CASE NO. 318532

IN THE COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, DEPARTMENT OF NATURAL RESOURCES,

Respondent.

v.

PUBLIC UTILITY DISTRICT NO. 1 OF KLICKITAT COUNTY, a Washington municipal corporation,

Appellant,

APPELLANT'S REPLY BRIEF

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I. INTRODUCTION

> This calls to mind what Judge Friendly described as Felix Frankfurter's 'threefold imperative to law students' in his landmark statutory interpretation course: '(1) Read the statute; (2) read the statute; (3) read the statute!'

In re England, 375 F.3d 1169, 1182 (D.C. Cir. 2004).

The question before the Court is a narrow one of statutory interpretation. DNR argues that the term "person" actually means "municipal corporation," so that the legislature intended the phrase "person, firm, or corporation" to include municipal corporations. As discussed below, two syllogisms, and the text of the statute itself, establish that the statutory phrase "person, firm, or corporation" in RCW 76.04.495 does not include municipal corporations, such as KPUD.

1 a) The statute provides for a cause of action by DNR for recovery of fire suppression costs against a negligent "person, firm, or corporation".

1 b) The statute provides that the enforcement mechanism is DNR "shall have a lien" on the property of the "person, firm, or corporation".

1 c) Therefore, a "person, firm, or corporation" must be an entity which is legally capable of having a lien placed upon its property.

2 a) The property of municipal corporations, such as KPUD, is public property.

2 b) It is well-settled Washington law that no lien may be placed upon public property.

2 c) Therefore, a "person, firm, or corporation" cannot include a municipal corporation, such as KPUD.

If the phrase "person, firm, or corporation" cannot include municipal corporations such as KPUD, then the analysis need proceed no further, unless the Eighteenth Legislature in 1923, which enacted the "person, firm, or corporation" language in the statute, intended to *sub silentio* abrogate the long-standing principle that no lien may be placed upon public property.

DNR, as anticipated within KPUD's initial brief (pages 27-32), argues that within the phrase "person, firm, or corporation," a municipal corporation is not a "corporation," but a "person." DNR justifies this interpretation by reference to RCW 1.16.080(1).[1]

DNR's proffered interpretation of RCW 76.04.495 by way of RCW 1.16.080(1) is contrary to several canons of statutory construction. Moreover, reference to RCW 1.16.080(1) does not solve the 'lien conundrum' described above. Since a "person, firm, or corporation" must be an entity legally capable of having a lien placed upon its property, and

[1] The statute provides: "(1) The term 'person' may be construed to include the United States, this state, or any state or territory, or any public or private corporation or limited liability company, as well as an individual."

since the property of KPUD, a municipal corporation, is public property, the statute, as written, cannot apply to public entities such as KPUD.

The only alternative to KPUD's interpretation of the statute would "create an absurd result,"[2] namely, a *sub silentio* abrogation of the fundamental principle of Washington law which forbids liens on public property. Given the lien language which modifies the entire statutory phrase "person, firm or corporation", it does not matter whether DNR argues KPUD is a "person," a "firm," or a "corporation"; none of the terms within the quoted phrase can apply to public entities or public property as a matter of law.

Finally, DNR's public policy contentions are without merit. There is no question that municipal corporations, such as KPUD, are potentially liable at common law for negligence. The question before the Court does not concern a common law damages claim for a negligently-caused fire. Instead, the only cause of action brought against KPUD, and the only question before the Court, is a narrow one of the interpretation of an agency cost recovery and lien statute.

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[2] *See Pub. Util. Dist. No. 1 of Okanogan Cy. v. State*, 174 Wn. App. 793, 807, 301 P.3d 472 (2013) ("But following this logic, [the statute] would have meaningless terms that would create an absurd result.").

II. ARGUMENT

A. The 1923 Legislature Did Not *Sub Silentio* Abrogate the Doctrine that No Lien May Be Placed Upon Public Property. By Its Terms, RCW 76.04.495 is Inapplicable to Public Entities.

The fire suppression cost recovery statute, RCW 76.04.495, provides:

> (1) **Any person, firm, or corporation**...Whose negligence is responsible for the starting or existence of a fire which spreads on forest land... **shall be liable** for any reasonable expenses made necessary...
>
> (2) **The** department or **agency** incurring such expense **shall have a lien** for the same **against any property of the person, firm, or corporation liable under subsection (1)** of this section[.] (emphasis added).

A statute must not be interpreted in a way that renders any portion meaningless or superfluous. *Jongeward v. BNSF Ry.*, 174 Wn.2d 586, 602, 278 P.3d 157 (2012). "A fundamental canon of construction holds a statute should not be interpreted so as to render one part inoperative." *Davis v. State ex rel. Dep't of Licensing*, 137 Wn.2d 957, 969, 977 P.2d 554 (1999)).

Here, the phrase "person, firm, or corporation" is expressly used synonymously within the two subsections of RCW 76.04.495; subsection 2 provides that DNR "shall have a lien" for its expenses "against any property of the person, firm, or corporation liable under subsection (1)[.]". "Person, firm, or corporation" has the same meaning in both subsections.

Therefore, a "person, firm, or corporation" must be an entity whose property is legally capable of having a lien placed upon it.

It is undisputed that KPUD is a public corporation, and that the property of KPUD is public property.

"Our Supreme Court has held, without exception, that public property is not subject to any lien." *Hazelwood v. Bremerton*, 137 Wn. App. 872, 884, 155 P.3d 952 (2007) (internal citation omitted). "Washington courts continue to follow this precedent." *Id.* (internal citations omitted). Furthermore, the "Legislature is presumed to know the law in the area in which it is legislating, and statutes will not be construed in derogation of the common law absent express legislative intent to change the law." *Wynn v. Earwin*, 163 Wn.2d 361, 371, 181 P.3d 806 (2008).

> In construing...a statute, the court must examine the purpose [and] the historical background...If a statute is in derogation of a common law principle, it is to be construed strictly. If a statute substantially alters a common law principle, the intent to do so must be apparent from an express declaration, legislative history or the words themselves.

State v. A.N.W. Seed Corporation, 116 Wn.2d 39, 45, 802 P.2d 1353 (1991) (internal citation omitted).

Since a "person, firm, or corporation" must be an entity legally capable of having a lien placed upon its property, and because KPUD, a public corporation with public property, is not subject to liens under

longstanding Washington law, either the phrase "person, firm, or corporation" within RCW 76.04.495 cannot include public entities such as KPUD, or the 1923 legislature *sub silentio* abrogated the doctrine that public property is not subject to liens.

DNR's response to this argument is the following:

> The lien portion of the cost recovery statute is not "a mandatory enforcement mechanism"[3] that DNR must use, as KPUD contends, but is simply an option for DNR to use at its discretion.

The text of the lien statute explicitly provides that DNR "shall have a lien." More importantly, DNR's argument misses the point. The question is not whether DNR utilizes the lien mechanism in the statute – the question is the meaning of the statute itself. The phrase "person, firm, or corporation" is identical in subsections (1) and (2) of the statute, and subsection (2) provides that DNR "shall have a lien" upon the property of the "person, firm, or corporation liable under subsection (1) of this section[.]" A "person, firm, or corporation" is therefore an entity with property legally capable of being subject to liens. DNR cannot change the meaning of a statute by asserting it does not utilize or enforce a part of the statute against public entities.

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[3] The specific phrase "a mandatory enforcement mechanism" does not appear in KPUD's brief.

DNR cites *Cerrillo v. Esparza*, 158 Wn.2d 194, 204, 142 P.3d 155 (2006), and *Simpson Inv. Co. v Dept of Revenue*, 141 Wn.2d 139, 160, 3 P.3d 741 (2000) in support of its contention that its proffered interpretation is the "plain meaning" of the statute. *Cerrillo* concerned the interpretation of the minimum wage act. In rejecting a proposed interpretation of a statute, the *Cerrillo* court noted that the "court must interpret the statute as written and not add or move language, even if we believe the legislature intended a different result." *Id.* Here, as well, DNR's arguments as to its beliefs concerning the legislature's intent do not permit the Court to interpret RCW 76.04.495 by adding, moving, or changing its language.

Similarly, the analysis in *Simpson* rejects DNR's proffered interpretation of RCW 76.04.495. *Simpson*, which addressed the state tax code, noted "...that the same words used in the same statute should be interpreted alike[.]" *Id.* at 160 (internal citation omitted).

DNR cites *Auto Value Lease Plan, Inc., v. Am. Auto Lease Brokerage, Ltd.*, 57 Wn. App. 420, 423, 788 P.2d 601 (1990), for the proposition that the Court should not look outside of RCW 76.04 to determine the meaning of the phrase "person, firm, or corporation". In *Auto Value*, the appellant asked the court to analogize a term from a motor vehicles statute with a different term from a tax statute. The *Auto Value* court refused, holding:

"The statutes are not *in pari materia*. Thus, there is no basis for inferring a legislative intent to import terms from one statutory scheme to the other." *Id.*

Here, no party asks the Court to analogize two different terms from different statutes. Instead, KPUD asks that the Court give the same meaning to the phrase "person, firm, or corporation" as it appears within two subsections of the same statute. *Auto Value* does not support DNR's contention.

The phrase "person, firm, or corporation" has the same meaning in subsection (1) and subsection (2). A "person, firm, or corporation" must be an entity with property legally capable of having a lien placed upon it. Because the property of a municipal corporation is not subject to liens under longstanding Washington law, the phrase "person, firm, or corporation" within RCW 76.04.495 cannot include public entities such as KPUD as a matter of law.

B. The Eighteenth Legislature's Use of the Phrase "Person, Firm, or Corporation" in Contemporaneously-Enacted Statutes Demonstrates that the Phrase Does Not Encompass Municipal Corporations such as KPUD.

DNR argues the legislature intended to include public utility districts and other public corporations within the phrase "person, firm or corporation" as used in RCW 76.04.495.

DNR properly notes 1) that the statute in question, RCW 76.04.495, was first enacted in 1923, and 2) the statutory phrase in question here ("person, firm, or corporation") has not changed since the statute was first enacted.

Simultaneously, DNR relies upon RCW 76.04.005 and RCW 76.04.015 for its contentions of legislative intent. Neither of those statutes existed in 1923,[4] and were not enacted until 1986.

Thus, at the heart of DNR's arguments as to legislative intent is a contradiction. An act of the 1986 legislature does not provide the intent of a legislature 63 years earlier. If one wishes to make contentions concerning the intent of the legislature as it pertains to a particular statute, one should look to the acts of that particular legislature.[5]

The Eighteenth Legislature enacted 187 chapters of law in the 1923 regular session. Chapter 184 concerned Forests and Forest Fires, and is comprised of 11 sections.[6] Section 11, the portion pertinent here, created

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[4] And, public utility districts were not created until 1931. Ergo, it cannot be said that the 1923 legislature specifically intended to include public utility districts within the phrase "person, firm, or corporation," because they did not exist.

[5] "If a statute is subject to more than one reasonable interpretation, this court may look to the legislative history of the statute and the circumstances surrounding its enactment to determine legislative intent." *Restaurant Development, Inc. v. Cananwill*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003) (*citing* Philip A. Talmadge, A New Approach to Statutory Interpretation in Washington, 25 Seattle U. L.Rev. 179, 203 (2001)).

[6] Section 1 created the authority for fire protection districts, but was vetoed. Laws of 1923, Ch. 184 § 1. Section 2 authorized forest wardens. Laws of 1923, Ch. 184 § 2. Section 3 created *ex offico* rangers. Laws of 1923, Ch. 184 § 3. Section 4 concerned burn bans and fines, but was vetoed. Laws of 1923, Ch. 184 § 4. Section 5 concerned

four laws. Laws of 1923, Ch. 184 § 11. First, the "person, firm or corporation" language was enacted. Second, a misdemeanor was established for permitting a fire to spread to property of another. Third, a misdemeanor was established for refusing to obey the orders of the director of the department of conservation. Fourth:

> Any person who shall go upon any lands owned by the state, or by any person, firm or corporation, without the consent of the owner thereof, and cut down, cut off, top, or destroy any tree, shall be punished by a fine[.]

Laws of 1923, Ch. 184 § 11.

Notable is the phrase "owned by the state, or by any person, firm or corporation", which distinguishes between the public (state) on the one hand, and the private (person, firm, or corporation) on the other.

The Eighteenth Legislature used the phrase "person, firm or corporation" approximately 50 times in the 187 chapters of the laws of 1923. There does not appear to be an instance where the phrase "person, firm or corporation" in any of these other laws of 1923 refers to a public

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supervised burning. Laws of 1923, Ch. 184 § 5. Section 6 concerned spark-emitting locomotives. Laws of 1923, Ch. 184 § 6. Section 7 concerned telegraph rights of way and forbid disposing of lit tobacco products in the forest. Laws of 1923, Ch. 184 § 7. Section 8 concerned logging regulations. Laws of 1923, Ch. 184 § 8. Section 9 concerned criminal penalties for intentionally or negligently setting fires. Laws of 1923, Ch. 184 § 9. Section 10 authorized the state supervisor of forestry to tax forest land owners for the purposes of fire protection. Laws of 1923, Ch. 184 § 10.

or municipal corporation.[7] In one instance, the legislature defined "person, firm or corporation" to be comprised of private entities. *See* Laws of 1923, Ch. 134 § 2 ("person" is a natural person, "firm" and "corporation" are domestic or foreign private entities).

In Chapter 136, Section 5 of the Laws of 1923, which concerns worker's compensation, the legislature distinguishes between a "person, firm or corporation" on the one hand, and a "municipal corporation" on the other. Laws of 1923, Ch. 136 § 5. That statute regulated the situation where a public entity such as a municipal corporation contracted with a "person, firm or corporation" for the purposes of performing 'extra-hazardous' work.

The only evidence of the intent of the Eighteenth Legislature in 1923 is the laws they enacted. In the approximately 50 instances where the 1923 legislature used the phrase "person, firm or corporation," there do not appear to be any instances where either a) the phrase refers to a municipal

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[7] *See* Laws of 1923, Ch. 26 § 2 (insurance agent regulation); Laws of 1923, Ch. 27 § 6, 10, 12 (milk and cream regulation); Laws of 1923, Ch. 37 § 4 (insecticide and fungicide regulation); Laws of 1923, Ch. 37 § 7 (nurserymen regulation); Laws of 1923, Ch. 54 § 1 (billiard and pool table owners); Laws of 1923, Ch. 81 § 2, 4 (liquid fuel excise tax); Laws of 1923, Ch. 89 § 8 (possession of game and song birds); Laws of 1923, Ch. 90 § 9, 10 (regulating salmon and sturgeon businesses); Laws of 1923, Ch. 126 § 1 (weight of bread for sale); Laws of 1923, Ch. 134 § 3, 11, 12 (commission merchants); Laws of 1923, Ch. 136 § 1 (worker's compensation); Laws of 1923, Ch. 137 § 6 (license for agricultural sales); Laws of 1923, Ch. 146 § 1 (warehouse regulation); Laws of 1923, Ch. 172 § 9, 18 (securities regulations); Laws of 1923, Ch. 181 § 4, 6 (motor vehicle and roadway encroachment regulations); and Laws of 1923, Ch. 184 § 7 (posting of lit tobacco warnings on railcars).

corporation; or b) there is evidence that the phrase was meant to be construed via reference to RCW 1.16.080.[8]

The 1923 legislature could not have intended to include public utility districts within the phrase "person, firm, or corporation," as public utility districts were not created until 1931. Moreover, as is demonstrated by the laws enacted by the legislature in 1923, the legislature did not intend that the statutory phrase "person, firm, or corporation" include a public entity.

