

Chapter 79.140 RCW
AQUATIC LANDS—VALUABLE MATERIALS

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RCW 79.140.001 Intent—2005 c 155. See RCW 79.105.001.

SALE PROCEDURE

RCW 79.140.010 Manner of sale—Notice. (1) When the department decides to sell any valuable materials situated within or upon any state-owned aquatic lands, it is the duty of the department to fix the date, place, and time of sale, and no sale shall be had on any day that is a legal holiday.

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

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

(3) The notice shall: (a) Specify the place and time of sale; (b) estimate the volume of valuable materials; (c) state the appraised value; (d) describe with particularity each parcel of land from which valuable materials are to be sold; and (e) specify that the terms of sale will be posted in the area headquarters and the department's Olympia office. [2005 c 155 § 801. FORMERLY PART OF RCW 79.90.170.]

RCW 79.140.020 List of valuable materials. The department shall print a list of valuable materials contained within or upon state-owned aquatic lands, giving appraised value, character of the land, and such other information as may be of interest to prospective buyers. The lists must be issued at least four weeks prior to the date of any sale. The department shall retain for free distribution in its office in Olympia and the regional offices sufficient copies of the lists, to be kept in a conspicuous place or receptacle on the counter of the general and regional office of the department, and, when requested, shall mail copies of the list as issued to any applicant. [2005 c 155 § 802. FORMERLY PART OF RCW 79.90.180.]

RCW 79.140.030 Expenditures for advertising. The department is authorized to expend any sum in additional advertising of the sale as is determined to be in the best interests of the state. [2005 c 155 § 803. FORMERLY PART OF RCW 79.90.190.]

RCW 79.140.040 Reoffer of sale—Readvertised. Any sale that has been offered, and for which there are no bids received, shall not be reoffered until it has been readvertised as specified in RCW 79.140.010 through 79.140.030. If all sales cannot be offered within the specified time on the advertised date, the sale shall continue on the following day between the hours of ten o'clock a.m. and four o'clock p.m. [2005 c 155 § 804. FORMERLY PART OF RCW 79.90.200.]

RCW 79.140.050 Sale by public auction/sealed bid—Exception. All sales of valuable materials shall be at public auction or by sealed bid to the highest responsible bidder, on the terms prescribed by law and as specified in the notice provided, and no land or materials shall be sold for less than their appraised value. However:

(1) When valuable material has been appraised at an amount not exceeding one hundred thousand dollars, the department, when authorized by the board, may arrange for the sale at public auction of said valuable material and for its removal under such terms and conditions as the department may prescribe, after the department shall have caused to be published not less than ten days prior to sale a notice of such sale in a newspaper of general circulation located nearest to the property to be sold;

(2) Any sale of valuable material on state-owned aquatic lands of an appraised value of ten thousand dollars or less may be sold directly to the applicant for cash without notice or advertising. [2005 c 155 § 805. FORMERLY PART OF RCW 79.90.210.]

RCW 79.140.060 Determination of highest responsible bidder. (1)

To determine the "highest responsible bidder" under RCW 79.140.050, the department shall be entitled to consider, in addition to price, the following:

- (a) The financial and technical ability of the bidder to perform the contract;
- (b) Whether the bid contains material defects;
- (c) Whether the bidder has previously or is currently complying with terms and conditions of any other contracts with the state or relevant contracts with entities other than the state;
- (d) Whether the bidder was the "highest responsible bidder" for a sale within the previous five years but failed to complete the sale, such as by not entering into a resulting contract or by not paying the difference between the deposit and the total amount due. However, sales that were bid prior to January 1, 2003, may not be considered for the purposes of this subsection (1)(d);
- (e) Whether the bidder has been convicted of a crime relating to the public lands or natural resources of the state of Washington, the United States, or any other state, tribe, or country, where "conviction" includes a guilty plea, or unvacated forfeiture of bail;
- (f) Whether the bidder is owned, controlled, or managed by any person, partnership, or corporation that is not responsible under this statute; and
- (g) Whether the subcontractors of the bidder, if any, are responsible under this statute.

(2) Whenever the department has reason to believe that the apparent high bidder is not a responsible bidder, the department may award the sale to the next responsible bidder or the department may reject all bids pursuant to RCW 79.140.080. [2005 c 155 § 806. FORMERLY PART OF RCW 79.90.215.]

RCW 79.140.070 Sales by public auction—Procedure. (1) Sales by

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

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

sale, be paid in cash, certified check, cashier's check, draft, or postal money order payable to the department. Other deposits, if any, shall be returned to the respective bidders at the conclusion of each sale.

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

(4) The auctioneer shall at once send to the department the cash, certified check, cashier's check, draft, postal money order, or bid guarantee received from the purchaser, and a copy of the memorandum delivered to the purchaser, together with such additional report of the auctioneer's proceedings with reference to the sales as may be required by the department. [2005 c 155 § 807. FORMERLY PART OF RCW 79.90.220.]

RCW 79.140.080 Confirmation of sale. (1) A sale of valuable materials shall be confirmed if:

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

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

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

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

(2) Upon confirming a sale, the department shall enter upon its records the confirmation of sale and issue to the purchaser a contract of sale or bill of sale as the case may be, as is provided for in this chapter. [2005 c 155 § 808. FORMERLY PART OF RCW 79.90.240.]

