

# The Washington State Constitution and You

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# Overview

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Brief History of Washington Constitution

Unbundled or Plural Form of Government vs. Strong or Unitary Executive

County Government

Role of Individual County Officers

# The 1889 Washington Constitutional Convention

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# Constitutional Convention

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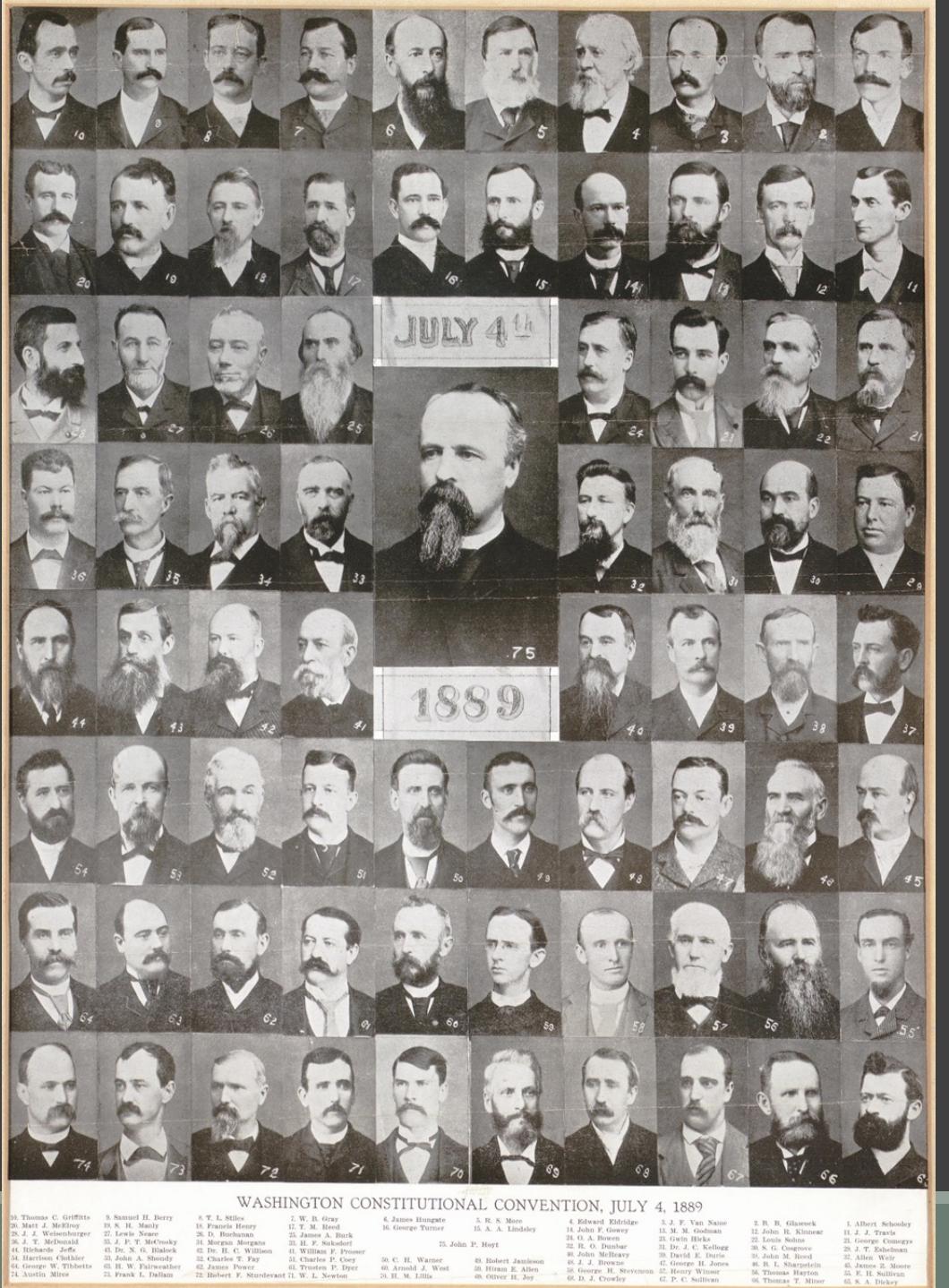
Convened in Olympia on July 4, 1889

