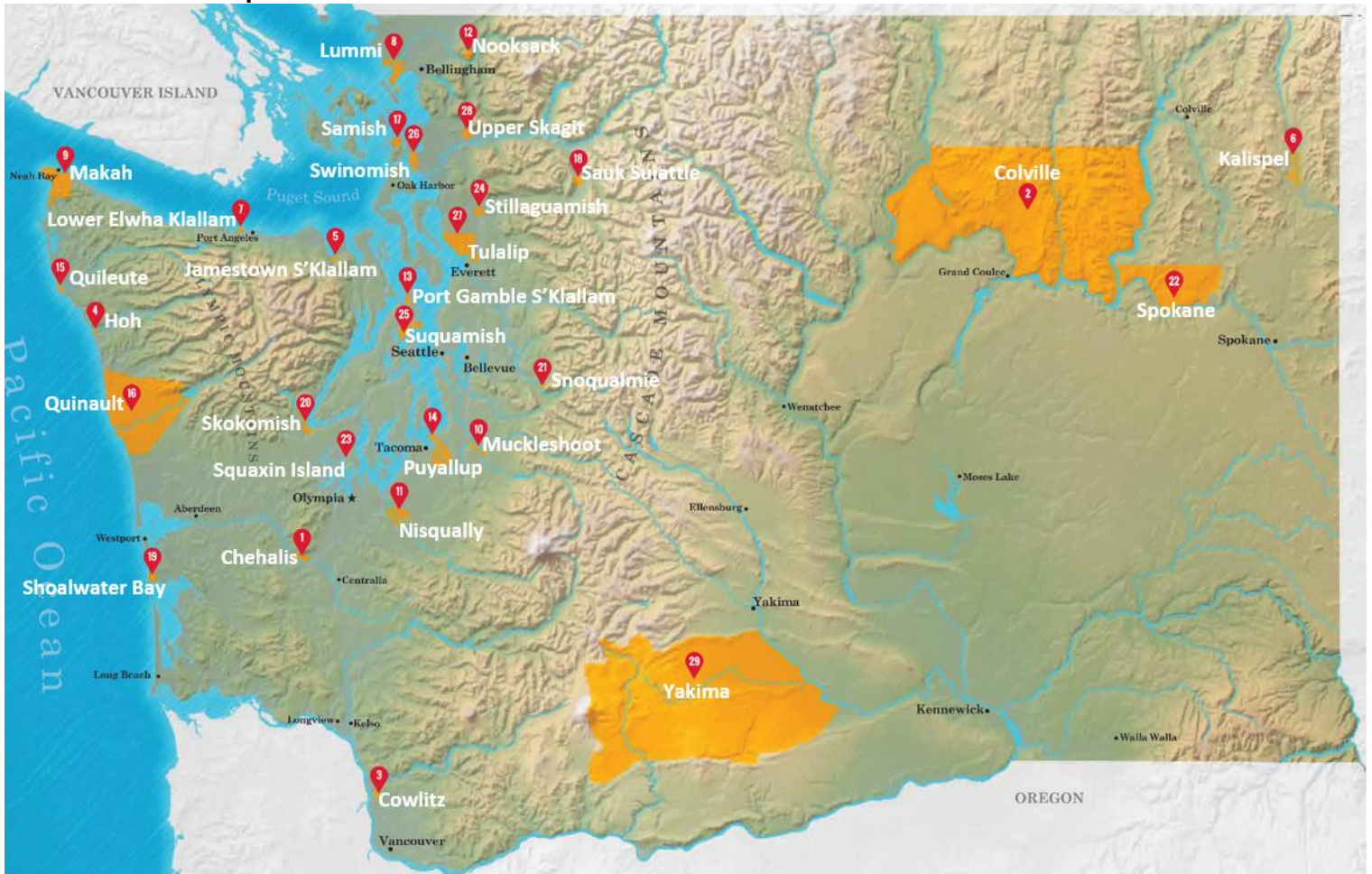
1. [Federally Recognized Tribes in Washington State](#)
2. [Tribal Chair Contact Information](#)
3. [Non-Federally Recognized Tribes in Washington State](#)
4. [Washington State Congressional Delegates](#)
5. [Federal Agencies in Washington State](#)
6. [GOIA Staff in the Governor's Office](#)
7. [State Agency Tribal Liaisons](#)
8. [Tribal Colleges](#)
9. [Tribal Newspapers](#)
10. [Tribal Courts](#)
11. [Tribal Museums](#)
12. [Tribal Casinos](#)
13. [Indian Organizations](#)

The Department of Ecology's Tribal Liaison is:

Tyson Oreiro
360-407-7017
tyson.oreiro@ecy.wa.gov



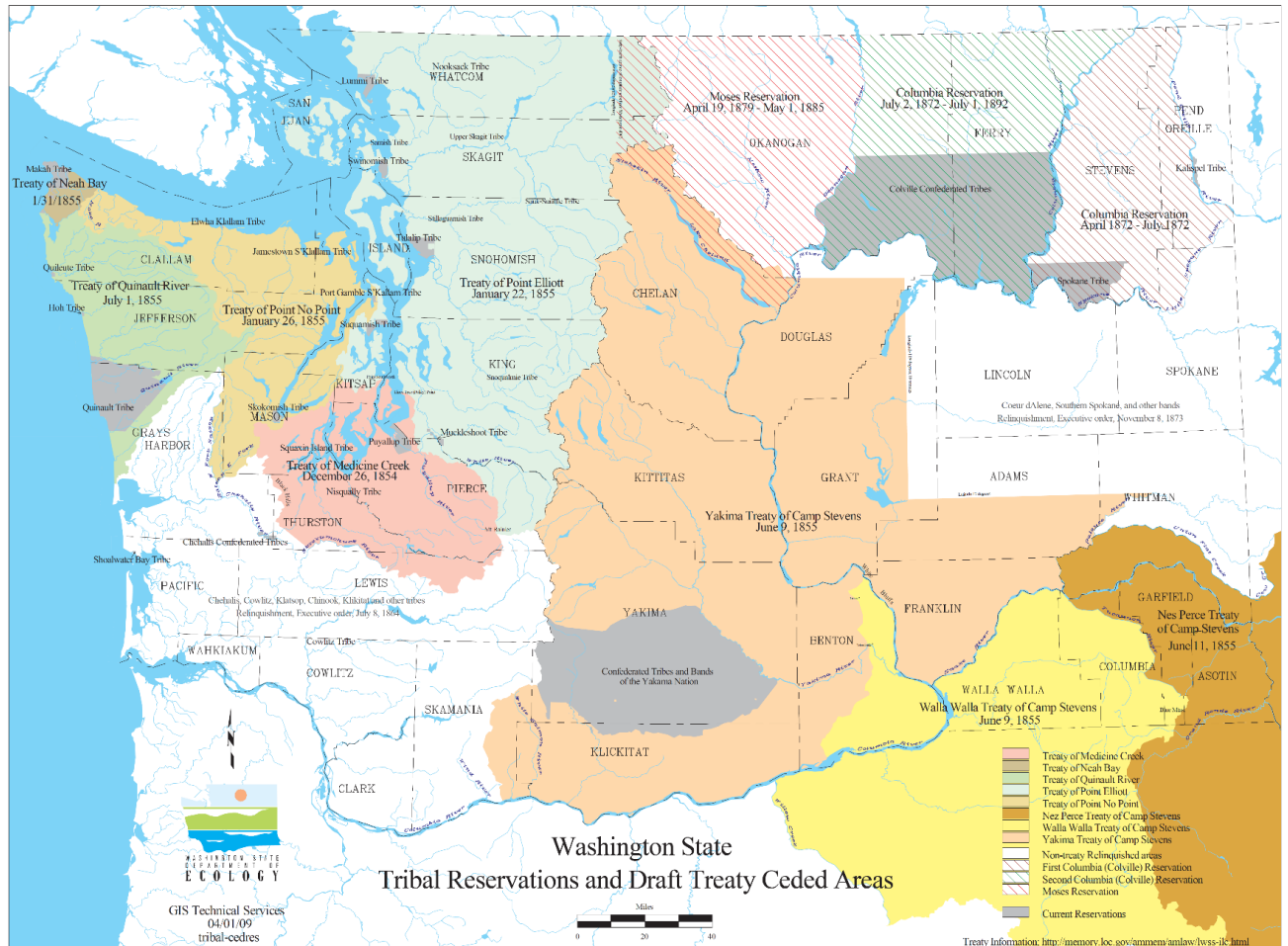
Tribal Map:



Tribal Ceded Land Map

Ceded Land Summary: Land given to the U.S. by tribes under treaty or treaty substitute. Treaty Information can be found at <http://memory.loc.gov/ammem/amlaw/lwss-ilc.html>.





Tribal Resource Directors Contact List

Chehalis Confederated Tribes

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Colville Confederated Tribes

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Cowlitz Indian Tribe

Taylor Aalvik, Natural Resources

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Tiffini Alexander, Natural Resources

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TAlexander@cowlitz.org

Hoh Indian Tribe

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Jamestown S'Klallam Tribe

Hansi Hals, Natural Resources

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HHals@jamestowntribe.org

Kalispel Tribe of Indians

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Stephanie Martin, Natural Resources

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Nooksack Tribe

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Port Gamble S'Klallam Tribe

Lower Elwha Klallam Tribe

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Puyallup Tribe

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Quileute Nation

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Frank.Geyer@quileutenation.org

Quinault Indian Nation

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Samish Nation

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TWoodard@samishtribe.nsn.us

Sauk-Suiattle Tribe

Jason Joseph, Natural Resources
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Case Law and Statutory Timelines

Status of Water Right Adjudications

Water Rights Adjudications: As of May 9, 2019, there are 83 completed adjudications since the adoption of the 1917 water code. These adjudications resulted in final decrees. Certificates were issued to parties who were confirmed rights. See the complete list below.

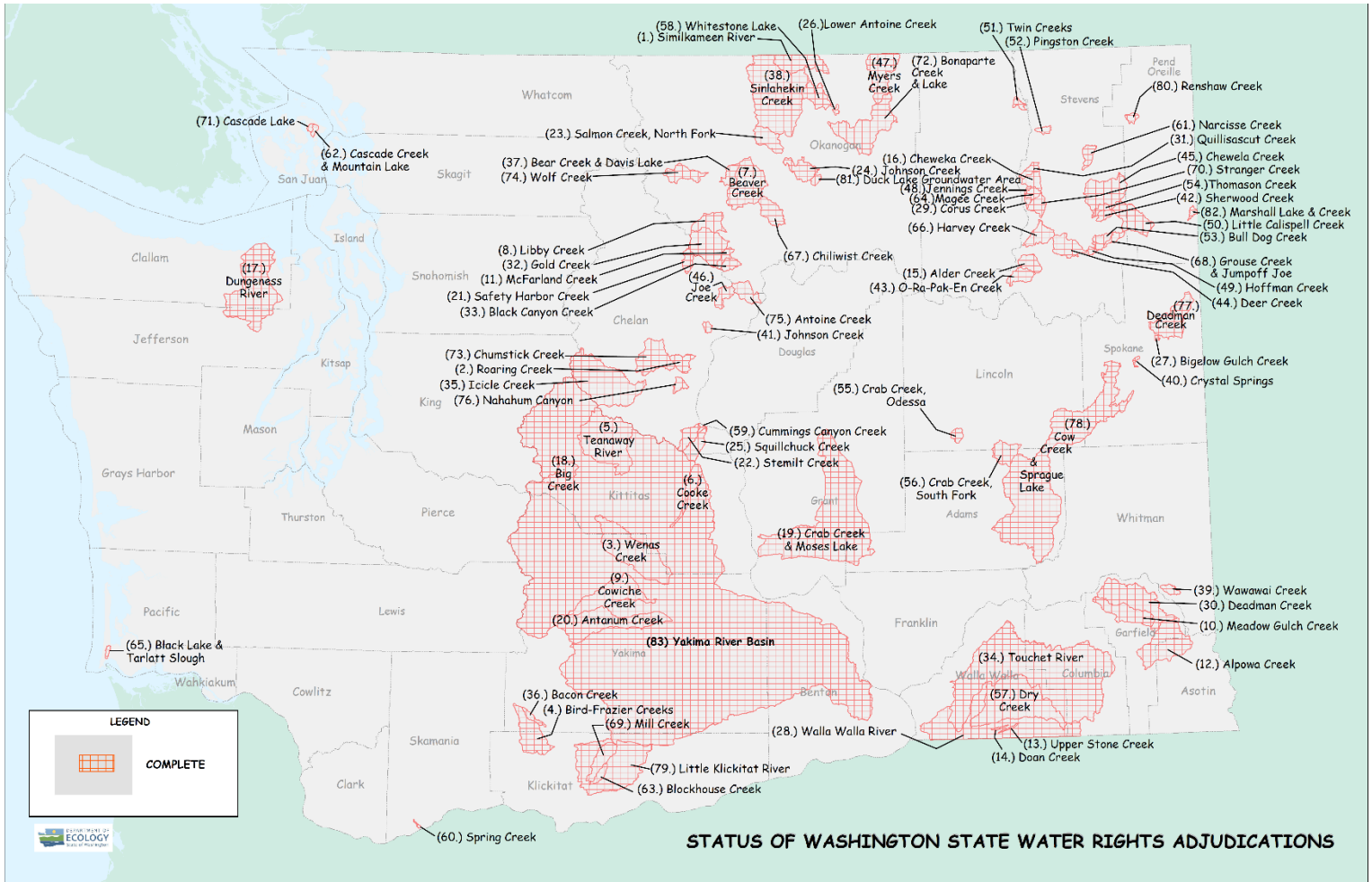
Code	Watercourse	County	Region	WRIA	Decree Filed
01	Similkameen River	Okanogan	Central	49	11/26/1918
02	Roaring Creek	Chelan	Central	46	10/24/1919
03	Wenas Creek	Kittitas, Yakima	Central	39	02/23/1921
04	Bird & Frazier Creeks	Klickitat, Yakima	Central	30	03/14/1921
05	Teanaway River	Kittitas	Central	39	06/16/1921
06	Cooke Creek	Kittitas	Central	39	08/13/1921
07	Beaver Creek	Okanogan	Central	48	09/20/1921
08	Libby Creek	Okanogan	Central	48	11/18/1921
09	Cowiche Creek	Yakima	Central	38	05/18/1922
10	Meadow Gulch Creek	Garfield	Eastern	35	06/06/1922
11	McFarland Creek	Okanogan	Central	48	11/16/1922
12	Alpowa Creek	Asotin, Garfield	Eastern	35	03/26/1923
13	Upper Stone Creek	Walla Walla	Eastern	32	07/10/1923
14	Doan Creek	Walla Walla	Eastern	32	06/01/1922
15	Alder Creek	Stevens	Eastern	58	02/19/1924
16	Cheweka Creek	Stevens	Eastern	58	02/19/1924
17	Dungeness River	Clallam	Southwest	18	03/07/1924
18	Big Creek	Kittitas	Central	39	03/27/1924
19	Crab Creek & Moses Lake	Adams, Grant	Eastern	41	03/27/1924
20	Ahtanum Creek	Yakima	Central	37	05/05/1924
21	Safety Harbor Creek	Chelan	Central	47	06/20/1925
22	Stemilt Creek	Chelan	Central	40	01/22/1926
23	Salmon Creek, North Fork	Okanogan	Central	49	04/06/1926
24	Johnson Creek	Okanogan	Central	49	05/20/1926
25	Squillchuck Creek	Chelan	Central	40	06/14/1928
26	Lower Antoine Creek	Okanogan	Central	49	07/09/1928
27	Bigelow Gulch Creek	Spokane	Eastern	55	08/31/1928
28	Walla Walla River	Walla Walla	Eastern	32	09/12/1928
29	Corus Creek	Stevens	Eastern	58	10/03/1928
30	Deadman Creek	Garfield	Eastern	35	01/04/1929
31	Quillisascut Creek	Stevens	Eastern	58	01/19/1929
32	Gold Creek	Okanogan	Central	48	05/07/1929
33	Black Canyon Creek	Okanogan	Central	48	06/20/1929
34	Touchet River	Columbia, Walla Walla	Eastern	32	09/19/1929
35	Icicle Creek	Chelan	Central	45	10/28/1929
36	Bacon Creek	Klickitat, Yakima	Central	30	02/20/1930
37	Bear Creek & Davis Lake	Okanogan	Central	48	05/14/1930
38	Sinlahekin Creek	Okanogan	Central	49	05/20/1930
39	Wawawai Creek	Whitman	Eastern	35	03/03/1931
40	Crystal Springs	Spokane	Eastern	56	03/05/1931
41	Johnson Creek	Chelan	Central	46	05/23/1931
42	Sherwood Creek	Stevens	Eastern	59	06/13/1931
43	O-Ra-Pak-En Creek	Stevens	Eastern	58	10/31/1931
44	Deer Creek	Stevens	Eastern	59	01/16/1932
45	Chewelah Creek	Stevens	Eastern	59	10/15/1932



