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A GENERAL REVIEW OF THE WORK OF THE
1939 WASHINGTON LEGISLATURE

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Probably a careful attempt to evaluate legislative activity should take into consideration the opportunities for enacting bad laws which were avoided and the opportunities for enacting good laws which were passed by. A comparative analysis of what the legislature has refused to do as well as what it has done might better reflect the operation of political democracy at work than a bare survey of the "end products", so to speak, as reflected in the paper and ink additions to the body of existing law. In the instance of the twenty-sixth session of the Washington Legislature, the latter consist of only two hundred and twenty-five new statutes, the governor having relieved the people of six,1 out of a total of around one thousand and seventy-five bills introduced into both houses. Considering a limited session of sixty days, the product numerically may fairly be taken as representing much labor in sifting and trading, if not in debate or scientific examination of all the proposals. A mere glance at the figures serves to emphasize the suggestion commonly made that government by legislation is carried on in camera, at least in committee, rather than in open session on the floor of the houses and by open debate.

There is much in the current legislation to suggest that the legislative mind was concentrated upon social welfare of the current type, co-operation with the federal government in its welfare programs, and succumbing to group pressure where the voting interest seemed to be the strongest. But this alone is not a fair summary of the legislative work; for after all, the people taken together or in groups are entitled to have their needs and desires attended to by the legislature and much that is done without

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1S. B. 150 relating to compensation of officers of third and fourth class cities; S. B. 204 creating a State Commission on Interstate Cooperation; S. B. 257 relating to qualifications for the practice of law; S. B. 282 relating to pilchard reduction plants; H. B. 257 creating a State Library Commission; and H. B. 283 limiting organization expenses of insurance companies.
opposition comes from the administrative and executive departments with the design of improving existing governmental machinery. Such, for example, seems to have been the origin of the statute amending the Revenue Act of 1935, covering the occupation and sales taxes, this latest revision covering 43 pages and containing in all, 35 sections. In the same category is the statute creating the new Social Security Committee consisting of the Governor, the Director of Finance, Budget and Business, and a third member who shall not be a state officer or employee, to be appointed by the Governor. The design of this legislation is apparently to concentrate control over the administration of public relief funds in state officers while leaving the handling of relief cases in the hands of a local administration so far as compatible with a uniform state policy. An interesting sidelight is furnished by the veto of section 22 which provided for a series of appeals with the purpose of obtaining the ultimate decision of the supreme court on the question of eligibility, an elaboration of the provisions contained in the former law. Somewhat similar provisions for review are contained in the statute relating to old age assistance.

The progress being made by the state in extending its activities into the field of private enterprise is measured by at least three acts: Chapter 45 authorizes port districts in counties of the first class (which does not include the Port of Seattle, King County being a Class A county) to establish industrial development districts; the statute reading as if some port districts desire to embark upon industrial real estate promotions, using tax delinquent land as the initial capital and tax supported bonds for running expenses. In comparison, the County Homesite Lands Act is also based on the existence of much tax delinquent land but is designed to encourage the return of such land to private productive use by offering it to "homesteaders", much in the manner that the western country was opened to settlement. This legislation is hardly in the class of business enterprise. However, enlarging the activities of the

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5Id. at § 4, p. 866, requires that the county administrator be selected out of a panel of eligible nominees furnished by the State Social Security Committee; but § 13 (p. 873) allows the Committee to move in by establishing its own regional program of assistance.
6Wash. Laws 1937, c. 180, § 12, p. 697, also relating to public assistance, repealed by Wash. Laws 1939, c. 216, § 35, p. 864, except as to § 11.
7See Wash. Laws 1937, c. 156, § 6, p. 551. The definition of "need" calculated to overcome the interpretation of Conant v. State, 97 Wash. Dec. 19, 84 P. (2d) 378 (1938) is the same in both c. 25, p. 80, amending Wash. Laws 1935, c. 182 as amended by Wash. Laws 1937, c. 156, relating to old age assistance, and c. 216, p. 864, relating to public assistance (see § 17, p. 874).
8Wash. Laws 1939, c. 201, p. 694.
state in the establishment of food processing plants\(^8\) must be characterized as distinctly an increase in public commercial activity even though the purpose be as stated "for the benefit of needy persons, public institutions, schools and school aid groups and organizations, educational, co-operative and charitable institutions and other organizations working for the public good." Perhaps the last few words need no emphasis.

The third and most important business enterprise for the state authorized by this legislature is the low cost housing project similar to the federal project already familiar to the public through press comments and other literature. The device selected is the "Housing Authority" which the act creates in each city and in each county of the state as a public corporation, subject to the right of the governing body of the city or county to prevent the corporation from functioning by failing to pass a resolution declaring that there is need for the local corporation to operate.\(^9\) The powers granted to these corporations are very broad,\(^10\) and are coupled with express power to borrow money for corporate purposes,\(^11\) but seemingly no power is granted to levy taxes. These corporations may, however, pledge their property and revenues,\(^12\) and their real property only is exempted from judgment liens and executions.\(^13\) On the other hand, all the property of these corporations, real and personal, is exempt from taxation.\(^14\) Apparently federal money is expected to do the initial financing.\(^15\) In addition, by a supplemental act\(^16\) cities, towns, counties and about all public bodies of the state are enabled to give co-operation of a substantial kind, not only in the formation of plans of the Authority involving public lands, park areas, streets and highways, but also to the extent of investing any money under their control in Authority bonds and to the extent of lending or donating money directly to the Authority.\(^17\) The expected source of such loans and donations by other public bodies is not disclosed; but it is declared\(^18\) that the assistance to the Housing Authority provided for "constitutes a public use and purpose and an essential governmental function for which public monies may be spent and other aid given".

