

# **Chapter 17:**

# **Public Health,**

# **Agencies, and**

# **Authorities**

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Reference Date: The author prepared this chapter from reference materials that were available as of June 13, 2008.

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### 17.1 Chapter Summary

This chapter addresses state and local agency authority to protect the public from the spread of disease in Washington State. Specifically, this chapter summarizes the relevant statutory and regulatory authority of the Washington State Board of Health (SBOH), the State Department of Health (DOH), and local health jurisdictions. Public health legal authorities support ongoing disease control programs. These authorities also support the response to a large disease outbreak or other emergencies that threaten the public's health. Additionally, this chapter describes the authority of the state and various political subdivisions for emergency management. State law establishes state and local organizations for emergency management and authorizes the Governor and heads of political subdivisions to act during emergencies.

### 17.2 State Responsibility for the Public Health System

#### 17.2.1 Overview

The SBOH, the DOH, and local health jurisdictions share responsibility for public health. The SBOH develops public health policy, including rules for disease control. The DOH provides leadership and coordination for public health programs, and, in certain situations, the Secretary of Health may exercise the powers of a local health officer. Counties or health districts govern local public health activities through local health departments, local health boards, and local health officers. Local health boards and local health officers are responsible for preservation of life and health within their jurisdictions.

#### 17.2.2 Washington State Board of Health

Statute directs the SBOH to provide a forum for the development of public health policy in the State of Washington. RCW 43.20.050(1). It also requires the SBOH to adopt rules regarding various topics related to public health protection, including “the imposition and use of isolation and quarantine,” and “the prevention and control of infectious and noninfectious diseases.” RCW 43.20.050(2). Additional rule-making authority for the SBOH is contained in RCW 70.24.130 (sexually transmitted diseases) and RCW 70.28.032 (tuberculosis).

The SBOH adopted a variety of rules governing communicable disease control, including:

- Notifiable conditions;<sup>1</sup>
- Responsibilities and duties of health care providers;<sup>2</sup>
- Responsibilities and duties of local health officers;<sup>3</sup>
- Isolation and quarantine;<sup>4</sup>
- Notification of partners at risk of HIV infection;<sup>5</sup>
- Immunization of child care and school children;<sup>6</sup>
- Responsibilities of health care facilities;<sup>7</sup>

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<sup>1</sup> Chapter 246-101 WAC.

<sup>2</sup> WAC 246-100-021.

<sup>3</sup> WAC 246-100-036; WAC 246-101-505.

<sup>4</sup> WAC 246-100-040 to -070. These rules do not apply to tuberculosis or sexually transmitted diseases.

<sup>5</sup> WAC 246-100-072.

<sup>6</sup> WAC 246-100-166. Specific statutory authority for the Board of Health to adopt rules establishing requirements for immunization is contained in RCW 28A.210.140.

<sup>7</sup> WAC 246-100-186.

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- Sexually transmitted diseases<sup>8</sup>; and
- Tuberculosis control.<sup>9</sup>

The SBOH may delegate any of its rulemaking authority to the Secretary of Health.<sup>10</sup>

### 17.2.3 State Department of Health

The DOH is responsible for “leadership and coordination in identifying and resolving threats to the public health. . . .” The DOH’s statutory responsibilities include:

- Working with local health departments and local governments to strengthen the state and local governmental partnership in providing public protection;
- Developing intervention strategies;
- Providing expert advice to the executive and legislative branches of state government;
- Providing active and fair enforcement of rules;
- Working with other federal, state, and local agencies and facilitating their involvement in planning and implementing health preservation measures;
- Providing information to the public; and
- Carrying out other related actions as may be appropriate to this purpose.<sup>11</sup>

The Secretary of Health shall:

- Strictly enforce all laws for the protection of the public health and the improvement of sanitary conditions in the state, and all rules, regulations, and orders of the SBOH;<sup>12</sup>
- Investigate outbreaks and epidemics of disease that may occur and advise local health officers as to measures to be taken to prevent and control the same;<sup>13</sup>
- Exercise general supervision over the work of all local health departments and establish uniform reporting systems by local health officers to the DOH<sup>14</sup>; and
- Take such measures as the Secretary deems necessary in order to promote the public health..<sup>15</sup>

The Secretary may investigate a condition constituting a threat to the public health, including outbreaks of communicable diseases.<sup>16</sup> For the purposes of an investigation, the Secretary shall have unimpeded access to buildings and other places.<sup>17</sup> The Secretary also may issue subpoenas to compel attendance of witnesses or for production of documents.<sup>18</sup> In certain circumstances, the Secretary may act in local matters. For example, the

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<sup>8</sup> WAC 246-100-202 to -209; WAC 246-101-520, 635.