Code	Watercourse	County	Region	WRIA	Decree Filed
46	Joe Creek	Chelan	Central	45	11/26/1932
47	Myers Creek	Okanogan	Central	60	11/26/1932
48	Jennings Creek	Stevens	Eastern	58	06/26/1933
49	Hoffman Creek	Stevens	Eastern	59	08/18/1934
50	Little Calispel Creek	Pend Oreille	Eastern	62	06/12/1935
51	Twin Creek	Ferry	Eastern	60	05/29/1936
52	Pingston Creek	Stevens	Eastern	59	07/01/1936
53	Bull Dog Creek	Stevens	Eastern	59	02/09/1938
54	Thomason Creek	Stevens	Eastern	59	05/11/1938
55	Crab Creek between Sylvan Lake & Odessa	Lincoln, Adams	Eastern	43	06/21/1939
56	Crab Creek, South Fork	Lincoln, Adams	Eastern	43	07/06/1939
57	Dry Creek	Walla Walla	Eastern	32	05/20/1952
58	Whitestone Lake	Okanogan	Central	49	05/21/1956
67	Chiliwist Creek	Okanogan	Central	49	05/16/1967
59	Cummings Canyon	Chelan	Central	40	09/21/1967
60	Spring Creek	Skamania	Southwest	28	10/22/1970
62	Mountain Lake & Cascade Crk.	San Juan	Northwest	2	02/28/1972
61	Narcisse Creek	Stevens	Eastern	59	02/28/1972
63	Blockhouse Creek	Klickitat	Central	30	06/01/1972
65	Black Lake-Tarlatt Slough	Pacific	Southwest	24	11/09/1973
66	Harvey Creek	Stevens	Eastern	58	01/04/1974
64	Magee Creek	Stevens	Eastern	58	01/04/1974
68	Grouse Creek, Jumpoff Joe Creek, Jumpoff Joe Lake	Stevens	Eastern	59	07/25/1975
69	Mill Creek	Klickitat	Central	30	10/19/1976
70	Stranger Creek	Stevens	Eastern	58	07/14/1978
71	Cascade Lake	San Juan	Northwest	2	08/31/1978
72	Bonaparte Creek & Lake	Okanogan	Central	49	12/14/1979
73	Chumstick Creek	Chelan	Central	45	04/12/1983
74	Wolf Creek	Okanogan	Central	48	03/13/1984
75	Antoine Creek	Chelan, Okanogan	Central	47	04/16/1984
76	Nahahum Canyon	Chelan	Central	45	05/10/1985
77	Deadman Creek	Spokane	Eastern	55	11/26/1986
78	Cow Creek & Sprague Lake	Adams, Lincoln, Spokane, & Whitman	Eastern	34	12/22/1986
79	Little Klickitat River	Klickitat	Central	30	02/17/1987
80	Renshaw Creek	Pend Oreille	Eastern	62	02/09/1989
81	Duck Lake Ground Water Subarea	Okanogan	Central	49	12/01/1989
82	Marshall Lake & Marshall Crk.	Pend Oreille	Eastern	62	06/05/1990
83	Yakima River Basin (Surface water only)	Yakima, Kittitas, Benton, Klickitat	Central	37,38,39	05/09/2019

Adjudications Webpage: <https://ecology.wa.gov/Water-Shorelines/Water-supply/Water-rights/Adjudications>





Areas Under Consideration for Future Adjudication

In 2019, the Legislature directed the Department of Ecology “to assess and explore opportunities to resolve water rights uncertainties and disputes through adjudications in selected basins where tribal senior water rights, unquantified claims, and similar uncertainties about the seniority, quantity, and validity of water rights exist.” Ecology reviewed watersheds around the state to determine which areas are most ready to begin an adjudication process. Through this assessment, Ecology identified the Nooksack and Upper Columbia/Lake Roosevelt watersheds as priority basins to begin this work. The Water Resources Adjudication Assessment Legislative Report can be found at:

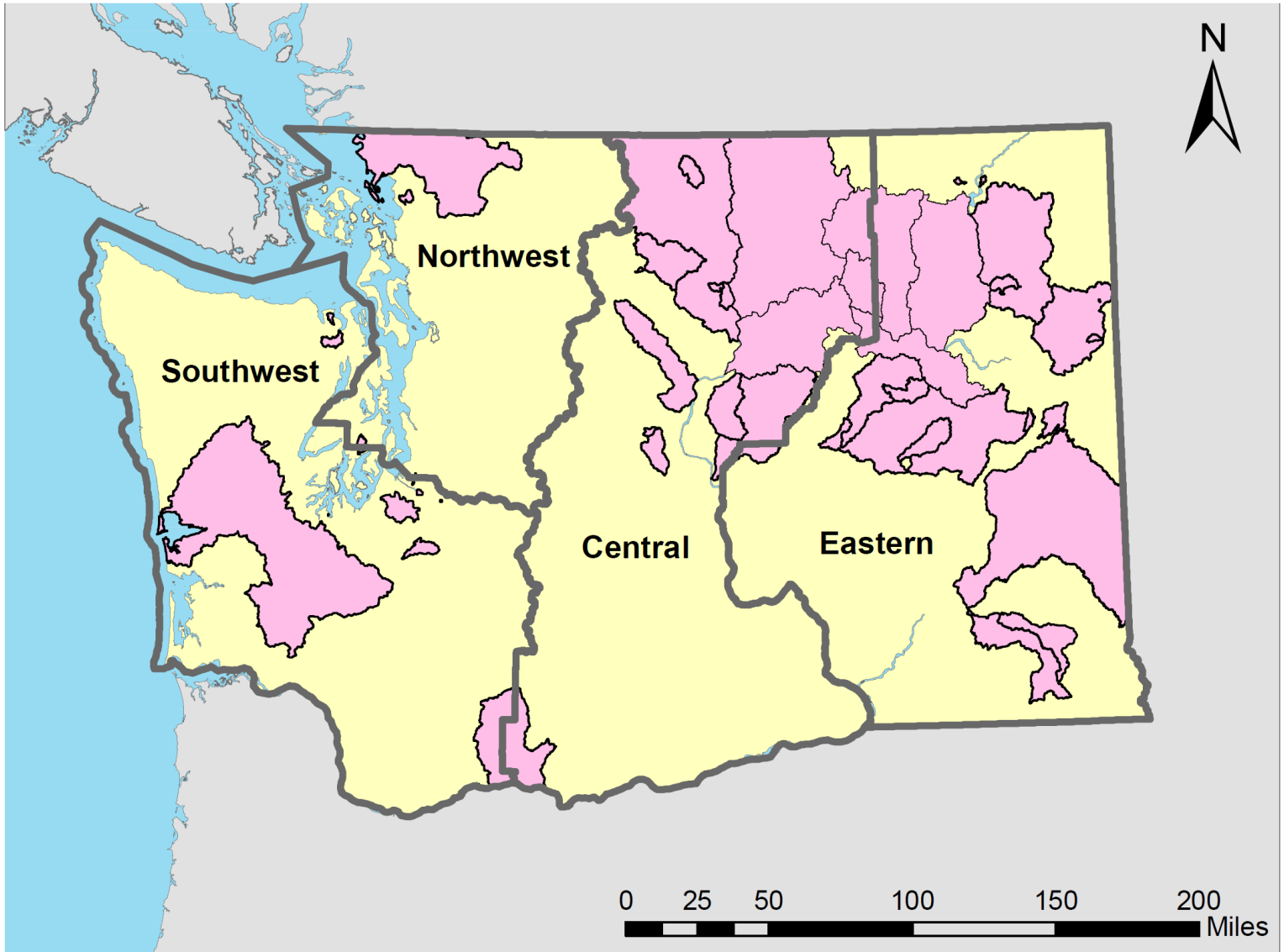
<https://apps.ecology.wa.gov/publications/SummaryPages/2011084.html>



Areas petitioned for adjudication.

Watercourse	County	Region	WRIA	Date Filed
Mosquito Creek, Tributary to Okanogan	Okanogan	Central	49	August 26, 1918
Mosquito Creek, Tributary to Okanogan	Okanogan	Central	49	May 9, 1919
Mills Canyon Creek	Chelan	Central	46	March 19, 1920
Jewett Creek, Tributary to Similkameen River	Okanogan	Central	49	July 1, 1920

Watercourse	County	Region	WRIA	Date Filed
French Creek, Tributary to Methow	Okanogan	Central	48	October 26, 1920
White Salmon R. & Tribs.	Klickitat & Skamania	Central/Southwest	29	May 16, 1922
LaFleur Creek, Tributary of Columbia River	Ferry	Eastern	60	July 23, 1922
Five Mile Lake	King	Northwest	10	November 9, 1923
Methow River	Okanogan	Central	48	February 1, 1924
Methow River	Okanogan	Central	48	February 5, 1924
North Pine Creek	Okanogan	Central	49	August 7, 1924
Douglas Creek	Douglas	Central	44	September 22, 1924
O'Brien Creek	Ferry	Eastern	52	April 22, 1925
DeSautel Creek	Stevens	Eastern	58	August 10, 1925
Upper Antoine Creek	Okanogan	Central	49	September 21, 1925
Duck Lake Creek (tributary to Crab Creek)	Lincoln	Eastern	43	November 12, 1925
Colville River and its tributaries including Loon Lake and Deer Lake	Stevens	Eastern	59	January 5, 1926
Entiat River & Tributaries	Chelan	Central	46	May 8, 1926
Wilmont Creek	Ferry	Eastern	58	June 28, 1926
Schneider Creek	Thurston	Southwest	13	October 21, 1926
Unnamed Spring, tributary to Collin Creek	Skamania	Southwest	29	April 13, 1927
Okanogan River & Tribs.	Okanogan	Central	49	January 7, 1930
Unnamed Stream & Spring	Clark	Southwest	28	February 13, 1931
Lake Creek, Tributary to Methow River	Okanogan	Central	48	February 25, 1931
Huckleberry Creek	Stevens	Eastern	59	June 18, 1931
Twisp River & Tribs.	Okanogan	Central	48	November 27, 1931
Salmon Creek & Tribs.	Okanogan	Central	49	February 29, 1932
Little Deer Creek	Spokane	Eastern	55	March 23, 1938
Tucannon River	Columbia	Eastern	35	September 13, 1939
Purple Creek, Tributary of Lake Chelan	Chelan	Central	47	August 11, 1941
Texas Creek, Tributary of Methow River	Okanogan	Central	48	May 12, 1945
Wilson Creek	Grant, Lincoln	Eastern	43	October 13, 1960
Tenmile Creek	Whatcom	Northwest	1	August 3, 1962
Marshall Creek	Spokane	Eastern	56	March 17, 1964
Unnamed Spring	Pierce	Southwest	10	December 14, 1964
China Creek	Stevens	Eastern	59	September 7, 1966
Snow Creek	Clallam, Jefferson	Southwest	17	December 7, 1967
Palouse River	Adams, Franklin, Lincoln, Spokane, Whitman	Eastern	34	July 8, 1969
Eagle Creek	Clallam, Jefferson	Southwest	17	August 10, 1970
Minter Creek	Kitsap, Pierce	Northwest/Southwest	15	September 11, 1970
Clover Creek	Pierce	Southwest	12	October 6, 1970
Moses Coulee Groundwater	Douglas, Grant	Central/Eastern	44	October 14, 1970
Moses Coulee Groundwater	Douglas, Grant	Central/Eastern	44	October 28, 1970
Unnamed Spring, Trib. To Little Spokane River	Spokane	Eastern	55	June 11, 1971
Ohop Creek and Lake	Pierce	Southwest	11	January 4, 1976
South Prairie Creek	Pierce	Southwest	10	July 11, 1977
Matson Creek	Ferry	Eastern	60	August 16, 1977
Mission Creek	Chelan	Central	45	August 16, 1977
Brender Creek, Tributary Mission Creek	Chelan	Central	45	September 12, 1977
Aeneas Creek	Okanogan	Central	52	October 10, 1977
Little Spokane River	Pend Oreille, Spokane, & Stevens	Eastern	55	November 2, 1979
Crab Creek	Adams, Grant, Lincoln, & Spokane	Eastern	41 & 43	March 20, 1980
Patterson Lake, Lake Creek & Tributaries	Okanogan	Central	48	October 26, 1986
Clear Lake	Spokane	Eastern	43	April 4, 1988
Hunters Creek	Stevens	Eastern	58	May 29, 1990
Samish Lake	Skagit, Whatcom	Northwest	3	October 2, 1990
Nooksack River Basin	Whatcom, Skagit	Northwest	1	December 30, 1992

Watercourse	County	Region	WRIA	Date Filed
Red (Lummi) River	Whatcom	Northwest	1	December 30, 1992
Swamp Creek	Okanogan	Central	49	June 3, 1994
Methow River Basin	Okanogan	Central	48	August 30, 1994
Sinking Creek	Lincoln	Eastern	43	February 28, 1995
Chehalis River & Tribs.	Grays Harbor	Southwest	22 & 23	June 26, 1996
Unnamed Creek	Pacific County	Southwest	24	September 21, 2000
Colville River and Tributaries	Stevens County	Eastern	59	October 17, 2005
Methow River Basin	Okanogan	Central	48	April 17, 2018
Nooksack River Basin	Whatcom, Skagit	Northwest	1	May 3, 2019