C. DNR's Policy Arguments are Without Merit – KPUD Remains Potentially Liable at Common Law for Negligence. The Only Question Before the Court is the Interpretation of an Agency Cost Recovery and Lien Statute.

DNR's contentions concerning public policy are without merit. There is no question that municipal corporations, such as KPUD, are potentially liable at common law for negligence. *See, e.g. Estate of Connelly v.*

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[8] In 1923, the statute currently codified at RCW 1.16.080 was the Laws of 1891, Ch. 23 § 1, compiled at RRS § 146 (1922). The statute was initially enacted in 1854, and read as follows: "When the term 'person' or other word is used to designate the party whose property is the subject of an offense, or against whom any act is done with intent to defraud or injure, the term may be construed to include the United States, this territory, or any state or territory, or any public or private corporations, as well as an individual." Laws of 1854, p. 99 § 134. The statute was later revised to read: "The term 'person' may be construed to include the United States, this state, or any state or territory, or any public or private corporation, as well as an individual." Laws of 1891, Ch. 23 § 1. The language in effect in 1923 was the same as that in the Laws of 1891, and was codified at RRS § 146 (1922). The 1922 Remington reviser's note provides that the statute was interpreted in *Denny Hotel Co. of Seattle v. Schram*, 6 Wn. 134, 32 P. 1002 (1893). In *Denny*, the court held that it "...[did] not think that a corporation was within the contemplation of the legislature when they used the expression 'two or more persons'...It is true that the term 'person' may be construed to include the United States, this state, or any state or territory, or any public or private corporation, as well as an individual. But it does not follow, by any means, that the term 'person' is always to be construed as a private corporation, any more than it is always to be construed as the United States." *Id.* at 137.

Snohomish Cy. PUD No. 1, 145 Wn. App. 941, 187 P.3d 842 (2008); *Keegan v. Grant Cy. PUD No. 2*, 34 Wn. App. 274, 661 P.2d 146 (1983); *but see Pope v. Douglas Cy. PUD No. 1*, 158 Wn. App. 23, 241 P.3d 797 (2010) (negligence claim against PUD dismissed under public duty doctrine).

The question before the Court does not concern a common law claim for damages from a negligently-caused fire. Instead, the only cause of action brought against KPUD, and the only question before the Court, is a narrow one of the interpretation of the agency cost recovery and lien statute, RCW 76.04.495.[9]

D. RCW 1.16.080 Cannot be Used to Interpret the Term "Person" Within the Statutory Phrase "Person, Firm or Corporation."

1. *Employing RCW 1.16.080's "person" definition renders the terms "firm" and "corporation" superfluous or redundant.*

RCW 76.04.495 cannot not be read in light of RCW 1.16.080(1), which expands the definition of the term "person" to include municipal corporations, because to do so would render the terms "firm" and "corporation" within RCW 76.04.495(1) superfluous or moot, as "firm"

[9] "Basic canons of statutory interpretation...such as the derogation of common law principle...provide content independent methods of deciding a case without injecting one's own personal views regarding optimal public policy in a given area." *Estate of Bunch v. McGraw Ctr.*, 174 Wn.2d 425, 439 n.6, 275 P.3d 1119 (2012) (J.M. Johnson, J., dissenting) (*citing* Jonathan R. Macey & Geoffrey P. Miller, The Canons of Statutory Construction and Judicial Preferences, 45 VAND. L. REV. 647, 663 (1992)).

and "corporation" are included within RCW 1.16.080(1)'s definition of "person."

DNR improperly relies upon *Segaline*, a case which rejected the application of RCW 1.16.080. In *Segaline v. Dep't of Labor & Indus.*, 169 Wn.2d 467, 238 P.3d 1107 (2010), the Washington Supreme Court rejected RCW 1.16.080's application to expand the scope of the statutory term "person." The issue in *Segaline* was "whether a government agency that reports information to another government agency is a 'person' under RCW 4.24.510." *Segaline,* 169 Wn.2d at 474. The *Segaline* court noted that "person" is ambiguous in the statute and its meaning varies within the RCW. *Id.* The Court held: "here, a government agency is not a 'person' under RCW 4.24.510." *Id.* Although the State argued that RCW 1.16.080(1) required state agencies to be included as a "person" under RCW 4.24.510, the Washington Supreme Court disagreed, holding:

> **[RCW 1.16.080 (1)] does not compel the court to broadly construe "person," but rather the use of "may" permits the court to interpret "person" to include such entities. This permissive language demonstrates the Legislature intended "person" to be defined in specific provisions of the RCW in accordance with the nature and purpose of those provisions. If RCW 1.16.080(1) compelled a broad interpretation of "person" throughout the RCW, it would produce absurd results. For instance, government agencies or corporations could be charged with murder.**

Segaline, 169 Wn.2d at 475 (internal citation omitted) (emphasis added).

Despite DNR's citation to *Segaline*, DNR argues as follows:

> The statutory definition of "person" does not render the term "corporation" superfluous. The definition both clarifies and provides an expression of legislative intent that both public and private corporations are included within the words "any person, firm, or corporation" as those words are used in the cost recovery statute. Alternatively, surplus language in a statute may be ignored in order to carry out legislative intent.[10]

This is, at best, a tautology. Applying RCW 1.16.080 to RCW 76.04.495, the statute would read: 'Any United States, this state, any state or territory, any public or private corporation or limited liability company, individual, firm, or corporation.' In order to adopt DNR's proffered interpretation, this Court must believe that the Eighteenth Legislature in 1923 intended that "corporation" means "private corporation," but that "person" means "public corporation." The Court must further believe that the Eighteenth Legislature in 1923 intended that the statute be interpreted with reference to the Laws of 1891, Ch. 23 § 1, codified at RRS § 146 (1922).[11]

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[10] In support of its "surplus language" argument, DNR cites *Wash. Water Power Co. v. Graybar Elec. Co.*, 112 Wn.2d 847, 859, 774 P.2d 1199 (1989). In *WWP*, the Court considered an ungrammatical phrase in RCW 7.72.010(6) that appeared to have been left as a drafter's error. *Id.* at 859. As DNR noted in its brief, the "person, firm, or corporation" language in RCW 76.04.495 was first enacted in 1923. *WWP* is inapplicable, as there is no argument or indication that the terms "firm" and "corporation" were inadvertently included as ungrammatical drafter's errors in 1923.

[11] *See* note 8, *supra*.

DNR argues that "person" should be interpreted broadly, and with reference to RCW 1.16.080, relies upon *Gontmakher v. City of Bellevue*, 120 Wn. App. 365, 371, 85 P.3d 926 (2004) for that proposition.

Gontmakher was **overruled** by the Washington Supreme Court in *Segaline*, on the precise issue of the application of RCW 1.16.080. *See Segaline* at 485 (Johnson, J., concurring/dissenting).

Gontmakher concerned the interpretation of Washington's Anti-SLAPP statute, RCW 4.24.510. In that statute, the word "person" appears in isolation, and provides for immunity for communicating with a law enforcement or regulatory agency. *Id.* at 366-67. *Gontmakher* does not support the proposition that RCW 1.16.080 should be applied to a statutory phrase which includes the term "person," particularly where that interpretation of "person" would render other terms in the phrase redundant or superfluous.

Further, as noted in *Gontmakher*, it is where the legislature uses "person" without other qualifier or modifier that the legislature intends the general definition of "person" to apply. *Id.* at 371. Here, the term "person" is not used in isolation, without other modification or qualification. Instead, the term appears as part of the phrase "person, firm or corporation." Being part of a phrase, each term in the phrase, under the

principle of *noscitur a sociis,* cannot be read in isolation, but rather should be given meaning with reference to each other. *Jongeward* at 602.

2. *As RCW 76.04.495(2) creates a lien right, the portions of the statute concerning who and what is subject to the lien are construed strictly.*

"Statutes creating liens are in derogation of the common law and are to receive a strict construction." *Williams v. Athletic Field, Inc.*, 172 Wn.2d 683, 695-97, 261 P.3d 109 (2011) (*quoting De Gooyer v. Nw. Trust & State Bank*, 130 Wn. 652, 653, 228 P. 835 (1924) (*citing Tsutakawa v. Kumamoto*, 53 Wn. 231, 101 P. 869, 102 P. 766 (1909))). "The strict construction rule, at its origin, was invoked to determine whether persons or services came within the [lien] statute's protection." *Id.* "Their operation will not be extended for the benefit of those who do not clearly come within the terms of the act." *Id.*

Here, the operative phrase of the statute in question is "person, firm, or corporation". The statute provides that DNR "shall have a lien" against the property of the "person, firm or corporation". Since the question before the Court ultimately concerns the scope of the phrase "person, firm or corporation" and who is subject to liens, under *Williams* the phrase "person, firm or corporation" must be strictly construed.[12]

[12] Moreover, the Ninth Circuit has held that under Washington law, RCW 76.04.495 must be strictly construed. *United States v. Burlington Northern, Inc.*, 500 F.2d 637, 639 (9th Cir. 1974) (*citing, inter alia, Dernac v. Pacific Coast Coal Co.*, 110 Wn. 138, 142, 188 P.

Further, DNR cites *State v. Krall*, 125 Wn.2d 146, 148, 881 P.2d 1040 (1994), arguing that the term "shall" is not mandatory. The *Krall* court explained:

> The dispositive question is whether the word "shall" in the statute is a mandatory directive. The basic rule is clear. It is well settled that the word "shall" in a statute is presumptively imperative and operates to create a duty...The word "shall" in a statute thus imposes a mandatory requirement unless a contrary legislative intent is apparent.

Id. at 148 (*quoting Erection Co. v. Department of Labor & Indus.*, 121 Wn.2d 513, 518, 852 P.2d 288 (1993)). "Nothing in the...statute indicates a legislative intent contrary to 'shall' being mandatory." *Id.* Here, too, DNR has no basis for arguing that the phrase "shall" is other than mandatory.

E. The Administrative Procedure Act, Specifically RCW 34.05.570(2), is Inapplicable to the Present Case as a Matter of Law.

DNR argues that its definition of "person" should be afforded deference, and further argues that KPUD has not properly challenged DNR's definition of "person" under RCW 34.05.570(2).[13] KPUD has not

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15 (1920) (A statute which "creates a right where none existed at common law...will be strictly construed[.]")).

[13] The statute provides, in pertinent part: "Review of rules. (a) A rule may be reviewed by petition for declaratory judgment filed pursuant to this subsection or in the context of any other review proceeding under this section. In an action challenging the validity of a rule, the agency shall be made a party to the proceeding."

challenged DNR's definition of "person" under RCW 34.05.570(2), because that statute is inapplicable.

The instant case was brought by DNR pursuant to RCW 76.04.495, which, by its terms, contemplates litigation by DNR against private parties. The Administrative Procedure Act, RCW 34.05 *et seq.*, is inapplicable "to litigation in which the sole issue is a claim for money damages or compensation and the agency whose action is at issue does not have statutory authority to determine the claim." RCW 34.05.510(1).

Indeed, it would be strange if the law required a party to file a declaratory action against an agency concerning that agency's definition of a particular term within a statute, prior to being sued in Superior Court by that agency.

F. DNR's Interpretive WAC Definition is Afforded No Deference as a Matter of Law.

DNR argues that this Court should give deference to its internally-promulgated definition of the term "person," as set forth in WAC 332-24-005:

> Items defined herein have reference to chapter 76.04 RCW and all other provisions of law relating to forest protection and have the meanings indicated unless the context clearly requires otherwise.
>
> ...
>
> 23. "Person" shall mean any individual, partnership, private, public, or municipal corporation, county, the department or other state or local governmental

> entity, or association of individuals of whatever nature.

The statutory authority cited for this WAC provision is RCW 76.04.015. No other statutory authority is cited to support this WAC provision.

RCW 76.04.015 does not define "person," nor does it provide authority for DNR to promulgate such a definition. Further, RCW 76.04.015 was enacted in 1986 and it did not exist in 1923, when the statutory language under consideration in RCW 76.04.495 was first enacted.

A WAC provision is an agency interpretation of a statute. It is well established that when an agency promulgates a WAC provision which interprets a statutory term, that interpretive WAC provision is neither evidence of legislative intent, nor is it binding upon the court. *Ass'n of Wash. Bus. v. Dep't of Revenue*, 155 Wn.2d 430, 447, 120 P.3d 46 (2005). Agency interpretations "serve merely as advance notice of the agency's position should a dispute arise and the matter result in litigation." *Id.* "They are not binding on the courts and are afforded no deference other than the power of persuasion." *Id.* Moreover,

> In the case of an interpretative rule, the inquiry is not into validity but is into correctness or propriety. The legislative body has not delegated power to make a rule which will be binding upon the court if it is

> valid. The statute does not prevent the reviewing court from substituting its judgment on questions of desirability or wisdom. The law is embodied in the statute, and the court is free to interpret the statute as it sees fit.

Id. at 446 (internal citation omitted).

DNR cites *Glaubach v. Regence BlueShield*, 149 Wn.2d 827, 832, 74 P.3d 115 (2003), in support of its argument that its internal definition should be afforded deference. In *Glaubach*, the State argued that its agency's interpretation of a statutory term should be afforded deference, and should be treated as persuasive authority. The *Glaubach* court rejected this argument, because the WAC provision in question was not an interpretation of the statute at issue. *Id.* at 834-35.

DNR next cites *Hama Hama v. Shorelines Hearings Bd.*, 85 Wn.2d 441, 448, 536 P.2d 157 (1975), in support of its contention that its WAC definition of "person" be afforded deference. The *Hama Hama* court noted that it is impermissible for an agency to "purport to 'amend' the statute." *Id. Hama Hama* concerned a conflict between two procedural statutes: one general statute with a 30 day time limit to administratively appeal; and one, more specific statute, with an express 45 day time limit to administratively appeal. There being no legislative rule nor issue of administrative procedure at issue here, *Hama Hama* is inapt.

DNR also cites *Phillips v. Seattle*, 111 Wn.2d 903, 908, 766 P.2d 1099 (1989) for the proposition that its WAC definition of "person" be afforded deference. *Phillips* concerned the statutory construction of the Washington Law Against Discrimination, and more specifically, whether "alcoholism" falls under the statutory definition of "handicap." While RCW 49.60.180 does not define "handicap," the statute delegates the authority to adopt and promulgate, *inter alia*, definitions of 'handicap,' to the Human Rights Commission. *Id.* at 906. The *Phillips* court found that the commission's definition, promulgated pursuant to a specific delegation of legislative authority, was a legislative rule in nature, and therefore afforded deference by the court. *Id.* at 908. Here, DNR has neither a specific delegation of authority to define "person" as it has attempted, nor is its WAC definition of "person" part of a legislative rule. Thus, *Phillips* is inapt.