\(^8\)Wash. Laws 1939, c. 120, p. 334.
\(^9\)Wash. Laws 1939, c. 23, p. 53; § 4, p. 57.
\(^10\)Id. at § 8, p. 60.
\(^11\)Id. at §§ 14, 15, 16, pp. 66-70.
\(^12\)Id. at § 16, p. 68.
\(^13\)Id. at § 20, p. 72.
\(^14\)Id. at § 22, p. 73 (includes exemption from special assessments).
\(^15\)Id. at § 21, p. 72.
\(^16\)Wash. Laws 1939, c. 24, p. 75.
\(^17\)Id. at §§ 4, 5, 6, pp. 77-79.
\(^18\)Id. at § 2, p. 75.
As usual, the legislature found occasion to enlarge the scope of existing regulatory laws; the perennial, or better, the biennial subject of workmen's compensation and medical aid accounting for no less than four chapters of the session laws. The definitions of "extra hazardous employment", of "employer", and of "dependents", are changed somewhat. Changes are made in the scheme of control over medical aid contracts. The definition of occupational diseases is elaborated. A new schedule of contributions including occupational diseases is provided. And Chapter 184, p. 579, now gives to the verdict of a jury, on appeal to the superior court, the same effect as a verdict in actions at law, and all right to introduce new evidence in court is taken away, the appeal being upon the record before the department as to all parties.

In regard to the regulation of the issuance and sale of securities in the state, the decision of the supreme court in the Petroleum Lease Properties Co. case, seems to have met with response in the statute requiring licenses for the persons engaged in the selling, and also for the issuance of, oil, gas and mining leases, which are defined as including "any instrument or instruments conveying title to oil, gas, metalliferous or non-metalliferous rights on a piece of real property exclusive of the title to the real property". The licensing feature of the act with respect to the issuance (sale) of such rights is of the negative sort, patterned after the "registration" requirement of the federal securities act, the company or person wishing to sell such rights at public sale (an offering of three or more "leases" to residents of the state of Washington) being required to "file" a verified statement, called a "statutory statement"; but such filing is not to take place until the Director

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1Wash. Laws 1939, c. 41, p. 119. Extra-hazardous employment is defined to include the installing and servicing of radios and electrical refrigerators; using power-driven machinery in shoe repair shops is eliminated (§ 1); the definition of employer restricts the application of the Workmen's Compensation Act to employments in extra-hazardous work "by way of trade or business", or the employment of one or more persons in extra-hazardous work when "the personal labor" of the workman is the essence of the contract (§ 2) cf. Vance v. Dept., 188 Wash. 278, 62 P. (2d) 450 (1936); house painter taking job for lump sum an independent contractor and not an employee; the definition of dependents is enlarged by raising the age of minor dependency to eighteen and naming as dependents "any invalid child" without regard to age (§ 2).

2Wash. Laws 1939, c. 50, p. 158.


6Wash. Laws 1939, c. 110, p. 314.

7Id. at § 3, p. 315; c. 48 Stat. 77-79 (1933), 15 U. S. C. A. § 77 (e) to (h).
of Licenses is satisfied that it is "complete and definite and found to comply with the provisions of this act" (the act specifying seven subjects which the statement is required to cover in detail). The Securities Act is likewise amended by this session; but the title appears to be untouched so far as making it broad enough to cover "leases" is concerned, although the definition of securities covered by the act so as to include oil and gas leases, which definition was held invalid in this particular in the case cited because of the narrow title, is retained. Perhaps the major changes in the Securities Act are represented by the new provision relative to pre-organization subscriptions to the shares of domestic and foreign corporations, and by the new provision defining the right to recover the purchase price of securities sold or contracted to be sold in violation of the act and fixing a two-year period of limitation upon such actions.

Second-hand watches are hardly in the same class of investments as stocks and bonds, or even oil and gas leases, but the legislature has apparently discovered enough fraud in the business of selling this sort of property to justify regulating the business. Chapter 89, P. 247, requires a tag to be affixed to the watch labeling it as second-hand and a written invoice to be delivered to the vendee fixing the responsibility of the vendor as seller of that particular watch, but whatever his responsibility in law is to be, is not stated, the misdemeanor consisting in failure to label or to deliver the invoice rather than in the sale of the watch.

Chapter 211, P. 798, contains comprehensive regulations governing the registration and purity of commercial animal foods, fertilizers, and livestock remedies, and the labeling, advertising and sale thereof. So far as the ordinary person in his use of such products may be concerned, the act is equipped with sufficient prohibitions and effective controls to protect the average user against having either harmful or worthless commodities foisted upon him under the guise of fancy names.

The health of eaters of candy has also become the subject of the legislative solicitude, and likewise the health of those who enjoy macaroni. The latter product, however, seems to be more subject to cut-throat competition since the act includes fair trade provisions, even to the extent of specifying as unlawful the defaming of competitors by imputing dishonorable conduct, inability to perform

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2a Wash. Laws 1939, c. 124, p. 347.
2b Id. at § 2, p. 349.
2c Id. at § 4, p. 352.
contracts, or questionable credit standing; or by disparaging the grade, quality or manufacture of the competitor’s products, or his business methods. On the other hand, Chapter 199, P. 673, designated as the Washington State Honey Act, has as its particular aim the protection of the work of the state honey bee from abuse and adulteration; otherwise the appearance of the “Washington state honey seal” on each container, as required by the act, would be very misleading.

The dairy industry of the state is to be promoted by two acts. By the provisions of one, a corporation to be known as the Washington State Dairy Products Commission is created, the business of which is to carry on scientific research into the health, food, therapeutic, dietetic, and industrial uses of milk products, and to increase the domestic and national markets for Washington dairy products by advertising. The revenue of the corporation is to be supplied by a tax upon butter fat and upon untested milk and cream.