<sup>9</sup> Chapter 246-170 WAC; WAC 246-100-211.

<sup>10</sup> RCW 43.20.050(4).

<sup>11</sup> RCW 43.70.020(3).

<sup>12</sup> RCW 43.70.130(3).

<sup>13</sup> RCW 43.70.130(5).

<sup>14</sup> RCW 43.70.130(6).

<sup>15</sup> RCW 43.70.130(10).

<sup>16</sup> RCW 43.70.170.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

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Secretary may enforce state public health laws and rules in local matters when an emergency exists and the local board of health has failed to act or is unable to act.<sup>19</sup> The Secretary has the same authority as a local health officer, but shall not exercise that authority unless the local health officer fails or is unable to act, when in an emergency the safety of the public health requires the exercise of authority, or by agreement with the local health officer or local board of health.<sup>20</sup>

### 17.3 Local Health Departments, Boards and Officers

#### 17.3.1 Structure

##### 17.3.1.1 Local Health Departments

A local health department is a county or district which provides public health services to persons within the area.<sup>21</sup> A health district can consist of one or more counties.<sup>22</sup> A city with a population of 100,000 or more and the county in which it is located may agree to establish a combined city and county health department.<sup>23</sup>

##### 17.3.1.2 Local Health Boards

A local board of health is a county or district board of health.<sup>24</sup> In a county without a home rule charter, the board of county commissioners constitutes the local board of health, unless the county is part of a health district.<sup>25</sup> In a county with a home rule charter, the county legislative authority establishes the local board of health.<sup>26</sup> The jurisdiction of a county board of health is coextensive with the boundaries of the county.<sup>27</sup>

In a health district of one county, the county legislative authority establishes the district board of health.<sup>28</sup> In a health district with two or more counties, the boards of county commissioners establish the district board of health.<sup>29</sup> A district board of health constitutes the local board of health for all territory included in the health district.<sup>30</sup>

##### 17.3.1.3 Local Health Officers

Each local health department has a local health officer.<sup>31</sup> A combined city-county health department has a director of public health, who is authorized to exercise all powers of a local health officer.<sup>32</sup> The local

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<sup>19</sup> RCW 43.70.130(4).

<sup>20</sup> RCW 43.70.130(7).

<sup>21</sup> RCW 70.05.010(1).

<sup>22</sup> RCW 70.46.031; RCW 70.46.020.

<sup>23</sup> RCW 70.08.010.

<sup>24</sup> RCW 70.05.010(3).

<sup>25</sup> RCW 70.05.030.

<sup>26</sup> RCW 70.05.035.

<sup>27</sup> RCW 70.05.030; RCW 70.05.035.

<sup>28</sup> RCW 70.46.031.

<sup>29</sup> RCW 70.46.020.

<sup>30</sup> RCW 70.46.060.

<sup>31</sup> RCW 70.05.010(2).

<sup>32</sup> RCW 70.08.020.

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board of health appoints the local health officer,<sup>33</sup> except in a county with a home rule charter that is not part of a health district. In a county with a home rule charter that is not part of a health district, the official designated under the provisions of the county charter appoints the health officer.<sup>34</sup> The director of public health of a combined city-county health department is appointed by the county executive and the mayor of the city.<sup>35</sup> The appointment is effective upon majority vote confirmation of the legislative authority of the county and the legislative authority of the city.<sup>36</sup> Chapter 70.05 RCW establishes the required qualifications for local health officers.<sup>37</sup> Chapter 70.08 RCW establishes the required qualifications for directors of public health for combined city-county health departments.<sup>38</sup>

### 17.3.2 Duties and Responsibilities

#### 17.3.2.1 Local Health Boards

RCW 70.05.060 establishes powers and duties of local health boards. Each local health board “shall have supervision over all matters pertaining to the preservation of the life and health of the people within its jurisdiction. . . .” A local health board’s responsibilities include:

- Enforcing through the local health officer . . . the public health statutes of the state, and rules promulgated by the state board of health and the secretary of health;
- Supervising the maintenance of all health and sanitary measures for the protection of the public health within its jurisdiction;
- Enacting such local rules and regulations as are necessary in order to preserve, promote and improve the public health and provide for the enforcement thereof; and
- Providing for the control and prevention of any dangerous, contagious or infectious disease within the jurisdiction of the local health department.