Further, while courts may generally accord substantial deference to agency decisions, courts do not defer to an agency the power to determine the scope of its own authority. *Washington Federation of State Employees v. State Dept. of General Admin.*, 152 Wn. App. 368, 377-378, 216 P.3d 1061 (2009). If the enabling statute does not authorize a particular regulation, either expressly or by necessary implication, that regulation must be declared invalid despite its practical necessity or appropriateness.

Id. at 379. To hold otherwise would be to defer to an agency the power to determine the scope of its own authority. *Id.* Here, DNR improperly attempts to define the scope of its own authority via the "person" definition expressed in WAC 332-24-005(23).

Washington law also holds that "rules that extend a statute's punitive reach are an invalid exercise of agency power." *Marcum v. DSHS*, 172 Wn. App. 546, 558, 290 P.3d 1045 (2012) (*citing State v. Miles*, 5 Wn.2d 322, 326, 105 P.2d 51 (1940)). Here, DNR incorrectly attempts to extend RCW 76.04.495's reach, via WAC 332-24-005's "person" definition.

Notably, agency definitions are sometimes afforded deference only where the agency has "special expertise" in the area within which the definition is proposed. *See Mall, Inc. v. Seattle*, 108 Wn.2d 369, 378, 739 P.2d 668 (1987). Here, there is no contention that DNR has any "special expertise" in determining who a "person" is.

Additionally, the Washington Supreme Court has rejected the notion that a statute can be interpreted via reference to a WAC promulgated under it. *See Bostain v. Food Express*, 159 Wn.2d 700, 716-17 n.6, 153 P.3d 846 (2007) (noting the "obvious circularity" of the conclusion that a WAC provision could be "used as an aid in determining legislative intent[.]"). In *Bostain*, the department of labor's definition of "hours" lacked sufficient statutory support, causing the Court to reject both the

definition, and the agency's argument that its definition was entitled to deference. *Id.*[14]

DNR's WAC provision interpreting the statutory term "person" has no more weight as a matter of law than the arguments made by DNR in its responsive briefing and its WAC provision is merely a restatement of its position in the instant litigation.

III. CONCLUSION

Under a plain meaning analysis, the phrase "person, firm, or corporation" within RCW 76.04.495 cannot include public entities, such as KPUD, without violating established Washington law that public property cannot be subject to liens. Likewise, legislative history establishes that the contemporaneous use of the phrase "person, firm, or corporation" in other legislation by the Eighteenth Legislature does not evidence an intent to either a) include public entities within the ambit of the phrase, or b) interpret the term "person" by way of reference to RCW 1.16.080(1).[15]

RCW 1.16.080 cannot be used to expand RCW 76.04.495's definition of "person", because doing so would render the statutory terms "firm" and "corporation" superfluous. Likewise, under a strict construction analysis,

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[14] "The department's rules...are not consistent with the plain language of the statutes being implemented."
[15] *See* note 8, *supra.*

DNR's interpretive WAC definition of "person" cannot expand the meaning of "person" within RCW 76.04.495, or the scope of DNR's authority. Moreover, rules that extend a statute's punitive reach are an invalid exercise of agency power.

Even if one assumes that the Eighteenth Legislature's intent was, as contended by DNR, to include public entities within the phrase "person, firm, or corporation" in RCW 76.04.495, the statute, as written, does not say this. Statutes must be interpreted as written and the onus is on the Legislature, not the Judiciary, to correct any existing statutory problems.

KPUD therefore respectfully requests that the Court reverse the trial court's denial of its CR 12(b)(6) motion to dismiss.

RESPECTFULLY SUBMITTED this 14th day of March, 2014.

PAINE HAMBLEN LLP

By: _____

Donald G. Stone, WSBA #7547
Daniel W. Short, WSBA #7945
Gregory S. Johnson, WSBA #13782
William C. Schroeder, WSBA #41986
Attorneys for Appellant

IV. CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of March, 2014, I caused to be served a true and correct copy of the foregoing document, by the method indicated below and addressed to the following:

Michael J. Rollinger
Assistant Attorney General
1125 Washington Street SE
P.O. Box 40100
Olympia, WA 98504-0100

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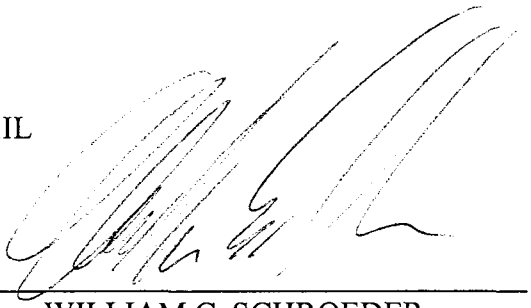

WILLIAM C. SCHROEDER

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No. 318532

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, DEPARTMENT OF NATURAL RESOURCES,

Respondent,

v.

PUBLIC UTILITY DISTRICT NO. 1 OF KLICKITAT COUNTY, a Washington municipal corporation

Appellant.

APPENDIX TO APPELLANT'S REPLY BRIEF

PAINE HAMBLEN, LLP
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1854

SEC. 129. When a public offense has been committed partly in one county and partly in another, or the act or effects constituting or requisite to the consummation of the offense occur in two or more counties, the jurisdiction is in either county.

SEC. 130. Offenses committed on the boundary line of two counties or within one hundred rods of the dividing line between them, may be alleged in the indictment to have been committed in either of them, and may be prosecuted and punished in either county.

SEC. 131. When property taken in one county by burglary, robbery, larceny or embezzlement, has been brought into an another county, the jurisdiction is in either county.

SEC. 132. If any mortal wound is given, or poison administered in one county, and death, by means thereof, ensue in another, the jurisdiction is in either.

SEC. 133. In the prosecution of any offense committed upon, or in relation to, or in any way affecting any real estate, or any offense committed in stealing, embezzling, destroying, injuring or fraudulently receiving or concealing any money, goods or other personal estate, it shall be sufficient, and shall not be deemed a variance, if it be proved on trial that at the time when such offense was committed, either the actual or constructive possession, or the general or special property in the whole, or any part of such real or personal estate, was in the person or community alleged in the indictment or other accusation to be the owner thereof.

SEC. 134. When the term "person" or other word is used to designate the party whose property is the subject of an offense, or against whom any act is done with intent to defraud or injure, the term may be construed to include the United States, this territory, or any state or territory, or any public or private corporations, as well as an individual.

SEC. 135. Every term in this act implying one only, shall, when required, be construed to mean two or more, and any term implying two or more, shall also be construed to mean, when required, but one, except in cases where two or more are necessary to constitute the offense, and every term implying sex, shall, when necessary, be construed to mean both or either.

SEC. 136. No offense committed against the laws heretofore in force, shall be affected by the provisions of this act, except where any punishment may have been mitigated by those provisions, they may be extended and applied to any judgment hereafter to be pronounced.

from which the execution issued, and be tried by a jury as other civil actions are tried.

Approved February 24, 1891.

CHAPTER XXIII.

[S. B. No. 78.]

CONSTRUCTION OF STATUTES.

AN ACT concerning the construction of statutes.

Be it enacted by the Legislature of the State of Washington:

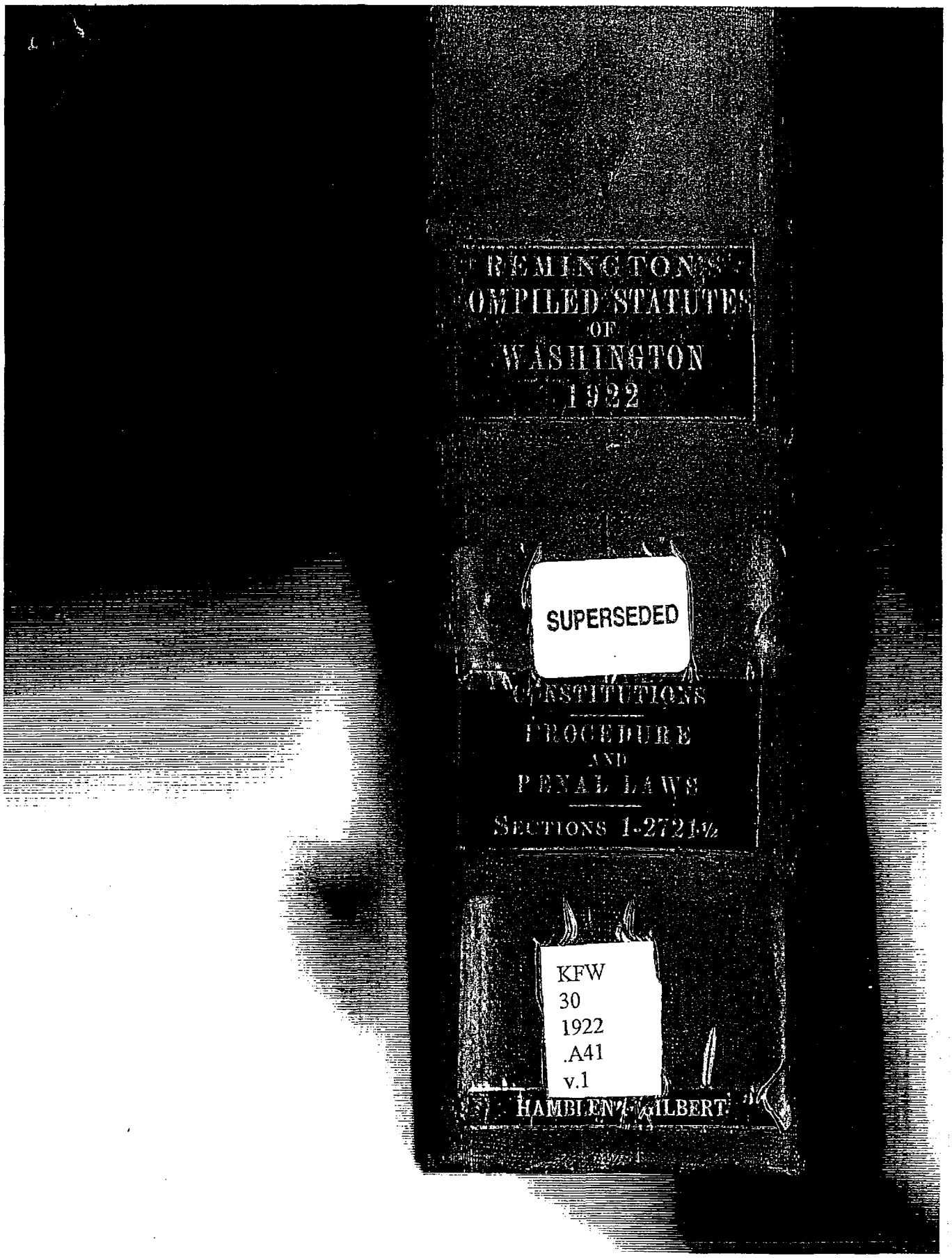
SECTION 1. The following provisions relative to the construction of statutes shall be rules of construction and shall constitute a part of the code of procedure of this state: The provisions of this code shall be liberally construed, and shall not be limited by any rule of strict construction. The provisions of a statute, so far as they are substantially the same as those of a statute existing at the time of their enactment, must be construed as continuations thereof. The term "person" may be construed to include the United States, this state, or any state or territory, or any public or private corporation, as well as an individual. Words importing the singular number may also be applied to the plural of persons and things; words importing the plural may be applied to the singular; and words importing the masculine gender may be extended to females also. That the word "month" or "months" whenever the same occurs in the statutes of this state now in force, or in statutes hereinafter enacted, or in any contract made in this state, shall be taken and construed to mean "calendar months."

The term "person."

Singular and plural.

The term "month."

Approved February 24, 1891.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perior Court, 40 Wash. 443, 82 Pac. 875, 111 Am. St. Rep. 915, 5 Ann. Cas. 775, 3 L. R. A. (N. S.) 563; United States, Use of Standard Furn. Co. v. Aetna Indemnity Co., 40 Wash. 87, 82 Pac. 171. See, also, Dernac v. Pacific Coast Coal Co., 110 Wash. 138, 188 Pac. 15.

A statute creating a right where none existed before will be strictly construed as to the persons entitled to the benefit of it: Dernac v. Pacific Coast Coal Co., 110 Wash. 138, 188 Pac. 25.

—— Penal Statutes: See Remington's Digest, Statut., § 77; McCarty v. State, 1 Wash. 377, 25 Pac. 299, 22 Am. St. Rep. 152; State v. Coolidge, 72 Wash. 42, 129 Pac. 1088; State v. Furth, 82 Wash. 665, 144 Pac. 907. See, also, State v. Eberhart, 106 Wash. 222, 179 Pac. 853; State v. Hoffman, 110 Wash. 82, 188 Pac. 25.

§ 145. Laws Continued.

The provisions of a statute, so far as they are substantially the same as those of a statute existing at the time of their enactment, must be construed as continuations thereof. [Cf. Cd. '81, §§ 761, 1681; L. '91, p. 40, § 1; 2 H. C., § 1708.]

§ 146. Word "Person" Defined.

The term "person" may be construed to include the United States, this state, or any state or territory, or any public or private corporation, as well as an individual. [Cf. L. '54, p. 99, § 134; L. '57, p. 46; Cd. '81, §§ 756, 964; L. '91, p. 40, § 1; 2 H. C., § 1709.]

Cited in 6 Wash. 137.

"Person" defined: Denny Hotel Co. v. Schram, 6 Wash. 134, 137, 32 Pac. 1002, 36 Am. St. Rep. 130; Barnes v. Plummerfelt, 21 Wash. 498, 500, 58 Pac. 575; West Coast Mfg. & Inv. Co. v. West Coast Imp. Co., 25 Wash. 627, 642, 66 Pac. 97, 62 L. R. A. 763; State ex rel. Atty. Gen. v. Seattle Gas & Elec. Co., 28 Wash. 488, 493, 68 Pac. 946, 70 Pac. 114; State v. Packenham, 40 Wash. 403, 406, 82 Pac. 597; State v. Nick, 66 Wash. 134, 137, 119 Pac. 15; Spear v. Bremerton, 90 Wash. 507, 510, 156 Pac. 825; Whittlesey v. Seattle, 94 Wash. 645, 656, 163 Pac. 193, L. R. A. 1917D, 1084.

§ 147. Term "Officer" Defined.

Whenever any term indicating an officer is used it shall be construed, when required, to mean any person authorized by law to discharge the duties of such officer. [L. '54, p. 221, § 501; Cd. '81, § 755; 2 H. C., § 1710.]

"Officer" defined: Nelson v. Troy, 11 Wash. 435, 441, 39 Pac. 974; State ex rel. Griffith v. Newland, 37 Wash. 428, 431, 79 Pac. 983; State ex rel. Powell v. Fassett, 69 Wash. 555, 559, 125 Pac. 963.

§ 148. Words Importing Number and Gender, How Construed.

Words importing the singular number may also be applied to the plural of persons and things; words importing the plural may be applied to the singular; and words importing the masculine gender may be extended to females also. [Cf. L. '54, p. 99, § 135; Id., p. 221, § 502; L. '57, p. 45, § 1; Cd. '81, §§ 756, 965; L. '91, p. 40, § 1; 2 H. C., § 1711.]