The functions of the Washington State Apple Advertising Commission have also been expanded to include research “to establish further and additional uses for apples and particularly cull apples”, duly supported by an appropriate tax per basket on culls. On the same note, the low state of the apple industry has tempted the legislature to revive for that industry the lately discredited device of coupling the prohibition of unfair trade practices and the limitation of the supply of apples by “marketing agreement” or order of the Director of Agriculture; the declared purpose being, in part, to raise the income of the apple producers, as was also the declared purpose under the former Washington Agriculture Adjustment Act with respect to farmers generally. The primary hurdle to be surmounted by the apple act is the same as proved an effective obstacle to the Agriculture Adjustment Act, namely, the delegation of legislative power to the Director of Agriculture, the Governor, and to the handlers and producers. The orders to be promulgated by the director are to be based upon marketing agreements and cannot be made effective without the consent or agreement of the handlers of at least fifty per cent of the volume of apples produced or marketed in the state, and two-thirds of the producers who “during the representative period determined by the director” have been engaged in the production of apples for

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8 Wash. Laws 1939, c. 219, p. 909.
9 Wash. Laws 1939, c. 222, p. 931.
10 Wash. Laws 1939, c. 224, p. 958.
12 See Wash. Laws 1939, c. 224, §§ 5-10 and §§ 13-17.
market or for sale in this state. The orders are to provide at least for the limitation of the quantity of inferior apples marketed; or to provide allotments of quantity of any apples which any handler will be allowed to purchase; or to provide for the allotting of the quantity which any handler may market or transport to any market. The only legislative standard provided for these regulations is the amount sold by producers, or the amount shipped by handlers, "in such prior period as the director determines to be representative". In addition, the orders may provide definition of unfair trade practices and unfair methods of competition, and almost anything else related to the marketing of apples. The orders are binding upon all handlers and producers to the extent the director thinks the marketing agreement and/or order should provide; and orders may be issued without regard to the handlers, if the Governor approve and two-thirds of the defined producers "approve" or "favor" them. In terms, all dealers and brokers of apples are covered by the act, which suggests that the dealer or broker who buys to ship out of the state may find the act objectionable as imposing a burden upon interstate commerce, for the inclusion of handlers is not restricted to such as handle apples marketed within the state, but to those who handle the apples "produced or marketed within this state", as well as all the producers who have been engaged in the "production for market of apples or who . . . have been engaged in the production of apples for sale in this state". The suppression of competition still appears to be a desirable feature of this sort of regulation since by this act the legislature in effect legalizes it, in spite of the provisions contained in Section 22 of Article XII of the state constitution. It is yet possible for the supreme court to change its collective mind on the scope of the constitutional prohibition.

The legislature provided a new commission merchants act, in lieu of the Act of 1937 which is repealed. The new act adds "the
credit buyer" and regulates him along with the commission merchant, distinguishing between dealers who are "commission merchants and credit buyers" and dealers who are "cash" buyers. Both classes are required to obtain licenses but only the commission merchant and credit buyer are required to furnish a bond. A new ground for declining to grant, or for revoking a license, or for suspending a license, is given the director, viz: attempted payment by check with insufficient funds or stopping payment on a check given as a cash payment. There are some others. The provisions of the 1937 Act authorizing a review of the director's orders as to licenses has been omitted from this act. A new provision allows the director to bring suit on the commission merchant's and credit buyer's bond. The recovery is apparently for the benefit of the consignor and is an additional right of suit. Perhaps this act, like some of its predecessors, will bear judicial examination.

**Unfair Practices Act**

Chapter 221 prohibits certain trade practices; primarily price discrimination and the use of "loss leaders".

Section 2 of the act provides that it shall be unlawful for one who deals in articles of "general use", to sell at lower prices in one section of any community than in another, "with the intent to destroy ... competition ..." The statute, however, does permit differences in price based upon "grade, quality, or quantity when ... justified", as well as differentials based on the "selection of customers or a functional classification—of any customer as broker, jobber, wholesaler or retailer." Motion picture films are exempt from the operation of this section, as are articles sold by public utilities, services, articles or products for which rates are established under the Department of Public Service, or similar services, articles or products of publicly owned utilities.

"Id. at § 38, p. 665.
"A similar provision was held to be constitutional in Wholesale Tobacco Dealers Bureau of Southern California, Inc. v. National Candy & Tobacco Co., — Cal. —, 82 P. (2d) 3 (1938); but where the inhibition of the statute applied regardless of motive, the statute was held to be unconstitutional in Great Atlantic & Pacific Tea Co. v. Ervin, 23 F. Supp. 70 (D. C. Minn., 1939).
"In an action against a tobacco dealer under a similar statute, it was held that the defendant could not raise the objection that the act was discriminatory because of such exemption. Wholesale Tobacco Dealers Bureau of Southern California, Inc. v. National Candy & Tobacco Co., — Cal. —, 82 P. (2d) 3 (1938).
Any scheme of rebates, etc., the purpose of which is the violation of the statute is expressly prohibited, but the section ends with the provision that "nothing in the section shall be construed to prohibit the meeting in good faith of a legal competitive price." Section 4 makes unlawful the sale of any article below cost, or the giving away of any article, "for the purpose of injuring competitors or destroying competition", or the use of any article as a "loss leader". It should be noted that "cost" as defined in Section 1 includes overhead expenses. Thus, resale at invoice cost will constitute a violation of the act. The cost of goods bought at forced sale may not be used in establishing cost under this section, unless such goods are kept separate from goods purchased in the ordinary trade channels and are advertised and sold as goods so bought. In any proceeding under the statute an established cost survey for the particular trade or industry involved is competent evidence in proving costs; also, when it is alleged and shown that the person complained against is selling below cost and is including labor cost at less than the prevailing wage scale in the trade, evidence of the prevailing wage scale is admissible to prove intent to evade the statute.