-  Ecology Regions
-  Petitioned Areas

Relevant Case Law

[Acquavella](#) — otherwise known as Acquavella III; validating surface water rights

[Campbell and Gwinn](#) — use of the permit exemption; exempt withdrawal

[Cornelius](#) — application of Washington’s Municipal Water Law

[Foster](#) — our authority in applying the overriding considerations of public interest standard

[Grimes](#) — perfection of a water right; beneficial use

[Kim](#) — “industrial” irrigation under the permit exemption; reversed interpretation requiring groundwater application/permit for commercial nursery

[Merrill](#) — requirement to review perfection, validity, and extent of a water right

[Motley-Motley](#) — relinquishment of surface water right through non-use

[Postema](#) — impairment test

[Schuh](#) — public interest test

[Sinking Creek](#) — requirement to review perfection, validity, and extent of a water right

[Sullivan Creek](#) — public interest, enlargement, and impairment tests

[Swinomish](#) — applying the overriding considerations of public interest standard

[Theodoratus](#) — perfection of right through beneficial use, rather than “pumps and pipes”

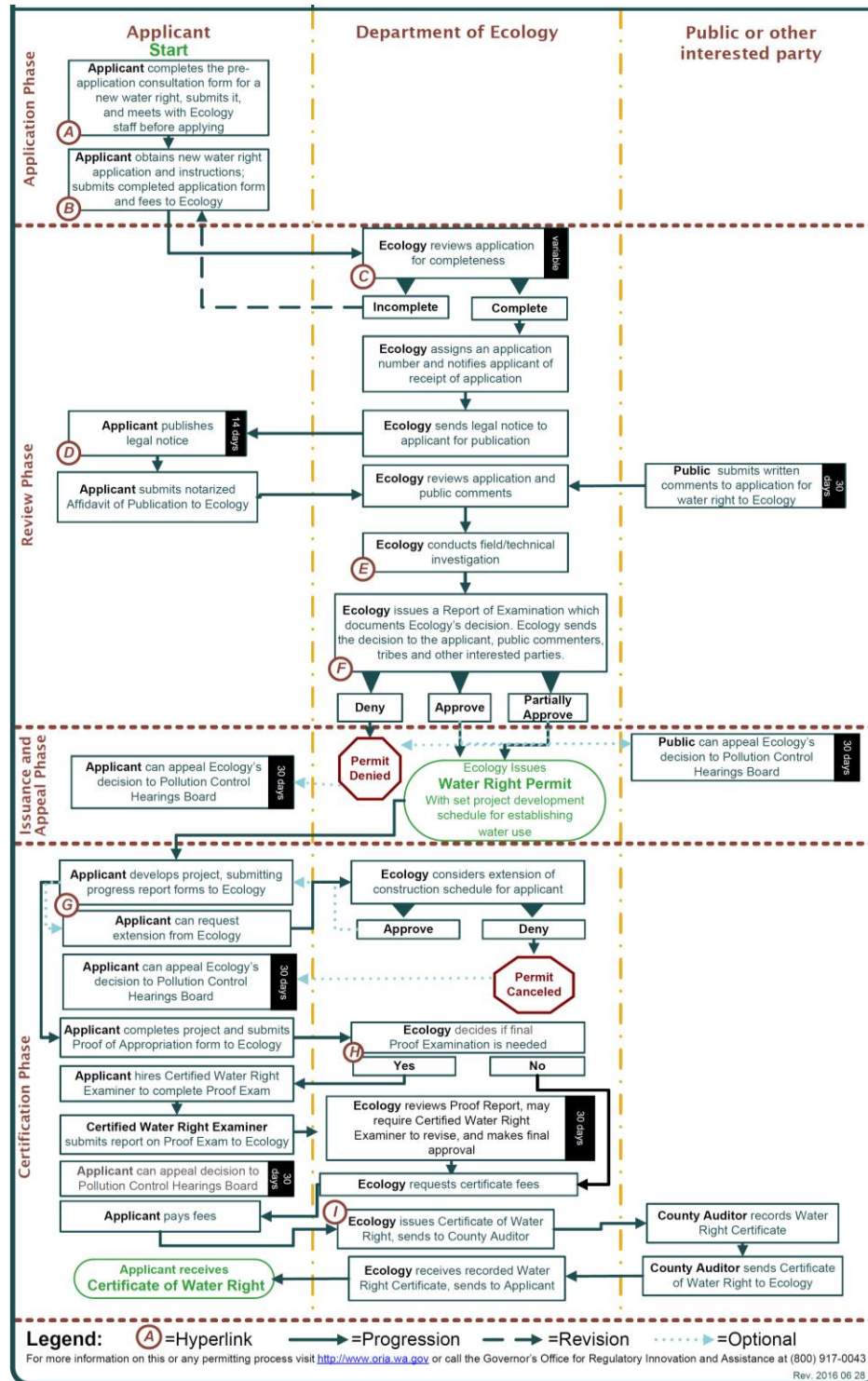
[Twisp](#) — common law abandonment; requirement to review perfection, validity, and extent of a water right

[Union Gap](#) — verifying exemptions to relinquishment

Processing an Application

New Water Right Permit Process Flowchart

Flowchart:



Basic Information on Water Rights (Link A): Under state law, the waters of Washington collectively belong to the public and cannot be owned by any one individual or group. Instead the Department of Ecology, in its role managing the state’s water resources, may grant individuals or groups the right to use these resources.

Washington water law requires users of public water to receive approval from the state prior to the actual use of water. Approval is granted in the form of a water right permit or certificate.

A water right is a legal authorization to use a certain amount of public water for a designated purpose. The water must be put to “beneficial use,” which refers to a reasonable quantity of water applied in a non-wasteful manner to a use such as irrigation, domestic water supply, industry and power generation, to name a few.

A water right permit is necessary if you plan to divert or withdraw any amount of water for any use from:

- Surface waters (water located above ground) such as lakes, river, streams and springs.
- Ground waters (water located under the ground), if you plan to withdraw more than 5,000 gallons per day or irrigate more than a half-acre of lawn or noncommercial garden.

A permit is permission by the state to *develop* a water right. It is not a *final* water right. A permit allows you to proceed with construction of a water system and to put the water to use, in accordance with the conditions specified in the permit.

There is *one exception* to the water right permitting requirement. You do not need to apply for a water right if you use a total of 5,000 gallons or less of ground water from a well each day for any of the following combination of uses:

- Providing drinking and cleaning water for livestock.
- Single or group domestic purposes, such as drinking, cooking and washing.
- Industrial purposes.
- Watering a lawn or noncommercial garden that is a half-acre or less in size.

Since much of the water in Washington has already been allocated or claimed, new water rights are increasingly difficult to obtain. Depending on the complexities of water availability, the number of applications before yours, and water use within your watershed, *a decision on your water right application may take anywhere from months to years*. As a result, more and more people are choosing to make changes to existing water rights rather than apply for a new one.

Submit Application (Link B): Fill out an “Application for a Water Right” form; instructions are included. The minimum fee required to file an application is \$50, but other fees may be



required. Return the completed application, along with the application fee in the form of a check or money order, to the Water Resources Program at the appropriate regional Ecology office. (see map below)

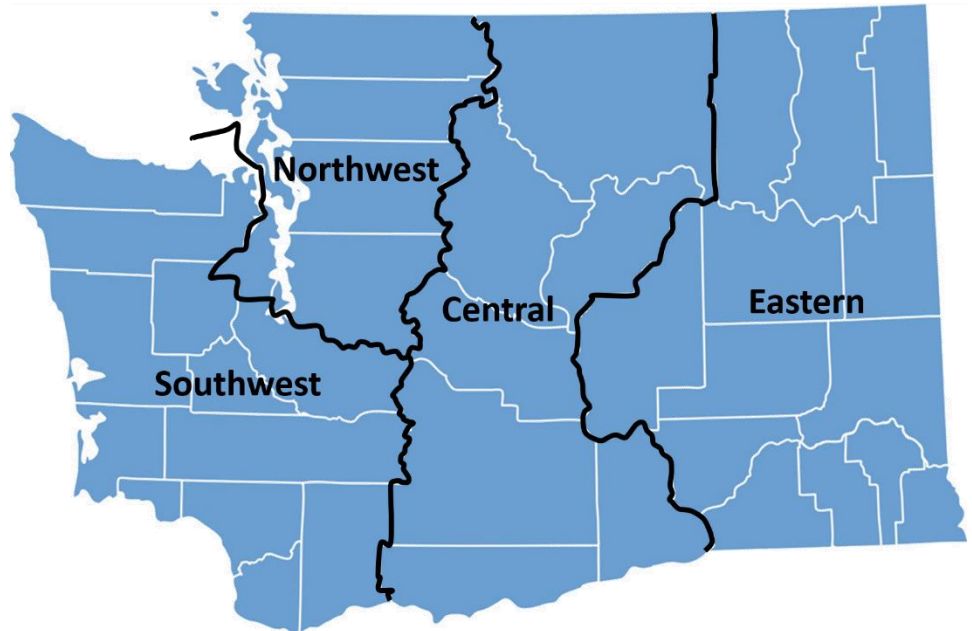
Application forms are available from Ecology offices, or you can download the application form from Ecology's Internet site:

Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452
(425) 649-7000

Southwest Regional Office
P.O. Box 47775
Olympia, WA 98504-7775
(360) 407-6300

Central Regional Office
1250 West Alder Street
Union Gap, WA 98903-0009
(509) 575-2490

Eastern Regional Office
N. 4601 Monroe
Spokane, WA 99205-1295
(509) 329-3400



Review the Application Form for Completeness ([Link C](#)): Applications are stamped on the day they are received. This date will normally become the “priority date,” that is, the effective date of the water right.

Once received, Ecology staff review your application for completeness. If there are missing elements, the application will be returned to you with an explanation of what is needed. Usually you can retain the original priority date if you complete and return the application within 30 days.

The priority date is important because it establishes the seniority of a water right application. Washington water law is based on the principle of “first in time, first in right,” which means that in times of shortage, holders of senior, or earlier, water rights have their water needs satisfied



first. Therefore, it is to your advantage to be sure the application is complete and the necessary filing fee is attached before mailing.

Issue Legal Notice (Affidavit of Publication) (Link D): Ecology will send you a legal notice of the application to publish in an approved newspaper with general circulation in the county (or counties) where water will be withdrawn, stored or used. The notice must be published once a week for two consecutive weeks. It will include:

- The basic facts of your request.
- Information regarding the 30-day public protest period. Anyone who feels that your proposed water use would have a negative effect on other uses of the resource can submit a written protest to Ecology.

After final publication of the notice, you must send Ecology the original, notarized Affidavit of Publication that you get from the publishing newspaper. Ecology cannot take action on your water right request until the Affidavit is submitted.

The applicant is responsible for all costs associated with publishing, notarizing and returning the legal notice to Ecology.

Conduct Field/Technical Investigation (Link E): Ecology staff review the application and conduct field and technical investigations.

The review includes a “four-part test.” The proposed use must meet four requirements in order for Ecology to issue a water right permit:

- 1. The water will be put to a beneficial use.
- 2. There will be no impairment (harmful effects) to existing rights.
- 3. Water is available.
- 4. The water use is not contrary to the public welfare.

In applying this four-part test, Ecology will consider aspects of the particular water source and watershed. These include the existence of instream flow rules, whether and how much ground water is connected to surface water and the availability of alternative water supplies.

Report of Examination (Link F): The results of the field and technical investigations are summarized in a document called a Report of Examination (ROE). The report is Ecology’s decision on your water right request. Ecology can deny, approve, or approve the permit with conditions.

Ecology sends you, anyone who filed a protest, and identified interested parties a copy of the final decision. All parties have 30 days to appeal Ecology’s decision. The state Pollution Control Hearings Board (PCHB) handles appeals.



Develop the Water Right (Link G): Your water right permit will include a development schedule, which specifies the dates (on or before) by which you must:

- Begin construction of your water system.
- Complete construction of your water system.
- Put the water to full use.

As you complete each phase, you must submit a progress report to Ecology on the appropriate form. An appropriate construction schedule form will be mailed to you with your permit. These forms are also available from any Ecology office.

You can request an extension to the schedule, however you must show diligence in developing the water right. A request for an extension should be done in writing, and show good cause as to why the development schedule needs to be modified. There is a non-refundable \$50 fee that must accompany each extension request.

When the water is put to full beneficial use, your water right is considered “perfected.” You must now complete and submit a notarized Proof of Appropriation of Water form.

Proof of Examination (Link H): Ecology reviews your Proof of Appropriation of Water form to determine if a Proof Examination is needed. A Proof Examination is a field examination to verify your water use and other conditions of the water right. Ecology will notify you if you need to hire a certified water right examiner (CWRE) to complete a Proof Examination and prepare a Proof Report on their findings.

Ecology has 30 days to determine if the CWRE Proof Report is adequate and may return the report to the certified water right examiner for correction. The certified water right examiner has up to 60 days to make the corrections and resubmit their revised report. Ecology then has another 30 days to make a final decision on the extent of your perfected water right.

Issue Certificate of Water Right (Link I): Once Ecology staff determine that the water right has been perfected and you have paid the appropriate statutory and auditor fees, a Certificate of Water Right will be issued.

The Certificate is recorded at the county auditor’s office in the county where the property lies, and at Ecology. A certificate may issue for less than what was authorized in the permit.

The county auditor will forward your certificate to you. It becomes part of the legal record of your water right.