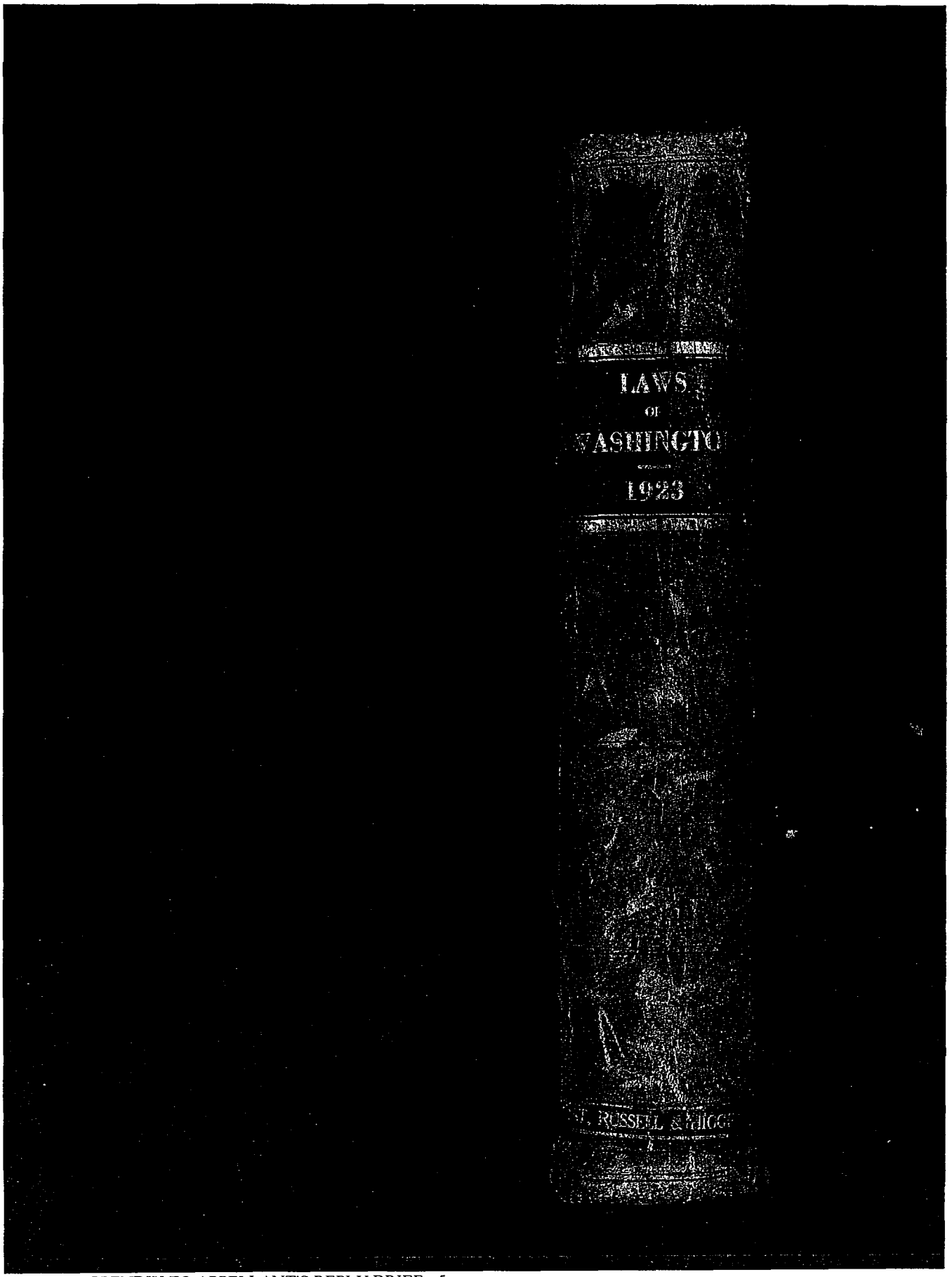
Cited in 20 Wash. 523; 94 Wash. 653, 654.

Application of the clause in this section providing that words importing the masculine gender may be extended to females also: Thompson v. Seattle, Renton & S. R. Co., 71 Wash. 436, 128 Pac. 1070.

Under this section incest may be committed without the concurrent consent of both parties, and one alone may be guilty: State v. Nugent, 20 Wash. 52, 56 Pac. 25.

§ 149. Word "Month" Defined.

The word "month" or "months," whenever the same occurs in the statutes of this state now in force, or in statutes hereinafter enacted,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"Double Insurance" exists where the same party is insured by several insurers separately, in respect to the same subject and interest. Double insurance.

"Over-Insurance" exists where a party having an insurable interest in property has insurance thereon against the same hazard or peril in excess of the actual value of his interest therein. Over-insurance.

"Reinsurance" means a contract by which an insurer procures a third party to insure it against loss or liability by reason of such original insurance. Reinsurance.

SEC. 2. That Section 7088 of Remington's Compiled Statutes be amended to read as follows: Amends Rem. Comp. Stat. § 7088; Pierce's Code § 2951.

Section 7088. It shall be unlawful for any company, corporation or association to transact the business of insurance in this state, except as provided in Section 7120 of Remington's Compiled Statutes, unless the company, corporation, or association, shall have complied with all the provisions of this act, and shall have obtained a certificate of authority from the commissioner. Rem. Comp. Stat. § 7120; Pierce's Code § 2982.

No person, firm or corporation shall act as agent for any insurance company, in the transaction of any business of insurance within this state, or negotiate for, or place risks for, any such company, or in any way or manner aid such company in effecting insurance, or otherwise in this state, except as provided in Section 7120 of Remington's Compiled Statutes, unless such company shall in all things have complied with the provisions of this act. All business transacted by any solicitor shall be in the name of the agent or broker appointing him, and said agent or broker shall be responsible for all acts of said solicitor while acting for such agent or broker. Unlawful to transact business without certificate. Rem. Comp. Stat. § 7120; Pierce's Code § 2982.

Every insurance agent, solicitor or broker shall annually, on or before the first day of April, procure a license from the commissioner who shall make and keep a record thereof. Every insurance company which shall jointly with any other company or com- Underwriter's policy.

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ture of butter or cheese, and when the process of ripening is to be commenced immediately, it shall not be necessary that such milk or cream be cooled to a lower temperature than is necessary for such ripening or starting: *And Provided further,* That the heating of milk to above one hundred and ten degrees Fahrenheit shall be considered as intent to pasteurize and that thereafter the process of pasteurization as defined herein must be completed and such milk marked and sold as pasteurized milk.

Repeals Rem. Comp. Stat. § 6187; Pierce's Code §§ 1856-24.

SEC. 5. That section 6187 of Remington's Compiled Statutes is hereby repealed.

Amends Rem. Comp. Stat. § 6188; Pierce's Code §§ 1856-25.

SEC. 6. That section 6188 of Remington's Compiled Statutes be amended to read as follows:

Milk tests.

Section 6188. All tests of milk or cream sold, purchased or delivered on the basis of the amount of milk fat or butter fat contained therein shall be performed by a Babcock licensed tester. Such tester shall personally operate and conduct each test and shall be personally responsible to any person injured by any careless, negligent or unskillful operation thereof, and for any fraudulent, intentionally inaccurate or manipulated report or return of any such test: *Provided,* That it shall be the duty of each and every licensed Babcock tester to make and keep for a period of four months one or more legible carbon copies of the original report of each and every test made by him or her, and that the record or records of any and all tests shall be subject to examination at any and all times by the director of agriculture or his duly authorized agent or agents. Whoever violates the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined for each and every offence not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00), and the license of the Babcock tester revoked. Any person, firm or corporation

who refuses to allow, or fails to assist in such examination of records by an authorized representative of the department of agriculture may be enjoined in such complaint and punished by a like fine.

Amends Rem. Comp. Stat. § 6189; Pierce's Code §§ 1855-26.

SEC. 7. That section 6189 of Remington's Compiled Statutes be amended to read as follows:

License as Babcock tester.

Section 6189. Any person may receive from the department of agriculture a license as a Babcock licensed tester upon application therefor and upon the payment to said department of a license fee of two dollars ($2.00) therefor. Before issuing such license the department of agriculture shall inquire into the qualifications of the applicant, and shall require such applicant to submit to examination as to his qualifications, and may require the applicant to submit to it satisfactory proof that he is of good moral character.

Amends Rem. Comp. Stat. § 6192; Pierce's Code §§ 1855-29.

SEC. 8. That section 6192 of Remington's Compiled Statutes be amended to read as follows:

Factories licensed.

Section 6192. Every creamery, milk plant, shipping station, milk condensing plant, ice cream factory or factory of milk products, or other person receiving or purchasing milk or cream in bulk and not bottled, and by weight or measure or upon the basis of the amount of milk fat contained therein, shall annually obtain a license therefor. Such license shall be issued by the department of agriculture upon being satisfied that the building, structure, place or premises where such milk is to be received or purchased is maintained in a sanitary condition in accordance with the provisions of this act; and upon the payment to the department of a license fee of ten dollars ($10.00) therefor. Such license shall be for the period of one year and shall expire on the 30th day of June subsequent to the date of its issue, and may be sooner revoked by the department of agriculture, upon reasonable notice to the licensee, if such licensee shall fail to comply with

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the provisions of this act and the rules and regulations issued and promulgated by the department of agriculture under the authority of this act: *Provided, however,* That the provisions of this section shall not apply to individuals purchasing milk or cream for consumption by themselves or their families, nor to the owners or keepers of hotels, restaurants, boarding houses and eating houses purchasing milk or cream to be served or consumed therein.

Amends Rem. Comp. Stat. § 6194; Pierce's Code §§ 1855-32.

SEC. 9. That section 6194 of Remington's Compiled Statutes be amended to read as follows:

Section 6194. Milk vendor's licenses shall be issued by the department of agriculture upon application and upon the payment therefor of a license fee of two dollars ($2.00). Such licenses shall be for the period of one year, unless sooner revoked, and shall expire on the 30th day of June next subsequent to the issue thereof. Each milk vender's license shall contain the number of the license, and the name, residence and place of business, if any, of the licensee, and no such license shall be sold, assigned or transferred. Any milk vender's license may be at any time revoked by the department of agriculture upon reasonable notice to the licensee, if such licensee shall be guilty of violation of or shall fail to comply with this act or any section or provision thereof, or shall violate or refuse or neglect to comply with any lawful regulation or order of the department of agriculture, or any officer, agent or inspector thereof.

Vendor's license.

Amends Rem. Comp. Stat. § 6210; Pierce's Code §§ 1855-48.

SEC. 10. That section 6210 of Remington's Compiled Statutes be amended to read as follows:

Section 6210. No person, firm or corporation shall sell, expose or offer for sale, or exchange with, present or deliver to any creamery, milk plant, cheese factory, milk condensing factory, factory of milk products, or other buyer or consumer of milk

Sale of impure milk.

or milk products, any unclean, unwholesome, adulterated, stale or impure milk, cream, butter or other milk product: *Provided,* That milk, cream or milk products when found to be rancid or in such condition as to be unfit for human consumption may be condemned and destroyed.

Amends Rem. Comp. Stat. § 6215; Pierce's Code §§ 1855-53.

Cooling regulations.

SEC. 11. That section 6215 of Remington's Compiled Statutes be amended to read as follows:

Section 6215. All milk shall be cooled in the dairy where it is produced to a temperature of not more than fifty-five degrees Fahrenheit within thirty minutes after the same is drawn from the cows, and shall not before being delivered to the milk plant, creamery, cheese factory, factory of milk products, or other place where the same is to be distributed, bottled, pasteurized or manufactured be permitted to reach a temperature above sixty degrees Fahrenheit, and all such milk shall thereafter be maintained at a temperature of not exceeding fifty degrees Fahrenheit until delivered to the consumer: *Provided,* Nothing in this section shall be deemed applicable to milk or cream while being subject to the process of pasteurization.

Amends Rem. Comp. Stat. § 6259; Pierce's Code § 1902.

Containers, ownership marks.

SEC. 12. That section 6259 of Remington's Compiled Statutes be amended to read as follows:

Section 6259. Any person, firm or corporation engaged in the manufacture, sale or transportation of milk, cream, ice cream or any other dairy product may adopt a mark or marks of ownership to be stamped, marked or otherwise affixed to any milk bottle, can, tub or case used in the manufacture, sale or transportation of any such product and may upon the payment of a fee of fifteen dollars ($15.00) file an application for the exclusive right to use such mark or marks, in the office of the department of agriculture, which application shall contain the name and address of the applicant, a description of the mark or marks proposed and the use to be made of

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the milk bottles, cans or tubs, or cases by such applicant. The department of agriculture shall refuse such application if such mark or marks of ownership shall be the same or so nearly similar to any mark or marks of ownership theretofore registered as to be misleading. Otherwise such application shall be granted and such fact, together with a description of the mark or marks of ownership, shall be entered in a register to be kept by said department of agriculture: *Provided,* That a mark or marks of ownership must be stamped, embossed or affixed by means of a metal plate, or in the case of wooden containers must be burned therein, and that upon the sale of any milk bottles, cans, tubs or containers so registered the mark or marks of ownership of said person, firm or corporation shall become void: *And Provided further,* That it shall be unlawful for any person, other than the registered owner thereof, to have or keep in his possession for the purposes of sale, barter or use, any such branded, stamped or marked can, bottle, tub or container, and the possession of any such branded, stamped or marked cans, bottles, tubs or containers by any junk dealer, or vender, shall be *prima facie* evidence of possession for the purpose of sale, barter or use, and in violation of this act, and when it shall come to the knowledge of the director of agriculture or his duly authorized agent that any such branded, stamped or marked can, bottle, tub or container is in the possession of any person, firm or corporation other than the registered owner thereof, the said director of agriculture or his authorized agent shall have the power to immediately seize and hold all such cans, bottles, tubs and containers until it shall be established to the satisfaction of the said director of agriculture or his duly authorized agent that such possession is in accordance with the provisions of this act. The said director of agriculture or his au-

thorized agent shall upon the establishment of the right of possession of such cans, bottles, tubs or containers release the same to the person, firm or corporation entitled to the possession thereof.

Passed the Senate February 8, 1923.
Passed the House February 13, 1923.
Approved by the Governor February 24, 1923.

CHAPTER 28.

[S. B. 54.]

258 P. 1039

LIMITATION OF ACTIONS.

AN ACT relating to limitation of actions and the accrual thereof and applying to actions now barred as well as those not barred, and amending section 159 of Remington's Compiled Statutes.

Be it enacted by the Legislature of the State of Washington:

Amends Rem. Comp. Stat. § 159; Pierce's Code § 8166.

SECTION 1. That section 159 of Remington's Compiled Statutes of Washington be amended to read as follows:

Section 159. Within Three Years:

Waste or trespass.

1. An action for waste or trespass upon real property;

Personal property.

2. An action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated;

Contract not in writing.

3. An action upon a contract or liability, express or implied, which is not in writing, and does not arise out of any written instrument;

Fraud.