The constitutionality of a similar provision in the Robinson-Patman Act, 18 U. S. C. § 13, was upheld in Biddle Purchasing Co. v. Federal Trade Commission, 96 F. (2d) 687 (1938), affording the entry of a restraining order against a brokerage company which acted as intermediary between buyers and sellers.

Accordingly, that situation is listed in § 7 as one to which the act does not apply.

The constitutionality of a similar provision was upheld in Wholesale Tobacco Dealers Bureau of Southern California, Inc., v. National Candy & Tobacco Co., — Cal. —, 82 P. (2d) 3 (1938), and in State v. Langley, — Wyo. —, 84 P. (2d) 767 (1938); but denied in State v. Packard-Bamberger & Co., — N. J. —, 2 Atl. (2d) 599 (1938), because not limited to business affected with a public interest. Under such a provision, a complaint which alleged sale below cost but did not allege that such sale was made with the intent to injure competition, was held not to state a cause of action: Balzer v. Caler, — Cal. —, 82 P. (2d) 19 (1938).

Sec. 1 defines "loss leader" to mean any article sold below cost for the purpose of encouraging the purchase of other merchandise, or which may have the tendency to mislead purchasers, or which diverts trade from competitors. Note that under this definition, an intent to injure competitors is not a condition precedent to the application of the inhibition of the statute, and this provision is accordingly analogous, in such respect, to the provision held unconstitutional on that ground in Great Atlantic & Pacific Tea Co. v. Ervin, 23 F. Supp. 70 (D. C. Minn., 1938).

Wash. Laws 1939, c. 221, § 5, p. 926.

A similar provision was held invalid in Great Atlantic & Pacific Tea Co. v. Ervin, 23 F. Supp. 70 (D. C. Minn., 1938), on the ground that it was "vague, indefinite, arbitrary, and discriminatory."

Wash. Laws 1939, c. 221, § 6, p. 927.
It may be pointed out that Section 3 provides for the equal guilt of any agent who directly or indirectly assists in the violation of the statute by the principal, and that allegation and proof of the unlawful intent of the principal shall be sufficient in the prosecution of the agent. 8

The situations to which the statute does not apply are enumerated in Section 7, as follows:

1. The closing out, in good faith, of all or a part of the owner’s stock in case of discontinuance of a particular line of goods, or of seasonal goods, and bona fide sales of perishable goods to prevent loss by spoilage, provided that notice thereof is given to the public;

2. The sale of damaged goods, provided the public is given notice thereof;

3. Sales by an officer acting under the orders of any court;

4. Endeavoring in good faith to meet the legal prices of a competitor.

Any contract made in violation of the statute is declared to be an illegal contract. 9

Any person is authorized to maintain an action to enjoin violations of the act, and if injured by such violations may recover damages in addition; but neither allegation nor proof of actual damages is necessary to maintain the action. 6

**Uniform Motor Vehicle Safety Responsibility Act**

Chapter 158 enacts the Uniform Motor Vehicle Safety Responsibility Act with some changes. 61 The design of the act is to compel the carrying of liability insurance by operators and owners of motor vehicles alike, or the furnishing of the equivalent in the form of proof of financial ability to respond coupled with a surety bond or that of two individual sureties, or a cash or collateral deposit, for the protection of persons and property injured.

8The latter provision is duplicated in § 6. The identical provisions of the Minnesota Unfair Practices Act were held unconstitutional in Great Atlantic & Pacific Tea Co. v. Ervin, 23 F. Supp. 70 (D. C. Minn., 1938), on the ground that “it is not within the province of a legislature to declare a person guilty or presumptively guilty of a crime.”

9Wash. Laws 1939, c. 221, § 8, p. 928.

10Id. at § 9, p. 928.

11The original act as adopted in 1932 by the National Conference of Commissioners on Uniform State Laws, is listed in Uniform Laws Annotated, vol. 11, under the title of “Uniform Automobile Liability Security Act.” The committee which prepared the act was originally known as the Committee on Compulsory Automobile Insurance, but upon its own recommendation, its name and purpose were later changed and the present law is the result of its labors. Pennsylvania appears to be the only other state which has thus far enacted the uniform act. Massachusetts, however, “has a compulsory automobile insurance act, and upwards of fifteen states have so-called ‘financial responsibility acts’”, after which the uniform act is patterned. 11 U. L. A. 126.
The method of enforcement is by suspending the operator and vehicle licenses of the person convicted, or who pleads guilty, or forfeits bail for any offense which requires the suspension of or revocation of the licenses of such person, or for "any offense in any other state which if committed in this state would require the suspension or revocation of the licenses of such person in this state." The suspension takes place automatically, and the licenses remain suspended until proof of financial responsibility is given the Director of Licenses. Suspension also takes place upon receipt by the Director of a certificate from the court in which a judgment for damages for personal injuries in any amount, or for property damage in excess of $100, has become final and remains unsatisfied for thirty days. Discharge in bankruptcy is not satisfaction; but arrangements can be made to pay the judgment in instalments. Proof of ability to respond in damages in the future is also a requirement for the renewal of the licenses.

The act is applicable to non-resident motorists. The owner of a motor vehicle may give proof of his ability to respond in damages to relieve a person in his employ or a member of his family of the requirement for making such proof. The proof required may be made voluntarily in advance of any occasion when suspension might occur.

The minimum coverage provided for in the act is $5,000 for personal injury or death of any one person; $10,000 for two or more, and $1,000 for property damage, in any one accident. The same figures qualify the requirement for the satisfaction of judgments. Sections 23, 24 and 26 supply specific provisions for, and restrictions upon motor vehicle liability and operator's policies. If an owner of a motor vehicle wishes to operate other motor vehicles not covered by the liability policy on his own car, he may do well to obtain an operator's policy in addition.