#### 17.3.2.2 Local Health Officers

RCW 70.05.070 establishes powers and duties of local health officers. A local health officer acts under the direction of the local board of health. A local health officer’s responsibilities include:

- Enforcing the public health statutes of the state, rules of the state board of health and the secretary of health, and all local health rules, regulations and ordinances within his or her jurisdiction;
- Taking such action as is necessary to maintain health and sanitation supervision over the territory within his or her jurisdiction; and
- Controlling and preventing the spread of any dangerous, contagious or infectious diseases that may occur within his or her jurisdiction.

WAC 246-101-505(1) further establishes duties of local health officers. Local health officers or the local health department shall “review and determine appropriate action” for:

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<sup>33</sup> RCW 70.05.040.

<sup>34</sup> RCW 70.05.035.

<sup>35</sup> RCW 70.08.040.

<sup>36</sup> *Id.*

<sup>37</sup> RCW 70.05.050 and .051. A local board of health may appoint a “provisionally qualified local health officer” pursuant to RCW 70.05.053, .054, and .055.

<sup>38</sup> RCW 70.08.030.

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- Each reported case or suspected case of a notifiable condition;
- Any disease or condition considered a threat to public health; and
- Each reported outbreak or suspected outbreak of disease.

Local health officers also have authority under WAC 246-101-505(11) to:

- Carry out additional steps determined to be necessary to verify a diagnosis reported by a health care provider;
- Require any person suspected of having a reportable disease or condition to submit to examinations required to determine the presence of the disease or condition;
- Investigate any case or suspected case of a reportable disease or condition or other illness, communicable or otherwise, if deemed necessary; and
- Require the notification of additional conditions of public health importance occurring within the jurisdiction of the local health officer.

WAC 246-100-036(3) lists a variety of measures available to local health officers for purposes of disease control. “Local health officers shall, when necessary, conduct investigations and institute disease control and contamination measures, including medical examination, testing, counseling, treatment, vaccination, decontamination of persons or animals, isolation, quarantine, vector control, condemnation of food supplies, and inspection and closure of facilities. . . .”

WAC 246-100-040 contains specific rules for involuntary isolation and quarantine. A local health officer may initiate involuntary isolation or quarantine if he or she,

[h]as reason to believe that the person or group of persons is, or is suspected to be, infected with [or] exposed to . . . a communicable disease . . . that could spread to . . . others if remedial action is not taken; and . . . the person or group of persons would pose a serious and imminent risk to the health and safety of others if not detained . . .

Before a local health officer initiates involuntary isolation or quarantine, he or she must make reasonable efforts to obtain voluntary compliance or determine that seeking voluntary compliance would create a risk of serious harm. A local health officer may issue an emergency detention order or petition the superior court ex parte for a detention order. Detention may last up to ten days. A local health officer may petition the superior court for an order authorizing continued detention for up to thirty days. WAC 246-100-045 to -070 contain additional provisions, including conditions and principles for isolation or quarantine, restrictions on entry into isolation or quarantine premises, and the right of isolated or quarantined persons to counsel.

Other sets of rules contain specific procedural requirements that local health officers must follow when implementing certain disease control measures. These include:

- Tuberculosis control;<sup>39</sup>
- Control and treatment of sexually transmitted diseases;<sup>40</sup>

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<sup>39</sup> WAC 246-170-051 to -065.

<sup>40</sup> WAC 246-100-203. WAC 246-100-203 supplements RCW 70.24.024 and .034, which govern local health officers' authority to issue orders for purposes of control of sexually transmitted diseases.

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- Closures of schools and day care centers; and<sup>41</sup>
- Exclusion of children who are not immunized from day care centers and schools.<sup>42</sup>

### 17.3.2.3 Health Care Facilities and Health Care Providers

Chapter 246-100 WAC also includes communicable disease control requirements for health care facilities and health care providers. Health care facilities are required under WAC 246-100-186 to:

- Adopt written policy and procedures restricting work of employees, staff, students, and volunteers diagnosed to have a communicable disease from direct contact with patients, residents, and recipients of care during the period of communicability when transmission of the diseases . . . can occur . . . and the disease can cause serious illness;
- Permit employees, staff, students, and volunteers to return to work when measures have been taken to prevent transmission of diseases if measures are consistent with recommendations of an infection control committee or equivalent authorized group . . . and measures are consistent with recommendations of local health officer; and
- Comply with applicable state licensure law and department rules regarding communicable disease screening and control.

WAC 246-100-021 requires health care providers to cooperate with public health authorities during investigation of a case or suspected case of a notifiable condition or other communicable disease, and an outbreak or suspected outbreak of illness. Health care providers are also required to provide instruction in control measures to each patient with a communicable disease and others as appropriate. Separate requirements for providers who are caring for persons with tuberculosis are contained in WAC 246-100-211. WAC 246-101-425 requires members of the public to cooperate with public health authorities.