4. An action for relief upon the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud;

It shall be unlawful for any person, firm or corporation to sell, offer for sale or to apply to trees or plants by boring holes or otherwise for compensation any material as a horticultural insecticide or fungicide which relies for its effectiveness on being transferred throughout the tree or plant by the sap thereof without having demonstrated to the satisfaction of the state insecticide and fungicide board the effectiveness thereof and without furnishing the purchaser thereof a printed statement describing the material in the same manner as listed above for other insecticides or fungicides sold in closed packages.

Amends Rem. Comp. Stat. § 2854; Pierce's Code § 2722.

SEC. 5. That Section 2854 of Remington's Compiled Statutes be amended to read as follows:

Fruit packing and shipping.

Section 2854. It shall be the duty of every person growing or packing and selling, offering for sale or shipping in closed boxes or packages, any fruit grown in this state, to plainly mark the same on the outside of the box or package with the name of the variety contained therein or with the words "variety unknown," the name of the place or locality where grown and the name of the grower, or in case of sale or shipment through an association or organization of growers, the name of such association or organization and the lot number of the grower, and, in case of apples, pears or peaches, the net weight or the number contained in the package, and the grade of apples or pears, and it shall be unlawful for any person to mark or place upon any such package the name of any other place or locality than the place where such fruit was grown, except the place to which shipped, or to falsely mark any such package as to variety, name of grower, association or organization or place where grown, or to obliterate or change the original marks on any such package or to re-mark the same with the name of any other grower or of any other place than that by or in which the contents were grown, or in case such package is

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fruit or vegetables in each district of the state affected by the grading obligatory rules to be established; said rules and regulations so established to become obligatory rules and regulations and be given the same force and effect as though enacted by the Legislature of the State of Washington, said obligatory rules and regulations to become effective upon being adopted and promulgated by the director of agriculture.

Promulgation of rules.

Amends Rem. Comp. Stat. § 2858; Pierce's Code § 2726.

SEC. 7. That Section 2858 of Remington's Compiled Statutes be amended to read as follows:

Section 2858. It shall be unlawful for any person, firm or corporation to sell, deal in or import into this state for sale or distribution any nursery stock except berry plants or bushes, or to act as agent, salesman, or solicitor for any nurseryman or dealer in nursery stock, without first having obtained from the director of agriculture and having in force a license so to do, and it shall be unlawful for any person to falsely represent that he is the agent, salesman, solicitor or representative of any nurseryman or dealer in nursery stock. No license shall issue until the applicant therefor shall have paid the fee and furnished the bond, as in this act required. The license fee shall be five dollars for nurserymen and dealers in nursery stock and one dollar for agents, salesmen and solicitors. All licenses shall be in the name of the person, firm or corporation licensed, and shall show the purpose for which issued, the name and location of the nursery or place of business of the nurserymen or dealer licensed or represented by the agent, salesman or solicitor licensed, and no license shall be issued to any agent, salesman or solicitor unless the nurseryman or dealer represented shall be licensed. All licenses shall bear the date of issue and shall expire on the first day of July next following the date of issue: *Provided*, That all licenses in force at the time of the taking

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Second. All moneys received from the sales of all unclaimed property.

Third. Not more than ten per centum of all moneys received from licenses from pawnbrokers, second-hand stores, junk dealers, and from any person, firm or corporation maintaining or conducting billiard, pool or pigeon hole tables for hire, or billiard and pool rooms.

Fourth. All moneys received from fines for the carrying of concealed weapons.

Fifth. Ten per centum of all fines and forfeitures collected or received in money for violation of city ordinances.

Sixth. The treasurer of any incorporated city which may hereafter be subject to the provisions of this act, shall retain monthly from the pay of each member of the police department of such city, a sum equal to one and one-half per centum of the monthly compensation paid each member for his services as such police officer, said sum to be forthwith paid into said police relief and pension fund, and no other or further deduction shall be made from such pay for any other fund or purpose whatever.

Passed the House February 20, 1923.

Passed the Senate February 28, 1923.

Approved by the Governor March 6, 1923.

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CHAPTER 81.

[S. B. 145.]

LIQUID FUEL TAX.

AN ACT relating to an excise tax on the sale and use of certain liquid fuels, providing for the refunding thereof in certain cases, fixing penalties for violations of this act and amending Section 8328 and 8331 of Remington's Compiled Statutes, and further amending Chapter VIII of Title LIV of Remington's Compiled Statutes by adding thereto a new section to be known as Section 8328-1, and declaring the time when this act shall take effect.

Be it enacted by the Legislature of the State of Washington:

Amends Rem. Comp. Stat. § 8328; Pierce's Code § 7050h-2.

SECTION 1. That Section 8328 of Remington's Compiled Statutes be amended to read as follows:

Distributor taxed.

Section 8328. That in addition to the taxes now provided for by law each and every distributor, as defined in this act, who is now engaged or who may hereafter engage, in his own name, or in the name of others, or in the name of his representatives or agents of this state, in the sale of liquid fuel as herein defined, shall not later than the fifteenth of each calendar month render a sworn statement to the director of licenses of the State of Washington of all such liquid fuels sold by him or them in the State of Washington during the preceding calendar month, and pay an excise tax of two cents per gallon on all liquid fuel so sold as shown by such statement in the manner and within the time hereinafter provided.

SEC. 2. That Chapter VIII, Title LIV of Remington's Compiled Statutes be amended by adding thereto a new section to be known as Section 8328-1 to read as follows:

All users, including distributors to pay.

Section 8328-1. Every person, firm, or corporation, including distributors, who shall use liquid fuel for the purpose of operating motor vehicles, including motor trucks, upon the public highways of the

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state, or the political subdivisions thereof, upon the sale or use of which liquid fuel the excise tax imposed by this chapter has not been theretofore paid, shall pay an excise tax of two cents per gallon upon all such liquid fuel so used, and, insofar as such liquid fuel is concerned, shall make the same reports and pay the same taxes as and be subject to all the other provisions of this chapter relating to, distributors of liquid fuel: *Provided*, That any tourist or traveler coming into the state in a motor vehicle may transport, for his own use only, not more than twenty gallons of liquid fuel at one time and use the same for the purpose of operating such motor vehicle without the payment of said tax.

Amends Rem. Comp. Stat. § 8331; Pierce's Code § 7050h-5.

SEC. 3. That Section 8331 of Remington's Compiled Statutes be amended to read as follows:

Date for payment.

Section 8331. Said excise tax shall be paid on or before the fifteenth day of each month to the state treasurer of the State of Washington, who shall receipt the distributor therefor, and on the next business day after the receipt of any such excise taxes deposit in the state treasury, to the credit of the motor vehicle fund the balance of moneys received for such excise taxes remaining on hand at the close of the preceding business day, after making all corrections and refunding all over-payments and all sums required to be refunded by the next succeeding section.

SEC. 4. That Chapter VIII of Title LIV of Remington's Compiled Statutes be further amended by adding thereto a new section to be known as Section 8331-1 to read as follows:

Refund.

Section 8331-1. Any person, firm or corporation who shall buy and use any liquid fuel as defined in this chapter for the purpose of operating or propelling stationary gas engines, farm tractors or motor boats, or who shall purchase and use any such

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Guide. SEC. 6. It shall be unlawful for any person to act as guide to any person or persons in this state without first obtaining a license from the county auditor of the county in which he resides, said license to be known as a guide's license, for which a fee of ten dollars ($10.00) shall be charged by the county auditor, and all moneys so received shall be turned over to the game fund of the county in which said license is issued, and any such guide found guilty of violating any of the game laws of this state shall forfeit his license for one year.

Elk, moose, possession. SEC. 7. No person shall, within the State of Washington, hunt, catch, take, kill, ship, convey or cause to be shipped or transported by common or private carrier to any person either within or without the state, purchase, expose for sale, have in possession with intent to sell, sell to any person or have in possession or under control at any time, any elk, elk meat, moose, moose meat, hide, hoofs, horns or teeth of any elk or moose unless lawfully acquired. Any person violating any of the provisions of this section shall be guilty of a gross misdemeanor and upon conviction thereof shall be fined not less than two hundred and fifty dollars ($250.00) nor more than one thousand dollars ($1,000.00) or be imprisoned in the county jail for not less than sixty (60) days nor more than one year.

Imported game. SEC. 8. Any person, firm or corporation may have in possession, at any time, any game or fur bearing animal, any game or song bird, or any game fish, or parts thereof, lawfully taken outside the boundaries of the State of Washington or lawfully taken within the State of Washington, for purposes

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Columbia River license fees.

Section 5704-a. There shall be paid to the state treasurer of the state of the following license fees and taxes in the Columbia River district or the Columbia River or the waters of the Columbia River over which the State of Washington has jurisdiction or concurrent jurisdiction:

For each gill net license for the taking of salmon, smelt or herring, seven and fifty-one-hundredths dollars ($7.50);

For each boat puller license for the taking of salmon, smelt or herring, one dollar ($1.00);

Provided, however, That no such gill net licenses or boat puller licenses shall be issued in the name of or to any applicant unless the said applicant is to be engaged personally in the operation of said gill net or boat used in the operation thereof.

Poundage tax.

Every person, firm or corporation operating as a canner, receiver, buyer, or wholesaler of salmon, shad or sturgeon shall pay in addition to all other licenses or fees provided by law, the sum of one half cent (½c) per pound on each and every specie of salmon, shad and sturgeon caught in the Columbia River district or the waters of the Columbia River over which the State of Washington has jurisdiction or concurrent jurisdiction. The poundage fee herein required shall be paid to the state treasurer on March first and September first or at such other times as the supervisor of fisheries may order and direct, and the fee shall be accompanied by a report showing the total number of pounds of all varieties of fish, stated separately upon blanks furnished by the supervisor of fisheries.

It is the intention of this act that only one poundage fee shall be collected for each and every pound of fish purchased or received and in order that this end may be accomplished, the supervisor of fisheries and the state treasurer are hereby authorized to

determine finally any dispute arising out of the operation and enforcement of this section.

Lien.

The poundage fee herein required shall constitute a first lien upon the cannery, packing plant, scow, boat and its equipment used in the canning, receiving or transporting of the said fish.

Rules and regulations.

The state treasurer and the supervisor of fisheries shall have and hereby are granted the right and power to make such rules, regulations and orders and require such reports to be made as in their judgment shall be necessary to insure the collection and payment of the poundage fee herein required, and may in their discretion require a bond from any person, firm or corporation licensed, guaranteeing the payment of said poundage fee.

Reports.

It shall be unlawful for any person to falsify any of the reports or to violate any of the rules, regulations or orders made or required by the state treasurer or the supervisor of fisheries, or to violate any of the provisions of this section. Every person, firm or corporation licensed to operate as a canner, packer, buyer, receiver or wholesaler by the director of licenses shall keep a record in triplicate in such form so that the following information and facts shall be found thereon:

Record required.

1. Name of person from whom any of said fish are obtained.

2. The license number and kind of gear operated by said person.

3. The license number shall be preceded by the letter "W" in case the license has been issued by the State of Washington, and the letter "O" in case the license has been issued by the State of Oregon.

4. The number of pounds of each variety of fish purchased or received from said person, said weights to be the gross weight, figured in the whole or round.

5. The date when said fish was purchased or received.

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6. The name of the purchaser or receiver.

At least one copy of this record must be kept on each scow, pick-up boat or other craft used in buying, receiving or transporting said fish and by the canner, or packer and the wholesaler or his buyer or receiver, and shall be subject to inspection by the supervisor of fisheries and the state treasurer or their deputies or agents.

Failure on the part of any person, firm or corporation to keep the record herein required shall be good and sufficient reason for the director of licenses to suspend or revoke the license granted to said person, firm or corporation, and any person, firm or corporation failing to pay the poundage fee required herein shall be denied a renewal of said license or the issuance of any other license which may be issued by the director of licenses hereunder.

Refund to Oregon.

Any tax received hereunder shown by the reports to have been collected under a license issued by the State of Oregon shall not be deposited in the state treasury, but shall be deposited in a fund to be known as the Oregon License Fund; and the state treasurer of the State of Washington shall, each month, make a statement of all such tax received by him, and shall pay the same to the state fish commission of Oregon. This provision shall not become effective, however, unless a similar and reciprocal statute of the State of Oregon shall become effective in favor of the state fisheries board of the State of Washington.

Gill net and boat puller, license required.

It shall be unlawful to take or catch any food fish with a gill net or to operate as a boat puller in the Columbia River district, or in the waters in the Columbia River, over which the State of Washington has jurisdiction or concurrent jurisdiction without first obtaining the license as in this section provided.

Whip seine.

No license shall be granted to any person, firm or corporation to operate a whip seine in the Columbia River district or in the waters of the Columbia River, over which the State of Washington has jurisdiction or concurrent jurisdiction.

Penalty.

Any person, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than $250 nor more than $1,000, or imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment.

SEC. 10. That Chapter 1 Title 35 of Remington's Compiled Statutes be amended by adding thereto a new section to be known and designated as Section 5754-a to read as follows:

Penalty.

See Rem. Comp. Stat. § 6752 and § 6758; Pierce's Code § 2510-1 and § 2510-2.

Section 5754-a. Any person, firm or corporation who shall violate any of the provisions of Section 5752 and 5753 of Remington's Compiled Statutes or of any rule or regulation or order of the state fisheries board made pursuant thereto shall be guilty of a misdemeanor.

Emergency.

SEC. 11. This act is necessary for the support of the state government and its existing public institutions and it shall take effect immediately.

Passed the Senate March 7, 1923.

Passed the House March 6, 1923.

Approved by the Governor March 13, 1923, with the exception of Section 2, which is vetoed.

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CHAPTER 126.

[H. B. 171.]

WEIGHTS AND MEASURES.

AN ACT relating to weights and measures establishing standards therefor, prohibiting the return of or credit for unsold bakery products, and amending section 11612 of Remington's Compiled Statutes.

Be it enacted by the Legislature of the State of Washington:

Amends Rem. Comp. Stat. § 11612; Pierce's Code § 7260.

SECTION 1. That Section 11612 of Remington's Compiled Statutes be, and the same is hereby amended to read as follows:

Butter standard.

Section 11612. A standard package or container of butter in the state of Washington shall contain sixteen (16) ounces net weight or thirty-two (32) ounces net weight, and a standard package or container need have no statement of the net weight of its contents.

Whenever butter is sold or offered for sale in a package or container the net weight of which is more or less than the standards herein prescribed, such package or container shall be labeled in plain English words or figures with the correct net weight of its contents expressed in pounds and ounces together with the name of the manufacturer or jobber.

Bread standard.

That no person, firm or corporation shall hereafter manufacture, sell, offer or expose for sale bread, except in the following weights, which shall be net weights twelve hours after baking; one pound, one and one-half pounds, two pounds, three pounds, four pounds and five pounds, or other pound weights. Variations at the rate of one ounce per pound over, and one ounce per pound under above specified unit weights are permitted in individual loaves, but the average weight of not less than twelve loaves of any one unit of any one kind shall

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Bread not returnable.

That no person, firm or corporation engaged in the manufacture of bread, or other bakery products, for sale, shall hereafter, directly or indirectly accept under any guise or arrangement whatever, returns of bread or other bakery products from any person, firm or corporation, nor make cash payments, nor allow credit to any retailer or other person for any unsold bread or other bakery products: nor shall any manufacturer of bread or other bakery products exchange any bread or other bakery products for other bread or other bakery products previously sold by said manufacturer.