SPECIAL PROVISIONS AND LEASES

RCW 79.140.100 Valuable materials from Columbia river—Agreements with Oregon. The department is authorized and empowered to confer with and enter into any agreements with the public authorities of the state of Oregon, which in the judgment of the department will assist the state of Washington and the state of Oregon in securing the maximum revenues for sand, gravel, or other valuable materials taken from the bed of the Columbia river where the river forms the boundary line between the states. [2005 c 155 § 109; 1991 c 322 § 24; 1982 1st ex.s. c 21 § 19. Formerly RCW 79.90.130.]

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

RCW 79.140.110 Material removed for channel or harbor improvement or flood control—Use for public purpose. When gravel,

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

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

RCW 79.140.130 Prior appraisal required. In no case shall any valuable materials situated within or upon any tidelands, shorelands, or beds of navigable waters belonging to the state, be offered for sale unless the same shall have been appraised by the department of natural resources within ninety days prior to the date fixed for the sale. [2005 c 155 § 809. FORMERLY PART OF RCW 79.90.110.]

RCW 79.140.140 Bill of sale for valuable material sold separately. When valuable materials are sold separate from state-owned aquatic lands and the purchase price is paid in full, the department shall cause a bill of sale, signed by the commissioner and attested by the seal of the commissioner's office, setting forth the time within which the material shall be removed. The bill of sale shall be issued to the purchaser and shall be recorded in the department's Olympia office, upon the payment of the fee provided for in this chapter. [2005 c 155 § 126; 1982 1st ex.s. c 21 § 35. Formerly RCW 79.90.290.]

RCW 79.140.150 Sale of rock, gravel, sand, silt, and other valuable materials. The department, upon application by any person or when determined by the department to be in the best interest of the state, may enter into a contract or lease providing for the removal

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

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

RCW 79.140.160 Sale of rock, gravel, sand, and silt—Application—Terms of lease or contract—Bond—Payment—Reports. Each application made pursuant to RCW 79.140.150 shall set forth the estimated quantity and kind of materials desired to be removed and shall be accompanied by a map or plat showing the area from which the applicant wishes to remove the materials. The department may in its discretion include in any lease or contract entered into pursuant to RCW 79.140.150 through 79.140.170, terms and conditions deemed necessary by the department to protect the interests of the state. In each lease or contract the department shall provide for a right of forfeiture by the state, upon a failure to operate under the lease or contract or pay royalties or rent for periods therein stipulated, and the department shall require a bond with a surety company authorized to transact a surety business in this state, as surety to secure the performance of the terms and conditions of the contract or lease including the payment of royalties. The right of forfeiture shall be exercised by entry of a declaration of forfeiture in the records of the department. The amount of rock, gravel, sand, or silt taken under the contract or lease shall be reported monthly by the purchaser to the department and payment made on the basis of the royalty provided in the lease or contract. [2005 c 155 § 128; 1982 1st ex.s. c 21 § 37. Formerly RCW 79.90.310.]

RCW 79.140.170 Sale of rock, gravel, sand, and silt—Investigation, audit of books of person removing. The department may inspect and audit books, contracts, and accounts of each person removing rock, gravel, sand, or silt pursuant to any lease or contract under RCW 79.140.150 and 79.140.160 and make such other investigation and secure or receive any other evidence necessary to determine whether or not the state is being paid the full amount payable to it for the removal of the materials. [2005 c 155 § 129; 1982 1st ex.s. c 21 § 38. Formerly RCW 79.90.320.]

RCW 79.140.180 Contract for sale of rock, gravel, etc.—Royalties—Consideration of flood protection value. Whenever, pursuant to RCW 79.15.300, the department enters into a contract for the sale and removal of rock, gravel, sand, or silt out of a riverbed, the department shall, when establishing a royalty, take into consideration flood protection value to the public that will arise as a result of the removal. [2005 c 155 § 130; 2003 c 334 § 602; 1984 c 212 § 10. Formerly RCW 79.90.325, 79.01.135.]

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

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

—Exceptions. (1) Except as provided in subsection (2) of this section, the department may issue permits and leases for prospecting, placer mining contracts, and contracts for the mining of valuable minerals and specific materials, except rock, gravel, sand, silt, coal, or hydrocarbons, upon and from any state-owned aquatic lands, or which have been sold and the minerals reserved by the state in tracts not to exceed six hundred forty acres or an entire government-surveyed section. The procedures contained at RCW 79.14.300 through 79.14.450, inclusive, shall apply.

(2) The department may not issue permits and leases on state-owned aquatic lands along the Washington coast from Cape Flattery south to Washington's southern boundary, nor in Grays Harbor, Willapa Bay, and the Columbia river downstream from the Longview bridge, for purposes of exploration, development, or mining of hard minerals. For the purposes of this section, "hard minerals" has the same meaning as defined in RCW 79.14.300(2). [2021 c 181 § 2; 2005 c 155 § 131; 2003 c 334 § 603; 1987 c 20 § 16; 1982 1st ex.s. c 21 § 39. Formerly RCW 79.90.330.]

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

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

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

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

RCW 79.140.210 Mount St. Helens dredge spoils or materials.

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

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

(c) The legislature further finds that the dredging activities following the eruption of Mount St. Helens are no longer adequate to protect engineered structures on the affected rivers or the public health and safety of the communities located in proximity to the affected rivers. Future river dredging will be necessary as part of managing the post-eruption state of the rivers, and with the

commencement of new dredging activities, the underlying conditions leading to the previous authority for private landowners to dispose of the dredged materials without the necessity of any charge by the department are replicated.

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

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

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