### 17.3.3 Case Law Addressing Actions by Local Health Boards and Officers

#### 17.3.3.1 Cases Upholding Local Health Board Actions

The Washington State Supreme Court discussed the powers of local boards of health and local health officers in *Spokane County Health Dist. v. Brockett*.<sup>43</sup> *Brockett* involved the Spokane County Health District Board of Health's decision to establish a needle exchange program as part of the district's overall program to slow the spread of AIDS.<sup>44</sup> The Spokane County Prosecuting Attorney, the Spokane County Sheriff, and the State Attorney General challenged the program as an unlawful distribution of drug paraphernalia.<sup>45</sup> The court upheld the local board's authority to establish the program, stating that public health statutes and actions of local boards of health and health officers are to be liberally construed. "The

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<sup>41</sup> Chapter 246-110 WAC.

<sup>42</sup> WAC 246-100-166.

<sup>43</sup> 120 Wn.2d 140, 839 P.2d 324 (1992).

<sup>44</sup> *Id.* at 143-44, 839 P.2d at 326.

<sup>45</sup> *Id.* at 146, 839 P.2d at 327.

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legislatively delegated power to . . . health boards to control contagious diseases gives them extraordinary power which might be unreasonable in another context.”<sup>46</sup>

Washington courts also have upheld the authority of local health boards to adopt regulations governing private sewage disposal systems.<sup>47</sup> Between 1902 and 1927, the Washington State Supreme Court upheld the actions of health officials in cases involving vaccination as a condition of school attendance and quarantine.<sup>48</sup>

### 17.3.3.2 Cases Where Local Health Board Actions Conflicted With Other Laws

Three cases decided since 1999 involved actions by local health boards that were held to conflict with more specific statutes. In *Lindsey v. Tacoma-Pierce County Health Dep’t*, the court decided that a local ban on outdoor tobacco advertising was preempted by the Federal Cigarette Labeling and Advertising Act.<sup>49</sup> In *Parkland Light & Water Co. v. Tacoma-Pierce County Bd. of Health*, the court invalidated a resolution that required municipal water districts and certain private water purveyors to fluoridate their water systems because it conflicted with RCW 57.08.012, which authorizes water districts to control the content of their water systems.<sup>50</sup> As a final example, in *Entm’t Indus. Coal. v. Tacoma-Pierce County Health Dep’t*, the court invalidated a resolution that banned smoking in indoor places because it conflicted with the Washington Clean Indoor Air Act.<sup>51</sup>

## 17.4 Enforcement and Penalties

SBOH rules are enforceable under RCW 43.20.050(5). This provision requires a variety of persons to “enforce all rules adopted by the state board of health.” It applies to local boards of health, health authorities and officials, officers of state institutions, police officers, sheriffs, constables, and all other officers and employees of the state, or any county, city, or township. The penalty for failure or refusal to enforce is a fine of not less than \$50 upon first conviction and not less than \$100 upon second conviction.

Local health boards and local health officers are under additional obligations to obey and enforce public health laws and SBOH rules and orders. A local health officer may be removed from office by the SBOH for failure to enforce public health laws and rules.<sup>52</sup> A member of a local board of health may be prosecuted for a misdemeanor for

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<sup>46</sup> *Id.* at 149, 839 P.2d at 329. *Brockett* also involved RCW 70.24.400, a provision of the AIDS act, which the court concluded provided evidence of legislative intent for broad construction of programs to reduce the incidence of HIV infection. *Id.* at 155, 839 P.2d at 332.

<sup>47</sup> *Ford v. Bellingham-Whatcom County Dist. Bd. of Health*, 16 Wn. App. 709, 712, 558 P.2d 821, 824 (1977); *Snohomish County Builders Ass’n v. Snohomish Health Dist.*, 8 Wn. App. 589, 595, 508 P.2d 617, 621 (1973).

<sup>48</sup> *Seattle v. Cottin*, 144 Wash. 572, 576, 258 P. 520, 521 (1927); *State v. Partlow*, 119 Wash. 316, 321-22, 205 P. 420, 422 (1922), *State v. Superior Court for King County*, 103 Wash. 409, 428-29, 174 P. 973, 979 (1918), *State v. Superior Court for King County*, 103 Wash. 701, 701, 174 P. 979, 979 (1918); *Brown v. Pierce*, 28 Wash. 345, 350, 68 P. 872, 874 (1902).