Potato standard.

A standard sack of potatoes in the state of Washington shall contain one hundred (100) pounds net weight, and a standard sack of potatoes need have no statement of the weight of its contents.

Whenever potatoes are sold by the sack, in sacks containing more or less than the standard, such sack shall be labeled in plain English words or figures with its true net weight.

Berry standard.

All sales of blackberries, currants, strawberries, cranberries, blueberries, gooseberries, cherries and similar berries in packages containing less than one bushel, shall be sold by the dry quart containing 67.2 cubic inches or the dry pint containing 33.6 cubic inches, and all berry boxes sold, used or offered for sale within the state shall be of the interior capacity of 67.2 or 33.6 cubic inches, unless the same be labeled in plain English words or figures with its correct interior capacity expressed thereon in cubic inches.

Nothing in the above section shall be so construed as to prevent the sale of any of the articles therein mentioned by weight.

Coal standard.

A standard sack of coal in the state of Washington shall contain one hundred (100) pounds net weight and a standard sack of coal need have no statement of the net weight of its contents.

Whenever coal is sold or offered for sale by the sack, in sacks containing more or less than one hundred (100) pounds net weight, such sack shall be labeled in plain English words or figures with the true net weight of its contents expressed in pounds.

Coal misrepresentation.

It shall be unlawful for any person, firm or corporation or their agents, servants or other employees to misrepresent any coal offered for sale or to sell coal of any particular name or designation, or from any particular mine under the name or designation of another coal or mine.

Milk and cream.

All milk, cream or buttermilk sold in the state of Washington, in bottles, shall be sold only in bottles containing one-half pint, one pint, one quart, one-half gallon or one gallon standard liquid measure.

Vinegar.

All vinegar sold, exposed or offered for sale in the state of Washington, in bottles, shall be sold in bottles containing one-half pint, one pint, one quart, one-half gallon or one gallon standard liquid measure and when so sold need have no statement of the net measure of its contents.

Whenever vinegar is sold in the state of Washington in bottles containing more or less than mentioned in the foregoing section, such bottles shall be labeled in plain English words and figures, with its true net measure.

Purchase by weight and measure.

It shall be unlawful for any person, firm or corporation in the state of Washington to buy any commodity upon the basis of weight or measure except the same be bought upon the basis of the true net weight or measure and unless the scales or measures so used shall bear the seal of a sealer of weights and

Repealed Ch. 194 LEx25

230 P. 837

CHAPTER 134.

[H. B. 260.]

COMMISSION MERCHANTS.

AN ACT relating to commission merchants engaged in selling any agricultural product and repealing chapter 139 of the Laws of 1907, and providing penalties.

Be it enacted by the Legislature of the State of Washington:

Definitions.

SECTION 1. The term "agricultural product" whenever used in this act shall include any horticultural, viticultural, forestry, dairy, livestock, poultry, bee or farm product; the term "commission merchant" whenever used in this act shall include every person, firm or corporation who receives any agricultural product to be sold on commission for the account of another, but shall not include non-profit cooperative marketing organizations; the term "consignor" whenever used in this act shall mean any person, firm or corporation forwarding, delivering, consigning, or shipping any agricultural product to any commission merchant for sale on commission.

License.

Application, contents.

SEC. 2. It shall be unlawful for any person, firm or corporation to act as a commission merchant without first obtaining a license as in this act provided. Applications for licenses under this act shall be in writing, signed and sworn to by the applicant and shall state the name of the city or town where the business of commission merchant is to be conducted, giving the street and number of building if practicable, and the character of products which will be handled by the applicant; and if made by an individual his full name; and if made by a copartnership, the full names of each of the partners composing the copartnership, together with the firm or trade name under which the business is to be conducted; and if made by a corporation, shall state

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Rep. Ch. 194 LEx25

whether a domestic or foreign corporation, the amount of its capital stock as provided in its articles of incorporation and the amount of its capital stock fully paid in. All applications for licenses hereunder shall be executed in duplicate; one copy thereof shall at the time of making the application be filed with the director of agriculture and the other shall be filed with the state treasurer. The state treasurer shall, if the application is in proper form, is accompanied by a sufficient fee, and if the bond is sufficient and properly executed, on the next business day following the receipt of such application transmit the application and bond, accompanied by his duplicate receipt for the fee, to the department of licenses, and shall deposit the fee accompanying the application in the general fund of the state treasury. If the application is not in proper form, is not accompanied by a sufficient fee, or if the bond is insufficient or not in proper form, or properly executed, the state treasurer shall notify the applicant of the defects and shall not pass the application on to the department of licenses or pay the money accompanying the application into the state treasury until such time as all defects have been corrected. Filed.

The application filed with the state treasurer shall be accompanied by a good and sufficient bond in the penal sum of three thousand dollars ($3,000) and upon a form to be approved by the attorney general, and shall be executed by the applicant as principal and by a surety company authorized to do business in the state of Washington as surety. Said bond shall be for the benefit of all consignors having any cause of action against the commission merchant, and shall be conditioned for the faithful performance by the applicant of all duties as such commission merchant. Bond.

Upon receipt by the department of licenses of such application the director of licenses shall cause License issued.

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Ch 194

to be prepared and issued to the applicant a license as commission merchant under this act, which license shall be signed by the director of licenses and attested by the secretary under the seal of the department of licenses.

Fee.

SEC. 3. All applications shall be accompanied by a fee of ten dollars ($10) which shall entitle the applicant to a license to expire on December 31st next following. Upon application and payment of a fee of ten dollars ($10) on or before the first day of January following the date of expiration of any license issued hereunder the applicant shall be entitled to a renewal license to expire one year from the date of expiration of the old license. All applications for renewal of licenses shall be made in the same manner as applications for original licenses.

Renewal license.

Books to be kept.

SEC. 4. Every person licensed to do business as a commission merchant under this act shall keep an accurate and complete set of books, in which shall be truly recorded the amount and character of all agricultural products received on consignment by such commission merchant from any resident of the state of Washington, with the date of receipt, the name of the consignor and the condition of the shipment when received; the date when the same or any part thereof is sold, together with the price for which sold, and the name of the person, firm or corporation to whom sold. The books of any such commission merchant shall at all times be open and subject to the inspection of the director of agriculture or his duly authorized agent, and to any consignor as to any entry concerning any agricultural products received from such consignor.

Inspection.

Statement upon receipt of goods.

SEC. 5. Any commission merchant who shall receive any agricultural products to sell on commission, shall immediately send to such consignor a statement in writing, showing what agricultural

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Penalty.

SEC. 11. Any person, firm or corporation violating any provisions of this act shall be guilty of a misdemeanor.

Revocation of license.

SEC. 12. The director of licenses shall revoke any license issued under this act whenever the person, firm or corporation holding the same is convicted of any violation of this act.

If any part unconstitutional.

SEC. 13. If any section or part of a section of this act shall, for any cause, be held unconstitutional, such holding shall not affect the rest of this act or any other section hereof.

SEC. 14. That chapter 139 of the Laws of 1907 is hereby repealed.

Passed the House March 3, 1923.
Passed the Senate March 6, 1923.
Approved by the Governor March 17, 1923.

CHAPTER 135.

[H. B. 18.]

LOCAL IMPROVEMENTS.

AN ACT relating to local improvements and amending section 9363 of Remington's Compiled Statutes.

Be it enacted by the Legislature of the State of Washington:

Amends Rem. Comp. Stat. § 9363; Pierce's Code § 1000.

SECTION 1. That Section 9363 of Remington's Compiled Statutes be amended to read as follows:

Section 9363. The council or other legislative body shall have jurisdiction to proceed with any such improvement initiated by petition or resolution: *Provided,* that in any city of the first class it appears from the certificate of the board, officer, or

Council to proceed with improvement.

First class cities.

vided in this act, and shall pay his premiums thereon to the accident fund and medical aid fund. The sufficiency of such statement shall be subject to the approval of the director of labor and industries.

Record of employment.

Every employer shall keep at his place of business a record of his employment from which the above information may be obtained and such record shall at all times be open to the inspection of the director of labor and industries, supervisor of industrial insurance, or the traveling auditors, agents or assistants of the department, as provided in Section 7690 of Remington's Compiled Statutes of Washington.

See Rem. Comp. Stat. § 7690; Pierce's Code § 3483.

Partners or other person excluded from payroll.

In all cases where partners or other persons are excluded on the payroll such statement shall state both the names and occupations of the parties excluded and no such persons shall be entitled to compensation unless notice in writing that such excluded person has been included is received by the department prior to the date of injury to such person. Such employer shall at the time of reporting his payroll also state the names and addresses of any contractor or subcontractor operating for or under him.

Failure to keep record, penalty.

Every person, firm or corporation who shall fail to keep such record or fail to make such report in the manner and at the time herein provided shall be subject to a penalty of one hundred dollars ($100.00) for each such offense, to be collected by civil action in the name of the state and paid into the accident fund.

Failure to furnish estimated payroll, penalty.

Every employer who shall fail to furnish an estimated payroll and make payments as above provided shall be liable to a penalty of not to exceed five hundred dollars ($500.00) and shall also be liable if an accident has been sustained by an employee prior to the time such estimate is received by the department, to a penalty in a sum equal to 50

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per cent of the cost to the accident fund and medical aid fund of such accident, to be collected in a civil action in the name of the state, and paid into the accident fund. In case the consequent payment to the injured workman, his dependents or beneficiaries, be payable in monthly payments, the cost to the accident fund shall be estimated in accordance with the rule stated in Section 7681 of Remington's Compiled Statutes of Washington. The director of labor and industries may waive the whole or any part of any penalty charged under this act.

See Rem. Comp. Stat. § 7681; Pierce's Code § 8475.

Waiver of penalty.

Any employer who shall misrepresent to the department the amount of his payroll or the number of days upon which the premium under this act is based shall be liable to the state in ten times the amount of the difference in premium paid and the amount the employer should have paid, and shall also be guilty of a misdemeanor if such misrepresentation shall be made knowingly. Civil penalties to the state under this act shall be collected by civil action in the name of the state and paid into the accident fund.

Misrepresentation of payroll.

Penalty.

Action to collect civil penalties.

Any person, firm or corporation who not having previously reported to the department shall establish any new plant, or works, or enter upon the performance of any new building contract or construction contract and who shall fail to send written notice thereof to the department within five days after such establishing or entering shall be guilty of a misdemeanor.

New business or plant, duty to report, penalty for failure.

For the purpose of such payments into the accident fund accounts shall be kept with each industry in accordance with the classification herein provided and no class shall be liable for the depletion of the accident fund from accidents happening in any other class. Each class shall meet and be liable for the accidents occurring in such class. The fund

Classification of industry.

Class liability.

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SEC. 5. That Section 7692 of Remington's Compiled Statutes of Washington be amended to read as follows: Amends Rem. Comp. Stat. § 7692; Pierce's Code § 8455.

Section 7692. Whenever the state, county, any municipal corporation or other taxing district shall engage in any extra-hazardous work, or let a contract therefor, in which workmen are employed for wages, this act shall be applicable thereto. The employer's payments into the accident fund shall be made from the treasury of the state, county, municipality or other taxing district. If said work is being done by contract, the payroll of the contractor and the sub-contractor shall be the basis of computation, and in the case of contract work consuming less than one year in performance the required payment into the accident fund shall be based upon the total payroll. The contractor and any sub-contractor shall be subject to the provisions of the act, and the state for its general fund, the county, municipal corporation or other taxing district shall be entitled to collect from the contractor the full amount payable to the accident fund, and the contractor, in turn shall be entitled to collect from the sub-contractor his proportionate amount of the payment. Whenever and so long as, by state law, city charter or municipal ordinance, provision is made for municipal employees injured in the course of employment, such employees shall not be entitled to the benefits of this act and shall not be included in the payroll of the municipality under this act.

State, county, municipal corporations, etc.

Application of act.

Contract.

Contractor, sub-contractor.

The provisions of this act shall apply to all extra-hazardous work done by contract; the person, firm or corporation who lets a contract for such extra-hazardous work shall be responsible primarily and directly for all payments due to the accident fund and medical aid fund upon the work. The contractor

All extra-hazardous contract work under act.

Person letting contract responsible.

and any sub-contractor shall be subject to the provisions of this act, and the person, firm or corporation letting the contract shall be entitled to collect from the contractor the full amount payable to the accident fund and medical aid fund, and the contractor in turn shall be entitled to collect from the sub-contractor his proportionate amount of the payment.

City or town, building permits.

See Rem. Comp. Stat. § 7676; Pierce's Code § 8471.

It shall be unlawful for any city or town to issue a construction building permit to any person who has not submitted to the department of labor and industries an estimate of payroll and paid premium thereon as provided by Section 7676 of Remington's Compiled Statutes.

Amends Rem. Comp. Stat. § 7696; Pierce's Code § 8487.

SEC. 6. That Section 7696 of Remington's Compiled Statutes of Washington be amended to read as follows:

Employer in other occupations may come under act.

See Rem. Comp. Stat. § 7674; Pierce's Code § 8469.

Section 7696. Any employer engaged in any occupation other than those enumerated or declared to be under this act as provided in Section 7674 of Remington's Compiled Statutes may make written application to the director of labor and industries to fix rates of contribution for such occupation for industrial insurance and for medical aid, and thereupon it shall be the duty of the director of labor and industries through the division of industrial insurance to fix such rate, which shall be based on the hazard of such occupation in relation to the hazards of the occupations for which rates are prescribed.

Rate fixed.

When such rate shall be so fixed such applicant may file notice in writing with the supervisor of industrial insurance, giving ten days notice of his or its election to contribute under this act, and shall forthwith display in a conspicuous manner about his or its works and in a sufficient number of places to reasonably inform his or its workman of the fact, printed notices furnished by the department stating that he or it has elected to contribute to the accident fund

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Prosecutions. Prosecutions for violation of this act shall be brought in the proper court by the prosecuting attorney of the county in which said violation occurred, upon complaint of the director, supervisor, inspectors or assistants.

License fees, fines, costs, how disposed of. All moneys received from license fees, fines, costs imposed and recovered under the provisions of this act shall be paid to the director of agriculture, or his agents, and by him paid into the state treasury to the credit of the agricultural seed revolving fund to be used to assist in defraying costs of inspection and analysis and grading of agricultural and vegetable seeds under the provisions of this act.

Attorney general. The director, supervisor, or inspectors shall have the power whenever he shall deem it necessary to call upon the attorney general for aid in the prosecution of all cases arising under the provisions of this act.

Violation, penalties. Whoever violates any of the provisions named in this act, or who shall attempt to interfere with the inspectors or assistants in the discharge of the duties named herein, shall be guilty of a misdemeanor and upon conviction shall be fined not less than twenty-five dollars ($25.00) and costs for the first offense and not less than one hundred dollars ($100.00) and costs for the second or any subsequent offense.

Amends Rem. Comp. Stat. § 2827; Pierce's Code § 112d. SEC. 6. That section 2827 of Remington's Compiled Statutes be amended to read as follows:

License for dealers. Section 2827. It shall be unlawful for any person, firm or corporation to engage in, conduct, or carry on the business of selling, dealing in or importing into this state for sale or distribution any agricultural or vegetable seed, without first having ob-

(b) Acknowledgment by warehouseman that the warehouse receipts and commodity thereby covered are held in trust by the warehouseman for the holder of the trust receipt for the purpose of shipment or delivery as therein specified.