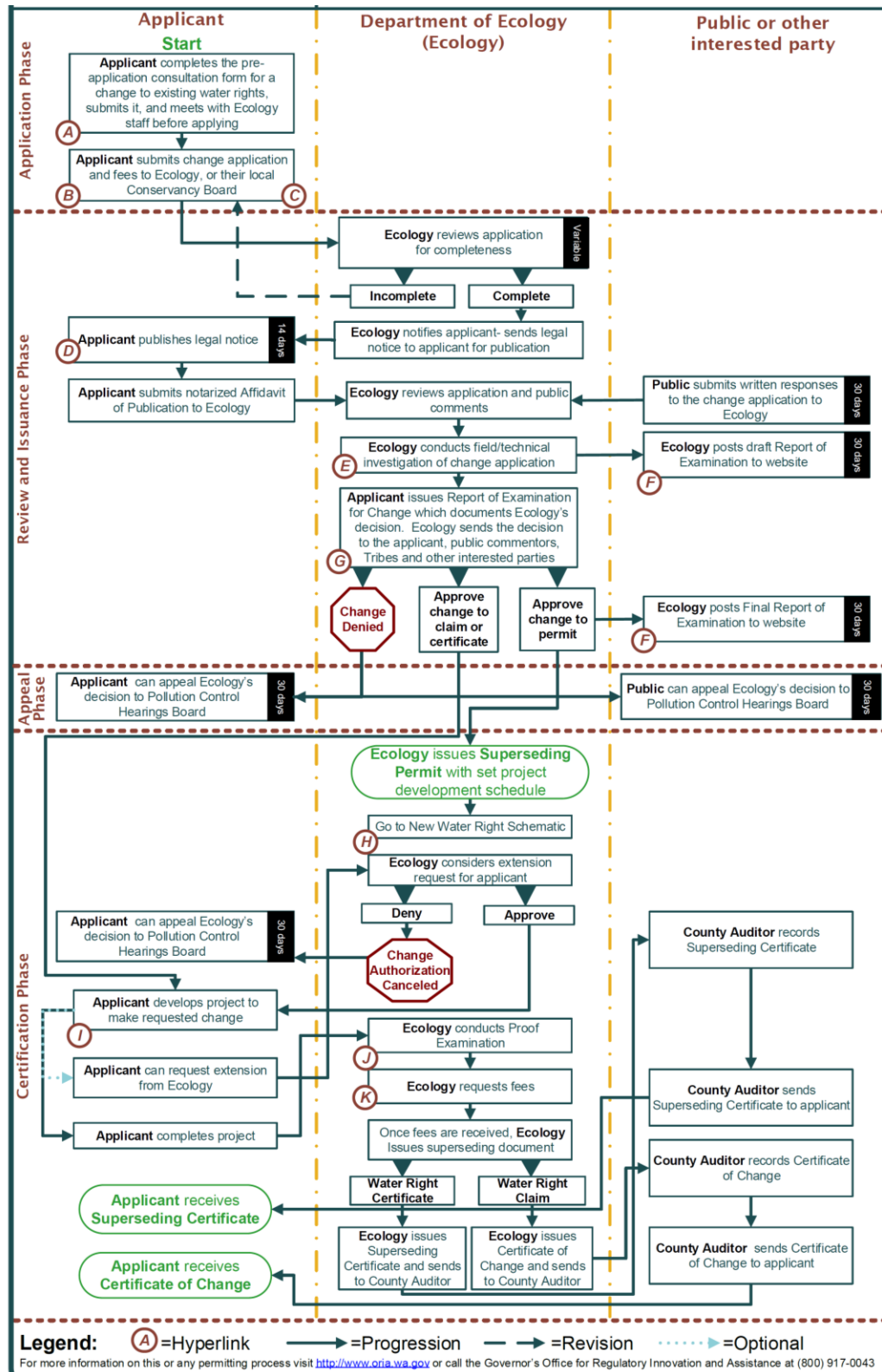


The water right, once perfected, attaches to the land and is transferred along with the land when the property is sold.



Change Existing Water Right Permit Process Flowchart

Flowchart:



Change to an Existing Water Right ([Link A](#)): Note: The terms “change” and “transfer” can be used interchangeably in this context. Since much of the water in Washington is already allocated or claimed, it is increasingly difficult to obtain new water rights. As a result, many individuals are choosing to make changes to existing water rights in order to meet new water needs. Changes can be made to existing water right claims, permits or certificates.

The Department of Ecology may consider changes to the following elements of an existing water right:

- Place of use.
- Point of diversion or withdrawal.
- Additional point(s) of diversion or withdrawal.
- Purpose of use (including season of use).

Certain elements of a water right cannot be changed through the change process, such as increasing the instantaneous withdrawal rate or annual quantity. Washington water law is complex, and the specific requirements for changing existing water rights can vary considerably across projects. It is not possible to describe all the possible circumstances and considerations here. Therefore you may want to contact an attorney and/or Ecology representative to discuss your proposed project and clarify your options before deciding to apply for a water right change.

In addition to the conventional change application process described in this schematic, two additional approaches have been added in recent years. These alternative processes provide applicants with timelier water right changes than Ecology would otherwise be able to provide, given staffing limitations.

- *Water Conservancy Boards* can process water right change applications, including generating the Report of Examination, at the local level. Refer to of this schematic for a detailed look at the conservancy board process.
- Cost reimbursement contracting allows you to pay for the cost of processing the application yourself, and any senior applications ahead of yours in the processing line, in order to allow Ecology to get to your application. For further information, contact your nearest Ecology office (see for locations).

Submit Application ([Link B](#)): Fill out an “Application for Change/Transfer of a Water Right” form; instructions are included. The minimum fee required to file an application is \$10, but other fees may be required. Return the completed application, along with the application fee in the form of a check or money order, to the Water Resources Program at the appropriate regional Ecology office (see map below).

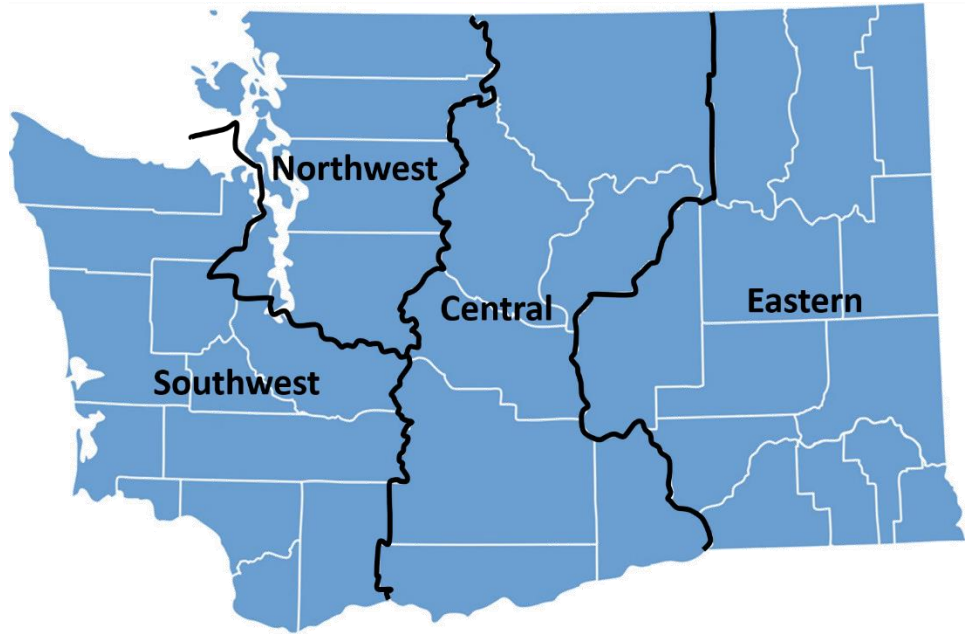


Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452
(425) 649-7000

Southwest Regional Office
P.O. Box 47775
Olympia, WA 98504-7775
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Central Regional Office
1250 West Alder Street
Union Gap, WA 98903-0009
(509) 575-2490

Eastern Regional Office
N. 4601 Monroe
Spokane, WA 99205-1295
(509) 329-3400



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- The basic facts of your request.
- Information regarding the 30-day public protest period. Anyone who feels that your proposed water use would have a negative effect on other uses of the resource can submit a written protest to Ecology.

After final publication of the notice, you must send Ecology the original, notarized Affidavit of Publication that you get from the publishing newspaper. Ecology cannot take action on your water right request until the Affidavit is submitted.

The applicant is responsible for all costs associated with publishing, notarizing and returning the legal notice to Ecology.

Conduct Field/Technical Investigation ([Link E](#)): Ecology staff review the change application and conduct field and technical investigations.



Ecology performs a tentative determination of the extent and validity of the water right. With this information, staff then determine whether the change can be authorized without impairing existing water rights.

Report of Examination of Change ([Link G](#)): The results of the field and technical investigations are summarized in a document called a Report of Examination of Change. The report is Ecology’s decision on your water right request. Ecology can deny, approve, or approve the change with conditions.

Ecology sends you, anyone who filed a protest, and identified interested parties a copy of the final decision. All parties have 30 days to appeal Ecology’s decision. The state Pollution Control Hearings Board (PCHB) handles appeals.

An ROE with an approval (once any appeals are settled) is your official authorizing document. You can begin developing the water right change.

Superseding Permit ([Link H](#)): Changes to permits go through a different process than changes to claims or certificates. A superseding permit is issued shortly after the change decision (documented in the Record of Examination for Change, or ROE), assuming there is no appeal. The process of developing a superseding permit is the same as that of a new water right permit, since the right has never been perfected. (A perfected water right is established by the continuous beneficial use of water.)

To review the remainder of the change process for a permit, refer back to the New Water Right Permit Process schematic. Begin at the circle with the text “Ecology issues Water Right Permit with set project schedule for establishing water use.”

Developing the Authorized Change to the Water Right ([Link I](#)): Once you receive authorization (a positive decision documented in the Record of Examination for Change, the “ROE”), and if no appeals are filed, you can begin taking action on the requested change. This could be, for example, drilling a replacement well or implementing a change in the purpose of use.

The ROE will include a *development schedule*, which specifies the dates (on or before) by which you must:

- Begin construction of the change to the water system.
- Complete construction of the change to the water system.
- Put the water to full use.

As you complete each phase, you must submit a progress report to Ecology on the appropriate form. Appropriate construction schedule forms will be mailed to you as you progress with your project. These forms are also available from any Ecology office.

You can request an extension to the schedule, however you must show diligence in developing the water right. A request for an extension should be done in writing, and show good cause as to why the development schedule needs to be modified. A non-refundable fee of \$50 must accompany the extension request.

When the water is put to full beneficial use, you must complete and submit a notarized Proof of Appropriation of Water form.

Conduct Proof Examination ([Link J](#)): A water right is established by the continuous beneficial use of water. Such rights are considered “perfected.”

Ecology will conduct a second field examination when:

- Your project is complete: the change to the water right is developed, all the conditions of the water right change authorization are met and your water right is now perfected.
- You fill out, notarize and submit to Ecology a notarized Proof of Appropriation of Water form.

This second field examination is called a Proof Examination. Its purpose is to verify your water use and other conditions of the water right change authorization.

Certificate of Change or Superseding Certificate ([Link K](#)): Once Ecology confirms that all the conditions of the water right change authorization are met, you will be asked to submit statutory filing and county auditor fees to Ecology. The county auditor will forward your Superseding Certificate (if you made a change to an existing certificate) or Certificate of Change (for a change to an existing claim) to you.

Application Progress Sheet

Form:

WATER CONSERVANCY BOARD APPLICATION PROGRESS SHEET

NAME _____	PHONE _____
ADDRESS (STREET) _____	(CITY) _____ (STATE) _____ (ZIP CODE) _____

Application Status

DATE APPLICATION RECEIVED	CHANGE APPLICATION NUMBER	CERTIFICATE NUMBER	CROSSES COUNTY LINE	WRIA
---------------------------	---------------------------	--------------------	---------------------	------

☐ State application fee paid-\$10 ☐ Application and fee forwarded to Ecology: _____

☐ Board fees paid _____

☐ Application returned to applicant for completion: _____
Date returned to board complete: _____

☐ Application declined: _____
Date letters sent to applicant and Dept. of Ecology: _____

☐ Applicant informed that application may be filed with Ecology.

☐ Date of application acceptance: _____

☐ Ecology letter received (within 30 working days of notice to DOE) with state water right control number: _____

☐ Copies of applications sent to interested parties (attach list of recipients): _____

☐ Copy of application sent to tribes with reservation in jurisdiction.

Publication for Application (Send copy of publication notice to Ecology same time it is submitted to media ☐)

Date Published	Name of Publication	Date Published	Name of Publication

Protests and Comments/Concerns on Publication

Protest/Comments (received by Ecology and forwarded to board)			Comments/Concerns Received by Board		
*Date Received	Protested by	Date forwarded by Ecology	*Date Received	Commentor's Name	Issue (e.g., impairment, right exists, public interest)

*Any protest received 30 days after the last date of publication of the public notice or without required fee will be filed as a letter of concern.

<input type="checkbox"/> Public Meetings on application held:	<input type="checkbox"/> Hearing in other county held:
<input type="checkbox"/> Meeting publication:	<input type="checkbox"/> Hearing publication:

Examination

☐ Technical report received: _____

☐ Field examination: _____ Conducted by: _____

Comments Received at Public Meeting

Received from	Agency Name	Affiliation (i.e., Tribe, Watershed Planning Unit, governmental body, other)
		<input type="checkbox"/> Tribe <input type="checkbox"/> Watershed Planning Unit <input type="checkbox"/> Government Body <input type="checkbox"/> Other
		<input type="checkbox"/> Tribe <input type="checkbox"/> Watershed Planning Unit <input type="checkbox"/> Government Body <input type="checkbox"/> Other
		<input type="checkbox"/> Tribe <input type="checkbox"/> Watershed Planning Unit <input type="checkbox"/> Government Body <input type="checkbox"/> Other

☐ Evaluation of the application, including the entire water rights record, has been completed: _____

☐ SEPA-The board ensures that the provisions of the State Environmental Policy Act of 1971, Chapter 43.21C RCW and the SEPA rules, chapter 197-11 WAC have been met.

Decision and Ecology Review

☐ Record of Decision and Report of Examination complete: _____

☐ Documentation of 45-day review letter received from Ecology: _____

☐ 30-day review period extended by ☐ director, ☐ applicant, ☐ board is due _____

A



Field Exam Record Form

Form:

FIELD EXAM RECORD (Name of Board) Water Conservancy Board

Application Number _____ Applicant Name _____

Owner of land on which source is located and water used: _____

POD/W Location

Section _____ Township _____ Range _____ (¼ ¼)

Project Status: Proposed ☐ Partially Constructed ☐ Existing and In Use ☐ Expansion of Existing System ☐

Development Schedule: _____

Description of Water Delivery System: ☐ Surface ☐ Ground _____

Pump Type & hp _____ Booster Pump & hp _____

Static Water Level _____ Method _____

Well Log available ☐ Casing Diameter/Depth _____

Proposed Use(s)

☐ Industrial ☐ Municipal ☐ Domestic ☐ Irrigation ☐ Stockwater ☐ Power Generation

☐ Recreation ☐ Beautification ☐ Wildlife Refuge ☐ Fish Propagation ☐ Other _____

Use Details

Crop Type: _____ Use Season _____

Acres: Current _____ Planned _____ Feasible _____

Domestic (number, type): _____ Industrial (specific use): _____

Non-consumptive uses: _____

Other uses from this source: _____

Beneficial Use Determination: ☐ Affidavits ☐ Photos ☐ Meter ☐ Power Records



Other water rights (certificates, claims, irrigation districts, etc.) appurtenant to this land ☐ or from this stream ☐:

Proximity to existing wells, springs, streams, etc: _____

Surface water: Other uses from same source _____

☐ Flow measurement or ☐ estimate (cfs or gpm) _____ Meter type _____

Family Farm: ☐ Yes ☐ No Date Waiver Sent to Applicant: _____ Date Signed Waiver Received: _____

Research Checklist

- | | |
|--|---|
| <input type="checkbox"/> Instream Resources Protection Program | <input type="checkbox"/> Surface Water Source Limitations |
| <input type="checkbox"/> Closure | <input type="checkbox"/> Low Flow _____ cfs |
| <input type="checkbox"/> Maps (Topo. Flat | <input type="checkbox"/> Well Logs <input type="checkbox"/> Waste Discharge |
| <input type="checkbox"/> WRATS | <input type="checkbox"/> Claims Registry |

Remarks: _____

Examiner: _____

Time: _____

Date: _____



Application for Change/Transfer Form

Form:



Application for Change/Transfer of Water Right

For Ecology Use
(Date Stamp)

For filing with the Department of Ecology *or* with County Conservancy Boards

**A NON-REFUNDABLE MINIMUM FEE OF \$50.00 MUST ACCOMPANY THIS APPLICATION
IF FILED WITH THE DEPARTMENT OF ECOLOGY**

(Check all that apply.)