SOIL CONSERVATION AND IRRIGATION DISTRICTS

The Soil Conservation District Law 62 contemplates control and prevention of soil erosion through a State Soil Conservation Committee, which is established as an agency of the state but is not given corporate character, and through contemplated soil conservation districts, the latter being designated as governmental subdivisions of the state and public corporations. However, the power to levy taxes or to issue bonds is withheld. 63 Apparently, for financial implementation of the scheme, reliance is placed upon state appropriations or federal grants. The district supervisors

63 Id. at § 8, p. 616.
compose the legislative body and plans for conservation are to be promulgated by ordinances containing regulations for land use and cultivation. The State Soil Committee is the agency for setting up the districts, upon petition and after a hearing, fixing the boundaries and determining whether or not a district within the territory established is necessary and feasible. A referendum is provided but its result seems not to be controlling. One obvious question relative to the validity of the scheme arises from the fact that the Committee is not a legislative body while the creation of governmental subdivisions of the state is a legislative act.

As to irrigation districts some new provisions are made for the fairly obvious purpose of co-operating with the federal government in its plans for developing arid lands with available water supply. Thus, Chapter 13 authorizes the splitting of districts into "director divisions" so as to facilitate the allotment of water when it is available for parts of the district. Chapter 14 adopts as the state law the provisions of the federal act having for its purpose the preventing of speculation in lands in the Columbia Basin and giving aid to actual settlers. To further facilitate the development of irrigable lands, existing districts are authorized to enlarge their boundaries so as to include additional land susceptible of irrigation from the water supply and system of works of the district. Looking to the possible sale by any district of its lands, canals, pipelines and water rights to the federal government. Chapter 57 is designed to help clear the title by limiting actions by bondholders to six years after the maturity date of the bond; or, if the maturity date has been reached, to a period of six months after the taking effect of the act if such period is more than the period of limitation provided by the act. Since the act carries an emergency clause, the effective date is March 10, 1939. Any district which has no bonded indebtedness and which has been in existence for more than twenty years without securing irrigation of any lands, may liquidate under the provisions of Chapter 149.

Footnotes:
1. Id. at §§ 7, 8, 9, pp. 614-621.
2. Id. at § 5, p. 605.
3. See Territory ex rel. Kelly v. Stewart, 1 Wash. 98, 23 Pac. 405 (1890); State ex rel Higgins v. Aicklen, 167 La. 356, 119 So. 425 (1929); Kenyon v. Moore, 267 Ill. 233, 122 N. E. 548 (1919). This statute does not seem to fit the parallel where the legislature authorizes the establishment of boundaries after a public hearing and a vote on the question of creating a municipal corporation with such boundaries, or the legislative adoption of existing municipal corporations as delimiting the boundaries and the establishment of additional corporations within such boundaries by popular vote. Compare: Fallbrook Irrigation District v. Bradley, 164 U. S. 112 (1896); Lausen v. Board, 204 Iowa 30, 214 N. W. 682 (1927); Royer v. Public Utility District No. 1, 186 Wash. 142, 56 P. (2d) 1302 (1936).
REVIEW OF 1939 LEGISLATION

TAXATION

Several chapters deal with the general system of taxation for general revenue purposes. Chapter 171 deals with irrigation district delinquent assessments. No new general taxes are directly provided; the only approach to additional taxation being found in the removal of exemptions under the sales tax, the increase in the cigarette tax, and the substitute fuel oil tax. It is expected that a detailed analysis of the changes made by this legislature in the general tax laws will be made at another time.

CORPORATIONS

The general corporation statute has been amended by Chapter 143; and Chapter 100 introduces the Uniform Stock Transfer Act. These enactments will be commented upon by Professor Ayer.

Public service corporations came in for legislative attention to the extent of authorizing the Department of Public Service to assess the costs of an investigation, as it progresses, to the company being investigated, up to one per cent of its gross operating revenue from intrastate operations during the preceding calendar year, in any one year. The 1933 law on this subject is repealed. The life of this particular act was limited by the legislature to March 1, 1941; but this provision the Governor vetoed. The expiration feature being contained in a part of a section, it may become necessary to have the effect of the veto determined. The requirement that all utility corporations subject to the jurisdiction of the Department of Public Service contribute to a general expense fund is amplified by an amendatory act; the contribution is based on gross operating revenue from intrastate operations only, and the

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69See particularly c. 9, p. 15 (compensating tax, repealed by § 34, c. 225, at p. 1019); c. 10, p. 20 (tax on insurance companies); c. 16, p. 42 (property erroneously assessed); c. 37, p. 115 (time for filing budgets or estimates respecting taxes to be raised by levies according to assessed valuations); c. 104, p. 300 (installment contracts on delinquencies); c. 116, p. 328 (listing and assessment of personal property held for sale); c. 136, p. 386 (changing designation of taxes and assessments to the year in which they are due and payable); c. 137, p. 387 (providing for the listing and assessment of real and personal property and for the assessment of personal property on a monthly average basis in the case of manufacturers' stock); c. 155, p. 455 (authorizing the segregation and separate payment of the tax upon improvements owned separately from the fee); c. 202, p. 692 (inheritance tax); c. 206, p. 720 (general law amendments); c. 225, p. 976 (occupation and sales tax amendments, Revenue Act of 1935 amended).

70See Wash. Laws 1939, c. 225, § 9, p. 991.

71Id. at § 23, p. 1003.


73Wash. Laws 1939, c. 203, p. 713.


department is authorized to decrease the contributions by classes for any one year. This feature of the exaction seems to insure it against attack upon the ground that excessive burdens are placed upon particular utilities, particularly those engaged in interstate commerce.\textsuperscript{76}

\textbf{Municipal Utilities}

Some municipal utilities must be in a thriving condition for the legislature has authorized the transfer of a part of net earnings (actual and not merely bookkeeping surplus) to current expenses.\textsuperscript{77} The prosperity is apparently confined to some one, or possibly more, cities of the fourth class, since the statute is expressly so limited in its application.