(c) Description of warehouse receipts for which trust receipt is issued.

(d) Description of commodity, with grades if any, covered by such warehouse receipts.

(e) A copy of the shipping or delivery instructions.

(f) Amount of charges if any paid by the holder of warehouse receipts to warehouseman at time of the surrender thereof.

(g) That the trust receipt will be surrendered to warehouseman by the holder thereof upon receipt of proper and valid bill or bills of lading covering commodity therein described or upon receipt of written evidence of shipment or delivery by such warehouseman of the commodity in accordance with shipping or delivery instructions stated in said trust receipt.

Surrender of trust receipt.

It shall be the duty of such warehouseman to issue such trust receipt or trust receipts to the holder of such warehouse receipt or receipts when requested so to do. At the time of the surrender of such warehouse receipt or receipts and the issuance by the warehouseman of his trust receipt or trust receipts therefor, the fact of the issuance of such trust receipt or trust receipts shall be plainly noted by the warehouseman upon the warehouse receipt or warehouse receipts so surrendered. Such notation thereon shall give the name of the person, firm, or corporation who received the trust receipt from the warehouseman, the date of the issuance thereof, and the serial number, if any, of the trust receipt or trust receipts issued in exchange therefor. The warehouseman thereafter when and if such trust receipt or trust receipts shall have been surrendered to him

See Rem. Comp. Stat. § 3809; Pierce's Code § 4515.

Amended Ch 184 Prohibited acts.

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(e) Conferred upon corporations by Section 3809 of Remington's Compiled Statutes.

SEC. 9. No corporation under the provisions of this act shall:

(a) Make any loan, on the security of makers, co-makers, endorsers, sureties or guarantors, for a longer period than one year from the date thereof, or to any person, firm or corporation who is not a resident of the county in which the corporation maintains an office.

(b) Hold at any one time the obligation or obligations of any person, firm or corporation, for more than one per cent of the amount of the capital and surplus of such industrial loan company.

(c) Hold at any one time the obligation or obligations of persons, firms, or corporations purchased from any person, firm or corporation for more than ten per cent of the total resources of such industrial loan company.

(d) Hold at any one time the obligation or obligations of persons, firms or corporations secured by real estate aggregating more than ten per cent of the total resources of such industrial loan company.

(e) Make any loan or discount on the security of its own capital stock, or be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith. Stock so purchased or acquired shall be sold at public or private sale or otherwise disposed of within ninety days from the time of its purchase or acquisition.

(f) Invest any of its funds, otherwise than as herein authorized, except in such investments as are by law legal investments for commercial banks, or in the securities of its branches or subsidiaries authorized by the supervisor of banking.

(g) Make any loan or discount, nor shall any officer or employee thereof on behalf of such corpora-

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Debts due.

SEC. 18. Any debt due a corporation under the provisions of this act, upon which no payment has been made upon the principal thereof for six months, unless such debt be well secured and in course of collection by legal process or probate proceedings shall be considered a bad debt, and shall be charged off of the books of such corporation. A judgment held by such corporation shall not be considered an asset of the corporation after two years from the date of its rendition, unless with the written permission of the bank commissioner specifying an additional period; *provided*, that time consumed by any appeal from such judgment shall be excluded.

Judgments.

Insolvent, receiving money.

SEC. 19. Every officer, director, agent, stockholder, or employee of a corporation under the provisions of this act who shall fraudulently receive money or money's worth in exchange for the issuance of any choses in action of such corporation, when he knows or has good reason to believe that such corporation is insolvent shall be deemed guilty of a felony, and punished upon conviction, thereof, by a fine not exceeding one thousand (1000) dollars, or imprisoned in the state penitentiary not exceeding ten years, or both such fine and imprisonment, at the discretion of the court.

Penalty.

Bonus, commission by officers, employes.

(b) Every officer, director, agent, stockholder, or employee of a corporation under the provisions of this act, who shall directly or indirectly, receive a bonus, commission, compensation, remuneration, gift, speculative interest or gratuity of any kind from any person, firm, or corporation for granting, procuring or endeavoring to procure, for any person, firm or corporation, any loan by or out of the funds of such corporation, or the purchase or sale of any securities or property for or on account of such corporation, shall be guilty of a felony.

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gross weight, including load, exceeds those herein prescribed, may operate under special written permits, which must be first obtained and under such terms and conditions as to time, route, equipment, speed and otherwise as shall be determined by the State Highway Engineer if it is desired to use a state highway; the county commissioners, if it is desired to use a county road; and the city or town council, if it is desired to use a city or town street; from each of which officer or officers such permit shall be obtained in the respective cases. *Provided*, that no motor truck or trailer shall be driven over or on a public highway with a load exceeding the licensed capacity.

Width. No vehicles whose width over all, including load, exceeds eight feet shall be driven over or on a public highway (Farm machinery moving from one farm or section of farm to another not included); and no vehicle having two axles and having a length of more than thirty feet shall be driven over or on a public highway; and no vehicle or combination of vehicles having more than two axles and having a length including load of more than eighty-five feet shall be driven over or on a public highway; and no vehicle or combination of vehicles having more than six axles shall be driven over or on a public highway: *Provided, further*, upon the conviction of any person, firm or corporation for the violation of the provisions of this section, a fine shall be imposed of not less than twenty-five dollars ($25); *Provided, further*, upon the conviction of any person, for a second violation of the provisions of this section, the court or judge before whom such conviction is had may in its or his discretion impose a fine of not to exceed fifty dollars ($50) and shall in addition to any fine imposed suspend the license covering the vehicle involved in such violation for a period of

Penalties.

thirty days, and upon a third conviction, the court or judge may in its or his discretion impose a fine of not to exceed one hundred dollars ($100) and shall in addition to any fine imposed suspend said license covering the vehicle involved in such violation for a period of three months.

Metal tires.

It shall be unlawful for any person, firm or corporation to operate any vehicle equipped with metal tires over and along any paved public highway in this state whose gross weight including load is more than 10,000 pounds or any vehicle having a gross weight, including load, of over 625 pounds per inch width of tire.

Solid rubber tires.

It shall be unlawful for any person, firm or corporation to operate over and along any public highway any vehicle equipped with tires of solid rubber or other elastic material and having upon the wheels thereof any tire of a less thickness of solid rubber, or other equally elastic material or composition, than will insure and maintain a cushion of elastic material between the surface of the highway and every metal part of every wheel of such vehicle of not less than the following:

(a) When the gross weight, including load, on any one wheel is less than 6,000 pounds, one and one-quarter inches.

(b) When the gross weight, including load, on any one wheel is 6,000 pounds or more, one and one-half inches.

Amends Rem. Comp. Stat. § 6335; Pierce's Code § 217.

SEC. 5. That section 6335 of Remington's Compiled Statutes of Washington be amended to read as follows:

Brakes.

Section 6335. Every motor vehicle or combination of vehicle operated or driven upon the public highways of this state, shall be equipped with brakes as follows:

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yards of any school house, on school days between eight o'clock in the morning and five o'clock in the evening, at a rate of speed faster than twelve miles per hour, or in any case at a rate of speed that will endanger the property of another or the life or limb of any person. It shall be unlawful to operate any motor truck equipped with pneumatic tires over or along the highways of this state at a greater rate of speed than twenty-five miles per hour; or any motor truck having two axles and a gross weight including load as hereinafter provided, equipped with solid rubber tires at a greater rate of speed than the following:

4,000 pounds and under	25 miles per hour
Over 4,000 pounds and up to 8,000 pounds	20 miles per hour
Over 8,000 pounds and up to 12,000 pounds	18 miles per hour
Over 12,000 pounds and up to 16,000 pounds	16 miles per hour
Over 16,000 pounds and up to 20,000 pounds	14 miles per hour
Over 20,000 pounds and up to 24,000 pounds	12 miles per hour

It shall be unlawful for any person, firm or corporation to operate any vehicle or combination of vehicles of a gross weight, including load, as hereinafter provided at a greater rate of speed than that stated in the following tables for the class and gross weight, including load, of vehicle or combination of vehicles stated:

Vehicles or combinations of vehicles having three or four axles:

24,000 pounds and under	20 miles per hour
Over 24,000 pounds and up to 28,000 pounds	18 miles per hour
Over 28,000 pounds and up to 32,000 pounds	16 miles per hour
Over 32,000 pounds and up to 38,000 pounds	14 miles per hour
Over 38,000 pounds and up to 42,500 pounds for vehicles having three axles	12 miles per hour
Over 38,000 pounds and up to 44,000 pounds for vehicles having four axles	12 miles per hour

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Rem. Comp. Stat. § 6358-1; Pierce's Code § 230-a-1.

SEC. 10. That Chapter II of Title XLI, of Remington's Compiled Statutes of Washington be further amended by adding thereto a new section 6358-1 to read as follows:

Platform, box, etc.

Section 6358-1. It shall be unlawful for any person, firm or corporation to build, erect, establish, operate, maintain or conduct along side any of the public highways of this state any platform, box, stand, or any other temporary or permanent device or structure to be used for the purpose of receiving from or delivering to any vehicle mail, milk cans, vegetables, fruit, merchandise, produce or commodities of any character unless such platform, box, stand, or other temporary or permanent device or structure is so located that no portion thereof is less than four feet from the paved or main travelled portion of such highway.

Emergency.

SEC. 11. This act is necessary for the immediate preservation of the public safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate March 8, 1923.

Passed the House March 3, 1923.

Approved by the Governor with the exception of Section 9, which is vetoed, March 19, 1923.

CHAPTER 184.

[S. B. 63.]

FORESTS AND FOREST FIRES.

AN ACT relating to forest protection, providing a penalty for violation of any of the orders, rules or regulations made for that purpose, amending Sections 5785, 5787, 5788, 5789, 5794, 5797, 5803, and 5805 of Remington's Compiled Statutes of Washington 1922, and further amending said Compiled Statutes by adding to Chapter 1, Title XXXVI thereof, to be known as Sections 5782-1, 5795-1, 5795-2, 5806-1, 5806-2, 5811-1, and 5813-1.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. That chapter 1, Title XXXVI of Remington's Compiled Statutes of Washington 1922, shall be amended by adding thereto a new section to be known as section 5782-1, as follows:

Section 5782-1. When, in the opinion of the director of the department of conservation and development, any forest region is particularly exposed to fire danger, he may, in his discretion, designate such region, defining the boundaries thereof by legal subdivisions or water-courses, watersheds, mountain ranges, or other natural monuments, as a region of extra fire hazard, and he shall have the power and it shall be his duty to make, adopt, amend and promulgate rules and regulations for the protection thereof. All such rules and regulations shall be promulgated by the director by publication in such newspaper, or newspapers, of general circulation in the county, or counties, wherein such region is situated and for such length of time as the director may determine, and by posting copies of the rules and regulations on roads and trails entering such region; such rules and regulations shall be in force from and after the time specified therein. *Provided,* that nothing in this act shall authorize the director

Vetoed
L. F. H.

of the department of conservation and development to exclude permanent residents, or prohibit logging, milling, canning, or other industrial operations, or public works in such regions but shall authorize such director to make such rules and regulations as he may deem necessary for the conduct of such residents and such operations with respect to any act or thing which may create or increase the fire hazard.

Vetoed L. F. H.

Amends Rem. Comp. Stat. § 5785; Pierce's Code § 2562.

SEC. 2. That section 5785 of Remington's Compiled Statutes of Washington 1922, shall be amended to read as follows:

Wardens, appointment.

Section 5785. The state supervisor of forestry shall, subject to the approval of the director of the department of conservation and development, have power to appoint within any region or district in this state where there is timber requiring protection, one or more wardens for all or any portion of the period during which the said supervisor deems that forest fire dangers exist.

Examination of deforested lands.

The said supervisor may, subject to the approval of the said director, and at such times and in such localities as he deems the public welfare demands, employ one or more wardens whose duty it shall be to examine deforested lands of the state, and ascertain if such lands are chiefly valuable for agriculture, or if they are chiefly valuable for timber growing, with a view to reforestation. The said wardens, shall, under the direction of the said supervisor engage in the discovery of inflammable materials, and cause, or assist in the burning of such material at such times as the burning can be done with a minimum of danger to adjacent timber, or other property. The said wardens, under the direction of the said supervisor, shall report any trespass and illegal cutting upon state timber lands, coming to his notice, and report the same to the state land commissioner.

Reforestation.

Inflammable materials burned.

Wardens, suspension.

The said supervisor shall have power to temporarily suspend any warden or ranger who may be incompetent or unwilling to discharge properly the duties of his office, and to appoint his successor temporarily, until his action shall be passed upon by the said director.

Wardens' office.

The wardens shall make their headquarters at such place as the said supervisor shall determine, and upon request of said supervisor to the county commissioners of any county such wardens shall be furnished with suitably equipped office quarters in the county court house, said quarters to be designated by said county commissioners.

Wardens' authority.

The authority of the wardens respecting the prevention, suppression and control of forest fires, summoning, impressing or employing help, or making arrests for the violation of this act, may extend to any part of the state.

Salary and expense.

The salaries and necessary expenses of all wardens, together with all wages and expenses incurred for help and assistance in forest fire protection shall be fixed by the said director the wages and salaries to be based on but not to exceed going wages and salaries for similar work, and shall be borne in the proportion of two-thirds by the state and one-third by the county in which the service was given and the expense incurred for forest fire protection.

Accounts and bills.

All accounts of the wardens shall be submitted to the said supervisor, as well as all bills for forest fire protection authorized by the wardens, and when such bills are approved and paid as provided for in section 5783, the amount of one-third of all such outlays in each county shall be due and payable on demand from each of said counties into the state treasury, and credited to the fund appropriated for the division of forestry.

See Rem. Comp. Stat. § 5783; Pierce's Code § 2560.

Reports of wardens and rangers.

All wardens and rangers shall render reports to the said supervisor on such blanks or forms, or in such manner, and at such times as may be ordered, giving a summary of how employed, the area of county visited, expenses incurred, and such other information as may be called for by the said supervisor.

Amends Rem. Comp. Stat. § 5787; Pierce's Code § 2564.

SEC. 3. That section 5787 of Remington's Compiled Statutes of Washington 1922, shall be amended to read as follows:

Officers, ex-officio, rangers.

Section 5787. All state land cruisers, all game wardens, road supervisors and state highway patrolmen, when approved by the state supervisor of forestry, and all rangers and assistant rangers of the United States Forest Service, when recommended by their forest supervisors, and commissioned by the state supervisor of forestry shall be *ex-officio* rangers.

Timber cruisers and citizens of the state advantageously located may, at the discretion of the said supervisor, be appointed rangers and vested with their powers and duties.

Rangers' compensation.

Rangers shall receive no compensation for their services except when employed in cooperation with the state and under the provisions of this act, and shall not create any indebtedness, or incur any liability on behalf of the state: *Provided,* that rangers actually engaged in extinguishing, or preventing the spread of fire in brush, slashings, choppings, timber or elsewhere that may endanger timber or other property, shall when their accounts for such service have been approved by the fire wardens in authority, be entitled to receive compensation for such services at a rate to be fixed by the director of the department of conservation and development.