<sup>49</sup> 195 F.3d 1065, 1067 (9th Cir. 1999).

<sup>50</sup> 151 Wn.2d 428, 430, 90 P.3d 37, 38 (2004). In an earlier case, a city ordinance to fluoridate the city water supply was upheld. *See Kaul v. Chehalis*, 45 Wn.2d 616, 621, 277 P.2d 352, 355 (1954).

<sup>51</sup> 153 Wn.2d 657, 664, 105 P.3d 985, 988 (2005).

<sup>52</sup> RCW 70.05.120(1).

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failure to enforce public health laws and rules.<sup>53</sup> Upon conviction, the member of the board may be fined between \$10 and \$200.<sup>54</sup> Local boards of health and health officials are required to report certain diseases to the SBOH.<sup>55</sup>

Members of the public are required to obey rules and orders made by the local board of health, local health officer, or the SBOH for the purpose of control of contagious and infectious diseases. A conviction is a misdemeanor, with a penalty of between \$25 and \$100 and/or 90 days imprisonment.<sup>56</sup>

Physicians who fail to report within twelve hours contagious or infectious diseases, or diseases required to be reported by the SBOH, may be prosecuted for a misdemeanor. The penalty for conviction ranges from \$10 to \$200.<sup>57</sup> The twelve-hour requirement, however, conflicts with a separate statutory provision that requires reporting to occur within twenty-four hours.<sup>58</sup>

### 17.5 Emergency Management

#### 17.5.1 Overview

Chapter 38.52 RCW contains the authorities for Washington's system for emergency management. Additionally, chapter 43.06 RCW contains authorities for the Governor to act during an emergency. It defines an emergency as,

an event or set of circumstances which: (i) demands immediate action to preserve public health, protect life, protect public property, or to provide relief to any stricken community overtaken by such occurrences, or (ii) reaches such a dimension or degree of destructiveness as to warrant the governor declaring a state of emergency . . . .<sup>59</sup>

“Emergency management” is defined as,

the preparation for and the carrying out of all emergency functions, other than functions for which the military forces are primarily responsible, to mitigate, prepare for, respond to, and recover from emergencies and disasters, and to aid victims suffering from injury or damage, resulting from disasters caused by all hazards, whether natural, technological, or human caused, and to provide support for search and rescue operations for persons and property in distress.<sup>60</sup>

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<sup>53</sup> RCW 70.05.120(2).

<sup>54</sup> *Id.*

<sup>55</sup> RCW 70.05.110. This provision also applies to physicians.

<sup>56</sup> RCW 70.05.120(4).

<sup>57</sup> RCW 70.05.120(3).

<sup>58</sup> RCW 70.05.090.

<sup>59</sup> RCW 38.52.010(6). The Governor's authority to proclaim an emergency is contained in RCW 43.06.010(12).

<sup>60</sup> RCW 30.52.010(1). The definition excludes preparation for emergency evacuation or relocation of residents in anticipation of nuclear attack.

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### 17.5.2 State and Local Organization

#### 17.5.2.1 State

The Adjutant General is the Director of the State Military Department and is responsible for the state's emergency management program.<sup>61</sup> The Director is responsible for coordinating the activities of all emergency management organizations within the state, is the liaison with other states and the federal government, and is responsible to the Governor for carrying out the emergency management program.<sup>62</sup> The Director is also required to develop and maintain a comprehensive, all-hazard emergency plan.<sup>63</sup>

#### 17.5.2.2 Local

Each political subdivision of the state is required to establish a local organization or be a member of a joint local organization for emergency management.<sup>64</sup> "Political subdivision" is defined as "any county, city or town."<sup>65</sup> Local organizations are responsible for emergency management functions within their territorial limits, and they may conduct functions outside their territorial limits when required.<sup>66</sup> Local organizations must coordinate their plans for emergency management with the State Emergency Management Division.<sup>67</sup>

### 17.5.3 Authorities During Emergencies

#### 17.5.3.1 Authority of the Governor

Under RCW 43.06.010(12), the Governor may proclaim "a state of emergency" after finding the existence of "a public disorder, disaster, energy emergency, or riot" which affects "life, health, property, or the public peace."<sup>68</sup> The proclamation may apply to the entire state or to affected areas within the state.<sup>69</sup> The Governor may issue orders prohibiting such activities that he or she reasonably believes should be prohibited to help maintain "life, health, property or the public peace."<sup>70</sup>

RCW 38.52.050 also describes the Governor's powers and duties during an emergency. The Governor has general supervision of the emergency management functions in the Military Department, and in the event of a disaster beyond local control, he or she may assume direct operational control over any emergency management functions within the state.<sup>71</sup> The Governor "may make, amend, and rescind the necessary

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<sup>61</sup> RCW 38.52.030; RCW 38.52.010(9).