75 delegates equally apportioned among 25 district

- 43 Republicans, 28 Democrats, 2 Independents and 2 Labor Delegates

Cascade Mountain Divide

- Western delegates were 5 votes stronger than those from Eastern Washington



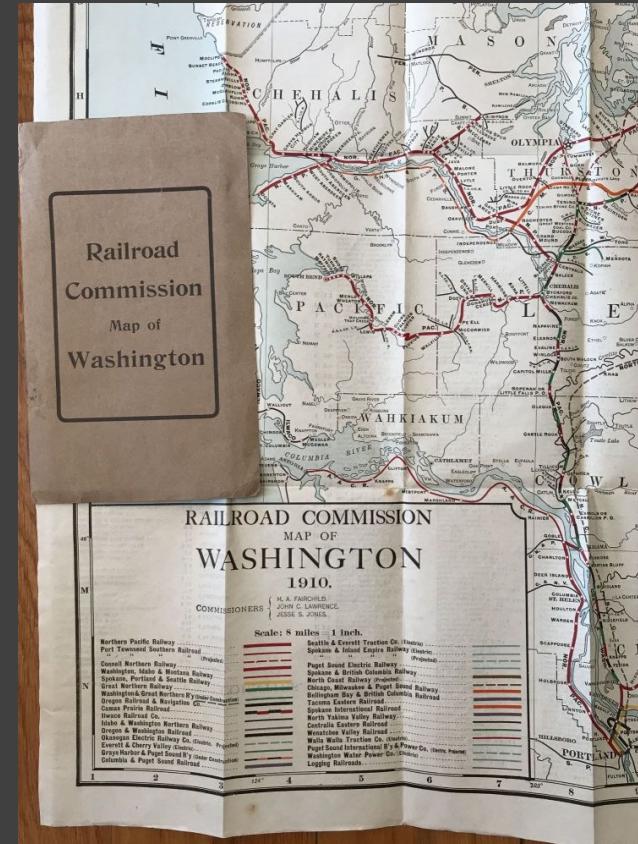
# Political Backdrop

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Legislative scandals in a number of Eastern states

Judicial scandals in mining states and territories

Distrust of major corporations, particularly railroads



# Impact on the Delegates

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General distrust of government (even of representative government)

Desire to deal with political corruption before it could take hold in Washington

Safeguard against public extravagance

Protect against large business corporations

# Starting Points

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Draft proposed by W. Lair Hill that was published in the Portland Oregonian

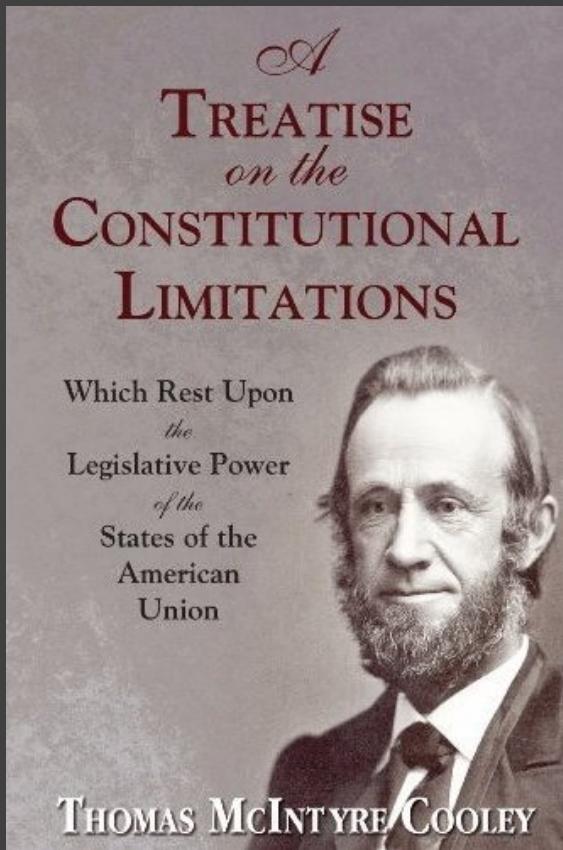
Constitutions of Oregon, Wisconsin, Indiana, and other states