- ☐ Change purpose(s) of use
- ☐ Add purpose(s) of use
- ☐ Change point(s) of diversion/withdrawal
- ☐ Add point(s) of diversion/withdrawal
- ☐ Change/transfer place of use
- ☐ Other (i.e. consolidation, intertie, trust water)

Explain: _____

****IF MORE SPACE IS NEEDED, ATTACH ADDITIONAL
SHEETS (PLEASE PRINT OR TYPE CLEARLY)****

FOR OFFICIAL USE ONLY

DATE APPLICATION RECEIVED _____
CHECK NO. _____ FEE \$ _____
DATE ACCEPTED _____ BY _____
CHANGE NO. _____
COUNTY _____ WRIA _____
SPECIAL AREA _____

SEPA: ☐ EXEMPT ☐ NOT EXEMPT

ECY CODING: 001-002-WR10285-000011

APP NO. _____ PERMIT NO. _____

CERT NO. _____ CERT OF CHG NO. _____

☐ I have participated in a pre-application conference with Ecology.

1. Applicant Information

APPLICANT/BUSINESS NAME	PHONE NO.	FAX NO.
ADDRESS		
CITY	STATE	ZIP CODE
EMAIL ADDRESS (IF AVAILABLE)		

CONTACT (IF DIFFERENT FROM ABOVE)	PHONE NO.	FAX NO.
ADDRESS		
CITY	STATE	ZIP CODE
EMAIL ADDRESS (IF AVAILABLE)		

LEGAL LAND OWNER or PART OWNER OF PROPOSED PLACE OF USE	PHONE NO.	FAX NO.
ADDRESS		
CITY	STATE	ZIP CODE
EMAIL ADDRESS (IF AVAILABLE)		

2. Water Right Information

WATER RIGHT OR CLAIM NUMBER	RECORDED NAME(S)
DO YOU OWN THE RIGHT TO BE CHANGED? <input type="checkbox"/> YES <input type="checkbox"/> NO	
IF NO, PROVIDE OWNER(S) NAME and ADDRESS: _____	
HAS THE WATER BEEN PUT TO BENEFICIAL USE IN THE LAST FIVE (5) YEARS? <input type="checkbox"/> YES <input type="checkbox"/> NO	



3. Point(s) of Diversion/Withdrawal:

A. Existing

SOURCE	NO.	¼	¼	SEC.	TWP.	RGE.	PARCEL #	WELL TAG #

B. Proposed

SOURCE	NO.	¼	¼	SEC.	TWP.	RGE.	PARCEL #	WELL TAG #

DO YOU OWN THE EXISTING AND PROPOSED POINT(S) OF DIVERSION/WITHDRAWAL?

EXISTING: ☐ YES ☐ NO PROPOSED: ☐ YES ☐ NO – IF NO, PROVIDE OWNER(S) NAME: _____

Please include copies of all water well reports involved with this proposal. Also, if you know the distances from the nearest section corner to the above point(s) of diversion/withdrawal, please include that information in Item No. 6 (remarks) or as an attachment.

4. Purpose of Use:

A. Existing

PURPOSE OF USE	GPM or CFS	ACRE-FT/YR	PERIOD OF USE

B. Proposed

PURPOSE OF USE	GPM or CFS	ACRE-FT/YR	PERIOD OF USE

5. Place of Use:

A. Existing

LEGAL DESCRIPTION OF LANDS WHERE WATER IS PRESENTLY USED:

¼	¼	SEC.	TWP.	RGE.	COUNTY	PARCEL #	# OF ACRES

DO YOU OWN ALL THE LANDS IN THE EXISTING PLACE OF USE? ☐ YES ☐ NO

IF NO, PROVIDE OWNER(S) NAME: _____

B. Proposed

LEGAL DESCRIPTION OF LANDS WHERE NEW USE IS PROPOSED:

¼	¼	SEC.	TWP.	RGE.	COUNTY	PARCEL #	# OF ACRES

DO YOU OWN ALL THE LANDS IN THE PROPOSED PLACE OF USE? ☐ YES ☐ NO

IF NO, PROVIDE OWNER(S) NAME: _____

Attach a detailed map of your proposed change/transfer. The map should show existing and proposed point(s) of diversion/withdrawal, place of use and any other features involved with this application. If platted property, please include a certified copy of the plat map.

Are there any ADDITIONAL WATER rights OR CLAIMS RELATED to the same property as the ONE PROPOSED FOR CHANGE/TRANSFER?

☐ ES ☐ NO – IF YES, PROVIDE THE WATER RIGHT/CLAIM NUMBER(S): _____



6. Remarks and Other Relevant Information:

IF FOR SEASONAL OR TEMPORARY, START DATE ____/____/____ END DATE ____/____/____

Certain applications may incur a Real Estate Excise Tax liability for the seller of the water rights. The Department of Revenue has requested notification of potential taxable water right related actions and therefore may be provided with a copy of this request. For further information, contact: Department of Revenue, Real Estate Excise Tax, PO Box 47477, Olympia, WA 98504-7477. Phone (360) 570-3265.

7. Signatures:

I certify that the information above is true and accurate to the best of my knowledge. I understand that in order to process my application, I hereby grant staff from the Department of Ecology or the County Conservancy Board access to the above site(s) for inspection and monitoring purposes. If assisted in preparing this above application, I understand that all responsibility for the accuracy of the information rests with me.

<i>Applicant Printed Name – Title</i>	<i>Applicant Signature</i>	____/____/____ <i>(Date)</i>
<i>Water Right Holder Printed Name</i>	<i>Water Right Holder Signature</i>	____/____/____ <i>(Date)</i>
<i>Land Owner of Existing Place of Use Printed Name</i>	<i>Land Owner of Existing Place of Use Signature</i>	____/____/____ <i>(Date)</i>
<i>Land Owner of Proposed Place of Use Printed Name</i>	<i>Land Owner of Proposed Place of Use Signature</i>	____/____/____ <i>(Date)</i>

Please check the region in which the project is located:

<p>*Submit your application to:</p> <p>DEPARTMENT OF ECOLOGY CASHIERING SECTION PO BOX 47611 OLYMPIA, WA 98504-7611</p>	<input type="checkbox"/> Central Regional Office 1250 W. Alder Street Union Gap, WA 98903-0009 (509) 575-2490	<input type="checkbox"/> Eastern Regional Office 4601 N. Monroe Street Spokane, WA 99205-1295 (509) 329-3400
	<input type="checkbox"/> Northwest Regional Office 3190 – 160 th Avenue SE Bellevue, WA 98008-5452 (425) 649-7000	<input type="checkbox"/> Southwest Regional Office PO Box 47775 Olympia, WA 98504-7775 (360) 407-6300

WE ARE RETURNING YOUR APPLICATION FOR THE FOLLOWING REASON(S):

- | | |
|---|---|
| <input type="checkbox"/> APPLICATION FEE NOT ENCLOSED | <input type="checkbox"/> MAP NOT INCLUDED or INCOMPLETE |
| <input type="checkbox"/> ADDITIONAL SIGNATURES REQUIRED | <input type="checkbox"/> SECTION _____ IS INCOMPLETE |
| <input type="checkbox"/> OTHER/EXPLANATION: _____ | |

STAFF: _____ **DATE:** ____/____/____



ATTACHMENT FOR Application for Change/Transfer of Water Right

Signatures:

I certify that the information above is true and accurate to the best of my knowledge. I understand that in order to process my application, I hereby grant staff from the Department of Ecology or the County Conservancy Board access to the above site(s) for inspection and monitoring purposes. If assisted in the preparation of the above application, I understand that all responsibility for the accuracy of the information rests with me.

<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <input type="checkbox"/> Applicant Printed Name – Title <input type="checkbox"/> Water Right Holder Printed Name <input type="checkbox"/> Land Owner of Existing Place of Use Printed Name <input type="checkbox"/> Land Owner of Proposed Place of Use Printed Name	<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Applicant Signature Water Right Holder Signature Land Owner of Existing Place of Use Signature Land Owner of Proposed Place of Use Signature	<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <div style="text-align: center;">/ /</div> (Date)
<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <input type="checkbox"/> Applicant Printed Name – Title <input type="checkbox"/> Water Right Holder Printed Name <input type="checkbox"/> Land Owner of Existing Place of Use Printed Name <input type="checkbox"/> Land Owner of Proposed Place of Use Printed Name	<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Applicant Signature Water Right Holder Signature Land Owner of Existing Place of Use Signature Land Owner of Proposed Place of Use Signature	<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <div style="text-align: center;">/ /</div> (Date)
<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <input type="checkbox"/> Applicant Printed Name – Title <input type="checkbox"/> Water Right Holder Printed Name <input type="checkbox"/> Land Owner of Existing Place of Use Printed Name <input type="checkbox"/> Land Owner of Proposed Place of Use Printed Name	<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Applicant Signature Water Right Holder Signature Land Owner of Existing Place of Use Signature Land Owner of Proposed Place of Use Signature	<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <div style="text-align: center;">/ /</div> (Date)
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INSTRUCTIONS FOR Application for Change/Transfer of Water Right

We encourage you to contact the Ecology Regional Office in your area to request a **pre-application conference** PRIOR to filing your application. Contacts are listed on the last page of these instructions.

Please type or print clearly in ink

Introduction: You must file an application for change or transfer of water right together with the required fees with the Department of Ecology to propose certain changes to an existing water right or claim. This application may be filed with a County Conservancy Board – the Department of Ecology application fee is not required if filed with a County Conservancy Board; however additional fees will be required. General information about the process and considerations involved in making changes to water rights is available from each Ecology region office. Once an application is filed, a public notice is prepared for publication in at least one designated newspaper at your cost, and the application is made available for review.

- You **must** provide the information requested in this application, as it relates to your proposed change, or the application will be returned to you for completion.
- Spaces bordered with a dark outline are for office staff use in processing the application. Please do not mark within those spaces.
- This application requests information about your actual water use and the changes you propose to make. Please **do not** simply copy information about your water use from a water right document. Inaccurate information about your water use may cause substantial delays in processing a decision on your application.
- If additional space is required, you may attach additional sheets of paper or use the Application Attachment Form that is available at any Ecology regional office or from any County Conservancy Board.

A County Conservancy Board is a board established by the County Commissioners and authorized by Ecology to accept and make recommendations for approval or denial of an application for Change or Transfer of a Water Right. Statutory authority for County Conservancy Boards can be found within Chapter 90.80 RCW.

Applications for Change of Water Right are subject to the State Environmental Policy Act, Chapter 43.21C Revised Code of Washington and Chapter 197-11, Washington Administrative Code.

Check the type of change proposed: For your convenience, boxes are located within the upper left-hand corner on the first page of the application form. The following are instructions for completing the boxes that indicate the type of changes that are proposed. The boxes found on the application form are shown in example No. 1.

(Check all that apply.)

☐ Change purpose(s) of use

☐ Add purpose(s) of use

☐ Change point(s) of diversion/withdrawal

☐ Add point(s) of diversion/withdrawal

☐ Change/transfer place of use

☐ Other (i.e. consolidation, intertie, trust water)

Explain: _____

Example No. 1

Check the boxes to indicate the changes that are proposed. You may mark as many types of changes as are appropriate, but you must mark at least one box. If none of the boxes provided appear to represent the change or transfer that you wish to propose, please contact the appropriate regional office shown on the last page of the form for assistance. If you mark “other,” you **must** describe the change that you propose. Possible explanations are that the application proposes “consolidation” of a water use exempt from permitting requirements with a water system for which a certificate of water right has issued; that the application proposes to “intertie” two or more public water supplies; or that you propose to enter a water right into the “trust water right program.” The space for explanation may also be used to further explain any proposed change. If additional space is needed to fully explain the intent of the application you may add attachments.

In the following, the number preceding the instruction refers to the corresponding section of the application.

1. Applicant Information: Provide the name in which the application is being filed and the mailing address and telephone number(s) through which the applicant may be reached. The address and phone number provided will be the only address that will be used to contact the applicant unless an alternate contact person is listed.

Provide the name of the person(s) that should be contacted regarding the application, if contact should be made to someone other than the listed applicant. If a contact person(s) is identified, provide their mailing address and telephone number. If a contact name is provided, all mail concerning the application will be directed to the contact person unless amended by the applicant.



If you do not own the land that contains the existing point(s) of diversion/withdrawal, please provide the owner's name.

2. Water Right Information: You **must** identify a water right or water right claim to be changed.

WATER RIGHT OR CLAIM NUMBER <i>Certificate No. G1-26483C</i>	RECORDED NAME(S) <i>The person(s) name appearing on the water right document</i>
DO YOU HOLD LEGAL TITLE TO THE RIGHT TO BE CHANGED? <input type="checkbox"/> YES <input type="checkbox"/> NO	
IF NO, PROVIDE OWNER(S) NAME and ADDRESS:	
HAS THE WATER BEEN PUT TO BENEFICIAL USE IN THE LAST FIVE (5) YEARS? <input type="checkbox"/> YES <input type="checkbox"/> NO	

Example No. 2

Identify the water right document that describes the water right including the water right number or water right claim number. Provide the name of the person(s) under which the document was filed or recorded.

Indicate whether the applicant is the current owner of the water right proposed to be changed or transferred by marking the appropriate box. If the applicant is not the current owner of the right, provide the name and address of the water right owner.

Indicate, by marking the appropriate box whether the water right to be changed has been in beneficial use at any time during the most recent five-year period. If you check "no," you may wish to describe past use of the right on a separate attachment.

Please attach copies of any documents or records that support the consistent, historical use of water since the right was established. Examples include electric bills for a pumping station, receipts for purchase of water system equipment, dated aerial photographs, and affidavit(s) of persons familiar with water use under the water right. Also, if you have a water system plan or conservation plan written for your water use, please include a copy with your application.