<sup>62</sup> RCW 38.52.030(2).

<sup>63</sup> RCW 38.52.030(3). The plan may not include preparation for emergency evacuation or relocation of residents in anticipation of nuclear attack.

<sup>64</sup> RCW 38.52.070(1).

<sup>65</sup> RCW 38.52.010(3).

<sup>66</sup> RCW 38.52.070(1).

<sup>67</sup> *Id.*

<sup>68</sup> Procedural requirements are contained in RCW 43.06.210.

<sup>69</sup> RCW 43.06.010(12).

<sup>70</sup> RCW 43.06.220(1). The statute lists a variety of activities that may be prohibited such as (1) use of streets or highways; (2) being on public streets during a period of curfew; and (3) sale, purchase or dispensing of commodities or goods. The statute also authorizes prohibiting "such other activities" as the Governor reasonably believes should be prohibited. *Id.* Additionally, pursuant to RCW 43.06.220(2), the Governor may issue orders concerning waiver or suspension of certain statutory obligations. RCW 43.06.220(2).

<sup>71</sup> RCW 38.52.050(1).

orders, rules, and regulations . . . within the limits of the authority conferred” by chapter 38.52 RCW.<sup>72</sup> Organizations for emergency management must enforce orders, rules, and regulations made by the Governor.<sup>73</sup>

### **17.5.3.2 Authority of Political Subdivisions**

RCW 38.52.070(2) authorizes certain powers for political subdivisions during emergencies. It provides:

In carrying out the provisions of this chapter each political subdivision, in which any disaster. . . occurs, shall have the power to enter into contracts and incur obligations necessary to combat such disaster, protecting the health and safety of persons and property, and providing emergency assistance to the victims of such disaster. Each political subdivision is authorized to exercise the powers vested under this section in the light of the exigencies of an extreme emergency situation without regard to time-consuming procedures and formalities prescribed by law (excepting mandatory constitutional requirements), including, but not limited to, budget law limitations, requirements of competitive bidding and publication of notices, provisions pertaining to the performance of public work, entering into contracts, the incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase of supplies and materials, the levying of taxes, and the appropriation and expenditures of public funds.

### **17.5.4 Utilization of Existing Public Services, Equipment, Supplies and Facilities**

RCW 38.52.110(1) directs the Governor and the executive heads of political subdivisions to utilize the “services, equipment, supplies, and facilities of existing departments, offices, and agencies of the state, political subdivisions, and all other municipal corporations thereof including but not limited to districts and quasi municipal corporations organized under the laws of the State of Washington” to the extent possible. RCW 38.52.110(1) also directs officers and personnel of these agencies to cooperate.

### **17.5.5 Commanding of Services and Equipment**

Under RCW 38.52.110(2), if the Governor has proclaimed an emergency, then certain government officials may “command the service and equipment of as many citizens as necessary.” The Governor, chief executives of counties, cities, and towns, and emergency management directors of political subdivisions may exercise this power.<sup>74</sup> Persons who are commandeered are entitled to the protections available to registered emergency workers.<sup>75</sup> (A description of the Emergency Worker Program follows at Section 17.5.6.)

### **17.5.6 Emergency Worker Program**

The state’s system for emergency management includes the Emergency Worker Program. Chapter 38.52 RCW provides certain protections for “emergency workers” and “covered volunteer emergency workers.” Chapter 118-04 WAC contains rules governing the program.

An “emergency worker” is,

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<sup>72</sup> RCW 38.52.050(3)(a).

<sup>73</sup> RCW 38.52.150(1).

<sup>74</sup> RCW 38.52.110(2).

<sup>75</sup> *Id.*

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any person . . . who is registered with a local emergency management organization or the [military] department and holds an identification card . . . for the purpose of engaging in authorized emergency management activities or is an employee of the State of Washington or any political subdivision thereof who is called upon to perform emergency management activities.<sup>76</sup>

An emergency worker is a “covered volunteer emergency worker” if he or she (i) is not receiving or expecting compensation as an emergency worker from the state or local government, or (ii) is not a state or local government employee unless on leave without pay status.<sup>77</sup>