The less satisfactory street railway situation in Seattle called for legislative aid in the shape of an act enabling the city to take advantage of available federal funds for refinancing and rehabilitation purposes, in effect lifting the burden from the shoulders of private investors. Whether the new bondholder is going to be in a better position than the old may turn in part upon the new terms authorized for the refunding bonds; the pledge seems still to be confined to the revenue but the "system" is made to include all surface transportation methods and not only street railway transportation.\textsuperscript{78}

\textbf{Domestic Relations}

The legislature adopted a three-day marriage license law,\textsuperscript{79} and enacted two adoption statutes: one relating to the persons authorized to adopt children\textsuperscript{80} and the other to the machinery for the adoption.\textsuperscript{81} These statutes will be the subject of special discussion.

\textbf{Legal Aid Bureau}

Chapter 93 authorizes the establishment of legal aid bureaus in Class A and first-class counties by resolution of the county commissioners, to be supported by county funds, the bureaus to be under the control of the Board of Governors of the Washington State Bar Association. However, the act specially recognizes the propriety of the promotion of legal aid by the lawyers of the state upon their own initiative without public financial support, and this alternative has been availed of in King County for the immediate future.

\textsuperscript{Cf. Great Northern R. Co. v. Washington, 300 U. S. 154 (1937).}
\textsuperscript{Wash. Laws 1939, c. 96, p. 265.}
\textsuperscript{Wash. Laws 1939, c. 47, p. 142.}
\textsuperscript{Wash. Laws 1939, c. 204, p. 716.}
\textsuperscript{Wash. Laws 1939, c. 162, p. 485.}
\textsuperscript{Wash. Laws 1939, c. 163, p. 488. See c. 133, p. 379, providing the recording of a certificate of the decree of adoption and the issuance of birth certificates.}
WAGE LEGISLATION

Rebating wages for a job in both public and private employment is made a misdemeanor by Chapter 195. The employer and any agent of an employer, and an elected public official may be guilty of violating the act; likewise, any employee who accepts or continues in the employment of any employer guilty of any violation of the act, with knowledge thereof, is guilty of a misdemeanor. This provision appears to be applicable to any employee who has knowledge of violations even though he is not himself implicated. The aggrieved employee may recover twice the amount of wages rebated or withheld, together with costs of suit and an attorney’s fee, except that a person who has knowingly submitted to a violation of the act has no recourse under this provision. The exception seems to emasculate the remedy.

Chapter 139 authorizes the payment of wages earned at the time of an employee’s death to his widow; or if no surviving spouse, to his children; or if no children, to his mother or father, without probate proceedings (if none are instituted), but such payment must not exceed $300.

PROBATE PROCEEDINGS

Chapter 132 adds creditors whose claims have been duly served and filed, to the list of persons who are entitled to require notice of the statutorily designated steps in the administration of estates.

Chapter 26 corrects an error in the Probate Code of 1917 relating to the removal or resignation of an executor or administrator, by providing for enlarging the time for filing claims if notice to creditors had already been published at the time of removal or resignation, to the extent of the time between the resignation or removal and publication of notice of such resignation or removal and a new appointment, instead of reducing the time as provided by the existing provision.

By Chapter 27 the court is now authorized to dispense with an executor’s and administrator’s bond when the petition for letters is made by or upon the written request of the surviving spouse and the court is satisfied that the value of the estate does not exceed the statutory exemptions, and in all other estates when it appears that the value of the estate does not exceed $500, and that the rights of heirs and creditors will not be jeopardized thereby.

LIFE INSURANCE

The exemption statute has been amended. The exemption of

\[\text{Footnotes:}
\begin{align*}
\text{\textsuperscript{a}} & \text{Wash. Laws 1917, c. 156, § 121, p. 675 (Rem. Rev. Stat. § 1491, P. C. § 984).} \\
\text{\textsuperscript{b}} & \text{Rem. Rev. Stat. § 7230-1, P. C. § 7854-2.} \\
\text{\textsuperscript{c}} & \text{Wash. Laws 1939, c. 173, p. 546.}
\end{align*}\]
life insurance proceeds has been extended to cover assignments to any one other than the person effecting the insurance, and the restriction that there be no contrary provision in the policy affecting the exemption has been omitted. The exemption is also made categorically independent of any reserved right to change the beneficiary, so any contention that an effective assignment of a policy cannot be made in view of such reservation is apparently eliminated. But there does not seem to be any intention to change the rule that assignees for security have priority over named beneficiaries.\(^5\) The omission of the provision that a beneficiary may maintain an action on the policy in his own name is probably without significance. The new provision is to the effect that beneficiary or assignee is entitled to the proceeds against the creditors.

Chapter 97 protects insurance companies in paying according to the terms of the policy to the person named in the policy, or by a change of beneficiary, or by an assignment. The provisions apply to life insurance contracts and to accident policies with respect to death benefits; also to fraternal benefit societies and certificates, and to annuity contracts. The statute, however, expressly disclaims any purpose to affect the rights of third persons to the policy or its proceeds.\(^6\) In any case, the statute will not be a protection if, before payment is made, the insurance company has received \textit{at its home office} written notice of a third person's claim. The purpose of the statute evidently is to remedy the uncertain position in which insurers find themselves by reason of the decision in \textit{Occidental Life Insurance Co. v. Powers},\(^7\) wherein it was held that the husband's change of beneficiary in a life insurance policy, without his wife's consent, was without effect, the policy having been paid for with community funds and therefore being community property.