3. Point(s) of Diversion/Withdrawal:

A. Existing

SOURCE	NO.	¼	¼	SEC.	TWP.	RGE.	PARCEL #	WELL TAG #
<i>Well</i>	<i>1</i>	<i>NW</i>	<i>SW</i>	<i>10</i>	<i>15 E</i>	<i>25</i>	<i>854321-237</i>	<i>043986</i>
<i>Wilson Well</i>	<i>2</i>	<i>SE</i>	<i>SW</i>	<i>10</i>	<i>15 E</i>	<i>25</i>	<i>854321-238</i>	<i>043987</i>

Example No. 3

Existing: You **must** describe the existing point(s) of diversion/withdrawal on your application. The point(s) of diversion/withdrawal is the location of the well or the location of the point of withdrawal from a public water body (a lake, stream, etc.) where water is withdrawn for use.

Identify the name of the source of water that is used under your water right. If the source is surface water and has no name write "unnamed." If the source is a well and has no name, write "well." If you refer to the listed water sources by number, provide the number.

The spaces for ¼¼, SEC, TWP, and RGE are provided for identifying the general location of the point(s) of diversion/withdrawal. The SEC., TWP., and RGE refer to the section, township and range where the diversion/withdrawal is (are) located. The ¼¼ spaces refer to (from right to left) the quarter of the identified section and then to the quarter of the identified quarter section in which the point(s) of diversion/withdrawal are located. If you do not understand this geographic location system, please contact the appropriate Ecology regional office, County Conservancy Board, or seek professional assistance in completing your application.

Parcel #. You must provide the county assigned parcel identification number for each parcel containing a point of diversion. This number may be obtained from the County Assessor's office for the county containing the point(s) of diversion/withdrawal.

Well Tag #. Every well within the State of Washington is required to have a well tag number displayed. The well tag number is a unique number assigned at the time of construction or upon request by the well owner to the Water Resources Program, Department of Ecology. For specific requirements, see Washington Administrative Code (WAC) 173-160-311, [What are the well tagging requirements?](#). If no well tag number is prominently displayed on your well head, you may assume that no number has been assigned and may leave this space blank. Upon verification that no number has been assigned, Ecology will assign a number and provide a tag for permanent installation upon the well.

Complete this section of the application **only** if you propose to change or add points of diversion/withdrawal to your water right. Follow the instructions provided above for Part A to describe the point(s) you wish to add or change. Include water well reports for any constructed wells you have described and any information that describes the precise location of the point of diversion/withdrawal.



Ownership: Below Part 3B. of the application, state whether you own the land(s) that contains the existing point(s) of diversion/withdrawal. If you do not own the land, provide the owner's name.

DO YOU OWN THE EXISTING AND PROPOSED POINT(S) OF DIVERSION/WITHDRAWAL?
EXISTING ☐ YES ☐ NO **PROPOSED** ☐ YES ☐ NO - IF NO, PROVIDE OWNER(S) NAME: _____

Example No. 4

4. Purpose of Use: You **must** complete Part 4 A., existing purpose of use, to have your application accepted

A. Existing

PURPOSE OF USE	GPM or CFS	ACRE-FT/YR	PERIOD OF USE
3 domestic uses	45	3	Throughout the year
Irrigation	150	45	April 1 to September 15

Example No. 5

In the spaces provided on the application, identify **all** the uses currently made of the water taken under the water right that you propose to change.

Purpose of Use: List each purpose of use currently made of the water right proposed for change. For example, "irrigation," "stockwater," and "municipal supply" are typical uses. If you are proposing a domestic use other than for a municipality, include the number of residences to be served in the description of the purpose of use. For example, if you propose to serve 10 homes, indicate this by entering "10 domestic uses" in the space provided.

GPM or CFS: State the rate of water actually used for each listed purpose. You **must** indicate whether the rate you have stated is in units of gallons per minute (GPM) or cubic feet per second (CFS) by circling the appropriate unit.

Acre-Feet/Yr: State the volume of water that is used during a calendar year in the unit of acre-feet for each listed purpose. One acre-foot is equal to 325,851 gallons or 43,560 cubic feet of water.

The volume of water that is reasonably required for beneficial use is highly variable from one water right to another. The number of acre-feet required depends upon the type of beneficial use, the geographic location of use, soil types, slope, and other case specific factors. The following are suggestions that may assist in estimating the volume of water used for purposes of filing your application. Ecology will also make a tentative determination of the extent of the existing water right that will include the number of acre-feet of water authorized per year.

For domestic water supplies, a reasonable estimate of use is 0.25 to 2 acre-feet per residence.

Acre-feet per year for uses that are continuous throughout a day of use at or near the maximum rate of diversion/withdrawal, may be estimated by multiplying the rate of diversion you have provided in GPM or CFS by the number of days that water is actually used each year:

_____ (GPM or CFS) multiplied by _____ number of days of actual water use during the period of use

Multiply your answer by 2 if the diversion is in CFS

Multiply your answer by 0.005 if the withdrawal is in GPM.

Period of Use: Identify the timeframe from the beginning month and day of use to the ending month and day of use, in which water is actually used for each listed purpose.

B. Proposed

Complete Part B. of Section 4, Purpose of Use, **only** if you are proposing to change or add uses of water authorized by your water right. If you are proposing to change the purpose of use, you **must** list **all** purposes for which you wish to use water. Follow the instructions provided by Part A of Section 4 to describe each intended water use under the proposed change.

5. Place of Use: The place of use is the lands on which water is actually used. You must describe the existing place of water use and, if you proposed a change/transfer of place of use or to add place of use, you must describe the proposed place of use. Follow the instructions below to complete Section 5 of the application:



6. Remarks and Other Relevant Information: Your application will be reviewed by several interested agencies and is available to the public for inspection. You may use this space to provide additional information or an explanation for your change proposal. Your remarks or explanation may include any information that you believe should be considered in the review of your application. You may also explain the reasons that you are proposing the change/transfer, for example, that you are updating your water distribution system or relocating a water well.

Please note: If you are submitting this application for a seasonal or temporary water right change, whether or not in conjunction with a permanent change or transfer, you must indicate the date that you desire the change/ transfer to be effective and the date that you desire the change/transfer to terminate. It is recommended that you submit your application as far in advance of the date you wish the change/transfer to be effective as possible.

7. Signatures: The applicant(s) must sign and date the application. In addition, the holder(s) of the water right and the owner(s) of the proposed place of use must sign and date the application if different than the applicant. Contact the appropriate regional office for more information. See below.

Submit your application to Ecology at: DEPARTMENT OF ECOLOGY
CASHIERING UNIT
PO BOX 47611
OLYMPIA, WA 98504-7611

Alternatively, you may submit your application to a Water Conservancy Board with jurisdiction. If you have questions about your application or whether a [Conservancy Board](#) with jurisdiction exists, contact the appropriate Water Resources Program regional office.

Water Resources Program regional boundaries and regional offices are located as follows:

Central Regional Office
1250 W. Alder Street
Union Gap, WA 98903-0009
(509) 575-2490

Eastern Regional Office
4601 N. Monroe Street
Spokane, WA 99205-1295
(509) 329-3400

Northwest Regional Office
3190 – 160th Avenue SE
Bellevue, WA 98008-5452
(425) 649-7000

Southwest Regional Office
PO Box 47775
Olympia, WA 98504-7775
(360) 407-6300



If you need this document in a format for the visually impaired, call the Water Resources Program at 360-407-6872. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.



Record of Decision Template/Form

Form:



(Board Name)
WATER CONSERVANCY BOARD
Application for Change/Transfer
Record of Decision

For Ecology Use Only	
Received:	Date Stamp
Reviewed by: _____	
Date Reviewed: _____	

Applicant: (applicant's name)

Application Number: (application number)

This record of decision was made by a majority of the board at an open public meeting of the (Board Name) Water Conservancy Board held on (date meeting was held). The undersigned board commissioners certify that they each understand the board is responsible "to ensure that all relevant issues identified during its evaluation of the application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the board's deliberations. These discussions must be fully documented in the report of examination." [WAC 173-153-130(5)] The undersigned therefore, certifies that each commissioner, having reviewed the report of examination, knows and understands the content of the report.

☐ **Approval:** The (board name) Water Conservancy Board hereby **grants** conditional approval for the water right transfer described and conditioned within the report of examination on (date report of exam was signed) and submits this record of decision and report of examination to the Department of Ecology for final review.

☐ **Denial:** The (board name) Water Conservancy Board hereby **denies** conditional approval for the water right transfer as described within the report of examination on (date report of exam was signed) and submits this record of decision to the Department of Ecology for final review.

Signed:

(Name), Chair
(Board Name) Water Conservancy Board

Date: _____

Approve ☐
Deny ☐
Abstain ☐
Recuse ☐
Other ☐

(Name), (Title)
(Board Name) Water Conservancy Board

Date: _____

Approve ☐
Deny ☐
Abstain ☐
Recuse ☐
Other ☐

(Name), (Title)
(Board Name) Water Conservancy Board

Date: _____

Approve ☐
Deny ☐
Abstain ☐
Recuse ☐
Other ☐

(Name), (Title)
(Board Name) Water Conservancy Board

Date: _____

Approve ☐
Deny ☐
Abstain ☐
Recuse ☐
Other ☐

(Name), (Title)
(Board Name) Water Conservancy Board

Date: _____

Approve ☐
Deny ☐
Abstain ☐
Recuse ☐
Other ☐

Mailed with all related documents to the Dept of Ecology (regional office name) Regional Office, and other interested parties on (date mailed).

If you have special accommodation needs or require this form in alternate format, please contact 360-407-6607 (Voice) or 711 (TTY) or 1-800-833-6388 (TTY).

Ecology is an equal opportunity employer

040-105(02/08)

Record of Decision No. (WR Change App Number)



Report of Examination Instructions and Form

Form and Instructions: These instructions are provided as a guide to water conservancy boards when writing a report of examination regarding a water right change application. *“It is the responsibility of the water conservancy board to ensure that all relevant issues identified during its evaluation of the application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the board's deliberations. These discussions must be fully documented in the report of examination.”* [WAC 173-153-130(5)] It is also the responsibility of the *board* to ensure that the final report complies with the minimum requirements as provided in the Water Conservancy Board rule, WAC 173-153-130(6).

INTRODUCTION

There are two distinct sections within the report of examination (ROE) form.

1. Front page – All information found on page 1 including the demographic and application identification information, “Background and Decision Summary”, “Description of proposed work”, and “Development Schedule”. *Each separate decision requires a unique and separate record of decision (ROD form) and report of examination front page form.*

2. Report (narrative) – All information found under the section “Report.”

FRONT PAGE

Demographic and Application Identification

1. Check a box to identify whether the application is for surface water or ground water.
2. Application received – Enter the date the application was accepted by the board.
3. Water right document number – Enter the water right document number, e.g., certificate, claim, permit number, etc.
4. Water right priority date – Enter the priority date of the water right, when water was first put to use.
5. Board assigned change application number – Enter the board assigned application number as described in WAC 173-153-070(11).
6. Name, address, city, state, zip – Enter the name and address of applicant.
7. Changes proposed – Check all box(es) that apply to the changes proposed in the application.
8. SEPA – Check a box identifying whether the application is exempt or non-exempt from SEPA. This section relates to the application only. How SEPA relates to the *project* will be addressed in the narrative report section.

Background and Decision Summary



1. Existing right (tentative determination) – Complete these boxes based on what is actually being used *right now*. Make a tentative determination as to the validity and extent of the right as it is currently being beneficially used.
2. Proposed use – Complete these boxes with the exact information as it is written on the application.
3. Board’s decision – Complete these boxes based on the board’s final decision. The board should determine what exactly is available for transfer including the instantaneous and annual quantities, place of use, point of diversion or withdrawal, and purpose of use and season of use.

Description of Proposed Works

Describe the water system the applicant intends to use with the proposed change such as irrigation system, pump type, etc.

Development Schedule

1. Begin project by this date – Identify the date when the applicant may begin the project. The board must consider that the applicant cannot begin until a final decision is made by Ecology. Potentially, this could be a minimum of 45 days or 75 days. It is recommended that the board also consider the 30 day appeal period when determining the beginning construction date.
[WAC 173-153-130(8)]
2. Complete project by this date – Identify the date when the project and works must be completed.
3. Complete change and put water to full beneficial use by this date – Identify the date when the applicant must complete the change and put all water to beneficial use as approved in the change application.

REPORT (NARRATIVE)

Writing a report of examination for more than one water right application

It is important that each water right file is able to stand alone. Each separate decision requires a separate map reflecting existing and proposed point(s) of diversion or withdrawal and place of use (RCW 90.03.260(7); WAC 173-153-070 (6)(c)).

However, when writing an ROE for more than one related water right change, the narrative “Report” section of the ROE, including background, comments/protests, investigation, conclusions, and decision, may summarize all the related rights in one report. The narrative can then be copied to accompany the related form. But, there cannot be just one document for all the applications; each file is required to have a separate document.

Writing a report of examination

Refer to WAC 173-153-130



The Water Conservancy Board rule is clear regarding the minimum information required when writing a report of examination. The information requested on the form is copied from the rule verbatim. *More information may be necessary than what is required in the rule and the need must be determined by the board on a case-by-case basis.* WAC 173-153-130(5) states, “It is the responsibility of the water conservancy board to ensure that all relevant issues identified during its evaluation of the application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the board's deliberations. These discussions must be fully documented in the report of examination.”

1. WAC 173-153-130 (6) requires the report of examination to consist of a form provided by Ecology and identified as Water Conservancy Board Report of Examination, form number 040-106, documenting and summarizing the basic facts associated with the decision.

2. Describe all information as required in each narrative section on the report of examination form as follows:

a. Background – Complete the background section as described on the form and also include any other information pertinent to the application.

b. Comments and protests – Complete the comments and protests section as described on the form and also include any other information pertinent to the application.

c. Investigation – Complete the investigation section as described on the form. Also, consider the unique characteristics of each application and include other information that may be pertinent to the decision such as:

i. The applicant's ownership interest in the water right, if multiple owners, describe how right is apportioned;

ii. The information the board used to quantify beneficial use under the right, including meter records, power data, aerial photos, crop type, crop irrigation requirement and efficiency estimates, declarations, etc;

iii. For claims, discuss historic beneficial use and when the beneficial uses were perfected;

iv. For permits, discuss the current development schedule and whether the water right is in good standing;

v. If a portion of the right is proposed for change, a tentative determination must be completed for the entire water right. The portion being changed should be described on the front sheet of the ROE;

vi. For changes where additional acres or new purposes of use are being added, calculate the annual consumptive quantity. Describe the years used to determine the ACQ and the source of the data;

vii. Water rights in the vicinity that may be impaired by the proposed transfer, including an evaluation of impacts on the closest/relevant water rights;

viii. If groundwater rights have the potential to be impaired by the proposed transfer, reference and attach appropriate well logs;



ix. For surface to ground transfers, discuss continuity between sources.

d. Conclusions – Complete the conclusions section as described on the form. Also, consider the unique characteristics of each application and include other information that may be pertinent to the decision such as: For surface to ground transfers where the surface sources was not always available (e.g. some tributary streams), discuss the potential for enlargement of the right.

e. Decision – Complete the decision section as described on the form. Also, consider the unique characteristics of each application and include other information that may be pertinent to the decision such as: When only a portion of the right is changed, include a description of how superseding documents should issue to each owner including the characteristics of each right, e.g. place, purpose, quantities.

f. Provisions – Complete the provisions section as described on the form. Also, consider the unique characteristics of each application and include other information that may be pertinent to the decision such as measurement/metering, screening, etc.