Emergency workers are considered to be on duty when they are performing duties during a mission authorized by the state and working under the direction and control of an authorized official.<sup>78</sup> An authorized mission requires assignment of a mission number by the state emergency management division.<sup>79</sup> Emergency workers must be registered with the local emergency management organization.<sup>80</sup> Temporary registration is authorized when an emergency requires immediate or on-scene recruiting of volunteers.<sup>81</sup> Employees of the state or political subdivisions who perform emergency duties as part of their jobs shall be considered as registered.<sup>82</sup>

Licensing requirements for “any professional, mechanical, or other skill” do not apply to authorized emergency workers during an emergency.<sup>83</sup> With narrow exceptions, emergency workers who are not “covered volunteers” are indemnified by the state, and emergency workers who are “covered volunteers” are immune from liability.<sup>84</sup> Emergency workers are entitled to compensation for injury or death arising out of activities as an emergency worker.<sup>85</sup> Compensation is calculated according to Washington’s Workers’ Compensation Act.<sup>86</sup> State and local governments are immune from tort claims by emergency workers.<sup>87</sup> (In addition to the Emergency Worker Program, Washington law contains other provisions for liability protection for volunteers. *Appendix B* contains a list of references.)

### 17.5.7 Enforcement and Penalties

Chapter 38.52 RCW and chapter 43.06 RCW both provide for enforcement and penalties. A violation of a rule, regulation, or order issued under the authority of chapter 38.52 RCW is a misdemeanor.<sup>88</sup> A second offense is a

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<sup>76</sup> RCW 38.52.010(4).

<sup>77</sup> RCW 38.52.180(5)(a).

<sup>78</sup> WAC 118-04-220.

<sup>79</sup> WAC 118-04-240. The emergency management division is located within the Military Department.

<sup>80</sup> WAC 118-04-080(1).

<sup>81</sup> WAC 118-04-080(3).

<sup>82</sup> WAC 118-04-080(2).

<sup>83</sup> RCW 38.52.180(6).

<sup>84</sup> RCW 38.52.180(3) and (4). The immunity from liability extends to the volunteer’s supervisor or employer, any facility or their officers or employees, the owner of property where the act or omission may have occurred, the state or local governmental entity, and any local entity that registered the volunteer.

<sup>85</sup> RCW 38.52.260. The statute contains narrow exceptions.

<sup>86</sup> RCW 38.52.290.

<sup>87</sup> RCW 38.52.190. *Hauber v. Yakima County*, 147 Wn.2d 655, 660, 56 P.3d 559, 561 (2002).

<sup>88</sup> RCW 38.52.150(2)(a).

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gross misdemeanor.<sup>89</sup> A person who willfully violates an emergency order of the Governor is guilty of a gross misdemeanor.<sup>90</sup> Additionally, certain types of conduct after the proclamation of an emergency are subject to criminal prosecution.<sup>91</sup>

### 17.5.8 Case Law Addressing Actions Related to Emergency Management

Washington courts have upheld actions taken by state government officials during emergencies. In *Cougar Business Owners Ass'n v. State*, the plaintiffs were owners of businesses located inside a restricted zone around Mt. St. Helens that the Governor established before and after the mountain erupted.<sup>92</sup> The plaintiffs sued for damages for taking of property without compensation, violation of due process, and several theories of tort.<sup>93</sup> The court rejected the taking and due process claims, holding that the Governor's decisions were valid exercises of police power.<sup>94</sup> The court also rejected the tort claims, holding that the Governor's decisions were discretionary acts and therefore immune.<sup>95</sup>

In the case *In re Property Located at 14255 53rd Ave. S., Tukwila, King County, Wash.*, property owners claimed that destruction of their trees, to prevent infestation of a pest, constituted a taking without compensation.<sup>96</sup> The State Department of Agriculture had destroyed all potential host trees within a certain radius after citrus longhorned beetles escaped from quarantine.<sup>97</sup> The court held that the destruction of the trees was not a compensable taking, citing cases applying "the law of necessity or the conflagration doctrine."<sup>98</sup> "The government will not have a constitutional obligation to compensate for property damage, if the damage is necessary to contain or abate a public calamity."<sup>99</sup>

### 17.5.9 State "Public Health Emergencies"

With one narrow exception, Washington law does not authorize officials to proclaim a "public health emergency."<sup>100</sup> The authorities in chapter 70.05 RCW for local health boards and local health officers are independent of the emergency powers of the Governor and the heads of political subdivisions under chapters 38.52 and 43.06 RCW. Public health officials may act within the scope of their authority without a proclamation of emergency.

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<sup>89</sup> RCW 38.52.150(2)(b).

<sup>90</sup> RCW 43.06.220(4).