The result aimed at by this chapter appears to have been accomplished in California by judicial decision.\(^8\)

\textbf{Chattel Mortgages}

The duplication in the present statutes with respect to the recording of chattel mortgages is eliminated by Chapter 121.\(^9\) It is also provided that where a chattel mortgage has been filed as required by statute and the property is subsequently removed

\(^{5}\)Schade v. Western Union Life Insurance Co., 125 Wash. 200, 215 Pac. 521 (1923).

\(^{6}\)Wash. Laws 1939, c. 97, p. 266; § 4, p. 267.

\(^{7}\)193 Wash. 475, 74 P. (2d) 27 (1937).

\(^{8}\)Blethen v. Pacific Mutual Life Insurance Co., 198 Cal. 91, 243 Pac. 431 (1926).

\(^{9}\)See \textit{REM. REV. STAT.} § 3788. \textit{Cf. In re McNeil}, 44 F. (2d) 666 (D. C. Wash., 1930); filing held to satisfy § 3788.
to another county, the mortgagee shall file a certified copy of the mortgage in such latter county either prior to or within thirty days after such removal. This is a change in the law to the extent that filing rather than recording is referred to, and to the extent that filing prior to removal is made effective to protect the mortgagee.

The further provision is made for the benefit of the mortgagee, that the mortgage remains enforceable, where there is a failure to file in another county upon removal of the property, not only against the parties to the mortgage, which is the existing law, but also against those having actual notice thereof. Prior to this enactment, failure to record a mortgage upon removal was held to be fatal as to third parties even with notice. Express provision is made that the effect of filing the mortgage in the county of removal after the thirty-day period is to restore the operation of the mortgage as to all parties except purchasers and incumbrancers in good faith who have become such after the expiration of the thirty-day period and before such filing.

The effect of a late filing of a chattel mortgage, in cases of removal, accordingly will differ from the effect of the failure to make an original filing within the required time of ten days (Rem. Rev Stat. § 3781, P. C. § 9747), the rule in such a case being that filing after the ten-day period is of no effect so far as the filing constituting constructive notice is concerned.

BULK SALES

The Bulk Sales Law is amended by Chapter 122 so as to extend its operation to "any restaurant, cafe, beer parlor, tavern, hotel, club or gasoline service station"; and requires the inclusion in the vendor's affidavit of creditors, a statement of the amounts owing to employees, as well as a statement of the consideration to be paid by the vendee. Each of these amendments effects a change in the existing law. In Garner v. Thompson, the Washington court had held that the Bulk Sales Act did not apply to restaurants. As to the creditors required to be listed in the affidavit, the existing provisions refer only to creditors on account of "goods, wares or merchandise, and/or fixtures and equipment . . . or . . . money borrowed . . ." Likewise, prior to this statute, there was no requirement that the consideration for the sale be stated.

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91Clark v. Kilian, 116 Wash. 532, 199 Pac. 721 (1921). The court most likely would have reached the same conclusion with respect to filing or recording upon removal to another county. Cf. Turner v. Caldwell, 15 Wash. 274, 46 Pac. 235 (1896).
BANKS

Chapter 59 provides that stop-payment orders on checks, notes, drafts or trade acceptances drawn against or payable out of an account maintained with a branch bank shall have no effect unless delivered to or made at the branch. The non-independent nature of the branch bank was recognized in *Canadian Bank of Commerce v. Johnson*,[9] dealing with a different problem; but the opinion throws no light upon the precise question dealt with by this statute. In the absence of statute there appears to be some uncertainty as to the extent branches are to be treated as independent institutions.[94]

**Garnishment—Branch Banks**

The present requirements relating to garnishments in superior court cases when they are directed to banks having branches,[95] are extended to justice court garnishments by Chapter 70, the requirement being that such writs must be directed to the branch and served upon the manager or other officer "at the office or branch thereof at which the account evidencing (the) indebtedness of the defendant is carried, or at the office or branch which has in its possession or under its control credits or other personal property belonging to the defendant."

**Sale of Property Under Execution—Redemption**

The present redemption law relating to land sold on execution or foreclosure[96] provides that when farm land has remained in possession of the debtor during the redemption period and is not redeemed, the purchaser at the sale shall have a lien, upon the crops raised during the period of possession, for interest upon the purchase price and for taxes with interest. Chapter 94 substitutes for "the period of possession" the "year of redemption", and provides that the lien for taxes refers only to taxes becoming delinquent during the year of redemption.

**Test Suits by Municipal Corporations**

Chapter 153 establishes machinery whereby bond issues by municipal corporations can be subjected to judicial scrutiny in advance at the instance of the municipal corporation involved, instead of requiring bond attorneys to resort to the practice of

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[9b] Wash. Laws, Extra Sess., 1933, 1933, c. 44, p. 107; Rem. Rev. Stat. § 687. This statute expressly provides that the writ in such cases shall be sufficient to attach accounts, credits, or other personal property only in that particular branch upon which service is made.
arranging taxpayer test suits for the purpose of enhancing the marketability of the bonds by obtaining a judgment foreclosing objections to their legality, in advance of sale.\footnote{See Stallcup v. Tacoma, 13 Wash. 141, 42 Pac. 541, 52 Am. St. Rep. 25 (1895).} This new statute authorizes the issuer, after enactment of a bond ordinance, to file suit against "all taxpayers", as defendants. The court is required to designate one or more taxpayers as the persons upon whom service of process is to be had, as representative of all. If the taxpayers served default, the court is further required to appoint an attorney to defend the action. Any taxpayer may intervene.