Board Name: _____
WATER CONSERVANCY BOARD
Application for Change/Transfer
OF A RIGHT TO THE BENEFICIAL USE OF THE PUBLIC WATERS OF
THE STATE OF WASHINGTON

REPORT OF EXAMINATION

NOTE TO APPLICANT: Pursuant to WAC 173-153-130(8), the applicant is not permitted to proceed to act on the proposal until Ecology makes a final decision affirming, in whole or in part, the board's recommendation. It is advised that the applicant not proceed until the appeal period of Ecology's decision is complete.

NOTE TO AUTHOR: Read the instructions for completing a water conservancy board report of examination. [Use the Tab key to move through the form or with your mouse, select the fields to enter information.](#)

☐ Surface Water ☐ Ground Water

Date Application Received	Water Right Document Number (i.e., claim, permit, certificate, etc.)	Water Right Priority Date	Board-Assigned Change Application Number
Name	Phone	Email	
Address (street)	City	State	Zip
Changes Proposed: <input type="checkbox"/> Change purpose <input type="checkbox"/> Add purpose <input type="checkbox"/> Add irrigated acres <input type="checkbox"/> Change point of diversion/withdrawal <input type="checkbox"/> Add point of diversion/withdrawal <input type="checkbox"/> Change place of use <input type="checkbox"/> Other (Temporary, Trust, Interties, etc.)			
SEPA: The board has reviewed the provisions of the State Environmental Policy Act of 1971, Chapter 43.21C RCW and the SEPA rules, chapter 197-11 WAC and has determined the application is: <input type="checkbox"/> Exempt <input type="checkbox"/> Not Exempt			

BACKGROUND AND DECISION SUMMARY

Please include a map(s) reflecting all referenced existing and proposed point(s) of diversion or withdrawal and place(s) of use (RCW 90.03.260(7); WAC 173-153-070 (6)(c).

Existing Right (Tentative Determination)

Maximum cub ft/second	Maximum gal/minute	Maximum acre-ft/yr	Describe Type(s) of use, and period(s) of use				
Source			Tributary of (if surface water)				
At a Point Located: Parcel No.	1/4	1/4	Section	Township N.	Range	WRIA	County
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED							
Type detailed legal description of the place of use:							
Parcel no.	1/4	1/4	Section	Township N.	Range	WRIA	County

Proposed Use

Maximum cub ft/second	Maximum gal/minute	Maximum acre-ft/yr	Describe Type(s) of use, and period(s) of use				
Source			Tributary of (if surface water)				
At a point located: Parcel no.	1/4	1/4	Section	Township N.	Range	WRIA	County
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED							
Type detailed legal description of the place of use:							
Parcel no.	1/4	1/4	Section	Township N.	Range	WRIA	County

ECY 040-106 (08/2015) To request ADA accommodation including materials in a format for the visually impaired, call Ecology Water Resources Program 360-407-6872. Persons with impaired hearing may call Washington Relay Service at 711. Persons with speech disability may call TTY at 877-833-6341.



Board's Decision on the Application

Maximum cub ft/second	Maximum gal/minute	Maximum acre-ft/yr	Describe Type(s) of use, and period(s) of use				
Source			Tributary of (if surface water)				
At a point located: Parcel no.	1/4	1/4	Section	Township N.	Range	WRIA	County
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED							
Type detailed legal description of the place of use:							
Parcel no.	1/4	1/4	Section	Township N.	Range	WRIA	County

Description of Proposed Works

Description of water diversion/withdrawal, conveyance, and distribution system:

Development Schedule

Begin project by this date (At least 75 days after Board's ROD issuance):	Complete project by this date:	Complete change & put water to full use by this date:
---	--------------------------------	---

Report

NOTE TO AUTHOR: This form reflects the minimum regulatory requirements as required in WAC 173-153-130(6). In accordance with WAC 173-153-130(5), "It is the responsibility of the water conservancy board to ensure that all relevant issues identified during its evaluation of the application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the board's deliberations. These discussions must be fully documented in the report of examination." **Completion solely of the minimum regulatory requirements may not constitute a fully documented decision.**

BACKGROUND [See WAC 173-153-130(6)(a)]

On Month: _____, day: _____, year: _____.

Name of applicant: _____ of City: _____ State: _____ filed an application for change (to do what e.g., POU, POD, POW, etc) _____ under (Water right number, e.g., certificate, permit, claim, superseding document #, cert of change #): _____. The application was accepted at an open public meeting on Month: _____, day: _____, year: _____, and the board assigned application number(XXXX-YR-##): _____.

Attributes of the water right as currently documented

Name on certificate, claim, permit: _____
 Water right document number (e.g., cert #, claim #, permit #, superseding document #): _____
 As modified by certificate of change number: _____
 Priority date, first use Date of priority or claimed date water was originally first put to beneficial use : _____
 Water quantities: Qi (Instant qty): _____ Qa (Annual qty): _____ acre ft./ year
 Source (well, river, etc): _____
 Point of diversion/withdrawal (Distance from 1/4 1/4, Section, Township, Range EWM): _____
 Purpose of use: _____ Number of Acres if Irrigation: _____
 Period of use: _____
 Place of use: _____
 Existing provisions (family farm act, interruptable, etc.): _____

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Tentative determination of the water right

The tentative determination is provided on the front page of this report.

History of water use

Describe the historical water use information that was considered by the board:

Previous changes

Describe any previous change decisions associated with the water right:

SEPA

The board has reviewed the proposed project in its entirety (Provide a detailed explanation of how the board complied with the State Environmental Policy Act):

Other

Provide any other pertinent information relative to the background of this water right:

The information or conclusions in this section were authored and/or developed by (Name of Person):

COMMENT AND PROTESTS [See WAC 173-153-130(6)(b)]

Public notice of the application was given in the (Name of Publication(s): _____
on Dates Published: _____. Protest period ended on (end date of protest period): _____

There were **# or no** _____ protests received during the 30 day protest period. In addition, **no or #** _____ oral and written comments were received at an open public meeting of the board or other means as designated by the board.

Date (protest/comment received): _____

This was recognized by the board as a ☐ Protest ☐ Comment

Name/address of protestor/commenter: _____

Issue (describe issues raised): _____

Board's analysis (board's response to the protest/comment): _____

NOTE to author: *Repeat this table as necessary to describe each protest or comment*

Other

Provide any other pertinent information relative to the comments and protests receive:

The information or conclusions in this section were authored and/or developed by (Name of Person):

ECY 040-106 (08/2015) To request ADA accommodation including materials in a format for the visually impaired, call Ecology Water Resources Program 360-407-6872. Persons with impaired hearing may call Washington Relay Service at 711. Persons with speech disability may call TTY at 877-833-6341.



INVESTIGATION [See WAC 173-153-130(6)(c)]

The following information was obtained from a site inspection conducted by (person(s)): _____
on (date of field exam): _____, technical reports, research of department records (list other references, if any)
_____ and conversations with the applicant and/or other interested parties.

Proposed project plans and specifications

Describe proposed use of water to include # of connections, method of irrigation, type of crop, commercial use, etc. Also describe any issues related to development, such as the proposed development schedule and an analysis of the effect of the proposed transfer on other water rights, pending change applications & instream flows established under state law.

Other water rights appurtenant to the property (if applicable)

Describe any other water rights or other water uses associated with both the current and proposed place of use and an explanation of how those other rights or uses will be exercised in conjunction with the right proposed to be transferred.

Public Interest (groundwater only)

The proposed transfer is subject to RCW 90.44.100 and therefore, cannot be detrimental to the public interest, including impacts on any watershed planning activities. Provide an analysis of the transfer as to whether it is detrimental to the public interest, including impacts on any watershed planning activity. Public interest is not considered if the proposed water right is authorized under RCW 90.03.380 exclusively.

Tentative Determination

In order to make a water right change decision, the Board must make a tentative determination on the validity and extent of the right. The Board has made the tentative determination as displayed upon the first page of this report. There are several circumstances that can cause the board's tentative determination to differ from the stated extent of the water right within water right documentation. Water right documents attempt to define a maximum limitation to a water right, rather than the actual extent to which a water right has been developed and maintained through historic beneficial use. Additionally, except for a sufficient cause pursuant to RCW 90.14.140, water rights, in whole or in part, not put to a beneficial use for five consecutive years since 1967 may be subject to relinquishment under Chapter 90.14.130 through 90.14.180 RCW. Water rights may additionally be lost through abandonment. The Board's tentative determination was based upon the following findings. Describe any information indicating that an existing water right or portion of a water right has been relinquished or abandoned due to nonuse and the basis for the determination.

Geologic, Hydrogeologic, or other scientific investigations (if applicable)

Describe the results of any geologic, hydrogeologic, or other scientific investigations that were considered by the board and how this information contributed to the board's conclusions.

ECY 040-106 (08/2015) To request ADA accommodation including materials in a format for the visually impaired, call Ecology Water Resources Program 360-407-6872. Persons with impaired hearing may call Washington Relay Service at 711. Persons with speech disability may call TTY at 877-833-6341.



Other

Provide any other pertinent information relative to the investigation of this application.

The information or conclusions in this section were authored and/or developed by (Name of Person):

CONCLUSIONS [See WAC 173-153-130(6)(d)]

Tentative determination (validity and extent of the right)

Describe whether, and to what extent, a valid water right exists.

Relinquishment or abandonment concerns

Describe any relinquishment or abandonment of the water right associated with the water right transfer application as discussed in the investigation section of this report.

Hydraulic analysis

Describe the result, as adopted by the board, of any hydraulic analysis done related to the proposed water right transfer.

Consideration of comments and protests

Discuss the board's conclusions of issues raised by any comments and protests received.

Impairment

Describe how or if the transfer proposal will impair existing rights of others.

Public Interest

If the proposed transfer is authorized pursuant to RCW 90.44.100, describe whether it is detrimental to the public interest. Public interest shall not be considered if the proposed transfer is authorized pursuant to RCW 90.03.380 exclusively.

Other

The board also considered the previous provisions associated with the water right as identified in the background section of this report when making its decision. Provide any other pertinent information relative to the board's conclusions.

ECY 040-106 (08/2015) To request ADA accommodation including materials in a format for the visually impaired, call Ecology Water Resources Program 360-407-6872. Persons with impaired hearing may call Washington Relay Service at 711. Persons with speech disability may call TTY at 877-833-6341.



DECISION [See WAC 173-153-130(6)(e)]

Provide a complete description of the board's decision, fully and comprehensively addressing the entire application proposal.

Provide any other pertinent information relative to the board's decision

The information or conclusions in this section were authored and/or developed by (Name of Person):

PROVISIONS [See WAC 173-153-130(6)(f)]

Conditions and limitations

Identify any conditions and limitations recommended as part of an approved transfer, and/or any other corrective action necessary to maintain the water use in compliance with state laws and regulations.

Mitigation (if applicable)

Describe any requirement to mitigate adverse effects of the project. Mitigation may be proposed by the applicant or the board and be required in the board's decision.

Construction Schedule

Provide a schedule for development and completion of the water right transfer, if approved in part or in whole that includes a definite date for completion of the transfer and application of the water to an authorized beneficial use.

Other

Provide any other pertinent information relative to provisions

The information or conclusions in this section were authored and/or developed by (Name of Person):

The undersigned board commissioner certifies that he/she understands the board is responsible "to ensure that all relevant issues identified during its evaluation of the application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the board's deliberations. These discussions must be fully documented in the report of examination." [WAC 173-153-130(5)] The undersigned therefore, certifies that he/she, having reviewed the report of examination, knows and understands the content of this report and concurs with the report's conclusions.

Signed at _____, Washington
(City)

This _____ day of _____, _____
Date (Day) (Month) (Year)

Name of Board Representative: _____

Name of Water Conservancy Board: _____

Signature: _____

ECY 040-106 (08/2015) To request ADA accommodation including materials in a format for the visually impaired, call Ecology Water Resources Program 360-407-6872. Persons with impaired hearing may call Washington Relay Service at 711. Persons with speech disability may call TTY at 877-833-6341.



Withdrawal of Record of Decision and Report of Examination

Form:

Date

To: Department of Ecology

From: (Board Name) Water Conservancy Board

Re: Withdrawal of Record of Decision and Report of Examination

A meeting of the (Board Name Water Conservancy Board was conducted in compliance with Chapter 42.30 RCW at (location of meeting) on (date).

The board had previously issued a Record of Decision and Report of Examination on (date decision issued) in the matter of Application for Change/Transfer No. (application number) filed by (applicant name). At the meeting mentioned above and by a majority vote, the board withdrew the referenced issued Record of Decision and Report of Examination for the following reason(s):

(Reasons for withdrawing)

The withdrawal of the referenced Record of Decision and Report of Examination is effective as of the adjournment of the meeting of the board during which it was adopted. Upon Ecology concurrence to this withdrawal, the Ecology review period provided by RCW 90.80.080 is terminated without prejudice for the referenced application for change/transfer.

The applicant (did or did not) participate in the meeting and (concur or does not concur) with the withdrawal of the board's previous decision.

The board adopts the following plan for action on the application (*check one*):

- ☐ The board intends to revise and resubmit for Ecology review the record of decision and report of examination for the subject application.
- ☐ The board will take no further action on the subject application and has informed the applicant that the application may be filed with Ecology for processing.

Information relevant to the board's withdrawal action and a record of the Board's vote in this matter are attached.

ECY 040-107 (Revised 11-12) If you need this document in a format for the visually impaired, call Water Resources Program at 360-407-6872. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.





Water Resources Program
Application for Change/Transfer
Decision to Withdraw a Record of
Decision and Report of Examination

FOR ECOLOGY USE ONLY

Date Stamp

Reviewed by: _____
Date Reviewed: _____

WATER CONSERVANCY BOARD: (Board Name)

Applicant: (applicant's name)

Application Number: (application number)

The (Board name) Water Conservancy Board hereby **withdraws** the Record of Decision and the Report of Examination for the entitled water right transfer issued on (date Record of Decision was signed) in accordance with the accompanying resolution of the board and submits this resolution to the Department of Ecology.

It is understood that with the concurrence of Ecology to this withdrawal, that the decision review period provided by RCW 90.80.080 for Ecology review of the previous decision of the board is terminated without prejudice. No board decision regarding the titled application for change/transfer is before Ecology for review.