<sup>91</sup> RCW 43.06.230 (malicious property damage or personal injury); RCW 43.06.240 (disorderly conduct); RCW 43.06.250 (refusing to leave public property or a public right of way).

<sup>92</sup> 97 Wn.2d 466, 467, 647 P.2d 481, 482 (1982).

<sup>93</sup> *Id.* at 470, 647 P.2d at 483.

<sup>94</sup> *Id.* at 479-80, 647 P.2d at 488.

<sup>95</sup> *Id.* at 476, 647 P.2d at 486. *See also Karr v. State*, 53 Wn. App. 1, 10-11, 765 P.2d 316, 321 (1988). In *Karr*, personal representatives of persons killed by the eruption of Mt. St. Helens sued the state for negligence in establishing the restricted zones. *Id.* The Court held that the state was immune from tort liability because its decisions were discretionary acts. *Id.*

<sup>96</sup> 120 Wn. App. 737, 742, 86 P.3d 222, 224 (2004).

<sup>97</sup> *Id.* at 742, 86 P.3d at 224.

<sup>98</sup> *Id.* at 745, 86 P.3d at 225.

<sup>99</sup> *Id.* at 752, 86 P.3d at 229.

<sup>100</sup> Chapter 70.119A RCW contains the term "public health emergency" related to public water systems. *See* Chapter 70.119A RCW.

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### 17.5.10 Federal “Public Health Emergencies”

Federal law authorizes the determination that a “public health emergency” exists. The Secretary of the United States Department of Health and Human Services may determine that a disease or disorder presents a public health emergency, or that a public health emergency otherwise exists.<sup>101</sup> Upon making such a determination, the Secretary may take action including making grants, entering into contracts, and investigating the disease or disorder.<sup>102</sup>

The Secretary may waive or modify certain requirements of Medicare, Medicaid, and the State Children’s Health Insurance Program in an “emergency area” and during an “emergency period.”<sup>103</sup> A declaration of emergency or disaster by the President and a declaration of a public health emergency by the Secretary constitute an emergency area and period. (Appendix A contains a list of relevant federal references.)

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<sup>101</sup> 42 U.S.C. § 247d(a).

<sup>102</sup> *Id.*

<sup>103</sup> 42 U.S.C. § 1320b-5.

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**17.6 Appendix A: Relevant Federal Reference Material**

Authority of the Secretary of HHS to make and enforce regulations necessary to prevent the introduction, transmission, and spread of communicable diseases from foreign countries into the U.S. and from one state or possession into another state or possession	42 U.S.C. § 264
Regulations governing control of communicable disease, including federal quarantine	42 C.F.R parts 70 and 71
List of federal quarantinable diseases	Exec. Order No. 13295, 68 Fed. Reg. 17255 (April 4, 2003), as amended by Exec. Order No. 13375, 70 Fed. Reg. 17299 (April 1, 2005)
Provisions for Secretary of HHS and state and local authorities to cooperate in enforcement of federal and state quarantine and health regulations	42 U.S.C. § 243
Authority of the Secretary of HHS to declare a public health emergency and take certain actions	42 U.S.C. § 247d
Authority of the Secretary of HHS to waive certain federal requirements in an emergency	42 U.S.C. § 1320b-5
Strategic National Stockpile	42 U.S.C. § 247d-6b
National Disaster Medical System	42 U.S.C. 300hh-11
Emergency use of unapproved products or approved products for unapproved uses	21 U.S.C. § 360bbb-3
Immunity provisions applicable to claims for loss caused by administration to or use by an individual of a “covered countermeasure”	42 U.S.C. 247d-6e and 6f
Programs and processes for federal disaster and emergency assistance to states, local governments, tribal nations, individuals, and qualified private nonprofit organizations, including Presidential declaration of disasters and emergencies	Robert T. Stafford Disaster Relief and Emergency Assistance Act, 93 Pub. L. No. 93-288 (codified as amended at 42 U.S.C. § 5121 et seq.)
Procedures for Presidential declaration and termination of national emergencies	National Emergencies Act, 50 U.S.C. §§ 1601-1651

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### 17.7 Appendix B: Relevant State Reference Material for Volunteers

Emergency Worker Program	Chapter 38.52 RCW; Chapter 118-04 WAC
Emergency Management Assistance Compact	Chapter 38.10 RCW
Immunity provisions for volunteers for nonprofit organizations and governmental entities	RCW 4.24.670
Liability coverage and medical aid benefits for volunteers for state agencies	RCW 4.92.060, .070, and .075; RCW 51.12.035
Liability coverage and medical aid benefits for volunteers for local government agencies	RCW 4.96.041; RCW 51.12.035