Many provisions are identical to provisions in the 1879 California Constitution



# Leading Treatise of the Day

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One of the best legal treatises of its time: *A Treatise on the Constitutional Limitations*

Fifth edition (1883) available during the constitutional convention

# Ending Point

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State Constitution or Proposed Draft	Identical Section	Similar Section
Hill	51	46
California	45	45
Oregon	23	37
Wisconsin	27	17
Proposed 1878	19	30
Colorado	8	15
Indiana	7	10
Pennsylvania	7	6
United States	7	17
Illinois	6	14
Missouri	3	18
Texas	2	7
Ohio	1	17

# Record of How We Got from There to Here

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Minimal records available from the convention

Minutes and contemporary newspaper accounts all that remains today.

- Extensive collection available in an on line collection at the Gallagher Law Library --  
<https://liblawuw.libguides.com/waconsthist>

STATE OF WASHINGTON.

*donated by  
M B Blackwell  
2-20-1917*  
ENABLING ACT AND CONSTITUTION

WITH

SIDE NOTES AND INDEX.

T. M. REED, STATE AUDITOR.

PUBLISHED BY AUTHORITY.

OLYMPIA, WASH.:  
O. C. WHITE, STATE PRINTER,  
1891

# Legislative Branch

Legislative article resulted in a longer constitution than those of other states

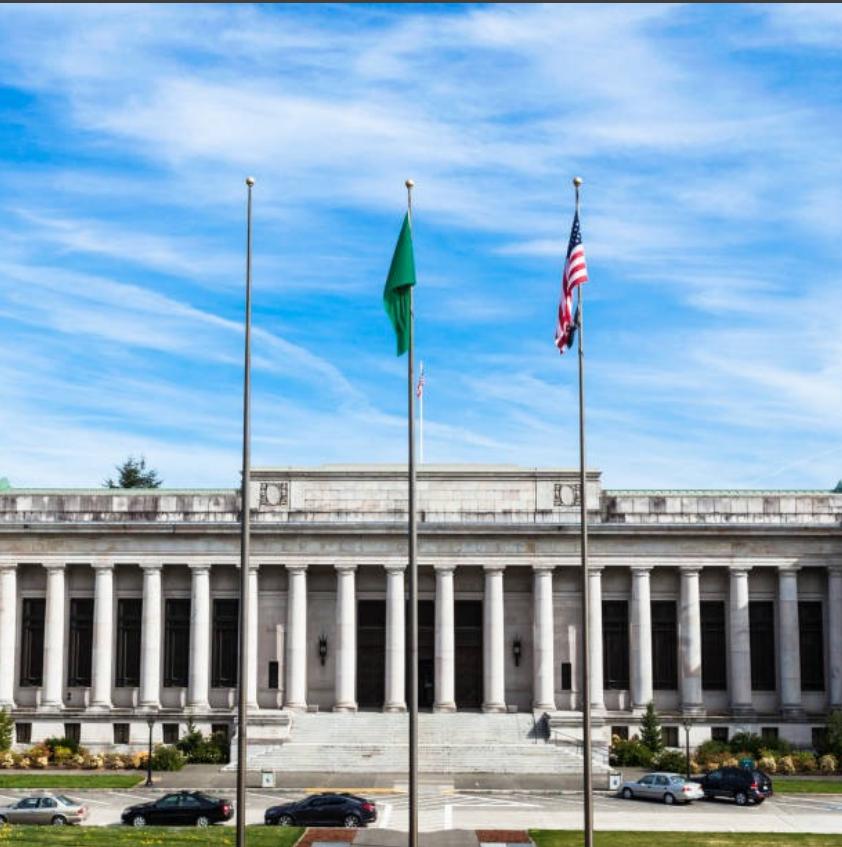
Significant restrictions on legislature

- Cannot increase or diminish compensation of any officer
- One subject bills with subject in the title