Signed:

_____ (Name), Chair (Board Name) Water Conservancy Board	Date: _____	Approve <input type="checkbox"/> Deny <input type="checkbox"/> Abstain <input type="checkbox"/> Recuse <input type="checkbox"/> Other <input type="checkbox"/>
_____ (Name), (Title) (Board Name) Water Conservancy Board	Date: _____	Approve <input type="checkbox"/> Deny <input type="checkbox"/> Abstain <input type="checkbox"/> Recuse <input type="checkbox"/> Other <input type="checkbox"/>
_____ (Name), (Title) (Board Name) Water Conservancy Board	Date: _____	Approve <input type="checkbox"/> Deny <input type="checkbox"/> Abstain <input type="checkbox"/> Recuse <input type="checkbox"/> Other <input type="checkbox"/>
_____ (Name), (Title) (Board Name) Water Conservancy Board	Date: _____	Approve <input type="checkbox"/> Deny <input type="checkbox"/> Abstain <input type="checkbox"/> Recuse <input type="checkbox"/> Other <input type="checkbox"/>
_____ (Name), (Title) (Board Name) Water Conservancy Board	Date: _____	Approve <input type="checkbox"/> Deny <input type="checkbox"/> Abstain <input type="checkbox"/> Recuse <input type="checkbox"/> Other <input type="checkbox"/>

Mailed to the Department of Ecology (regional office name) Regional Office of Ecology, via certified mail, and other interested parties on (date mailed).

ECY 040-107 (Revised 11-12) If you need this document in a format for the visually impaired, call Water Resources Program at 360-407-6872. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.



Water Conservancy Board Annual Report

Form:



Reporting Year (ending October 31st): _____
**Water Conservancy Board Report
to Ecology & the Legislature**

All fields must be completed. Double-click on each gray rectangle and enter response in the 'Default Text' field or select from the drop down list where provided. Use '0' or 'none' where necessary.

Date established	Board Contact	Date of Report
(MM/DD/YYYY)	Mailing Address:	
	City, State & Zip:	
	Primary Contact:	
	Phone:	
	Email:	

Position	Commissioners (*) = Chair	Term Expires	Change in Membership (Vacant, Current, New, Term Ended, Resigned, None)
1			
2			
3			
4			
5			
Alternate - 1			
Alternate - 2			
Alternate - 3			
Admin Staff Name / Contact Info			
Volunteers			
Water Conservancy Board Operations			
Regular meeting schedule			
Regular meeting location address			
Current fee(s) for processing application			
Changes to previously set fees	<input type="checkbox"/> No <input type="checkbox"/> Yes – Amount:		
WCB property ownership?	<input type="checkbox"/> No <input type="checkbox"/> Yes – Describe:		
Trust water / water bank activities?	<input type="checkbox"/> No <input type="checkbox"/> Yes – Describe:		
WCB involvement in litigation?	<input type="checkbox"/> No <input type="checkbox"/> Yes – Describe:		
Water Conservancy Board Training			
Title of Training	Date(s) (MM/DD/YYYY)	Sponsor	#WCB Members attending



Application Data Breakout		#	
Estimated pre-application consultations or contacts	With board		
	With individual board commissioners		
Applications for	Groundwater transfers		
	Surface water transfer		
	Surface to groundwater		
	Groundwater to surface water		
Total applications accepted by the Board	Conveyed from Ecology		
	Filed originally with WCB		
	Total applications accepted		
Proposing transfer related to	Certificates		
	Permits		
	Water right claims		
	Court claims or other documents		
	Trust water		
Total withdrawn or declined	Applications		
	Records of Decision		
	Reports of Examination		
	Withdrawn by applicant		
	Withdrawn by board for reconsideration		
	Board declined to process		
Hearings in other counties (Describe each)			
Record of Decisions by WCB for Reporting Year:			
# Approved		# Withdrawn from Ecology	
# Modified		# Remanded back to board	
# Denied		# Appealed to PCHB	
Total # of decisions (Sum of all RODs)			
Total # of applications for surface water			
Total # of application for ground water			
Total # decisions to transfer to trust water			



Water Conservancy Board Training Credit Request

Form:



Water Resources Program **Water Conservancy Board** **Training Credit Request**

FOR ECOLOGY USE

(Date Stamp)

Training Hours Credited: _____

Send completed form to: Department of Ecology, Water Resources Program,
Water Conservancy Board Coordinator, PO Box 47600 Olympia, WA 98504-7600
Fax# 360-407-7162

Board Member Information:		
Name:	Phone No:	Other No:
Board Name:	Appointment Date:	
Email Address (optional):		

Training Activity Information:		
Title of Training Activity:		
Training Location	City:	State:
Training Activity Date(s):	Total Hours:	
Content/Description: (Attach course documentation if available or summary of activity)		
How does this training relate to your work on the Water Conservancy Board?		
Sponsor of activity: <input type="checkbox"/> Other State Agency <input type="checkbox"/> Federal Government <input type="checkbox"/> Educational Institute <input type="checkbox"/> Other: (Please list agency):		
Instructor type: <input type="checkbox"/> Contractor Instructor <input type="checkbox"/> Author of Reading Material <input type="checkbox"/> Ecology Employee <input type="checkbox"/> State Employee <input type="checkbox"/> Federal Employee <input type="checkbox"/> College Instructor <input type="checkbox"/> Other/Unknown Instructor's or Author's Name (if known):		

Signature:		
Date	Printed Name	Signature



References/Index of Terms

Common Terms and Definitions

Abandonment: The intentional relinquishment of a water right. Intent is determined with reference to the conduct of the parties. The burden of proof of abandonment is on the party alleging abandonment. Nonuse is not necessary abandonment. The general rule of Western water law is that nonuse is evidence of intent to abandon, and long periods of nonuse raise a rebuttable presumption of intent to abandon, thus shifting the burden of proof to the holder of the water right to explain reasons for the nonuse. [AAG summary, *Okanogan Wilderness v. Town of Twisp*, 133 Wn.2d 769, 947 P.2d 732 (1997)]

Additive: A water right for either annual or instantaneous quantities of water that are added to an existing water right.

*For example: A well (Water Right G2-11111) is reconstructed and a larger pump installed to allow a water system to meet fire flow needs and accommodate additional homes. A second water right (G2-22222) is issued for additional Qa and Qi from the well, which is **additive** to G2-11111.*

Adjudicated Certificate: A paper issued by the state based on the superior court findings. It documents a water right that defines instantaneous quantity, annual quantity, purpose, place of use, and season of use as perfected at a specific point in time. The adjudicated certificate documents a final determination of the water right attributes based on the beneficial use.

Adjudication: Legal process carried out in superior court to identify the extent, validity, and priority of water rights within a basin or basins.

Alternate: A water right that can be used either instead of, or simultaneously with, another water right. Alternate rights authorize a substitute point of diversion or withdrawal under a second water right to meet or augment an existing water right. The water user is allowed to determine which right to use. An alternate water right generally does not have an annual quantity that is additive to other water rights, and can have an instantaneous quantity that is either additive or non-additive depending on the needs of the project. Alternate water rights are typically associated with municipal water supply purpose of use.

*For example: A municipality has Water Right G2-33333 for Well 1. During the summer, the well does not produce enough instantaneous flow to meet the peak demands of the system. Water Right G2-44444 is issued for additive instantaneous quantity from Well 2, which is a deeper, better producing well. Well 2 can be used simultaneously or **alternately** with Well 1, but the*



sum of water from the two sources cannot exceed the total annual quantity originally issued under Well 1.

Beneficial Use: A reasonable use of water for domestic, stock watering, industrial, commercial, agricultural, irrigation, hydroelectric power production, mining, fish and wildlife maintenance and enhancement, recreational, and thermal power production purposes, and preservation of environmental and aesthetic values, and all other uses compatible with the enjoyment of the public water of the state, are declared to be beneficial. (RCW 90.54.020; Grimes)

Certificate: A state issued paper documenting a water right that defines instantaneous quantity, annual quantity, purpose, place of use, and season of use as perfected at a specific point in time. The document reflects the investigation and tentative determination for extent and validity conducted by Ecology or a predecessor agency.

Claim: It is just a person's claim to water use with no verification. A form filed during one of four claim filing periods by a person using or claiming the right to withdraw or divert water and make beneficial use of public surface or ground waters of the state prior to the water code (1917 - surface; 1945 - ground). (RCW 90.14.041) The document reflects only what a person claims to be using at the time of filing the claim form. **No** adjudication or verification of water use has been determined. Ecology has no enforcement authority over a claim until adjudication has been completed.

Extent and Validity: Investigation of a water right that reveals 1) whether (validity) and 2) how much (extent) a water right has historically been put to beneficial use. The tentative determination is made based on this investigation.

Ground Water: All water that exist beneath the land surface or beneath the bed of any stream, lake or reservoir, or other surface water body in which such water stands or flows, percolates or otherwise moves. (RCW 90.44.035)

Hydraulic Continuity: The interchange of surface and ground water.

Impact: Influence or effect. With water use, there may be an effect on the water source but other water rights are not impaired from being exercised.

Impairment: Diminish in ability, value, etc., weaken or damage. With water rights, a person's water right can no longer be exercised as a result of other water uses.



Inchoate: Permitted water that has not been put to beneficial use.

Natural Ground Water: Water that exists in underground storage owing wholly to natural processes. (RCW 90.44.035)

Non-Additive: A water right for either annual or instantaneous quantities of water that does not increase the water available in existing water rights.

For example: In the "alternate" example above, Water Right G2-44444 was issued for additive instantaneous quantity, and non-additive annual quantity.

Perfection: A water right is perfected when it has been put to beneficial use.

Permit: A state issued paper documenting the construction schedule to develop a water right project and identifying the approved limits of water use. Once the permitted project is fully constructed a certificate may be issued based on the extent to which the water right is beneficially used

Permit Exempt: Any withdrawal of public ground waters for stock-watering, up to ½ acre of lawn or noncommercial garden, single or group domestic not exceeding 5,000 gallons per day, or for an industrial purpose not exceeding 5,000 gallons per day used beneficially used regularly. (RCW 90.44.050)

Primary Water Right: A water right that must be used to the fullest extent possible before a standby/reserve water right can be exercised.

*For example: Water Right S2-55555 was issued for irrigation of an orchard from Rushing Stream. However, in late summer, the stream dries up and water is unavailable. Water Right G2-66666 is issued to authorize a well to supply irrigation needs only when the **primary** right (S2-55555) can't be used. Water Right S2-55555 must be used to the extent water is available from Rushing Stream before G2-66666 can be used to augment the supply.*

Prior Appropriation Doctrine: Based upon actual water use; not tied to land/water relationship; senior rights satisfied first; State water code relies upon the principles of this doctrine.

Reclaimed Water: .Reclaimed water is derived from domestic wastewater and small amounts of industrial process water or stormwater. The process of reclaiming water, sometimes called water recycling or water reuse, involves a highly engineered, multi-step treatment process that speeds up nature's restoration of water quality. The process provides a high-level of



disinfection and reliability to assure that only water meeting stringent requirements leaves the treatment facility.

Relinquishment: Any person or entity entitled to divert or withdraw state that abandons or voluntarily fails without sufficient cause, to beneficially use all or any part of the right for any period of five successive years after July 1, 1967. (RCW 90.14.160; 90.14.170; 90.14.180)

Riparian Doctrine: A right to use water that abuts or is contained with land ownership. The water is shared equally with other riparians. The Riparian Doctrine expired in Washington in 1932.

Source: A point of diversion or withdrawal authorized by a water right, not to be confused with a "same body of groundwater" under RCW 90.44.100, "same source of supply" under RCW 90.03.265 or other such references.

Standby/Reserve: A water right that can only be used when the primary water right goes unfilled or cannot satisfy an authorized use during times of drought or other low flow periods. A primary right must be used to the extent available before a standby/reserve right is used.

For example: As referenced in the definition of "primary" above, the well that was constructed under Water Right 62-66666 is issued as Standby/Reserve, to be used when the primary right cannot be exercised (in whole or in part). ("Standby" and "Reserve" are addressed in RCW 90.14.140(2)(b) under relinquishment exemptions.)

Surface Water: Water that appears above ground or flowing on the ground including springs, lakes, and rivers, and creeks.

Tentative Determination: Ecology makes a tentative determine about the validity and extent of existing rights for the purpose of issuing new water right permits. [Rettkowski vs. Dept. of Ecology, 219 122 Wn.2d 219, 858 P.2d 232 (1993)] The Twisp case [Okanogan Wilderness vs. Town of Twisp, 133 Wn.2d 769, 947 P.2d 732(197)] and Sullivan Creek [Pend Oreille PUD #1 vs. Ecology] extends tentative determination authority to water right changes.

Trust Water Right: Any water right acquired by the state under RCW 90.42 for management in the state's trust water rights program. Trust water rights acquired by the state shall be held or authorized for use by the department for instream flows, irrigation, municipal, or other beneficial uses. There are various methods for putting water into trust either permanently or temporarily.(RCW 90.42.020; **90.42.040**)



Usufructuary Right: Right that allows the use of property that belongs to another. Water is considered to be held by the public with other property owners holding rights to its use it. Restrictions vary under various state water law.

Water Resource Inventory Area (WRIA): Water Resource Inventory Areas (WRIA) were formalized under Washington Administrative Code (WAC) 173-500-040 and authorized under the Water Resources Act of 1971, Revised Code of Washington (RCW) 90.5 4. Ecology was given responsibility for the development and management of these administrative and planning boundaries. These boundaries represent the administrative under pinning of this agency's business activities. The original WRIA boundary agreements and judgments were reached jointly by Washington's natural resource agencies Ecology, Department of Natural Resources, and Washington Department of Fish and Wildlife in 1970 and were updated in 1998 and 2000.

Water Right: A right to the beneficial use of a reasonable quantity of public water for a beneficial purpose during a certain period of time that occurs at a certain place. A water right holder uses water to the exclusion of others. (Water Conservancy Board Training materials)

Water Right Transfer: A transfer, change, amendment, or other alteration of a part of or all of a water right. (RCW 90.80.010)

Acronyms

ACQ: Annual Consumptive Quantity

ASR: Artificial Storage and Recovery

CELP: Center for Environmental Law and Policy

CREP: Conservation Resource Enhancement Program (USDA program to replace riparian vegetation)

CRWRP: Columbia River Water Resources Program

CRP: Conservation Reserve Program (USDA program to halt irrigation for a period of time)

DFD: Determined Future Development

EIS: Environmental Impact Statement

ESA: Environmental Species Act



ERTS: Environmental Report Tracking System

CFS: Cubic Feet per Second

GMAP: Government Management Accountability and Performance

GPM: Gallons per Minute

GWIS: Geographic Water Right Information System

IPT: Internal Policy Team

IRPP: Instream Resource Protection Plan

ISF: Instream Flows

MWL: Municipal Water Law

OCPI: Overriding Consideration of the Public Interest

PCHB: Pollution Control Hearings Board

PLT: Program Leadership Team

PMT: Program Management Team

Qa: Annual Quantity

Qi: Instantaneous Quantity

RCW: Revised Code of Washington

ROD: Record of Decision

ROE: Report of Examination

SAR: Shallow Aquifer Recharge

TRS: Township, Range, and Section

WAC: Washington Administrative Code

WCB: Water Conservancy Board

WIG: Washington Irrigation Guide

WRAC: Water Resources Advisory Committee

WRIA: Water Resource Inventory Area

WRTS: Water Right Tracking System