SEC. 4. That section 5788 of Remington's Compiled Statutes of Washington 1922, shall be amended to read as follows:

Section 5788. No one shall burn any forest material within any county in this state in which there is a warden or ranger during the period beginning the first day of May west of the summit of the Cascade Mountains, and the first day of June east of the summit of the Cascade Mountains and ending, unless sooner ended by proclamation of the director of the department of conservation and development, on the first day of October in each year, which period is hereby designated as the closed season, without first obtaining permission in writing from the state supervisor of forestry, or a state warden or a state ranger, and afterwards complying with the terms of said permit and any one violating any provisions contained in the preceding portions of this section shall, upon conviction thereof, be fined not less than twenty-five dollars ($25.00) nor more than five hundred dollars ($500.00), or be imprisoned in the county jail not exceeding thirty (30) days. Such permission for burning shall be given only upon compliance with such rules and regulations as the director of the department of conservation and development shall prescribe, which shall be only such as the said director deems necessary for the protection of life or property.

Vetoed L. F. H.

The said supervisor, any of his assistants, any warden or ranger, may at his discretion, refuse, revoke, or postpone the use of permits to burn when such act is clearly necessary for the safety of adjacent property.

SEC. 5. That section 5789 of Remington's Compiled Statutes of Washington 1922, shall be amended to read as follows:

Amends Rem. Comp. Stat. § 5789; Pierce's Code § 2566.

Section 5789. No one shall burn any forest material until all dry snags, stubs and dead trees over

Forest material burned, conditions.

twenty-five (25) feet in height, within the area to be burned, shall have been cut down and until such other work shall have been done in and around the slashing or chopping, to prevent the spread of fire therefrom, as shall be required to be done by the state supervisor of forestry, or any warden or ranger.

Slashings burned, supervision.

When any person shall have obtained permission from the said supervisor, warden or ranger, to burn any slashings made for the purpose of clearing land, the warden may, at his discretion furnish him with a man to supervise and control the burning, who shall represent and act for such warden, and shall have all the power and authority of a warden while engaged in such service, including the right to revoke such permit, if in his opinion the burning authorized would endanger any valuable timber or other property. Such a man shall serve only until such time as the party burning may be able to keep the fire under control himself.

Assistance to prevent destruction by fire.

The said supervisor and wardens are hereby authorized and empowered to employ a sufficient number of men to extinguish or prevent the spreading of any fires that may be in danger of destroying any valuable timber or other property of the state. The said supervisor, or any warden by special authority of the said supervisor, may provide needed tools and supplies, and transportation when necessary for men so employed.

Compensation.

Every man so employed, and also the representative of the warden supervising the burning, shall be entitled to compensation at a rate to be fixed by the director of the department of conservation and development, and the warden shall issue a certificate to each man so employed showing the number of hours worked by him and the amounts due to him, upon which, after approval by the said supervisor, the men shall be entitled to receive payment from the state in the manner provided for in section 5783.

See Rem. Comp. Stat. § 5783; Pierce's Code § 2560.

Any person refusing to render assistance when called upon by any warden, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00). Assistance refused, penalty.

SEC. 6. That section 5794 of Remington's Compiled Statutes of Washington 1922, shall be amended to read as follows: Amends Rem. Comp. Stat. § 5794; Pierce's Code § 2571.

Section 5794. It shall be unlawful for any one to operate any spark-emitting railroad locomotive, logging locomotive, logging, or farming engine, or boiler, at any time during the closed season, or for any one to operate any railroad locomotive, logging locomotive, or logging or farm engine or boiler, within one-quarter of one mile of any forest material during the closed season, without such railroad locomotive, logging locomotive, logging, or other engine or boiler is provided with and uses a safe and suitable device for arresting sparks, a suitable power pump with hose and three shovels, one axe, one mattock, two water pails and one hand force pump, such tools and accessories to be kept in place around each donkey engine and in effective condition for immediate use for fire suppression. Locomotive engine, spark arrester.

It shall be unlawful for anyone to operate during the closed season any railroad locomotive, logging locomotive, or logging, or other engine or boiler within one-quarter of one mile of any forest material, without such railroad locomotive, logging locomotive, or logging or other engine or boiler is provided with and uses an adequate device to prevent the escape of fire or live coals from all ash-pans, and all fire-boxes, except when said ash-pans and said fire-boxes are being cleaned when not in motion. Locomotive engine, ash-pan protector.

It shall be unlawful for common carrier railroad companies to operate trains through forested districts unless such trains are followed by a speeder patrol at such times and in such places as the state

supervisor of forestry may designate, each patrol to be equipped with a five-gallon fire extinguisher, two shovels and an ax. In case a railroad company fails to provide patrol as required, the state supervisor of forestry is hereby authorized to employ patrolmen for such purpose and the railway company concerned shall be liable for the expense of the same to be collected in a civil suit brought by the state against said railroad company.

Penalty.

Every person violating the provisions of this section shall upon conviction be punished by a fine of not less than twenty-five dollars ($25.00), nor more than seventy-five dollars ($75.00) and the judgment of the court, in case of conviction, shall prohibit such person from operating such train, railroad locomotive, logging locomotive or other engine or boiler until the requirements of this section have been complied with.

Amends Rem. Comp. Stat. § 5795-1 and 5795-2; Pierce's Code § 2572-1 and 2572-2.

SEC. 7. That Chapter 1, Title XXXVI of Remington's Compiled Statutes of Washington 1922, shall be amended by adding thereto, two new sections to be known as sections 5795-1 and 5795-2; as follows:

Public carriers to report fires.

Section 5795-1. Railroad companies and other public carriers, or any person or persons, operating through forested districts, must report forthwith by telephone or telegraph any fires on or adjacent to their right-of-way or route, to the local fire warden or to the office of the state supervisor of forestry.

Lighted cigars, etc., prohibited.

Section 5795-2. It shall be unlawful, during the closed season, for any person to throw away any lighted tobacco, cigars, cigarettes, matches, fire crackers or other lighted material in any forest region of this state. Every person, firm or corporation operating a public conveyance shall post a copy of this section in a conspicuous place within the smoking compartments of such conveyance. Any

person violating the provisions of this section shall be deemed guilty of a misdemeanor.

Amends Rem. Comp. Stat. § 5797; Pierce's Code § 2574.

SEC. 8. That section 5797 of Remington's Compiled Statutes of Washington 1922, shall be amended to read as follows:

Donkey or stationary engine.

Section 5797. Everyone operating a stationary engine, for the logging of timber, or the clearing of land of tree stumps, or other wood material, shall during the closed season:

Watchman.

(a) Maintain a watchman at the point where the said donkey engine, or other portable or stationary engine may be located, said watchman to be on duty for at least two hours following every time when the said donkey-engine, or other portable, or stationary engine shall cease operations.

Clearing around.

(b) Cut down all snags, stubs and dead trees over fifteen (15) feet in height within a radius of one hundred fifty (150) feet and clear the ground of all inflammable debris for a radius of thirty-five (35) feet from each donkey-engine, or other portable or stationary spark-emitting engine.

Amends Rem. Comp. Stat. § 5803; Pierce's Code § 9131-37.

SEC. 9. That section 5803 of Remington's Compiled Statutes of Washington 1922, shall be amended to read as follows:

Deliberately setting fire, penalty.

Section 5803. Any person or persons who shall wilfully and deliberately set fire to any forest within the state, or in any place from which fire may be communicated to any such forest, or who shall accidently set fire to any such forest, or to any place from which fire may be communicated to any such forest, and shall not extinguish the same or use every effort to that end, or who shall build any fire for lawful purposes or otherwise in or near any such forest, and through carelessness or neglect shall permit said fire to extend to and burn through such forest, shall be deemed guilty of a misdemeanor, and on conviction before a court of competent jurisdic-

tion shall be punishable by fine not exceeding one thousand dollars ($1,000.00) or imprisonment not exceeding one year, or by both such fine and imprisonment.

Amends Rem. Comp. Stat. § 5805; Pierce's Code § 2580.

SEC. 10. That section 5805 of Remington's Compiled Statutes of Washington 1922, shall be amended to read as follows:

See Rem. Comp. Stat. § 5804; Pierce's Code § 2579.

Section 5805. If any owner or owners of forest land shall neglect or fail to provide adequate fire protection therefor as required by section 5804, then

Owners failure to provide fire protection.

the state supervisor of forestry under direction from the director of the department of conservation and development shall provide such protection therefor at a cost not to exceed five (5) cents an acre per annum, and for that purpose may divide the forest lands of the state, or any part of the same, into districts, for patrol and assessment purposes, may classify lands according to the character of timber prevailing, and the fire hazard existing and place unprotected lands under the administration of the

Supplied by state.

proper district. Any amounts paid or contracted to be paid by the said supervisor for this purpose shall be a lien upon the property patroled and protected and, unless reimbursed by the owner within ten days

Lien.

after October 1st of the year in which they were incurred, on which date the said supervisor shall be prepared to make statement thereof upon request, to any forest owner whose own protection has not been previously approved by him as adequate, shall be reported by the said supervisor to the county as-

Collection of cost.

sessors of the county or counties in which the property is situated who shall extend the amounts upon the tax-rolls covering such property, and the amounts shall be collected at the time and in the same manner by the same procedure and with the same penalties attached that the next general state and county taxes on the same property are collected, except that errors in assessments may be corrected

at any time by the said supervisor certifying the same to the county treasurer of the county in which the land involved is situated. Upon the collection of said assessments the county officials shall repay said amounts to the said supervisor to be applied to the expenses incurred in carrying out the provisions of this section: *Provided,* that the said supervisor is hereby authorized and required to include in the assessment herein authorized against the owner or owners of forest lands neglecting to provide adequate fire protection, a sum not to exceed one-half of one cent per acre, to cover the necessary and reasonable cost of office and clerical work incurred in the enforcement of the provisions of section 5804 *et seq.* and subsequent amendments thereto, and is authorized to expend any sums heretofore collected from owners of forest lands or coming from any other source for any necessary office and clerical expenses in connection with the enforcements of the provisions of section 5807: *Provided further,* that whenever any lands against which such fire patrol assessments are outstanding are acquired for delinquent taxes and sold at public auction, the state shall have a prior lien of the proceeds of such sale over and above the amount necessary to satisfy the county's delinquent tax judgment, and the county treasurer in case the proceeds of such sale exceed the amount of the delinquent tax judgment aforesaid shall forthwith remit to the said supervisor the amount of such outstanding patrol assessments. *Provided, further,* that the said supervisor is required to furnish a good and sufficient bond of a surety company running to the State of Washington, in a sum as great as the probable amount of money annually coming into his hands under the provisions of this act, conditioned for the faithful performance of his duties as such officer and for a faithful accounting for all sums received and expended there-

See Rem. Comp. Stat. § 5804 et seq; Pierce's Code § 2579 et seq.

See Rem. Comp. Stat. § 5807; Pierce's Code § 2582.

Bond of supervisor.

under, which bond shall be approved by the attorney general.

Amends Rem. Comp. Stat. § 5806-1, 5806-2, 5811-1 and 5813-1; Pierce's Code § 2581-1, 2581-2, 2585-b and 2578-3a.

SEC. 11. That chapter 1, Title XXXVI of Remington's Compiled Statutes of Washington 1922, shall be amended by adding thereto, four new sections to be known as sections 5806-1, 5806-2, 5811-1 and 5813-1.

Person negligently starting, liable for cost of fighting.

Section 5806-1. Any person, firm or corporation negligently responsible for the starting or existence of a fire which spreads on forest land shall be liable for any expense incurred by the state, a municipality or forest protective association, in fighting such fire provided that such expense was, at the time incurred, authorized by the state supervisor of forestry or by one of his duly appointed and acting district or state fire wardens. The agency incurring such expense shall have a lien for the same against any property of said person, firm or corporation liable as above provided by filing a claim of lien naming said person, firm or corporation describing the property against which the lien is claimed, specifying the amount expended on the lands on which the fire fighting took place and the period during which the expenses were incurred, and signed by the claimant with post office address. No claim of lien shall be valid unless filed with the county auditor of the county in which the property sought to be charged is located within a period of ninety days after the expenses of the claimant were incurred. The claimant may recover said expenses incurred in a civil action against said person, firm or corporation liable therefor, and shall have in addition the lien remedy above provided. Said lien may be foreclosed in the same manner as a mechanics lien is foreclosed under the statutes of the state of Washington.

Action to recover.

Permitting spreading, penalty.

Section 5806-2. Any person who shall negligently suffer fire originating on his own property to

spread to the property of another shall be deemed guilty of a misdemeanor.

Rules and regulations, violation, penalty.

Section 5811-1. Any person who shall wilfully violate any of the orders, rules or regulations made by the director of the department of conservation and development of the state of Washington in accordance with the authority granted by the provisions of Title XXXVI of Remington's Compiled Statutes of Washington 1922, for the protection of forests from fires, shall be guilty of a misdemeanor.

See Rem. Comp. Stat. § 5781 to 5823; Pierce's Code § 2558 to 2585-a.

Cutting or destroying trees, without consent of owner, penalty.

Section 5813-1. Any person who shall go upon any lands owned by the state, or by any person, firm or corporation, without the consent of the owner thereof, and cut down, cut off, top, or destroy any tree, shall be punished by a fine equivalent to one dollar for every tree so cut down, topped, or destroyed.

Passed the Senate March 8, 1923.

Passed the House March 2, 1923.

Approved by the Governor with the exception of Sections 1 and 4, which are vetoed, March 19, 1923.

CHAPTER 185.

223 P3.

[S. B. 271.]

PRIMARY AND SECONDARY STATE HIGHWAYS.

AN ACT relating to, classifying, naming and fixing the routes of certain state highways, amending Section 6796, and repealing Sections 6791, 6792, 6793, 6794, 6795, 6797, 6798, 6799, 6800, 6801, 6802, 6803, 6804, 6805, 6806, 6808, 6809, 6811, 6812, 6813 and 6816 of Remington's Compiled Statutes.

Be it enacted by the Legislature of the State of Washington:

State road No. 1, or Pacific Highway.

SECTION 1. A primary state highway, to be known as State Road No. 1 or the Pacific Highway, is established as follows: Beginning at the international boundary line at Blaine in the County of

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of March, 2014, I caused to be served a true and correct copy of the foregoing document, by the method indicated below and addressed to the following:

Michael J. Rollinger
Justin J. Kato
Attorneys General
1125 Washington Street SE
P.O. Box 40100
Olympia, WA 98504-0100

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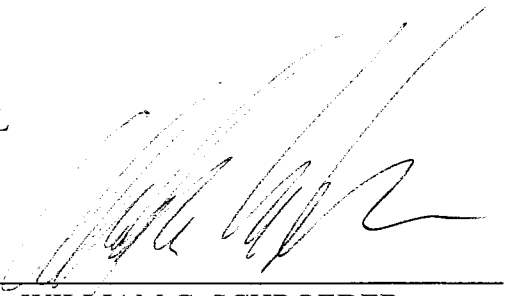

WILLIAM C. SCHROEDER

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