# Judicial Branch

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Five justices because it is  
too easy to corrupt two  
Six year terms of office  
Directly elected versus  
appointed  
Separately elected clerks

# Executive Branch

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Executive split into a number of directly elected positions

Governor                    Lieutenant Governor

Secretary of State      Treasurer

Auditor                    Attorney General

Superintendent of Public Instruction

Commissioner of Public Lands





# 2020 Organization Chart

# Washington State Government

<b>Legislative Branch</b>			<b>Executive Branch</b>			<b>Judicial Branch</b>		
<b>Senate and House of Representatives</b>						<b>Supreme Court</b>		
Joint Legislative Audit & Review Committee	Legislative Evaluation & Accountability		Administrative Office of the Courts	Law Library				
Joint Legislative Systems Committee	Program (LEAP) Committee		Office of Civil Legal Aid	Municipal Courts				
Joint Transportation Committee	Office of the State Actuary		Court of Appeals	Office of Public Defense				
Legislative Ethics Board	Redistricting Commission (activated decennially)		Commission on Judicial Conduct	District and Superior Courts				
Office of Legislative Support Services	Statute Law Committee (Code Reviser's Office)							
Commissioner of Public Lands	Insurance Commissioner	Treasurer	Lieutenant Governor	Governor	Attorney General	Superintendent of Public Instruction	Auditor	Secretary of State
Dept. of Natural Resources - Board of Natural Resources	Public Deposit Protection Commission State Finance Committee		See offices below	Executive Ethics Board				State Library
Environment and Natural Resources	General Government	Transportation	Health and Human Services	Education	Community and Economic Development			
<b>Agencies led by Governor-appointed executives</b>								
Department of Agriculture (commodity commissions)	Board of Accountancy Office of Administrative Hearings	Dept. of Licensing (occupational regulatory boards)	Dept. of Children, Youth and Families	Center for Deaf and Hard of Hearing Youth	Commission on African-American Affairs			
Department of Ecology	Dept. of Archaeology and Historic Preservation	Washington State Patrol	Department of Corrections - Indeterminate Sentence Review Board	School for the Blind	Arts Commission			
Pollution Liability Insurance Agency	Consolidated Technology Services (WaTech) - Technology Services Board	Traffic Safety Commission	Employment Security Dept. - Governor's Committee on Disability Issues and Employment	Workforce Training and Education Coordinating Board	Commission on Asian Pacific American Affairs			
Puget Sound Partnership	Department of Enterprise Services - Building Code Council	Dept. of Transportation	Department of Health (occupational regulatory boards) - Board of Health		Dept. of Commerce - Community Economic Revitalization Board - Developmental Disabilities Council - Public Works Board - Broadband Office			
Recreation and Conservation Office	Department of Financial Institutions Office of Financial Management - Personnel Resources Board - Sentencing Guidelines Commission - Serve Washington		Health Care Authority - Public Employees Benefits Bd. - School Employees Benefits Bd.		Commission on Hispanic Affairs			
	Office of the Governor - Corrections Ombuds, Office of - Education Ombuds, Office of - Equity Office - Family & Children's Ombuds, Office of - LGBTQ Commission - Regulatory Innovation & Assistance, Office for - Results Washington - Women's Commission		Dept. of Labor and Industries Dept. of Services for the Blind Dept. of Social and Health Services Dept. of Veterans Affairs		Office of Minority & Women's Business Enterprises			
	Governor's Office of Indian Affairs State Lottery Military Department Department of Retirement Systems Department of Revenue							

# Unbundled or Plural Executive

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# Two Main Forms of Executives

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## STRONG OR UNITARY

United States President

All power in one person

Appoints other executive officers  
and can fire them at will

## PLURAL EXECUTIVE

Discrete authority is taken away  
from the chief executive and  
given exclusively to a directly  
elected executive official

# Pros and Cons

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## STRONG OR UNITARY EXECUTIVE

More efficient

Uniformity

Coordination

Accountability

Voters must make a decision on a bundle of policy dimensions

Concentration of power

## PLURAL OR UNBUNDLED EXECUTIVE

Produces political outcomes closer to public preferences

Easier to match expertise, ability, and other characteristics to the specific task

Greater time and cost commitment to monitoring performance

Duplication of effort and/or coordination issues

Can protect or enhance minority input

# Least Effective Plural Executive Governments

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Numerous authorities sharing power.