Such a proceeding is to some extent well known in this state in connection with the statutory method for obtaining confirmation of the organization of irrigation districts and their proceedings, including the authorization of bond issues. But in such cases the decree is in effect a judgment in rem binding upon the property within the district.\footnote{See Tweedt v. Puderbaugh, 183 Wash. 425, 48 P. (2d) 648 (1935).} The effect of such a proceeding is to quiet title to the lien created against the property and, on that basis, does not provide a judicial proceeding where there is no controversy, but carries the characteristic res judicata.\footnote{Fidelity National Bank & Trust Co. v. Swope, 274 U. S. 123 (1926).} In contrast, the proceeding contemplated by Chapter 153 creates no lien and does not require that there be a controversy.\footnote{Cf. Muskrat v. U. S., 219 U. S. 346 (1911).} Even the local Declaratory Judgment Act\footnote{Wash. Laws 1935, c. 113, p. 305; amended by Wash. Laws 1937, c. 15, p. 39; Rem. Rev. Stat. § 784-1 et seq.; P. C. §§ 8108-21 et seq.} has been construed as not authorizing judicial proceedings unless they are adversary in character, involving "real" issues and "real" parties, and "an actual as distinguished from a possible or potential dispute."\footnote{Washington Beauty College v. Huse, 195 Wash. 160, 80 P. (2d) 403 (1938); Adams v. Walla Walla, 196 Wash. 263, 82 P. (2d) 584 (1939).}

However, statutes of a similar character have been employed in other states for some years. The Mississippi statute, for example, dating at least from 1917, has been sustained as constituting a proper grant of power to the courts under the state constitution.\footnote{See Bacot v. Hinds County, 124 Miss. 231, 86 So. 765 (1921); Jackson & E. R. Co. v. Burns, 148 Miss. 709, 113 So. 908 (1927); writ of error denied 278 U. S. 562 (1928); Love v. Yazoo City, 162 Miss. 65, 138 So. 600 (1931). See also annotations: 87 A. L. R. 706; 102 A. L. R. 82.} Under statutes of this type, the conclusive effect of the decree has been held to turn upon the requirement of a general notice to the taxpayers at large;\footnote{Love v. Yazoo City, 162 Miss. 65, 138 So. 600 (1931); Miami v. Romfh, 66 Fla. 260, 63 So. 440 (1913).} and in one instance the decree was held not conclusive on the constitutional validity of the bond issue as to a
taxpayer who did not appear and contest the validity on this
ground, although the right to do so was open to every taxpayer.\textsuperscript{105}

The substitution for the usual requirement of notice by publica-
tion, of the requirement that the court select certain specified tax-
payers for service in behalf of all is in accordance with equity
practice of long standing, as where the parties are numerous, some
only need to be served or the court can be requested to designate the
proper persons upon whom service is to be made.\textsuperscript{106} There is also
authority for the appointment of an attorney for absent parties;\textsuperscript{107}
and the duty of the court to see that the legal questions are
thoroughly explored seems to be clear, although the nature of the
proceeding would appear to place the burden of the affirmative
upon the municipal corporation seeking confirmation.\textsuperscript{108}

\textbf{CRIMINAL LAW}

By Chapter 74 the legislature has authorized the frank employ-
ment of court reporters for sessions of the grand jury by attaching
an amendment to that effect to Section 982 of the Code of 1881.\textsuperscript{109}
The prosecuting attorney is no longer hampered by the require-
ment that the minutes be kept by a clerk appointed by the grand
jury from their own number\textsuperscript{110} and is driven no longer to the
device of appointing a stenographer as a deputy.

The criminal responsibility of the drivers of motor vehicles has
been enlarged by Chapter 154, by adding to the category of mis-
demeanors of this class "to operate a motor vehicle in a negligent
manner." Negligent operation is defined as meaning the "operation
of a vehicle upon the public highways of the state in such a
manner as to endanger or to be likely to endanger any person or
property." It is also provided that operating in a negligent manner
is a lesser offense than, but included in, operating in a reckless
manner. This statute may not be directed at fostering prosecutions
for negligent driving so much as designing to prevent the escape
from punishment of reckless drivers when the evidence is not suf-
ficient to sustain the statutory requirement that recklessness be
shown by proof of "either a wilful or a wanton disregard of the
safety of persons or property."\textsuperscript{111}

\textsuperscript{105}Weinberger v. Board of Public Instruction, 93 Fla. 470, 112 So. 253
(1927); State v. Hillsborough County, 113 Fla. 345, 151 So. 712 (1933).
\textsuperscript{106}Ayers v. Carver, 17 How. 591 (U. S. 1855); Wallace v. Adams, 204
Barrett v. Harris, 51 Ont. L. 404, 69 Dom. L. R. 503 (1921).
\textsuperscript{108}See Randolph v. Shelby County, 257 Ky. 297, § 77 S. W. (2d) 961 (1934).
\textsuperscript{110}Mather v. King County, 39 Wash. 693, 82 Pac. 121 (1906).
\textsuperscript{111}See Wash. Laws 1937, c. 168, § 118; Rem. Rev. Stat. § 6390-118, P. C.
§ 2696-876.
A number of other enactments have not suggested any particular basis for comment. Reference perhaps should be made to the statute regulating the taking of tuna fish, an industry that may assume some proportions in the state;\(^\text{112}\) also the statute providing for the establishment of "mine to market" roads, evidently designed to promote the development of the state's mineral wealth. Another statute is designed to implement the operation of the Federal Land Speculation Act\(^\text{114}\) aimed to prevent speculation in public lands under the Grand Coulee project.\(^\text{115}\) Reference also seems required in the case of Chapter 118 which amends the insurance code in providing for compound interest on insurance policy loans, whether made before or after this act, in view of the determination in Goodwin v. Northwestern Mutual Life Insurance Co.,\(^\text{116}\) that insurance companies could not charge compound interest on a policy loan in the absence of an express provision therefor in the policy.

\(^{112}\)Wash. Laws 1939, c. 84, p. 219.
\(^{113}\)Wash. Laws 1939, c. 175, p. 530.
\(^{115}\)Wash. Laws 1939, c. 14, p. 37.
\(^{116}\)196 Wash. 391, 83 P. (2d) 231 (1938).