Shared authority for policy implementation.

# Most Effective Unbundled Governments

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Specialized executives with exclusive authority to make decisions about one policy dimension.

# Unbundled Washington County Government

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# Delegates' Choices

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Plural legislative authority – 3 county commissioners

and

Directly elected specialized executives

## Article XI, § 5

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The legislature by general and uniform laws shall provide for the election in the several counties of boards of county commissioners, sheriffs, county clerks, treasurers, prosecuting attorneys, and other county, township or precinct and district officers as public convenience may require, and shall prescribe their duties, and fix their terms of office. . . .

# What is the Effect of Naming Specialized Officers in the Constitution?

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What can be definitely said on this subject is this: That such powers as are specially conferred by the constitution upon the governor, or upon any other specified officer, the legislature cannot require or authorize to be performed by any other officer or authority; and from those duties which the constitution requires of him he cannot be excused by law. *Constitutional Limitations* (5th ed.), at 135-36.

At the local level, this bedrock principle meant that: [I]f the term of an office is fixed by the Constitution, the legislature cannot remove the officer, — except as that instrument may allow, — either directly, or indirectly by abolishing the office... Or by shortening the constitutional term. . . . or can the legislature take from a constitutional officer a portion of the characteristic duties belonging to that office, and devolve them upon an office of its own creation. . . Nor, where the office is elective, can the legislature fill it, either directly, or by extending the term of the incumbent. *Constitutional Limitations* (5th ed.), at 335 n. 1 (citations omitted).

# Does Washington Follow These Principles?

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“In naming the county officers in § 5, Article 11 of the constitution, the people intended that those officers should exercise the powers and perform the duties then recognized as appertaining to the respective offices which they were to hold.”

State ex rel. Johnston v. Melton, 192 Wash. 379, 388 (1937)

# Plain English Please

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Duties of one elected official cannot be transferred to another elected official.

A private individual may not be hired to perform duties assigned to a specific elected official.

Duties belonging to a specific office cannot be removed from that office until the end of the current term.

An office cannot be eliminated mid-term.

# Application of the Rule Over the Years

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*Northwestern Improvement Co. v. McNeil*, 100 Wash. 22 (1918) (assessor)

*State ex rel. Johnston v. Melton*, 192 Wash. 379, 388 (1937) (sheriffs)

*State ex. Banks v. Drummond*, 187 Wn.2d 157 (2016) (prosecutor)

*Burrowes v. Killian*, 195 Wn.2d 350 (2020) (county clerk)

# Surely County Commissioners Have Oversight Powers

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The official is accountable not to the board of commissioners but to the public. If the public dislikes a decision, the ballot is its recourse.

- Commissioners lack authority to interfere with hiring decisions of separately elected county official. *Osborn v. Grant County*, 130 Wn.2d 615 (1996).
- Commissioners lack authority to insist on whom a separately elected county official assigns to a specific task. *State ex rel. Banks v. Drummonds*, 187 Wn.2d 157 (2016).
- Commissioners cannot hire a private contractor to perform functions of an “incompetent” voter selected public officer. *Northwestern Improvement Co. v. McNeil*, 100 Wash. 22, 33 (1918).

# What Are the Duties of Each Named Officer

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The Washington Supreme Court construes “core functions” according to a given office's historical usage: ‘In naming the county officers in § 5, Article 11 of the constitution, the people intended that those officers should exercise the powers and perform the duties then recognized as appertaining to the respective offices which they were to hold.’”

*State ex rel. Banks v. Drummond*, 187 Wn.2d 157, 180 (2016)

# How Do I Determine the Core Functions of My Office

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Title 36 RCW sets out the statutes for counties.

Each officer has a separate chapter:

36.22 County Assessor

36.23 County Clerk

36.24 County Coroner

36.27 Prosecuting Attorney

36.28 County Sheriff

36.29 County Treasurer

36.32 County Commissioners

# Those Chapters Have My Office’s Current Duties, I Want to Know My Historical Duties

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Current chapters generally have a “duties” provision:

RCW 36.22.010

Duties of auditor.

The county auditor:

(1) Shall be recorder of deeds and other instruments in writing which by law are to be filed and recorded in and for the county for which he or she is elected; . . .

# History of Provision

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Code Reviser is required to “prepare and maintain full historical records showing the enactment, amendment, revision, supersession, and repeal of the various sections of the revised code.”

[ 2009 c 337 § 3; 1995 c 194 § 1; 1984 c 128 § 2; 1963 c 4 § 36.22.010. Prior: 1955 c 157 § 9; prior: (i) Code 1881 § 2707; 1869 p 310 §§ 1, 2, 3; 1863 p 549 §§ 1, 2, 3; 1854 p 424 §§ 1, 2, 3; RRS § 4083. (ii) Code 1881 § 2709; RRS § 4085. (iii) Code 1881 § 2711; RRS § 4088. (iv) 1893 c 119 § 2; Code 1881 § 2712; 1869 p 311 § 6; 1863 p 550 § 6; 1854 p 425 § 6; RRS § 4089. (v) 1893 c 119 § 3; Code 1881 § 2571; RRS § 4090. (vi) 1893 c 119 § 4; Code 1881 § 2713; 1869 p 311 § 7; 1867 p 130 § 1; RRS § 4091. (vii) 1893 c 119 § 5; Code 1881 § 2714; 1869 p 311 § 8; 1867 p 131 § 2; RRS § 4092. (viii) 1893 c 119 § 7; Code 1881 § 2718; 1869 p 312 § 13; RRS § 4095. (ix) Code 1881 § 2719; RRS § 4098. (x) 1893 c 119 § 8; Code 1881 § 2720; RRS § 4099.]

# History Hyperlinks to Older Versions

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SESSION LAWS, 1893.

CHAPTER CXIX.

[S. B. No. 265.]

RELATING TO THE DUTIES OF COUNTY AUDITORS.

AN ACT amending sections 2710, 2712, 2571, 2713, 2714, 2717, 2718, 2720, 2726, 2727 and 2728 of the Code of 1881, and repealing section 2721, Code of 1881, as amended by subdivision 9 of section 1, page 45, session laws of 1883, laws of the Territory (now State) of Washington, relating to the duties of county auditors, and declaring an emergency

## CODE OF WASHINGTON

# Shortcut Method

Go directly to the Code of  
1881

<https://leg.wa.gov/CodeReviser/documents/sessionlaw/1881Code.pdf>

CONTAINING ALL

## ACTS OF A GENERAL NATURE

REVISED AND AMENDED BY THE LEGISLATIVE ASSEMBLY OF THE TERRITORY  
OF WASHINGTON, DURING THE EIGHTH BIENNIAL SESSION, AND THE  
EXTRA SESSION, ENDING DECEMBER 7, 1881; THE CONSTITUTION  
OF THE UNITED STATES AND AMENDMENTS THERETO; THE  
ACTS OF CONGRESS APPLICABLE TO THE TERRITORY OF  
WASHINGTON; AND THE NATURALIZATION LAWS.

*Published by Authority.*

# QUESTIONS

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## Read More About It

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Christopher R. Berry and Jacob E. Gersen, *The Unbundled Executive*, 75 U. Chi. L. Rev. 1385 (2008)

Jacob E. Gersen, *Unbundled Powers*, 96 Va. L. Rev. 301 (2010)

Steven G. Calabresi and Nicholas Terrell, *The Fatally Flawed Theory of the Unbundled Executive*, 93 Minn. L. Rev. 1696 (2009)